GLOBAL TAX WEEKLY
a closer look

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

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

COUNTRIES AND REGIONS EUROPE AUSTRIA BELGIUM BULGARIA CYPRUS CZECH REPUBLIC DENMARK ESTONIA FINLAND FRANCE GERMANY GREECE HUNGARY IRELAND ITALY LATVIA LITHUANIA LUXEMBOURG MALTA NETHERLANDS POLAND PORTUGAL ROMANIA SLOVAKIA SLOVENIA SPAIN SWEDEN SWITZERLAND UNITED KINGDOM EMERGING MARKETS ARGENTINA BRAZIL CHILE CHINA INDIA ISRAEL MEXICO RUSSIA SOUTH AFRICA SOUTH KOREA TAIWAN VIETNAM CENTRAL AND EASTERN EUROPE ARMENIA AZERBAIJAN BOSNIA CROATIA FAROE ISLANDS GEORGIA KAZAKHSTAN MONTENEGRO NORWAY SERBIA TURKEY UKRAINE UZBEKISTAN ASIA-PAC AUSTRALIA BANGLADESH BRUNEI HONG KONG INDONESIA JAPAN MALAYSIA NEW ZEALAND PAKISTAN PHILIPPINES SINGAPORE THAILAND AMERICAS BOLIVIA CANADA COLOMBIA COSTA RICA ECUADOR EL SALVADOR GUATEMALA PANAMA PERU PUERTO RICO URUGUAY UNITED STATES VENEZUELA MIDDLE EAST ALGERIA BAHRAIN BOTSWANA DUBAI EGYPT ETHIOPIA EQUATORIAL GUINEA IRAQ KUWAIT MOROCCO NIGERIA OMAN QATAR SAUDI ARABIA TUNISIA LOW-TAX JURISDICTIONS ANDORRA ARUBA BAHAMAS BARBADOS BELIZE BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS COOK ISLANDS CURACAO GIBRALTAR GUERNSEY ISLE OF MAN JERSEY LABUAN LIECHTENSTEIN MAURITIUS MONACO TURKS AND CAICOS ISLANDS VANUATU

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a closer look

Global Tax Weekly – A Closer Look

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by Duff & Phelps

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Proposed Regulations Under 163(j) On Business Interest Deductibility Limitation Are Released

On November 26, 2018 the US Department of Treasury and the IRS released proposed regulations that provide guidance on the limitation on the business interest expense deduction for certain taxpayers. Section 163(j) was revised as part of the Tax Cuts and Jobs Act (TCJA), and the proposed regulations will impact companies claiming interest expense deductions for 2018.

As revised, 163(j) generally caps the amount allowed as a deduction for business interest expense to a taxpayer's business interest income plus 30 percent of the taxpayer's adjusted taxable income (ATI) plus the taxpayer's floor plan financing interest expenses for the taxable year. Disallowed interest can be carried forward and treated as business interest paid or accrued in the next taxable year. A new form, Form 8990, Limitation on Business Interest Expense Under Section 163(j), should be used by taxpayers to calculate and report their deduction and the amount of disallowed business interest expense to carry forward to the next tax year.

163(j) will generally apply to all taxpayers, except:

1. Certain small businesses that meet a gross receipts test (*i.e.*, less than an average of USD25m over the prior three-year period, adjusted for inflation); or
2. Taxpayers in certain trades or businesses (*i.e.*, electing real property businesses, electing farming businesses, and certain regulated utility businesses).

The proposed regulations[1] are organized into eleven sections. The first three sections include definitions, general rules on the computation of a taxpayer's 163(j) limitation, and details on the interaction and ordering with respect to other Internal Revenue Code sections, respectively. The sections that follow include rules applicable to C Corporations (including REITS, RICs and consolidated group members) as well as tax exempt corporations and rules applicable to C Corporations with respect to carryforwards. There are then separate sections of rules with respect to Partnerships and S Corporations; Foreign Corporations and their shareholders; and Foreign Persons with effectively connected income. More details are then provided on rules regarding elections for excepted trades or businesses as well as a safe harbor for certain REITS. Detail around allocations between these excepted trades or businesses and non-expected trades or businesses is also provided. Lastly, there are rules around transition from the prior 163(j).

Of note, the proposed regulations define the term "interest" in the context of Federal tax law. The proposed regulations state that interest relates to an "instrument or a contractual arrangement, including a series of arrangements" and includes transactions that are indebtedness in substance but not in form. In addition, the proposed regulations contain an anti-avoidance rule whereby "any expense or loss predominately incurred in consideration of the time value of money is treated as interest expense." In aggregate, the proposed regulations intend to provide clarity on the types of instruments/transactions that will be subject to 163(j) and to leave little room for taxpayers to structure debt-like arrangements in order to circumvent the business interest limitation as a tax-avoidance mechanism.

With respect to key international tax provisions in 163(j), the proposed regulations reserve for future guidance on the interaction of Sections 163(j) and BEAT, but do address the effect of deemed inclusions from branch income, Subpart F income and GILTI[2] as well as the effect of FDII on adjusted taxable income.

Also of note, several adjustments to the calculation of ATI are added to avoid double counting. Other adjustments specific to particular types of taxpayers are meant to ensure even treatment across different types of taxpayers.

Comments are due within 60 days of the date the proposed regulations are published in the Federal Register and a public hearing is scheduled for February 25, 2019. Also, according to the accompanying IRS release, IR-2018-233[3], taxpayers may rely on the rules in these proposed regulations until final regulations are published in the Federal Register.

Proposed Regulations Under Internal Revenue Code Section 956 Issued

On October 31, 2018 the IRS released proposed regulations under Internal Revenue Code Section 956 (Section 956) which would reduce the amount determined under Section 956 with respect to certain transactions.

Section 956 was put in place alongside the subpart F regime in the Revenue Act of 1962 to ensure that a CFC's earnings not subject to immediate tax when earned (under the subpart F regime) would be taxed when repatriated, either through a dividend or an effective repatriation. Congress recognized that repatriation of foreign earnings was possible through means other than a taxable distribution, and therefore enacted Section 956 "to prevent the repatriation of income to the United States in a manner which does not subject it to US taxation." Section 956 serves as an anti-abuse measure to tax a CFC's investment of earnings in United States property in the same manner as if it had distributed those earnings to the United States.

The Tax Cuts and Jobs Act(TCJA)[4] enacted on December 22, 2017 established a participation exemption system for the taxation of certain foreign income. Under Section 245A of the TCJA, in the case of any dividend received from a specified 10% owned foreign corporation by a domestic corporation which is a U.S. shareholder with respect to such foreign corporation, there is allowed as a deduction an amount equal to the foreign-source portion of such dividend. In effect Section 245A allows these dividends to be repatriated to the US on a tax-exempt basis due to the dividend received deduction.

The proposed regulations under Section 956 align Sections 956 and 245A with regards to actual dividends determined under Section 245A and substantially equivalent dividends determined under Section 956 by treating both types of dividends (actual dividends and substantially equivalent dividends) as not subject to additional US tax for corporate U.S. shareholders of CFCs. The proposed regulations note that disparate treatment of actual dividends and amounts substantially the equivalent of a dividend would be directly at odds with the purpose of Section 956. The proposed regulations under Section 956 also indicate that one of their outcomes will be to significantly reduce complexity, costs, and compliance burdens for corporate US shareholders of CFCs.

It should be noted that Section 956 will continue to apply without modification to US shareholders other than corporate US shareholders, such as individuals. In addition, Section 956 will continue to apply without reduction to regulated investment companies and real estate investment trusts because they are not allowed the dividends received deduction under Section 245A.

The proposed regulations will apply to taxable years of a CFC beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register and to taxable years of a US shareholder in which or with which such taxable years of the CFC end. Taxpayers may rely on the proposed regulations for taxable years of a CFC beginning after December 31, 2017, and for taxable years of a U.S. shareholder in which or with which such taxable years of the CFC end, provided that the taxpayer and U.S. persons that are related to the taxpayer consistently apply the proposed regulations with respect to all CFCs in which they are U.S. shareholders.

The proposed Section 956 regulations (REG-114540-18) can be found here.[5]

UK And Spain Announce Digital Services Tax Rules

The EU's member states continue to debate the introduction of a digital services tax (DST) within the EU but have thus far not achieved consensus. In late October 2018, both the UK and Spanish governments commenced unilateral action to impose DST regimes in their respective jurisdictions.

UK Announcement

The UK government has announced in its autumn budget, delivered on October 29, 2018, that it will proceed unilaterally with its own DST from April 2020.[6] The government presents the DST as an interim measure that will be disapplied if and when an appropriate approach to the taxation of digital businesses is agreed at the global level through the OECD.

Sitting outside the framework of double tax treaties, the DST will be a 2 percent tax on the gross revenues of specific business models, where those revenues are connected with the participation of UK users. The UK government has adopted the position that digital businesses create value in a novel way. It is the UK government's view that highly digitalized business models derive value from the participation of their local users, but that value does not generate income tax in the jurisdiction of those users under the existing international corporate tax system.

The government expects to raise GBP1.5bn from the DST over four years. The legislation takes aim at the internet giants, such as Google, Amazon and Facebook, which has raised concern in the US over the apparent targeting of US multinationals.[7] The tax will apply to revenues derived from provision of a search engine, a social media platform or an online marketplace. It will not be a tax on online sales of goods; hence, Amazon, for example, would be liable to the DST on the revenues linked to the participation of UK users that it generates from its marketplace function, but not from its direct sales to customers. Also, explicitly outside the scope of DST will be revenues from financial and payment services, the provision of online content, sales of software or hardware and television and broadcasting services.

Businesses generating less than GBP500m in revenues globally from in-scope activities will not be caught by the DST, nor will any business have to pay the tax on the first £25 million of relevant UK revenues. The government has also proposed a safe harbor for loss-making businesses and those with very low profit margins.

Because the tax will not be covered by the UK's double tax treaties, it will not be creditable against UK corporation tax, but it will be treated as an allowable expense for the purpose of calculating UK corporation tax. The government has issued assurances that an assessment will be made in 2025 as to whether the DST is still required in light of international action and that it will be disapplied if an acceptable global solution has been implemented by that date.

The government issued a consultation document on November 7, 2018 on the design, implementation and administration of the DST, as a precursor to the introduction of legislation in Finance Bill 2019-20.[8] The consultation seeks views on, inter alia: the approach proposed for defining business activities within the scope of the tax and for determining when the revenues become taxable; the design of the safe harbor; the effect of treating DST as a deductible expense; the proposed review mechanism; and reporting and payment. Comments are to be sent to the government by February 28, 2019.[9]

Spanish Announcement

On October 23, 2018, the Spanish Government released the preliminary draft bill on the Digital Services Tax (DST), taking as the starting point the European Commission's (EC) proposal presented on March 21, 2018 and leaving a door open to its future implementation in 2019, if approved.

Both the EC and the Spanish Government claim that the most practical way to tackle the challenge of fair taxation in a digital economy is the introduction of this DST that updates the notion of a (digital) permanent establishment (PE) by allocating the profit derived from the data and the value created by user participation, to the source country where those data and users are located. However, Spain currently precedes the EU consensus, as it is still a topic up in the air without clear practical measures.

For a related entity to qualify as taxable for the purposes of the DST, the group should meet two thresholds to ensure that the former poses both sufficient scale and significant digital footprint. These are quantified in terms of having a total amount of worldwide revenues reported by the group for the previous calendar year that exceeds EUR 750m, and EUR3m in Spain.

The DST consists of a 3 percent tax rate applicable to gross income derived from certain digital services net of VAT or other similar taxes. The relevant digital services for tax purposes must be characterized by user value creation (e.g. online intermediation, online advertising and data transmission services) and rendered within the Spanish territory, based on the place where the devices of these users have been used, generally located by their Internet Protocol (IP) addresses.

The EC's proposal states that a series of services including, but not limited to: e-commerce, online financial services, online payment services and online intermediation services (to supply digital content, communication services, etc.,) are exempted from taxation. Yet, while the former transactions do not qualify as taxable, from the transfer pricing perspective, the Draft does not expressly neglect these when rendered between related entities. Hence, today, intra-group digital services in Spain lie within the DST scope.

Utah Supreme Court Rules In Favor Of Taxpayer In See's Candies Transfer Pricing Case

On October 5, 2018, the Utah Supreme Court affirmed a Fourth Judicial District Court, thereby upholding deductions for royalty payments made to a related party for the use of intellectual property.

The case[10] (opinion available here[11]) involved See's Candies, Inc. (See's Candies), a California corporation that sells candy in Utah and Columbia Insurance Company (Columbia), an admitted insurance company in Utah. Both entities are wholly owned subsidiaries of Berkshire Hathaway. In 1997, Columbia purchased intellectual property from See's Candies in exchange for stock in Columbia. The transaction was followed by a non-exclusive licensing agreement whereby

Columbia would protect and develop the intellectual property, and See's Candies would pay quarterly royalties to license back the intellectual property purchased by Columbia. An outside accounting firm was hired to set the value of Columbia stock, See's intellectual property and the related royalty payments to ensure that the transaction met the arm's-length standard as described under IRC Section 482.

