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a closer look

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a closer look

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a closer look

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Tax Reform Has Officially Arrived – What Does It Mean For US Expats? (Part I – Personal Taxation)

by Ephraim Moss, Esq. & Joshua Ashman, CPA, Expat Tax Professionals

Introduction

In December 2017, President Donald Trump officially signed into law the Tax Cuts and Jobs Act ("TCJA"),[1] the much-anticipated Republican tax reform legislation that was the subject of intense political wrangling throughout the first year of Trump's presidency.

By all accounts, this new legislation represents the largest overhaul of the US federal tax system in several decades. The impact will be felt by Americans almost immediately as the legislation takes effect starting with the 2018 tax year.

In this week's and next week's articles, we carefully review the provisions of the legislation that we believe will most significantly impact US citizens living abroad in terms of personal taxation (Part I) and business taxation (Part II).

What Didn't Change Under The TCJA?

Before we get to the legislative changes in the TCJA, it's important to first acknowledge that the major features of US taxation affecting expat individuals generally did not change under the new law.

1. No change to the basics of individual expat taxation

Perhaps most fundamentally, US expats continue to be subject to citizenship-based taxation on their worldwide income. While the TCJA does change the scope of taxation in this regard for US corporations (which we discuss next week), it does not affect the overall tax and reporting obligations of US individuals living abroad. So yes – FBAR [2] and FATCA [3] and the other foreign information reporting rules and concepts we've become accustomed to will continue to apply.

The TCJA also does not change the major provisions benefiting US expats, such as the foreign earned income exclusion [4] and foreign tax credit [5] for individuals, so US expats can continue to utilize these and other methods to reduce or eliminate their tax obligations (although, as we often point out, these methods do not exempt expats from filing tax returns and FBARs with the IRS on an annual basis).

Notable changes that were proposed in previous versions of the bill, but did not make it into the final version, include:

2. No change to the Net Investment Income (Obamacare) Tax

One of the bigger surprises in the final bill is the retention of the Net Investment Income Tax (NIIT),[6] sometimes called the Obamacare Tax, which Trump had pledged a number of times to repeal.

To briefly explain how the tax works: if an individual has income from investments, the individual may be subject to the 3.8 percent NIIT on the lesser of their net investment income (such as interest, dividends, capital gains, rental and royalty income, among others), or the amount by which their modified adjusted gross income exceeds the statutory threshold amount based on their filing status.

Why is no change to the NIIT significant for expats?

The basic answer is that the foreign tax credit [7] cannot be used to reduce the tax. Consequently, a US expat who otherwise has 100 percent foreign source income and sufficient foreign tax or other credits to credit against such income, can still end up paying US federal income taxes by virtue of the NIIT. Depending on the amount of investment income, the 3.8 percent tax can end up being significant for expat investors. Unfortunately for expats, the exclusion was not repealed by the TCJA.

3. No change to the exclusion from gain on sale of principle residence

A previous version of the tax reform bill would have modified the current "primary residence exclusion" rule,[8] which allows an individual to exclude gain of up to USD250,000 realized from the sale of his or her home (USD500,000 if married and filing jointly), provided they meet the "ownership" and "use" tests for two out of the five years leading up to the sale.

The previous version would have increased the required period of ownership from two of the previous five years to five of the previous eight years, including phase-outs of the exclusion for wealthier individuals. In the end, however, the beneficial exclusion was not changed.

Why is no change to the exclusion from gain on the sale of a principal residence significant for expats?

The principal residence exclusion is often an important tax-saving method for expats because it is not limited to homes in the United States. Since many foreign jurisdictions offer an exemption on the sale of a personal residence (thereby creating no foreign tax credits to utilize), a sale of a personal residence triggers taxable gain only for US tax purposes. However, due to the exclusion, expat sellers only have to pay tax to the extent the gain exceeds the USD250,000 or USD500,000 amount. Fortunately for expats, the exclusion remains untouched by the TCJA.

What Did Change Under The TCJA?

The following are the provisions of the TCJA that we believe will most significantly impact US citizens living abroad in terms of personal (non-business) taxation. The changes generally apply through to year 2026, but many expect that they will be renewed at that time.

Some of the changes that we list are only relevant if the expat taxpayer has at least some US tax due (*i.e.*, taxable income is not completely eliminated by the foreign earned income exclusion or foreign tax credit).

1. Change to personal income tax rates

The TCJA keeps the seven ordinary income tax brackets but with generally reduced rates: 10 percent, 12 percent, 22 percent, 24 percent, 32 percent, 35 percent, and 37 percent. Capital gains rates remain the same (0/15/20 percent), but the brackets are adjusted to correspond with the new ordinary income tax brackets.

2. Standard deduction increased but personal exemption eliminated

The TCJA nearly doubles the standard deduction amounts to USD12,000 for individuals, USD18,000 for heads of household, and USD24,000 for married couples filing jointly.

To offset this increase, the personal exemption is eliminated. Interestingly, for the 2018 tax year only, employers can withhold as if the personal exemption is still allowed, allowing taxpayers to delay their tax payment, if due, to the time of filing.

3. Many itemized deductions eliminated or limited

For those taxpayers who think their itemized deductions may exceed the new standard deduction, it should be noted that a number of itemized deductions are eliminated or limited, including, among others:

- Miscellaneous itemized deductions which exceed 2 percent of adjusted gross income (AGI) (an example includes the deduction for tax preparation services) are eliminated;
- The deduction for mortgage interest is limited to an underlying indebtedness of up to USD750,000 (USD350,000 for married taxpayers filing separately); and
- State and local income and property tax deductions are collectively limited to USD10,000 per year (foreign real property taxes may not be deducted).

4. Child tax credit increased

The TCJA doubles the child tax credit to USD2,000 per child, which is refundable up to USD1,400, subject to higher phase-out thresholds (USD400,000 for married taxpayers filing jointly and USD200,000 for all other taxpayers). It also includes a temporary USD500 nonrefundable credit for other qualifying dependents (for instance, older adults).

This increased credit can be significant for expat parents as it can be used to offset the NIIT, whereas the foreign tax credit cannot be so utilized (as discussed above).

5. Estate and gift tax exemption amount increased

Following previous iterations of the tax reform that included a repeal of the estate tax and then a phase-out of the estate tax, the final bill keeps the estate tax for US individuals intact but increases the lifetime estate and gift tax exemption from the USD5m base amount, set in 2011, to a new USD10m base amount.

The exemption is adjusted for inflation each year, so in 2018, an individual would be able shelter approximately USD11.2m in assets from the estate and gift tax. Couples who do proper planning can double the estate tax exemption to approximately USD22.4m. (Non-US individuals remain subject to the US estate tax and gift tax with respect to "US-situs property" in excess of USD60,000.)

The increase in the gift tax exemption could prove very beneficial for wealthier individuals who want to renounce [9] their US citizenship but avoid the dreaded "exit tax." The exit tax applies to renouncers who, among other things, have a net worth of USD2m or more. The utilization of gift planning in order to fall under the USD2m threshold is made significantly easier with the increase to the lifetime estate and gift tax exemption.

Other Changes For Individuals

For the sake of completeness, the following are some of the other changes for individuals under the TCJA that are perhaps less relevant for most expats, but are still noteworthy:

- New measure of inflation provided;
- Alternative minimum tax (AMT) retained with higher exemption amounts;
- The moving expenses deduction and exclusion for moving expense reimbursement are eliminated;
- Deduction for interest on home equity eliminated;
- Charitable contribution deduction limitation increased to 60 percent;
- Kiddie tax modified;
- Alimony deduction eliminated; and
- New deferral election for qualified equity grants.

Summary Chart Of Tax Reforms In TCJA (Personal Taxation)

As a quick reference guide, here is a summary of the tax reforms in the TCJA that are of particular significance for US citizens living abroad:

Tax Issue	Previous Law	New Law Under TCJA
Basics of US Expat Taxation	Citizenship-based taxation of individual's worldwide income; Beneficial provisions such as the Foreign Earned Income Exclusion and Foreign Tax Credit; FATCA, FBAR and other foreign reporting rules and requirements.	No change
Net Investment Income (Obamacare) Tax	3.8 percent on Net Investment Income; Foreign tax credit cannot be credited against the tax.	No change
Exclusion of Gain on Sale of Personal Residence	Exclusion of gain of up to USD250,000 from sale of home (USD500,000 if married filing jointly); Requires meeting "ownership" and "use" tests for two out of the five years leading up to the sale.	No change

Tax Issue	Previous Law	New Law Under TCJA
Personal Income Tax Rates	Ordinary income rates have seven brackets with top rate of 39.6 percent; Capital gains rates have three brackets with top rate of 20 percent.	Ordinary income rates have seven brackets with top rate of 37 percent; Same capital gains rates with adjusted brackets.
Standard Deduction and Personal Exemption	Standard deduction for 2018 would be USD6,500 for individuals, USD9,550 for heads of household (HOH), and USD13,000 for married couples; Personal exemptions of USD4,510 each allowed.	Standard deduction increased to USD12k for individuals, USD18k for heads of household (HOH), and USD24k for married couples; Personal exemptions eliminated.
Itemized Deductions	Many itemized deductions allowed.	Miscellaneous itemized deductions eliminated and other deductions eliminated or limited.
Child Tax Credit	Credit of USD1,000, which is refundable.	Credit of USD2,000, a USD1,400 portion of which is refundable (with higher phase-out thresholds).
Estate and Gift Tax	Lifetime estate and gift tax exemption base of USD5m (adjusted for inflation).	Lifetime estate and gift tax exemption base of USD10m (adjusted for inflation).

In next week's article, we'll continue our analysis of the TCJA by covering the provisions of the legislation that we believe will most significantly impact US citizens living abroad in terms of business taxation issues.

Endnotes

1 https://www.congress.gov/bill/115th-congress/house-bill/1.

2 https://www.expattaxprofessionals.com/expat-tax-information-fbar/.

3 https://www.expattaxprofessionals.com/expat-tax-information-fatca/.

4 https://www.expattaxprofessionals.com/Form-2555-Foreign-Earned-Income-Exclusion.

5 https://www.expattaxprofessionals.com/Form-1116-Foreign-Tax-Credit.

6 https://www.irs.gov/newsroom/net-investment-income-tax-faqs.

7 *Supra*, note 5.

8 https://www.expattaxprofessionals.com/expat-tax-information-other-information-foreign-real-estate/.

9 https://www.expattaxprofessionals.com/expat-tax-information-other-information-renouncing-us-citizenship/.

The EU Directive On Administrative Cooperation

by Stuart Gray, Senior Editor, Global Tax Weekly

Legislation requiring the automatic exchange of information of certain information between EU tax authorities in the fight against money laundering is but the latest addition to the EU Administrative Cooperation Directive, which has arguably provided the bloc with the world's most intensive automatic information exchange system. And it is growing.

This article looks at the key requirements of the Directive, and summarizes the four major extensions to the legislation that have been added since it first became effective.

Council Directive 2011/16/EU (DAC1)

The foundation of this increasingly extensive system of automatic information exchange is Council Directive 2011/16/EU,[1] which established the framework for better cooperation between EU tax authorities. This replaced the previous legal basis for administrative cooperation in the field of taxation provided by the 1977 legislation 77/799/EEC.

Formally adopted by the European Council of Finance Ministers (Ecofin) on February 15, 2011, the national laws, regulations, and administrative provisions implementing the Directive entered into force on January 1, 2013, with the provisions relating to automatic exchange of information entering into force on January 1, 2015.

According to the Council of the European Union, enhanced administrative cooperation between tax authorities was needed to help governments combat growing levels of cross-border tax avoidance and fraud in an increasingly globalized economy. "In the light of greater taxpayer mobility and a growing volume of cross-border transactions, the Directive sets out to fulfill the member states' growing need for mutual assistance – especially via the exchange of information – so as to enable them to better assess taxes due," the Council said at the time the new Directive was adopted.[2]

The Directive lays down the rules and procedures under which member states must cooperate with each other with a view to exchanging information that is "foreseeably relevant" to the administration and enforcement of the domestic laws concerning certain taxes (see below) of other member states.

The Directive is also designed to prevent a member state from refusing to supply information concerning a taxpayer of another member state on the sole grounds that the information is held by a bank or other financial institution. Further, it identifies certain details that must be specified in requests for information, namely the identity of the person under investigation and the tax purpose for which the information is sought.

The Directive provides for the exchange of information that is of "foreseeable relevance" to the administration and the enforcement of member states' tax laws. In addition, the Directive:

- Extends cooperation between member states to cover direct taxes of any kind;
- Establishes time limits for the provision of information on request and other administrative enquiries;
- Allows officials of one member state to participate in administrative enquiries on the territory of another member state;
- Provides for feedback on the exchange of information; and
- Provides that information exchange be made using standardized forms, formats, and channels of communication.

The core Directive on Administrative Cooperation (now known as DAC1) has since been added to on several occasions, to accommodate the automatic exchange between national tax authorities of financial account information, cross-border and advanced tax rulings, country-by-country reports, and beneficial ownership information (see below).

Forms of exchange

The Directive provides for the exchange of information in three forms – spontaneous, automatic, and on request. These three forms of information exchange conform with standards agreed by tax administrations at international level, notably at the OECD.

Under spontaneous exchange, a country provides its treaty partner with information about likely tax evaders if it happens to uncover such information during its own audits. Each competent national authority must communicate information to the competent authority of any other EU country in the following situations:

- The competent authority of one EU country has reason to suppose that there may be a loss of tax in the other EU country;
- A person liable to tax obtains a reduction in, or an exemption from, tax in one EU country which would give rise to an increase in tax or to liability to tax in the other EU country;
- Business dealings between two persons liable to tax in different EU countries are conducted through one or more countries in such a way that a saving in tax may result in either or both of the EU countries;
- The competent authority of one EU country has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises; and
- Information forwarded to one EU country by another EU country's competent authority has enabled information to be obtained which may be relevant in assessing liability to tax in the latter EU country.

