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# GLOBAL TAX WEEKLY
## a closer look

ISSUE 223 | February 16, 2017

**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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# GLOBAL TAX WEEKLY
## a closer look

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# GLOBAL TAX WEEKLY
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**For article guidelines and submissions, contact GTW_Submissions@wolterskluwer.com**

# The Foreign Earned Income Exclusion – A Coat Of Many Colors: Part I

by Nathan Mintz, Esq., Ephraim Moss, Esq., and Joshua Ashman, CPA, Expat Tax Professionals

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## Part I – Introduction To The Foreign Earned Income Exclusion And Its Interpretive Challenges

For US persons living abroad, the Foreign Earned Income Exclusion ("FEIE") under Section 911(a)(1) of the Internal Revenue Code provides a significant measure of tax relief against the US government's unique system of citizenship-based taxation. However, despite its practical influence and prevalence, the provisions of Section 911 leave much to interpretation. In this regard, the Ninth Circuit Court of Appeals, in a moment of Biblical reflection, described its construal as having an "evasive way about it, with as many colors as Joseph's coat." [1]

At the conceptual level, the exclusion can be described in simple terms: A US person living outside the United States can exclude a certain portion of his or her compensation each year for personal services performed outside the United States. The exclusion amount is adjusted annually for inflation.[2] For tax year 2016, the amount is USD101,300 per qualifying person, which can double if the filing individuals are married earners qualifying for the exclusion.[3]

As with many US federal income tax concepts however, the exclusion presents a number of interpretive challenges, due to the loosely defined qualification requirements set out in Section 911 and the regulations thereunder.

While there are several features of the exclusion worthy of focused analysis, two aspects have garnered particular attention by the Tax Court and other federal courts, due largely to their inexact nature. These are the qualification requirements that the individual's "tax home" be in a foreign country and the individual's "abode" not be within the United States.

In this series, we examine the "tax home" and "abode" requirements of the FEIE within the context of the modern workplace. In Part I of this three-part series, we set out the interpretive challenges presented by the "tax home" and "abode" requirements. In Part II, we will review some of the recent case law analyzing the requirements under particular circumstances, and in Part III, we will consider the "digital nomad," a modern case study highlighting the FEIE's many colors of interpretation.

***The FEIE Qualification Requirements***

Section 911(a)(1) of the Code allows a "qualified individual" to utilize the FEIE to exclude his or her earned income up to the exclusion amount. Under Section 911(d)(1), a "qualified individual" means an individual whose "tax home" is in a foreign country and who is:

> (A) A citizen of the United States and establishes to the satisfaction of the Secretary that he has been a *bona fide* resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year (the "*bona fide* residence test");[4] or
>
> (B) A citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period (the "330-day physical presence test").

Under Section 911(d)(2), the term "earned income" generally means wages, salaries or professional fees, and other amounts received as compensation for personal services actually rendered by the taxpayer.

***The "Tax Home" Requirement***

As described above, in order for an individual to qualify for the FEIE, his or her "tax home" must be in a foreign country. The Code and regulations offer limited guidance in defining this key term. Under Section 911(d)(3), the term "tax home" is defined generally to mean an individual's home for purposes of Section 162(a)(2), relating to deducting travel expenses while away from home.

Treas. Reg. §1.911-2(b), borrowing conceptually from Section 162(a)(2), states that an individual's tax home is considered to be located at his "regular or principal (if more than one regular) place of business" or, if the individual has no regular or principal place of business because of the nature of the business, then at his "regular place of abode in a real and substantial sense." The regulation caveats that the "maintenance of a dwelling in the United States, whether or not that dwelling is used by the individual's spouse and dependents, does not necessarily mean that the individual's abode is in the United States." Courts have further held that a taxpayer who has neither a principal place of employment nor a permanent place of abode is considered to be an "itinerant" worker whose tax home moves with him from place to place.[5]

The IRS has also used Section 162(a)(2) concepts to apply the tax home rule to temporary and indefinite assignments.[6] IRS Publication 54 states that in the case of a work assignment abroad, the location of your tax home "often depends on the whether your assignment is temporary or indefinite." If you expect your employment away from home in a single location to last, and it does last, for one year or less, it is "temporary" unless facts and circumstances indicate otherwise. If you expect it to last for more than one year, it is indefinite.

With these timing rules in place, Publication 54 continues by seemingly making qualifying for the FEIE and qualifying for travel expense deductions while abroad mutually exclusive. It states that if you are "temporarily absent from your tax home in the United States on business," then your away-from-home expenses may be deductible, but you do not qualify for the FEIE. In contrast, if you are on assignment for an indefinite period, you will not be able to deduct any of the related travel expenses that you have in the general area of your new tax home, but you potentially qualify for the FEIE.

***The "Abode" Requirement***

Under Section 911(d)(3) of the Code, the "tax home" rule is subject to an important overriding exception – an individual is not considered to have a tax home in a foreign country for any period during which the individual's "abode" is in the United States.

Thus, a taxpayer's abode plays two roles in the tax home definitional labyrinth. First, if there is no regular or principal place of business, then the location of the taxpayer's abode is the deciding factor. Second, even if a taxpayer has a regular or principal place of business in a foreign country, the tax home requirement is not satisfied if the taxpayer has an abode within the United States.

The Code and regulations do not offer an objective meaning of the term "abode." As the Tax Court has also admitted, "… an exact definition of 'abode' depends upon the context in which the word is used." [7] It is clear that the term does not mean one's principal place of business, but rather one's personal residence. Thus, in contrast to "tax home," "abode" has a domestic rather than vocational meaning.[8]

In trying to help taxpayers apply the "abode" requirement in the context of Section 162(a)(2), the IRS has set out three factors that can be used for determining the location of an individual's abode:

> (1) Whether the taxpayer performs a portion of his business in the vicinity of his claimed abode and uses such abode (for purposes of his lodging) while performing such business there;
>
> (2) Whether the taxpayer's living expenses incurred at his claimed abode are duplicated because his business requires him to be away therefrom; and
>
> (3) Whether the taxpayer: (a) has not abandoned the vicinity in which his historical place of lodging and his claimed abode are both located, (b) has a member or members of his family (marital or lineal only) currently residing at his claimed abode, or (c) uses his claimed abode frequently for purposes of his lodging.[9]

***Historical Case Law Interpreting The "Tax Home" And "Abode" Requirements***

With broad definitional boundaries in play, courts have been given a large interpretive space to analyze the "tax home" and "abode" requirements. Taxpayers with inherently mobile job descriptions, such oil rig workers and airplane pilots and staff,[10] have challenged courts to apply the conceptual requirements within the context of practical circumstances.[11]

In the oil rig worker cases, the fact pattern has typically involved taxpayers who work for certain periods on a rig in a foreign country and come home to their families during non-work periods. Courts have found that the abode requirement was not met in these cases because the taxpayers maintained strong personal ties to the US, particularly by keeping residences in the US where their families continued to reside.[12] Notably, as mentioned above, Treas. Reg. §1.911-2(b) caveats that the "maintenance of a dwelling in the United States, whether or not that dwelling is used by the individual's spouse and dependents, does not necessarily mean that the individual's abode is in the United States." However, because the taxpayers made no efforts to develop personal ties in the foreign country, they were found to have an abode in the United States.

Taxpayers in the airline industry, in contrast, have historically achieved mixed results. In *Jones v. Commissioner*,[13] for instance, the Fifth Circuit Court of Appeals found that an airline pilot stationed in Japan had his abode in Japan (and therefore qualified for the FEIE), even though his spouse continued to live in their US home while the taxpayer was stationed overseas. Interestingly, the Court reasoned that the taxpayer's spouse could have moved to Japan, but declined in order to keep her US-based job. The Court also distinguished Jones, who paid his own way while in Japan, from the oil rig workers, who received employer-provided housing, meals and transportation back to the US during non-working periods.

In *Sislik v. Commissioner*,[14] however, the Tax Court found that a commercial pilot for Pan Am did not qualify for the FEIE, reasoning that the taxpayer's tax home was JFK airport in New York. Since the taxpayer's "base station," where his flights originated and returned, was JFK, and because the taxpayer was under the supervision of the base station when in flight, the Court held that Sislik's principal place of business was JFK and he therefore did not qualify for the FEIE.

These historical FEIE cases highlight the factual sensitivities that can make or break a taxpayer's FEIE claim. They also highlight that factual emphasis may differ from court to court.

In recent years, several new fact patterns have emerged, giving courts the opportunity to further develop and crystallize the FEIE qualification requirements. In Part II of this series, we will review some of the more recent cases that have interpreted the "tax home" and "abode" requirements of the FEIE.

## Endnotes

1 *Weible v. United States*, 244 F.2d 158, 163 (Ninth Circuit 1957) (interpreting the "*bona fide* residence" requirement of the previous version of the FEIE under former Section 116 of the Code).

2 IRC Section 911(b)(2)(D).

3 Treas. Reg. §1.911-5. In addition to the FEIE, certain housing costs incurred in a foreign country can be excluded or deducted. *See* IRC Section 911(a)(2) and (c).

4 We note that the *bona fide* residence test has been analyzed in a number of court decisions and has its own interpretive challenges. Because, in our experience, our clients often meet the 330-day physical presence test, we have focused this article on the "tax home" and "abode" requirements.

5 *Deamer v. Commissioner*, 752 F.2d 337 (Eighth Circuit 1985).

6 *See* Rev. Rul. 93-86, 1993-2 CB 71 (applying Section 162(a)(2) in the context of work assignments).

7 *Bujol v. Commissioner*, TC Memo 1987-230.

8 *Id*.

9 Rev. Rul. 73-529, 1973-2 CB 37.

10 The tax home concept has been analyzed in the context of other professions as well, including, for example, the band musician. *See Bjornstad v. Commissioner*, TC Memo 2002-47, 2002 WL 238507.

[11] Ancillary issues that have recently emerged in FEIE cases include the parameters of the employer-employee relationship (*see*, *e.g.*, *Co v. Commissioner*, TC Memo 2016-19), and the application of the FEIE in the context of international waters (*see*, *e.g.*, *Wilson v. Commissioner*, TC Summary Opinion 2016-19).

[12] *See Bujol*, *supra*, note 7; *Lemay v. Commissioner*, TC Memo 1987-256, *aff'd*, 837 F.2d 681 (Fifth Circuit 1988).

[13] 927 F.2d 849 (Fifth Circuit 1991).

[14] TC Memo 1989-495, *aff'd per curiam*, 1992 US App. LEXIS 15691 (DC Circuit May 22, 1992).

