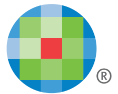
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GLOBAL TAX WEEKLY
a closer look

ISSUE 227 | MARCH 16, 2017

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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

GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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

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a closer look

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UK Budget Analysis

by Christopher Groves and Sophie Dworetzsky, Withers

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As anticipated, Chancellor of the Exchequer Philip Hammond's recent Budget announcement contained little of great surprise.

"Box-Office Phil," as the press has ironically dubbed him, had been careful to downplay expectations for his first Budget and duly delivered with a Budget speech that was clearly positioned as the lull before the Brexit storm. This is in many ways reassuring given the very significant changes to the taxation of longer term resident non-domiciliaries from April 2017.

The following points are of note.

The Self-Employed

As widely trailed before the Budget speech, the self-employed are most affected by the changes announced. This is manifest in two different areas:

1. Taxation Of Dividends

Following the abolition of the dividend tax credit in 2016, former Chancellor George Osborne introduced a new tax-free "Dividends Allowance" for each taxpayer, which exempted the first GBP5,000 (USD6,076) of dividends received from tax. This exemption will be reduced to GBP2,000 for dividends paid from April 2018. This will raise a further GBP1.7bn for the Treasury over the next three years.

In his speech announcing this change, Hammond announced this measure as affecting dividends received by a "Director/Shareholder". However, from the Budget papers it appears that this reduction will apply to all taxpayers. If this is the case, it represents a significant u-turn for the

Government and significantly undermines their manifesto pledge not to increase levels of income tax. Further details will be released in due course.

2. National Insurance Contributions (NICs)

NICs are one of the more arcane areas of the UK tax system, but are beloved of Chancellors who want to raise revenue without raising "taxes" or breaking manifesto commitments (apparently).

In summary, the self-employed currently pay:

- Class 2 NICs at a rate of GBP2.80 per week if their profits are GBP5,965 or more a year; and
- Class 4 NICs if their profits are GBP8,060 or more a year at a rate of 9 percent up to GBP43,000 and 2 percent thereafter.

Employees pay:

- Class 1 NICs if their earnings are more than GBP155 in a week (approximately GBP8,000 per annum) and at a rate of 12 percent on earnings between GBP155 and GBP827 per week (approximately GBP8,000 and GBP43,000 per annum) and 2 percent thereafter.

It was already proposed to abolish Class 2 NICs. In itself this would have reduced the tax burden for the self-employed. The proposal was made to align the rates for the employed and self-employed and to that end the Class 4 rate paid on earnings would have increased:

- to 10 percent from April 2018; and
- to 11 percent from April 2019.

For a higher rate self-employed taxpayer (*e.g.*, a partner in a law firm), this would have increased their NICs bill by about GBP350 a year from April 2018, and a further GBP350 a year from April 2019. The Treasury would have seen revenues increase by GBP970m over the next three years as a result.

Class 2 NICs will still be abolished from April 2018, saving self-employed taxpayers earning more than GBP5,965 a year. Under the proposals, the "average" self-employed person would apparently have been 60p a week worse off as a result.

However, Prime Minister Theresa May subsequently confirmed that legislation in this area would be delayed, at least until the Autumn Statement, following objections from Tory MPs, and in a shock announcement on March 15, the Chancellor announced that the proposed increase would not be implemented in the course of the current Parliament.

Non-Doms

Major changes to the way non-doms are to be taxed, first announced by Osborne in 2015, are due to come into force on April 6, 2017, and two minor amendments to these changes were announced:

- From April 6, 2017, if the value of a shareholding in a non-UK company that is attributable to underlying UK residential property is less than 5 percent of the total value of the company, the new rules bringing such companies within the scope of inheritance tax (IHT) will not apply. This *de minimis* level had previously been set at 1 percent.
- In the two tax years following April 6, 2017, non-doms will have an opportunity to segregate any offshore cash funds that currently represent a mixture of capital, income and gains into these component parts. Previously this was only to apply to mixed funds containing income and capital gains arising after April 6, 2008. This will now apply to all mixed funds. Non-doms will now be able to identify and segregate even more "clean capital" which can then be brought into, and spent in, the UK free of tax, which is exactly what the Government are hoping they will do.

Further details are expected on March 20 when the draft Finance Bill is published.

Probate Fees

Fears of an increase in IHT or the reintroduction of another "death tax" to fund adult social care proved unfounded. However, the Government confirmed last month that probate fees payable on death will increase from the GBP155 flat rate currently up to a potential ceiling of GBP20,000. This significant charge will be payable by a deceased family before they can have access to the deceased's assets.

The table of proposed charges is set out below.

Value of estate (before IHT)	Proportion of all estates in England and Wales	Proposed fee
Up to GBP50,000 or exempt from requiring a grant of probate	58%	GBP0
Exceeds GBP50,000 but does not exceed GBP300,000	23%	GBP300
Exceeds GBP300,000 but does not exceed GBP500,000	11%	GBP1,000
Exceeds GBP500,000 but does not exceed GBP1m	6%	GBP4,000
Exceeds GBP1m but does not exceed GBP1.6m	1%	GBP8,000
Exceeds GBP1.6m but does not exceed GBP2m	0.3%	GBP12,000
Above GBP2m	0.5%	GBP20,000

Anti-Avoidance

No Budget is complete without a crackdown on anti-avoidance, and the Government's focus on anti-avoidance continues to be a priority. The Chancellor noted that the UK now has one of the lowest tax gaps in the world, a reflection of how much has been done over the last 15 years to ensure taxpayers pay the "right" amount of tax.

Tax Allowance And Thresholds

Incremental changes to tax allowances and thresholds have been announced for 2017/18, as follows:

	2016/17	2017/18
Personal income tax allowance	GBP11,000	GBP11,500
Higher rate threshold	GBP32,001	GBP32,501
Capital gains tax annual exempt amount	GBP11,000	GBP11,300

Measures Already Announced

Various measures announced last year have been confirmed as follows:

- A corporate group's net deductions for interest will be limited to 30 percent of EBITDA that is taxable in the UK. All groups will be able to deduct up to GBP2m of net interest expenses per annum before these rules apply.
- There will be a consultation on bringing non-UK resident companies, which are currently chargeable to Income Tax on their UK taxable income, and to non-resident Capital Gains Tax (NRCGT) on certain gains, within the scope of Corporation Tax. This may be beneficial as currently such companies pay basic rate income tax at 20 percent on their income and 20 percent on gains as opposed to 19 percent corporation tax from April (and lower in future), but will also bring them within the limitation on corporate interest expense deductibility referred to above.
- Changes which would have reduced the time limit for paying and filing Stamp Duty Land Tax from 30 to 14 days have been delayed until 2018.

ATED

While a number of UK residential properties are being de-enveloped ahead of April 6, 2017 changes to IHT, those that remain owned by a company and within the Annual Tax on Enveloped Dwellings (ATED) charge will face the following small increases in rates of tax:

Property value	2016/17	2017/18
More than GBP500,000 but not more than GBP1m	GBP3,500	GBP3,500
More than GBP1m but not more than GBP2m	GBP7,000	GBP7,050
More than GBP2m but not more than GBP5m	GBP23,350	GBP23,550
More than GBP5m but not more than GBP10m	GBP54,450	GBP54,950
More than GBP10m but not more than GBP20m	GBP109,050	GBP110,100
More than GBP20m	GBP218,200	GBP220,350

Pensions

The shock news in the Budget was the introduction of a 25 percent overseas transfer charge on certain transfers from a UK-registered pension scheme to a QROPS (qualifying recognized overseas pension scheme) and transfers of UK tax-relieved funds to a QROPS made on or after March 9, 2017, and any onward transfer of those funds to a QROPS after that date.

QROPS wishing to accept such transfers will also need to update their undertakings to HMRC by April 13, 2017 if they wish to continue to be a QROPS.

This charge is likely to significantly impact the QROPS market, but it will not necessarily affect individuals looking to invest in QNUPS (qualifying non-UK pension schemes) for IHT planning.

The charge will not apply where:

- The member is resident in the same country as the country in which the QROPS receiving the transfer payment is established;
- The member is resident in an EEA country (*i.e.*, an EU member state or Norway, Iceland and Liechtenstein) and the QROPS is also established in an EEA country (which need not be the same country);
- The QROPS is set up by an "international organization" (as defined in regulations) of which the member is an employee; or
- The QROPS is an overseas public sector scheme or an occupational pension scheme and the member is an employee of a scheme employer.

If the charge is not payable on the original post-March 9th transfer, it can become payable if the member's circumstances change within five full tax years of the transfer (*e.g.*, the member ceases to be resident in the same country in which the receiving scheme is established). Similarly, the tax charge can be reclaimed if it was paid on the original transfer, but the member's circumstances change within five full tax years.

Members will be jointly and severally liable for the charge with the scheme administrator, and it will be reportable in the member's self-assessment tax return.

It is also confirmed that other pensions-related changes previously announced in last year's Budget and Autumn Statement will appear in the Finance Bill 2017 and will take effect from April 6, 2017 as planned:

Money Purchase Annual Allowance (MPAA)

The MPAA will fall from GBP10,000 to GBP4,000.

The MPAA applies to restrict future tax relieved contributions to a defined contribution (DC) pension scheme where an individual has flexibly accessed pension savings from any of their registered pension scheme arrangements.

Income Tax Exemption For Employer-arranged Pensions Advice

The exemption will rise from GBP150 to GBP500 per employee per tax year.

This will cover not only pensions advice (as was the case previously) but also general financial and tax advice relating to pensions. This is also separate from allowance for retirement advice in relation to DC pension savings (also coming into force on April 6, 2017) which will permit individuals to draw GBP500 per tax year on up to three occasions during their lifetime.

Alignment Of Tax Treatment Of Pensions With UK's Domestic Pensions Regime

Going forward, 100 percent of a foreign pension or lump sum paid to a UK-resident individual will be taxable (to the same extent as if it was paid by a registered pension scheme). Temporary non-residence rules will also impose tax charges on foreign pensions received by individuals resident outside the UK for less than ten tax years. Certain criteria for schemes wishing to qualify as a QROPS are also changing.

Image Rights

In a move that will likely send footballers rushing for their agents, HMRC will seek to "clarify" the taxation of payments to employees for their image rights.

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Cuba Is Not Yet Fully Open For US Business

by Marc Schwartz, Richard Hartnig, Schwartz International, and Bo Jackson, The Jackson Firm, CPA

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Introduction

Although the administration of former President Obama made a large first step in opening the door for US business in Cuba, the door is not yet fully open. To assist with the transition, the IRS has provided some guidance on the tax effects of Cuban investment. We anticipate more will be forthcoming, although perhaps at a slow rate.

Even though the ruling is from 2016, it is worth revisiting now as it is unclear what the Trump Administration will do about Cuba. On the one hand, he may feel beholden to those closer to his own age, and some of his South Florida support, still angry at Fidel Castro's hostile takeover while, on the other, we're sure a shiny, new hotel with five golden letters shining over the Caribbean Sea and Gulf of Mexico would be attractive to him.

Foreign Tax Credit

As we see more business focusing on Cuba, we wanted to review what we know for certain – which we admit is not much right now. Last year the tax authorities issued Rev. Rul. 2016-8 [2016-11 IRB 426, 03/01/2016], modifying Rev. Rul. 2005-3 [2005-1 C.B. 334]. The ruling modifies the US treatment of foreign taxes paid to the Cuban government.

As background, US taxpayers generally may claim a foreign tax credit for certain taxes paid or accrued to a foreign country or a US possession, subject to various restrictions under Internal Revenue Code Section ("IRC") Sec. 901. Some US corporations can ultimately also claim a credit or certain taxes paid by a foreign corporation under IRC Sec. 902. The Rev. Rul. discusses IRC Sec. 901(j)(1),

which restricts foreign tax credits arising in certain jurisdictions. IRC Sec. 901(j)(1)(A) disallows a foreign tax credit related to taxes paid or accrued to countries listed in IRC Sec. 901(j)(2)(A).

Specifically, IRC Sec. 901(j)(1)(A) provides: "no credit shall be allowed … for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country," and IRC Sec. 901(j)(1)(B) follows that "subsections (a), (b) and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country."

IRC Sec. 901(j)(2)(A) provides that the above foreign tax credit rules apply to any country:

"(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,
(ii) with respect to which the United States has severed diplomatic relations,
(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or
(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms."

Based on the Trump Administration's first several weeks in office, it is unclear what its ultimate foreign policy will be. While we're focusing on Cuba, could we see additional countries listed shortly?

The ruling provides that the above rules no longer apply when the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in IRC Sec. 901(j)(2)(A). Cuba has historically been so described. The ruling provides that Cuba's end date on such list is December 21, 2015. Thus, after that date, taxes paid or accrued to Cuba would be considered creditable.

In addition, under Section 952(a)(A), a controlled foreign corporation ("CFC") in Cuba was deemed to generate Subpart F income as long as Cuba was listed as a "tainted" jurisdiction. The removal of Cuba from the "naughty list" means that a Cuba CFC's income could be eligible for deferral from US tax until repatriation. Again, the guidance is moving forward slowly and the number of CFCs there is certainly nothing like the number in, say, the UK. However, to the extent relations continue to approve, we will see materially more investment.

