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a closer look

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

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

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CONTENTS

FEATURED ARTICLES

An Antifragile Tax System
Andrew P. Morriss, Dean & Anthony G. Buzbee Dean's Endowed Chair, Texas A&M University School of Law — 5

Meeting US FATCA Reporting Requirements
Sareena Sawhney, Marks Paneth LLP, New York, US, independent member of Morison International — 9

Australian Tax Reform: Will It Happen This Time?
Stuart Gray, Senior Editor, Global Tax Weekly — 11

New ECJ Ruling Regarding VAT Exempt Asset Management
Martijn Jaegers, Taxand, Netherlands — 16

Topical News Briefing: Another Cold GST Winter
The Global Tax Weekly Editorial Team — 19

NEWS ROUND-UP

VAT, GST, Sales Tax — 20

India Will Fail To Introduce GST On Schedule

Singapore Issues Guide On GST Assisted Compliance Program

Tax Reform — 22

Italian Parliament Passes 2016 Budget

Scotland To Retain Personal Tax Rate, Despite New Powers

Compliance Corner — 25

India's Customs Board To Resolve Disputes

ATO Releases Corporate Tax Data

European Union — 28

EU Pushes For Conclusion Of Japanese FTA Talks

EC: Greece Should Better Target Tonnage Tax

EU, Philippines Launch FTA Talks

US Tax Reform 30

Republicans Concerned About US CbC Reporting

US Congress Has Restricted REIT Spin-Offs

Other Taxes 32

South Korea, China To Cooperate On Carbon Taxation

TAX TREATY ROUND-UP 33

CONFERENCE CALENDAR 35

IN THE COURTS 41

THE JESTER'S COLUMN 47
The unacceptable face of tax journalism

For article guidelines and submissions, contact GTW_Submissions@wolterskluwer.com

An Antifragile Tax System

by Andrew P. Morriss, Dean & Anthony G. Buzbee Dean's Endowed Chair, Texas A&M University School of Law

Introduction

Nassim Nicholas Taleb, author of *Black Swan* (Random House 2010), wrote a terrific follow-up book, which has gotten less attention than *Black Swan* did. This is unfortunate because *Antifragile* (Random House 2012) generalizes on the lessons of Taleb's earlier work and sets out an important way of thinking about institutions. We can use it to understand the current uproar over tax avoidance.

Things that are "antifragile" improve with shocks. Antifragility is thus more than simply surviving a shock; robustness or resilience captures that property. Here's a short description by Taleb that captures the property:

> The antifragile loves randomness and uncertainty, which also means – crucially – a love of errors, a certain class of errors. Antifragility has a singular property of allowing us to deal with the unknown, to do things without understanding them – and do them well. Let me be more aggressive: we are largely better at doing than we are at thinking, thanks to antifragility. I'd rather be dumb and antifragile than extremely smart and fragile, any time. (4)

You can see the connection to *Black Swan*: being antifragile makes black swans more survivable. But if being antifragile is so wonderful, why aren't more things antifragile? Indeed, why don't we have an English word for antifragility? The main reason is that we often confuse it with being strong or robust. Something that is strong is not harmed by a shock but the shock doesn't make the strong system better. A shock makes the antifragile system better.

Fragility And Tax

To apply this to tax systems, let's look at the *Casablanca*-like shock that governments have been expressing recently upon the discovery that businesses are engaged in clever tax avoidance schemes with names like "double Irish." By taking advantage of smart lawyers and accountants, many multinational companies have built economic structures that route funds through multiple jurisdictions, with the goal of minimizing the corporate tax paid. (Let's save for another day whether or not it makes sense to tax business income twice, by taxing it both at the entity and shareholder levels and assume that governments have good reasons for doing it.)

There are two sets of fragile institutions here. The first set of fragile institutions are the structures businesses have built to ship funds through Luxembourg, the Netherlands, Ireland, *etc.* in pursuit of lower tax bills. As Starbucks, Amazon, Apple and others are discovering, governments are quite happy to change the rules (sometimes even retroactively) to disrupt these plans. (Again, leave aside whether it is a good thing for governments to change rules retroactively in any area, let alone one where businesses need to plan.) These systems are fragile because they are vulnerable to even small changes in the rules.