Subsequently, the Utah State Tax Commission (UTC) audited the results of See's Candies for 1999-2007 and disallowed the royalty deductions in their entirety under its authority under Utah Code Annotated § 59-7-113 via a 2009 Statutory Notice letter, noting a shifting of income leading to an understatement of income attributable to See's Candies. See's Candies disagreed with the audit results, resulting in the controversy moving to the Fourth Judicial District Court in Utah County. This court upheld 90 percent of the deductions for royalty payments made by See's Candies, generally agreeing with the taxpayer that the payments met the requirements under IRC Section 482 and that the UTC was limited to adjustments allowed under the IRC Section 482 framework. The Court also indicated that Utah Code Ann. Sec. 59-7-113 was ambiguous and much of its language was nearly identical to IRC Sec. 482, necessitating a reliance on IRC Section 482 principles for any proposed adjustment.

The Utah Supreme Court decision provides insight on how individual U.S. states may be limited in their ability to price transfer pricing transactions in a manner not conforming with IRC Section 482, especially if the states do not have specific guidance which departs from IRC Section 482.

ATO Releases Guidance on the Interaction Between the Transfer Pricing Rules and Debt/Equity Tests

On October 31, 2018 the Australian Taxation Office (ATO) published Draft Taxation Determination TD 2018/D6 dealing with the interaction between the debt and equity rules in Division 974 and the transfer pricing rules in Subdivision 815-B of the Income Tax Assessment Act 1997.

TD 2018/D6 states that the transfer pricing rules prevail over the debt/equity rules and that the debt/equity rules apply to classify financing arrangements as either debt or equity by reference to the arm's length conditions, not the actual conditions. This is on the basis that Subdivision 815-B explicitly states that nothing in the income tax legislation limits the operation of the transfer pricing rules (with the exception of the thin capitalization rules).

The draft tax determination provides three examples to illustrate the effect of the transfer pricing rules on the debt equity rules.

The first example deals with an outbound loan to a distressed subsidiary with an interest moratorium until the foreign subsidiary makes an accounting profit. The loan would satisfy the equity test under the debt/equity rules because the payment of interest is contingent on the economic performance of the issuer. Although it's questionable whether a distressed company would have been able to borrow in the first place, the ATO assumes that had arm's length conditions operated under the transfer pricing rules, interest would have accrued from start date of the loan and as a result any interest the Australian company receives would be included in its assessable income.

The second example involves an inbound discretionary, non-cumulative interest loan to an Australian company which would satisfy the equity test. As a result, no interest withholding tax would be payable on any interest paid by the Australian company. However, as interest is assumed to have been charged under arm's length conditions, the ATO can make a determination and adjustment against the foreign resident company so as to deem an interest withholding tax liability. In this situation, the ATO may exercise its discretion to make a consequential adjustment by way of a deemed deduction for interest to the Australian-company which begs the question whether the ATO would seek to challenge the arrangement in the first place.

The third example deals with an outbound interest-free loan to a foreign subsidiary in the exploration stage of a mining business that could not obtain debt financing from an unrelated party which would satisfy the debt test. The arm's length conditions would give rise to an equity interest but as there is no transfer pricing benefit flowing from this the transfer pricing rules would not apply to deem interest income to the Australian lender. This is consistent with the approach taken in Taxation Ruling TR 92/11 dealing with the former transfer pricing rules under Division 13 of the ITAA 1936 whereby certain financing arrangement could be treated as "quasi-equity".

The approach set out in the draft tax determination preserves the position under TD 2008/20 (since withdrawn) dealing with the interaction between the debt/equity rules and Division 13. However, it would appear to be somewhat at odds with the special rule under Subdivision 815-B which preserves the thin capitalization rules (which themselves depend on the debt/equity tests to identify whether financing arrangements constitute debt for thin capitalization purposes) in respect of their application to an entity's amount of debt.

The draft tax determination does not address the situation where there is a genuine commercial reason for an inbound interest-free loan and the loan has not disadvantaged the Australian revenue. In this case, it could reasonably be expected that the ATO would not make a determination and adjustment against the foreign resident company to raise a withholding tax liability. Such a situation could conceivably arise where, if interest had been charged, the thin capitalization rules would operate to deny a deduction and therefore the interest free loan arrangement is designed to enable the Australian entity to satisfy the relevant thin capitalization test. Clarity on this would be welcome.

Taxpayers should review their cross-border financing arrangements in light of the draft tax determination.

In addition to the draft tax determination, the ATO is expected to release shortly a new draft schedule 3 to Practical Compliance Guideline 2017/4 on interest free related party loans, as well as new guidance on the application of the thin capitalization arm's length debt test.

Comments were due by November 30, 2018.

TD 2018/D6 is available here.[12]

Vietnam Signals Potential Taxpayer Friendly Position on New Interest Expense Deductibility Rules

Since May 2017, with the implementation of Decree 20/2017/ND-CP (Decree 20) and Circular 41/2017/TT-BTC (Circular 41), the cap on interest expense deductibility for income tax purpose has become one of the most controversial and important transfer pricing topics in Vietnam. The key issue under the new rules is that interest deductions arising from loans are capped, including loans from both related parties and those from third-parties such as commercial banks. Further, Decree 20 has no article providing any relief on such interest expense cap, which could further be interpreted that no interest expense is deductible if the tax payer has a loss.

In a recent public article before the coming discussion of National Assembly on Tax Administration, Mr. Cao Anh Tuan, Deputy Director of the General Department Taxation (GDT) mentioned that this issue will be addressed in the upcoming amendment of Law on Tax Administration.[13]

> "The idea of the amended Law on Tax Administration is that the 20% EBITDA deductibility of interest expense will only be applicable on FDI enterprises and enterprises

> with loans between related parties who have different CIT rates. In addition, with corporations, parent companies and subsidiaries in Vietnam applying the same CIT rates and incentives, this cap shall apply only on their consolidated financial statements. The above content has been included in the draft of amended Law on Tax Administration to submit to the National Assembly during the 6th discussion session. The draft of the amendment will be discussed by delegates on November 8 but must wait until the next session to get approval".

If acted upon, this statement would be a positive development for taxpayers. First, it appears that Ministry of Finance (MOF) and GDT have recognized and are taking serious consideration of the needs for a relief measure for this issue. Second, authorities have acknowledged the international practice as well as BEPS action plan in which the main target should be cross-border transactions and profit shifting. This means that financing transactions between companies within Vietnam having the same tax treatment (CIT rates and incentives) should not be the main target and impacted by the regulation.

Another possibility is that a financing entity incorporated in Vietnam could be an acceptable option in the future. The financing entity should have enough creditability to obtain loans from financial institutions on behalf of the remaining group entities, and sufficient operating profit to ensure interest expense triggered from the loans is lower than the deductibility cap. In this case there could be a possibility that the loan interest paid to such financing entity from local enterprises will be deductible.

Nevertheless, demonstrating a full compliance with the prevailing regulations should be the top priority at this stage. As stated by Minister Dinh Tien Dung of the MOF, the aforementioned amendment of Law on Tax Administration is planned to take effect from July 2020, which means any change on the treatment and interpretation on this matter should only be expected for financial year 2020 onward, and the risks of noncompliance and/or additional tax payable still remain for financial years 2017, 2018 and 2019. Thus, it is a critical time to revisit the tax and transfer pricing declaration for FY2017 and kick-off the preparation for FY2018 tax filing with the note that the 20 percent EBITDA cap is applied to total interest expense.

Highlights From The 2018 IP Value Summit

Duff & Phelps' 5th Annual IP Value Summit[14], held at The Lodge at Torrey Pines in La Jolla, California on November 28-29, 2018, delved deeply into current issues in valuation, tax and transfer pricing, and litigation and licensing issues surrounding intellectual property.[15] The over-arching theme of this year's conference was disruptive technologies and how we view them as valuation professionals. The IP Value Summit, an intimate gathering of over 125 corporate executives, attorneys, investors and experts, provides a forum for the honest, and sometimes, animated exchange of best practices.

The conference was bookended by a pair of insightful and lively keynote speakers on the future of IP management in an integrated world and the history and trials of brand management in retail. In the afternoon, participants broke out into elective tracks that enabled them to interact and debate issues with panelists on focused discussions around valuation and M&A, tax and transfer pricing, and litigation and licensing.

Jonathan Wood, Executive Director of Innovation and Collaboration, Bridgestone Americas, Inc., through the lens of the advent of autonomous vehicles, expressed his views on how new value propositions require a new thinking on how we view IP. More than components and defensive measures, he inspired us to look at IP as interrelated components in an ecosystem and to look to other innovators in nearby technology areas as inspiration for how our portfolios will grow.

Tax and Transfer Pricing

In sometimes colorful and contentious discussions, moderators Susan Fickling-Munge, Simon Webber and Wade Owen led panels on issues facing taxpayers in the face of changing tax policies and disruptive technologies.

What does the storied *Altera*[16] tax court decision mean, not only to the seemingly singular issue of stock-based compensation, but to the arm's length standard more fundamentally? Have the courts enabled the IRS to redefine it? Our panelists warn us to look to the broader implications as the next chapter in the story is forthcoming, especially in light of the Tax Cuts and Jobs Act of 2017.[17]

One would think that an "update on latest legislation and proposals" would be a stale discussion, but our panelists illuminated the risk and concern about inevitable imposition of new taxes on the digital economy, what a digital PE might look like, and how levees at levels above income fly in the face of international tax norms and may stifle innovation.

Lastly, we grappled with taxation of cryptoassets, with a specific focus on how to view the blockchain technology that enables these assets in a multinational enterprise. What does disintermediation mean to a supply chain? What is the separable and identifiable intangible, who controls this, and who is entitled to a return.

Closing Keynote

Stephen Lee, Assistant General Counsel, Intellectual Property, Target Corporation, shared with us the trials and tribulations of brand management in a digitized world. Highlighted by often humorous reflections on efforts to build brand loyalty from the ground up, Stephen reminds us how deeply IP professionals are invested and embedded in the business.

Endnotes

1 https://www.irs.gov/pub/irs-drop/REG-106089-18-NPRM.pdf

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9 Email: dstconsultation@hmtreasury.gov.uk

10 *Utah State Tax Commission v. See's Candies, Inc*., 2018 UT 57, October 5, 2018

11 https://www.utcourts.gov/opinions/supopin/Sees%20Candies%20v.%20Tax%20Commn20181005_20160910_57.pdf

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EU VAT E-Commerce Package - Implementing Regulations Published

by Stuart Gray, Senior Editor, Global Tax Weekly

Updating the rules of the EU Single Market so that they facilitate rather than hinder the growth of e-commerce in the European Union is one of the EU's key priorities. And a major component of this plan is improvements to the bloc's value-added tax rules. This article looks at the recently published Implementing Regulations for the main proposed changes due to enter into force in 2019 and 2021 under the 2017 VAT e-commerce package.

Objective Of The Reforms

The VAT reforms are a key part of the EU's Digital Single Market Strategy,[1] launched in 2015 and intended to remove regulatory and tax barriers inhibiting the expansion of the EU's digital economy. They also form part of the 2016 Action Plan on VAT,[2] which will steer the EU away from the current "transitional" VAT regime, which is centered on taxation based on the location of the supplier, towards a "definitive" system from 2022, which will center on taxation based on the location of the recipient of the goods or services.

As the Commission has observed: "Current EU VAT rules were agreed between all member states before the rise of the internet and the boom in online sales, and especially cross-border sales. The rulebook clearly needs to be updated if we want to encourage online businesses and the digital economy to expand cross-border and to thrive."[3]

In reforming the rules, the European Commission hopes to secure a double dividend of boosting revenue collections for states while simplifying compliance for businesses. The Commission estimates that EUR5bn (USD5.7bn) of VAT is lost each year in the EU due to non-compliance on cross-border online sales. This figure is projected to rise to EUR7bn by 2020.[4]

Background

The Commission has gone about overhauling the rules for digital firms in multiple stages. In 2015, the EU began to enforce tax rules on providers of telecommunications, broadcasting, and electronic (TBE) services. It sought to ensure that value-added tax would be charged on business-to-consumer supplies of these services based on the rules in place in the location where the services were effectively consumed – *i.e.* where the customer belongs – under the destination principle.

The second package of measures – "the VAT e-commerce package"[5] – was approved by the EU Council in December 2017 and its provisions will generally apply from 2021. It will include the introduction of new rules for distance sales of goods as well as for any type of service supplied to final consumers in the EU.

Overview

Implementing regulations for the e-commerce package were released by the Commission on December 11, 2018.[6] The new rules include:

- Improvements to the current Mini One Stop Shop (MOSS), a simplified system in place since 2015, which is intended to enable providers of TBE services to EU consumers to comply with their EU VAT obligations through interaction with a single member state tax authority.
- Special provisions applicable to supplies of goods facilitated by electronic platforms. Businesses operating electronic interfaces such as marketplaces or platforms will, in certain situations, be deemed for VAT purposes to be the supplier of goods sold to customers in the EU by companies using the marketplace or platform. Consequently, they will have to collect and pay the VAT on these sales.
- Extension of the scope of the MOSS, turning it into a "One Stop Shop" (OSS), covering:
    - Business-to-consumer (B2C) supplies of services other than TBE services;
    - Intra-EU distance sales of goods; and
    - Distance sales of goods imported from third countries and third territories in consignments of an intrinsic value of a maximum of EUR150.

Further, the proposed implementing regulations would ensure that goods sold from storage facilities within the EU will have the correct amount of VAT charged, even when the goods are technically being sold to consumers by non-EU businesses. The Commission said that it can be difficult under the current rules for member states to obtain the VAT due on goods from so-called "fulfill-ment centers."

Timetable

While most of the VAT e-commerce package will be implemented in 2021, some elements will be introduced from next year.