# Risks Of Brexit From A Continental European – Especially German – Perspective

by Carsten Deecke, Auditor/Tax Advisor, Partner, Dr. Florian Gehrke, Lawyer/ Expert Lawyer for Commercial and Corporate Law, Partner, and Dr. Simone Wick, Tax Advisor, Dierkes Partner, independent member of Morison KSi

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## Introduction

One of the most hotly discussed topics over the past few months has been "Brexit." Numerous articles, comments and recommendations have already been published, despite the remarkable fact that so far nothing has changed: the UK is still a member of the EU! All regulations, rules, agreements, *etc.* remain unchanged and are still valid. So far, the issues of when Great Britain will leave the EU, and how the EU and its members will proceed to cooperate with the UK, remain ambiguous. However, recent developments in UK politics and statements from Prime Minister Theresa May suggest that the withdrawal is gaining momentum, with leading national newspapers reporting that the UK Government plans to trigger Article 50 of the Lisbon Treaty, thus executing Brexit, by the end of March 2017. In addition, unsettled by increasingly radical views expressed in support of a "hard BREXIT," economic operators are now starting to leave the UK. Russia's VTB Bank, for example, is seeking to relocate its European headquarters.

Thus, it is important to understand possible developments and the impacts of Brexit on daily business. The main issues are explored below from our respective points of view as lawyer, auditor, and tax advisor.

## Lawyer's Perspective

Corporate law will be one of the topics that will have a huge impact for companies. Within the EU, companies can decide if they want to move their place of management to another country without losing their legal identity. Therefore, several corporations were founded as limited liability partnerships (LLPs) or limited companies within recent years. Right now, it is unclear what will happen to such UK companies in other EU jurisdictions. Under current legislation, those LLPs and limited companies will not keep their status as corporation but will be transformed compulsorily into a limited partnership, resulting in the shareholders becoming personally liable. Furthermore, cross-border mergers and similar actions will be much more complex with parties from a non-EU country, as the UK will be after Brexit.

It is worth checking existing contracts for any references to "EU countries," as such contracts will need modification if UK companies are to be included after Brexit.

Global companies share many data, benefiting within the EU from the harmonized data protection rules. After leaving the EU, the UK will be seen as a non-member country and companies will need to obey stricter data protection regulations.

Pre-referendum debates revealed that some voters resented the influx of too many foreigners into the UK. Within the EU, the principle of freedom of movement applies. When the UK leaves the EU, foreign nationals living in the UK may need to deal with visa issues, work permits, and so on – just as UK nationals will need to do in continental Europe. At the moment, employers and employees can rely on EU labor laws and social security regulations. After Brexit, each case will be dealt with individually. Where possible, requests will need to be filed (*e.g.*, for social security issues) and some employees may even have to terminate their work abroad. For British nationals working overseas, Brexit will mean that they will no longer benefit from any EU regulation or law.

## Auditor's Perspective

The currency risk has always been a topic for companies having subsidiaries or business connections with the UK. Auditors will need to bear increased volatility in mind, and should carefully check the values of participations, loans, *etc.* connected to British companies. So far, Brexit's effect on worldwide and especially EU markets is unpredictable.

Within the EU, the bookkeeping can be done by a company of another member country after applying for it. This will not be possible with the UK after leaving the EU.

## Tax Advisor's Perspective

One of the main tax issues relating to daily business will be VAT and customs. Within the EU, companies and customers can benefit from harmonized VAT regulations. After Brexit, the UK government can set the VAT percentages freely without considering the minimum percentage of 15 percent for EU member countries. Furthermore, the UK government and British companies need not worry that the national regulations will be checked and eventually be abandoned with regard to EU laws on state aid. At the same time, the special regulations for EU member countries can no longer be used.

Especially for multinational groups, the loss of the Parent-Subsidiary Directive will have a noticeable impact: within the EU, dividends can be paid tax free if certain conditions are met. Non-EU companies cannot benefit from this regulation, and the subsidiaries must withhold taxes for any dividend (in Germany, 25 percent plus solidarity surcharge). In case of a double tax treaty, the rate of the withholding tax might be reduced. The same aspects will need checking with regard to interests and license fees (interest and royalties directive).

In connection with corporate law also, tax advisors must bear in mind that UK corporations (limited companies and LLPs) will no longer be automatically accepted as corporations in Germany. As mentioned above, those companies will compulsorily be switched into a partnership and the shareholders will become taxable in Germany – in the absence of a grandfather rule or any other agreement. Furthermore, transformations relating to British companies will cause tax payments because they can no longer profit from tax reliefs given to EU companies.

EU companies can avoid an additional taxation at the German parent company on the basis of the provisions of the Foreign Transactions Tax Act if they can prove an actual economic activity. After leaving the EU, income from British subsidiaries might have to be taxed in Germany, if the tax rates stay as low as they are at the moment.

For individuals, it is important to be aware that after Brexit they will no longer profit from tax incentives for EU citizens, such as married-couple splitting.

While the UK seems to be starting Brexit earlier than expected, so far what happens next is unclear. Since some articles suggest that initial steps will be taken in March 2017, it is reasonable to start evaluating possible ways to proceed for clients having any business relations (holding company, subsidiaries, business *etc.*) with the UK.

# Indirect Taxes Inch Forward

by the Global Tax Weekly Editorial Team


## The Gulf Cooperation Council Value-added Tax

Tax spotters in the Middle East will have pricked up their ears earlier this month, when both Bahrain and Saudi Arabia announced further progress towards the implementation of the long-awaited Gulf Cooperation Council's (GCC's) value-added tax (VAT).

Decades in the making, the joint initiative has been given additional impetus by declining oil revenues in the region in recent years. However, it is set to be a shock to the system for taxpayers in the participating countries, which have for the most part imposed no, or low, taxes on individuals and businesses resident there.

The GCC is comprised of Saudi Arabia, the United Arab Emirates, Bahrain, Kuwait, Qatar, and Oman, and in a meeting on June 16, 2016, Ministers of Finance from the states approved, in principle, the introduction of VAT and new excise duties, as part of a common framework.

Initially, the pan-GCC VAT framework was designed to be in place from January 1, 2018. However, the lack of legislation in this area and related implementation concerns, combined with the need to prepare taxpayers for the seismic shift, have necessitated a delay in the introduction of the levy until mid-year.

The tax, when in place, will apply at a 5 percent rate on around 100 goods and services. Basic foodstuffs, medications, and medical supplies will be exempt.

On February 1, Bahrain's Finance Minister, Ahmed bin Mohamed Al Khalifa, signed the unified VAT agreement, which provides for simultaneous implementation in all participating states.[1] He indicated that the Government is ready to begin developing the relevant legislation, and reportedly stressed that the levy should not be viewed as an income tax.

Speaking to the press at a meeting, Finance Undersecretary Arif Khamis stated that the imposition of the tax would not adversely impact those on low incomes, and that in parallel to the legislative work being done, a public awareness program will be undertaken.

It further emerged recently that the Saudi Cabinet had given its final approval for the introduction of the tax from mid-2018, with a Royal Decree to that effect reportedly being prepared.

Bahrain was the last to sign the common framework. It is expected that details of the framework will shortly be made public.[2]

In a statement released following the signature of the framework, KPMG observed:[3]

> "While the VAT framework only sets out key VAT principles, it clears the way – once ratified – for each GCC member to release their national VAT laws based on those principles. The UAE has indicated its intention to implement VAT with effect from January 1, 2018. The framework paves the way for implementation, allowing for a basic rate of VAT of 5 percent while certain supplies of goods and services can be zero rated or VAT exempt. All businesses should carefully review their processes to understand the impact of VAT and to determine what needs to be done to be fully compliant with the new laws. Clear communication is essential to ensure effective compliance.
>
> VAT will impact all businesses in the GCC, either directly or indirectly and, as a transaction-based tax, will impact across your business. Finance, legal, IT, sales, marketing, and even HR must understand the impact of VAT on their function and determine whether the introduction of VAT will result in additional costs, which could be actual or cash flow or compliance-related. Businesses should consider any contracts going beyond January 1, 2018, to protect their position."

It has been estimated that the new goods and services tax will bring in the region of USD25bn per year in additional revenue for participating states.[4] It forms part of a package of reforms designed to boost revenues in the Gulf region, including the introduction of taxes on soft and energy drinks, and on tobacco.

Businesses in the GCC countries have been urged to begin preparations as far ahead of time as possible, including undertaking impact assessments and mapping transactions that are likely to be affected, to identify any necessary changes to their processes.

Speaking last summer, Jeanine Daou, Middle East Indirect Taxes Partner with PwC, observed:

> "The introduction of VAT and excise tax constitute an important policy reform aiming to help GCC governments achieve medium to long term social and economic policy goals, and reduce reliance on hydrocarbon revenues. Approval of the treaties is an important development as it sets out common principles that will guide the application of VAT and excise tax at a national level by each individual member state. Companies should take action now, if they have not already, to prepare for the implementation of the new tax systems and be ready by go-live date."

## India

Another country that has made progress towards the implementation of a VAT is India. After several promising lurches forward, it emerged that in order to achieve consensus between the Central and State governments on several still outstanding issues, the planned implementation date for India's GST would be pushed back to July 2017.

India had planned to have GST in place from April 2017, but given delays to the passage of the crucial legislation to amend the constitution late last year, the announcement that India will defer the start date was not terribly surprising, especially after more than a decade of failed negotiations towards the introduction of GST.

Finance Minister Arun Jaitley announced last month that "there was a broad view [at a GST Council meeting on January 16] that July 1 appears to be a more realistic date for the implementation."

Under the GST proposals, the various elements of the existing indirect tax regime in India will be replaced by a comprehensive dual-GST system, with Central GST and State GST to be levied concurrently by the center (federal government) and the states, respectively. The centrally levied indirect taxes that would be replaced by the GST include CENVAT, the central excise duty, services tax, customs duties, and any related surcharges. State-levied taxes that would be subsumed by the GST include VAT, sales taxes, entertainment and gambling taxes, the luxury tax, certain entry taxes, and related state surcharges.

The Budget delivered on February 1 contained none of the traditional indirect tax tinkering, suggesting that, despite some commentators observing that even July 1 is optimistic, the Government has confidence that the new system will be in place in relatively short order.

## Endnotes

1 https://home.kpmg.com/content/dam/kpmg/bh/pdf/GCC-VAT-Introduction-Update-(Feb-17).pdf

2 https://www.zawya.com/mena/en/story/GCC_sign_common_VAT_agreement-ZAWYA20170207045452/

3 https://home.kpmg.com/ae/en/home/insights/2017/02/vat-in-the-gcc.html

4 http://www.arabianbusiness.com/gcc-said-see-25bn-annual-revenue-boost-from-vat-launch-656070.html

# IRS Launches Issue Based Corporate Compliance Campaigns

by Caplin & Drysdale, Chartered

On January 31, 2017, the US Internal Revenue Service (IRS) launched its first wave of compliance "campaigns." A campaign is an issue-based compliance process centering on focused examinations, staffed with IRS experts on the targeted subject matter. The identified campaigns cover a broad range of topics. Working through the Large Business and International division (LB&I), the IRS will deploy resources to investigate and remediate these issues through one or more "treatment streams." ***This new issue-focused approach means businesses and high-net-worth individuals dealing with any of the identified issues face increased IRS audit risk, and should work with their legal advisors to prepare for IRS challenges of their positions. In this article, for each of the campaigns of interest to Global Tax Weekly*** readers, we identify the targeted issue(s), explain the IRS strategy, and provide relevant insights for how the campaign will impact taxpayers.