The second is the tax system itself. This is much more important. Why is it possible for Starbucks to park its profits in a low-tax jurisdiction? Because the tax system is complex and riddled with rules that sometimes conflict, sometimes leave gaps, and sometimes make no sense. This is what makes the tax system itself fragile.

Only the second fragile institution is a problem, however. This is because to make an antifragile economy (*i.e.*, one that is improved by shocks rather than harmed by them), "every single individual business must *necessarily* be fragile, exposed to breaking – evolution needs organisms (or their genes) to die when supplanted by others, in order to achieve improvement, or to avoid reproduction when they are not as fit as someone else." (74) The complexity of tax rules makes them fragile – and shelters the institutions that operate under them from forces of competition. If you are making your money because of a tax avoidance scheme, you aren't making your money by being better at delivering goods and services than your competitors.

The fragility of the tax systems is even more of a problem, however, because of the reason they are fragile. Tax systems are inevitably more complex than the man-on-the-street thinks optimal because defining things like "income" is tricky. But the reason the word count in the US Internal Revenue Code and its regulations exceeds the King James Version of the Bible is not because it is defining income with uncommon subtlety and nuance.

The complexity and length are the product of cramming it full of special interest provisions that have been inserted by our elected representatives and bureaucrats to help this business or that industry. As noted earlier, many of those special interest provisions have the effect of bolstering individual businesses and industries – thus making them less susceptible to evolutionary pressures from competition. As a result the economy becomes more fragile. Taleb makes a similar point when he criticizes bailouts as "*transferring fragility from the collective to the unfit.*" (75) This is a trend with worrying consequences for the entire economy.

Incentives To Promote Fragility

It gets worse, however. Near the end of *Antifragile,* Taleb uses an encounter he had with a former US Federal Reserve vice chair at a Davos conference. He offered Taleb a chance to invest in a "peculiar investment product that aims at legally hoodwinking

taxpayers. It allowed the high net worth investor to get around regulations limiting deposit insurance (at the time, USD100,000) and benefit from coverage for near-unlimited amounts." In short, Taleb concluded that the product would "allow the super-rich to scam the taxpayers by getting free government-sponsored insurance. Yes, *scam* taxpayers. Legally. With the help of former civil servants who have an insider edge." (412–13)

Taleb objected to this product – and similar maneuvers by other former civil servants and politicians – because it created a perverse incentive structure. "Think about it a bit further: the more complex the regulation, the more bureaucratic the network, the more a regulator who knows the loops and glitches would benefit from it later, as his regulator edge would be a convex function of his differential knowledge. This is a franchise, an asymmetry one has at the expense of others." (413) The system is thus geared toward encouraging the sort of features that make it more fragile.

What To Do?

What *not* to do is easier to specify than what to do. Taleb says we should keep the "fragilistas" away from the levers of power. A fragilista is a person who "makes you engage in policies and actions, all artificial, in which *the benefits are small and visible, and the side effects potentially severe and invisible.*" (10).

How do we do that? In tax this means that what we should not do is exactly what we are doing. We should not make the international tax system more complex by layering the OECD BEPS project, FATCA, son-of-FATCA, and other such things on to an already overly complex system. All of these efforts are making our system more fragile and damaging the underlying competitive forces that make our economy as a whole more antifragile. (It goes against my personal interest to say this, as these efforts by governments and NGOs are creating the conditions under which my students will find lucrative jobs in international business and tax, enabling them to contribute to the law school and the university.)

Taleb points to "the worst problem of modernity" as the "malignant transfer of fragility and antifragility from one party to another, with one getting the benefits, and the other one (unwittingly) getting the harm, with such transfer facilitated by the growing wedge between the ethical and the legal." (376) One key to the solution is to require people to keep some "skin in the game" to prevent them from transferring fragility to others. This includes "every opinion maker" and "anyone producing a forecast or making an economic analysis." Each needs "to have something to lose from it." (381).

An action item for tax flows from this: the rules of international tax ought to be set by those with "skin in the game." That rules out the OECD, a club of transnational bureaucrats who have managed to get themselves exempted from income taxes, and organizations of people with nothing more than opinions. It rules in the national tax authority employees who will have to implement the rules,

the taxpayers, and people engaged in transactions across borders. Let's build a framework for coping with the inevitable problems caused by differences in tax systems by getting the people who actually do business across borders involved and let the OECD bureaucrats spend their time enjoying spending their tax-free salaries in Paris bistros.