Automatic exchange consists of the automatic provision of information by one country to another on income of residents of the second country and, in the case of cross-border tax rulings and advance pricing arrangements, the automatic provision of information to all member states and the Commission. This form of exchange is usually in electronic form and usually on a mutually agreed periodic basis.

Information exchange on request is a response by one country to a request by another country for information. Upon receipt of a request, an authority must communicate to the requesting authority any relevant information that it has in its possession or that it obtains from administrative enquiries.

In order to obtain the requested information or to conduct the administrative enquiry requested, the authority must follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own country. As mentioned, EU countries may not refuse to supply information solely because this information is held by a bank or other type of financial institution.

Scope

The Directive encompasses all taxes of any kind with the exception of VAT, customs duties, excise duties, and compulsory social contributions. These taxes are already covered by other EU legislation on administrative cooperation.

The type of person covered by the Directive depends on the type of exchange involved, but in general, natural persons (*i.e.*, individuals), legal persons (*i.e.*, companies), associations of persons, and any other legal arrangements are included within its scope.

With effect from January 1, 2015, the Directive provides for the mandatory exchange of information in respect of five non-financial categories of income and capital, where such information is available. These are: income from employment; directors' fees; life insurance products not covered by other directives; pensions; and ownership of, and income from, immovable property.

Time limits

The Directive requires that information exchanges must take place within certain deadlines, in an effort to improve the system's effectiveness. As such, in cases where information is to be exchanged on request, tax authorities must respond to the request within seven days, and provide the requested information within six months. If the authority receiving the request already possesses the information, it must be provided within two months of that date.

For spontaneous exchanges, the transmission of the relevant information must take place no later than one year after the information becomes available.

Timelines for automatic exchanges vary, depending on the situation. However, in general, the communication of information must take place at least once a year, within six months following the end of the tax year of the member state during which the information became available.

Feedback

If requested, the competent authority which has received information has to send feedback to the sending country as soon as possible and no later than three months after the outcome of the use of the requested information is known. Such feedback must be in accordance with any rules on confidentiality and data protection.

Other forms of administrative cooperation

The Directive provides for a number of other forms of administrative cooperation, including:

- By agreement between the requesting authority and the requested authority, officials authorized by the requesting authority may be present in administrative offices and may participate in administrative enquiries in the requested country;
- Simultaneous controls of persons of common or complementary interest between two or more EU countries, with a view to exchanging the information obtained;
- Administrative notification; and
- Sharing of best practices and experience to improve cooperation.

Disclosure

Information communicated between member states in any form under the Directive is covered by the obligation of official secrecy and enjoys the protection extended to similar information under the national law of the member state which received it.

However, such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, or for the assessment and enforcement of compulsory social security contributions.

In addition, it may be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax law, in accordance with the general rules and provisions governing the rights of defendants and witnesses in such proceedings.

Limits

The Directive states that an authority is only obligated to comply with an information request provided that the requesting authority has exhausted all usual sources of information which it could have used in the circumstances for obtaining the information requested.

The Directive also imposes no obligation upon a member state in receipt of a request to carry out enquiries or to communicate information, if it would be contrary to its legislation to conduct such enquiries or to collect the information requested for its own purposes.

Furthermore, the competent authority of a requested member state may decline to provide information where the requesting member state is unable, for legal reasons, to provide similar information. Information requests can also be refused if it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy.

Forms and formats

The Directive standardizes the forms that requests for information and replies should take. The standard form must include at least the following information to be provided by the requesting authority:

- The identity of the person under examination or investigation; and
- The tax purpose for which the information is sought.

Spontaneous information and its acknowledgement, as well as requests for administrative notifications, must be sent using the standard form adopted by the Commission.

The Directive requires that automatic information exchanges must be sent using a standard computerized format aimed at facilitating such automatic exchange, which is based on the existing computerized format used under the Savings Tax Directive (Directive 2003/48/EC), which DAC1 replaced.

Extensions To DAC1

DAC2 – financial account information

Under an amendment to the Directive formally adopted by Ecofin on December 9, 2014 (Council Directive 2014/107/EU),[3] certain items of financial information were brought within the scope of the legislation, effective January 1, 2017. These items include interest, dividends and similar types of income, gross proceeds from the sale of financial assets and other income, and account balances.

The Directive also provides that the European Commission publishes a list of jurisdictions with which the EU has an agreement in place according to which that jurisdiction will provide member states with the financial account information mentioned in the extension of the Directive. The list consists of the following third countries and territories: Switzerland, Liechtenstein, San Marino, Andorra, Monaco, and Saint-Barthelemy.

DAC3 – cross-border tax rulings

Another amendment to the Directive was formally adopted by Ecofin on December 8, 2015 (Council Directive (EU) 2015/2376),[4] which now provides for the exchange of information regarding cross-border tax rulings and advanced transfer pricing arrangements between EU member states. Entering into force on January 1, 2017, this amendment requires national tax authorities to transmit a report to a central depository listing all cross-border tax rulings issues every six months. Other member states are able to check these lists and ask the issuing member state for more detailed information on a particular ruling.

Since January 1, 2017, member states have been obligated to automatically exchange information on all new cross-border tax rulings that they issue, with the first exchanges taking place no later than September 1, 2017. As from January 1, 2018, all member states must provide information on rulings issued since the beginning of 2012.

DAC4 – country-by-country (CbC) reporting

On May 26, 2016, the EU Council approved a directive on the CbC reporting of tax information by multinational corporations and automatic exchange of that information between EU tax authorities (Council Directive (EU) 2016/881).[5] The Directive transposed the OECD recommendation on CbC reporting under BEPS Action 13 into a legally binding EU instrument, and requires a multinational corporation with total consolidated group revenue of at least EUR750m (USD900m) to file a CbC report to the tax authorities of the member state where it is tax resident.

Information to be reported, on a CbC basis, includes revenues, profits, taxes paid, capital, earnings, tangible assets, and the number of employees. The Directive requires EU tax authorities to exchange these details automatically to assess tax avoidance risks related to transfer pricing.

December 2016 amendment – beneficial ownership information

In the latest addition to the Directive, the EU Council adopted proposals on December 6, 2016, granting tax authorities access to information held by authorities responsible for the prevention of money laundering.[6] Effective from January 1, 2018, the legislation requires authorities with anti-money laundering responsibilities in any EU member state to automatically share certain information, including on the beneficial ownership of companies, trusts, and other entities, along with information on bank account balances, interest income, and dividends. They will also have access to the customer due diligence records kept by companies.

Currently, where a financial account holder is an intermediary structure, banks are required to look through that entity and report its beneficial ownership. Applying that provision relies on information held by authorities responsible for the prevention of money laundering.

Future Expansions

Looking ahead, it is likely that additional amendments will be bolted on to the Directive to increase the scope of information that can be exchanged between EU tax authorities. Indeed, the Commission has said it views further improvements to the Directive to be a priority.

The Commission has already proposed that the lists of financial and non-financial items of information subject to mandatory automatic exchange of information be extended. Furthermore, the EU Council may also decide to introduce unconditional automatic exchange of information in respect of the aforementioned non-financial categories.

It has additionally been suggested that the Directive could be further amended as a result of proposed reforms to the EU's corporate tax framework, which are primarily aimed at tackling tax avoidance, increasing transparency, and harmonizing aspects of the corporate tax rules.

Endnotes

1 http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011L0016

2 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/119310.pdf

3 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0107

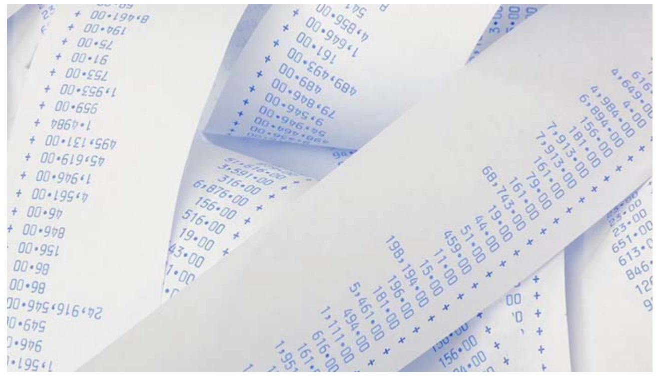
4 http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015L2376

5 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0881

6 https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/tax_cooperation/mutual_assistance/direct_tax_directive/com_2016_452_en.pdf

VAT On Real Estate Transactions In Cyprus

by Alexandra Spyrou, Elias Neocleous & Co. LLC



Introduction

When Cyprus joined the EU, the sale of new buildings with a building permit dated after May 1, 2004, became subject to VAT. Under a temporary derogation, the sale of land (including the land component of VAT-able buildings) and the letting of real estate remained outside the scope of VAT. Although this derogation expired at the end of 2007, it was only in November 2017 that the VAT Law was amended to bring it into line with the common EU system of VAT.

Law 157(I) of 2017 provides for VAT at the standard rate of 19 percent to be charged with effect from January 2, 2018, on the supply of undeveloped land by a person exercising an economic activity and with effect from November 13, 2017 (the date of publication of the amending law) on the leasing or letting of immovable property to a taxable person for the purposes of undertaking taxable activities. Letting of buildings used for private dwellings is not subject to VAT.

The amending law left a number of issues, including the definition of undeveloped building land and what constitutes a transaction for business purposes, to be determined by secondary legislation. This has been done by means of the VAT (Determination of Undeveloped Buildable Land and Other Provisions) Regulations of 2017 (PI 441/2017) ("the 2017 Regulations").

The Tax Department has now issued Interpretative Circulars EU 219 and 220 dealing respectively with what constitutes a taxable supply of building land, and with VAT on leasing and letting of property.

Circulars EU 219 And EU 220

Circular EU 219 – supply of undeveloped land by a person exercising an economic activity

The designation of the land is a key factor in determining whether or not there is a taxable supply. According to paragraph 4 of the 2017 Regulations, land designated for agricultural use or outside an area zoned for development, or which is protected from development for environmental protection, archaeological or similar reasons, is exempt from VAT. The exemption applies regardless of the identity of the person making the supply and irrespective of the purpose for which it is made.

According to the amending law, a taxable supply occurs only in respect of transactions undertaken in the course of a person's economic activity. "One-off" transactions are not taxable.

Article 3(1) of the VAT Law uses the term "undertaking" to mean an economic activity carried out independently and in any place, irrespective of the purpose or the results of that activity. Economic activities within the meaning of article 3(1) are all activities of the producer, trader or service provider, including agricultural activities and professional or similar activities and the exploitation of any tangible or intangible property for the purpose of obtaining income from it on a continuing basis.

The Court of Justice of the European Union has occasionally been called upon to interpret what constitutes "economic activity." It has concluded that there are no rigid criteria and that determination of economic activity should be based on the facts of the particular case applied to the following questions:

- Whether the activity is a serious or systematic occupation that goes beyond occasional speculative engagement;
- Whether it is actively pursued on a sustained basis;
- Whether it has measurable outcomes in value and quantity, on a quarterly or annual basis;
- Whether it is undertaken in accordance with normal recognizable business practice;
- Whether it is primarily concerned with making taxable supplies for consideration; and
- Whether the activities undertaken are normally undertaken for profit.

In order to determine whether a disposal is a "one-off" disposal not subject to VAT or whether it is part of the disponor's economic activity and therefore taxable, the Tax Department will consider all these questions as a whole in order to form a comprehensive view of how the person acts, in the light of all the facts and circumstances of the case. Unless there is other evidence to suggest that a person intends to pursue an activity on an ongoing basis, an individual transaction, such as the disposal of a parcel of land, will be presumed to be a "one-off" transaction and therefore not subject to VAT. Infrequent disposals, such as the disposal of parts of an inheritance at intervals of several years, are also likely to be treated as non-taxable. However, if the transactions are regular, frequent and continue on a sustained basis, then all the transactions including the first will be subject to tax.

In deciding whether a particular disposal is a "one-off" or whether it is part of a course of economic activity, the Tax Department will disregard the issue of whether it is subject to capital gains tax.

Disposals of land by a company will be treated as in the course of its business, and therefore taxable, even though the company's main activity is not property development.

Where there is any uncertainty, the Tax Department will also consider the extent to which classifying a transaction as exempt will distort tax neutrality between traders.

The circular also makes clear that VAT is not chargeable on transactions in the course of business concluded before January 2, 2018, in which the land has been transferred under the provisions of the Transfer and Real Estate Law or a stamped sale contract has been filed with the Department of Land and Surveys for the purposes of the Sale of Real Estate (Specific Performance) Law or with the tax authorities before that date, even though part of the sale price may be payable at a later date. However, if the transfer has not been completed or the contract has not been filed, any consideration received after January 1, 2018, will be subject to VAT.

The reverse charge procedure applies to transfers of property (whether to a third party or to the lender) under a loan restructuring arrangement. Until December 31, 2019, under Law 135(I) of 2017, transferors are exempt from paying the VAT. The transferee is required to pay the relevant tax and has the right to claim the amount of input tax.

Circular EU 220 – leases and rental agreements of immovable property to a taxable person for the purposes of taxable business activity

Leases and rental agreements of immovable property to a taxable person for the purposes of taxable business activity which commence on or after November 13, 2017, are subject to VAT. Property let as a residence is not subject to VAT.

Existing lease and rental arrangements are not affected unless the existing contract is cancelled and a new agreement is concluded on or after November 13, 2017. An automatic renewal under an existing lease agreement does not create a new contract, even if it involves an automatic increase in the rent.