## 1. IRC 48C Energy Credit

*by Mark D. Allison and Dustin J. Barzell*

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Section 48C of the Code provides a tax credit to businesses that establish, expand or re-equip a manufacturing facility for the production of certain advanced energy property, such as solar panels, wind turbines, fuel cells, or other property designed to reduce greenhouse gas emissions. The credit amount is equal to 30 percent of the qualified investment in selected manufacturing facilities.

In order to be eligible for the credit, taxpayers must apply in advance and have their facilities selected by the IRS. Notices 2009-72 and 2013-12 provide details on the rather extensive application process. The process requires, in part, that taxpayers submit concept papers to, and receive a recommendation from, the Department of Energy.

The IRS is concerned that taxpayers may be claiming section 48C credits for projects that have not been approved by the Department of Energy and/or the IRS. LB&I has indicated that it will be issuing soft letters to taxpayers and commencing issue-focused examinations.

## 2. OVDP Declines-Withdrawals

*by Zhanna A. Ziering, Niles A. Elber, and Mark D. Allison*

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LB&I has also announced that it is focusing attention on taxpayers who were either denied participation in the IRS's Offshore Voluntary Disclosure Program (OVDP), or were accepted and subsequently withdrew from the program or did not follow through with the required filings. In 2009, the IRS developed OVDP allowing taxpayers with undisclosed foreign accounts to initiate specified voluntary disclosures to resolve past income tax and reporting non-compliance relating to offshore accounts and assets. The Program provided a promise of no criminal prosecution and, in general, a cap on the civil penalty exposure.

Although the resolution through the OVDP frequently was a less expensive alternative than the significant FBAR and foreign information return penalties that might otherwise be imposed, not every taxpayer seeking participation in the Program was eligible. For example, the IRS would reject as untimely a proposed disclosure from a taxpayer who was already under civil examination or criminal investigation at the time of the request for "preclearance," the usual first step in entering the Program. Likewise, if the IRS had become aware of the taxpayer's unreported foreign account before receiving the taxpayer's request for preclearance, it would not accept the taxpayer into the OVDP. Also, there were many instances where individuals sought preclearance, and even submitted certain additional required information, but then either withdrew from the Program or simply did not complete its requirements.

In June 2016, the US Inspector General for Taxation (TIGTA) issued a report summarizing its review of the IRS's management of the OVDP and recommending, among other things, that the IRS scrutinize all cases where taxpayers either were denied preclearance or failed to complete the Program. Such taxpayers are at risk for potential FBAR civil penalty assessments and even possible criminal investigations. Following TIGTA's recommendation, LB&I is allocating resources to follow up on all such cases and apparently to implement a procedure to do so.

As a result, we anticipate a significant increase in the IRS's examination and possible criminal investigation of offshore non-compliance cases, especially in connection with taxpayers who were denied participation in the OVDP and who did not then take steps to rectify prior non-compliance, or even continued their non-compliance.

Based on our experience, taxpayers who become targets of LB&I's new effort should expect offshore non-compliance audits to be protracted and potentially result in draconian penalties. The IRS will undoubtedly look for a few cases to prosecute criminally. Taxpayers who were denied participation in the OVDP or otherwise did not follow through with the Program are strongly encouraged to develop a strategy in advance of the IRS commencing its investigation.

### 3. Related Party Transactions

*by J. Clark Armitage, Mark D. Allison, Rachel L. Partain, and Neal M. Kochman*

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LB&I will be examining related-party transactions for mid-market taxpayers. The IRS is concerned that taxpayers may use these transactions to shift or defer income, to avoid second-level taxation, to accelerate deductions, or, in the worst cases, to commit fraud. This is one of the more open-ended campaigns. The targeted transactions are wide-ranging and may involve section 482 transfer pricing, reasonable compensation, disguised sales in the partnership context, like-kind exchange structures, *etc.* The IRS may also be focusing here on debt-equity characterization, which is an area of particular IRS emphasis following the issuance of section 385 regulations.

### 4. Basket Transactions

*by Mark D. Allison, Rachel L. Partain, and Dustin Barzell*

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Examinations of basket transactions is another focus of LB&I, and we have already seen several examinations commence. The IRS has raised concerns that taxpayers are using basket transactions to defer the recognition of income, and convert ordinary income and short-term capital gains into long-term capital gains.

Basket transactions are structured financial transactions entered into between an investor and a counterparty (typically, a bank), where the investor receives a return based upon the performance of a notional "basket" of actively traded securities, interests in hedge funds, and/or other specified assets.

In the fall of 2015, the IRS issued two Notices (2015-73 and 2015-74) designating certain basket transactions as a listed transaction or a transaction of interest. Also in 2015, the IRS released CCA 201547004 explaining the substantive arguments that the IRS may raise in challenging these transactions.

LB&I also indicated that it will be issuing "soft letters" to material advisors who arranged basket transactions for investors.

## 5. S Corporation Losses Claimed In Excess Of Basis

*by James E. Salles and Neal M. Kochman*

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Subchapter "S" corporations elect to be taxed, generally, as pass-through entities: the corporation's income, deductions and credits "pass through" to the shareholders in proportion to their ownership. Shareholders' tax "basis" in their shares is adjusted to reflect these items, as well as contributions and distributions of cash and property. Basis is critical because shareholders' use of deductions and credits from the "S" corporation is limited to their remaining share basis, plus money they have lent the corporation. This basis limitation on deductions and credits applies before, and in addition to, any other limits that might apply, such as the limitation on deductions to amounts "at risk" and the deferral of deductions relating to passive activities.

The IRS is concerned that shareholders are failing to apply these rules correctly, and are deducting current losses in excess of basis. Apart from developing a new form for shareholders to complete, it intends to start "issue-based examinations" focusing on this issue. These types of controversies will often require reconstructing past reporting, and may implicate issues concerning the structure of corporate financing. (It is often critical, for example, whether a third party lent to the shareholder(s) or the corporation.) Even taxpayers that are not audited may find they have to review these issues to properly prepare the new form.

## 6. Repatriation

*by Rachel L. Partain and Mark D. Allison*

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LB&I will be targeting taxpayers for examination, particularly in the middle-market, that are using structures to bring offshore cash back into the US tax free. These structures have included related-party loans and internal reorganizations and liquidations. The IRS believes that repatriation transactions are taxable. The IRS has challenged taxpayers' reporting positions (including in a Tax Court trial) and issued guidance to combat these transactions, asserting technical arguments as well as lack of economic substance and substance over form.

## 7. Form 1120-F Non-Filer

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A foreign company that conducts a trade or business in the United States generally is required to file a US return on which it reports its income effectively connected with that trade or business. The trade or business threshold is similar to, but typically presents a lower threshold for taxation than, the permanent establishment standard found in tax treaties. That is, a foreign company that does not have a US PE under an applicable treaty may nonetheless have a US trade or business. In such a case the company is required to file a US return even though it might have no taxable income on account of the treaty, in order to claim the treaty protection.

A major tool for encouraging foreign companies to comply with their filing requirement is section 882(c)(2), under which a foreign company that does not timely file a US return is denied deductions in computing its taxable income. Regulations allow relief from the disallowance of deductions if a taxpayer has reasonable cause for not filing, with a key factor being that the taxpayer comes forward before being discovered by the IRS. They also allow for the filing of "protective returns" by taxpayers that believe they are not taxable but want to avoid the risk of losing their deductions if the IRS disagrees. In this campaign, the IRS will issue "soft letters" to potential identified non-filers to encourage them to come forward. It is unclear what incentives the IRS will provide to get these non-filers to comply voluntarily.

It is also unclear which non-filers the IRS intends to target. The announcement refers only very generally to "external data sources" that LB&I will use to identify non-compliant foreign corporations. Most likely, the campaign will focus on foreign multinationals with no reported US presence (*i.e.*, foreign groups that have no US subsidiaries and pay no US tax). But another target may be foreign corporations that the IRS believes have a dependent agency relationship with a US affiliate. The latter situations may be easier to identify and so present more immediate opportunities to staff involved in the campaign.

## 8. Inbound Distributor

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In this campaign, LB&I will assess whether returns earned by US distributors of tangible goods imported from foreign related parties are consistent with the arm's length standard. The IRS has observed that such distributors often report small profits or even losses, which may be inconsistent with the functions performed and risks assumed. There are, of course, many reasons for a distributor to earn little or no profit in a particular year, such as implementation of a market penetration strategy, inventory risk, exchange rate risk, *etc.* Nonetheless, consistent low profits or losses, particularly for a limited risk distributor, may raise suspicions of income shifting.

This campaign item is not a surprise since, as part of its knowledge management effort, LB&I published an International Practice Unit (IPU) to guide agents in their analysis of this issue. The IPU generally assumes that the comparable profits method is the best method, and focuses on selection of tested party and profit level indicator, as well as identification of comparables. If Congress passes a destination-based cash flow tax, this issue becomes moot since such a tax, as currently framed in the Republicans' "A Better Way" platform, would not allow a deduction for imports, regardless of price.

## Topical News Briefing: Pulling A Fiscal Trick, UK-Style

by the Global Tax Weekly Editorial Team

We learned recently that, according to the Institute of Fiscal Studies (IFS) in the United Kingdom, the UK tax burden will be pushed up to historic levels in the coming years in a renewed attempt by the Government to rein in the deficit (as reported in this week's issue of *Global Tax Weekly*).

For a country that is very keen to emphasize the competitiveness of its economy as it approaches the currently unknown territory of Brexit, this news is clearly bad for the UK's image. Tax is one of the most important factors in determining where foreign investors choose to put their money, and the prospect of an increasing tax burden could dissuade many large companies from locating operations in the UK.

Yet, there are reasons for corporate taxpayers to be relatively cheerful. Corporate tax, at 20 percent, is already one of the lowest around within the community of developed nations, and is set to go lower, hitting 17 percent by 2020.

The UK also measures up well against most of its competitors in the 2017 Paying Taxes Index by PwC, in which the UK sits a creditable 10th place in a league table measuring the relative ease or otherwise of paying business taxes across the world. No other G20 country places better.

Given the uncertainties over the UK's post-Brexit trade relationships with the EU and other key economies, the UK Government has also hinted recently that additional corporate tax cuts could be used to effectively offset the additional costs that businesses could face if trade taxes and other barriers to UK trade increase.

If the Government is to raise the additional GBP17bn (USD21.2bn) that the IFS says it needs over the life of the current parliament, it seems that the burden is unlikely to fall too heavily on businesses.