Taleb's second rule of thumb for coping with fragility is to build in redundancy. As he more colorfully puts it: "make sure there is also a copilot" on any plane you board. (381) Redundancy can come from making options available. The ability to move money and transactions around the globe creates redundancy. If a tyrant seizes power in country A, your money or your company can move to country B. This happened during the early days of World War II.

As Dutch multinationals realized that the German troops massing on the board portended a potential change in ownership of their shares and control of their businesses, they shifted the legal seat of the companies to the island of Curacao, a Dutch possession in the Caribbean. Anton Smeets, an enterprising notary there, offered corporate management services, drawing on the professionals there to manage Royal Dutch/Shell's refinery. (As a result, Curacao acquired the human capital to become a major offshore jurisdiction.)[1] We ought to encourage redundancy in legal systems just as we encourage it in other areas of life if only because more legal systems mean more opportunities to evolve solutions to problems. (Professors Erin A. O'Hara and Larry E. Ribstein have the best discussion of jurisdictional competition in *The Law Market* (Oxford 2009).)

The Triad

Taleb organizes the world into a triad of the fragile, the robust, and the antifragile. He offers many examples, but let's just use one, Greek mythology. The Sword of Damocles epitomizes fragility – it hangs by a thread. The phoenix exemplifies robustness – it returns in the same form when it is killed. The hydra is antifragile – cut off a head and it grows more than one back.

If we are going to live in an antifragile world economy, we need to start thinking about how the rules we establish for that economy affect our position in this triad. Right now, we're moving in the direction of greater fragility – the wrong direction. If we don't turn things around, the next shock to the world economy is likely to break a lot of fragile institutions.

Endnotes

1 Craig Boise and I wrote about this history in *Change, Dependency, and Regime Plasticity in Offshore Financial Intermediation: The Saga of the Netherlands Antilles,* 45(2) Texas Int'l L. J. 377 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1368489. The Dutch were right to move their corporate seats. After the German occupation began, many Dutch shareholders found themselves compelled to sell assets to the occupiers at bargain prices.

Meeting US FATCA Reporting Requirements

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This article is only able to supply a general overview of the complex world of social insurances and cannot replace a detailed analysis of any individual case or a particular geographic jurisdiction. Should you perceive the need for action in your company, or have any further questions regarding this matter, our specialists will be pleased to help you.

The Foreign Account Tax Compliance Act (FATCA) was enacted with the primary goal of providing the Internal Revenue Service (IRS) with the ability to locate US tax evaders hiding assets abroad. Foreign Financial Institutions (FFIs) will now need to conduct the necessary due diligence and meet the necessary documentation requirements in order to help find such US tax avoiders. Non-compliance can result in the FFI paying a 30 percent withholding tax on income from US sources.

FATCA requires FFIs to report such data either directly to the IRS by entering into an Intergovernmental Agreement or through the FFI's own local government. FFIs must now conduct due diligence to scrutinize their own records and documentation in order to determine the "FATCA status" of their existing account holders.

So what are the overall steps a FFI needs to perform? They are as follows:

1. Determine who meets the IRS definition of who must be reported, and whether the account holder is an entity or an individual as the rules are different for each;
2. Collect the data electronically if possible. Larger institutions should have most of this information in an electronic format. Smaller firms may be more paper intensive, which can present more of a challenge and may require contacting the client directly to get know-your-customer information;
3. Once the data has been collected, categorize the accounts by their aggregate value. Reporting thresholds vary whether you file tax returns jointly or live abroad. Individuals with accounts of at least USD50,000 in aggregate value may be subject to reporting, as may entities with USD250,000 in aggregate value.

4. Once the data has been categorized, the IRS has provided specific criteria to look for in determining whether an account holder should be reported to the IRS or local tax authority as follows:
   - Identification of an investor as a US resident or citizen;
   - US place of birth;
   - US mailing address (including a US post office box);
   - US telephone number;
   - Instructions to transfer funds to an account maintained in the US;
   - Power of attorney or signatory authority granted to a person with a US address.
5. Once account holders believed to be liable for US taxes are identified, the information must be verified. For accounts of more than USD1m it may not be sufficient enough to look at documentation, but rather, doing that in conjunction with interviewing bank relationship managers as well as potentially contacting the client themselves may be necessary in order to know whether an individual is a US based person. If an account holder refuses to provide the necessary documentation, they are to be treated as a "recalcitrant accountholder" and the FFI must impose 30 percent FATCA withholding on US source income.