In 2019, two thresholds will be introduced to simplify VAT obligations for micro businesses and SMEs. Businesses generating EUR10,000 or less from the sale of TBE services will be subject to their home country's VAT rules, rather than having to comply with the VAT rules in place in each member state in which they do business. Further, businesses with a turnover of less than EUR100,000 will be able to rely on a single piece of evidence to satisfy itself of the location of the consumer for imposing VAT.

Further, the Commission has provided that, with regards to invoicing, businesses will be required to comply with the rules of the EU country where the supplier is based (the EU country of identification of the supplier), rather than the member state of consumption.

From January 1, 2021, the new rules on businesses operating electronic interfaces, such as marketplaces, will be introduced. They will, in certain situations, be deemed for VAT purposes to be the supplier of goods sold to customers in the EU by companies using the marketplace or platform.

In 2021, as previously stated, the Commission will expand on the MOSS scheme in establishing a "One Stop Shop." Specifically:

- The non-Union scheme for supplies of TBE services by taxable persons not established in the EU will be extended to all types of cross-border services to final consumers in the EU;
- The Union scheme for intra-EU supplies of TBE services will be extended to all types of B2C services as well as to intra-EU distance sales of goods.
- An import scheme will be created covering distance sales of goods imported from third countries or territories to customers in the EU up to a value of EUR150. Unlike under current rules, when the import scheme is used, the seller will charge and collect the VAT at the point of sale to EU customers and declare and pay that VAT globally to the member state of identification

in the OSS. These goods will then benefit from a VAT exemption upon importation, allowing fast release at customs.

- The current VAT exemption for goods in small consignment of a value of up to EUR22 will be abolished.

Where the import OSS is not used, a second simplification mechanism will be available for imports. Import VAT will be collected from customers by the customs declarant (*e.g.* postal operator, courier firm, customs agents) which will pay it to the customs authorities via a monthly payment.

Implementing Regulation

On December 5, 2017, the Council adopted Directive (EU) 2017/24553[7] (the VAT e-commerce Directive) amending the VAT Directive which introduces the proposed changes summarized in the previous section. The objective of this proposal is to lay down the detailed implementation rules needed to support these amendments to the VAT Directive which apply from January 1, 2021. This is achieved through an amendment to the VAT Implementing Regulation. A more detailed explanation of these amendments is provided in the following sections.

Indirect intervention of the supplier in the dispatch or transport

Article 14(4) of the VAT Directive as amended by the VAT e-commerce Directive defines "intra-Community distance sales of goods" and "distance sales of goods imported from third territories or third countries." These definitions also cover supplies of goods where the supplier intervenes indirectly in their dispatch or transport to the customer. To ensure the correct and uniform application of these definitions, it is necessary to define the meaning of "indirectly." So far, this notion has only been clarified in guidelines of the VAT Committee. The proposal inserts the text of these guidelines in the VAT Implementing Regulation to enhance legal certainty for both economic operators and tax administrations.

Provisions relating to electronic interfaces

Articles 14a and 242a of the VAT Directive as amended by the VAT e-commerce Directive introduce specific provisions for electronic interfaces such as a marketplace, platform or portal facilitating certain supplies of goods or services made by other taxable persons. In the statements included in the Council minutes when adopting the VAT e-commerce Directive, the Council invited the Commission to propose the necessary implementation rules for the application of these provisions, considering the following elements:

- Definition of the situation in which a taxable person is considered to facilitate sales of goods or services through the use of an electronic interface (this is proposed in Article 1, point (1)(b), adding a new Article 5b to the Regulation and point (4), adding a new Article 54b to the Regulation);
- Specific provisions on the conditions for determining when the payment is accepted to determine in which taxable period supplies by taxable persons facilitating supplies of goods in the Community through an electronic interface or by any taxable person making use of the special scheme for distance sales of goods from third territories or third countries should be declared (this is specified by Article 1, point (3), adding a new Chapter Va and Article 41a to the Regulation and point (5), adding a new Article 61b to the Regulation);
- The type of information to be kept in the records of taxable persons facilitating supplies of goods and services in the Community through the use of an electronic interface. Account should be taken of what information is available to such taxable persons, is relevant to tax administrations and is proportionate to the purpose of the provision, as well as of the need to comply with the General Data Protection Regulation (EU) 2016/679.

Further to the discussions with member states' authorities and businesses, Article 1, point (1)(b) inserts a new Article 5c in the VAT Implementing Regulation specifying that:

- When an electronic interface is deemed to have received and supplied goods itself, it shall not be held liable for the payment of any amount of VAT in excess of the VAT which it declared and paid on sales made through the electronic interface. Such a provision is required in order to allow member states to release electronic interfaces from additional VAT payments where the electronic interface depends on information provided by the supplier selling goods through the electronic interface and can prove that it acted in good faith;
- Any supplier selling goods through the interface shall be presumed to be a taxable person and his customer to be a non-taxable person. This presumption releases the interface from the burden of having to prove the status of the seller and customer.

Provisions relating to the extension of the scope of the One Stop Shop

Most of these provisions update Section 2 of Chapter XI of the VAT Implementing Regulation, laying down implementing provisions required for the proper functioning of the mini One Stop Shop, following the extension of its scope.

In addition, as a result of the stakeholder consultation, a number of changes are proposed which go beyond the mere alignment of these provisions to the extension of the scope of the mini One Stop Shop. These changes relate to the following issues:

- Article 369q of the VAT Directive as amended by the VAT e-commerce Directive provides that the member state of identification shall allocate an identification number to an intermediary acting in the name and on behalf of a taxable person using the One Stop Shop for distance sales of goods imported from third territories or third countries. A second paragraph is added to Article 57e of the VAT Implementing Regulation clarifying that this identification number is an authorization enabling him to act as intermediary and cannot be used by the intermediary to declare VAT on taxable transactions.
- Article 57g of the VAT Implementing Regulation provides that where a taxable person voluntarily ceases using the mini One Stop Shop regardless of whether he continues to supply goods or services which can be eligible for its use, he shall be excluded from the mini One Stop Shop in any member state for two calendar quarters. This provision is removed as it is not considered useful by member states and may create additional burdens for the taxable persons concerned.
- The VAT e-commerce Directive allows making corrections to previous One Stop Shop VAT returns, within three years, in a subsequent return instead of having to resubmit the return of the tax period to which the corrections relate, as is the case in the mini One Stop Shop. The VAT e-commerce Directive does however not specify how corrections to returns relating to tax periods preceding January 1, 2021 have to be made as of 2021. To limit the IT impact of the changeover from one system to another, it is preferable to keep in place the current system for making corrections to mini One Stop Shop VAT returns relating to the periods from the fourth quarter of 2017 to the fourth quarter of 2020. The proposal amends Article 61 of the VAT Implementing Regulation accordingly.
- Under the One Stop Shop, corrections to previous VAT returns will have to be submitted in a subsequent return. Once the final VAT return has been submitted, it will no longer be possible for a taxable person excluded from the One Stop Shop pursuant to Article 61a of the VAT Implementing Regulation to submit subsequent VAT returns. As a consequence, the proposal provides that any corrections to the final return and previous returns arising after the submission of the final return shall be discharged directly with the tax authorities of the member state of consumption concerned.
- The records to be kept by a taxable person using the mini One Stop Shop currently include the name of the customer, where known to the taxable person. As this information must only

be kept if available, is not needed to determine the member state in which the supply is taxable, and may raise data protection issues, it is no longer included in the records to be kept by taxable persons using the One Stop Shop listed in Article 63c of the VAT Implementing Regulation. Further information on returns of goods and consignment or transaction numbers are included in Article 63c to facilitate the control of those operations.

Other provisions

Article 2 provides that the measures shall apply from January 1, 2021, which is the date of application of the relevant provisions of the VAT e-commerce Directive which this proposal implements. Furthermore, it provides for the possibility for taxable persons to register for the One Stop Shop as of October 1, 2020, to allow them to make use of it as of January 1, 2021.

Implementation will be overseen by the Standing Committee on Administrative Cooperation (SCAC), supported by its IT subcommittee, the Standing Committee on Information Technology (SCIT).

Impact On Businesses

In announcing the proposed implementing regulations, Tax Commissioner Pierre Moscovici said these important changes will "make it easier for companies to sell goods online and for member states to recoup lost VAT revenues."

"[These] proposals will allow online businesses to flourish while ensuring non-compliant businesses or fraudsters cannot undercut them. For this to happen, it is crucial that online marketplaces play their part," he noted.[8]

The OSS is expected to relieve taxpayers of a significant administrative burden by removing the obligation of registering in every member state in which they sell goods. According to the Commission, this obligation costs businesses around EUR8,000 per EU country.[9] The proposals would therefore enable administrative burdens for companies to be reduced by 95 percent. The OSS will generate an overall saving of EUR2.3bn for businesses, the Commission estimates.

The proposals have largely been welcomed by online retailers in the EU. However, certain elements have been criticized. For example, Ecommerce Europe pointed out in a recent position paper that despite the widening of the OSS scheme, online merchants will still have to deal with different VAT rates when selling abroad. The organization also has reservations about the introduction of a marketplace liability regime, describing it as an "unjustified, non-proportional deviation from the principles inspiring the VAT framework."[10]

Next Steps

The implementing regulations will now be sent to member states in the Council for agreement and to the European Parliament for consultation. The Commission is calling for a swift agreement in 2019 to give businesses sufficient time to prepare for the changes due to be implemented in 2021.

Endnotes

1 https://ec.europa.eu/commission/priorities/digital-single-market_en

2 https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat_en

3 http://europa.eu/rapid/press-release_MEMO-16-3746_en.htm

4 *Ibid*

5 http://europa.eu/rapid/press-release_IP-17-4404_en.htm

6 https://ec.europa.eu/taxation_customs/sites/taxation/files/vat_ecommerce_proposal_2018_821_en.pdf

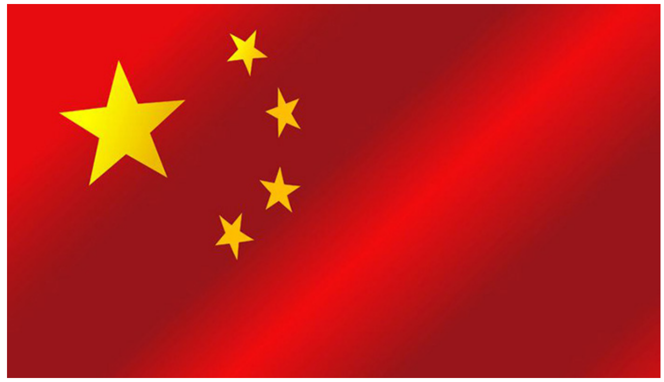
7 https://ec.europa.eu/taxation_customs/sites/taxation/files/vat_proposal_2018_819_en.pdf

8 http://europa.eu/rapid/press-release_IP-18-6732_en.htm

9 http://europa.eu/rapid/press-release_MEMO-16-3746_en.htm

10 https://www.ecommerce-europe.eu/press-item/ecommerce-europe-welcomes-agreement-vat-dsm-package-questions-marketplace-liability-regime/

Changes to Individual Income Tax Legislation In China



by Yan Wong, CWCC, independent member firm of Morison KSi

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On August 31, 2018, China's Individual Income Tax Law (Amendment) was passed by the National People's Congress of the People's Republic of China (PRC). It will be effective from January 1, 2019, although some parts of it – including the minimum threshold for personal income tax exemption – were scheduled to come into force on October 1 2018.

Redefinition Of 'Resident' And 'Nonresident'

The new legislation redefines the criteria for being tax resident in mainland China as anyone who resides in PRC for 183 days in a calendar year (previously, 'resident' status required them to have lived there for 5 full consecutive years). Such individuals will be regarded as 'resident' and subject to individual income tax (IIT) on their global income.

A non-resident – who is not domiciled in mainland China, or who has lived in mainland China for <183 days in a calendar year – is subject to IIT only on their China-sourced income.

Inclusion Of Four Types Of Income For Consolidated Tax Computation

The new IIT Law includes four types of income in the scope of consolidated taxation, to be applied with standard progressive tax rates:

- Salaries and wages
- Income from personal services (20 percent deduction)
- Manuscript fees (20 percent deduction, plus a further 30 percent, up to a total of 44 percent of the manuscript fee income)
- Royalties (20 percent deduction).

Tax residents calculate IIT by consolidated income on an annual basis, while non-residents calculate it on a monthly or ad hoc basis.

Optimized Tax rate Structure

- *New consolidated income tax rate:* Residents must now report all their consolidated income on an annual basis.
- *Adjusted thresholds for lower tax rates:* Thresholds for the three lowest tax rates – 3 percent, 10 percent and 20 percent – have been expanded (those of the three highest tax rates – 30 percent, 35 percent and 45 percent – remain unchanged).
- *Business income tax rate (for sole proprietors):* Based on existing tax rates for manufacturing income, business income, contracting income and sole proprietorship leasing income, the five level tax rates of 5 percent to 35 percent remain unchanged. However, the levels between tax rates have been enlarged and the minimum threshold applicable to the tax rate of 35 percent will be increased from RMB 100,000 (USD14,532) to RMB 500,000.

Increased Minimum Threshold For Personal Income Tax Exemption

The new IIT Law increases the minimum threshold for personal income tax exemption from RMB 3,500 to RMB 5,000 per month or RMB 60,000 per annum. The RMB 5,000 minimum threshold may be adjusted from time to time.