## Capital Repatriation Decree For 2017

by Manuel Tamez and Luis A. Monroy, Taxand, Mexico

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On January 17, 2017, President Enrique Peña Nieto announced the actions to promote productive investments and employment creation, pursuant to the Agreement for Strengthening and Protecting the Families Economy. Along with other actions, this Agreement includes the Decree that grants incentives for income tax (IT) purposes in connection with investments or deposits received in Mexico. This Decree was published on January 18, 2017, and it seeks to promote and simplify the repatriation of capitals.

In general terms, the Decree grants a tax incentive to Mexican tax residents and foreign tax residents with a permanent establishment in Mexico that obtained income from direct and indirect investments held abroad until December 31, 2016.

Such incentive consists of applying an 8 percent tax rate to the resources kept abroad before January 1, 2017, which are brought back to Mexico. The resulting tax shall be paid within the following 15 calendar days in which such resources are repatriated.

The Decree applies to income originated abroad that would normally be taxable in terms of Titles I, IV and VI of the Mexican IT Law (Corporations, Individuals, and Preferential Tax Regimes, respectively), and it shall be enforceable for six months as of January 19, 2017. Returned capital shall remain invested in Mexico for at least two years as of the date on which it is returned.

In order to qualify for the Decree, corporations shall allocate returned capital on any of the following investments:

(a) Acquisition of fixed assets to be used for their economic activities;

(b) Acquisition of real estate located in Mexico to be used for their economic activities;
(c) R&D projects;
(d) Payment of liabilities contracted with independent parties before the entry into force of the Decree; or
(e) Investments in Mexico through credit institutions or brokerage firms.

On the other hand, individuals shall invest their returned capital in financial instruments or shares issued by Mexican companies through institutions recognized by the Mexican financial system, or by allocating it in any of the investments established in (a), (b) or (c) above.

Taxpayers who apply the Decree would be able to credit the IT paid abroad against the IT that they shall pay pursuant to such Decree. However, the foreign tax credit shall not exceed 8 percent of the resources returned to Mexico.

The Decree will not apply to taxpayers who are being subject to a tax audit in connection with the earned capital that would have been returned to Mexico.

Taxpayers who decide to apply the Decree and do not satisfy the mentioned requirements, or do not invest the returned capital in Mexico, would be subject to the applicable legal provisions.

Finally, it is established that the Tax Administration Service will issue general rules for the application of the provisions contained in the Decree.

## Taxand's Take

In the midst of an unfavorable economic environment and the loss of foreign investment, the Decree intends to bring capitals held abroad by individuals and corporations by taxing them at a low income tax rate (ordinarily, such resources would be taxed at a 30 percent or 35 percent rate on corporations and individuals, respectively). However, from our point of view, its success will ultimately depend on the rules issued by the Tax Administration Service, particularly in connection with the anonymity of the beneficiaries of the Decree, which has been a major concern in the past. Potential beneficiaries should analyze their particular situation to assess if the Decree would be beneficial to them.

## Topical News Briefing: A BAT Out Of Hell?

by the Global Tax Weekly Editorial Team

Setting aside the arguments for and against the border taxes proposed by President Donald Trump and the Republican leadership in the House of Representatives, it is clear that opposition to these ideas is growing domestically and internationally.

It could be said that the mere threat of Trump's border tax on imports from US companies' foreign production facilities has had the desired effect. A number of automakers have committed to substantial investments in US plants in recent weeks, while others are weighing up their options as they attempt to assess the potential damage that a border tax could have on their business.

But, the tax isn't without its risks. As reported in this week's issue of *Global Tax Weekly*, Canada and the EU – the US's second-largest and largest trading partner, respectively – have spoken out against Trump's border tax proposal, suggesting that they would not only challenge the legality of the measures if implemented, but also be prepared to retaliate in kind with additional taxes on imports of certain goods from the US. Other nations have said much the same thing on this matter.

However, Trump's proposal, one of the key elements of his election campaign, isn't the only border tax cab on the rank at the moment. Over in the House, Speaker Paul Ryan (R – Wisconsin) has placed plans for a border adjustment tax (BAT) at the heart of the tax reform framework he released last year. This measure would attempt to neutralize the additional costs faced by US businesses when selling goods and services in jurisdictions with value-added taxes, and because the border adjustment mechanism is not a direct tax, he argues that it is acceptable under world trade rules.

Naturally, there are experts in world trade law that disagree with Ryan's view, and warn that, like Trump's more overt border tax, the measure could spark a trade war. But while Ryan – and Trump for that matter – may easily dismiss the views of academics, it is harder for them to ignore growing opposition from large sections of the business community, as well as influential members of Congress, including prominent Republicans.

The BAT has come in for particularly strong criticism recently. On February 1, more than 100 US businesses and trade associations, including the likes of Nike, The Gap, Best Buy, Abercrombie & Fitch, and Levi Strauss, announced the formation of a new coalition – Americans for Affordable Products (AAP) – to lobby against the proposal. They warn that under the BAT, a large US company may pay virtually no corporate taxes simply because it exports products, while another American company importing goods to be sold in the US "will be faced with crushing taxes."

Another blow was dealt on the same day by Senate Finance Committee Chairman Orrin Hatch (R – Utah), who stated in a speech to the US Chamber of Commerce that he could not, as yet, fully support the BAT. In line with the opinions of some other Republican senators, Hatch questioned the consistency of border adjustability with America's international trade obligations, and expressed doubts about who will ultimately bear the tax – consumers, workers, shareholders, or foreigners? What's more, he expressed fears the BAT may unduly increase the tax burden on specific industries.

Trump and Ryan seem entrenched behind their respective proposals, with both determined to push their ideas through. But will Congress have either? As Hatch pointed out, the Republicans are working with a narrow majority in the Senate, and he appears in no mood to entertain any controversies as Congress prepares to work on wider tax reform. The key question is: will a once-in-a-generation opportunity for sweeping income tax reform be placed in jeopardy by a political fight over border taxation? Time will tell.

# International Tax Issues Of Interest Raised At CRA Roundtable

by the Tax Topics Editorial Team

*A version of this article was first published in "Tax Topics," Number 2344*

At the Canada Revenue Agency (CRA) Roundtable meeting held late last year, the tax authority provided clarity on a number of international tax matters. Below we summarize a number of the key areas of interest.

## Canadian Corporate Filing For US LLPs And LLLPs

The CRA was asked if certain US limited liability partnerships ("LLPs") or limited liability limited partnerships ("LLLPs") would be allowed to file as corporations on a go-forward basis but not on a retroactive basis. The CRA announced at the 2016 STEP and IFA roundtables that Florida and Delaware LLPs and LLLPs would be considered as corporations for the purpose of Canadian income tax law but that existing ones could be treated as partnerships if they could meet certain criteria.

Regarding LLPs and LLLPs not meeting those criteria and willing to file as corporations on a prospective basis, the CRA suggested that they make a submission to a new internal working group studying compliance issues for LLPs and LLLPs. Submissions were invited by February 28, 2017.

## Calculation Of Earnings For US LLCs

In response to Question 9 of the 2011 International Fiscal Association Conference Roundtable, the CRA had previously confirmed that a disregarded US limited liability company ("LLC") having one member regarded as a US corporation and viewed as a foreign affiliate of a Canadian taxpayer had to calculate its "earnings" in accordance with subparagraph (a)(i) of the definition of "earnings" in Regulation 5907(1). This was the case even if the LLC was not required to compute its profits under US tax rules and that such computation was only required to calculate the tax liability of members.

The CRA was asked if their position had changed after the enactment of Regulation 5907(2.03) requiring affiliates calculating their earnings under Canadian income tax law to claim all discretionary deductions to their maximum. It was also asked if disregarded US LLCs were still required to calculate their "earnings" under subparagraph (a)(i) of the definition of this term in Regulation 5907(1) after the enactment of Regulation 5907(2.03) and if their response would be different if one or more members were not US resident corporations.

The CRA confirmed that, following the introduction of Regulation 5907(2.03), the "earnings" of disregarded US LLCs are calculated under subparagraph (a)(iii) of the definition of "earnings" in Regulation 5907(1). Their response would not change even if one of the LLC members was not a US resident corporation provided the LLC was treated as a disregarded one for US purposes. However, if those LLCs are treated as partnerships for US purposes, earnings must be calculated under subparagraph (a)(i) of the definition of "earnings" in Regulation 5907(1).

## Base Erosion And Profit Shifting (BEPS) – Action Item 13

The CRA confirmed that taxpayers are not required to produce "master file" and "local file" information (as required by the Base Erosion and Profit Shifting ("BEPS") Action Item 13) to satisfy their responsibility to make reasonable efforts to determine and use arm's length transfer prices in their business (as required by s.247 of the Act). The requirements shown in BEPS Action Item 13 dealing with the implementation of country-by-country reporting were taken care of by s.233.8 of the Act which was included in Bill C-29 enacted on December 15, 2016. It is worth noting that s.233.8 of the Act has no direct relation with the contemporaneous documentation required under s.247(4).

## Support Of Canadian Foreign Tax Credit For US Income Taxes

The CRA confirmed, in answer to Question 9 of the 2016 STEP Conference Roundtable, that taxpayers claiming a Canadian foreign tax credit for their US income taxes and unable to provide a copy of a US notice of assessment, transcript, statement, or other document from the US tax authorities could support their claims by providing bank statements, cancelled checks, or official receipts.

The CRA was asked if they could reach out to the US Internal Revenue Service ("IRS") to streamline the process of verifying credits claimed since the IRS does not issue a notice of assessment and can take a very long time (*i.e.*, much longer than the 30-day CRA extension) to provide an account statement. The CRA was also asked if IRS Form 1040-NR showing the deduction of state tax from US federal tax could be used to support the state tax claimed as a Canadian foreign tax credit.

Regarding the first question, the CRA confirmed that the IRS had a very structured process for dealing with IRS Form 4506T used to request a tax account transcript and that taxpayers should not wait for the CRA to ask for transcripts before requesting them from the IRS or other US tax authorities. For the time being, the CRA will not communicate with the IRS on this matter.

Regarding the second question, the CRA noted that it would accept the following documents:

- Form T2209 from each country to which taxes were paid;
- Federal, state, and municipal tax returns with related schedules and forms;
- Federal account transcripts;
- Account statements or similar documents from a state or municipal authority;
- Information slips like W-2, 1042-S, 1; or
- Any other documents supporting the foreign tax credit claim.

The CRA indicated that it will only accept the following documentation to replace an IRS account transcript or account statement from a state or municipal authority as proof of payment:

- Bank statements
- Cancelled checks; or
- Official receipts

However, the documentation will only be accepted if the taxpayer indicates clearly:

- The amount of the payment or refund
- The date on which it was paid or received
- The taxation year to which it relates; and
- That it was made or received from the applicable US tax authority.

## Swiss Voters Reject Corporate Tax Reform

Proposed changes to Switzerland's corporate tax framework have been rejected in a referendum.

Provisional results show that the Corporate Tax Reform III (CTR III) package was opposed by just over 59 percent of voters in the February 12 referendum.