From Obamacare To Trumpcare: The Tax Consequences Of US Health Care Reform

by Stuart Gray, Senior Editor, Global Tax Weekly

Reforming the provision of health care in the US was arguably President Obama's top priority when he reached the White House in 2009. Eight years later, repealing these reforms is now the number one priority of President Donald Trump.

This article looks at key tax elements of the Affordable Care Act (ACA), and examines the tax consequences of the proposed replacement bill currently being lined up by Republicans in the House of Representatives.

Introduction To Obamacare

The Patient Protection and Affordable Health Care Act,[1] to give the ACA its full name, was signed by President Obama in March 2010, and is widely regarded as his most significant achievement on the domestic front. More commonly referred to as "Obamacare," the legislation was intended to address a major shortfall in affordable health care coverage, especially for the poor and the middle classes, and drive down spiraling health care costs essentially by subsidizing health care.

In essence, the ACA makes the federal government, state governments, insurers, employers, and individuals "share responsibility" for improving the quality and availability of health insurance coverage in the US. It is supposed to reform the existing health insurance market by prohibiting insurers from denying coverage or charging higher premiums because of an individual's pre-existing conditions.

The ACA has created the Health Insurance Marketplace, also known as the Marketplace or the Exchange. The Marketplace is designed to help taxpayers find information about health insurance options, purchase qualified health plans, and, if eligible, obtain financial assistance to pay

premiums and out-of-pocket costs. A new tax credit, the premium tax credit (see below), is available only if the taxpayer purchased a qualified health plan through the Marketplace. This credit helps eligible taxpayers pay for coverage.

A Health Reform And A Tax Reform

It may seem incongruous for a tax publication to be covering the issue of health care reforms. But there is a good reason for that: Obamacare is as much about taxation as it is about the affordability of health insurance policies – USD438bn worth of taxation to be precise.[2] And these measures include, but are by no means limited to, the following:

- Two tax hikes on high-income taxpayers, including a 0.9 percent Medicare tax on wages earned above USD250,000 by couples (USD200,000 for singles), and a 3.8 percent Medicare tax on investment income earned by couples earning more than USD250,000 in modified adjusted gross income (USD200,000 for singles);
- A 2.3 percent excise tax on manufacturers of medical devices;
- A 10 percent excise tax on indoor tanning services, collected by tanning salons and passed on to the Government;
- A 40 percent tax on "Cadillac" health insurance plans, or high-value plans, which, from 2018, kicks in when the cost exceeds USD10,200 for individuals and USD27,500 for families; and
- Numerous fees, including an annual fee on health insurance providers based on net premiums written.

The revenue raisers help to fund Obamacare's main subsidy, the premium tax credit. This is an advanceable and refundable tax credit designed to help eligible individuals and families with low or moderate income afford health insurance purchased through the Health Insurance Marketplace.

The credit, worth USD5,000 per year on average, is paid directly as a subsidy to the health insurance carrier and is based on estimated household size and income. Generally, individuals and families with an estimated household income of between 100 percent and 400 percent of the federal poverty level (FPL) for their family size are eligible for the subsidy. That is equivalent, for the purposes of 2016 tax returns, to annual household income of between USD11,770 and USD47,080 for a single individual; between USD15,930 and USD63,720 for a family of two; and between USD24,250 and USD97,000 for a family of four. It is estimated that as many as 18m uninsured Americans are eligible for the premium tax credit.

A taxpayer does not have to wait until his or her earnings are verified by the Internal Revenue Service (IRS) when filing an annual tax return to benefit from the tax credit, but may choose to apply it to health insurance premiums each month. However, if, for example, actual household income exceeds the FPL-based amounts and a subsidy was granted, the subsidy will need to be repaid on the recipient's federal tax return.

Shared Responsibility

As mentioned above, one of the overarching goals of the ACA is to encourage the Government, both at federal and at state levels, the private sector and individuals to share responsibility for improving the quality and availability of health insurance coverage in the US. And this is where one of the most controversial aspects of the system rears its head – the shared responsibility payments.

These require individuals to have qualifying health care coverage (also known as "minimum essential coverage") for each month of the year. Those who are deemed to have failed the minimum essential coverage test face paying a "shared responsibility payment" when filing a federal income tax return. In general, all US taxpayers are subject to the individual shared responsibility provision. They are also potentially liable for any individual the taxpayer could claim as a dependent for federal income tax purposes.

Similarly, Obamacare's "employer mandate" is a requirement that all businesses with 50 or more full-time equivalent (FTE) employees provide health insurance to at least 95 percent of their full-time employees and their dependents, up to age 26, or pay a fee. Firms with 100 or more FTE employees, and average annual wages above USD250,000, needed to insure at least 70 percent of their full-time workers by 2015 and 95 percent by 2016. Small businesses with 50–99 FTE employees needed to insure full-time workers by 2016. The mandate does not apply to employers with 49 or fewer FTE employees.

Employers with fewer than 25 FTE employees and with average annual wages of less than USD50,000 qualify for employer tax credits. Those with ten or fewer FTE employees with average annual wages of less than USD20,000 qualify for the full credit of up to 50 percent of their share of employer premiums.

If an employer does not provide coverage, or provides coverage that does not offer "minimum value" or is unaffordable, then they must make a per employee, per month "Employer Shared Responsibility Payment." For employers who do not provide coverage, the fee is USD2,000 per full-time employee (minus the first 30 full-time employees).

For employers who do provide coverage, but coverage that does not provide minimum value or is not affordable, the fee is the lesser of USD3,000 per full-time employee receiving the subsidy, or USD2,000 per full-time employee. For plan years beginning in 2015 only, the penalty is USD2,000 for each full-time employee minus the first 80 employees. For plan years beginning in 2016 and beyond, employers can exclude 30 full-time employees from the penalty calculation. In general, the fee is "triggered" only if at least one employee shops on the marketplace and is eligible for a federal premium subsidy. The fee does not apply if a dependent shops on the Marketplace and receives a subsidy.

Is The End Nigh for Obamacare?

Under the ACA, the hand of government has left few areas of the US health care industry untouched. And the perception that it forces individuals and companies to make certain choices is the reason why it is so unpopular with conservatives in America. Hence, Republicans have been attempting to strike down the legislation, both in Congress and through the courts, since the moment Obama signed the legislation. And they came close on numerous occasions.

Ultimately, the Republicans failed to convince the Supreme Court of the illegitimacy of key aspects of the ACA. While they have enjoyed a majority in the House since 2010, and have controlled the Senate since 2012, legislative attempts also fell short, largely because they lacked the required majority in the latter. Besides, Obama was always likely to wield his presidential veto.

Trump, on the other hand, is a staunch critic of the ACA, and has a Congress largely willing and able to back him on this issue. Indeed, the need to repeal and replace Obamacare has become pressing for the his Administration, because tax reform – another of Trump's early priorities – is contingent upon it, as the President confirmed in a budget meeting on February 22. And on March 6, House Republicans published their much-anticipated legislative plan to replace Obamacare.

With the political stars seemingly lined up fatally against it, it certainly looks as if Obamacare's days are numbered. Certainly, Trump and House Republicans are confident about finally overturning the divisive reforms, not least because it is being dealt with in the budget reconciliation process, which allows legislation to be passed by a simple majority in the Senate, rather than the 60-vote super majority that would otherwise have been required.

It is, however, an approach that has attracted criticism for its lack of transparency, more so from Democratic legislators, but also from some Republicans anxious not to repeat the mistakes of the

past, with Democrats themselves accused of rushing Obamacare through in 2010 with the aid of their congressional majority. It remains to be seen how the legislative process plays out, and shapes the reform bill itself; however, the tax proposals as published by the House Republicans on March 6 are outlined in the next section.

The American Health Care Act

Ironically, the Republican plan bears a passing resemblance to the very legislation it is about to replace. For its foundation similarly rests on a system of tax credits designed to subsidize health care costs for low- and middle-income taxpayers.

Under the American Health Care Act (which has quickly earned the nickname "Trumpcare"), it is intended that this advanceable and refundable tax credit will be used for the purchase of state-approved major medical insurance schemes and COBRA coverage.[3] In general, eligibility rests on an individual not having access to government health insurance programs or an offer from any employer. In addition, an individual must be a citizen, national, or qualified alien of the US, and not incarcerated.

Under the proposal as it stands, the credits are adjusted by age, as follows:

- Under age 30: USD2,000
- Between 30 and 39: USD2,500
- Between 40 and 49: USD3,000
- Between 50 and 59: USD3,500
- Over age 60: USD4,000

The credits can accumulate in a family group, but are capped at USD14,000 per household. They are available in full to those making USD75,000 per year (USD150,000 joint filers), at which point the credits phase out by USD100 for every USD1,000 in income higher than those thresholds.

The bill empowers the Secretary of the Treasury to create a system to deliver the credits, which will build upon tax credit systems already in place. The intention is that eligibility determinations will continue to be conducted by the Federal Government, while insurers and licensed agents and brokers will be able to do more of the consumer-facing actions currently performed in 39 states by healthcare.gov, the Government's health insurance portal.

Any similarities between the two systems end there, however, as the Republican plan envisages decimating much of the Affordable Care Act through the repeal of most of its revenue provisions. A summary of the tax provisions of the "Trumpcare" bill follows below.

Premium Tax Credit

This is the amount a household is required to pay towards their premiums is based on income. If a household's income increases during the tax year, excess premium tax credits may result. Under current law, for households with incomes less than 400 percent of the FPL, there are certain limits on the amount the household is required to repay the federal government for the excess premium tax credits. For tax years 2018 and 2019, this section requires any individual who was overpaid in premium tax credits to repay the entire excess amount, regardless of income.

Under current law, qualified health plans must meet certain requirements for households to be eligible for the premium tax credit. This section amends those requirements to make available premium tax credits for the purchase of "catastrophic-only" qualified health plans and certain qualified plans not offered through an Exchange. Additionally, this section prohibits premium tax credits from being used to purchase plans that offer elective abortion coverage. Lastly, this section revises the schedule under which an individual's or family's share of premiums is determined by adjusting for household income and the age of the individual or family members.

The premium tax credit will be repealed beginning in 2020.

Small Business Tax Credit

The small business tax credit will be repealed beginning in 2020. Between 2018 and 2020, under the proposal, the credit generally will not be available with respect to a qualified health plan that provides coverage relating to elective abortions.

Individual Mandate

The penalty for failure to maintain minimum essential coverage will be reduced to zero, effectively repealing the individual mandate. The effective date will apply for months beginning after December 31, 2015, providing retroactive relief to those impacted by the penalty in 2016.

Employer Mandate

The penalty for failure to provide minimum essential coverage will be reduced to zero, effectively repealing the employer mandate. The effective date will apply for months beginning after December 31, 2015, providing retroactive relief to those impacted by the penalty in 2016.

Cadillac Tax

Under current law, the tax will go into effect in 2020. The Republican bill changes the effective date of the tax so that it will not apply for any taxable period beginning after December 31, 2019, and before January 1, 2025. Thus, the tax will apply only for taxable periods beginning after December 31, 2024.

"Tax" On Over-The-Counter Medications

Under current law, taxpayers may use several different types of tax-advantaged health savings accounts to help pay or be reimbursed for qualified medical expenses. However, Obamacare excluded over-the-counter medications from the definition of qualified medical expenses. The Republican bill effectively repeals this exclusion starting in tax year 2018.

Tax On Health Savings Accounts (HSAs)

Distributions from tax-advantaged savings accounts, including HSAs or Archer Medical Savings Accounts, that are used for qualified medical expenses are excludible from gross income. Distributions that are not used for qualified medical expenses are includible in income and are generally subject to an additional tax. Obamacare increased the percentage of the tax on distributions that are not used for qualified medical expenses to 20 percent. The Republican bill lowers the rate to pre-Obamacare percentages, effective for distributions after December 31, 2017.

Limitations On Contributions To Flexible Savings Accounts

The ACA limits the amount an employer or individual may contribute to a health Flexible Spending Account (FSA) to USD2,500, indexed for cost-of-living adjustments. The Republican bill repeals the limitation on health FSA contributions for taxable years beginning after December 31, 2017.

Medical Device Tax

The medical device tax will be repealed beginning after December 31, 2017.

Deduction For Expenses Allocable To Medicare Part D Subsidies

Prior to Obamacare, as an incentive for employers to offer retiree drug coverage, employers who offered sufficient prescription drug coverage to their employees qualified for the Retiree Drug Subsidy to help cover actual spending for prescription drug costs. Obamacare eliminated the ability for employers to take a tax deduction on the value of this subsidy.

The Republican bill will repeal this change, and reinstate the business-expense deduction for retiree prescription drug costs without reduction by the amount of any federal subsidy. This change will apply to taxable years beginning after December 31, 2017.

Income Threshold For Medical Expense Deduction

Taxpayers who itemize their deductions may deduct qualifying medical expenses. The medical-expense deduction may be claimed only for expenses that exceed a certain percentage of the taxpayer's adjusted gross income (AGI). Obamacare increased the AGI percentage threshold from 7.5 percent to 10 percent if the taxpayer or spouse was aged 65 or older. The Republican bill restores the AGI percentage threshold to 7.5 percent for all taxpayers beginning in 2018, and extends the special rule for those aged 65 or older through this year.