Additional Special Expense Deductions

In addition to existing allowable deductions, such as basic pension insurance, basic medical insurance, unemployment insurance, housing provident fund, the new IIT Law introduces further special expense deductions, including children's education, caring for the elderly, continuing education, treatment for serious diseases, housing loan interest and rental.

The State Council will later announce the criteria, amounts and execution procedures for these additional special expense deductions.

New Anti-Avoidance Rules

For enterprise income tax, the new IIT Law introduces anti-avoidance rules that empower the tax authority to make tax adjustments in certain circumstances, such as where:

- An individual's transactions are unreasonable and not on an arm's-length basis
- An individual reduces their tax burden by deploying a foreign tax haven
- An individual enjoys tax benefits by involving unreasonable commercial arrangements.

Apart from affecting Chinese residents, the new IIT Law will have a significant impact on foreign expatriates working in China and residents of Hong Kong, Macau and Taiwan who are working in or retiring to China. Under the new legislation, anyone residing in China for 183 days in a calendar year will now be regarded as tax resident and their global income – including salaries and wages, business profits, bank interest, dividend income, rental income, gain on disposal of properties, or even incidental income – will be subject to PRC IIT.

If foreign tax has already been paid on that income, the resident may be eligible to claim tax credit to offset part of the IIT.

On October 20, 2018, a Consultation Draft regarding the implementation of the New IIT Law was announced by the Ministry of Finance and the State Administration of Taxation.

According to the Consultation Draft, any individual not domiciled in mainland China but who has lived in mainland China for 183 days or more in a calendar year ('183 days' status), and this 183-days status continues for less than 5 consecutive years, or for 5 consecutive years during which the individual has left mainland China for 30 days in a single trip, then this individual would be subject to IIT on their China-sourced income only.

On the other hand, if the 183-days status continues for 5 consecutive years during which the individual has not left mainland China for 30 days in a single trip, then from the 6th year, then this individual will be subject to IIT on his or her global income.

The Consultation Draft means the continuation of the existing tax preferential policy for non-PRC domiciled residents working or retiring in mainland China (including the residents of foreign countries, Hong Kong, Macau and Taiwan) that their non–China-sourced income is tax exempt for 5 years.

Topical News Briefing: The TCJA - Unfinished Business

by the Global Tax weekly Editorial Team

As we approach the first anniversary of the signing of the United States tax reform bill, the Tax Cuts and Jobs Act (TCJA), recent developments suggest that the tax reform implementation phase has much further to run.

The TCJA introduced some entirely new concepts into the US tax code, especially with respect to international corporate taxation, and it is clear that it will take some time for these measures to become fully bedded in. In one recent example, on November 28, 2018, highly anticipated proposed regulations were issued by the Internal Revenue Service intended to provide guidance on foreign tax credit rules for businesses and individuals in the light of changes brought about by the TCJA. In another, reported in this week's issue of *Global Tax Weekly*, on December 13, 2018, the IRS issued proposed regulations on the operation of the base erosion and anti-abuse tax (BEAT), contained in Section 59A of the Internal Revenue Code. In addition, the recently published Notice 2019-01 informed taxpayers that certain issues arising from the enactment of the TCJA means that new regulations will be issued with respect to previously tax foreign earnings.

There has also been recent activity on the legislative front, with a package of tax bills introduced in the House of Representatives by Republicans on December 10. This wide-ranging package bundles together disaster tax relief, enhancements to retirement and savings accounts, relief from various Obamacare taxes, IRS reform, and other tax provisions. However, there is considerable uncertainty as to whether this will be put to a vote in the remainder of the "lame duck" congressional session.

Looking forward, the results of November's mid-term congressional elections, which saw the Democrats regain control of the House of Representatives, may have reduced the chances that additional Republican tax cuts bills will be moved through Congress. Nevertheless, legislation to enact technical fixes to the TCJA is likely to remain a priority, and additional regulations and guidance related to the changes brought about by the Act are likely to be a regular feature of the weeks and months ahead.

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Corporate Reorganizations In The UK – Debt Waivers And Tax

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Corporate reorganizations often involve waivers of inter-company debt. In general – although perhaps more obviously outside the group context – the waiver of a debt can be seen as producing a profit for the debtor company. Where this is reflected in profit and loss for accounting purposes, a taxable profit may arise in the hands of a UK resident debtor.

Typically, however, debt waivers in the context of corporate reorganizations are not problematic. This is because a specific relieving provision in the UK tax legislation prevents accounting profits (or losses) from being recognized for tax purposes on debt waivers between connected companies.

Some commentators have noted, however, that this simple picture has been complicated by an unhelpful interaction with the UK anti-hybrid rules, which could produce a charge to tax in a UK debtor on the amount of the debt waived.

The anti-hybrid rules dealing with "financial instruments" can apply where, broadly:

(i) a payment is made under a financial instrument;

(ii) there is a mismatch because the payer takes a tax deduction in respect of the payment but the receipt is not charged to tax;

(iii) the mismatch arises by virtue of a feature of the financial instrument; and

(iv) the parties are connected.

Whilst these rules do not look immediately relevant to a straightforward intra-group debt waiver, a potential concern does arise. This is because a "payment" can include a transfer of value of the type that arguably occurs when a creditor releases a debt in favor of a debtor, and UK tax authority guidance suggests that, where the group relationship of parties to a financial instrument produces a beneficial tax treatment, this can be regarded as a "feature" of the financial instrument/debt.

Regarding the latter, it is understood that the accounting treatment of debt waivers is such that they may not produce a (taxable) credit through profit and loss for the debtor in the context of a connected party debt, whereas they might do otherwise. Where a non-UK creditor takes a tax deduction for the waiver; therefore, a corresponding tax charge could in theory arise in the UK debtor under the anti-hybrid rules.

The tax authority has addressed the debt waiver issue in the sense that there is an exclusion in the anti-hybrid rules for mismatches arising because of the relieving provision in the tax legislation referred to above; but unfortunately in this example, the mismatch arises because the accounting rules never produce a taxable credit in the first place, not because of the relieving provision.

Although this outcome presumably cannot be the intention of the rules, and one hopes that the tax authority would not look to apply them in this way, it serves as another example of how the UK anti-hybrid rules are relevant in an unexpectedly wide range of circumstances, which in many cases go beyond those which were intended to be addressed by the Base Erosion and Profit Shifting Action 2.

It remains to be seen whether similar issues will arise as anti-hybrid rules are introduced across the EU in response to the Anti-Tax Avoidance Directive.

Topical News Briefing: The EU - Legislative Life Goes On

by the Global Tax Weekly Editorial Team

The European agenda may be dominated by Brexit, but behind the scenes, the legislative machinery of the European Union carries on regardless.

As reported in this week's issue of *Global Tax Weekly*, a number of directives are due to come into effect in 2019 and beyond in the area of taxation, and recent weeks and months have seen member states busily attempting to transpose these requirements into national law by stated deadlines.

By June 30, 2019, they must transpose the requirements of Directive 2017/1852, which provides new European Union rules intended to ensure that businesses and citizens can resolve disputes relating to the interpretation of tax treaties more swiftly and effectively. These measures will apply to any complaint submitted from July 1, 2019, relating to a tax dispute on income earned on a tax year commencing after January 1, 2018.

In the area of compliance, member states have until the end of this year to transpose the first Anti-Tax Avoidance Directive. This directive contains five legally-binding anti-abuse measures, which all member states are required to apply against common forms of aggressive tax planning. They include limitations on deductions of interest payments, exit tax rules, a general anti-abuse rule, controlled foreign company rules, and hybrid mismatch rules.

As the EU forges ahead with its ambitious reform of the bloc's value-added tax architecture, several important VAT changes will take place next year. In 2019, two thresholds will be introduced to simplify VAT obligations for microbusinesses and SMEs. First, an annual turnover threshold of EUR10,000 (USD113,300) for intra-EU cross-border supplies of telecommunications, broadcasting and electronic (TBE) services. TBE supplies of up to EUR10,000 will remain subject to the VAT rules of the member state of the supplier. There will also be an annual turnover threshold of EUR100,000 up to which the vendor must only keep one piece of evidence (instead of two) to identify the member state of the customer.

On December 4, 2018, the EU Directive enabling member states to apply a reduced, super reduced rate, or zero rate of value-added tax to electronic publications entered into force following its publication in the EU's Official Gazette on November 14, 2018. These new rules will apply temporarily, pending the introduction of a new, 'definitive' VAT system, scheduled for 2022, and several member states have already begun legislative proceedings reduce VAT on electronic publications, including, as reported this week, Finland.

One EU tax initiative about which there continues to be major doubts, however, is the proposed digital services tax. As also reported this week, the European Parliament has urged the European Council to show ambition in implementing a broad-based new digital tax. However, with member states still starkly divided on the issue, further progress in 2019 is likely to be a struggle for the Council and the Commission, especially with France having recently announced that it intends to introduce a national digital tax on January 1, 2019.

Recent Tax Developments In Chile

by Sofia Astudillo Galarza, Espinosa Granese Bianchi Abogados

Details Of Tax Reform Project In Chile Are Revealed

In the last months, Chile´s government has announced a tax reform project that is currently being discussed and analyzed by Congress. This project in general aims to modernize and simplify our current tax system. The main bearings of this project are to create a simpler, equitable and fully integrated tax system for all Chilean companies. One of the innovations is that the corporate taxes paid by the companies can be used as a credit against personal taxes.

A very important and interesting change is the creation of a government body that will work as a "taxpayer defender" (known as DEDECON) to avoid arbitrary and abusive acts by the tax authority; granting the fulfillment of their legal rights.

Another key element of the reform package is a tax that will affect the digital services used in Chile (but provided by non-resident entities) such as Airbnb, Netflix, Spotify, Icloud and others. The tax rate for these services will be 10 percent, and that will be charged to the credit or debit card of the purchaser together with the purchased service.

The President also announced a modernization of international taxation rules in order to encourage investment in Chile.

A part of government´s new tax collection plan is to extend "green taxes" to more polluting sources such as mining foundries. This upturn will allow to increase in USD40m goverments annual collection, according to a financial report, and will benefit public expenses, especially in matters of social policies and infrastructure.

The aim of the aforementioned measures is to bring Chile closer into line with developed countries in the areas of social justice, and to reduce inequality and combat poverty in the country.

Register Of Undeclared Capital Abroad

For understanding this change it is important to consider that in 2015 there was a special transitory law that contemplated a lower tax rate for undeclared capital held aboard by residents in Chile; the rate was 8 percent.

In this context; the tax reform project is going to maintain similar characteristics as the ones for special transitory regime of 2015, the difference being that the applicable tax rate will rise up from 8 percent to 10 percent. One of the controversial points is that this amount cannot be used as a credit against any type of corporate or personal tax, nor can it be deducted as an expense for the determination of tax. However, any undeclared amounts will not be subjected to the 40 percent sanction rate that they would otherwise face.

This new version of voluntary and extraordinary declaration of assets or incomes held overseas does not force the taxpayer to repatriate same to Chile. One of the innovations included in the reform in this regard is that it will be extended to real estate assets and not only imposed on personal property, investments and currencies.

Chile Issued A New Resolution For Automatic Exchange Of Financial Information

This resolution published be the Chilean IRS ('SII'), will help to accomplish OECD international guidelines for the automatic exchange of information meant to battle tax evasion. It is also part of the final step on the implementation of the OECD Common Reporting Standard that prevents aggressive tax planning strategies.

The automatic exchange will encompass the information of foreign companies and individuals with investments in Chile; this procedure will consider 91 world jurisdictions, including countries designated as tax havens.

In this manner; Government Financial Institutions in Chile must report the financial accounts in Chile of individuals or companies with foreign residency once a year. These Institutions will consider general taxpayer information such as name, address, account type and balance at the end of each year. In addition, the Financial Institutions have to be enrolled via the information exchange facility on the tax authority website: www.sii.cl

The financial information collected will be shared automatically with the tax authority of the taxpayer's country of residence before September 30th and reciprocally; Chilean tax authorities will receive financial information relating to residents of Chile.

US Electric Vehicle Tax Credit Begins To Phase Down

The United States Internal Revenue Service (IRS) announced on December 14, 2018, that Tesla, Inc. has sold more than 200,000 vehicles eligible for the plug-in electric drive motor vehicle credit during the third quarter of 2018, triggering a phase out of the tax credit available for purchasers of new Tesla plug-in electric vehicles beginning January 1, 2019.

The tax credit was enacted in the Energy Improvement and Extension Act of 2008 and subsequently modified in later law. It provides a credit for eligible passenger vehicles and light trucks. By law, five quarters after reaching the sales threshold, the credit ends for the manufacturer. Tesla Inc.'s vehicles are eligible for some portion of a credit until January 1, 2020.

Qualifying vehicles by the manufacturer are eligible for a USD7,500 credit if acquired before January 1, 2019. Beginning that date, the credit will be USD3,750 for Tesla's eligible vehicles. On July 1, 2019, the credit will be reduced to USD1,875 for the remainder of the year. After December 31, 2019, no credit will be available.

The details of the phase-out of the credit are included in Notice 2018-96.

IRS Issues Notice On Previously Taxed Earnings

The US Treasury Department and the Internal Revenue Service have announced that they intend to issue regulations addressing certain issues arising from the enactment of the Tax Cuts and Jobs Act of 2017 with respect to foreign corporations with previously taxed earnings and profits (PTEP).