The lessor may be the owner of the property or any person who exploits it in any way, such as a lessee or licensee creating a sub-lease.

Where the lessor is a taxable person for VAT and the lease or rental is of the whole of a building or building complex, there is no possibility of opting out of VAT. In other cases the lessor may apply for exemption from VAT by completing the requisite form and submitting it to the Tax Department. The option may be exercised separately for each functionally independent part of the building or complex, such as individual retail units.

In order to be able to reclaim input VAT, the lessee must be a taxable person who carries out taxable transactions for VAT purposes. The term "taxable transactions" is not defined in the VAT Law, but consists of all transactions that are not categorized as exempt from VAT. The Tax Department will treat the letting as taxable if the lessee's taxable outputs account for 90 percent or more of its total outputs. Transactions which are outside the scope but which provide the right to deduct input tax will be taken into account.

The lessor is responsible for obtaining the requisite information and confirmations from the lessee regarding the nature of the transactions the lessee carries out and the extent of any non-taxable activities at the time the contract is signed. There is no obligation to monitor the lessee's transactions retrospectively to ensure that they meet the required level.

Input tax is fully deductible if all the lessee's transactions are taxable. If the lessee carries out both taxable and exempt transactions, the proportion of input tax that is deductible is calculated on the basis of the ratio of taxable and exempt transactions.

Any decision by the lessor to opt into or out of taxation cannot be changed, and will apply to any new lease or rental agreement in relation to the property as long as the ownership is unchanged. Following a change of ownership, the new owner of the property has the right to elect for exemption from VAT on any leases.

Taxpayers who are registered under special schemes, such as those for farmers and taxi drivers, must also apply for registration in the normal VAT system in respect of any property they let, unless they opt for exemption from tax. The registration threshold is EUR15,600 per year of taxable outputs.

VAT should be charged on rentals each time a rental invoice is issued or a rental payment is received, whichever occurs first.

If the owner or lessee grants the right to exploit the property to another person (*e.g.*, by subletting), the obligations regarding VAT apply to both of them independently. If there are joint owners, they will be treated as one taxpayer.

A taxable person is entitled to deduct input VAT incurred on improvements or maintenance of the property, provided that this is evidenced by a valid VAT invoice or equivalent document.

The circular also explains the arrangements for recovery of input tax on the capital cost of properties completed more than a year before the latest amendments to the VAT Law took effect, which were previously leased or rented on a VAT-exempt basis and in respect of which a new lease is subsequently entered into. The input tax is amortized over the ten years beginning with the date the premises were first occupied, and deductible if the letting is subject to VAT. For example, in the case of a property leased on a VAT-exempt basis from the beginning of 2016, and in respect of which a new taxable lease is entered into at the beginning of 2018, eight-tenths of the input tax on the capital cost are recoverable.

A Summary Of The Current Position

Following the latest changes to the law, the situation may be summarized as follows:

- The supply of undeveloped land on or after January 2, 2018, in the course of economic activity, as described above, is subject to VAT at the standard rate of 19 percent.
- The supply of new buildings of all types, including the land on which they are erected, before their first use is subject to VAT at the standard rate of 19 percent.
- Purchasers of new buildings used as a principal private residence within specified size limits can claim a partial refund of VAT, bringing the effective rate to 5 percent.
- Renovations and repairs of private dwellings that have been in use for three years or longer are subject to VAT at the reduced rate of 5 percent, excluding materials that account for more than half the total value of the services provided (this exclusion does not apply in certain cases).
- Rental or leasing arrangements of non-residential buildings to taxable persons for business purposes entered into on or after November 13, 2017, are subject to VAT at the standard rate of 19 percent. As described earlier, the lessor can recover the VAT on the cost of the building and the lessee can recover the input tax. Alternatively, the lessor can opt out of taxation subject to specified conditions.
- VAT under the reverse charge mechanism applies when property is transferred from the borrower in the context of a loan restructuring arrangement or a mortgage repossession. Until December 31, 2019, the transferor is exempt from paying the VAT.

New Investment Opportunities For Foreign Tax-Exempt Investors In Germany

by Martin Heinsius, DLA Piper

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The German legislature recently enacted a far-reaching reform of the German Investment Fund Tax Act, which governs the taxation of investment funds and their investors, and which took effect on January 1, 2018. The reform aims at removing inconsistencies in the taxation of non-resident and resident investors in German investment funds, and protecting the freedom of movement of capital under the EU Treaty.

In general, under the previous investment fund taxation rules, the German investment fund was tax exempt and, at investor level, the income of the fund was subject to taxation on a *pro rata* basis as if the investor had invested in the investment fund's assets directly himself. The investment fund, respectively its management company or the investment fund's custodian, was obliged to withhold taxes from distributions and deemed distributions from the account of the investor. German resident investors were entitled to a full credit refund of such withholding taxes, while non-resident investors were not, and were therefore obliged to rely on tax credits for German withholding taxes in their own country of residence.

In essence, under the new rules, investment funds have become subject to corporate income tax on their German-sourced income at a rate of 15 percent. German-sourced income in this context means real estate income including capital gains, dividends received from corporations tax-resident in Germany, as well as yields from lending transactions relating to shares in corporations that are tax-resident in Germany. German-sourced taxable income does not include capital gains made on the sale of shares in such corporations. In addition, German-sourced income includes interest paid on debt secured by land charges or similar instruments on real property located in Germany, or on ships registered on a German register, as well as interest paid on participation rights which qualify as debt for German tax purposes. In order to (partially) compensate the investor for the taxation of the fund's taxable income, partial exemptions of between 30 and 80 percent apply at investor level, depending on the classes of assets in which the investment fund invests, and whether the units are held as an asset of a trade or business.

Spezialfonds (*i.e.*, those investment funds investing only in certain eligible assets, including real estate, which have no more than 100 (only corporate) investors and where the units can be redeemed at least once per year) may opt for tax transparency. In essence, this moves the taxation of the investment fund's taxable income to the investor level.

To ensure that such taxable income in the hands of the investor is effectively taxed at a level comparable to other investments, the investment fund – that is, its management company or the custodian – is again obliged to withhold taxes from all distributions made to the investor. However, such withholding taxes are not charged on distributions to non-resident investors. German-resident investors holding units in the distributing investment fund continue to be entitled to a full credit or refund of the withholding taxes on the fund's distributions.

To accommodate tax-exempt investors under the new rules, the two different tax exemptions are now provided for in the legislation. The first of these applies to tax-exempt charities and provides for a full exemption of the investment fund's taxable income to the extent to which the tax-exempt charity invests in the investment fund. This exemption also applies to non-resident charities, provided that they are comparable to their German counterparts (*i.e.*, they would be eligible for tax-exempt status under German tax law had they been tax resident in Germany).

The second exemption applies to tax-exempt resident corporations and their comparable non-resident counterparts. The most important entities which fall under this category are general pension funds (*Pensionskassen*) and pension funds for the members of certain professions (*berufsständische Versorgungswerke*).

The law is framed to limit this tax exemption to real estate income. However, a draft circular letter from the German Inland Revenue Office broadens this tax exemption to the same scope as for tax-exempt charities, that is, covering the entire taxable (*i.e.*, German-sourced) income of the investment fund. Based on precedent from the European Court of Justice, the question of whether or not a non-resident pension fund (or other tax-exempt corporate investor) is comparable to its German counterpart is to be answered from a functional perspective. Accordingly, most pension funds from other EU member states, as well as pension funds for the members of certain professions, should be comparable to their respective German counterparts.

In addition, the non-resident investor who is eligible for the tax exemption needs to be resident in a country that provides administrative and tax collection support equal to, or at least comparable to, the Mutual Assistance Directive and the Tax Recovery Directive. These states are all EU member states and certain others such as, for example, Canada. The tax exemption covers the *pro rata* share of the investment fund's taxable income which is allocable to the investor on a per unit basis. If one assumes that only these kinds of pension funds or charities invest in the investment fund, the entire taxable income would be covered by the tax exemption.

The investment fund has to apply for such tax exemption in its corporate income tax return. When filing its return, the investment fund must provide evidence on the comparability of its tax-exempt non-resident investor with its German counterparts as well as on its tax residency.

In summary then, these new rules also allow non-resident, tax-exempt investors, such as charities and pension funds, to use an investment fund as a vehicle for a tax-exempt investment in German real estate and other assets which would otherwise produce German-sourced taxable income at investment fund level. This is provided that the investor can furnish evidence to show that it is comparable, from a functional perspective, to one of its counterparts under German law and is resident in an EU member state, or a state which provides not only administrative but also tax collection support to the German tax authorities. There will be no withholding on distributions of the investment fund to these investors. Thus the new rules put non-resident, tax-exempt investors in real estate investment funds on an equal footing with resident tax-exempt investors.

Topical News Briefing: The Art Of Taxation – More Feathers, Less Hissing

by the Global Tax Weekly Editorial Team

When parliaments pass major legislative reforms, it's easily forgotten that the final vote represents only half a job done. It then falls to whichever government department is responsible to properly implement the reforms, and in the area of taxation, this means tax authorities already expected by governments to do more with less.

This topic is particularly pertinent in the US, where, as reported in this week's issue of *Global Tax Weekly*, the National Taxpayer Advocate identified the Internal Revenue Service's ability to implement the wide-ranging changes included in the recently enacted Tax Cuts and Jobs Act, expected to require almost USD500m in additional funding over the next two years, as a "most serious problem."

The matter of tax authority performance is also a live one on the other side of the Atlantic, where, in the UK, HM Revenue & Customs was praised recently by a parliamentary committee for the way in which it is dealing with the many challenges it confronts, including Brexit. However, others, including tax professionals and taxpayers themselves, have expressed major concerns about the department's ability to juggle its roles as tax collector and tax enforcer.

Certainly, advances in information technology have helped to make tax compliance and administration much less labor-intensive, time-consuming and costly for both taxpayers and tax departments across the world. But according to some, for taxpayers, digitization is both a blessing and a curse.

In the UK, the Association of Taxation Technicians has warned that incoming requirements for digital record-keeping under the Making Tax Digital initiative will make HMRC seem an even more distant institution to taxpayers than it is already perceived. Therefore, a project designed to cut down on filing errors could ultimately fail because taxpayers, particularly those running small businesses, cannot actually "speak" to the authority to sort out problems.

Furthermore, the stability and security of government information technology systems is a constant source of worry for taxpayers, as high rates of tax refund theft in the US have shown. So more IT isn't necessarily a good thing.

Nevertheless, despite these concerns being flagged on a regular basis, the current trends appear unlikely to abate in the foreseeable future. Therefore, tax authorities will remain responsible for implementing frequent changes in tax legislation, and, at the behest of their political masters, extract as much revenue from the tax system for the lowest cost – all while attempting to streamline administrative processes.

New VAT Law In Switzerland

by Urs Fischer, artax Fide Consult AG, independent member of Morison KSi

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Introduction

On January 1, 2018, the partial amendment of the VAT law came into effect in Switzerland. Many amendments that are undertaken affect only a select few taxpayers who are liable to VAT. In addition to these changes, there are other fundamental amendments that will apply to foreign companies, as summarized here.

Criteria For Tax Liability In Switzerland

Until now, the issue of who needs to register for VAT in Switzerland was considered from the perspective of the total turnover in Switzerland. If the Swiss turnover was below the tax-exempt amount of CHF100,000, a foreign company was not required to register for VAT purposes. On the one hand, this led to certain distortions of competition. For example, it allowed foreign construction companies close to the border to provide their services to a few Swiss clients, and as long as they managed to keep turnover realized in Switzerland below CHF100,000, they could avoid paying VAT completely. On the other hand, there has been a growing tendency within the EU to increasingly make foreign companies (domiciled outside the EU) liable to EU VAT. For example, if a Swiss company provided internet services and software downloads to clients domiciled within the EU, it had to register in the EU and make VAT payments in up to 28 countries. It was only a question of time until Switzerland decided to reciprocate.

As of 2018, the law provides that if the turnover realized worldwide exceeds the tax-exempt amount of CHF100,000, then a foreign company is liable to register for VAT in Switzerland. Some typical cases are analyzed below.

Which Foreign Companies Are Affected, And How?

This article examines what is going to change in 2018 for a few typical categories, providing an overview of how and to what extent your company will be affected. Of course, in the end, an individual assessment will have to be made for each case.

Construction companies and building workers

Previously, there was only a requirement to register if a company realized a turnover of more than CHF100,000 with Swiss contracts, something quite easily avoidable within the SME sector. Below this tax-exempt amount, it had to be differentiated whether materials were obtained from abroad: if so, then the value of the materials plus the supply of services rendered (which Switzerland considers to be part of the supply of goods) needed to be declared with customs. Otherwise, the beneficiary was liable to acquisition tax, with private persons only needing to declare for services received above CHF10,000. In practice, neither of these were effective solutions and quite a few services rendered remained untaxed.

From 2018 onwards, all construction companies with a turnover of more than CHF100,000 worldwide are required to register in Switzerland as soon as they realize one franc of turnover in Switzerland. In return, the required materials can be imported under their own name, allowing foreign construction companies to immediately reclaim import tax paid at customs, so that their clients will not be burdened by it. These clients will then receive a comprehensive invoice including 8 percent VAT, just as a Swiss construction company would send invoices to its clients in Switzerland.

"Services" regarded as supply of goods in Switzerland

Switzerland – in contrast to the EU – has an unusual approach, whereby impacting or working on an object is regarded as supply of goods and not as supply of services. Examples include installations and repair work in situ, but also cleaning operations. Since, usually, no goods are brought along, customs cannot levy any taxes. Until now, this meant – as described above, under "building workers" – that acquisition tax came into effect, with a high tax-exempt threshold for individuals and a high number of unreported cases, as nobody really had any idea what to do, and the authorities were often left in the dark if any breaches occurred.