CTR III would have abolished corporate tax arrangements that the Swiss Federal Council deemed as no longer in keeping with international standards. These related principally to the reduced taxation of holding, domiciliary, and mixed companies. To avoid any adverse impact on Switzerland's international competitiveness, it was also proposed to give cantons the option of introducing a special patent box regime for intellectual property income, and of applying a higher deduction for research and development expenditure.

Reacting to the vote, Finance Minister Ueli Maurer told a press conference, "It will not be possible to find a solution overnight." He warned that it could now take the Government a year to devise new proposals and longer still to implement them.

## Sweden's Competition Commission Opposes FTT

Sweden's competition authority has warned that proposals for a financial activities tax would place the country's financial services sector at a competitive disadvantage.

The competition authority published an opinion against the tax on its website on January 30.

It noted that the proposals are being put forward as the financial sector is not subject to value-added tax.

It cautioned that the measure could lead to distortions in competition between large and small financial services companies in Sweden. It is also concerned that the tax could increase the administrative burden on companies and the financial cost could be passed on to consumers in the form of higher prices.

It recommended that Sweden consider introducing the measure only if such is agreed at EU level.

## Trump Plans 'Phenomenal' Tax Cuts

Without giving any details of his proposals, US President Donald Trump said on February 9 that the formulation of tax reforms to cut "the overall tax burden on American businesses big league" is "coming along very well."

At a meeting with the aviation industry in the White House, he confirmed that the proposals were "way ahead of schedule. And we're going to be announcing something, I would say, over the next two or three weeks that will be phenomenal in terms of tax."

During his press briefing on the same day, White House Press Secretary Sean Spicer gave little further away, except to add that the tax reform would be comprehensive. He indicated that "the outline of a comprehensive tax plan that we'll be working with Congress will address both the business side of the tax ledger as well as the individual rates."

"It's going to recognize the need to give so many working Americans the relief that they need," he added. "But more importantly, I think part of the issue that we continue to see over and over again with businesses is that we're facing competition from abroad because of our tax code. And what [the President] wants to do is create a tax climate that not only keeps jobs here but makes it incentivize companies to want to come here, to grow here, to create jobs here, to bring their profits back here."

"I don't want to get any further ahead of it," Spicer concluded, "but I will tell you that it is going to be the first time that this nation has seen a full comprehensive tax reform in a long, long time."

It has been pointed out, however, that tax legislation in the US begins in the House of Representatives, rather than with the President, and changes are required to be approved by Congress. There appears to be, as yet, no agreement on certain elements of tax reform between Republicans in the House and the Senate, and particularly on the House Republicans' proposal for a border adjustment tax.

## UK Austerity To Push Tax Burden To Record Level

The UK tax burden relative to national income is to hit its highest level since 1986/87 under government plans to reduce the deficit, says the Institute for Fiscal Studies (IFS).

The IFS Green Budget 2017, produced in association with the Institute of Chartered Accountants in England and Wales (ICAEW) and funded by the Nuffield Foundation with analysis from Oxford Economics, said that Chancellor Philip Hammond's plans to eliminate the deficit during the next parliament will probably mean tax rises well into the 2020s.

It said that after nearly seven years of tax rises and spending cuts, tax rises worth GBP17bn (USD21.23bn) will be needed over this parliament relative to the burden in 2015/16.

Tax (and non-tax) receipts are expected to rise above 37 percent of national income for the first time since 1986/87.

"Cuts to day-to-day public service spending are due to accelerate while the tax burden continues to rise," said Paul Johnson, Director of the IFS.

## Botswana's Budget Seeks To Broaden Tax Base

Botswana's Budget for the 2017/18 fiscal year looks to reduce the country's dependency on revenues from diamonds.

During his Budget Speech on February 6, Finance Minister Kenneth Matambo noted that, at end of 2015, diamonds accounted for 83.1 percent of total exports, and mineral revenue provided 30.4 percent of total government revenues. In finding tax revenues to fund development, he continued, Botswana still remains open to the downside risks of a mining sector subject to the slow global economic recovery and weak commodity prices.

In addition, Matambo pointed out that customs and excise revenues, specifically Southern African Customs Union (SACU) revenues, which are the country's second largest source of revenue after diamonds, have been fluctuating recently due to the poor trading performance within the region.

"With mineral revenues declining and those from SACU being volatile," he said, "there is therefore an urgent need to diversify our revenue base towards more sustainable and reliable sources."

Matambo confirmed that, "to this end, my Ministry is considering proposals by the Taxation Review Committee of how to diversify the Government revenue base. These proposals include adjusting various taxes, levies, permits and licenses, and reviewing some tax expenditures such as value-added tax (VAT) exemptions."

Later in his speech, he added that the Taxation Review Committee's proposals to widen the tax base and encourage compliance included the "introduction of transfer pricing rules that would curb any undesirable tax avoidance as well as underscore the alignment of this country's tax system to international best practice; [and] amending the [tax code] to impose a penalty for non-filers irrespective of whether there is any tax to pay or not."

He also disclosed that his Ministry is to undertake a "simplification of both the Income Tax Act and the VAT Act with a view to developing a Tax Administration Act. This is intended to improve tax administration efficiency, resulting in optimal revenue collection. This project is envisaged to be completed in the next financial year."

## Le Pen Proposes Tax On Foreign Workers

Nationalist candidate for the French presidency Marine Le Pen has proposed a tax on companies employing foreign workers in France.

Under the plans, recently confirmed by senior members of the National Front and Le Pen, companies would pay a tax of 10 percent of the wages paid to each foreign worker they employ. Foreign workers would also include citizens originating from other EU member states.

The presidential election, due to be staged in April, was until recently expected to culminate in a straight fight between Le Pen and conservative candidate François Fillon after the elimination of the other candidates in the first rounds of voting. However, the race has recently opened up following a surge in support for center-left candidate Emmanuel Macron.

## EU Could Challenge US Border Tax: Report

The EU, along with other US trading partners, could mount a legal challenge to the proposed US "border adjustment tax," according to the *Financial Times*.

The newspaper said that Jyrki Katainen, the EU Vice President in charge of the Commission's Jobs, Growth, Investment and Competitiveness project, had described the prospect of a trade war with the US as "disastrous" for the world economy. It added that Katainen had however made clear in an interview that the EU would be willing to take action against the US if its interests were threatened.

Katainen told the *Financial Times*: "If someone is behaving against our interests or against international rules in trade then we have our own mechanisms to react. We have all the legal arrangements within the EU, but we are also part of global arrangements like the [World Trade Organization] and we want to respect the global rule base when it comes to trade."

The tax has been proposed by US House Leader Paul Ryan (R – Wisconsin) and House Ways and Means Chairman Kevin Brady (R – Texas). Reacting to the reports, Brady told Bloomberg, "We expect other countries to challenge this provision. Because they have a pretty sweet deal right now."

## EU: UK Cannot Negotiate Trade Deals Until After Brexit

The UK will not be able to negotiate bilateral trade agreements until it exits the EU, Federica Mogherini, the EU's High Representative for Foreign Affairs, has said.

She noted that, eight months after the referendum, the UK has not yet formally signaled that it will leave the EU, and while it delays triggering Article 50 "will stay a member state of the European Union for another two years at least."

Mogherini explained: "This also implies that it will not be able to negotiate any trade agreement bilaterally with any third country which is the case [with] all the member states, not because we limit our member states, but because this is the guarantee for all Europeans that we are stronger in trade negotiations, being the second economy in the world, and because this guarantee[s] … that the benefit of any trade agreement goes equally to all Europeans without any internal competition."

Mogherini also disclosed that the EU will finalize its trade agreement with Canada this week.

## Australia Says TPP States Taking Forward Talks

Australian Trade Minister Steven Ciobo has said that he is focusing on whether it is possible to proceed with the Trans-Pacific Partnership (TPP) without the US.

Ciobo told Bloomberg Daybreak that signatories will meet in Chile in March "to canvas all of the options."

He said that hard-fought gains had been achieved through intense negotiations and that he does not "want to let those gains slip through our fingers."

"That's why I put a focus on whether or not we could have, for example, a TPP-12 minus one. In other words, the TPP less the United States, given the US doesn't want to be part of it," he explained.

According to Ciobo, if participants can agree in principle on how to take the treaty forward, "we could make minor changes to the text to allow for the exclusion of the United States and still get the TPP into place."

"Alternatively, if there was going to be a more substantial redrafting around some of the agreed points, well that's obviously a whole separate issue that we'd need to deal with."

Ciobo stated that, at this stage, he is "pursuing a minimalist approach, which would be to say let's keep the gains that we achieved under the TPP, and let's apply it to as many member states as possible that are willing to sign up on those terms, less the United States."

## Canada Opposed To New US Tariffs

Canadian Trade Minister Chrystia Freeland has said that the Government would be "strongly opposed to any imposition of new tariffs between Canada and the United States."

Freeland undertook a two-day visit to Washington, DC, on February 7–8. She met with her counterpart, the new US Secretary of State Rex Tillerson, and with House Speaker Paul Ryan, and the chairs of the Senate committees on armed services and foreign relations.

Speaking to reporters after her meeting with Tillerson, Freeland said: "I did make the point that Canada will have no position on the [US Government's] tax reform plan or the border adjustment tax idea until it is fully formed and it is a concrete proposal. But I did make clear that we would be strongly opposed to any imposition of new tariffs between Canada and the US, that we felt tariffs on exports would be mutually harmful."

She added that "if such an idea were ever to come into being, Canada would respond appropriately."

US President Donald Trump has promised "massive" tax cuts for American companies. He has however also threatened a "major border tax" of up to 35 percent on imports from US multinational companies that move their production facilities outside the country.

## UAE Confirms Details For VAT From January 2018

The UAE has provided more details on plans to introduce VAT at a rate of 5 percent across the other Gulf Cooperation Council (GCC) member states on January 1, 2018.

The Ministry of Finance said on its website that businesses will be able to register for the tax online three months before the launch.

Most registered companies will need to submit returns detailing business activities and transactions every three months, it said.

The UAE said that its VAT law is still being finalized. It will be made available online when that process is completed.

At a meeting on June 16, 2016, ministers of finance from the GCC states approved, in principle, the introduction of VAT and new excise duties, as part of a common framework. It paved the way for the introduction of harmonized excise duties from January 1, 2017, and a pan-GCC VAT framework from January 1, 2018.

## Angola May Install VAT With IMF's Help

In its latest Article IV Consultation with Angola, the International Monetary Fund (IMF) has suggested that the Government could introduce a value-added tax (VAT) to provide a stable non-oil revenue source.

The IMF noted that "the oil price shock that started in mid-2014 has substantially reduced fiscal revenue and exports. Growth was estimated to come to a halt in 2016 … and inflation has accelerated."

While it "welcomed the significant non-oil primary fiscal consolidation to date," the IMF "stressed that continued fiscal adjustment will be needed going forward to put public debt on a clear downward path while supporting economic growth over the medium term."