FFIs that decide not to cooperate with FATCA potentially run the risk of paying heavy penalties. Although the cost of compliance may be high, FFIs should beware that the IRS is "zeroing" in on banks, investment managers and broker-dealers who fail to send information on US persons to the IRS or their local taxing authorities.

Attention: confirmation by OASI only shows that the person mentioned is self-employed and personally deals with OASI matters. Yet a specific job could still be regarded as employment as, depending on the amount, duration or administrative integration into your company, too much dependency might be created. In such situations we recommend presenting the specific case to the relevant OASI compensation office and asking for a binding judgment.

Australian Tax Reform: Will It Happen This Time?

by Stuart Gray, Senior Editor, Global Tax Weekly

The Australian Government's Tax White Paper, published earlier this year, is the latest in a succession of consultations on how the failings of Australia's tax regime can be rectified. But given previous tax reform campaigns largely fizzled out, can we expect the current process to result in any meaningful change?

Introduction

Australia is generally seen as a favorable place in which to do business. It is ranked 13th out of 189 nations in the World Bank Group's Doing Business Index 2016, and 4th out of 178 countries in the Heritage Foundation's most recent Index of Economic Freedom, which says that "Australia's strong commitment to economic freedom has resulted in a policy framework that has facilitated economic dynamism and resilience."[1]

"Although overall economic freedom has declined slightly over the past five years, the Australian economy performs remarkably well in many of the ten economic freedoms," the Foundation observes. "Regulatory efficiency remains firmly institutionalized, and well-established open-market policies sustain flexibility, competitiveness, and large flows of trade and investment."

However, Australia is let down to a certain extent by its tax system, with the country ranked 44th in the world in PwC's Paying Taxes Index 2016. According to this annual study, a medium-sized manufacturing company can expect to pay almost 50 percent of its profits in income, labor and other taxes, and spend over 100 hours per year complying with the tax code.

An obvious problem with Australia's business tax regime is the country's relatively high rate of corporate tax which, at 30 percent, is well above the OECD average of 24 percent. What's more, individual income is also taxed quite heavily, with the top rate currently 47 percent, which compares unfavorably with other countries in the Asia-Pacific region, especially places like Hong Kong and Singapore.

The Tax White Paper

In order to address the failings of the Australian tax system, the Government released a tax discussion paper on March 30, 2015, marking "the start of a conversation about how we bring a tax system built before the 1950s into the new century," according to then Treasurer Joe Hockey.[2]

"The tax discussion paper … begins a dialogue on how we create a tax system that supports higher economic growth and living standards, improves our international competitiveness, and adjusts to a changing economy and new opportunities," said Hockey. He highlighted that a 2015 Intergenerational Report[3] illustrated the "need to take continued steps to boost productivity and encourage higher workforce participation to drive future economic growth" in the face of slowing income growth. He continued:

> "Tax reform is a critical part of the Government's policy to create jobs, growth and opportunity.
>
> "The problem we face is that our current tax system, which was designed before the 1950s, is ill-suited to the 2050s.
>
> "As a result of changes driven by globalization and the rise of the digital economy, Australia's heavy reliance on income taxes may be unsustainable. This over-reliance is projected to increase further, largely as a result of wages growth leading to individuals paying higher average rates of tax (bracket creep)."

Hockey said that around 300,000 individual taxpayers are expected to be subject to the second highest tax bracket by 2017, with 43 percent of all taxpayers becoming subject to the top two tax brackets within ten years. He added that around 70 percent of Commonwealth (*i.e.*, federal) tax revenue is from individual and corporate income taxes, with a dozen companies paying approximately one third of Australia's corporate income tax. Hockey continued:

> "The rise of the digital economy and globalization presents significant challenges for the effectiveness of the tax system. Capital is more mobile and we need a competitive corporate tax regime to encourage investment. Multinational corporations operate across many jurisdictions and that means it can be difficult to determine where tax should be paid."
>
> "The Intergenerational Report highlights the need for a tax system that can support a growing and ageing population while there is a decline in the number of traditional working age Australians to fund services."