From 2018 onwards, any foreign company must register in Switzerland as soon as turnover worldwide exceeds CHF100,000 and as soon as any supply has been rendered in Switzerland, however small.

Goods export into Switzerland

Basically, for foreign companies exporting goods to Switzerland, nothing is going to change. Just as before, goods need to be correctly declared at customs, who in turn will levy import VAT on top of customs duties and charge it, via the shipping company, to the recipient of the goods. The recipient, liable to tax, can then, where applicable, reclaim this import tax as input tax. This applies not only to wholesale trade between companies, but also to trade with private persons, as long as customs actually levy VAT. However, there will soon be a considerable exception in this instance.

To simplify matters, customs waive import sales tax where the amount is less than CHF5. Considering today's tax rates, this is the case with a goods value up to CHF62.50 (at 8 percent) or CHF200.00 (at 2.5 percent), respectively. Instead of rather laborious customs clearance, the package will receive a green sticker saying "exempt from duty," and the matter is settled. Thanks to this, a flourishing trade with such small shipments has developed in the last few years, and there are a number of foreign mail-order companies that distribute major orders deliberately in smaller shipments that each have a value below the threshold and can thus be imported free of tax. This distortion of competition will cease to exist with the new VAT Act. However, as everyone is aware of the rather complex changeover, the new regulation described here only comes into effect on January 1, 2019.

From then on, it will be mandatory for foreign companies that annually send more than CHF100,000 worth of small shipments exempt from tax to Switzerland to register in Switzerland. They will also be required to import the goods under their own name, and to invoice their clients with Swiss VAT.

What Else Is Going To Change In 2018?

Apart from this major change regarding registration rules, there are a few more selective changes in the amended law. These generally have small or no implications for most companies; however, in specific instances they could have major effects. Switzerland has also lowered its VAT rates as of January 1, 2018. The regular rate, for example, has been reduced from 8 percent to 7.7 percent.

Topical News Briefing: Rocking The Digital Apple Cart

by the Global Tax Weekly Editorial Team

It's difficult for taxpayers to look too far ahead in these uncertain and changeable times. But one thing at least looks a near certainty: that the taxation of digital companies will be a *cause célèbre* of governments and tax authorities in 2018.

This issue is not a sudden arrival on the international tax agenda. The bombshell dropped by the European Commission over Apple's tax arrangements in Ireland now feels like old news. And the taxation of the digital economy was (and still is) a major priority of the OECD's BEPS project which began in 2013 with the publication of the Action Plan. Indeed, the public outcry over the tax affairs of major internet companies preceded the BEPS project by many years.

However, recent developments suggest that policymakers now view this issue as an increasingly important one to tackle.

The EU began to champion this cause loudly last year, and the Commission's consultation on policy solutions to problems associated with taxing the digital economy closed earlier this month, concurrent with an OECD consultation on the same topic. Indeed, the EU has told the OECD that it must present new tax policy measures – and if it doesn't, has threatened that the EU will take the lead in this area.

The appropriate taxation of digital companies has also shifted up the political agenda at country level, with individual jurisdictions increasingly willing to take matters into their own hands, OECD or no OECD.

It is clear in the UK, for example, that legislative and enforcement policies are homing in on the digital sector. According to the Government, the recently announced royalty withholding tax is another step towards its "longer-term ambition of domestic and international reform of the taxation of digital businesses." And Apple announced earlier this month that it expects to pay more UK tax as a result of an extensive audit by the tax authority.

In Italy too, proposals were approved last month designed to increase the tax take from large internet companies. While, as reported in this week's issue of *Global Tax Weekly*, in Germany, the three parties set to form the new governing coalition have just agreed to place a strong emphasis on tackling corporate tax avoidance, and the "just taxation of large companies, especially the internet companies," as part of their program for government.

From the point of view of taxpayers, it is to be hoped that policymakers would balance the need for tax "justice" against the costs of new measures in terms of compliance, legal certainty, and the risk of reduced investment and innovation.

But, judging by the responses of representative bodies, businesses aren't optimistic that such a balance will be achieved. AmCham EU probably summed up these fears best, when it said the options put forward by the European Commission would result in "double taxation, increased compliance burdens, conflicting unilateral interpretations, potential treaty conflicts, and increased taxation for low-margin, loss-making, and fast-growing businesses."

Nevertheless, there seems little doubt that governments – particularly in the EU – will push hard for new "digital taxes" in the coming months, even if there is less certainty about the form these measures will take, and how effective they will be.

Tax Cuts, No Tax Hikes For Germany's New Government

The three political parties set to form Germany's next governing coalition have agreed to reduce the solidarity tax burden, according to the text of their recently released agreement.

Used to help fund economic development in the east of Germany, the solidarity tax is a 5.5 percent surtax on both corporate and individual income. The agreement between the Christian Democrat Union, the Social Democrat Party, and the Free Democrat Party states that the incoming government would reduce the tax for those on low and middle incomes, as a first step towards gradually abolishing it.

The coalition agreement pledges not to increase tax on German taxpayers, but has a strong emphasis on tackling tax avoidance and on cooperating with other jurisdictions to ensure the appropriate alignment of tax and corporate profits, especially with regards to the digital economy.

"We support just taxation of large corporations, especially the internet companies Google, Apple, Facebook and Amazon," the document states.

The agreement also declares the new coalition's support for the proposed EU common corporate tax base, and for a "substantial" financial transactions tax at EU level.

Finance Minister: Ireland Remains Tax Competitive

Irish Finance Minister Paschal Donohoe has said that Ireland's 12.5 percent corporate tax rate will remain competitive, despite the substantial reduction to the US corporate tax.

Donohoe told a news conference on January 9 that, in the light of his recent discussions with multinational companies, Ireland will remain a popular location for foreign investment, despite the recently enacted US tax reform legislation.

"The proposition that we offer will continue to be competitive, even against the context of changes being made in the US and the UK," he said.

"The engagement I have had with international companies since it has become clear what the direction of travel will be in the US has confirmed that view to me," he added.

Legislation was passed in December to reduce the US corporate tax rate from 35 percent to 21 percent, a move described recently by Martin Shanahan, Chief Executive of IDA Ireland, as "an effort to make the US more competitive."

Shanahan said that US tax reform is unlikely to disrupt investment flows into Ireland.

Philippines Commits To 25 Percent Corporate Tax Rate

The Philippines Department of Finance has said the country will look to install a 25 percent corporate income tax (CIT) rate on a broader base as part of the second phase of its tax reform process.

Finance Undersecretary Karl Kendrick Chua explained that, presently, the country levies a 30 percent CIT rate but it is applied across a narrow base, due to authorities granting tax breaks and concessions too extensively.

The Philippines imposes the highest CIT rate among Association of Southeast Asian Nations (ASEAN) but is among those at the bottom in terms of collection efficiency. "The Philippines," Chua said, "currently imposes a CIT rate of 30 percent but with a tax collection efficiency of only 12.3 percent, while Thailand's CIT rate is only 20 percent but it collects almost triple …"

"So clearly, we have the classic problem of a high rate but narrow base. That is why the efficiency is problematic," he added.

Chua said the second stage of the Government's tax reform program will look to rationalize incentives to ensure these are "performance-based, targeted, time-bound, and transparent."

Danish Tax Cuts Plan Scaled Back

Danish Prime Minister Lars Løkke Rasmussen has been forced to scale back plans to cut tax in order to retain the support of a coalition partner.

As a result of the decision, announced on January 9, tax cuts will be largely restricted to those on low and middle incomes, with proposals to reduce the top rate of tax scrapped. Plans for the introduction of incentives for retirement saving will be retained, Rasmussen said.

The anti-immigration Danish People's Party had said it would only support tax cuts for those on high incomes if the Government introduces tougher controls on immigration, a demand that Rasmussen, of the center-right Liberal Party, refused.

He had confirmed the Government's plans to proceed with the tax package only days earlier, in his New Year address to the nation.

Swiss Government Pushes For Adoption Of Tax Overhaul

The Swiss Federal Council has said that corporate tax reform is now urgently needed, with the Government hopeful that the first reforms could enter into force in 2019.

The Federal Council met on January 10 to discuss the progress made on tax proposal 17 (TP17). In particular, ministers discussed the main findings of a consultation on TP17.

The Council said that participants in the consultation recognized the need for action. However, it also explained that the consultation "showed that the proposal will remain demanding politically."

It noted that, for the measures to be agreed to by a substantial majority, and for Switzerland's competitiveness to be maintained, a "high degree of willingness to compromise on the part of all parties concerned is indispensable."

The Federal Department of Finance (FDF) will continue talks with the cantons, communes, political parties, and other interested parties.

The FDF will submit a dispatch on the proposals to Parliament this spring. The Federal Council hopes that the parliamentary debate on the measures will be concluded as early as the 2018 autumn session. If a referendum is not called, the first TP17 measures could enter into force at the beginning of 2019, with the remainder entering into force in 2020.

Under TP17, the special arrangements for cantonal status companies will be abolished, and the cantons will be required to introduce patent box regimes, with the option of introducing additional tax deductions for research and development activities. Swiss operating companies of foreign companies will be entitled to a flat-rate tax credit, and the dividend taxation for "natural persons" will be increased to 70 percent at federal and cantonal levels. Companies that relocate their headquarters to Switzerland will be able to benefit from additional amortization in the first "few" years of operations.

The Federal Council said that the international trend toward lower corporate taxes has made the need for action still more urgent. It added that TP17 will be an effective way of ensuring that Switzerland remains a competitive location.

In February 2017, the Government lost a referendum on its Corporate Tax Reform III package, which would have abolished a range of special tax arrangements for status companies, in an effort to meet evolving international tax standards on harmful tax competition.

The TP17 package was swiftly drawn up, and a consultation draft was released in September. The Federal Council said at the time that the current corporate tax system "no longer meets international requirements, which is having an increasingly negative impact on Switzerland as a location."

IRS Faces Stark Challenges This Year: National Taxpayer Advocate

The US National Taxpayer Advocate, Nina E. Olson, has released her 2017 Annual Report to Congress.

In her weekly blog, she discussed the Report, stating: "Because this Report was almost complete by the time Congress passed tax reform, I did not identify the IRS's ability to implement this legislation as a 'Most Serious Problem.' But as I discuss in my Preface to the Annual Report, it is clear the IRS will face significant challenges. Even before tax reform was enacted, the IRS projected that during the 2018 filing season, it would only answer 60 percent of the calls from taxpayers seeking a live assistor, and for the full Fiscal Year 2018, it would answer less than 40 percent of those calls. When the Tax Reform Act of 1986 was enacted, the IRS call volume went up by 14 percent. And when the 2008 Economic Stimulus Payment was enacted, the Accounts Management phone lines experienced a 125 percent increase in calls between FY 2007 and FY 2008 – an additional 85 million calls in one year!"

The Report states that the reduction in IRS funding since the 2010 fiscal year has challenged the agency's ability to perform basic tasks of administering the tax system. "I see the consequences of reduced IRS funding and the choices made by the agency in the face of these funding constraints," Olson wrote. "Funding cuts have rendered the IRS unable to provide acceptable levels of taxpayer service, update its technology to improve its efficiency and effectiveness, and maintain compliance programs that both promote compliance and protect taxpayer rights. 'Shortcuts' have become the norm, and 'shortcuts' are incompatible with high-quality tax administration."

While Olson said the IRS needs additional funding, she also expressed concern that the agency has sometimes been too quick to cite funding constraints as a basis for inaction. "Limited resources cannot be used as an all-purpose excuse for mediocrity," she wrote. "There is not a day that goes by inside the agency when someone proposes a good idea only to be told, 'We don't have the resources.'" Notwithstanding funding constraints, she said there are steps the IRS can take to improve taxpayer service through creativity and innovation.

Still, the Report states that the implementation of major tax legislation is always a heavy lift for the agency; a preliminary estimate from the IRS projected it would require additional funding of USD495m in fiscal years 2018 and

2019. "The IRS will have many issues to work through, and taxpayers will have questions. But with more funding, strong leadership, and a closer working relationship with Congress, I am convinced the IRS can do the job well," Olson said.

In her Report, she also unveiled a new publication – the "Purple Book" – which described 50 legislative recommendations intended to strengthen taxpayers' rights and improve tax administration. It also examines a range of tax administration issues. In such, she suggested Congress codify both the Taxpayer Bill of Rights and the IRS mission statement as Section 1 of the Internal Revenue Code.

This year's Report identifies 21 problems, makes 11 recommendations for legislative change, analyzes the ten tax issues most frequently litigated in the federal courts, and presents seven research studies and two literature reviews.

Problems addressed include:

- Private Debt Collection;
- Online Taxpayer Accounts;
- Taxpayer Rights in "Real" v. "Unreal" Audits;
- The Streamlined Section 501(c)(3) Approval Process (1023 EZ); and
- Passport Denial and Revocation.

Attempts To Preserve SALT Deductions Could Be Unlawful: TF

The Tax Foundation (TF) has suggested that strategies currently being explored by US states to preserve state and local tax (SALT) deductions for high-income residents face legal challenges.

The SALT deduction permits taxpayers who itemize deductions on their federal income tax to deduct certain taxes paid to state and local governments from their gross income for federal income tax purposes. Taxpayers may deduct their property taxes plus either their state income or sales taxes, but not both. Under the new Tax Cuts and Jobs Act passed in December 2017, deductions are now capped at USD10,000, while a significantly higher standard deduction is also likely to reduce the number of filers who itemize from 30 percent to about 10 percent.