The term PTEP refers to earnings and profits (E&P) of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under Section 951(a) or under Section 1248(a). Distributions of PTEP are excluded from the US shareholder's gross income, or the gross income of any other US person who acquires the US shareholder's interest (or a portion thereof) in the foreign corporation. PTEP is further excluded from a US shareholder's gross income if such E&P would be included in the gross income of the US shareholder or successor in interest as an amount determined under Section 956. Distributions of PTEP to a US shareholder or successor in interest generally are not treated as dividends except that such distributions immediately reduce the E&P of the foreign corporation.

Notice 2019-01 describes regulations that the Treasury Department intends to issue, including:

- Rules relating to the maintenance of PTEP in annual accounts and within certain groups;
- Rules relating to the ordering of PTEP upon distribution and reclassification; and
- Rules relating to the adjustment required when an income inclusion exceeds the earnings and profits of a foreign corporation.

It is anticipated that the regulations announced in the notice will apply to taxable years of US shareholders ending after the date of release of the notice and to taxable years of foreign corporations ending with or within such taxable years.

The Treasury Department and the IRS are welcoming comments on the proposed regulations, which should be submitted by February 12, 2019.

IRS Issues Proposed Regulations On BEAT

On December 13, 2018, the United States Internal Revenue Service issued proposed regulations on the operation of the base erosion and anti-abuse tax (BEAT), contained in Section 59A of the Internal Revenue Code.

Added to the tax code by the Tax Cuts and Jobs Act of 2017, Section 59A is a minimum tax provision, designed to penalize those companies that make deductible payments to foreign affiliates to substantially reduce their exposure to US taxation. The BEAT is calculated by adding back certain deductible payments made to foreign affiliates and applying a minimum tax to a percentage of the difference between the taxpayer's modified taxable income and their regular tax liability, at a rate of five percent for 2018. This rate will rise to 10 percent in 2019 and to 12.5 percent from 2025.

The provision primarily affects corporate taxpayers with gross receipts averaging more than USD500m over a three-year period who make deductible payments to foreign related parties.

The proposed regulations provide detailed guidance regarding which taxpayers will be subject to Section 59A, the determination of what is a base erosion payment, the method for calculating the base erosion minimum tax amount, and the required base erosion and anti-abuse tax resulting from that calculation.

The IRS is welcoming comments on the proposed regulations. These must be submitted within 60 days of their publication in the Federal Register.

Proposed Regulations Will Reduce FATCA Burden

The United States Treasury Department and the Internal Revenue Service have announced proposed regulations intended to reduce the burden on taxpayers of compliance with certain requirements of the Foreign Account Tax Compliance Act (FATCA).

FATCA, enacted by the US Congress in 2010, is intended to ensure that the US obtains information on accounts held abroad at foreign financial institutions (FFIs) by US persons. Failure by an FI to comply can result in 30 percent withholding tax on US source income, and the possible loss of correspondent banking relationships with the US.

The proposed regulations concern withholding requirements under Chapters 3 and 4 and Sections 1441, 1461, 1471, 1472, 1473, and 1474 of the Internal Revenue Code.

Specifically, the proposed regulations eliminate withholding on payments of gross proceeds, defer withholding on foreign passthrough payments, eliminate withholding on certain insurance premiums, and clarify the definition of investment entities. The proposed regulations also include guidance on certain due diligence requirements of withholding agents and clarify procedures for refunds and credits of amounts withheld.

Written or electronic comments and requests for a public hearing on these proposed regulations must be received within 60 days of publication in the Federal Register, which is forthcoming.

Iceland To Cut VAT Rate, Drop VAT On E-Books

Iceland will reduce its value-added tax rate from 24 percent to 22.5 percent from January 1, 2019, and remove VAT on electronic publications.

The decision to zero rate electronic publications was announced in April 2018, while the decision to cut the VAT rate was announced in April 2017.

Both form part of the Government's 2019-2023 Budget Plan.

UK Updates VAT Guidance On Business Transfers

The UK tax agency, HM Revenue and Customs, has released an update to its guidance on the transfer of a business as a going concern, contained in VAT Notice 700/9, which was last updated in 2012.

According to HMRC, new advice has been added for purchasers not established in the UK at paragraph 2.2.6. There are updated rules on transfers into a VAT group in paragraph 4.3, and in paragraph 2.4 there is new information for when property is transferred but the seller retains an interest in it.

The notice explains whether the transfer of a business should be treated as a "transfer of a business as a going concern" (TOGC) for VAT purposes. It also explains the VAT treatment in each circumstance.

Taxpayers or their agents should refer to the guidance if the taxpayer is selling or otherwise transferring a business, or part of a business.

In certain circumstances special TOGC rules apply and the sale will not be treated as a supply for VAT purposes, so no VAT should be charged.

To qualify as a TOGC, the assets sold must be both of the following:

- Capable of forming a separate business in their own right;
- Used by the purchaser to carry on the same kind of business as that operated by the seller.

Finland Confirms VAT Cut For E-Books

The Finnish Government has announced that value-added tax on supplies of electronic publications will be reduced from 24 to 10 percent in July 2019.

The Ministry of Finance confirmed on December 13, 2018, that the reduced rate will apply to electronic books and audio books, and electronic newspapers and magazines.

This aligns the VAT treatment of electronic publications with that for traditional tangible publications.

Legislation to bring about the change has been submitted to Parliament and will become effective from July 1, 2018, the Ministry said.

EU Issues Regulations On 2021 VAT Rule Changes For E-Commerce

The European Commission has published proposed implementing regulations for reforms to VAT rules for e-commerce that will be effective from January 2021.

These implementing regulations are intended to ensure the smooth running of the new VAT rules for e-commerce agreed by member states last December. The European Commission said they were developed in consultation with online platforms and the authorities in EU member states.

Reforms from 2021

Reforms agreed in December 2017 by the EU's Economic and Financial Affairs Council will extend an existing EU-wide portal, the mini "one-stop shop," for the VAT registration of distance sales and establish a new portal for distance sales from third countries with a value below EUR150 (USD171). This is intended to reduce the costs of complying with VAT requirements for business-to-consumer transactions.

Most goods that are imported for distance sales currently enter the EU VAT-free, resulting in unfair competition for EU businesses. Under the changes, VAT will be paid in the member state of the consumer, ensuring a fairer distribution of tax revenues amongst member states.

Additionally, online platforms will become liable to collect VAT on the distance sales that they facilitate.

The one-stop shop will relieve online traders of having to register for VAT in each of the member states in which they sell goods. According to the Commission, such obligations cost businesses around EUR8,000 for every EU country into which they sell. The one-stop shop will generate an overall saving of EUR2.3bn for businesses, the Commission estimates, and a EUR7bn increase in VAT revenues for member states.

For start-ups and SMEs, the new rules will introduce an important simplification. For those firms with yearly cross-border online sales below EUR10,000, businesses will be able to continue applying VAT rules used in their home country. Furthermore, the new rules remove an exemption for consignments from outside the EU worth less than EUR22. Around 150 million small consignments are imported free of VAT, and the current system is open to abuse. While EU businesses have to apply VAT regardless of the value of the goods sold, imported goods benefit from the exemption and are often undervalued in order to do so.

The simplification measures for intra-EU sales of electronic services are being introduced from next year. The extension of the one-stop shop to distance sales of goods, both intra-EU and from third countries, will apply from 2021, alongside the elimination of VAT exemptions for low-value consignments.

New implementing regulations

The Commission said that its implementing rules will ensure that a new VAT system is ready for businesses that sell goods online once the agreed new framework enters into force in 2021. It explained that without the One-Stop Shop, VAT registration would be required in each member state into which companies sell. This system has been in place for e-service providers since 2015.

The regulations further clarify the situations in which online platforms will be considered to have facilitated a sale between users, and detail the records businesses must keep on sales made via their interface. The Commission said that, since online marketplaces will be liable for any missing VAT, authorities will be sure that they can claim the tax due when sellers from outside the EU have not complied with the rules.

The new rules will also ensure that the goods sold from storage facilities within the EU will have the correct amount of VAT charged, even when the goods are technically being sold to consumers by non-EU businesses. The Commission said that it can be difficult under the current rules for member states to obtain the VAT due on goods from so-called "fulfilment centres."

Tax Commissioner Pierre Moscovici said: "The EU is gearing up for a brand new VAT system in 2021 to make it easier for companies to sell goods online and for member states to recoup lost VAT revenues. [These] proposals will allow online businesses to flourish while ensuring non-compliant businesses or fraudsters cannot undercut them. For this to happen, it is crucial that online marketplaces play their part."

EU To Require Payment Service Providers To Disclose Sales Data

To support efforts to crack down on value-added tax fraud, the EU has proposed that online payment companies should be obligated to comply with new information-sharing obligations.

The Commission is proposing that the companies would be required to share information on transactions on a quarterly basis. This would allow member state anti-fraud specialists (the Eurofisc network) to exchange and analyze certain payment data received from the providers. Both EU and non-EU online sellers would be identifiable in cases where they did not comply with their VAT obligations.

More than 90 percent of European customers' online purchases involve a payment intermediary. According to the European Commission, data held by these companies would help EU tax administrations to detect VAT non-compliance.

The proposals will now be submitted to the European Council for agreement and to the European Parliament for consultation.

EU Parliament Pushes For Ambitious Digital Services Tax

With EU states still divided on whether to introduce a new turnover tax framework for digital firms, the European Parliament has said that the EU Council must be ambitious in introducing a broader tax on digital activities.

A plenary session of Parliament on December 13, 2018, adopted two opinions on the European Commission's proposals for directives on a digital services tax and on the corporate taxation of a significant digital presence.

The report on the digital services tax directive was adopted with 451 votes in favor, 69 against, and 64 abstentions.

In March, the Commission proposed the introduction of a temporary three percent excise tax on turnover from certain online activities, to apply to companies with total annual worldwide revenues of at least EUR750m (USD852m) and EU revenues of EUR50m.

MEPs proposed adding to the list of services that would qualify as taxable revenues the supply of "content on a digital interface such as video, audio, games, or text using a digital interface," regardless of whether the content is owned by that entity or if it has acquired the rights to distribute it. This would mean that online platforms selling digital content, such as Netflix, could be taxed.

MEPs also argued that the minimum threshold above which a company's revenues are liable to be taxed should be reduced from the level originally proposed by the Commission. The report recommended that the new rules should apply to any entity generating revenues within the EU of more than EUR40m during the relevant financial year.

The European Council has been unable to agree on the proposals. Earlier this month, Austria, which holds the Council presidency, put forward a compromise text in a bid to secure a deal among EU finance ministers. It recommended that the tax target "the revenues stemming from the supply of digital services where users contribute significantly to the process of value creation" and apply to "revenues resulting from the provision of certain digital services only."

France and Germany have separately proposed an alternative compromise on a more narrowly focused measure. They called on the Commission to "amend and focus its draft directive for a digital services tax on a tax base referring to advertisement."

Paul Tang, the rapporteur on the digital services tax, said: "Both the European Parliament and the European people want tech giants to pay their taxes. That is why we voted for a more ambitious digital services tax, also taxing revenues from online streaming services."

The report on the corporate taxation of a significant digital presence directive was adopted with 439 votes in favor, 58 against, and 81 abstentions.

The European Commission has recommended that in their national tax laws member states extend the definition of a permanent establishment and "establish a taxable nexus for a significant digital presence in their respective jurisdictions." It also wants there to be laid down general principles for allocating taxable profits to such a digital presence.

The Commission intends that, in principle, these rules should apply to all corporate taxpayers, irrespective of where they are tax resident. Parliament has proposed that this be extended to all corporate taxpayers, irrespective of their size and of where they are tax resident.

Parliament's text argued that, to date, the OECD's work on taxing the digital economy "has not resulted in sufficient progress." It stated that, in the absence of a common EU approach, member states will adopt unilateral solutions, "which will lead to regulatory uncertainty and which will be difficult for companies which operate cross-border and for tax authorities."

The report recommended that member states be urged to adapt, where necessary, their double taxation agreements to include provisions on a significant digital presence. In addition, to ensure that there is a coherent and consistent tax base framework for all corporations, the concept of a significant digital presence should become an integral part of the proposed future EU directives on a common corporate tax base and on a common consolidated corporate tax base, they agreed.

Dariusz Rosati, the rapporteur on the significant digital presence, said: "Taxes have to be paid where a company creates its value – irrespective of if it is a digital or a traditional enterprise. The quarrels and mutual vetoes in the [European] Council lead to the EU being unable to tackle this problem. The European Union should be a trendsetter, while also continuing to work on an international solution at an OECD level."

The European Parliament has a consultative role when it comes to taxation laws. It will fall to the Council to decide on the final content of the proposed rules. The Council must reach a unanimous agreement.

The European Parliament wants the directives to be approved before the end of its mandate in April 2019.

Finland To Implement EU Tax Dispute Resolution Law

On December 13, 2018, the Finnish Government issued a proposed law to transpose the requirements of new European Union rules intended to ensure that businesses and citizens can resolve disputes relating to the interpretation of tax treaties more swiftly and effectively.

Directive 2017/1852 was adopted at the ECOFIN meeting held in Luxembourg on October 10, 2017. Under the directive, taxpayers faced with tax treaty disputes can initiate a procedure whereby the member states in question must try to resolve the dispute amicably within two years. If at the end of this period no solution has been found, the member states must set up an advisory commission to arbitrate. Failing such, the taxpayer can then bring an action before the national court to do so.

An advisory commission must be comprised of three independent members and representatives of the competent authorities in question. It will have six months to deliver a final, binding decision. This decision will be immediately enforceable and must resolve the dispute.