Medicare Tax

The 0.9 percent Medicare surtax will be repealed beginning in 2018.

HSA Contribution Limit

The Republican bill increases the basic limit on aggregate HSA contributions for a year to equal the maximum on the sum of the annual deductible and out-of-pocket expenses permitted under a high deductible health plan. This means the basic limit will be at least USD6,550 in the case of self-only coverage, and USD13,100 in the case of family coverage beginning in 2018.

Catch-up Contributions

Both spouses will effectively be permitted to make catch-up contributions to one HSA beginning in 2018.

Medical Expenses Incurred Before Establishment Of HSA

The Republican Bill sets forth certain circumstances under which HSA withdrawals can be used to pay qualified medical expenses incurred before the HSA was established. Starting in 2018, if an HSA is established during the 60-day period beginning on the date that an individual's coverage under a high deductible health plan begins, the HSA is treated as having been established on the date coverage under the high deductible health plan begins for the purposes of determining if an expense incurred is a qualified medical expense.

Tanning Tax

The 10 percent tax on indoor tanning services will be repealed starting in 2018.

Net Investment Tax

The 3.8 percent net investment tax on certain net investment income of individuals, estates, and trusts will be repealed starting in 2018.

Remuneration From Certain Insurers

Generally, employers may deduct the remuneration paid to employees as "ordinary and necessary" business expenses. Obamacare added a limitation for certain health insurance providers that exceeds USD500,000 paid to an officer, director, or employee. The Republican bill repeals the limit on the deduction of a covered health insurance provider for compensation attributable to services performed by an applicable individual, starting in 2018.

Tax On Prescription Medication

Obamacare imposed an annual fee on certain brand pharmaceutical manufacturers. The Republican bill repeals this fee so that it would not apply for years beginning after December 31, 2017.

Health Insurance Tax

Obamacare imposed an annual fee on certain health insurers. The Republican proposal repeals this tax beginning after December 31, 2017.

Conclusion

Setting aside the debate on whether the framers of Obamacare achieved what they set out to do, it is undeniable that the changes to the US health care system brought about by the reforms have been hugely controversial. However, while many Republicans have made it their political mission to repeal Obamacare, until recently we had little knowledge about what they hoped would replace it, if anything.

With the publication of the American Health Care Act, we now have a much better idea, and it comes as little surprise that Republicans plan to consign the majority of Obamacare's tax provisions into history. Nevertheless, it is perhaps more surprising that the Republicans have come to accept that the answer to bridging the health insurance gap is also to provide tax credits to low- and middle-income taxpayers.

As we observed at the beginning of this article, this is as much an issue of taxation as it is the organization of the US health care system. And if the Republicans' reforms are approved by Congress, another shake-up of the US tax system is what we can expect over the next year and more, just like Obamacare before it.

Endnotes

[1] http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf

[2] https://www.gop.com/obamacare-2013-edition/

[3] COBRA (Consolidated Omnibus Budget Reconciliation Act) coverage allows individuals to temporarily keep health coverage after their employment ends, loss of coverage as a dependent of the covered employee, or after another qualifying event. Individuals electing COBRA coverage pay 100 percent of the premiums, including the share the employer used to pay, plus a small administrative fee.

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What To Expect From The Multilateral Competent Authority Agreement On Automatic Exchange Of Country-By-Country Reports Signed By Cyprus

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Introduction

Development and global implementation of the Base Erosion and Profits Shifting (BEPS) Action Plan, prepared by the Organisation for Economic Co-operation and Development (OECD), have successfully continued in 2016. The country-by-country (CbC) reporting initiative, under Action 13 of the BEPS project, has not been an exception.

As of March 10, 2017, 57 jurisdictions have already signed the Multilateral Competent Authority Agreement (MCAA) on the automatic exchange of CbC reports.

What does CbC reporting and the automatic exchange of CbC reports entail?

The ultimate parent entity of any large multinational enterprise (MNE) (with annual consolidated group revenue in the immediately preceding fiscal year equal to or exceeding EUR750m, or a near equivalent amount in domestic currency), for the MNE group's fiscal year beginning on or after January 1, 2016, will have to prepare and file a CbC report in the jurisdiction of its tax residence. Then, following the government-to-government mechanism implemented, CbC reports will be exchanged on an automatic basis with the competent authorities of the jurisdictions in which the MNE group operates.

Which Information Will Be Exchanged?

Information on the amount of revenue, the amount of profit before tax, and the amount of tax paid and accrued will be reported. The CbC reporting also requires MNEs to report their total number of employees, stated capital, retained earnings and tangible assets in each jurisdiction.

As mentioned above, CbC reports will be exchanged automatically, based on the legal mechanism implemented by the participating jurisdictions.

There are some existing legal mechanisms which can be used for this purpose, one of which is the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA), which has been developed based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (Convention).

Cyprus, being a jurisdiction participating in the Convention, has opted for the rules and procedures foreseen by the CbC MCAA, by signing the CbC MCAA on November 1, 2016.

The Ministry of Finance of Cyprus has already initiated development of the appropriate local legal and regulatory framework, through the development of a special Decree. The Decree, which was issued by the Ministry of Finance in December 2016, determines, *inter alia*, the obligations of the reporting entities in relation to the submission of CbC reports to the tax authorities.

These measures in the Decree implement EU legislation as part of the EU's anti-tax avoidance package released earlier in 2016, which member states are required to implement into their own legislation.

Coming back to the CbC MCAA, it is worth mentioning that according to the section 8 of the CbC MCAA, Cyprus is obliged to provide to the Coordinating Body Secretariat (the OECD Secretariat that provides support to the Coordinating Body) a written notification containing, among other things, a list of jurisdictions with respect to which Cyprus intends to have the CbC MCAA in effect and exchange CbC reports with, or a declaration that it intends to have this agreement in effect with all other competent authorities that provide a similar notification. Also, Cyprus must indicate whether it prefers to be included in the list of non-reciprocal jurisdictions which will send, but will not receive, CbC reports.

Additionally, for an actual exchange to take place, both participating jurisdictions have to harmonize their legislation with CbC reporting requirements accordingly and to ensure that the required confidentiality and data safeguard standards are in place.

In summary, it is worth reiterating that the exchange will not start with the jurisdictions which are not party to the CbC MCAA. For instance, if one entity from the MNE group is a tax resident of the Russian Federation, a CbC report will not be sent to the Russian tax authorities until the Russian Federation joins the agreement.

Topical News Briefing: Virtual Tax

by the Global Tax Weekly Editorial Team

The digital economy has given tax collectors all over the world a new challenge, none more so than in the area of virtual currencies (VCs).

As reported in this week's issue of *Global Tax Weekly*, the level of uncertainty surrounding the taxation of VCs in the US is such that key players in the industry have formed a coalition to pressure the federal government for more tax and regulatory certainty.

However, looking at recent developments in this area, one might get the impression that the US tax and regulatory authorities aren't yet entirely trusting enough of this industry to effectively validate it with comprehensive tax and legal guidance.

For instance, last week saw the Securities and Exchange Commission refusing to endorse the listing of the first Bitcoin-backed exchange-traded fund in the US, citing concerns about consumer protection.

And last November, a federal court in the Northern District of California entered an order authorizing the Internal Revenue Service (IRS) to serve a John Doe summons on Coinbase Inc., to discover information on US taxpayers who transacted in VCs, such as Bitcoin, during the years from 2013 to 2015.

While no allegation was made that Coinbase has engaged in any wrongdoing in connection with its VC exchange business, by permitting the summons the judge said that there is a reasonable basis for believing that VC users may have failed to comply with federal tax laws.

For regulators, part of the problem, it seems, is that anonymity is inherent in the world of VCs, and therefore it is an easier place for tax evaders and criminals to hide their activities. It is also a world that doesn't respect national borders, with transactions taking place on a peer-to-peer basis, bypassing the heavily regulated world of banks and payment processing firms.

On a more basic level however, tax and regulatory authorities can't even agree on what a "virtual currency" is for the purposes of tax and law enforcement. And sometimes there is even disagreement between agencies in the same jurisdiction. In the US for example, the IRS decided in

guidance issued in 2014 that VCs were to be treated as "property" for tax purposes. However, the Treasury Department's Financial Crime Enforcement Network (more commonly abbreviated to FinCEN) has classified them as "value" for the purpose of AML/CFT obligations.

Unsurprisingly, the international picture is just as muddled, with countries taking different approaches to the taxation of VCs. The legal and regulatory challenges surrounding VCs was tackled in a 2016 paper by the International Monetary Fund, which observed: "Although some major jurisdictions have made considerable strides toward resolving these issues, this is not the case in all countries."

"A key issue in the tax treatment of VCs is whether they should be treated as a form of (non-monetary) property, or as a form of currency," the IMF observed. "Where the former position is adopted, use of a VC to purchase goods or services or for investment purposes would result in the recognition of gains or losses. The character of the gain or loss would depend on the applicable rules in the relevant jurisdiction, for example whether the property is defined to be a capital asset, the length of holding period, or the classification of a transaction as speculation."

"Where VCs are treated as a currency most jurisdictions would require the recognition of foreign exchange gains or losses. Additional issues include the tax treatment of newly created VCs obtained through mining (in the case of cryptocurrencies) – as opposed to acquiring already existing VCs – and the value-added tax and sales tax treatment of transactions involving VCs. Country practices have varied significantly."

The IMF paper called for further analysis and discussions among tax authorities and regulators, and for the promotion of greater international consistency in the legal treatment of VCs. Recent developments, however, suggest this isn't happening. And therefore VCs are likely to continue existing in something of a legal and regulatory vacuum until such time as the industry's lobbying has the desired effect on policymakers.

Minister's GAAR Reassessments Vacated Despite Existence Of Some Abusive Tax Avoidance

by Wolters Kluwer Canada Authors

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A case involving a tax plan allegedly straddling the line between astute and abusive tax avoidance that was heard in the Tax Court of Canada (*British Columbia Ltd v. The Queen*, 2017 DTC 1004) was presented to the Canada Revenue Agency at the recent Canadian Tax Foundation Annual Conference, and was later released as a Tax Window File by the CRA.

A partnership ("HLP") in the business of real estate had four corporate limited partners (the "Partnercos"), each of which was wholly owned by a holding corporation (the "Holdcos"), each of which, in turn, was wholly owned by a family member. The corporate taxpayer was one of these Holdcos. In the absence of tax planning, HLP's income would have been allocated to its corporate partners, the Partnercos, which would have paid tax thereon. However, under a certain tax plan developed for the taxpayer and others (the "Plan"), HLP's cash was extracted tax free to the Holdcos, while for tax purposes that income was allocated almost entirely to an arm's length corporation ("Nuinsco") with accumulated losses and resource expenses sufficient to reduce the tax payable thereon. In GAAR reassessments for 2006 the Minister of National Revenue:

- Allocated HLP's income back to its limited partners, the Partnercos, including the Partnerco which was a wholly owned subsidiary of the taxpayer (the "Partnerco Reassessment"); and
- Imposed tax on the taxpayer under section 160 of the Income Tax Act (the "Holdco Reassessment") as being jointly and severally liable for the reassessed tax owing by its wholly owned Partnerco subsidiary.

The Minister's position, in part, was that the Plan abusively circumvented section 160, which, had it applied as it should have but for the Plan, would have resulted in the taxpayer being liable for the tax owing by its wholly owned Partnerco. On appeal to the Tax Court of Canada,

the taxpayer, in addition to directing argument relating to the GAAR reassessments, raised two procedural issues, alleging that:

- The Partnerco reassessment was out of time because of the complication arising from Partnerco's two taxation periods in 2006; and
- The Minister could not assess the taxpayer itself under the GAAR for tax owing as a consequence of a GAAR assessment against another corporation, in this case the Partnerco.

The Minister also raised a procedural objection based on the allegation that the taxpayer was precluded from raising the limitation period argument against the Minister's reassessment, because it had not complied with the appeal provisions relating to large corporations in subsection 169(2.1) of the Act. In rejecting the taxpayer's two procedural arguments, the Tax Court noted, in part, that:

- The Partnerco reassessment was valid and timely;
- By invoking the GAAR, the minister was able to ensure that the taxpayer was rendered liable under subsection 160(1) for the tax debt of Partnerco as part of the reasonable tax consequences designed to prevent the abusive tax avoidance in question;
- Following recognition of this liability, the Minister could properly assess the taxpayer under subsection 160(2), which is what he did.

The taxpayer's appeal was allowed. The Ontario Court of Appeal recently noted that for the GAAR to apply, there must be a tax benefit, an avoidance transaction without any *bona fide* purpose other than to obtain that tax benefit, and abusive tax avoidance (see *Inter-Leasing Inc. v. Ontario (Minister of Revenue)*, 2014 PTC-ON-2 – Leave to appeal dismissed [2014] SCCA No. 443). The distributions from HLP would have been taxable in the hands of Partnerco, so that their taxation in the hands of Nuinsco created a tax benefit. The Minister assumed that there was no *bona fide* non-tax purpose for this benefit, and the taxpayer did not appear to argue otherwise.