"The deduction reduces the cost of state and local government expenditures, particularly in high-income areas, with lower-income states and regions subsidizing higher-income, higher-tax jurisdictions," the TF explained in a January 5 analysis. "A USD10,000 cap, however, will limit the impact of those transfers, prompting some states to seek 'fixes' to restore the full deduction for their own high-income taxpayers."

In California, legislation has been filed to allow residents to make contributions in lieu of taxes, making a voluntary contribution to a new California Excellence Fund and then claiming the full amount as a credit against state income tax liability, since the state and local tax deduction is capped but the charitable deduction is not.

In New York, Governor Andrew Cuomo is considering creating a new employer-side payroll tax with a commensurate credit against state income tax liability, since employer-side payroll taxes are deductible.

"Both are intriguing ideas, but they raise serious legal and practical challenges," said Jared Walczak, Senior Policy Analyst at the TF. "If states are genuinely concerned about the effects of their tax codes absent an uncapped state and local tax deduction, they should consider revisiting their tax rates rather than devising increasingly convoluted and legally suspect workarounds."

Walmart Joins Ranks Of Firms 'Sharing' US Tax Reform Benefits

Walmart, the US retail giant, has become the latest company to announce perks for its employees as a result of the passage of the US tax reform legislation.

On January 11, it announced that it would increase its starting wage rate to USD11, expand maternity and parental leave benefits, and generally provide a one-time cash bonus of up to USD1,000.

The company said: "We are early in the stages of assessing the opportunities tax reform creates for us to invest in our customers and associates and to further strengthen our business, all of which should benefit our shareholders … Tax reform gives us the opportunity to be more competitive globally and to accelerate plans for the US."

Americans for Tax Reform (ATR) is maintaining a list of companies and their commitments to employees on its website as a result of the US tax reform package, announcing on January 11 that more than a million US workers stand to benefit so far.

"Just ten days into 2018 the Tax Cuts and Jobs Act has changed the nation for the better," ATR President Grover Norquist said. "American companies are raising wages, paying bonuses, expanding operations and increasing 401(k) contributions."

Noting the expanding list, John Thune (R – South Dakota), a member of the tax-writing Senate Finance Committee, said: "Two weeks ago, President Trump signed our historic tax reform bill into law, and middle-income

Americans are already seeing the benefits. Companies across America are announcing they will raise wages, increase charitable donations, and give out bonuses to many of their hardworking employees – citing the tax reform legislation as the key factor in those decisions."

"As it stands today, at least one million Americans will receive special bonuses due to the passage of comprehensive tax reform. This is good news for many workers who have struggled to make ends meet in a weak economy. Americans now have a tax code that will foster the economic growth necessary to put more money in their pockets."

Zurich Sees Surge In Tax Disclosures

The Swiss canton of Zurich has reported a threefold increase in the number of voluntary disclosures involving previously undisclosed assets.

According to Reuters, Zurich's finance department said that a record 6,150 voluntary disclosures were made in 2017, triple the number seen in 2016. To date, the cases have involved CHF1.3bn (USD1.3bn) in previously undisclosed assets. Reuters added that the Zurich authorities have so far only been able to process around half the cases.

The surge is likely due to the start of the automatic exchange of information (AEOI) in tax matters under the OECD's Common Reporting Standard (CRS), with countries beginning to make the first exchanges this year.

Several of Switzerland's agreements for AEOI in tax matters became effective with numerous other territories from January 1, 2018.

Switzerland will begin to exchange such information this year, and receive information from other states, in respect of account information collected for and by some partners (the CRS "early adopters"): Australia, Canada, the EU states, Guernsey, the Isle of Man, Iceland, Japan, Jersey, Norway, and South Korea.

An expanded list of the territories that Switzerland intends to automatically exchange information with from 2019 has been newly published on the State Secretariat for International Finance's website.

To comply with its commitment to automatically exchange information with these states from 2019, Swiss financial institutions will be required to comply with new information collection obligations from January 1, 2018, in respect of accounts involving taxpayers from the following states: Andorra, Argentina, Barbados, Belize, Brazil, Chile, China, Colombia, Cook Islands, Costa Rica, Curacao, Faroe Islands, Greenland, Hong Kong, India, Indonesia, Israel, Liechtenstein, Malaysia, Mauritius, Mexico, Monaco, Montserrat, New Zealand, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Seychelles, Singapore, South Africa, and Uruguay.

New AEOI agreements entered into force for other states from January 1, 2018, also. These states and territories – Bermuda, the British Virgin Islands, the Cayman Islands, the United Arab Emirates, and Turks and Caicos – are "permanent non-reciprocal jurisdictions"; they will supply account information to Switzerland and other partner states on a permanent basis, but will not receive such data.

Panama Signs OECD's Multilateral Tax Cooperation Pact

On January 15, Panama signed the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA), becoming the 98th jurisdiction to join the pact.

The OECD describes the CRS MCAA as the prime international agreement for implementing the automatic exchange of financial account information under the Multilateral Convention on Mutual Administrative Assistance, which provides for all forms of administrative cooperation in tax matters, including automatic tax information exchange and exchange of information on request.

The OECD said, by signing the CRS MCAA, Panama has reaffirmed its commitment to the automatic exchange of financial account information pursuant to the OECD/G20 Common Reporting Standard (CRS), with exchanges set to commence in September 2018. The signing of the CRS MCAA will allow Panama to activate bilateral exchange relationships with the other 97 jurisdictions that have so far joined the CRS MCAA, it said.

At the signing ceremony, OECD Deputy Secretary-General Masamichi Kono said: "I congratulate Panama on taking this very substantial step towards putting in place a truly global exchange network for the automatic exchange of financial account information. [Its] signing today puts Panama in an excellent position to fully deliver on its commitment to start CRS exchanges with all interested appropriate partners in September of this year."

Singapore To Automatically Exchange Tax Info With 61 States

Singapore has announced that it has activated automatic exchange of information relationships with a total of 61 territories, as part of global efforts to tackle tax evasion and fiscal crime.

The exchanges will take place under the OECD's Common Reporting Standard (CRS), which provides for the automatic exchange of information between those territories that have agreed to exchange information automatically.

Singapore's CRS Regulations, which came into force at the beginning of the year, require and empower all financial institutions to put in place necessary processes and systems to collect financial account information, generally from January 1, 2017.

Singapore has adopted the "wider approach" under the CRS, which means that financial institutions will need to collect and retain the CRS information for all account holders, instead of only for account holders and controlling persons who are tax residents of the territories with which Singapore has currently committed to exchange such information.

For CRS reporting purposes, covered financial institutions will need to transmit to the Inland Revenue Authority of Singapore (IRAS) the financial account information relating to tax residents of Singapore's competent authority agreement partners from 2018. The IRAS will subsequently exchange the reported information with Singapore's automatic information exchange partners.

The development means Singapore will share financial account data generally dating back as far as January 1, 2017, with these countries on an annual basis, with covered financial institutions required to provide on CRS information for these jurisdictions by May 31, 2018.

Under the CRS, the financial information to be reported with respect to reportable accounts includes interest, dividends, account balance, income from certain insurance products, sales proceeds from financial assets, and other income generated with respect to assets held in the account or payments made with respect to the account.

Reportable accounts include accounts held by individuals and entities, which includes trusts and foundations, and the CRS includes a requirement that financial institutions "look through" passive entities to report on the relevant controlling persons.

EU To Remove Eight Countries From Tax Blacklist: Reports

EU ambassadors are set to discuss proposals to remove eight countries from the bloc's blacklist of non-cooperative tax jurisdictions, according to reports.

Reuters said it had seen documents in which EU officials recommended de-listing eight jurisdictions that had made commitments to amend their tax rules: Panama, South Korea, the United Arab Emirates, Barbados, Grenada, Macao, Mongolia, and Tunisia.

Reuters added that the proposals will be discussed by EU ambassadors on January 16, and are expected to be adopted by EU finance ministers the following week.

The list of non-cooperative territories was published on December 5, 2017, and features 17 jurisdictions. The Commission sent letters to all jurisdictions on the list, explaining the decision and what they can do to be de-listed. A first interim progress report should be published by mid-2018, and the list will be updated at least once a year.

Uber, Vietnam Continue Battle Over Tax

Uber has failed to challenge efforts by the Vietnamese tax authorities to collect more tax from the ride-hailing app provider.

In an ongoing dispute between the firm and the tax agency, Vietnam is seeking considerably more tax from its local operations than the firm is willing to pay.

Based on local media reports, Uber contests that it should be taxed as though it simply provides an app-based service that connects drivers with end users, rather than providing a traditional taxi service.

According to local media reports, Uber has now failed to challenge before a local court attempts by local authorities to seize funds from its local bank accounts, based on an assessment of unpaid tax and penalties of about USD3m. Further, the tax agency is seeking to compel local banks to pass on information about Uber's turnover.

HMRC Urged To Temper VAT Penalties On Online Retailers

The Chartered Institute of Taxation (CIOT) is calling for revisions to a new UK government scheme to tackle VAT evasion to ensure those that make administrative errors but are not accused of involvement in tax evasion are not penalized with heavy fines.

Businesses that store goods in the UK to deliver to UK consumers on behalf of sellers established outside the EU will need to register for the Government's new Fulfilment House Due Diligence Scheme (FHDDS) this year. The intention is that the introduction of a list of "approved" UK fulfillment businesses will help combat growing tax evasion and non-compliance in the trade in goods via online marketplaces, and thereby level the playing field for legitimate UK and overseas sellers.

The CIOT has set out a number of concerns about the FHDDS in its response to a recent HMRC consultation. Among its concerns is that, where a non-EU supplier is declaring UK VAT and duty correctly to HMRC, the "approved" person or business under the FHDDS could still face harsh penalties, such as of GBP500 (USD690) for each occasion it records an incorrect import entry number of the goods stored, even if they have otherwise been fully tax compliant and have not been involved in any fraudulent supply chain to date.

Alan McLintock, Chair of CIOT's Indirect Taxes Sub-committee, said: "We support HMRC taking action to combat VAT evasion and non-compliance. Compliant retailers should not have to compete against rivals who do not pay the VAT which is properly due."

"However, we are concerned that businesses will be hit with penalties simply due to paperwork mistakes under the new administrative regime, even where there has been no lost tax to HMRC. It is likely to be the 'little guys' who make administrative mistakes as they may not have the administration control and oversight that larger fulfillment houses can rely on."

"We urge the Government to adopt a light touch to penalties for such errors where there is no evidence of evasion so the penalty system for the new scheme is proportionate. This is particularly important as the regime is likely to apply to EU sellers, too, once the UK has left the EU. After all, the aim of the scheme is to ensure the system is free from fraud by overseas sellers, rather than to punish 'approved' people for making accidental administrative mistakes."

The CIOT says it is also concerned that UK fulfillment houses with compliance issues such as late VAT returns or being on time to pay arrangements could eventually lead an "approved" business to lose the "approval" status, potentially closing their business despite never being involved in tax evasion.

Primary legislation introducing the FHDDS was passed by Parliament as part of the Finance (No. 2) Act 2017. To complete the legislative framework for the scheme, a statutory instrument is required.

South Korea Undecided On How To Police, Tax Virtual Currencies

South Korea has suggested that it could ban virtual currency trading, citing tax evasion concerns.

It appears that regulatory authorities and the tax authority are at cross paths, with the latter earlier said to be developing a tax regime that would regularize the sector.

The Minister of Justice, Park Sang-Ki, told a press conference on January 11 that he has "great concerns" regarding virtual currencies.

After hinting there would be an outright ban, the Government appeared to backtrack somewhat, having been reported in media as saying it was just one option on the table.

Prior to Park's comments, police and the National Tax Service raided a number of the country's largest cryptocurrency exchanges, including Coinone and Bithumb.

It was thought that Korea would have devised a prospective regime for taxing virtual currencies by the middle of this year.

Korea is seeking to cool activity in virtual currency exchanges, given that the price being paid for them on the country's exchange has been tracking above worldwide averages, leading to fears of a bubble.

UK Tax Industry Concerned By HMRC's Expanding Workload

The Association of Taxation Technicians (ATT) has called on HM Revenue & Customs (HMRC) to ensure its taxpayer services do not crumble under strain when the Making Tax Digital (MTD) initiative is rolled out alongside the UK exiting the EU.

MTD was a controversial announcement from the Government, with concerns then about the administrative burden on small firms. Initially, the UK Government was to introduce mandatory digital record-keeping by small businesses and landlords from April 2018.

In July 2017, the Government delayed record-keeping obligations concerning income tax until at least April 2020, and provided that, from 2019, only businesses with a turnover above the value-added tax (VAT) threshold, currently GBP85,000 (USD117,300), will have to keep digital records and only for VAT purposes. For such purposes, they will have to keep their VAT records digitally, and provide their VAT return information to HMRC through MTD-functional compatible software.

With comments that echo concerns raised in a new report from the UK's Public Accounts Committee (PAC) on HMRC's performance in 2016/17, Yvette Nunn, Co-chair of the ATT's Technical Steering Group, said: "We share the PAC's concerns about the additional pressures facing HMRC and the risk that this may negatively impact on taxpayers' dealings with them."

"We believe that the situation will only become more challenging for the tax authority and taxpayers alike, with the upcoming introduction of MTD. We strongly urge HMRC to retain the levels of telephone support for taxpayers until MTD has been established."

"HMRC need to realize that automated messages are a source of frustration; by making it hard to speak to someone they increase the risk of taxpayers guessing the answer and getting it wrong."

"There are serious concerns as to whether HMRC's digital infrastructure can cope today. We have already seen unexpected system failures during the busy Self-Assessment tax season in January 2018, as well as delays in giving agents access to the Trust Registration Service."