Over the medium term, the IMF recommended that "permanently lower oil revenue needs to be offset by higher non-oil revenue." Those reforms could involve "enlarging the tax base; creating a single revenue administration agency; strengthening tax inspections; and better enforcing real estate taxation."

The IMF stated that a VAT (in place of the present narrow-base consumption tax) could be introduced on January 1, 2019. It has estimated that a VAT rate of 10 percent (and a very high threshold of around USD250,000) could yield about 2.5 percent of gross domestic product in revenue to Angola.

In reply to the IMF's report, the Government "did not dispute the need for fiscal consolidation over the medium term, but stressed the urgent need in the near term to support growth after two years of fiscal retrenchment. [It] remains interested in working closely with the [IMF] on fiscal structural reform, including a VAT, although they believe a VAT may take up to four years to be introduced in Angola."

## Italy Asks For Expansion Of VAT Split Payments

The Italian Government has requested approval from the European Commission to extend and expand the split payment value-added tax (VAT) mechanism, which is applicable to contracts with public sector entities.

The mechanism is an anti tax evasion measure that requires government departments to pay the VAT payable under a contract no longer to their supplier but directly to the state. It therefore specifies that public bodies should make invoice payments minus VAT to suppliers, as any tax is paid directly to the state.

A February 7 letter from Minister of the Economy and Finance Pier Carlo Padoan requests that the Commission's authorization of the Italian split payment regime should be extended from its present expiry on December 31 this year to end-December 2020; and an expansion of the authorization should be approved to include transactions by public bodies that are outside its current scope, for example, to contracts with companies that are wholly or partially state-owned.

The letter points out that "the application of the split payment has been very successful in terms of revenue collection, with no detrimental effect on suppliers." It is intended that its extension and expansion will therefore form an important element of the additional budgetary policies that Italy will need so as to reduce its fiscal deficit for this year and abide by the EU's medium-term budgetary objectives.

In that respect, Padoan confirmed the Italian Government's commitment "to adopt measures to deliver a structural adjustment of 0.2 percent of gross domestic product … by the end of April at the latest."

Three-quarters, or EUR2.5bn (USD2.7bn), of the adjustment will come from revenue-raising measures, with around EUR1bn of additional VAT expected to be found from split payments.

Padoan's letter stated that the remaining EUR1.5bn is to be collected from "increases in excise duties and other indirect taxation. Neither VAT [rate] increases or interventions on tax expenditures, nor a further voluntary disclosure extension, are planned."

## EU Presidency Pushing BEPS Agenda

On February 6, the EU Council released a Roadmap for the tax reform measures that are being progressed by the Maltese Presidency of the EU.

According to the Roadmap, the Maltese Presidency is: following up on the work on the Interest and Royalties Directive; pushing for the development of an EU list of third country non-cooperative jurisdictions; pushing for an agreement on improvements to dispute resolution mechanisms within the EU; seeking to update standards on good governance in tax matters for third countries; reviewing the text of novel provisions in the relaunched common consolidated corporate tax base proposal, looking specifically at the first element without consolidation; and finalizing measures to counter hybrid mismatches.

In the Roadmap, the Maltese Presidency notes the willingness of member states to undertake work in the medium term on specific areas, such as on patent box regimes; the implementation of the Council Conclusions on the future of the Code of Conduct on business taxation; and consideration of legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project.

The Roadmap also notes that member states will exchange views on the OECD Multilateral Instrument, which is due to be signed in June 2017. The Instrument is aimed at swiftly implementing a series of BEPS-related tax treaty measures into existing double tax agreements.

## Australia Legislates For Diverted Profits Tax

The Australian Government has introduced legislation to implement a Diverted Profits Tax (DPT) from July 1, 2017.

The DPT was announced as part of the 2016/17 Budget. It targets multinational companies that enter into arrangements to divert their Australian profits to offshore related parties to avoid paying Australian tax.

If the Combating Multinational Tax Avoidance Bill 2017 is passed, the new measure will apply to multinationals with global income of more than AUD1bn (USD764.6m) and Australian income of more than AUD25m. It will be applied at a rate of 40 percent and must be paid immediately on assessment; taxpayers may then make representations for the tax amount to be reviewed, and will have a right to appeal should they disagree with the final amount charged at the end of the review period.

The DPT is expected to raise AUD100m a year from 2018/19.

The DPT will not apply to managed investment trusts or similar foreign entities, sovereign wealth funds, or foreign pension funds. The Government regards these entities as low risk from a tax integrity perspective.

The Bill also increases the maximum penalty 100-fold, to AUD525,000, for large multinationals that fail to lodge tax documents on time. In addition, the Government will double the penalties for large multinationals that make false or misleading statements to the ATO, to make penalties commensurate with turnover.

Finally, the legislation amends Australia's transfer pricing law to give effect to the OECD's 2015 BEPS recommendations in this area.

## AMCHAM Ireland Backs Government's Appeal In Apple State Aid Case

The American Chamber of Commerce (AMCHAM) Ireland fully supports the Irish Government's decision to appeal the European Commission's decision in the Apple state aid case, its Chief Executive, Mark Redmond, has said.

In a statement to Parliament's Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, Redmond expressed concern that the issues arising from the Commission's investigation "can be used to paint a highly inaccurate picture of the nature of US business investment in Ireland."

Redmond argued that neither Ireland nor any other EU member state can "afford to have its tax policy and administration second-guessed in a retrospective fashion." He warned that "businesses cannot make investment decisions in such an environment."

According to Redmond, "Any attempt to undermine the independence of our revenue authority and second-guess how it does its work must be challenged. Any attempt to undermine the necessary process for taxpayers including businesses to seek clarification from the revenue authority on the application of the law must be challenged as a retrograde step that undermines the global move by all leading revenue authorities to a cooperative tax-compliance model."

He emphasized that Ireland's taxation regime is competitive, highly transparent, and consistent.

The Government has asked the General Court of the EU to annul the Commission's decision against its two rulings for Apple.

## Belgium's Innovation Deduction Approved

Belgium's national parliament has approved the new innovation income tax deduction scheme, which replaces the deduction for patent income.

The scheme, which was voted through recently by the Chamber of Deputies, is intended to bring Belgium into line with the modified nexus approach for patent box and other types of special tax regimes for income derived from intellectual property, as put forward by the OECD in 2015. As such, the extent of the innovation income deduction is more limited than the former patent deduction, although the new scheme has broader scope.

The new legislation increases the maximum deduction from 80 percent to 85 percent. But the deduction is based on a taxpayer's net income rather than gross income, as was the case under the previous regime.

Taxpayers are permitted to use the deduction against income from patents, orphan drugs, breeders' rights, copyrighted software, and data and market exclusivity. Under the previous regime, the deduction was limited to income from patents.

Qualifying capital gains that are reinvested are also eligible to be deducted under the new system. Taxpayers are entitled to carry forward any unused deductions to subsequent tax years.

The innovation income deduction replaces the patent income deduction retroactively from July 1, 2016, although grandfathering rules are in place for existing arrangements until June 30, 2021.

The changes will be formally enacted when published in Belgium's official gazette.

## New Record Of US Expats Giving Up Passports, Green Cards

According to Treasury Department statistics published in the Federal Register, a record 5,411 US taxpayers gave up their passports or their green cards in 2016 – over 26 percent more than the previous record of 4,279 set in 2015.

The number of individuals giving up their citizenship has been notably greater in the last four years. In 2014 and 2013, the numbers reached 3,415 and 2,999, respectively. The highest level in the years before that was only 1,781 in 2011.

The acceleration in the number of individuals giving up their citizenship has coincided with increased actions by the US Treasury and Internal Revenue Service to trace American undeclared assets and income held abroad, particularly by enforcing the Foreign Account Tax Compliance Act (FATCA) and the requirement to file a Report of Foreign Bank and Financial Accounts.

According to representative bodies, Americans living abroad have become increasingly aware of their US tax reporting obligations. In particular, US citizens are finding it more difficult to bank in foreign territories as a result of FATCA.

Treasury is required by statute to publish a quarterly list including the name of each individual who has lost or renounced US citizenship during the period. For the purposes of this listing, long-term residents or green card holders are treated as if they were citizens of the US who lost citizenship.

One name that stands out from Treasury's list for the last quarter of 2016 is that of the UK's current Foreign Secretary and ex-Mayor of London, Boris Johnson.

## Campaign Begins To Lobby For FATCA Repeal

The deVere Group, an independent financial consultancy, has begun lobbying in Washington, DC, for repeal of the US Foreign Account Tax Compliance Act (FATCA).

FATCA, which was enacted by Congress in 2010 and took effect in July 2014, is intended to ensure that the Internal Revenue Service obtains information on financial accounts held at foreign financial institutions (FFIs) by US persons. Failure by an FFI to report information on their US clients results in a requirement for US withholding agents to withhold 30 percent tax on payments of their US-sourced income.

Nigel Green, founder and CEO of the deVere Group, said: "FATCA turns law-abiding, middle-class Americans living overseas, of [which] there are approximately eight million, into financial pariahs." He noted that "many US citizens cannot even now hold a bank account in their country of residence as foreign banks routinely feel Americans are too much trouble thanks to FATCA's onerous and costly rules."

He said it was "virtually impossible" to push for repeal of FATCA before. However, with President Donald Trump's election and with a Republican-led Congress expected to pass a comprehensive tax reform package later this year, he believes the situation may have changed. He referred to the pre-election 2016 Republican Platform that called for FATCA's repeal as a "warrantless seizure of personal financial information without reasonable suspicion or probable cause" and a threat to the "ability of overseas Americans to lead normal lives."

## Italy Collects Record Anti-Tax Evasion Revenue In 2016

The Italian Government's measures against tax evasion yielded additional tax revenue of around EUR19bn (USD20.3bn) in 2016, 28 percent more than in 2015.

On January 9, 2017, at the presentation of the Italian Revenue Agency's achievements in 2016, it was disclosed that EUR4.3bn of that additional revenue was attributable to the voluntary disclosure program (VDP), which expired in November 2015. The VDP involved some 130,000 taxpayers, with 345,000 separate assessments and 125,000 sanction notifications.

In addition, it was noted that the new arrangement in 2016 of paying for television license fees within electricity bills had reduced the evasion of those licenses from 30 percent to 4 percent. A total of EUR2.1bn was collected in license fees, an increase of EUR500m.

It was announced that the Agency has estimated it will receive a record EUR450bn in revenue collections attributable to 2016, compared to actual collections of EUR436bn and EUR419bn in 2015 and 2014, respectively.

During the presentation, Italian Minister of the Economy and Finance Pier Carlo Padoan also disclosed that a "web tax" on companies operating solely on the internet will be discussed at the meeting of G7 finance ministers in Bari in May this year.

## BELARUS - HONG KONG

### Signature

Belarus and Hong Kong signed a new DTA on January 16, 2017.

## CANADA - ISRAEL

### Effective

The new DTA between Canada and Israel became effective on January 1, 2017.