However, the provisions relied upon to obtain the tax benefit for Partnerco directly relied on the operation of subsections 96(1) and 111(1), as well as on the related provisions in section 66.7 permitting the carryover of Canadian exploration expenses and Canadian development expenses. And while the Minister alleged that such reliance on these provisions in Partnerco's case circumvented a general policy in the Act aimed at preventing loss sharing between unrelated taxpayers, he was unable to prove the existence of such a policy. As a result, he failed to show that the object, spirit, or purpose of subsections 96(1) and 111(1) and section 66.7 had been abused, and hence failed to justify the tax liability set out in the Partnerco Reassessment. Conversely, the Holdco

Reassessment was based on the assumption that there had been an abuse of section 160. In this context, the Minister alleged that there had been a benefit for the taxpayer, and in support of this proposition, referred to the following three avoidance transactions:

(a) The issuance of stock dividends by Partnerco to the taxpayer;
(b) The redemption in cash of the preferred shares distributed to the taxpayer by Partnerco; and
(c) The agreement to lend funds to Nuinsco sufficient to enable Nuinsco to purchase the outstanding shares of Partnerco, the actual purchase itself, and the Nuinsco loan.

However, Partnerco did not divest itself of its property when it issued its preferred shares to the taxpayer. Those shares, moreover, were redeemed at their fair market value. Accordingly, while Partnerco did transfer CAD867,254 to the taxpayer indirectly by way of the loan to Nuinsco, the taxpayer was able to show that, at the end of the series of transactions referred to, Partnerco was left none the poorer. It remained a partner of HLP until it was wound up, while the assets of HLP changed from cash to a promissory note of the same value. Hence, there would have been no underlying liability under section 160, in as much as the taxpayer was able to show that there was no transfer of property from Partnerco to it for less than fair market value, and hence no tax benefit to support the Holdco Reassessment under the GAAR.

Admittedly the manner in which the series of transactions operated so as to allow the transfer of cash from HLP indirectly to the taxpayer while footing Nuinsco or Partnerco itself with the tax liability due to the operation of the deemed year-end rules was abusive of section 160. But for the deemed year-end rules, section 160 would have applied to make the taxpayer liable for Partnerco's tax debt. This conclusion, however, should be tempered by bearing in mind that there was no underlying tax debt owing by Partnerco, nor was there a tax benefit for the taxpayer from the Plan. As a result of the foregoing analysis, both the Partnerco and the Holdco Reassessments made under the GAAR were vacated.

Topical News Briefing: An International Guessing Game

by the Global Tax Weekly Editorial Team

As most investors would no doubt relate, certainty of tax laws is valued just as highly as low taxation, if not more so, for frequent changes to a country's tax system at short notice makes forward planning a hazardous business. Yet, governments, intentionally or otherwise, continue to eschew the virtues of tax stability either with frequent *ad hoc* tax changes, or policy u-turns – or in some instances, both.

In recent days, we have seen several examples of governments changing course unexpectedly in the area of tax. A prominent one was the UK's 2017 Spring Budget, as reported in this week's issue of *Global Tax Weekly*, in which Chancellor Philip Hammond unexpectedly announced measures designed to reduce opportunities for tax avoidance through the use by individual taxpayers of self-employed status (although there was a shock reversal on the proposed National Insurance increase for such taxpayers on March 15). Indeed, as part of the proposals, Hammond announced changes to the tax-free dividend tax allowance less than two years after they were introduced. As a result, the reaction has been mostly negative, with criticism centering on the fact that, at the very least, the Government should have given prior warning of its intentions.

China is another major economy where tax laws are subject to frequent changes as the Government continues to modernize its economy. Further tax cuts were announced by Finance Minister Xiao Jie earlier this month intended to increase the competitiveness of China's economy. However, while investors in China might welcome the broad direction of travel of China's tax policy, the rate of change in the country's tax regime is probably unhelpful at a time when the country's tax and legal regime still suffers a great deal of complexity.

Enterprises in China are still getting to grips with the new value-added tax system, which is replacing the business tax, yet the Government is now proposing further tweaks to the system in a bid to improve it, before it is fully bedded in. And uncertainty over the nationwide expansion of a property tax scheme currently being piloted in Shanghai and Chongqing remains after the Government appeared to postpone it indefinitely. Unsurprising then, China is rated 131st out of 189 jurisdictions for ease of complying with taxation according to PwC's Paying Tax Index 2017.

One of the worst culprits for creating an uncertain environment for taxpayers is India, which has seen many large companies fall foul of a retrospective change in the income tax law, and important reforms subject to many years of delay, particularly the proposed national/state goods and services tax (GST). The announcement by Finance Minister Arun Jaitley that GST could be in place by July 2017 was, therefore, probably greeted enthusiastically by those who have been awaiting this reform for more than a decade. However, the fact that GST has been postponed on several previous occasions doesn't exactly inspire confidence in Jaitley's statement.

A significant proportion of the tax changes taking place at national level are of course being driven by international cooperation under the aegis of the OECD's base erosion and profit shifting project. And numerous surveys have shown that BEPS is fueling tax uncertainty in many parts of the world, particularly in the area of transfer pricing. Indeed, tax uncertainty is almost a constant source of risk for international investors and multinational corporations, and recent developments suggest that this isn't going to change soon.

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Final Code Sec. 367(a) And (d) Regulations

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The IRS and Treasury late last year issued final regulations under Code Sec 367(a) and (d) that make a monumental change in how those provisions have applied since they were enacted over 30 years ago.[1] For the first time, the regulations subject to taxation the otherwise tax-free transfer of foreign goodwill and going concern value by a domestic corporation to a foreign subsidiary for use in a trade or business outside the United States.[2]

Code Sec 367(a) provides generally that gain on the otherwise tax-free transfer of property by a US person to a foreign corporation is subject to taxation. A broad general exception is provided for the transfer of "any" property for use in the active conduct of a trade or business outside the United States, with a limited list of ineligible items (*e.g.*, inventory and Code Sec. 936(h)(3)(B) intangible property).

The final regulations essentially abandon the Code's general active trade or business exception. They generally require that gain be recognized under Code Sec 367(a) on the transfer of any property to a foreign corporation for use in a trade or business outside the United States.[3] A limited carve-out is provided for "eligible property," which is defined as tangible property, working interests in oil or gas property and certain financial assets.[4]

Code Sec. 367(a) does not apply to intangible property within the meaning of Code Sec. 936(h)(3)(B); rather, Code Sec. 367(d) applies. That section treats an otherwise tax-free transfer of such intangible property by a domestic corporation to a foreign corporation as a sale for a stream of annual payments contingent on productivity and includible in the transferor's income over the useful life of the intangible property.

Code Sec. 936(h)(3)(B) defines intangible property by providing a list of 28 items, including patents, designs, copyrights, trademarks, franchises, contracts, systems, programs and customer lists. The definition ends by including "any similar item" and providing that all included items, whether specifically enumerated or merely "similar," must have "substantial value independent of the services of any individual."

The list of intangible property subject to Code Sec. 367(d) does not include goodwill or going concern value,[5] and the Tax Court, rejecting the IRS's contrary assertion, held that goodwill, going concern value and workforce in place are not included in Code Sec. 936(h)(3)(B) as "similar" items.[6] Prior regulations in effect since 1984 stated that Code Sec. 367(d) "shall not apply to the transfer of foreign goodwill or going concern value." [7] Therefore, gain on the transfer of foreign goodwill and going concern value to a foreign subsidiary generally was not taxable under Code Sec. 367 under the active trade or business exception.

In contrast, under the final regulations, gain on the transfer of foreign goodwill and going concern value is taxable because these items are not included in the narrow list of items qualifying for the active trade or business exception to Code Sec. 367(a). While the regulations remove the exception from Code Sec. 367(d) for foreign goodwill and going concern value, they do not purport to include those items within the definition of intangible property subject to Code Sec. 367(d), *i.e.*, that section still applies only to intangible property within the meaning of Code Sec. 936(h)(3)(B). The regulations do, however, permit a taxpayer to apply the rules of Code Sec. 367(d) (rather than Code Sec. 367(a)) to other intangible property, such as goodwill and going concern value.[8]

As numerous comment letters demonstrated, these regulations depart from the Code and Congressional intent. Code Sec. 367(a) provides a general exception for transfers of *any* property for use in an active trade or business outside the United States, and the list of ineligible items does not include goodwill or going concern value. Congress adopted a specific definition of ineligible intangible property which does not include goodwill or going concern value (the final regulations remove this statutory reference as no longer necessary). The intent to exclude foreign goodwill and going concern value from taxation under Code Sec. 367 is unequivocally expressed in the legislative history as reflected in temporary regulations for over 30 years.[9]

Indeed, the IRS and Treasury apparently continue to believe that it generally would be appropriate for foreign goodwill and going concern value to not be subject to taxation under Code Sec. 367, but state that taxing such items is necessary because taxpayers are taking positions that an

inappropriately large portion of the value of property transferred to a foreign subsidiary consists of goodwill and going concern value rather than Code Sec. 936(h)(3)(B) intangible property.[10] The government, however, does not support its assertion,[11] and the Tax Court has rejected similar IRS transfer pricing arguments (but the preamble nowhere discusses those cases). The final regulations appear to be essentially an attempt to bolster the IRS's litigation position.[12]

Code Sec. 367 applies only to transfers of property, and the final regulations do not attempt to overrule well-established case law that holds that merely relocating functions within a multinational group, or allowing an affiliate to benefit from a business opportunity available to the group, does not result in a taxable transfer, where the function relocation or opportunity does not take the form of any legally enforceable rights.[13] The Section 482 regulations confirm that such benefits in and of themselves are not compensable under Code Sec. 482.[14] In addition, the Tax Court recently confirmed that the IRS must demonstrate affirmatively that taxable asset transfers occurred, rather than simply asking the court to infer that such must be the case in light of the putative transferee's subsequent earning of an entrepreneurial profit.[15]

Endnotes

1. T.D. 9803, 81 FR 91,012 (Dec 16, 2016). The final regulations purport to apply retroactively to transfers occurring on or after September 14, 2015. Reg. Sec. 1.367(a)-1(g)(5).
2. The final regulations adopt proposed regulations with no material changes. *See* REG-139483-13, 80 FR 55,568 (Sept. 16, 2015); Yoder, "Proposed Code Sec. 367 Regs Attempt to Tax Foreign Goodwill and Going Concern Value," *Int'l Tax J.* 3 (March–April 2016).
3. Reg. Sec 1.367(a)-2(a)(2).
4. Reg. Sec. 1.367(a)-2(b).
5. Other definitions of intangible property specifically list goodwill and going concern value in situations in which policymakers have intended for a rule to apply to these items. *See*, *e.g.*, Code Secs. 197(d) and 865(d); Reg. Sec. 1.263(a)-4(c))1)(ix)-(x); Reg. Sec. 1.954-2(e)(3)(iv); Reg. Sec. 1.861-9T(h)(1)(ii).
6. *Veritas Software Corp.*, 133 TC 297, 316, 323, Dec. 58,016 (2009). *See* Yoder & Lewis, "Properly Valuing Intangibles Transferred to Foreign Subsidiaries," 142 *Tax Notes* 470 (2014).
7. Reg. Sec. 1.367(d)-1T(b).
8. Reg. Sec. 1.367(a)-1(b)(5), (d)(5).
9. *See*, *e.g.*, Joint Committee on Taxation, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984* (Dec. 31, 1984), at 428. ("Congress did not believe that transfers of goodwill, going concern value, or certain marketing intangibles should be subject to tax.")
10. Preamble to Proposed Regulations, 80 FR, at 55,571-55,572; Preamble to Final Regulations, 81 FR, at 91,105-91, 116.

[11] *See* Letter to Editor, "Response to Treasury's Crackdown on Goodwill Boom," 150 *Tax Notes* 367 (Jan. 18, 2016) (illustrates that goodwill can represent a majority of the value of a business).

[12] The validity of the final regulations seems questionable. *See Altera Corp.*, 145 TC No. 3 (July 27, 2015) (unanimous reviewed Tax Court opinion held that Reg. Sec. 1.482-7(d)(2) was invalid because Treasury failed to demonstrate that it engaged in reasoned decision-making as required by the Administrative Procedure Act). The IRS has appealed this decision to the US Court of Appeals for the Ninth Circuit, Docket Nos. 16-70496, 16-70497.

[13] *See Hospital Corp. of America*, 81 TC 520, 590, Dec. 40,476 (1983) (no compensation was required for the mere act of making available to a foreign subsidiary an opportunity to construct and run a hospital in Saudi Arabia, as the opportunity entailed no legally enforceable property rights); *Bausch & Lomb, Inc.*, 92 TC 525, Dec. 45,547 (1989), *aff'd*, CA-2, 91-1 USTC Para. 50,244, 933 F2d 1084 ("The mere power to determine who in a controlled group will earn income cannot justify a section 482 allocation of the income from the entity who actually earned the income."); *Merck & Co., Inc.*, 91-2 USTC Para. 50,456, 24 CLSCt 73, 88 (the court stated that the arrangement involved "no more than a recognition that Merck is the parent of the foreign affiliates. A parent corporation may create subsidiaries and determine which among its subsidiaries will earn income. The mere power to determine who in a controlled group will earn income cannot justify a section 482 allocation from the entity that actually earned the income.").