"The PAC notes that HMRC's original assumptions on the extent to which customer demand could be reduced were too aggressive in the past – there are concerns this could be the case for the introduction of MTD also. Taxpayers are likely to need significant support when MTD is first introduced. We suggest it is unlikely to result in a lack of demand for phone calls in the short term, at least."

The ATT also addressed a different finding in the PAC report: that small and medium-sized enterprises (SMEs) are the main contributors to the UK's tax gap (the percentage of total revenue that goes uncollected each year). The ATT urged that caution should be exercised with regards to the finding in the PAC report that SME non-compliance makes up a large part of the tax gap, noting that it could largely be as a result of unintentional errors, rather than intentional non-compliance.

"While the SME Tax Gap is stated to result from errors or a failure to take reasonable care, the complexity of the tax system is likely also to be a contributory factor. Errors resulting from a failure of small businesses to deal with complexity could increase if HMRC struggles to maintain service standards in the future," said Nunn.

"There is a risk that focusing on the SME sector will cause them to feel victimized, which may push them more towards the hidden economy. MTD may reduce errors but this may have a negligible impact on those businesses and individuals in the hidden economy who deliberately evade tax by operating under the radar – for instance, not registering with HMRC, or under-declaring their income."

The Chartered Institute of Taxation (CIOT), too, warned that HMRC risks stigmatizing SMEs without better tax gap scrutiny. John Cullinane, CIOT Tax Policy Director, said:

"HMRC have clearly believed for some time that the impact of [SMEs] on the Tax Gap is especially significant. The nature of this issue merits a more detailed explanation from HMRC than the tax authority shares at present. Without more granularity on the nature of the impact on the Tax Gap, HMRC risk stigmatizing SMEs, which could be unfair and does not seem calculated to improving whatever underlying behavior is the cause of the problem. It is also unhelpful to the public's understanding of tax. If more focused information on SMEs and the Tax Gap is simply not available to HMRC, then more needs to be obtained, so targeted initiatives can begin, which we would be keen to support."

"For example, we are still awaiting publication of the final report following the Business Records Checks initiative, which would both indicate the extent to which inadequate record keeping contributes to the Tax Gap and provide more information on the nature of the errors."

"HMRC's statistics on customer service and call handling, which show a clear improvement, warrant further investigation to see if this is because, in part, some services have been switched off. For example, early in 2017

HMRC stopped providing pay and tax details over the phone to agents, because HMRC were being flooded with calls, but they did this before a suitable alternative arrangement was made available. This risks HMRC being seen to say that customer service has improved, when in fact in some areas they are simply providing less of a service."

Answers Asked Of HMRC On Brexit VAT Changes

Nicky Morgan, the Chair of the UK's Treasury Committee, has written to Jon Thompson, the Chief Executive of UK tax agency HM Revenue & Customs (HMRC), to seek answers about how necessary value-added tax (VAT) policy changes will impact businesses and about support measures.

In a January 9 letter, she wrote: "The Taxation (Cross-border Trade) Bill, which had its Second Reading yesterday, makes major amendments to the VAT Act, with the intention of ensuring that the VAT regime functions effectively after the UK leaves the EU. The principal implication of these changes is that, after Brexit, imports to the UK from the EU would become liable for import VAT, which would have to be paid before goods could be released into free circulation in the UK. The changes would potentially affect over 200,000 businesses. For 132,000, the changes would be novel because these businesses trade only with other EU member states."

"The Government has already acknowledged that the application of import VAT to EU imports would constitute an additional burden, and the Autumn Budget committed to 'look at options to mitigate any cash-flow impacts'," she pointed out.

She has asked HMRC to inform the Committee of the estimated cost of the changes to businesses; a description of any measures under consideration to mitigate these costs; and whether such would also apply to non-EU transactions, since failure to do so may contravene WTO rules. She also asked whether a definitive decision has been taken that rules the UK out of participating in the EU VAT area; when HMRC intends to notify firms of how they will be impacted by the changes; and to assess the consequences of the necessary changes to VAT policy with regards to UK exports to the EU and the risks of potential behavioral responses by taxpayers.

In addition, she noted that the European Commission announced in October 2017 that it is working on proposals to reform the EU VAT area by 2022. She said: "This too will have an impact on cross-border trade, and the accounting and payment of VAT. I would be grateful for your assessment of these proposals, and how their implementation and effects interact with the changes to the VAT regime necessitated by Brexit."

Noting the content of Morgan's letter, Mike Cherry, chairperson to the Federation of Small Business, urged the Government to see the UK's departure from the EU "as an opportunity to reduce, not increase, the huge administrative burden that the VAT regime places on small firms. Our members say VAT is the most time-consuming tax to manage, with registered small firms spending more than a working week a year complying with their VAT obligations on average."

"If we move to an environment where small firms are forced to stump up for VAT on products bought from the EU before having the chance to recover those costs through their own sales," he continued, "that could create real cash flow issues and add further complexity to the system. Small firms are already having GBP18bn (USD24.3bn) withheld from them due to the late-payment crisis."

"Of course, the decision to leave the [EU] does not necessitate change for the worse. As the Office for Tax Simplification rightly points out, the fact that VAT rules are largely prescribed by the EU means leaving the Union could mark a chance to make the tax easier to navigate."

"Maintaining frictionless trade with the EU needs to be the top priority for Brexit negotiators. Nine in ten small firms that do business internationally have ties to Europe. Agreeing a time-limited transition period for the years after the UK's withdrawal from the EU is absolutely vital to providing these businesses with some stability."

"We look forward to working with the Chancellor on the VAT consultation announced at the Autumn Budget to help reform a tax which currently places huge administrative burdens on small businesses."

UK Lawmakers Discuss Potential Post-Brexit Free Zones

During a January 7 debate in the House of Commons, UK lawmakers discussed the country's plans to leave the EU, its customs union, and value-added tax (VAT) area.

The debate was on the content of the Taxation (Cross-border Trade) Bill, which is to set out the future arrangements between the EU and the UK on tax and trade.

There continued to be consternation over whether leaving the customs union and VAT area is the right decision for the UK, with Prime Minister Theresa May having earlier reinforced that the UK is heading towards a "hard" Brexit involving exiting all three.

As well as discussing the impact on local businesses and in particular businesses' cash flow, Anna Turley, a minister from Labour, the leading opposition party, suggested that the Government should consider whether it can solve some of the issues surrounding maintaining strong ties with the EU, facilitating trade post-Brexit, and the cash flow considerations by establishing free trade zones.

Such zones, which are particularly prevalent outside the EU, often provide preferential tax settings to encourage investment and innovation within their borders and suspend certain customs and tax obligations for temporarily imported goods.

In her address to lawmakers, Turley said: "Around the world there are approximately 3,500 free trade zones employing 66 million people across 135 countries. There are currently none in the UK."

"Conferring free trade status on a UK port would place it administratively outside of customs territory. It would mean that goods could be imported, manufactured, or re-exported inside the free trade zone without incurring domestic customs duties or taxes, which is paid only on goods entering the domestic UK economy. As well as bringing benefits through customs taxes and duties, free zones also support economic activity through financial incentives such as research and development tax credits, regulatory flexibility, and tax reductions. They are recognized around the world as playing a major role in retaining, re-shoring, and growing domestic manufacturing activity and boosting trade. In the US there are 250 free trade zones, and they also play a major role in the economies of Singapore, Hong Kong, Indonesia, and the United Arab Emirates."

"Ports are already a vital strategic asset for the UK, accounting for 96 percent of all trade volume and 75 percent of trade value. The free port concept builds on our maritime history and an existing UK strength. The creation of a free port would increase employment and economic activity in areas where economic need is high and could play a major role in rebalancing our London-centric economy."

"The development corporation – the only one outside London – has set out its ambition to create 20,000 additional jobs in high-value manufacturing over a 25-year period, adding GBP1bn in gross value-added for the local economy. This would be substantially enhanced through the creation of a free port."

"This Bill provides an opportunity to establish the legislative basis to enable such a system to be set up in the UK, potentially giving a quick and powerful boost to the British economy as we go forward in Brexit negotiations. However, such a zone is not dependent on leaving the EU. Other member states have free ports, including the ports of Bremerhaven in Germany, Le Verdon in France, and Shannon in the Republic of Ireland. In fact, there are currently 85 free port zones within the European Union," she noted.

"Moreover, the Secretary of State is already empowered to designate free ports by statutory instrument under Section 100A of the Customs and Excise Management Act 1979, which is still in force. Indeed, the UK itself had five free trade zones until 2012, at which point the statutory instruments that set them up expired, so the framework is in place and the opportunity is there."

"I conclude by asking the Minister the following questions. First, does he agree with the principle of free ports, and does he recognize the role they can play in driving and rebalancing our economy? Secondly, will the Government be using this Bill to amend the free port powers created by the Customs and Excise Management Act? If so, will they use the opportunity to bring forward powers to enable Teesport to become a free port or subject to special customs arrangements?"

In a later response, in returning to the question, the Parliamentary Under-Secretary of State for International Trade, Mark Garnier, said: "[Turley] asked a couple of important questions. The first was whether the Government were supportive of free trade zones. The simple answer is yes, but with a caveat that we need to understand them a great deal more. Her second question was whether the Government would advocate Teesport as a free trade port. She made a strong case for that – she speaks very well on behalf of her constituents. The Government will be very happy to engage with her and hear her case for that."

India Reports On Tax Enforcement Drive

India's Income Tax Department has said it sought to bring criminal charges against 2,225 taxpayers in the period April to November 2017.

The Department said prosecution has been initiated for various offenses, including, among other things, intentional evasion of tax; filing false tax declarations; or failing to remit tax deducted or collected at source.

It said it is making tackling tax evasion its "highest priority," with a significant jump in taxpayers being pursued, from 784 cases in the same period a year earlier.

A total of 1,052 taxpayers had agreed settlements, said the Department, compared with 575 a year earlier. In addition, there has been a sharp increase in convictions, with 48 persons convicted of various offenses during the period, compared with 13 convictions the year before.

Fraud At Record Levels, Says BDO Report

BDO, the accountancy and business advisory firm, has released a report into the rapidly growing issue businesses and governments face with fraud, including tax fraud.

According to the report, loss to reported fraud in the UK is at its highest level in 15 years, costing taxpayers GBP2.11bn in 2017, up 538 percent on 2003 and 6.5 percent on 2016 levels.

According to BDO, fraud in the financial services sector increased dramatically in 2017, rising 318 percent in value, to just under GBP900m.

The firm pointed out that, in contrast, public administration fraud saw a 73.2 percent drop in value to GBP368.5m from GBP1.37bn in 2016, stating that this was due in large part to the absence of a single GBP1bn VAT carousel fraud case that occurred in 2016.

"While a significant amount of fraud still goes unreported, our research suggests that people are becoming a lot more courageous in coming forward to report it and recovering their assets through the criminal or civil justice systems," said Kaley Crossthwaite, Partner and Head of Fraud at BDO. "There is now an expectation that fraud will be reported and investigated, both internally by corporations, charities, public sector entities, and companies operating within regulated sectors."

According to BDO, London and the South East remained the biggest hotspot for fraud in the UK in 2017, with the number of cases up by almost 30 percent to 176. Two of the biggest frauds in this area involved a family of VAT scammers who stole GBP45m from taxpayers, and a complex GBP121m scam where two city traders were said to have used sophisticated means to defraud a Russian bank.

Meanwhile, the average value of fraud in the North West has increased by 255 percent to GBP1.68m, with tax fraud accounting for more than 56 percent of the total value of all reported cases in the region.

According to the BDO report, in 2017, there were a number of instances where celebrity endorsements have been used to lend credibility to scams, as well as cases where celebrities have either been victims of fraud or – in the case of a former rugby star – part of the defrauding process itself. One of the biggest celebrity-related frauds, said BDO, was a GBP100m tax scam in which 730 celebrities, including comedians, sports stars, and relatives of politicians, were conned into believing they were investing in cutting-edge research and development reforestation projects in Brazil and China.

Crossthwaite said: "There is a common misconception that you will be able to spot a fraudster – you can't. Our research shows that anyone can be a victim, including celebrities, rich, and poor alike."

ANDORRA - BELGIUM

Negotiations

Andorra and Belgium are engaged in DTA negotiations, it was announced January 3, 2018.

COLOMBIA - JAPAN

Negotiations

According to preliminary media reports, Colombia and Japan are negotiating a DTA.

CYPRUS - SAUDI ARABIA

Signature

Cyprus and Saudi Arabia signed a DTA on January 3, 2018.

CZECH REPUBLIC - KOREA, SOUTH

Signature

According to preliminary media reports, on January 12, 2018, the Czech Republic and South Korea signed a DTA to replace their existing pact.

GEORGIA - MOLDOVA

Signature

Georgia and Moldova signed a DTA on November 29, 2017.

HONG KONG - FRANCE

Signature

Hong Kong announced on January 15, 2018, that it had entered into a competent authority agreement with France for the exchange of country-by-country reports.

IRELAND - KAZAKHSTAN

Effective

According to a January 12, 2018, update from the Irish Revenue, the country's DTA with Kazakhstan became effective on January 1, 2018, having entered into force on December 29, 2017.

JAPAN - ARGENTINA

Negotiations

Japan and Argentina launched DTA negotiations on January 10, 2018.

JAPAN - ICELAND

Signature

Japan signed a DTA with Iceland on January 15, 2018.

LUXEMBOURG - KOSOVO

Signature

Luxembourg and Kosovo signed a DTA on December 8, 2017.

SINGAPORE - CAMBODIA

Into Force

Singapore's tax agency has announced that the territory's new double tax avoidance agreement with Cambodia entered into force on December 29, 2017.