## CANADA - SWITZERLAND

### Effective

A TIEA between Canada and Switzerland for the automatic exchange of information in tax matters came into effect on January 1, 2017.

## CYPRUS - RUSSIA

### Negotiations

During recent negotiations, Cyprus and Russia agreed to postpone the implementation of a Protocol to their DTA.

## FINLAND - TURKMENISTAN

### Into Force

A DTA between Finland and Turkmenistan entered into force on February 10, 2017.

## GUERNSEY - UNITED KINGDOM

### Into Force

A Protocol to the DTA between Guernsey and the UK entered into force on December 6, 2016, the UK Government confirmed on January 4, 2017.

## HONG KONG - AUSTRALIA

### Negotiations

Hong Kong's new Financial Secretary, Paul Chan, is pushing for the completion of both a free trade agreement and a double taxation agreement with Australia.

## HONG KONG - KOREA, SOUTH

### Signature

According to a January 24, 2017, announcement from the Hong Kong Government, the territory has signed a TIEA covering financial account information with South Korea.

## INDIA - AUSTRIA

### Signature

India and Austria have signed a DTA Protocol, the Indian Government announced on February 6, 2017.

## INDIA - KAZAKHSTAN

### Signature

India and Kazakhstan signed a DTA Protocol on January 6, 2017.

## INDIA - UNITED ARAB EMIRATES

### Negotiations

According to preliminary media reports, India and the UAE intend to revise their DTA to improve its information exchange provisions.

## JAPAN - AUSTRIA

### Signature

Japan and Austria signed a DTA on January 30, 2017.

## JERSEY - UNITED KINGDOM

### Into Force

The DTA Protocol between the UK and Jersey entered into force on December 2, 2016, the UK Government announced on January 5, 2017.

## KUWAIT - INDIA

### Signature

According to preliminary media reports, Kuwait and India signed a DTA Protocol on January 14, 2017.

## LUXEMBOURG - BRUNEI

### Into Force

According to preliminary media reports, the DTA between Luxembourg and Brunei entered into force on January 26, 2017.

## LUXEMBOURG - HUNGARY

### Into Force

The DTA between Luxembourg and Hungary entered into force on January 19, 2017.

## PORTUGAL - SAINT KITTS AND NEVIS

### Ratified

Portugal completed its domestic ratification procedures in respect of the TIEA signed with Saint Kitts and Nevis on February 2, 2017.

## SOUTH AFRICA - SAINT KITTS AND NEVIS

### Into Force

The TIEA between South Africa and Saint Kitts and Nevis enters into force on February 18, 2017.

## TAIWAN - POLAND

### Effective

A DTA and Protocol between Taiwan and Poland became effective on January 1, 2017.

## UNITED KINGDOM - ISLE OF MAN

### Into Force

The DTA Protocol between the UK and the Isle of Man entered into force on November 29, 2016, the UK Government announced on January 5, 2017.

## UNITED KINGDOM - URUGUAY

### Effective

The UK Government on January 12, 2017, confirmed that the new DTA with Uruguay became effective on January 12, 2017.

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

## THE AMERICAS

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

2/21/2017 - 2/22/2017

Informa

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

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

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

### IFA USA 45th Annual Conference

2/22/2017 - 2/23/2017

IFA

Venue: Waldorf Astoria, 301 Park Ave, New York, NY 10022, USA

Key speakers: TBC

http://www.ibfd.org/IBFD-Tax-Portal/Events/IFA-USA-45th-Annual-Conference#tab_program

### The 6th Offshore Investment Conference Panama

3/8/2017 - 3/9/2017

Offshore Investment

Venue: Hilton Panama, Esquina de Avenida Balboa y Aquilino de la Guardia, Av Balboa, Panama

Key speakers: TBC

http://www.offshoreinvestment.com/pages/index.asp?title=The_6th_Offshore_Investment_Conference_Panama_2017&catID=14286

### Hot Issues in International Taxation

3/29/2017 - 3/30/2017

Bloomberg BNA

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

Key Speakers: TBC

https://www.bna.com/hot-issues_arlington2017/

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

5/4/2017 - 5/5/2017

STEP

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

Key speakers: TBC

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

## Transcontinental Trusts: International Forum 2017

5/4/2017 - 5/5/2017

Informa

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

Key speakers: TBC

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

## STEP Miami 8th Annual Summit

5/19/2017 - 5/19/2017

STEP

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

Key Speakers: TBC

http://www.step.org/events/step-miami-8th-annual-summit-19-may-2017

## The 8th Annual Private Investment Funds Tax Master Class

5/23/2017 - 5/24/2017

Financial Research Associates

Venue: The Princeton Club, 15 West 43rd Street, New York, NY 10036, USA

Key speakers: TBC

https://www.frallc.com/conference.aspx?ccode=B1039

## 16th Annual International Mergers & Acquisitions Conference

6/6/2017 - 6/7/2017

International Bar Association

Venue: Plaza Hotel, 768 5th Ave, New York, NY 10019, USA

Key Speakers: TBC

http://www.ibanet.org/Conferences/conf774.aspx

## 10th Annual US–Latin America Tax Planning Strategies

6/14/2017 - 6/16/2017

American Bar Association

Venue: Mandarin Oriental Miami, 500 Brickell Key Dr Miami, FL 33131-2605, USA

Key speakers: TBC

http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=264529724

### Basics of International Taxation 2017

7/18/2017 - 7/19/2017

Practising Law Institute

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

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

http://www.pli.edu/Content/Seminar/Basics_of_International_Taxation_2017/_/N-4kZ1z10oie?ID=299002

## ASIA PACIFIC

### International Taxation of Expatriates

4/3/2017 - 4/5/2017

IBFD

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

Key Speakers: TBC

http://www.ibfd.org/Training/International-Taxation-Expatriates-2

## MIDDLE EAST AND AFRICA

### 3rd IBFD Africa Tax Symposium

5/10/2017 - 5/12/2017

IBFD

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

Key speakers: TBC

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

## WESTERN EUROPE

### Global Transfer Pricing Conference

2/22/2017 - 2/24/2017

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

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

Key speakers: Krister Andersson (Lund University, Joe Andrus (OECD), Piero Bonarelli (UniCredit), Melinda Brown (OECD), among numerous others https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/institute/transfer_pricing_center/TP_Conf/Global_TP_Conference_2017_-_Brochure_19.8..pdf

## Tax Planning for Entertainers and Sports Stars 2017

2/23/2017 - 2/23/2017

Informa

Venue: TBC, London, UK

Chair: Patrick Way (Field Court Tax Chambers)

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

## Principles of International Taxation

2/27/2017 - 3/3/2017

IBFD

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

Key speakers: TBC

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

## Landed Estates 2017

2/28/2017 - 2/28/2017

Informa

Venue: TBC, London, UK

Chair: Rhoddy Voremberg (Farrer & Co)

https://finance.knect365.com/landed-estates/

## The 15th Annual Definitive Permanent Establishment & BEPS Mastercourse

3/1/2017 - 3/1/2017

Informa

Venue: TBC, London, TBC

Chair: Jonathan Schwarz (Temple Tax Chambers)

https://finance.knect365.com/permanent-establishment-beps-masterclass/

## BEPs Action 15 – Multilateral Convention

3/2/2017 - 3/2/2017

Informa

Venue: TBC, London, UK

Chair: Jonathan Schwarz (Temple Tax Chambers)

https://finance.knect365.com/multilateral-convention-beps-action-15/

## 22nd Annual International Wealth Transfer Practices Conference

3/6/2017 - 3/7/2017

International Bar Association

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

Key speakers: TBC

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

## TP Minds International

3/6/2017 - 3/9/2017

Informa

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

Chair: Ruth Steedman (FTI Consulting)

https://finance.knect365.com/tp-minds-international-conference/agenda/1

## 2nd International Conference on Taxpayer Rights

3/13/2017 - 3/14/2017

The Institute for Austrian and International Tax Law

Venue: TBC, Vienna, Austria

Key Speakers: TBC

https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/eventsn/ITRC_RegistrationFlyer_101216.pdf

## International Trust & Private Client Guernsey

3/21/2017 - 3/21/2017

Informa

Venue: TBC, Guernsey

Chair: Paul Hodgson (Butterfield Trust (Guernsey) Limited)

https://finance.knect365.com/international-trust-private-client-guernsey/

## International Trust & Private Client Jersey

3/23/2017 - 3/23/2017

Informa

Venue: TBC, Jersey

Chair: Julian Washington (RBC Wealth Management)

https://finance.knect365.com/international-trust-private-client-jersey/

## International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

3/29/2017 - 3/31/2017

IBFD

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

Key Speakers: Frank de Beijer (Liberty Global Plc Amsterdam HQ), Hugo Feis (ABN AMRO), Bart Weijers (PwC), Rens Bondrager (Allen & Overy LLP), among numerous others

http://www.ibfd.org/Training/International-Tax-Legal-and-Commercial-Aspects-Mergers-Acquisitions

## International Tax Aspects of Permanent Establishments

4/4/2017 - 4/7/2017

IBFD

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

Key Speakers: TBC

http://www.ibfd.org/Training/International-Tax-Aspects-Permanent-Establishments

## UK Tax, Trusts & Estates Conference 2017 – Exeter

4/20/2017 - 4/20/2017

STEP

Venue: Sandy Park Conference & Banqueting Centre, Sandy Park Way, Exeter, Devon, EX2 7NN, UK

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

## The 21st Annual VAT & Financial Services

4/26/2017 - 4/26/2017

Informa

Venue: TBC, London, UK

Chair: Peter Mason (Cuckmere Chambers)

https://finance.knect365.com/vat-and-financial-services/agenda/1

## The 21st Annual VAT & Property

4/27/2017 - 4/27/2017

Informa

Venue: TBC, London, UK

Chair: Paddy Behan (Simmons Gainsford)

https://finance.knect365.com/vat-and-property/agenda/1

## UK Tax, Trusts & Estates Conference 2017 – Leeds

5/4/2017 - 5/4/2017

STEP

Venue: Hilton Leeds City, Neville Street, Leeds, LS1 4BX, UK

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

## Global Tax Treaty Commentaries Conference

5/5/2017 - 5/5/2017

IBFD

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

Key speakers: Prof. John Avery Jones, Dr Philip Baker (QC Field Court Tax Chambers), Prof. Dr Michael Beusch (Federal Administrative Court), Prof. Mike Dolan (IRS Policies and Dispute Resolution and KPMG), among numerous others

http://www.ibfd.org/IBFD-Tax-Portal/Events/Global-Tax-Treaty-Commentaries-Conference#tab_program

## UK Tax, Trusts & Estates Conference 2017 – London

5/12/2017 - 5/12/2017

STEP

Venue: Park Plaza Westminster Bridge Hotel, 200 Westminster Bridge Road, London, SE1 7UT, UK

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

## UK Tax, Trusts & Estates Conference 2017 – Birmingham

5/18/2017 - 5/18/2017

STEP

Venue: Crowne Plaza Birmingham City Centre, Central Square, Birmingham, B1 1HH, UK

Key speakers: Emma Facey (Foot Anstey LLP), Professor Lesley King, Stephen

Lawson (Forshaws Davies Ridgway), Denzil Lush, Former Senior Judge of the Court of Protection (England and Wales), Lucy Obrey (Higgs & Sons), Peter Rayney (Peter Rayney Tax Consulting Ltd), Patricia Wass (Foot Anstey), Chris Whitehouse (5 Stone Buildings)

http://www.step.org/tte2017

## WESTERN EUROPE

### Finland

*A listing of recent key international tax cases.*

The Finnish tax administration on January 26, 2017, issued guidance on how it will apply a Supreme Administrative Court (SAC) ruling on the taxes withheld in Finland on dividends paid to a foreign life insurance company.