[14] Reg. Sec. 1.482-9(l)(3)(v) ("[a] controlled taxpayer generally will not be considered to obtain a benefit where that benefit results from the controlled taxpayer's status as a member of a controlled group"); (l)(5), *Exs* 15,18 and 19.

[15] *See Medtronic Inc.*, 111 TCM 1515, Dec. 60, 627(M), TC Memo 2016-112 (June 9, 2016), at 141–142 ("[T]he gist of respondent's argument seems to be that MPROC could not possibly be as profitable as it is unless intangibles were transferred to it. We are not persuaded by this argument."). Similarly, in a Stipulation of Settled Issues filed with the Tax Court on July 20, 2016, in *Guidant LLC,* the IRS fully conceded its arguments under Section 367(a) and (d), despite the fact that resolution of the ongoing transfer pricing issues as stipulated left more return offshore than the IRS had contended was consistent with the arm's length standard.

House Tax Committee Votes To Repeal Obamacare

Further progress towards the repeal of Obamacare and its replacement with a Republican alternative was taken on the evening of March 9, with the House of Representatives House Ways and Means Committee approving the proposed new legislation.

By approving the text of the American Health Care Act, the Committee voted to repeal the majority of the tax provisions included in the Obamacare legislation, notably the Medicare surtax and net investment tax on incomes above certain thresholds; the individual and employer mandates; and the premium tax credit, which is intended to help those on low and middle incomes to buy approved health insurance schemes.

The Republican plan would replace the premium tax credits with a refundable tax credit of between USD2,000 and USD14,000 depending on family size and income, aimed at taxpayers who do not receive insurance through work or a government program.

The proposed legislation would also broaden the scope of tax-advantaged Health Savings Accounts by almost doubling contribution limits and giving taxpayers more choice on how they spend money accumulated in their accounts.

The Committee has jurisdiction over federal revenues measures, and therefore its approval of the proposals is a key step towards the repeal and replacement of Obamacare. Following approval of new legislative proposals by the Energy and Commerce Committee – which also has jurisdiction over key elements of Obamacare – on the same day, the measures move to the House Budget Committee to be considered as one bill. The bill will then be sent to the Rules Committee (also known as the Speaker's Committee), before moving to the House floor for a final vote.

Trumpcare Could Leave 24m More People Uninsured By 2026

According to a report from the Congressional Budget Office (CBO), 24m more people would no longer have subsidized health insurance by 2026 if the American Health Care Act (AHCA) is enacted in its current form.

Produced in cooperation with the Joint Committee on Taxation (JCT), the report estimates that by 2026 the enactment of AHCA would reduce federal deficits by USD337bn over the 2017–2026 period. It states that 14m more people would be without health insurance by 2018, and this number would rise to 21m by 2020 and to 24m by 2026. Added to the 28m people estimated not to be insured in 2026

under current law, this could total 52m uninsured people.

The AHCA would bring about government cost savings of USD1.2 trillion, and cut revenues by about USD900bn.

The largest savings would come from reductions in outlays for Medicaid and from the elimination of the Affordable Care Act's (ACA's) subsidies for nongroup health insurance, the report said. It added that the largest costs would come from repealing many of the changes the ACA made to the Internal Revenue Code – including an increase in the Hospital Insurance payroll tax rate for high-income taxpayers, a surtax on those taxpayers' net investment income, and annual fees imposed on health insurers – and from the establishment of a new tax credit for health insurance.

The report went on to discuss the impact of the reforms on health insurance premiums. It said in its conclusion: "Although average premiums would increase prior to 2020 and decrease starting in 2020, CBO and JCT estimate that changes in premiums relative to those under current law would differ significantly for people of different ages because of a change in age-rating rules. Under the legislation, insurers would be allowed to generally charge five times more for older enrollees than younger ones rather than three times more as under current law, substantially reducing premiums for young adults and substantially raising premiums for older people."

US Virtual Currencies Industry Calls For Tax Certainty

Leading virtual currency industry stakeholders have formed a coalition to lobby in Washington, DC, for more effective tax policies for virtual currency markets in the US.

The Chamber of Digital Commerce (CDC) and international law firm Steptoe & Johnson LLP announced the formation of the Digital Assets Tax Policy Coalition on March 8, in response to what they see as a lack of clear guidance for issuers and users of virtual currencies such as Bitcoin, which have grown in popularity as a payment medium.

Led by the CDC, industry participants include some of the leading exchanges, wallet providers, and transaction processing companies in the digital asset sector. Steptoe will serve as counsel to the Coalition.

To date, the only guidance issued by the IRS regarding virtual currencies is contained in Notice 2014-21, which was issued in April 2014. This states that, as Bitcoin and other digital currencies do not have legal tender status in any jurisdiction, they should be treated as property for US federal tax purposes, and, therefore, the general tax principles that apply

to property transactions also apply to transactions using virtual currency.

"Clear tax treatment for digital assets is essential to ensure robust growth of this important sector," said Perianne Boring, President and Founder of the CDC.

The Coalition also says that clearer guidance would help the IRS enforce the tax laws in this area more effectively and lead to fewer disputes between the authorities and taxpayers.

"Tax solutions that allow the IRS to do its job without resorting to actions such as a John Doe summons will be of benefit to all," said Jason Weinstein, partner at Steptoe, and co-chair of Steptoe's Blockchain and Digital Currency practice.

Weinstein was referring to an order issued by a federal court in the Northern District of California on November 30, 2016, authorizing the IRS to serve a John Doe summons on Coinbase Inc., a major virtual currency exchanger headquartered in San Francisco, to discover information on US taxpayers who transacted in virtual currencies, such as Bitcoin, during the years from 2013 to 2015. It was said that, "because transactions in virtual currencies can be difficult to trace and have an inherently pseudo-anonymous aspect, taxpayers may be using them to hide taxable income from the IRS."

In comments made at the time of the summons, IRS Commissioner John Koskinen said transactions in virtual currency "are taxable just like those in any other property," referencing the agency's 2014 guidance.

However, in December, the IRS was criticized by the Treasury Inspector General For Tax Administration (TIGTA) for its failure to implement a full virtual currency compliance program. "None of the IRS operating divisions have developed any type of compliance initiatives or guidelines for conducting examinations or investigations specific to tax non-compliance related to virtual currencies," TIGTA said.

The American Institute of Certified Public Accountants (AICPA) has also urged the IRS to provide additional guidance on how the existing US tax code should apply to virtual currency transactions.

In a letter to the IRS last June, Troy Lewis, Chair of the AICPA's Tax Executive Committee, observed that virtual currency transactions, "in which taxpayers increasingly engage, add a new layer of complexity to the analysis of a client's reporting requirements."

"The issuance of clear guidance in this area will not only reduce the confusion and burden for tax preparers, but also allow taxpayers to accurately comply with IRS rules."

Obamacare Repeal Would Benefit High-Income Taxpayers: Think Tank

The repeal of or delay to tax increases in the Affordable Care Act (ACA) will "overwhelmingly benefit high-income households," according to the Urban-Brookings Tax Policy Center (TPC).

The House Ways and Means Committee has already approved the Republican's proposals to repeal elements of the ACA, commonly known as Obamacare. The TPC estimates that once the changes are fully effective in 2022, the chief beneficiaries in relative terms will be those households with higher incomes.

The TPC has calculated the lowest income households will receive a tax cut of USD150, equal to approximately 0.9 percent of their after-tax income. The highest income households would see tax cuts exceeding 2 percent of their after-tax income.

The top 1 percent of households by income would receive a tax cut of more than USD37,000, equivalent to 2.1 percent of their after-tax income, the think tank said.

Households in the top 0.1 percent would enjoy a tax cut of USD207,000 on average, or 2.6 percent of their income.

The TPC estimates cover the effects of repealing tax-raising measures in the ACA, such as the Medicare tax and net investment tax for high-income households. It does not analyze the Republican's alternative proposal for age-based refundable tax credits.

More Tax Hikes For UK Taxpayers In 2017 Budget

The UK Budget, released on March 9, featured tax measures to, among other things, hike taxes on self-employed workers, further close avenues for legal avoidance, and defer mandatory digital tax reporting until April 2019.

A key announcement in the Budget was that the tax-free allowance for dividend income will be cut from GBP5,000 (USD6,080) to GBP2,000, in a bid to reduce opportunities for legal individual income tax avoidance through the use of companies. This will reduce the tax differential between the employed and self-employed on the one hand, and those working through a company on the other.

The Government had already announced it will abolish Class 2 National Insurance contributions (NICs) from April 2018. On its own, this would increase the differential between the rates of National Insurance paid by employees and those paid by the self-employed. It announced that it would legislate to increase the main rate of Class 4 NICs from 9 percent to 10 percent with effect from April 6, 2018, and then to 11 percent with effect from April 6, 2019. However, this was subsequently deferred by Prime Minister Theresa May, and removed from the agenda entirely by Chancellor of the Exchequer, Philip Hammond in a surprise announcement on March 15.

For pensions for all taxpayers, a 25 percent tax charge will apply to pension transfers made to a Qualifying Recognised Overseas Pension Scheme (QROPS). In addition, UK tax rules will apply to any payments made in the first five full tax years following the transfer, regardless of whether the individual is or has been UK resident in that period. Exceptions will be made to the charge, allowing transfers to be made tax free where people have a genuine need to transfer their pension. The changes will take effect for transfers requested on or after March 9, 2017.

The Government has also announced a review of rules for the taxation of image rights.

Measures covering real property include that the Government will remove loopholes to the measure included in the 2016 Finance Bill aimed at offshore property developers. It will legislate in Finance Bill 2017 to amend the legislation on profits from trading in and developing land in the UK at sections 76–80 of the Finance Act 2016 to tax all profits arising on or after March 8, 2017.

There will be broad changes to the Social Investment Tax Relief, which is intended to encourage individuals to support social enterprises

and help them access new sources of finance. The Government will also make administrative changes to research and development (R&D) tax credits, following a review of the tax environment for R&D. This is intended to increase the certainty and simplicity around claims, and the Government will take action to improve awareness of R&D tax credits among SMEs.

The Government will introduce an exemption from withholding tax for interest on debt traded on a multilateral trading facility, removing a barrier to the development of UK debt markets, and will consult from spring 2017 on implementation. It will also seek to extend Enterprise Management Incentives and high-end TV, animation, and video games tax reliefs beyond 2018, subject to state aid approval.

As previously announced, the Government will legislate in Finance Bill 2017 for the Soft Drinks Industry Levy. The two thresholds, at 5 grams and 8 grams of sugar per 100ml, have been designed so that, by taking reasonable steps to reduce sugar content, UK producers and importers of soft drinks can pay less or escape the charge altogether. The rates were announced at Spring Budget 2017, and will be 18 pence per liter (ppl) for the main rate and 24 ppl for the higher rate. The levy will take effect from April 2018.

The Budget also confirmed measures announced previously, including in budgets in 2016. Under these changes, the UK will:

- Amend the definition of gaming payments and prizes, and change the tax treatment of freeplays, for Remote Gaming Duty purposes;
- Require disclosure of indirect tax avoidance schemes;
- Create two new income tax allowances of GBP1,000 each, for trading and property income, to support taxpayers who generate small amounts of income from the sharing economy. The allowances can be deducted from income instead of actual expenses;
- Bring about changes announced at Budget 2016 to tax-advantaged venture capital schemes;
- Increase the standard rate of Insurance Premium Tax (IPT) by 2 percent from June 2017;
- Bring about a number of changes to the taxation of benefits-in-kind, as well as reform of tax arrangements for termination payments. Under such changes, the first GBP30,000 of a termination payment will remain exempt from income tax and NICs;
- Tackle disguised remuneration avoidance schemes, targeting the self-employed in particular, with effect from April 2017; and
- Close loopholes in the Promoters of Tax Avoidance Schemes (POTAS) regime. In addition, as announced at Autumn Statement 2016, the Government will introduce a new penalty on those individuals or entities who enable the use of tax avoidance arrangements that HM Revenue & Customs (HMRC) later defeats.

Administrative changes include that, from the 2017/18 tax year, the general entry threshold for the trading cash basis will be increased to GBP150,000. (For Universal Credit claimants, the entry threshold will be increased to GBP300,000.) The exit threshold will be increased to GBP300,000 for all users of the trading cash basis.

As announced in August 2016 and confirmed at Spring Budget 2017, the Government will legislate in Finance Bill 2017 to allow most unincorporated property businesses (other than limited liability partnerships, trusts, partnerships with corporate partners, or those with receipts of more than GBP150,000) to calculate their taxable profits using a cash basis of accounting from April 6, 2017.

In addition, with effect from April 2017, the Government will provide, for unincorporated businesses, a simple list of disallowed expenditure in order to simplify the rules for allowable deductions within the cash basis.

The Budget also included a number of value-added tax (VAT) changes. These include confirmation that the Government will legislate for the Fulfilment House Due Diligence Scheme in Finance Bill 2017. The draft legislation was published for consultation on December 5, 2016. The scheme will require all UK fulfillment houses to register with HMRC from April 1, 2018, and comply with record-keeping and due diligence standards. Following the consultation, the draft legislation has been revised to provide for a disclosure gateway that will permit HMRC to disclose taxpayers' information to fulfillment houses for the purpose of meeting their obligations under the scheme.