TAIWAN - UNITED STATES

Negotiations

Taiwanese Premier Lai Ching-Te has directed the Ministry of Finance to work towards a tax treaty between Taiwan and the United States.

UNITED ARAB EMIRATES - VARIOUS

Forwarded

The United Arab Emirates Cabinet on January 7, 2018, approved two double tax agreements concluded with Moldova and Croatia.

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

THE AMERICAS

Hedge Fund Tax 101 and K-1 Boot Camp

1/24/2018 - 1/25/2018

Financial Research

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

Key Speakers: TBC

http://events.frallc.com/events/hedge-fund-tax-101-and-k-1-boot-camp-b1079-/event-summary-22badeb84b1c456a9f91595d120eba96.aspx?dvce=1

STEP Cayman Conference 2018

1/29/2018 - 1/30/2018

STEP

Venue: Kimpton Seafire Resort and Spa, 60 Tanager Way, Grand Cayman, Cayman Islands, KY1-9008

Key speakers: Sherice Arman (Maples and Calder), Maxine Bodden TEP (Maples and Calder), Sarah Cormack (Withers LLP), Oliver Court TEP (Withers LLP), Andrew De La Rosa (ICT Chambers), Antony Duckworth TEP (Collas Crill), among numerous others

http://www.step.org/cayman2018

STEP Orange County 7th Annual Institute on Tax, Estate Planning and The Economy

2/15/2018 - 2/16/2018

STEP

Venue: Island Hotel Newport Beach, 690 Newport Center Drive, Newport Beach, California, 92660, USA

Key speakers: Lawrence Brody (Bryan Cave LLP), Keith Schiller (Schiller Law Group), Jane Peebles (Karlin & Peebles LLP), Paul Lee (Northern Trust), Justin Miller (BNY Mellon), among numerous others

http://www.step.org/events/save-date-step-orange-county-7th-annual-institute-tax-estate-planning-and-economy

TP Minds Americas 2018

2/20/2018 - 2/21/2018

Informa

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

14th Annual International Estate Planning Institute

3/22/2018 - 3/23/2018

STEP

Venue: Crowne Plaza Hotel, 1605 Broadway and 49th, New York, NY 10019, USA

Key speakers: Richard Anderson (Wilmer Cutler Pickering Hale and Dorr), Stanley A. Barg (Kozusko Harris Duncan), Leigh-Alexandra Basha (McDermott Will and Emery), Robert Colvin (Robert D. Colvin & Associates), among numerous others

https://www.step.org/ny-institute2018

STEP CC18 Caribbean Conference

5/7/2018 - 5/9/2018

STEP

Venue: Hilton Barbados, Needham's Point St. Michael, Bridgetown, BB 11000, Barbados

Key speakers: Theo Burrows (Higgs & Johnson), Peter Cotorceanu (G&TCA and Anaford), Eric Dorsch (Kozusko Harris Duncan), Tara Frater (Lex Caribbean), among numerous others

http://www.stepcaribbeanconference.com/

48th Annual Spring Symposium

5/17/2018 - 5/18/2018

National Tax Association

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

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/48th-annual-spring-symposium-2018/

In-Depth HST/GST Course

5/27/2018 - 6/1/2018

CPA

Venue: 48 John Street, Niagara-on-the-Lake, ON LOS 1J0, Canada

Key speakers: David Robertson (CPA), Janice Roper (Deloitte)

https://www.cpacanada.ca/en/career-and-professional-development/courses/core-areas/taxation/indirect-tax/in-depth-hst-gst-course

Transcontinental Trusts: International Forum 2018

6/3/2018 - 6/5/2018

Informa

Venue: The Hamilton Princess, 76 Pitts Bay Rd, HM08, Bermuda

Key speakers: The Hon. Premier David Burt (Premier, The Goverment of Bermuda), The Hon. Justice Indra Charles (Justice, Supreme Court of The Bahamas), Anthony Poulton (Baker & McKenzie), Jonathan Conder (Macfarlanes), among numerous others https://finance.knect365.com/transcontinental-trusts-international-forum/

STEP Global Congress

9/13/2018 - 9/14/2018

STEP

Venue: The Westin Bayshore, 1601 Bayshore Drive, Vancouver, British Columbia, V6G 2VA, Canada

Key speakers: TBC

http://www.stepglobalcongress.com/About-Congress

111th Annual Conference on Taxation

11/15/2018 - 11/17/2018

National Tax Association

Venue: Sheraton New Orleans Hotel, 500 Canal St, New Orleans, LA 70130, USA

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/111th-annual-conference-on-taxation/

ASIA PACIFIC

8th Edition National Legal Summit 2018

1/20/2018 - 1/20/2018

Indian Chamber of Commerce

Venue: Jacaranda, India Habitat Centre, New Delhi 110003, India

Key speakers: TBC

http://www.lawyersclubindia.com/events/8th-Edition-National-Legal-Summit-2018-1356.asp

Financial Services Taxation Conference

2/7/2018 - 2/9/2018

The Tax Institute

Venue: QT Gold Coast, 7 Staghorn Avenue, Surfers Paradise QLD 4217, Australia

Key speakers: Anna Bligh (Australian Bankers' Association), Karen Payne (Board of Taxation), Michael Andrew (Board of Taxation), Julian Roberts (Australian Taxation Office), among numerous others

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

National GST Conference 2018

2/27/2018 - 2/28/2018

Royal Malaysian Customs Department / Chartered Tax Institute Of Malaysia

Venue: Kuala Lumpur Convention Centre, Jalan Pinang, Kuala Lumpur City Centre, 50088 Kuala Lumpur, Malaysia

Key speakers: Najib Razak (Prime Minister of Malaysia), Seah Siew Yun (Chartered Tax Institute of Malaysia), Datuk Subromaniam Tholasy (Royal Malaysian Customs Department), SM Thanneermalai (Crowe Horwath), among numerous others

http://gst.customs.gov.my/en/rg/SiteAssets/NGC_2018_Brochure.pdf

The Tax Institute, 33rd National Convention

3/14/2018 - 3/16/2018

The Tax Institute

Venue: Cairns Convention Centre, Sheridan and Wharf Street, Cairns City QLD 4870, Australia

Key speakers: Ken Schurgott (Schurgott & Co Lawyers), Vanessa Priest (Deloitte), Andrew Mills (Australian Taxation Office), Mark Leibler (Arnold Bloch Leibler), among numerous others

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

China Offshore Shenzhen Summit 2018

5/22/2018 - 5/24/2018

China Offshore

Venue: Grand Hyatt Shenzhen, 1881 Baoan Nan Road, Luohu District, Shenzhen, 518001, China

Key speakers: Simon Guo (Five Lakes World Trade Center), Uny Chan (Fidinam Hong Kong), Timothy Zammit (RSM Malta), Till Neumann (Citizen Lane), among numerous others

http://shenzhen.chinaoffshoresummit.com.hk/en/

The 4th Annual Asia Offshore Forum

5/29/2018 - 5/30/2018

Asia Offshore Association

Venue: Renaissance Hong Kong Harbour View Hotel, Hong Kong Convention And Exhibition Centre, 1 Harbour Rd, Wan Chai, Hong Kong

Key speakers: Michael Olesnicky (KPMG), Zarrian Liu (Zhong Zhi Wealth Preservation Holdings), Wilson Cheng (Ernst & Young), Gabriel Hai (Lang Di Fintech), among numerous others

http://asiaoffshoreforum.com/

CENTRAL AND EASTERN EUROPE

CIS Wealth Moscow 2018

2/19/2018 - 2/20/2018

CIS Wealth

Venue: Marriott Moscow Grand, 26/1 Tverskaya Street, Moscow, 125009, Russia

Key speakers: Svetlana Hohlova (Bell Moore S), Ekaterina Varadi (LAVECO Ltd), Maxim Simonov (Duvernoix Legal), Anna Modyanova (PwC)

http://cis-wealth.com/en/konferencii/19-cis-wealth-moscow-2018.html

Wealth Management & Private Banking Summit – Russia & CIS

4/17/2018 - 4/18/2018

Adam Smith Conferences

Venue: Marriott Grand Hotel, 26/1, Tverskaya Street, Moscow, 125009, Russia

Key speakers: Michael Addison (UBS), Evgenia Tyurikova (Sberbank Private Banking), Katerina Mileeva (Alfa-Bank), Evgeny Sivoushkov (PwC), among numerous others

http://www.russianwealthmanagement.com/

MIDDLE EAST AND AFRICA

4th IBFD Africa Tax Symposium

5/9/2018 - 5/11/2018

IBFD

Venue: Sarova Whitesands Beach Resort & Spa, Off Malindi Road, Mombasa County, Mombasa, Kenya

Key speakers: TBC

https://www.ibfd.org/IBFD-Tax-Portal/Events/4th-IBFD-Africa-Tax-Symposium

WESTERN EUROPE

7th Annual IBA Tax Conference

1/29/2018 - 1/30/2018

International Bar Association

Venue: etc.venues, 8 Fenchurch Pl, London, EC3M 4PB, UK

Speakers: TBC

https://www.ibanet.org/Conferences/conf856.aspx

Russian Wealth Advisors Forum

1/31/2018 - 2/1/2018

Adam Smith Conferences

Venue: Zürich Marriott Hotel, Neumühlequai 42, 8001 Zürich, Switzerland

Key speakers: Graham Povey (UBS), Michael Vlahovic (EFG Bank), Stefan Liniger (Rothschild Trust Group), John Riches (RMW Law), among numerous others

http://www.russianwealthzurich.com/

Swiss & Liechtenstein STEP Federation Alpine Conference

1/31/2018 - 2/1/2018

STEP

Venue: Congress Centre Kursaal Interlaken, Strandbadstrasse 44, 3800 Interlaken, Switzerland

Key speakers: Mark Barmes (Lenz & Staehelin), Professor Hans Peter Beck (CERN), Juerg Birri (KPMG), Nicholas Capt (Capt & Wyss Attorneys), among numerous others

http://www.step.org/events/save-date-swiss-liechtenstein-step-federation-alpine-conference-31-january-1-february-2018

Current Issues in International Tax Planning

2/21/2018 - 2/23/2018

IBFD

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

Key speakers: Emma Barrögård (IBFD), Premkumar Baldewsing (IBFD)

https://www.ibfd.org/Training/Current-Issues-International-Tax-Planning-0

Principles of International Taxation

2/26/2018 - 3/2/2018

IBFD

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

Key speakers: Bart Kosters (IBFD)

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

23rd Annual International Wealth Transfer Practice Conference

3/5/2018 - 3/6/2018

International Bar Association

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

Key Speakers: TBC

https://www.ibanet.org/Conferences/conf839.aspx

IBFD Seminar: The Future of VAT

3/14/2018 - 3/15/2018

IBFD

Venue: TBC

Key speakers: Robert van Brederode (Crowe Horwath), Werner Engelen (LEGO Group), Toon Beljaars (Uber)

https://www.ibfd.org/IBFD-Tax-Portal/Events/IBFD-Seminar-Future-VAT#tab_program

European Value Added Tax – Selected Issues

3/14/2018 - 3/16/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/European-Value-Added-Tax-Selected-Issues-1

Transfer Pricing Masterclass

3/28/2018 - 3/29/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Transfer-Pricing-Masterclass

Principles of Transfer Pricing

4/9/2018 - 4/13/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Principles-Transfer-Pricing-0

Transcontinental Trusts 2018

4/17/2018 - 4/19/2018

Informa

Venue: Grand Kempinski Hotel, Quai du Mont-Blanc 19, 1201 Genève, Switzerland

Key speakers: The Honourable Justice David Hayton (The Caribbean Court of Justice), Lewis Baglietto (Hassans), Julia Abrey (Withers), Marco Cerrato (Maisto E Associati), among numerous others

https://finance.knect365.com/transcontinental-trusts/

Global VAT

4/17/2018 - 4/20/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Global-VAT

Global Impact Investment Strategy

4/19/2018 - 4/19/2018

ESAFON

Venue: Mövenpick Hotel & Casino Geneva, Route de Pré-Bois 20, 1215 Geneva, Switzerland

Key speakers: Dr. Willem Schramade (NN Investment Partners), Damian Payiatakis (Barclays), Karen Wilson (OECD), Kurt Morriesen (United Nations Principles of Responsible Investments), among numerous others

http://esafon.com/

Global VAT – Specific Countries

4/19/2018 - 4/20/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Global-VAT-Specific-Countries-1

US Corporate Taxation

4/24/2018 - 4/26/2018

IBFD

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

Key speakers: John G. Rienstra (IBFD)

https://www.ibfd.org/Training/US-Corporate-Taxation-0

3rd International Conference on Taxpayer Rights

5/3/2018 - 5/4/2018

IBFD

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

Key speakers: Philip Baker, QC (Field Court Tax Chambers), Kevin M. Brown (PwC), Juliane Kokott (Advocate General, ECJ), Andrew Roberson (McDermitt Will & Emery), among numerous others

https://www.ibfd.org/IBFD-Tax-Portal/Events/3rd-International-Conference-Taxpayer-Rights

Tax and Technology

5/3/2018 - 5/4/2018

IBFD

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

Key speakers: Bart Janssen (Deloitte), Aleksandra Bal (IBFD), Monica Erasmus-Koen (Tytho), Eliza Alberts-Muller (Tytho)

https://www.ibfd.org/Training/Tax-and-Technology

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions

5/7/2018 - 5/9/2018

IBFD

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

Key speakers: Frank de Beijer (Liberty Global), Femke van der Zeijden (PwC), Rens Bondrager (Allen & Overy)

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

Transfer Pricing and Intra-Group Financing

5/24/2018 - 5/25/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Transfer-Pricing-and-Intra-Group-Financing

Introduction to European Value Added Tax

6/5/2018 - 6/8/2018

IBFD

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

Key speakers: TBC

https://www.ibfd.org/Training/Introduction-European-Value-Added-Tax-0

Private Investor Middle East International Conference

9/26/2018 - 9/27/2018

Adam Smith Conferences

Venue: The Montcalm London Marble Arch, 2 Wallenberg Place, London, W1H 7TN, UK

Key speakers: Jeffrey Sacks (Citi Private Bank), Michael Addison (UBS), Paul Stibbard (Rothschild Trust), Ian Barnard (Capital Generation Partners), among numerous others

http://www.privateinvestormiddleeast.com/

WESTERN EUROPE

France

A listing of recent key international tax cases.