In May 2016, the SAC ruled on a case involving a life insurance company in Luxembourg that, among other things, deals in investment-linked insurance products. The company had received Finnish dividends, which were subject to tax at source.

According to the Finnish tax authority, the SAC ruled there should have been no withholding of tax at source for 2014 when the life insurance company received dividends for its holdings of shares and these dividends were added to the company's technical provisions.

The SAC said that because the expenses collected from insurance clients must not be added to the technical provisions, their amount must be accounted for and deducted accordingly. It ruled that the company must give a report on the effects of the received dividends on its technical provisions.

The SAC noted that when dividends are paid on Finnish shares (that are part of the "investment" linked to the insurance), a deduction is permitted from the 2015 taxes at source, in reference to Section 8, subsection 1.10, Business Tax Act, corresponding to the share of dividends received from Finland of the insurance company's turnover. Because the management fees collected from insurance clients cause the value of the insurance policy to diminish, and they also decrease the technical provisions, the amount of such expenses must be deducted, the SAC said.

In its response to the judgment, released on January 26, 2017, the tax agency said the SAC's ruling only applies to the taxes at source paid by life insurance companies with receipts of dividends on the shares they own due to investment-linked insurance.

Companies seeking a refund as a result of the ruling have been advised to look at the agency's guidance on the treatment of foreign pension institutions. The agency said: "The Tax Administration requires the insurance companies that submit a refund application to present, as appropriate, the same facts and information that pension institutions would normally present when submitting a similar request. In addition, the insurance company must enclose an account explaining how much is deducted from its receipts of dividends, and what the reasons for these deductions are. The form to complete is the 'Application for refund of Finnish withholding tax'. The applicants must prepare a calculation of the amount to be deducted and give reasons for the deductions."

https://www.vero.fi/en-US/Tax_Administration/News/Ruling_of_the_Supreme_Administrative_Cou(42250)

Finnish Supreme Administrative Court: *LuxCo (SAC:2016:77)*

## Gibraltar

An EU Advocate General (AG) has opined that the UK and Gibraltar should be considered "one entity" in a case regarding the applicability of UK gambling duties.

The Gibraltar Betting and Gaming Association (GBGA) is challenging the gambling tax regime introduced by the UK Government in 2014. The UK requires gambling service providers to pay a gambling duty in respect of services provided to UK persons, regardless of whether the provider is located in the UK or another country. The GBGA claims that the tax is contrary to the freedom to provide services established in Article 56 of the Treaty on the Functioning of the European Union (TFEU).

AG Maciej Szpunar stated that the question of whether or not Article 56 can be invoked in this case hinges on whether Gibraltar and the UK are considered part of the same EU member state, and if the dispute is a "purely internal situation."

According to the AG, the European Court of Justice "should hold that, for the purposes of Article 56 TFEU, Gibraltar and the UK are to be treated as one entity." Should the Court find otherwise, AG Szpunar argued, "the provisions of the new tax regime which are contested … should not be regarded as a restriction on the freedom to provide services, given that they apply without distinction and on a non-discriminatory basis to gambling service providers located in the UK and elsewhere."

The opinion was issued on January 19, 2017.

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d6608787cc6ce246e38919f5d89e906500.e34KaxiLc3eQc40LaxqMbN4PaheTe0?text=&docid=186974&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=780080

European Court of Justice: *Gibraltar Betting and Gaming Association Ltd v. HMRC (Case C-591/15)*

## United Kingdom

The UK Supreme Court on January 24, 2017, ruled that Parliament must approve the Government's plan to trigger Article 50 to exit the EU.

It stated that Theresa May cannot use her executive powers as Prime Minister to automatically trigger Article 50 and launch the two-year separation process, upon which in-depth negotiations with the EU will begin.

The Supreme Court did not, however, require that lawmakers in Scotland, Northern Ireland, and Wales must also pass the necessary legislation, in a blow to those hoping that a Brexit could be avoided *via* that path.

The announcement could delay May's aim to trigger Article 50 by March, however. Opposition lawmakers may now seek to dictate to some extent the path the UK will take in the future, with May saying recently the UK would divorce itself from the Single Market, which is likely to have far-reaching consequences in a number of areas.

https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf

UK Supreme Court: *Miller v. Secretary of State for Exiting the European Union ([2016] EWHC 2768 (Admin) and [2016] NIQB 85)*

## United Kingdom

The UK's Upper Tribunal has ruled in favor of HM Revenue & Customs (HMRC) in a case concerning value-added tax (VAT) avoidance in the adult entertainment industry.

Wilton Park Ltd, the owner of five London-based "gentlemen's clubs" branded "Secrets," issued vouchers to its customers to pay its dancers. The club then charged the self-employed dancers a 20 percent fee to cash-in the "Secrets" branded "money."

The club argued that the fee charged did not attract VAT, stating that it was simply holding the money safely on the dancers' behalf.

However, the Tribunal agreed with HMRC that the club's income from charging dancers for redeeming the vouchers is taxable.

It considered that the company was providing a service to the dancers for those customers that opted to not use cash.

The judge said:

> "[T]he 20 percent charge reflects the fact that the dancer cannot provide her services to the non-cash customers without the much wider bundle of facilities and services provided by the clubs to create the environment in which the dancer can earn the Secrets money. …
>
> I therefore hold that the 20 percent commission payment charged by the club on redeeming the Secrets money is a payment in return for services which go significantly beyond the simple receipt or dealing with security for money … The services provided can accurately be described as the provision of the means whereby the dancers can exploit the opportunity to make more supplies to a wider market thereby increasing their turnover by facilitating the dancers' performances to the non-cash customer base."

Jim Harra, Director General, Customer Strategy and Tax Design, HMRC, welcomed the ruling, stating:

> "HMRC always intervenes when it seems to us that tax due under the law is not being paid. This is a prime example. Our work ensures that everyone pays the tax due, creating a level playing field for all businesses. We're investigating clubs who use similar schemes and there's a potential tax liability running into the millions at stake – money that is needed to pay for the UK's vital public services."

http://taxandchancery_ut.decisions.tribunals.gov.uk/Documents/decisions/Secrets-v-HMRC.pdf

UK Upper Tribunal, Tax And Chancery Chamber: *Secrets v. HM Revenue and Customs ([2015] UKUT 0343 (TCC))*

## Dateline February 16, 2017

With a Republican Congress, and a Republican (of sorts) in the White House, opponents of **FATCA** have probably never had a better opportunity to have the controversial law repealed. Indeed, the anti-FATCA lobbying campaign is already beginning to shift up a gear in Washington, DC.

For his part, President Trump has been silent on the matter. But observers suggest that his anti-big government, power-to-the-people, "America first" message places him firmly in the anti-FATCA camp. What's more, we can hardly expect a savvy businessman like Trump to accept a law that has cost billions to implement but will yield relatively small returns. We can only speculate about FATCA's future. However, obligations on US citizens to report foreign financial interests do not begin and end with this controversial law; there's also FBAR, and a multitude of other forms that must be submitted to the IRS bearing information about such items as foreign gifts and inheritances, and interests in foreign trusts, companies, and partnerships, among others. Will they be swept away in the tide of tax reform?

To mainly conservative campaigners, FATCA is redolent of an age when individual privacy matters less and less, and governments feel entitled to pry into the activities of their citizens. Repealing it would therefore represent a major victory for their cause. But peel FATCA away, and several layers of reporting requirements will remain. I was somewhat encouraged to learn that **Sweden's** competition commission has sounded alarm bells over the proposed **financial activities tax**. For the country has something of a fatal attraction to such taxes.

Citing a recent study by consultancy firm Copenhagen Economics, the Swedish Bankers' Association recently warned that companies would respond to the proposed tax by relocating operations to countries with lower wage costs, most likely the Baltic states, while smaller banks in Sweden would struggle to survive under the new tax regime. This could result in the loss of 16,000 jobs in Sweden's finance sector, of which 7,200 would be banking jobs, it said.

Sweden doesn't have particularly fond memories of financial sectors taxes. Following the introduction of a short-lived financial transactions tax in the 1980s, trading in Swedish equities and other securities plummeted almost immediately. In fact, bond trading fell by 85 percent in the first week, and about 60 percent of the volume of Sweden's most actively traded shares shifted to London.

Sure, the new proposal is a different type of tax. But whether Sweden likes it or not, even in a post-BEPS world, countries continue to compete fiercely with each other on tax. Companies are more mobile than ever. Bank-bashing tax proposals may be popular, but they can also be self-defeating.

Some of the more alarmist economic analyses would have you believe that the **South Korean** economy is in peril; that there is an over-reliance on exports to key economies like the United States, the EU, and China, an unhealthy concentration of wealth and economic power in a handful of large family-owned conglomerates, and a corruption problem. These things may well be true.

However, economically at least, the country is in fairly good shape. Bloomberg ranked South Korea as being the country with the world's **most innovative economy** in 2016, and its tax system for companies stacks up well against regional competitors, with a headline corporate tax rate of 22 percent. The Government is also striving to improve the tax system, with the intention of boosting domestic consumption and encouraging corporate investment. Within its proposed policy framework for 2017, announced just last month, the South Korean Ministry of Strategy and Finance has announced various **tax changes** to counteract the continued economic uncertainties, including measures to create jobs and support new growth industries. This includes an extra 2 percent corporate tax credit for posts created in projects that begin this year, a higher corporate tax credit for new job positions, and an expansion of the research and development tax credit scheme. South Korea has often been in the world news headlines for the wrong reasons lately, but on the tax front it's not all doom and gloom for companies.

To mislay one person's tax records would be careless, and very stressful for the taxpayer concerned. To let, say, **28,000 tax records** slip through your butter fingers would be catastrophic. But surely that would be impossible in this age of secure data storage and communication? Well, actually, no! Between them, the **Canada Revenue Agency** and a courier company have managed to achieve just this feat. The trouble is, in the world of digital records, this sort of thing can happen. Such cases may be isolated, but there's always the risk that bulk information may fall into the wrong hands *en route* from one place to another – electronically or otherwise.

This incident should serve as (yet another) warning about tax data security as we enter an era of mass information exchange.

**The Jester**