As announced at Autumn Statement 2016, the Government will legislate in Finance Bill 2017 to introduce a penalty for participating in VAT fraud. Following consultation on the draft legislation, some minor changes have been made to improve the clarity of the measure and also to limit the naming of a company officer to instances where the amount of tax due exceeds GBP25,000. The new penalty will take effect once the Finance Bill receives Royal Assent.

The Government is to investigate a split-payment model for online sales and new measures to counter VAT non-compliance in the construction sector. It will also review registration and deregistration thresholds, and remove the VAT use and enjoyment provision for mobile phone services provided to consumers.

UK Social Security Tax Increase Deferred

UK Prime Minister Theresa May has agreed to delay legislating for an increase in National Insurance contributions (NICs) for self-employed persons until the fall, following opposition to the proposals from senior members of her party.

She defended the measures at a European Summit in Brussels, stating that they do not conflict with a Tory pledge not to increase National Insurance. She said, however, that she had agreed to delay the measure until the UK's next half-year Budget.

Chancellor Philip Hammond further announced on March 15 that the increase would not now take place in the current Parliament.

Hammond had announced in the recent Budget that the Government would legislate to increase the main rate of Class 4 NICs paid by the self-employed from 9 percent to 10 percent with effect from April 6, 2018, and then to 11 percent with effect from April 6, 2019.

Italy Introduces Non-Dom Tax Incentive

In a bid to attract wealthy individuals to relocate to the country, and high-net-worth Italian expats to return there, the Italian authorities have introduced a EUR100,000 (USD106,251) per year substitute tax on foreign income and gains for previous non-doms who declare Italy as their primary tax residence.

According to the Italian Revenue Agency: "This favorable tax regime is available for 'newly resident' individuals in Italy, who (regardless of their nationality or domicile) have been non-tax resident in Italy for at least nine years out of the ten years preceding their transfer to Italy. The incentive regime may be also extended to the family members of these individuals."

"High-net-worth individuals transferring their tax residence to Italy are enabled to apply a substitute tax to their foreign income and gains, amounting to EUR100,000 for each fiscal year, in lieu of the Italian Income Tax. Therefore, this taxation represents an alternative to the application of the ordinary taxation and the option is valid for a period of 15 years."

"The election for the regime may be extended to family members through the payment on their foreign income and gains of a substitute tax amounting to EUR25,000 per member."

Italian-sourced income and gains for individuals opting into the scheme will remain taxable in the normal, progressive way, although there are benefits for applicants in terms of gift and succession taxes and tax reporting.

Observers have suggested the Italian authorities may have their eyes on capturing wealthy UK expats post-Brexit.

Argentina Allows Rent Deduction From Taxable Income

Argentina has published a resolution to allow taxpayers to deduct a portion of their rent payments from their taxable income.

Under General Resolution 4003-E, which was published in the country's Official Gazette, the deduction will be available subject to an annual cap of ARS51,967 (USD3,326).

The deduction will be available providing the taxpayer has no property holdings and completes the required process within tax returns, including forwarding on documentation proving the payment of rent under a tenancy agreement.

US Mobile Workforce Tax Bill Reintroduced

Legislation has been reintroduced into the US Congress to simplify state income tax requirements for employees who work multiple days per year outside the state of their residence.

The Mobile Workforce State Income Tax Simplification Act of 2017, introduced simultaneously in the House of Representatives and the Senate on March 7, provides a uniform framework for when states may tax non-resident employees who travel to the taxing state to perform work.

At present, states have widely varying and inconsistent requirements on the withholding of income tax and filing of personal income tax returns when employees travel to another state temporarily. For example, individuals are subject to state tax withholding after working 59 days in Arizona, 15 days in New Mexico, or 14 days in Connecticut, but, depending on their work plans, employees may be legally required to file an income tax return in every state in which they have conducted business, even if they were there for only one day.

A uniform standard would, according to Rep. Mike Bishop (R – Michigan), the sponsor of the House bill, substantially simplify state income tax law compliance for both employers and employees.

"Our state income tax structure is too complicated and costly for today's workforce," said Bishop. "Right now, workers who must travel out of state and their respective employers face dozens of erroneous reporting requirements, many of which depend on varying length of travel and income levels. The goal of our bipartisan legislation is to create one simplified system for Americans to do their state income taxes, eliminating the burdensome paperwork and reducing compliance costs for everyone involved."

Bishop's bill provides that an employee's earnings remain subject to full tax in the state of his or her residence. An employee would only be subject to another state's income taxes if he or she works there more than 30 days per calendar year.

Commenting on the bill, the American Institute of Certified Public Accountants (AICPA) said it "strongly supports" the proposals.

"This legislation strikes an equitable balance, and we urge Congress to take swift action so the bill can become law and relieve the burden imposed on countless US employers and employees by inconsistent state tax laws," said Barry C. Melancon, President and CEO of the AICPA.

The same bill was approved by the House in September 2016, but was not taken up by the Senate before Congress expired in December. The proposals did, however, attract wide bipartisan support.

India's Jaitley Says GST Implementation Likely In July

India's Finance Minister, Arun Jaitley, says that India is likely to have its goods and services tax (GST) regime in place by July, after approval from the GST Council of federal-level legislation.

The GST Council, comprising states and center representatives, approved legislation for the Central GST. It has yet to sign off on the state-level component, which would tax transactions between states.

The legislation will now go to Parliament, which is due to debate the legislation beginning next week.

In another new development at the Council meeting, negotiators confirmed a 5 percent rate for small hotels and restaurants.

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, the 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.

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, an announcement earlier that India would defer the start date did not come as a surprise. Observers had, however, expected another delay, beyond July 1, 2017.

Thai Government Denies VAT Increase 'Plan'

There has been confusion in Thailand over remarks made by Prime Minister Prayut Chan-o-cha, after the premier appeared to suggest increasing the 7 percent VAT rate to 8 percent to boost the Government's coffers to fund of various public projects.

The Prime Minister was quoted in the national media as saying: "The VAT has been at 7 percent for many years. If we increased it by just 1 percent, then the country would have an increased income of THB100bn (USD2.8bn). So I need to ask: Can you sacrifice it or not?"

Following a popular outcry at the possibility, various government officials and the Prime Minister himself have since distanced the Government from the comments, arguing that

the intention was merely to explain how much additional revenue would be generated by a 1 percent increase in VAT, and that the remarks had been twisted by the media.

Prayut, in addition to Deputy Prime Minister Somkid Jatusripitak, subsequently stressed that there are no plans to increase the VAT rate at this time. Finance Minister Apisak Tantivorawong has also reportedly stated that the current rate will be extended for a further year from September.

The International Monetary Fund in June 2016 welcomed the general direction of the Thai Government's tax policies, but urged it to increase the value-added tax rate to 10 percent.

Thailand's headline VAT rate is, in theory, 10 percent. However, the 7 percent rate has been in force since 1999 to support economic growth.

Australian Prime Minister Reiterates Opposition To GST Hike

Australian Prime Minister Malcolm Turnbull has described the argument for a goods and services tax (GST) hike as flawed.

According to Turnbull, "the idea that there is this huge, easy pot of gold to grab, simply does not stack up."

Turnbull made the comments during a question and answer session at the Australian Financial Review Business Summit. He denied claims that the Government has failed to take on "big tax reform," emphasizing the recent changes to superannuation tax concessions and the increased threshold for the middle-income personal tax rates.

Turning to the issue of GST reform, Turnbull acknowledged there will be calls to increase the GST and to either give the revenue to the states or use it to reduce company tax.

However, he argued that "the problem with … raising the GST, is that because so many Australians are not in the tax net, by the time you have [ensured] the bottom and the second bottom quintile – so the bottom 40 percent of households by income – are compensated so that they are not worse off, or not materially worse off, you have … little money left."

IMF Urges Bangladesh To Install New VAT Law From July

The International Monetary Fund (IMF) has urged Bangladesh to proceed on schedule with the introduction of the new value-added tax (VAT) from July 2017.

Bangladesh intends to introduce a uniform 15 percent VAT rate from July 1, based on a new VAT law drawn up in 2012 that has yet to take effect. Exemptions will be in place for basic goods and services for lower income taxpayers.

As well as boosting revenues for Bangladesh, the new VAT regime is intended to make tax compliance significantly simpler, especially for smaller firms.

At the end of a recent visit, an IMF official said: "Modernizing the tax system will be needed to boost Bangladesh's low budget revenue and allow room for public investment and social spending to increase to levels consistent with the government's growth ambitions without compromising fiscal sustainability."

"Launching the new VAT Law in July 2017 as planned will be central to raising revenue, and will have other significant benefits as well. In particular, it will make tax administration more transparent, it will reduce taxpayers' compliance costs, and serve as a key building block for a modern tax system more broadly."

OECD To Hold Fourth Meeting On International VAT Reform In April

The OECD has announced the agenda and date for the fourth meeting of the OECD Global Forum on value-added tax (VAT), to be held on April 12-14, 2017.

The meeting will focus in particular on the policy and operational challenges faced by tax authorities in the era of digital globalization, and on the efficient and effective implementation of the standards and mechanisms for addressing these challenges recommended by the International VAT/GST Guidelines.

These Guidelines were developed based on the final base erosion and profit shifting (BEPS) recommendations on Action 1 – Addressing the Tax Challenges of the Digital Economy.

The OECD said the meeting will include discussions on the collection of VAT/GST on online sales by offshore vendors; the role of digital platforms in the collection of VAT/GST on online sales; and the use of technology to support the effectiveness of VAT/GST collection.

The Global Forum will also look at recent and ongoing VAT/GST reforms around the world and examine the outcomes of recent VAT/GST policy research and analysis in a range of areas that are of common interest to countries and organizations worldwide. The upcoming meeting will also reserve considerable time for analysis and experience sharing in the area of fraud detection and effective countermeasures; on refunds policy and management; on digitalization of tax administration; and on improving compliance through incentives.

This fourth meeting is aimed at senior tax officials and representatives of international organizations. A delegation of academics and business representatives will also be invited to participate.

Canadian MPs Call For Tougher Action On Tax Evasion

The Canadian House of Commons has passed a motion calling on the Government to take tougher action against tax avoidance and to close tax loopholes.

The motion was put by the opposition New Democratic Party. It was passed by 205 votes to 77.

The motion called on the Government to "address tax measures that primarily benefit the wealthy." It said the Government should fulfill its pledge to "cap the stock option deduction loophole."

In addition, Members of Parliament recommended that the Government tighten rules for shell companies, and renegotiate tax treaties that "let companies repatriate profits from tax havens to Canada tax-free."

Finally, the motion argued that the Government should end "penalty-free amnesty deals for individuals suspected of tax evasion."

ATO Publishes Rulings On Superannuation Tax Changes

The Australian Taxation Office (ATO) has published three Law Companion Guidelines (LCGs), which explain recent changes to superannuation taxation.

The ATO said the LCGs provide taxpayers with "binding protection" if relied upon in good faith. They cover changes to:

- The transitional capital gains tax relief available for superannuation funds because of the new transfer balance cap and transition-to-retirement reforms commencing July 1, 2017;
- How the transfer balance cap (set at AUD1.6m (USD1.2m) for 2017/18) operates for account-based superannuation income stream products; and
- How the changes to the calculation of concessional contributions and excess concessional contributions apply to contributions and amounts allocated by superannuation providers for financial years commencing on or after July 1, 2017.

SARS Seeks To Remove Davis From Key Tax Policy Committee

The South African Revenue Service (SARS) has requested that Judge Dennis Davis be terminated as chair of the influential Davis Tax Committee (DTC).

SARS was responding to comments reportedly made by Davis during an address at a recent conference, which the agency described as "unprovoked and unwarranted attacks" on the tax authority's integrity.

These comments reportedly included accusations that the "erosion of the integrity of SARS was one of the biggest challenges facing South Africa today," and that SARS is incapable of properly dealing with multinational tax evasion and avoidance.

Noting that Davis did not address any concerns directly with the agency, SARS said it intends to "engage the Minister of Finance urgently with a view that Judge Davis should recuse himself from the specialist tax committee, or that his membership to the committee be terminated."

The DTC was established in 2013 to delve into how the tax system could better promote inclusive economic growth, jobs creation, development, and fiscal sustainability. Many of its recommendations have been adopted in South Africa, and recently it has been charged with studying specific proposals on corporate tax matters and South Africa's response to the OECD's proposals on base erosion and profit shifting (BEPS).

OECD Seeks Input On Spanish Version Of Transfer Pricing Toolkit

On March 10, 2017, the OECD released for public comment a Spanish translation of a draft toolkit to assist developing countries to build strong and credible transfer pricing regimes.

An English version of the draft toolkit was earlier jointly released by the International Monetary Fund, the OECD, the United Nations, and the World Bank Group on January 24. The draft examines how tax administrations can scrutinize transfer prices set by multinational corporations (MNCs) when there is insufficient information available to governments on market-based transactions that are comparable to those reported by the MNC, known as comparables.

The draft offers advice on making the best use of available data and options for monitoring the behavior of MNCs in situations where no data is available.

The draft discusses how to identify suitable comparables by properly defining an affected transaction, as well as sources for potential comparables. It also considers potential policy options such as the development of safe harbors to address situations where there are insufficient comparables.

The closing date for comments is April 7, 2017.