The European Commission said the agreement will ensure that taxpayers have much more certainty when it comes to resolving issues surrounding the interpretation of tax treaties or double taxation problems. In particular, a wider range of cases will be covered and member states will now have clear deadlines to agree on a binding solution, giving citizens and companies more timely decisions.

EU member states must transpose the directive into national law by June 30, 2019. The rules will apply to any complaint submitted from July 1, 2019, relating to a tax dispute on income earned on a tax year commencing after January 1, 2018.

The Finnish Government said that the draft law will be published on the Government's online proposals and decisions page.

Australia Announces Focus On Image Rights Tax Avoidance

The Australian Government is consulting on proposals designed to ensure that high profile individuals are not able to access lower rates of tax by licensing the use of their fame or image to related entities.

The Government is concerned that fame or imaging licensing structures may have been established to provide income splitting benefits to high profile individuals that cannot be obtained by other individuals.

The Government wants to address concerns that high profile individuals are taking advantage of lower tax rates by licensing the use of their fame or image to a related entity, such as a company or trust, and diverting the licence income to that entity.

The reforms aim to ensure that all remuneration (including payments and non-cash benefits) provided for the commercial exploitation of a person's fame or image will be included in the assessable income of that individual.

All individuals earning income from the exploitation of their fame or image, and their related entities that hold a licence to use the individual's fame or image, are intended to be subject to the measure.

A consultation on the proposals is to run until January 31, 2019. The measures would apply from July 1, 2019.

Australia Updates Guide On Reportable Tax Positions

The Australian Taxation Office has updated its guidance on the reportable tax position schedule, which requires large businesses to disclose their most contestable and material tax positions.

A company is required to complete an RTP schedule if the ATO has notified it of this requirement in writing. The ATO uses schedule disclosures to tailor its engagement with large companies, identify areas where it needs to provide further clarification or certainty on the correct treatment of transactions and complex high-risk tax arrangements, and to better understand tax risks. The disclosures are intended to help affected companies to make informed decisions about the positions they have taken or are considering taking that are deemed to be high-risk arrangements.

The ATO said that the RTP schedule has been extended to include companies in public or international economic groups with a turnover of more than AUD250m (USD180.3m) for four years ending on or after June 30, 2018. Impacted companies have been notified and will be required to lodge an RTP schedule.

The ATO has enabled RTP schedule lodgment through its online business and tax agent portals and has prepared a webinar on the RTP schedule. It has also updated RTP Category C to cover additional specific issues that it said are of concern to it. Category C covers reportable arrangements.

MNEs Paying More Tax On Digital Economy Activity To Australia

Companies operating in the digital economy have significantly increased their tax contributions in Australia as a result of the work of the Australian Taxation Office's Tax Avoidance Taskforce.

Its work has focused on improving oversight of the tax affairs of those rendering services digitally or selling goods online. It has also completed numerous complex audits on industry-leading e-commerce multinationals. Its efforts have involved ensuring that the activities of e-commerce multinationals with inbound supply chains comply with the arm's length standard and that firms comply with permanent establishment rules laid out in relevant double tax agreements.

It said the work done in these audits led to the introduction of new laws to combat structures designed to avoid establishing a taxable presence in Australia. The ATO reported in particular that the Multinational Anti-Avoidance Law (MAAL) has since eased concerns associated with these structures with many e-commerce taxpayers restructuring into MAAL-compliant buy/sell arrangements.

Other activities have focused on the enforcement of:

- Royalty withholding tax – in light of the emergence of software distribution models involving the provision of digital products and services, the ATO considered the characterization of payments made by Australian software distributors to offshore licensors and the royalty withholding tax implications.
- General anti-avoidance laws – prior to the introduction of the MAAL, the ATO considered the application of Part IVA to arrangements where Australian customer revenue was derived by a non-resident.
- Goods and services tax (GST) – From July 1, 2017, GST was extended to cross-border supplies of digital products and other services imported by Australian consumers to create a level playing field for domestic suppliers with their offshore counterparts.

The ATO reported that, as at June 30, 2018, its work on the digital economy has generated revenues worth AUD1bn in cash collections, and future revenue effects are expected to be worth more than AUD580m over the next four years.

France To Levy Digital Tax Starting Jan 2019

The French Government has decided to bring forward the introduction of a national tax on digital companies following the failure of European Union member states to agree on an EU-wide digital services tax.

Finance Minister Bruno Le Maire informed a press conference on December 17 that a French digital tax would be introduced on January 1, 2019, and would raise an estimated EUR500m (USD567m) next year. However, the exact scope of the tax has yet to be determined.

After EU finance ministers failed to reach an agreement on a proposed digital services tax earlier this month, Le Maire indicated that France would continue to push for an EU solution early in 2019, but would seek to legislate for a national digital tax if no agreement could be reached by next March.

However, it is thought that the French Government has decided to accelerate the introduction of a national digital tax to offset proposed new tax cuts for individuals in the wake of street protests against its tax policies.

Australia To Legislate For Petroleum Resource Rent Tax Changes

The Australian Government has published draft legislation to reform the Petroleum Resource Rent Tax's (PRRT's) uplift rates and treatment of onshore projects.

The PRRT is a tax generally on profits generated from the sale of marketable petroleum commodities. PRRT has applied to offshore petroleum projects since 1987 and to onshore petroleum projects since 2012.

The draft legislation will lower uplift rates for general expenditure and exploration expenditure from July 1, 2019. Taxpayers may carry forward unutilized expenditure to offset future positive cash-flow periods. The PRRT applies an uplift rate to carry-forward expenditure.

The aim of the changes is to limit the scope for excessive compounding of deductions.

The legislation will also remove onshore projects from the PRRT regime from July 1, 2019. According to the Government, onshore petroleum projects are generally not expected to result in PRRT liabilities but can reduce taxpayers' PRRT liabilities for offshore projects because of the transfer of exploration expenditure.

The Government said that no revenue has been collected since onshore projects were brought into the PRRT in 2012, a situation that is expected to remain unchanged into the future.

The new uplift rates and the removal of onshore projects are expected to raise AUD6bn (USD4.3bn) over the period to 2028-29.

A consultation on the proposed legislation will close on January 15, 2019.

Swiss 'Robot Taxes' Deemed Unnecessary

The Swiss Federal Council has endorsed a report that recommends that Switzerland does not yet need to introduce new or higher taxes to account for automation.

The study looks at the effects of "robotization" in the economy on Swiss tax revenues and funding for social security. It concluded that, although the Government may need to respond with tax measures in the future, in the immediate term automation is not having a negative impact on employment levels and wages in Switzerland.

It recommended that the Government should in future look to increase social insurance contributions before levying any new taxes on automation if there is a shift in company's expenditure from wages to capital income. It proposed that, alternatively, the Government could look to value-added tax to boost revenues or a "robot tax."

China To Cut Tariffs On US Vehicles

It has been reported that the Chinese Government is preparing to reduce the level of tariffs imposed on imports of US automobiles into China.

According to Bloomberg, China's leadership is currently reviewing a proposal to cut the existing 40 percent tariff levied on US vehicle imports to 15 percent, which would be in line with tariff imposed on car imports from other countries.

The reports would appear to support a December 2 tweet by US President Donald Trump that China "has agreed to reduce and remove tariffs on cars coming into China from the US."

China hiked tariffs on imported US vehicles in July 2018 in response to the US Government's decision to raise import tariffs on around USD34bn worth of Chinese goods.

In another potential signal that trade relations between the US and China are thawing, the new reports follow the announcement by the White House on December 1, 2018, that the US would suspend a scheduled tariff increase on around USD200bn worth of Chinese imports from 10 to 25 percent, due to take place on January 1, 2019, while the two governments worked on a deal to defuse bilateral trade tensions. However, the US Government has said that the tariff increase would go ahead if no deal is reached after 90 days.

Luxembourg Coalition Agrees Corporate Tax Cut

Luxembourg's new coalition Government has agreed to a number of tax changes in its program for government, including a reduction in corporate tax.

Under the proposals, the overall corporate tax rate, including the municipal business tax and unemployment contributions, will fall by one percent to 25.01 percent from the 2019 tax year. In addition, a reduced 15 percent rate of corporate tax will apply to profits up to EUR175,000 (USD199,000). Currently, the reduced corporate tax rate applies to income up to EUR25,000. In addition, the coalition has committed to simplifying the corporate income tax and municipal business tax regimes.

Other proposed measures include simplification of the tax rules applying to non-profit organizations and new rules to prevent investment fund vehicles from being used to avoid tax. However, the coalition has pledged not to increase the tax burden on the funds sector, a key component of Luxembourg's economy.

In the area of value-added tax, the coalition confirmed that the three percent super-reduced rate will be extended to electronic publications. These supplies are currently taxed at the standard rate of 17 percent. Additionally, the three percent rate will also apply to essential hygiene products.

With regards to international tax policy, the coalition says that it would prefer to see a multilateral solution to the tax challenges posed by the digital economy, although it would support a temporary EU-only interim measure until a multilateral agreement can be implemented. The coalition said it would continue to oppose the EU financial transactions tax, although it expressed support for a global levy on trading.

The Government has also committed to comprehensively reforming the personal income tax regime. It said it would also increase taxes on energy and fuel and introduce tax incentives for electricity-powered transport.

Puerto Rico Enacts Comprehensive Tax Reform Bill

On December 10, 2018, Puerto Rico Governor Ricardo Rossello signed into a law a USD2bn tax relief package including reductions in tax for businesses.

Under the law, the headline corporate tax rate will fall from 20 to 18.5 percent, and the progressive corporate surtax rates will remain at five to 19 percent. This will result in a combined corporate tax of 37.5 percent from December 31, 2018.

Additionally, the law phases out the four percent sales tax on certain designated professional services, the so-called business-to-business (B2B) tax, in place since October 1, 2015. As a result of the changes, the B2B tax will fall to three percent effective January 1, 2019, and to zero percent effective January 1, 2020, for businesses with annual revenues up to USD200,000.

Another sales tax measure will see the effective sales and use tax (SUT) on foods prepared by restaurants reduced from 11.5 percent to seven percent from October 2019.

CHINA - SPAIN

Signature

On November 28, 2018, China and Spain signed a DTA.

COSTA RICA - KOREA, SOUTH

Into Force

On November 13, 2018, the TIEA between Costa Rica and South Korea entered into force.

CROATIA - UNITED ARAB EMIRATES

Into Force

On September 28, 2018, the DTA between Croatia and the United Arab Emirates entered into force.

HONG KONG - INDIA

Into Force

On November 30, 2018, the DTA between Hong Kong and India entered into force.

MAURITANIA - SAUDI ARABIA

Signature

On December 2, 2018, Mauritania and Saudi Arabia signed a DTA.

PAKISTAN - SWITZERLAND

Into Force

On November 29, 2018, the DTA between Pakistan and Switzerland entered into force.

SERBIA - ISRAEL

Signature

On November 22, 2018, Serbia and Israel signed a DTA.

TURKEY - BOTSWANA

Negotiations

On November 19-23, 2018, Turkey and Botswana commenced negotiations towards a DTA.

TURKEY - VENEZUELA

Signature

On December 3, 2018, Turkey and Venezuela signed a DTA.

URUGUAY - PARAGUAY

Ratified

On November, 9 2018, Uruguay ratified its DTA with Paraguay.

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

THE AMERICAS

8th Annual Institute on Tax, Estate Planning and the World Economy

2/4/2019 - 2/5/2019

STEP

Venue: Fashion Island Hotel, 690 Newport Beach, Newport Beach, 92660, USA

Key speakers: Jay D. Adkisson (Riser Adkisson), Colleen Barney (Albrecht & Barney), Joseph A. Field (Pillsbury), Sandra D. Glazier (Lipson Neilson), among numerous others

http://www.stepoc.org/institute/

TP Minds Americas 2019

2/25/2019 - 2/28/2019

Informa

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

Key speakers: Michael Lennard (United Nations), Carlos Pérez-Gomez (Mexican Tax Administration), Nick Scott (Bunge), Terri Ziacik (Microsoft), among numerous others

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

ASIA PACIFIC

Financial Services Taxation Conference

2/6/2019 - 2/8/2019

The Tax Institute

Venue: QT Gold Coast, 7 Staghorn Ave, Gold Coast QLD 4217, Australia

Key speakers: Adam Boyton (Business Council of Australia), John Freebairn (University of Melbourne), Tony Frost (Greenwoods & Herbert Smith Freehills), Michael Barbour (Westpac Banking Corporation), among numerous others

https://www.taxinstitute.com.au/professional-development/key-events/financial-services-taxation-conference

Investment Immigration Summit Mumbai

2/20/2019 - 2/22/2019

Beacon Events

Venue: Address TBC, Mumbai, India

Key speakers: Bruno L'ecuyer (Investment Migration Council), Chad Ellsworth (Fragomen), Tajinder Pal Singh (Network Law Offices), James Hall (ANZ Migration), among numerous others

https://investmentimmigrationsummit.com/mumbai/

5th International Conference on Accounting Business and Economics

3/8/2019 - 3/10/2019

IPN Education Group

Venue: Address TBC, Bandung, Indonesia

Key speakers: TBC

http://icabe2019.weebly.com/

The Tax Institute's 34th National Convention

3/13/2019 - 3/15/2019

The Tax Institute

Venue: Hotel Grand Chancellor Hobart, 1 Davey St, Hobart TAS 7000, Australia

Key speakers: Bob Deutsch (The Tax Institute), Denise Honey (Pitcher Partners), Julianne Jaques (Victorian Bar), Chris Jordan (Commissioner of Taxation), among numerous others

https://www.taxinstitute.com.au/professional-development/key-events/national-convention