The General Court of the European Union has ruled that EDF, the energy company, was right to repay unlawful state aid granted to it by the French state, bringing to a close a long-running case dating back to 2003.

The case concerned whether, in absolving EDF from liability to corporate tax of EUR888.89m, the company had been granted unlawful state aid, as the European Commission argued, or whether, as a stakeholder in EDF, the French state had acted at arm's length such that relieving EDF of the tax liability was tantamount to an investor forgoing a debt in favor of recapitalizing the company to benefit from the company's future enhanced prosperity.

On December 16, 2003, the Commission adopted a decision finding that, in the context of the restructuring of EDF's balance sheet and increasing its capital, the French state had waived a tax claim valued at EUR888.89m, corresponding to the corporation tax due from EDF. According to the Commission, the effect of that waiver had been to strengthen EDF's competitive position in relation to its business rivals, and the waiver constituted state aid incompatible with the common market. The Commission calculated that the aid to be paid back by EDF amounted in total to EUR1.217bn, including interest. EDF has repaid that sum to the French State.

EDF, supported by France, brought an action before the General Court for the annulment, in part, of that decision. By judgment of December 15, 2009, upheld by a judgment of the Court of Justice on June 5, 2012, the General Court annulled the Commission's decision, holding that the Commission was not entitled to refuse, simply because the measure taken was fiscal in nature, to examine whether the French state had acted as a "private investor in a market economy."

The private investor test is intended to establish whether, in participating in the capital of the recipient undertaking, or in taking action in connection with that capital, the state is pursuing an economic objective that might also be pursued by a private investor and is accordingly acting in its role as economic operator, in the same way as a private operator. A finding in line with such would mean that the French state had not granted unlawful state aid.

Following the judgments of the General Court and Court of Justice, the Commission adopted a new decision on July 22, 2015. It argued the private investor test was not applicable in this case. EDF, supported by the French state, again argued against the Commission's case before the General Court, seeking annulment of the Commission's decision.

The General Court ruled in favor of the Commission. The General Court concluded that the Commission was right to find that the private investor test was not applicable, given that neither EDF nor France submitted evidence to establish unequivocally that the French state had, before or at the same time as conferring the advantage at issue, taken the decision to make an investment in EDF and had evaluated, as a private investor would have done, the profitability of the investment that would be made by conferring such an advantage on EDF.

The Court rejected EDF's argument that the French decision was a measure recapitalizing EDF, finding instead it to have been a waiver of the tax on the reclassification of the grantor's rights in capital. The General Court also rejected EDF's argument that the Commission wrongly concluded that the private investor test was inapplicable because the French State mixed its capacities as public authority and shareholder.

This judgment was released on January 16, 2018.

https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180003en.pdf

EU General Court: *EDF v. Commission (Case T-747/15)*

Ireland

The General Court of the EU has rejected a request put forward by the US Government to involve itself in support of Apple's attempts to vindicate its position in relation to tax rulings it received from Ireland.

The US's request for leave to intervene was lodged with the General Court in April. The European Commission raised objections to the application in May.

The dispute concerns the Commission's April 2016 decision that two rulings provided by the Irish Government had "substantially and artificially lowered" the tax paid by Apple in Ireland since 1991. It estimated that EUR13bn in illegal aid must be recovered by the Irish authorities, plus interest.

Both the Irish Government and Apple have lodged appeals against the ruling. In October, the Commission referred Ireland to the European Court of Justice for its failure to collect the money.

Under EU law, any person able to establish an interest in the result of a case submitted to the General Court is entitled to intervene.

The US had argued that its economic situation would be affected by the Apple case, to the extent that the amount the EU ordered Ireland to recover from Apple "could result in an increase in the amount of tax credits or deductions" that Apple's parent company could claim in the US if it decided "to repatriate profits obtained by its offshore subsidiaries."

The General Court, however, ruled that the US had "failed to establish the existence of a direct interest in the result of the case." It therefore rejected the US's request to intervene.

This ruling was delivered on December 15, 2017.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=197902&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=160357

European Court of Justice: *Apple Sales Int. v. European Commission (Case T-892/16)*

Luxembourg

Luxembourg's highest court has overturned the conviction of Luxleaks whistleblower Antoine Deltour, although he is set to face a retrial.

Deltour, a former employee of PwC, was originally given a one-year suspended jail sentence and a EUR1,500 (USD1,800) fine by a lower court for his part in exposing thousands of confidential documents which purported to show how multinational companies avoided tax through their Luxembourg tax arrangements.

Deltour's suspended sentence was halved on appeal in March 2017, while fellow whistleblower Raphael Halet, also a French national, had his suspended sentence lifted, although both convictions were allowed to stand by the appeal court.

However, in a ruling issued by the Luxembourg Court of Cassation, Deltour's conviction was quashed, with the court saying that the lower courts should have recognized his status as a whistleblower, as defined by the European Court of Human Rights.

Nevertheless, the court upheld Halet's conviction and ordered him to pay his EUR1,000 fine.

The Court of Cassation also ordered a retrial in Deltour's case, which related to documents obtained from PwC which were not exposed in the Luxleaks affair.

This ruling was issued on January 11, 2018 (in French).

http://www.justice.public.lu/fr/actualites/2018/01/arret-3912-cassation--deltour/index.html

Luxembourg's Court of Cassation: *Deltour v. PwC (Case No. 3912)*

United Kingdom

The UK Court of Appeal has dismissed an appeal brought by ING Group against rulings from the Upper Tribunal and the First-Tier Tribunal (FTT) concerning the group's inability to recover VAT incurred on costs associated with providing what it considered was limited to a deposit-taking business for no consideration, which would fall outside the scope of VAT.

The appeal focused on the recoverability of VAT incurred by members of ING's VAT group, namely on advertising campaigns, the construction of a head office and two call centers, IT systems and services, and employment of staff, including recruitment costs. HM Revenue & Customs (HMRC) had argued, successfully, that the group was supplying exempt banking services, against which the taxpayer could not recover output tax.

The case concerned, first, the nature of the company's supply of services, with the Court deciding to disregard users' perceptions of the nature of the supply (they may consider they are receiving deposit-taking services for no fee, given the promotional advertising associated with the arrangement).

ING's business model is notably different than traditional banks. The FTT had determined that ING provided a "normal retail banking service" but with two distinctions. These were that the members of the VAT group only offered deposit accounts and they had no walk-in branches. Instead the group offered a 24-hour telephone and internet banking service. It also attracted customers by offering higher interest rates than most or all of its competitors and by its marketing catchphrase of "no fees, no exceptions."

With the exception of account opening and deposits made by check (cheque), depositors could only interact with the bank and undertake transactions on their accounts by telephone or on the internet. A limited number of facilities were made available. Depositors could not receive check books, debit or credit cards, or overdraft facilities.

Although transfers to the account could come from any other bank account, including by a check payable to a depositor which was drawn by a third party, there was no ability to make a payment from the account to a third party. Instead, withdrawals had to be made via a transfer to another account operated by a member of the VAT group or to a linked account held by the depositor at another bank. Depositors were required to have a current account with another UK bank or building society which acted as the linked account.

The trade comprised taking cash deposits from private individuals and using the funds to acquire bonds and securities

The appellants sought to argue there was no supply subject to VAT, relying on the European Court of Justice's ruling in *BLP Group v. Customs and Excise Commissioners* (Case C-4/94), in which it held that to take out a loan does not involve a VATable transaction by the borrower at all, even if he pays interest: he is the mere recipient of a service provided by the lender.

HMRC contended, and did so successfully before both the Upper Tribunal and FTT, that it is more than a deposit-taking business and involved the provision of banking services.

The appellant had sought to argue that any banking service provided by the company as a result of its deposit-taking business was an ancillary supply, being the provision of interest plus the promise to repay, being a non-supply under the ruling in *BLP*. Failing such, it attempted to argue there was not a supply of banking services for VAT purposes because those supplies were not for consideration or, if such failed, because a monetary value could not be calculated for the consideration received.

Not only did it agree with the earlier Tribunals' ruling that the services constituted a supply of exempt banking services, the Court of Appeal agreed that consideration was implicitly given by the depositors in the form of their agreement to the contractual terms and conditions, including the interest rate which served both as a return on the deposit and as a payment for the banking services, and that consideration was capable of being expressed in a monetary form.

In its argument, HMRC said the terms and conditions give the customer a number of rights, such as the ability to use his account on a 24-hour basis, to make transfers and to receive interest and to receive statements online. The bundle of rights makes it clear that a user has a deposit account. It argued that while it is not an account on which checks can be drawn and there are no ATM services, from the perspective of both parties, the underlying product is the same. It follows that the consideration, so far as the customer is concerned, is not just the promise to pay interest; it is also the provision of a bank account.

The ruling was released on December 13, 2017.

http://www.bailii.org/ew/cases/EWCA/Civ/2017/2111.html

UK Court of Appeal: *ING Intermediate Holdings Limited v. HMRC ([2017] EWCA Civ 2111)*

Dateline January 18, 2018

Coalitions have their merits. However, some people argue that they are a recipe for **legislative gridlock**, and tend to serve up imperfect compromises to pressing problems. It's true that coalitions can often lead to political stalemates, but some would argue that it is better that a government does nothing, rather than do a succession of things very badly, as those with huge parliamentary majorities, or with a lack of democratic accountability, are sometimes apt to do.

We've seen in recent weeks that, in the area of taxation at least, coalitions can get a surprising amount of work done. Just look at the **Netherlands**; despite a dizzying array of parties competing for power, and an alphabet soup of party acronyms on any given governing ticket, **significant tax reforms** have been legislated for, including a corporate tax cut. Ditto **Belgium**, where the legislature recently signed off **major tax changes**.

However, more recent developments have highlighted the limitations of coalitions, especially when the parties involved are on different political pages. **Denmark**'s Prime Minister, Lars Løkke Rasmusen, for example, was forced into an embarrassing climb-down last week on tax after a coalition partner decided not to play ball. And in **Germany**, after September's inconclusive election, and months of fruitless coalition talks, lawmakers look set to unveil an utterly underwhelming grand coalition agreement as far as tax reform is concerned, which likely speaks of the CDU's fiscal conservatism rubbing up against the SPD's urge to splurge the surplus.

It's easily forgotten that the **United Kingdom** is also being governed by a coalition, probably because the vote-guaranteeing Democratic Unionist Party is something of a silent partner. There's also a coalition of warring factions of pro- and anti-**Brexit** Tories, which are now deciding how to position the UK in talks on the next stage of Brexit and specifically on tax and trade.

It's easy to get distracted by the politics and the personalities of the Brexit saga and to forget about the nitty gritty details that will **affect the lives of taxpayers** on the ground, particularly the thousands of companies trading across the Channel between the UK and Europe. However, we have had a glimpse of what post-Brexit life for traders has in store, in the form of the UK Taxation (Cross-border Trade) Bill, and it's not a pretty sight, especially for small firms.

This presents something of a nightmarish vision whereby the UK pulls out of the EU **VAT and customs** areas and traders face import VAT, a prospect that holds major cash-flow implications. According to Nicky Morgan, the Chair of the UK's Treasury Committee, over 200,000 businesses could be affected.

Further down the line, taxpayers also face the possibility of a UK **VAT system** that **diverges** from the EU regime and all the attendant administrative headaches associated with this. There are suggestions that the UK could shadow the EU VAT regime, to make life easier for businesses. But would the UK go along with the major reforms which are planned for EU VAT over the next few years?

By contrast, across the Atlantic, it seems the good times are about to roll for taxpayers after the enactment of the **Tax Cuts and Jobs Act**. And not only has the tax reform feel-good factor driven **US stocks** to their highest values, companies have announced pay rises and other tax perks for employees as a result, such as with the recent announcement from Walmart.

But even here, some companies are seeing short-term fallout. As a result of the cut to the corporate income tax rate to 21 percent, many **large multinationals** have adjusted the value of their deferred tax assets, resulting in a **write-down in their profits**, typically by billions of dollars. And elements of the TCJA could also prove particularly problematic for banks, many of which have expressed concern about the "BEAT" **interest deduction** limitation provisions.

What's more, while taxes might be getting lower for many individuals and businesses, they don't seem to be getting much easier, despite earlier promises that taxpayers will be able to file on a postcard. Indeed, as the National Taxpayer Advocate, Nina E. Olson, pointed out last week in presenting her latest annual report to Congress, taxpayers are going to need all the help they can get in the coming weeks and months as they adjust to these major changes.

Even the **2008 Economic Stimulus Payment** – a relatively minor undertaking compared with changes being brought about by the TCJA – resulted in a 125 percent increase in calls to the Internal Revenue Service's jammed phone lines between 2007 and 2008, according to Olsen. So heaven help you if you expect to seek advice from an IRS agent any time in the next year or two.

Tax reform was supposed to **reduce** the need for taxpayers to **hire help** from tax professionals to get their tax returns right. But judging by Olsen's findings, and given that US taxpayers already spend about 8 billion hours a year complying with their taxes, that need has probably never been greater.

The Jester