Minerals Council: Australia's Tax System Is Uncompetitive

The Minerals Council of Australia (MCA) has published a report it says confirms that the country's high company tax rates are damaging mining firms' ability to compete internationally for capital investment.

The report was commissioned by the MCA, and the research carried out by Dr. Jack M. Mintz and his colleagues at the University of Calgary. According to the report, "Australia's current tax burden on manufacturing and service companies is uncompetitive for investment."

The report compared the corporate tax rates of 43 countries. It found that, at 30 percent, Australia's tax rate is the tenth highest in this group, above the G20 average of 28.3 percent and the OECD average of 24.8 percent. In addition, while Australia's headline rate has remained static, the average G20 and OECD rates fell by 1 and 1.1 percentage points, respectively, from 2010 to 2017.

The study also concluded that Australia's marginal effective tax rate (METR) on capital is the seventh highest in the sample group. At 28.7 percent, it is 1.4 percent above the average G20 METR of 27.4 percent, and substantially higher than the OECD average of 19.2 percent. However, Australia does compare more favorably to the BRIC countries (Brazil, Russia, India, and China), which has an METR of 40.3 percent.

Turning to the minerals industry specifically, the study compared Australia's effective tax rate on iron ore investment with those of eight other countries. The rate was calculated at 37.8 percent, second highest only to the 39.7 percent calculated for South Africa. The Australian tax burden on mining is more than double that in Brazil (15.6 percent) and Chile (14.6 percent), and more than triple that in Canada (Quebec) (10.5 percent).

The report estimated that the AUD5 (USD3.76) per tonne royalty charge proposed by the Western Australian National Party would increase the effective rate from 37.8 percent to 45.2 percent.

The report recommended: "Australia should consider company tax reform. This would include a five point reduction in the company income tax rate, the elimination of stamp duties (in favor of other real estate taxes) and more profit-sensitive and internationally competitive state and territory mining royalty regimes."

Ibec: Major Overhaul Of Irish Business Tax Offering Needed

Danny McCoy, CEO of business group Ibec, has said that Ireland needs to "aggressively confront" the competitiveness challenge posed by a post-Brexit UK.

In a speech to the Ibec Business Leaders Conference, McCoy argued that "every government decision needs to be 'Brexit-proofed'." He pointed to reports that the UK is considering cutting its corporate tax rate and to the post-referendum fall in the value of sterling as symptoms of a problem that demands urgent government attention.

At the same time, McCoy was clear that Ireland must be "positioned to take full advantage of the inward investment opportunities that will arise" as a consequence of the UK leaving the EU.

In particular, McCoy said that "a major overhaul of our business tax offering is required to bring the Irish offering into line with the UK." He explained this should include a radical reform of the capital gains tax regime for entrepreneurs, and improvements to incentives for investment, innovation, and upskilling in SMEs.

McCoy also stressed the need for the Irish Government to "actively support the closest possible EU–UK relationship, while at the same time ensuring the UK does not steal a competitive march."

AZERBAIJAN - DENMARK

Signature

Azerbaijan and Denmark signed a DTA on February 17, 2017.

FINLAND - TURKMENISTAN

Into Force

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

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.

HONG KONG - PAKISTAN

Signature

Hong Kong and Pakistan signed a DTA on February 17, 2017.

INDIA - BELGIUM

Signature

India and Belgium signed a DTA Protocol on March 9, 2017.

ITALY - MONACO

Into Force

The Italian Finance Ministry announced on February 17, 2017, that Italy's new TIEA with Monaco had entered into force on February 4, 2017.

JERSEY - MAURITIUS

Signature

Jersey and Mauritius signed a DTA on March 3, 2017.

MAURITIUS - GHANA

Signature

Mauritius and Ghana signed a DTA on March 10, 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.

SINGAPORE - INDIA

Into Force

Singapore's DTA Protocol with India entered into force on February 27, 2017.

SINGAPORE - URUGUAY

Into Force

The DTA between Singapore and Uruguay entered into force on March 14, 2017.

SOUTH AFRICA - SAINT KITTS AND NEVIS

Into Force

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

SWITZERLAND - PAKISTAN

Signature

Switzerland and Pakistan are expected to sign a TIEA covering bank account information on March 21, 2017.

UNITED ARAB EMIRATES - BURUNDI

Signature

The UAE and Burundi signed a DTA on February 16, 2017.

VIETNAM - UNITED STATES

Ratified

According to recent media reports, Vietnam will soon ratify its new DTA with the United States.

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

THE AMERICAS

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

Chairs: M. Katharine Davidson TEP (STEP), Lawrence H. Heller TEP (Former U.S. Council Representative for STEP Worldwide)

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: Alessandro Amadeu da Fonseca (Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados), Glen Atchison (Harbottle & Lewis), James Brightwell (Barrister), Jonathan Burt (Harcus Sinclair), Russell Cohen (Farrer & Co), among numerous others.

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: Mary A. Akkerman TEP (Lindquist & Vennum LLP), Eduardo Arista TEP (Arista Law), Patricia Arrázola Jaramillo

TEP (Akro Legal International), Juan Bonet (Guyer & Regules), among numerous others

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

International Estate & Tax Planning 2017

5/22/2017 - 5/22/2017

Practising Law Institute

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

Chairs: Dean C. Berry (Cadwalader, Wickersham & Taft LLP), Robert Dumont (Principal, Robert Dumont PLLC)

http://www.pli.edu/Content/Seminar/International_Estate_Tax_Planning_2017/_/N-4kZ1z10ox6?ID=289155

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

Global Transfer Pricing Conference: DC

6/7/2017 - 6/8/2017

Bloomberg BNA

Venue: National Press Club, 529 14th St NW, Washington, DC 20045, USA

Key Speakers:TBC

https://www.bna.com/global-transfer-pricing-dc-2017/

Tax and Immigration Planning and Compliance for High Net Worth Individuals Acquiring US Citizenship, Green Cards and Expatriating

6/12/2017 - 6/12/2017

Bloomberg BNA

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

Key speakers: TBC

https://www.bna.com/expatriation_ny2017/

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

71st Congress of the International Fiscal Association

8/27/2017 - 9/1/2017

IFA

Venue: Winsor Barra da Tijuca, Av. Lúcio Costa, 2630 - Barra da Tijuca, Rio de Janeiro - RJ, 22620-172, Brazil

Key speakers: TBC

http://www.ifa2017rio.com.br/index.php

International Tax Issues 2017

9/11/2017 - 9/11/2017

Practising Law Institute

Venue: University of Chicago Gleacher Center, 450 N. Cityfront Plaza Drive, Chicago, Il 60611. USA

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

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2017/_/N-4kZ1z10p5l?ID=288689

ASIA PACIFIC

The 8th Offshore Investment Conference Hong Kong 2017

6/14/2017 - 6/15/2017

Offshore Investment

Venue: The Conrad Hong Kong, Pacific Place, One Pacific Place, 88 Queensway, Admiralty, Hong Kong

Key speakers: TBC

http://www.offshoreinvestment.com/event/8th-offshore-investment-conference-hong-kong-2017/

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: Annet Wanyana Oguttu (University of South Africa), Babatunde Oladapo (West African Tax Administrations Forum (WATAF)), Barassou Diawara (The African Capacity Building Foundation), Belema Obuoforibo (IBFD), Daniel Ngumy (Anjarwalla & Khanna (A&K)), among numerous others

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

WESTERN EUROPE

International Trust & Private Client Guernsey

3/21/2017 - 3/21/2017

Informa

Venue: Old Government House Hotel & Spa Guernsey, Ann's Place, GY1 1JL, 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: L'Horizon Beach Hotel and Spa, La Route de la Baie, St. Brelade, JE3 8EF, Jersey

Chair: Julian Washington (RBC Wealth Management)

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

Investment Company: Regulation Accounting & Taxation – 9th Annual Forum

3/28/2017 - 3/28/2017

Infoline

Venue: Doubletree by Hilton Victoria, 2 Bridge Place, Victoria, London, SW1V 1QA, UK

Key speakers: Nick Pearce (Alliance Trust Investments), Ronald Paterson (Eversheds), Anne Stopford (Grant Thornton), Peter Swabey (ICSA: The Governance Institute), among numerous others

https://finance.knect365.com/investment-company-accounting-taxation-regulation/agenda/1

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

17th Annual Tax Planning Strategies – US and Europe

4/5/2017 - 4/7/2017

American Bar Association

Venue: Ritz Carlton Hotel Arts Barcelona, Marina 19-21 08005, Barcelona, Spain

Chairs: Albert Collado (Garrigues), Carol P. Tello (Eversheds Sutherland (US) LLP), Sonia Velasco (Cuatrecasas)

http://shop.americanbar.org/PersonifyImages/ProductFiles/255529330/17Barcelona_brochure.pdf

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

Tax Planning for Non Doms 2017 – The Future of Non Doms After 6 April 2017

5/17/2017 - 5/17/2017

Private Client Tax

Venue: TBC, London, UK

Chair: John Barnett (Burges Salmon)

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

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

International Tax Aspects of Permanent Establishments

9/5/2017 - 9/8/2017

IBFD

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

Key Speakers: Bart Kosters (IBFD)

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

Duets in International Taxation: Single Taxation?

10/5/2017 - 10/6/2017

IBFD

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

Chairs: Prof. Frans Vanistendael (KU Leuven), Prof. Pasquale Pistone (IBFD), Prof. Dennis Weber (ACTL, University of Amsterdam and Loyens & Loeff), Prof. Stef van Weeghel (University of Amsterdam, PWC global thought leader)

https://www.ibfd.org/IBFD-Tax-Portal/Events/Duets-International-Taxation-Single-Taxation#tab_program

THE AMERICAS

United States

A listing of recent key international tax cases.

A court in the state of South Dakota has ruled against the state's new tax on sales made by out-of-state retailers, in a ruling intended to increase pressure for a new Supreme Court precedent in this area.

Under South Dakota's economic nexus law, signed by the state governor on March 29, 2016, remote sellers with annual in-state sales in excess USD100,000, or exceeding 200 transactions, are required to withhold and remit state sales tax.

The state of South Dakota sued three internet-based retailers, including Wayfair, Overstock, and Newegg, in an attempt to enforce the new tax, even though it was aware that under existing law, it was prevented from taxing sales made by retailers with no physical presence in the state, a fact noted by the South Dakota Sixth Judicial Circuit in its March 6 ruling.

Circuit Court Judge Mark W. Barnett said:

> "Because each of the defendants lacks a physical presence in South Dakota, the state acknowledges that under [existing case law], South Dakota is prohibited from imposing sales tax collection and remittance obligations on the defendants. The state further admits that this Court is required to grant summary judgment in defendants' favor."

Since the rise of e-commerce, an uneven sales tax playing field has emerged between "virtual" retailers and their physical counterparts. Brick-and-mortar retailers in states that impose sales and/or use taxes are legally obliged to collect these taxes from customers who make purchases in their stores at the point of sale and remit them to the state tax authority. However, if a resident of the same state chooses to purchase the same item from an online retailer or catalog seller based out-of-state, sales tax usually goes uncollected by the vendor because they do not have a physical presence, or tax nexus, there.

Many states have attempted to legislate around this problem by imposing an obligation on large internet retailers to collect and remit state sales tax, arguing that substantial volumes of sales, or the existence of an in-state affiliate program, is enough to establish a tax nexus in the state.

However, in the ongoing absence of federal legislation, the only source of guidance on this issue remains the 1992 Supreme Court ruling in *Quill*, which established the "physical presence" test for applying existing sales taxes to out-of-state merchants.

While Judge Barnett observed that "changing times and events" since *Quill* suggest another outcome would be more appropriate, he said he was not in a position to set a new precedent, noting that "it is simply not the role of a state circuit court to disregard a ruling from the United States Supreme Court."

While traditional retailers have long fought for a level playing field in this area, the decision was welcomed by the Retail Industry Leaders Association (RILA), which said the ruling was "one important step closer to the US Supreme Court, which is the only court that can overturn the outdated *Quill* decision."

"Retailers have long-fought for a level playing field with respect to online sales tax. Today's decision is an important and necessary step for closing the tax loophole that currently benefits large online retailers at the expense of local stores," RILA added in a statement.

Similar sentiments were expressed by the National Governors Association (NGA), which argues that the present state of affairs deprives state coffers of billions in sales tax revenues every year.

"Governors are not surprised by the decision found in *South Dakota v. Wayfair, Inc. et al.*," the NGA said. "The South Dakota law was designed to be challenged. In fact, the South Dakota court was 'duty bound' to rule the law unconstitutional because of a decades-old US Supreme Court precedent."

The US Supreme Court recently denied a review of *Quill*, by not taking up a case against Colorado's internet sales notice and reporting law. However, until Congress steps in with a federal solution to settle the issue, it is thought just a matter of time before it is once again asked to reconsider *Quill* as states increasingly take matters into their own hands.

This judgment was released on March 7, 2017.

http://cases.justia.com/federal/district-courts/south-dakota/sddce/3:2016cv03019/59193/38/0.pdf?ts=1484756528

South Dakota Circuit Court: *State of South Dakota v. Wayfair Inc. et al. (No. 3:2016cv03019)*

United States

The US Court of Federal Claims has turned down a claim from an Irish citizen that more than USD5m in US tax withheld on gambling winnings should be refunded under the US–Ireland double tax avoidance treaty.