STEP Australia 2019

5/15/2019 - 5/17/2019

STEP

Venue: The Stamford Plaza, Brisbane, Australia

Key speakers: TBC

https://www.step.org/events/step-australia-2019-conference-save-date-15-17-may-2019

3rd Interdisciplinary Conference on Accounting, Management, Business and Technology 2019

7/2/2019 - 7/3/2019

YSN Conference Management

Venue: Address TBC, Langkawi, Malaysia

Keynote speakers: Prof. Dr. Abdel Rahman Mohammad Said Al-Tawaha (Honorary Advisor IPN.org), Dato' Syed Azuan Syed Ahmad Al-Idrus (Honorary Advisory MDSG)

https://icambt2019.weebly.com/

5th 2019 International Conference Statistic, Accounting and Management (ICSAM 2019)

8/23/2019 - 8/25/2019

IPN Education Group

Venue: Address TBC: Kuala Lumpur, Malaysia

Key speakers: Makhmud Kharun (RUDN University), Kei Eguchi (Fukuoka Institute of Technology), Napat Watjanatepin (Rajamangala University of Technology Suvarnabhumi), Wan Rosli Wan Ishak (Universiti Sains Malaysia), among numerous others

https://icsam2019.weebly.com/

CENTRAL AND EASTERN EUROPE

CIS Wealth Moscow 2019

2/18/2019 - 2/19/2019

CIS Wealth

Venue: Marriott Grand Hotel, 26/1 Tverskaya St., Moscow, Russia

Key speakers: Sergey Nazarkin (Amond & Smith Ltd Law Firm), Christian Groess (Amergeris Wealth Management Group), Alexander Zakharov (Paragon Advice Group), Amiran Gogiberidze (MGAP Attorneys at law), among numerous others

http://moscow2019.cis-wealth.com/

Wealth Management & Private Banking Summit - Russia & CIS

4/10/2019 - 4/11/2019

Adam Smith Conferences

Venue: Marriott Grand Hotel, Tverskaya St, 26/1, Moskva, 12500, Russia

Key speakers: TBC

http://www.russianwealthmanagement.com/

MIDDLE EAST AND AFRICA

Investment Immigration Summit MENA

2/24/2019 - 2/26/2019

Beacon Events

Venue: Shangri-la Hotel Dubai, Sheikh Zayed Rd Near Financial Metro Station, Dubai

Key speakers: Bruno L'ecuyer (Investment Migration Council), Kripa Upadhyay (Orbit Law), Sam Bayat (Bayat Legal Services), Amir Mayo (Deloitte Middle East), among numerous others

https://investmentimmigrationsummit.com/mena/

WESTERN EUROPE

Tax Treatment of Employment Related Securities 2019

1/24/2019 - 1/24/2019

Informa

Venue: Address TBC: London, UK

Key speakers: Mahesh Varia (Travers Smith), David Bowes (Bruce Sutherland & Co), Ian

Shaw (Orrick), Andy Goodman (BDO), among numerous others

https://finance.knect365.com/tax-treatment-of-employment-related-securities/

Russian Wealth Advisor Forum

1/30/2019 - 1/31/2019

Adam Smith Conferences

Venue: Zürich Marriott Hotel, Neumühlequai 42, 8006 Zürich, Switzerland

Key speakers: Paul Stibbard (Rothschild Trust), Charlie Willcox (Stonehage Fleming), Steven Kempster (Withersworldwide), Richard Hay (Stikeman Elliott), among numerous others

http://www.russianwealthzurich.com/

Tax Planning for the Family Company & Business

2/26/2019 - 2/26/2019

Informa

Venue: Address TBC: London, UK

Key speakers: Gary Heynes (RSM Tax and Advisory Services LLP), Martin Roberts (HMRC), Caroline Harwood (Crowe U.K.), Pete Miller (The Miller Partnership), among numerous others

https://finance.knect365.com/tax-planning-family-company-business/

TP Minds International 2019

3/18/2019 - 3/21/2019

Informa

Venue: Hilton London Bankside, 2-8 Great Suffolk St, London, SE1 0UG, UK

Key speakers: Pascal Saint-Amans (OECD), Dr Max Lienemeyer (European Commission), Karine Halimi-Guez (FEDEX), Jens Svolgaard (Spotify), among numerous others

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

Tax Planning for Entertainers & Sports Stars 2019

3/19/2019 - 3/19/2019

Informa

Venue: Address TBC, London, UK

Key speakers: Dick Molenaar (All Arts Tax Advisers), Patrick Way (Field Court Tax Chambers), Charles Bradbrook (SLRV Accountants), Pete Hackleton (Saffery Champness LLP), among numerous others

https://finance.knect365.com/tax-planning-for-entertainers-sports-stars/

Alternative Accountancy Strategic IT Conference 2019

3/19/2019 - 3/20/2019

ICAEW

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

Key speakers: TBC

https://events.icaew.com/pd/11905/alternative-accountancy-strategic-it-conferen?st_t=49&st_ti=430&returncom=productlist&source=search

International Tax Planning Association Meeting

3/20/2019 - 3/22/2019

ITPA

Venue: Kempinski Hotel Bahía, Autovía del Mediterráneo, km 159, 29680 Estepona, Málaga, Spain

Chairs: Milton Grundy (Grays Inn Tax Chambers), Paolo Panico (Private Trustees)

https://www.itpa.org/meeting/estepona-march-2019/

Practice 2019: Annual Conference and Expo

11/14/2019 - 11/15/2019

ICAEW

Venue: Address TBC, UK

Key speakers: Fiona Wilkinson (ICAEW), Rachel Balchin (Bulldog), Trevor Williams (University of Derby), among numerous others

https://events.icaew.com/pd/12123/practice-2019-annual-conference-and-expo?st_t=49&st_ti=430&returncom=productlist&source=search

THE AMERICAS

Canada

A listing of recent key international tax cases.

The Ontario Government has taken the next step in its challenge to the federal administration's carbon pricing policy, filing key documents with the provincial Court of Appeal.

In August, Ontario launched a constitutional reference case in the provincial Court of Appeal to challenge the federal Government's ability to impose a carbon tax on the province. On November 30, the provincial Government filed a factum with the Court, which provides a summary of its position.

The factum argues that the provinces, not the federal Government, have the primary responsibility to regulate greenhouse gas emissions. It also alleges that the charges the federal legislation seeks to impose are unconstitutional disguised taxation.

Ontario was, under its previous Government, signed up to the Pan-Canadian Framework on Clean Growth and Climate Change, which stipulates that the federal Government will impose a carbon floor price in provinces that do not have their own pricing systems in place from this year. In July, the new administration scrapped the province's cap-and-trade system.

In October, the federal Government confirmed that federal fuel charge rates will apply in Ontario, New Brunswick, Manitoba, and Saskatchewan. The carbon price will apply at a rate of CAD20 (USD15.18) per tonne of carbon dioxide equivalent in 2019, rising by CAD10 a year to reach CAD50 per tonne in 2022.

Saskatchewan has also launched a constitutional reference case in its provincial Court of Appeal. The Manitoban Government had announced plans to implement an output-based pricing system that would meet the federal administration's required minimum pricing level in 2019 but not after that point; it dropped the plans after the federal Government confirmed it would impose its higher tax on Manitoba from 2020. Neither province was signed up to the Pan-Canadian Framework.

Caroline Mulroney, Ontario's province's Attorney General, said: "Our Government cannot stand by and let this unconstitutional tax eliminate jobs and hurt families who are already struggling to get ahead in Ontario ... The federal carbon tax takes money from families' pockets and makes job creators less competitive."

On November 29, Ontario published its new plan for tackling climate change. Environment Minister Rod Phillips said that the plan "puts Ontario on a path to meet our target, which matches Canada's commitment under the Paris Agreement."

"Most importantly, it does all of this without imposing an ineffective, regressive carbon tax on the hardworking families of our province," he added.

https://news.ontario.ca/ene/en/2018/11/ontario-takes-next-legal-step-to-challenge-the-federal-carbon-tax.html

Court of Appeal For Ontario: *Ontario Government v. Federal Government*

WESTERN EUROPE

Belgium

The European Court of Justice has ruled in favor of three Belgian companies that had challenged the legality of France's decision to refuse a refund of withholding tax collected on dividends paid by a resident company to a loss-making non-resident company.

Between 2008 and 2011, Belgian companies Sofina, Rebelco, and Sidro received dividends as shareholders in French companies, it said.

A French resident company receiving dividend income would include such income in its corporate income tax taxable income but that income would effectively be exempt from tax, due to tax relief provisions for loss-making companies, temporarily if the company is not profitable, and permanently if that company never returns to profitability and/or ceases trading.

However, Belgian companies receiving income from a French resident are liable to French withholding tax, reduced under the Belgian-French DTA to 15 percent. The Belgian recipient was likewise loss-making and never returned to being profitable. The Belgian companies' request for a refund of that tax, owing to the disparity in treatment, was rejected.

That difference in treatment of companies in different member states in the same circumstances was said to constitute a restriction from the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU).

The French Council of State referred questions to the ECJ, asking whether Articles 63 and 65 of the TFEU must be interpreted as meaning that the cash-flow disadvantage resulting from the application of withholding tax to dividends paid to loss-making non-resident companies, while loss-making resident companies are not taxed on the amount of the dividends they receive until the year when, if at all, they return to profitability, constitutes in itself a difference in treatment characterizing a restriction on the free movement of capital?

The ECJ found in favor of the Belgian companies, agreeing that the difference in treatment between a loss-making resident company and a loss-making non-resident company created an advantage for the resident company.

It ruled: "The national legislation at issue in the main proceedings is liable to procure an advantage for loss-making resident companies, since it gives rise, at the very least, to a cash-flow advantage, or even an exemption in the event of that company ceasing trading, whereas non-resident companies are subject to immediate and definitive taxation irrespective of their results."

Such a difference in tax treatment of dividends dependent on the place of residence of the companies receiving those dividends is liable to deter non-resident companies from investing in companies established in France, and investors residing in France from purchasing holdings in non-resident companies.

The Court said it follows that the national legislation at issue in the main proceedings constitutes a restriction on the free movement of capital, which is, in principle, prohibited by Article 63(1) of the TFEU.

The Court also said that the restriction cannot be justified against the tests in established EU case-law; that any difference in treatment must concern situations which are not objectively comparable or be justified by an overriding reason in the public interest.

The ECJ ruled: "Articles 63 and 65 TFEU must be interpreted as precluding the legislation of a member state, such as that at issue in the main proceedings, pursuant to which the dividends paid by a resident company are subject to a withholding tax when they are received by a non-resident company, whereas, when such dividends are received by a resident company, under the general corporation tax rules they are subject to taxation at the end of the financial year in which they were received only if the latter company was profitable in that financial year, and such taxation may, where applicable, never be levied if that company ceases trading without becoming profitable after receiving those dividends."

http://curia.europa.eu/juris/document/document.jsf?text=&docid=207970&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5536634

European Court of Justice: *Case C-575/17*

WESTERN EUROPE

Ireland

Investigations by the Irish Revenue into information contained in the Panama Papers and Paradise Papers have yielded just EUR400,000 (USD452,288) in settlements so far.

Irish Finance Minister Donohoe was asked to provide details to Parliament of Revenue's response to the revelations made in the Panama Papers and Paradise Papers.

In a written response, Donohoe said that Revenue has examined the information published by the International Consortium of Investigative Journalists (ICIJ) "to identify any cases with links to Ireland." Revenue was able to identify "offshore companies, individuals, addresses, and intermediaries of possible interest."

Donohoe explained that these cases were then profiled "and it was found that, in many instances, no further action was required." There were also instances "where the nature or age of the published information, or the current status of the entity concerned (liquidated, dormant, or non-resident) meant that further action was not possible."

However, enquiry letters were issued in over 100 cases. A majority of these cases were closed with no Irish tax issues identified. Settlements were made in six cases, yielding EUR400,000. Revenue is following up on the remaining cases.

Donohoe added that Revenue has written to two banks to ask if they had any information or records on the opening of offshore accounts or the depositing of funds in offshore accounts on behalf of Irish residents that had not previously been disclosed to Revenue under various High Court orders. The banks confirmed that all information had been covered by these orders.

More broadly, Revenue has worked with the OECD's Joint International Taskforce on Shared Intelligence and Collaboration in relation to the Panama and Paradise papers. Donohoe said that there is increasingly close cooperation between tax authorities worldwide "in targeting those who seek to hide profits or gains offshore."

Revenue has concluded 190 interventions, with a yield of EUR1.2m, in cases involving previously undisclosed offshore assets.

https://www.oireachtas.ie/en/debates/question/2018-12-12/76/?highlight%5B0%5D=cases&highlight%5B1%5D=tax&highlight%5B2%5D=tax

Written response from Irish Finance Ministry: *Panama Papers*

WESTERN EUROPE

United Kingdom

A legal challenge brought by 13 UK expats against the decision of the EU Council to endorse the start of negotiations with the UK on exiting the European Union has been rejected by the General Court of the EU, which said that the arguments put forward were inadmissible. The expats, among other things, argued that the decision to authorize the start of negotiations without any assurances with regards to their future status as EU citizens contravened their rights under EU treaties.

The General Court said the challenges were inadmissible as the challenged decision – the EU's decision to authorize the opening of negotiations on Brexit – did not affect the legal situation of the British citizens who brought the action.

Their legal challenge focused on two areas; that, due to their expatriation from the UK, they were unable to vote in the referendum, and that the EU Council, in approving the start of Brexit negotiations, did not include the objective of ensuring that UK expats would maintain their status as EU citizens. They submitted that the withdrawal procedure is void in the absence of constitutional authorization.

They argued that the action brought before the General Court is the only way they could challenge the legitimacy of the decision of the UK and the EU to begin negotiations towards the UK exiting the European Union – a process that could result in the inescapable loss of their status as EU citizens on March 29, 2019, should the UK and the EU fail to agree terms for an orderly withdrawal of the UK from the EU that includes reciprocal provisions safeguarding in particular the residency rights of UK citizens in EU states.

The EU Council was successful in asking the General Court to declare the action admissible and to hold that it cannot accordingly be heard, since, it argued, the contested decision may not be challenged by individuals or companies, arguing that the applicants have no interest or standing to bring proceedings against it.

It said the contested decision does not affect the applicants' legal situation; it is merely a preparatory act and draws the consequences of the UK's notification of its intention to withdraw. It is therefore only at the end of the Article 50 Treaty on European Union procedure (i.e. when the UK ceases to be a member of the EU) that the rights of the applicants are to be affected.

In ruling that the challenge is inadmissible, the Court said that, although the decision of the Council authorizing the opening of the Brexit negotiations has legal effects as regards the relations between the EU and its member states and between the EU institutions, in particular the Commission, which is authorized by that decision to open negotiations for an agreement with the UK, it does not directly affect the legal situation of the applicants.

The Court takes the view that the decision does not alter the legal situation of British citizens residing in an EU member state other than the UK, whether that be their situation at the date of the contested decision or their situation as from the date of the UK's withdrawal from the EU.

Therefore, according to the Court, the applicants are wrong to claim that they are directly affected, among other things as regards their status as EU citizens and their right to vote in European and municipal elections, their right to respect for their private and family life, their freedom to move, reside and work, their right to own property, and their right to social security benefits. The Court adds that, although it is true that the applicants' legal situation, particularly as regards their status as EU citizens, is likely to be affected when the UK withdraws from the EU, whether or not a withdrawal agreement can be concluded, such a potential effect on their rights – the nature and extent of which cannot, moreover, be known at the present time – does not result from the contested decision.

The Court stated, in addition, that the contested decision does not contain any decision approving or accepting the UK Government's notification of intention to withdraw of March 29, 2017, and takes the view, therefore, that the applicants are not justified in claiming that the contested decision constitutes an implicit act by which the Council accepted the notification of intention to withdraw of March 29, 2017, or that the contested decision acknowledged the UK's exit from the EU.

The EU said that the contested decision is merely a preparatory act and that a final agreement between the EU and UK will set out how UK citizens' rights will be affected.

The General Court therefore dismissed the action as inadmissible since the decision of the Council authorizing the opening of negotiations on Brexit does not produce binding legal effects capable of affecting the interests of the applicants by bringing about a distinct change in their legal position.

https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-11/cp180184en.pdf

European Court of Justice: *Case T-458/17 Shindler and Others v Council of the European Union*

WESTERN EUROPE

United Kingdom

The UK's Upper Tribunal has ruled in favor of a taxpayer who had relied on previous HMRC guidance, issued in 2006, which allowed a VAT exemption for card handling services.

The ruling in *Vacation Rentals (UK) Ltd (formerly known as The Hoseasons Group Ltd) v. HMRC* was released on November 22, 2018.

The case concerned a taxpayer that acted as a booking agent between holidaymakers and property owners. It had followed HMRC's published guidance on the treatment of its services as exempt. Following a ruling from the European Court of Justice that such services should be taxable, HMRC issued assessments to the company contrary to its earlier guidance. The taxpayer brought an appeal arguing that it had legitimate expectation that it would be taxed in accordance with the published guidance. The Upper Tribunal agreed, stating that the guidance was clear and unequivocal in providing that such services should be exempt and dismissed arguments put forward by HMRC.

Relevant case-law

The Court of Appeal's judgment in *Bookit v HMRC* ([2006] STC 1367) clarified the position surrounding the VAT treatment of card handling services at that time. In that case it was held that the supply by the taxpayer of card handling services was exempt from VAT. The supply comprised the following four components:

- Obtaining the card information with the necessary security information from the customer;
- Transmitting that information to the card issuers;
- Receiving the authorization codes from the card issuers; and
- Transmitting the card information with the necessary security information and the card issuers' authorization codes to the intermediary bank (known as the "merchant acquirer") which liaises between the card issuer and the taxpayer.

After that judgment, the UK Court of Session overturned an earlier tribunal decision and found that a taxpayer in a later case, SEC, was also carrying out an exempt card handling service, based on the tests set out in Bookit, even though such card handling services were earlier found by the Tribunal to be ancillary to a larger supply.

In SEC, the Tribunal stated that SEC was providing a single taxable booking service, with the taxable card handling service representing an ancillary aspect that enhanced the main service. The Court of Session overturned the tribunal decision, finding that SEC was carrying out an exempt card handling service. The Court based its judgment on the decision of the Court of Appeal in Bookit and on an assumption of similar facts.

Later, it was finally determined by the European Court of Justice (ECJ) in *National Exhibition Centre v. HMRC* ([2016] STC 2132) that card handling services consisting of the four components were in fact taxable rather than exempt. The ECJ stated that none of the four components identified in Bookit individually, or taken together, could be considered to be carrying out a specific, essential function of a payment or transfer transaction within the meaning of the exemption.

Prior to that ECJ ruling, HMRC issued guidance in Business Brief 18/06 (BB 18/06). In such, HMRC said the judgments provided further guidance on when a service of credit or debit card handling by an agent is VAT-exempt. It said: "If an agent, acting for the supplier of the goods or services, makes a charge to the customer over and above the price of the actual goods or services, for a separately identifiable service of handling payment by credit or debit card, and that service includes the fourth component listed above, then the additional charge will be exempt under item 1, Group 5 of Schedule 9 to the VAT Act 1994. However, where an agent provides some or all of the first three components without providing the fourth, the charge is taxable at the standard rate of VAT."

BB 18/06 provided the following instructions to taxpayers: "Agents supplying card handling services that meet the criteria set out above, and who have been treating the charge as taxable at the standard rate, should exempt such services from the date of this Business Brief. Conversely, agents supplying card handling services that do not meet the criteria set out above, and have been treating those services as exempt, should now charge tax."

Facts of the case

In the present case, when the taxpayer collected payment from holidaymakers via credit or debit card an additional fee was charged to reflect the extra work and extra costs involved in effecting such payments by the banking system.

However HMRC argued before the Upper Tribunal in this case that its guidance was limited to circumstances where the agent, not the merchant acquirer, obtains the authorization code from the card issuer and the merchant acquirer does not know the authorization code until it is transmitted to it by the agent.

HMRC regarded it as an important point of distinction that the merchant acquirer did not obtain the authorization code for the first time from the Claimant, unlike the position in Bookit where the findings were that the authorization code was obtained by Bookit directly from the card issuer and transmitted to the merchant acquirer at a later stage in the process.

Ruling

The Upper Tribunal said: "It is clear from the wording of BB 18/06 that HMRC did not draw a distinction between the judgment in Bookit and that in SEC. In our view, that indicates that at the time of publication of BB 18/06 they could not have regarded it as essential to the availability of the exemption that the supplier communicated directly with the card issuer to obtain the authorization codes."

"The wording of the specific guidance again makes it clear that where an agent makes a charge over and above the price of goods or services for a separately identifiable service of handling payment by credit or debit card and that service involves the Fourth Component, then the additional charge will be exempt; but where some or all of the first three components are provided without the fourth the charge is taxable at the standard rate."

Ruling for the taxpayer, the Court said: "The distinction that HMRC seek to make between direct and indirect communications between the agent and the card issuer is of no material significance to the guidance, just as it was of no material significance to the decisions in Bookit and SEC."

Further, the Upper Tribunal said that the taxpayer had legitimate expectation that it should be able to rely on the guidance to exempt its supplies. HMRC did not dispute that Business Briefs, as statements of HMRC's policy, are capable of giving rise to a legitimate expectation. However, HMRC say that BB 18/06 does not clearly, unambiguously and without qualification give rise to the particular legitimate expectation alleged by the taxpayer.

However, the Upper Tribunal rejected this, stating: "The arguments advanced by HMRC are a mixture of over-literalism, unjustified by the terms or the purpose of the exemption in question, and reading into the terms of the Fourth Component words that are simply not there, such as "for the first time" after "transmitting.'"

"Furthermore, even if HMRC were right in saying that BB 18/06 had to be read by reference to the full judgments in Bookit and SEC (which we do not accept) those judgments do not lend any support to the argument that the exemption was being limited to the precise facts found in

Bookit. On our reading of BB 18/06 it would appear that HMRC understood that to be the position when the guidance was issued," the Tribunal said.

The Court therefore granted the claimant's request for an order that HMRC be prohibited from collecting the VAT assessed.

https://assets.publishing.service.gov.uk/media/5bf6c413e5274a3b3368a95e/Queen_oao_Vacation_Rentals_formerly_Hoseasons_v_HMRC.pdf

UK Upper Tribunal: *Vacation Rentals (UK) Limited v. HM Revenue and Customs*

Dateline December 20, 2018

It used to be called the **United Kingdom**. Actually, it still is. But in name only? For this is a country tearing itself apart politically over Brexit. And perhaps fragmentation is the only way out of this most intractable of issues. Never mind parliament, where there are 650 members, and seemingly **just as many viewpoints on the ideal Brexit scenario**, ranging from remaining in the EU, to pulling up anchor and sailing HMS Blighty as far away from the French coast as the wind will take it.

What about the country as a whole? Whatever the result come March 29 next year, large sections of the British populace who voted in the 2016 referendum will be upset that their views have been ignored. So here's an idea. Why don't those constituencies, cities and regions that voted decisively one way or another either remain in the EU, or leave it completely, accordingly? Probably because it's a silly idea. But then again, London would be happy as it would retain its vital access to the single market for financial services; the great university cities like Cambridge and Oxford would retain their research links with the EU; the industrial north would get its hard Brexit and all the fish, etc, etc. You'd need to negotiate a dozen customs checks on a journey from London to Liverpool. But at least it might shut everyone up for a few minutes. Amen to that!

On a more serious note, putting aside the increasingly toxic debate about wither the UK would be better off in the EU, out of it, or kind of between in and out, the **fog of uncertainty about Britain's future trading environment** grows ever thicker. To such an extent, that it's becoming dangerous to plan any sort of move. Clarity, or the lack thereof, was a key theme that emerged from the reaction of the business community to last week's tumultuous events in Westminster.

For example, on the decision by Prime Minister Theresa May to **postpone the parliamentary vote** on the exit deal she negotiated with the EU, an exasperated Confederation of British Industry argued that: "This is yet another blow for companies desperate for clarity. Investment plans have been paused for two and a half years. Unless a deal is agreed quickly, the country risks sliding towards a national crisis."

On the result of the vote of confidence in May's leadership by her own Conservative Party, the British Chambers of Commerce implored Westminster to "focus all its energy on urgently giving businesses clarity on the future and avoiding a messy or disorderly Brexit. We [have] just over 100 days to go until the UK leaves the EU, and firms are still in the dark as to what trading conditions they will face."

Tax-wise, the key area is **VAT**. In the event that the UK leaves the EU without a deal, legislation will be necessary to ensure the UK's customs, VAT and excise regimes function as intended after exit day. According to the Government's recently consolidated Brexit guidance, draft legislation in this area is designed to **broadly replicate the current EU legislation** and minimize disruption of a no-deal scenario on the UK's international trade. However, I suppose the key word here is "broadly." For that implies that the UK VAT regime will not reflect current legislation to the letter. And businesses won't relish the prospect of poring over reams of new legislation, statutory instruments, regulations, and guidance notes in a grim game of spot the difference.

Compounding matters, taxpayers face not only the prospect that the **UK tax regime will diverge from EU rules**, but also the risk that it will fragment from within. In fact, this is already taking place. Thanks to laws devolving certain fiscal powers to **Scotland**, Scottish taxpayers will pay different amounts of income tax than their counterparts in the rest of the UK under Scotland's latest Budget. This will mean that taxpayers on low and moderate incomes will pay less in tax than equivalent earners in the rest of the UK, while those on middle and high incomes will pay more.

What's more, taxpayers resident in Scotland now have to grapple with as many as five new rates and bands of income tax, with the rest of the UK facing just three. As Moira Kelly, Chair of the CIOT's Scottish technical committee, observed, such measures "lend themselves to a growing perception that **Scotland is taking a different tax tack** to the rest of the country, particularly as the UK income tax regime moves in the opposite direction." Businesses would argue such measures certainly don't lend themselves to clarity. And what if this is the thin end of the wedge? Income tax today, corporate tax and VAT tomorrow?

Frankly however, Prime Minister Theresa May has bigger fish to fry at the moment (caught according to EU quota rules of course – this is a bad time to be upsetting Brussels!) Indeed, that she's still in the post at all, after what represents the **UK's greatest post-war political and constitutional challenge**, is quite remarkable. So perhaps we shouldn't rule out the possibility that SuperMay will swoop in and save the day at the last possible moment.

The Jester