The claim was filed by the plaintiff, John P. McManus, after USD5.22m in tax was withheld from winnings of USD17.4m connected to a three-day backgammon game held in the US.

McManus, who claims citizenship in Ireland but lives in Switzerland, argued that he is entitled to a refund under the tax treaty because, at the time the event took place in 2012, he paid the Irish domicile levy and was therefore a resident of Ireland for the purposes of Article 22 of the treaty, and exempt from the tax on gambling proceeds.

Introduced in 2010, the domicile levy applies to Irish-domiciled individuals who own property in Ireland valued at more than EUR5m (USD5.3m), whose worldwide income exceeds EUR1m, and whose liability for Irish income tax in the relevant tax year was less than EUR200,000.

Citing Article 4 of the treaty, McManus argued that he was a "resident" of Ireland in 2012 because he was "liable to tax" in Ireland "by reason of his domicile." He also contended that the domicile levy falls into the definition of a "full" and "comprehensive" tax liability under the OECD's Model Tax Convention.

In her judgment, senior judge Nancy B. Firestone agreed with the US Government's view, based on a letter received by the Irish tax authority, that payment of the domicile levy in itself is not sufficient to show that an individual is "resident" in Ireland for tax purposes.

This letter stated that: "The payment of the domicile levy does not entitle [McManus] to receive treaty benefits in accordance with the provisions in the Ireland–USA Double Taxation Convention. The domicile levy is not a covered tax for the purposes of this Convention."

Judge Firestone wrote:

> "In sum, none of Mr. McManus's arguments regarding his claim for a refund based on Articles 4 and 22 of the Tax Treaty have merit. The court finds that Mr. McManus's payment of the domicile levy alone did not make him a resident of Ireland in 2012 for the purposes of Article 4 of the Tax Treaty and thus his claim for a refund based on Article 22 is denied."

McManus also argued that the US tax on gambling winnings violates the treaty's non-discrimination clauses, which he contended apply to nationals of the US and Ireland regardless of residence status under the agreement.

However, Judge Firestone stated that the plaintiff's claim in this regard is barred under the Federal Circuit's doctrine of "substantial variance," because this argument was not presented to the Internal Revenue Service prior to the court hearing, and was made for the first time at the oral argument on the parties' cross-motions for summary judgment.

This opinion was released on March 3, 2017, having previously been filed under seal.

https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2015cv0946-50-0

US Court of Federal Claims: *John P. McManus v. The United States (No. 15-946T)*

WESTERN EUROPE

European Union (EU)

The General Court of the European Union has upheld anti-dumping duties on imports of Chinese solar panels to the EU, finding that EU institutions followed the correct methodology in applying the taxes.

The duties in question were imposed by the European Council on December 2, 2013, following a lengthy investigation which concluded that Chinese solar panels were being sold in Europe at well below their normal market value – a practice known as dumping.

The investigation also found that the manufacture of these products was being illegally subsidized by the Chinese Government, and anti-dumping duties (ADs), and anti-subsidy import taxes, known as countervailing duties (CVDs), were imposed at an average rate of 47.7 percent to mitigate the impact on the European solar panel industry of these dumped imports.

Twenty-six companies affected by the measures applied to the General Court for an annulment of the ADs and CVDs, arguing that the EU was wrong to apply the duties in cases where crucial components manufactured elsewhere were shipped with final products from China.

In its ruling, the Court explained that:

> "[I]n determining the normal value of the products concerned (solar panels) in the exporting country, the term 'exporting country' did not necessarily have to be defined in the same way for the entirety of the product, irrespective of its origin. Accordingly, the EU institutions were entitled validly to consider that, for cells and modules originating in and consigned from China and for modules originating in China but consigned from third countries, the exporting country corresponded to the country of origin (China), whereas, for modules consigned from China but originating in a third country, the exporting country corresponded not to the country of origin but to the intermediate country (also China)."

The Court also rejected the argument that the rates of duties determined by the Council are excessive compared with what is necessary to remedy the injury caused to the EU industry by the dumped imports.

This judgment was reported upon on February 28, 2017.

http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170018en.pdf

General Court of the European Union: *JingAo Solar and others v. EU Council (Case T-157/14)*

Greece

The European Commission has referred Greece to the European Court of Justice (ECJ) in a case concerning the reduced rate of excise duty that it applies to the alcoholic spirits Tsipouro and Tsikoudià.

The Commission argued that under EU law, the same excise duty rate should apply to ethyl alcohol used in the production of alcoholic beverages, unless exemptions or derogations apply.

It explained that Greece does not have a derogation for Tsipouro or Tsikoudià, and currently applies a reduced rate of excise duty (50 percent) to both, along with a super-reduced rate (of around 6 percent) to the production of the same spirits by small producers.

Tsipouro and Tsikoudià are traditional alcoholic drinks, produced in the north of Greece and in Crete. Both drinks have protected geographical indications.

According to the Commission, the application of these reduced rates infringes EU rules because it favors spirits produced in Greece. The Commission stated that this runs counter to the principle that prohibits internal taxation which affords indirect protection to domestic products, or the imposition on the products of other member states of any internal taxation in excess of that imposed on similar domestic products. It added that although small distilleries may benefit under certain conditions from a reduced rate of excise duty, this cannot be less than 50 percent of the standard national rate.

In September 2015, the Commission formally asked Greece to amend these rules. As Greece has not complied with this to the Commission's satisfaction, it has now been referred to the ECJ.

http://europa.eu/rapid/press-release_IP-17-242_en.htm?locale=en

European Court of Justice: *European Commission v. Greece*

Netherlands

The Dutch Supreme Court has ruled that the national tax authority cannot use camera evidence to prove whether individuals have exceeded their company car mileage allowances and are therefore liable to pay more tax.

Under Dutch tax rules, company car users driving more than 500km per year for personal use must pay additional payroll tax, and the tax authority had been using footage from police-operated roadside automatic vehicle number plate recognition (ANPR) cameras in an attempt to disprove individuals' claims that they had not exceeded this limit.

The case progressed to the Supreme Court after three individuals complained that assessments made by the tax authority on the basis of such footage were illegitimate and violated their right to a private life under the European Convention of Human Rights.

In its judgment of February 24, the Supreme Court came down on the side of the taxpayers, ruling that the tax authority was not entitled to use such footage to enforce tax rules.

"The issue here is not about one or a few observations in public spaces, but the systematic collection, capture, editing, and storage for years of data on the movement of vehicles at various locations in the Netherlands," a court statement explained.

"The additional tax assessments payroll taxes imposed on taxpayers should not be based on the ANPR data," the statement added.

The Court dismissed one of the cases, and passed the other two back to the lower courts with the proviso that they cannot use evidence collected through ANPR cameras to reach a decision.

The judgment was released on February 24, 2017, in Dutch.

https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Nieuws/Paginas/Belastingdienst-mag-fotos-snelwegcameras-niet-gebruiken.aspx

Dutch Supreme Court: *X v. Financial Secretary (ECLI: NL: HR: 2017: 286, 287, 288)*

Poland

The European Court of Justice (ECJ) has rejected a challenge brought by the Polish Government concerning the inability of member states to levy a reduced rate of value-added tax to electronic publications, which would be in line with the VAT treatment of tangible publications.

The case concerned whether the European Parliament had the opportunity to be sufficiently involved in the legislative procedure for the adoption of point 6 of Annex III of the EU VAT Directive.

Under this provision, member states may apply a reduced rate of VAT to printed publications such as books, newspapers, and periodicals. Digital publications, by contrast, must be subject to the standard rate of VAT, with the exception of digital books supplied on a physical support (*e.g.*, a CD-ROM). This was confirmed in a relatively recent ECJ ruling, which had outlawed reduced rates levied by Luxembourg and France, in *European Commission v. France* (Case C-479/13) and *European Commission v. Luxembourg* (Case C-502/13).

In a ruling on March 7, the ECJ pointed out that the European Parliament should be consulted afresh when the text finally adopted, as a whole, differs in essence from the text on which the Parliament has already been consulted, except in cases where the amendments substantially correspond to a wish of the Parliament itself.

The ECJ examined whether fresh consultation of the Parliament was necessary in relation to the provision of the directive limiting the application of a reduced rate of VAT to solely the supply of books on a physical support.

The ECJ held in this regard that the final text of the provision concerned is nothing other than a simplification of the drafting of the text which was set out in the proposal for a directive, the substance of which was fully preserved. The Council was thus not required to consult the Parliament afresh, the ECJ ruled, saying that the provision of the directive is not invalid.

This judgment was released on March 7, 2017.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=188625&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=25609

European Court of Justice: *Rzecznik Praw Obywatelskich et al. (Case C-390/15)*

Dateline March 16, 2017

When are changes in taxation a **tax "reform,"** and not merely a tax "change"? Why, when the government says so of course! But I've noticed recently there is a discrepancy in what some governments think is a tax reform, and what most of the rest of us would consider qualifies as such.

Australia has provided a good example of how flexible the term "tax reform" has become. When it was put to Prime Minister Malcolm Turnbull last week that the Government had failed to take on "big tax reform," he baulked at the suggestion, pointing to recent changes in the state pension scheme and the middle-income tax threshold. Really? That's what you call "reform," Malcolm?

To be fair to the Prime Minister, he said this while making a very good case against increasing GST. But this is a country which seems to be crying out for meaningful tax reform. Indeed, barely a week seems to go by without one organization or another calling for it, including the OECD earlier this month.

Taxpayers have been promised root-and-branch type tax reform for the last 25 years by one government after another. Patience is wearing thin, and just fiddling about with tax thresholds won't cut it anymore. Fiddling while Rome burns, you might say.

British taxpayers, and more specifically those of the self-employed variety, were also promised reform in the 2017 Budget announced last week. Admittedly, not by the Government itself, but largely by a media anticipating the start of a generational shift in the tax and legal framework that recognizes how technological change and the emergence of the gig economy are fundamentally altering the world of work. They didn't get it.

What they nearly got was an unexpected increase in **National Insurance (social security) contributions** intended to align the taxation of the self-employed with the employed. This was Chancellor Philip Hammond's supposedly big idea to address tax concerns linked to the growing army of self-employed workers in the UK, which has reached about 5m people.

The Government insisted that critics had got their sums wrong, and that in actual fact the Budget overall would leave the lowest-paid self-employed taxpayers marginally better off. But that's beside the point. This measure went down like a lead balloon for a number of reasons: first, because

it contradicted the Government's core message that it is pro-enterprise and the friend of aspiration; second, because it broke a manifesto commitment not to raise tax or National Insurance rates; third, because it failed to address the fundamental question of the changing work environment; and last, because Hammond couldn't wait for the publication of a government review into this very issue, expected in the coming months, before acting.

However, in a shock U-turn executed on March 15, following Prime Minister Theresa May's earlier announcement that the rate increase would not be legislated immediately to allow for a period of "calm" reflection, Hammond stated that the increase would not now occur in the course of the current Parliament.

Problems with outdated tax laws certainly aren't unique to the United Kingdom. The **United States** is another place where work patterns have left tax rules well and truly behind – in the haze of a car's tailpipe or the wake of an airplane's contrail, you could say.

Because, unbelievably, we are still in a situation where employees may be legally required to **file an income tax return in every state** in which they have conducted business, even if they were there for only one day. Surely the costs of administering such absurd rules routinely outweigh the amount of tax – if any – that is collected from mobile employees?

But thankfully sanity may soon prevail. A bill has been reintroduced into Congress to **standardize state income tax** requirements for employees working out of their state of residence, and the measure has wide bipartisan support. However, those affected by such anachronistic rules shouldn't get their hopes up too much. These proposals have entered Congress before without being approved. And one gets the impression that House Republicans and the fledgling Trump Administration have bigger fish to fry for the time being.

As we wrap up this week's edition, we stay on the theme of reform. And of all the countries in the world, **Ireland** isn't one I'd point to and say, "Boy, that's a country in dire need of deep and comprehensive corporate tax reform!" But with Ireland facing the twin specters of Brexit and a possible competitive threat on tax from the US – its largest source of foreign direct investment – this is exactly what the business association IBEC thinks the country requires.

With one third of employment in Ireland linked to sectors that export heavily to the UK according to financial services provider Merrion Capital, Ireland is rightly worried that **Brexit** will destabilize its relationship with a vital trade partner. And a recent survey by PwC has

revealed a level of pessimism among Ireland's CEOs in relation to the Brexit-effect on Ireland, with almost three quarters of those surveyed predicting that the outcome would probably be negative for the country.

Now President Trump has added to Ireland's woes with his promise to throw up **trade barriers**, and to slash corporate tax to almost Irish levels. How will Ireland cope if these developments come to pass?

So, it is not surprising that amid all these uncertainties, Ireland is a worried nation, as demonstrated by the regular news items attesting to its economic anxieties. Because, as we know, uncertainty is one of the investment community's biggest turn-offs. But it could be argued that **stability**, rather than a rush reform, is more preferable in this instance. And the Government is probably being sensible by resisting such calls for now.

Let's not forget, Ireland has recent experience of deep crisis, and it didn't panic then. Things seem to have worked out okay …

The Jester