It is a situation which has led the Australian Chamber of Commerce and Industry (ACCI) to conclude that only a comprehensive tax reform plan that touches every aspect of the Australian fiscal and regulatory system will fix the country's competitive shortcomings. As John Osborn, Director of Economics and Industry Policy at the ACCI observed: "Without comprehensive reform across taxation, spending and regulation, growth in Australian living standards will be about 25 percent less over the next 40 years, bracket creep will push up the average tax rate for the average worker by 5 percent over the next ten years, and Australia will continue to lose international investment thanks to our high corporate tax rate."[4]

"It's time to move the tax reform debate beyond the sloganeering of simple solutions and grievance politics," Osborne added. "No one wants to see poor and disadvantaged people worse off and that is exactly why we need to kick-start economic growth through reform. It's the only sustainable way to ensure widespread prosperity."

"We are living in an increasingly global and mobile world and without economic reform our international competitiveness remains weak and that means lower living standards. We are currently a disappointing 21st in the World Economic Forum Global Competitiveness Rankings and should be in the top ten."

Lessons From Recent History

As the launch of the White Paper suggests, Australia's politicians certainly seem well aware of these shortcomings and the need for change. Indeed, given the frequency with which tax reform is discussed in government and among the political parties, one could be forgiven for thinking that they talk about little else! And it is a conversation that seems to have intensified over the last few weeks.

Tax reform was a major talking point at the Council on Federal Financial Relations (CFFR) meeting in October 2015, when Australia's federal, state and territory treasurers agreed to review all state and Commonwealth taxes. On December 11, this was followed up by the CFFR's commitment "to continue discussions around a more sustainable and growth enhancing tax mix and tax base," according to federal Treasurer Scott Morrison. And just a day later, federal Prime Minister Malcolm Turnbull informed us after a meeting of the Council of Australian Governments that Australia's federal, state and territorial governments will continue to explore all options for tax reform.

Unfortunately for taxpayers in Australia, recent history suggests that all the talk probably will not translate into much action. Casting our eye back to previous tax reform initiatives, we see that the Ralph Report on business taxation, received by the Howard Government in 1999, was viewed as a missed opportunity for positive change. The last Labor government launched an even more ambitious review of the tax regime, the so-called "Future Tax System," designed to pave the way for a ten-year tax reform process. However, the major change to come out of the review was the ill-fated Mineral Resources Rent Tax, which was subsequently repealed after Labor lost the 2013 election to the incumbent Liberal/National coalition.

When he took over from former Prime Minister Tony Abbott in September, Turnbull assured taxpayers that the tax system "is one of the key levers the Government has to promote economic activity," and therefore, his administration "has a major focus on tax reform." However, the Government's true commitment to tax reform can be questioned. The promised Green Paper on tax setting out options for change has yet to materialize, despite the Government's pledge to publish it in the latter half of 2015. Federal Treasurer Scott Morrison also

confirmed to the Economic and Social Outlook Conference in November that the Government "has not yet put forward any preferred option or proposal," and that it has "no intention to rush to failure in this critical area."

The Deficit

Other forces are also working against tax reform. One of them is the Government's fiscal consolidation plan, as it seeks to reduce the AUD48bn (USD34.5bn) budget deficit it inherited from the previous administration. This has forced the Government into canceling an across-the-board corporate tax cut, and imposing a surtax on high incomes. In such dire fiscal circumstances, short-term revenue fixes are likely to take priority over long-term planning. Indeed, with the remainder of the Coalition's term now being counted in months rather than years – the next election will take place no later than January 14, 2017 – and without a majority in the Senate, its focus will probably be trained on achievable short-term goals.

BEPS And Beyond

There is one area where the Government has been only too keen to enact reform: BEPS. Even before the OECD released its final set of reports on base erosion and profit shifting, Australia was working on legislation to curb tax avoidance by multinational companies, such as the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015,[5] which received Royal Assent on December 11.

First announced in the 2015/16 Budget, the Combating Multinational Tax Avoidance Bill provides for a standard and centralized set of concepts to determine whether an entity is a "significant global entity"; introduces new standards for transfer pricing documentation and country-by-country reporting by "significant global entities"; and implements measures to negate certain tax avoidance schemes used by multinational entities to artificially avoid the attribution of profits to a permanent establishment in Australia. The legislation also amends the Taxation Administration Act, 1953, to increase the penalties imposed on "significant global entities" that enter into tax avoidance or profit shifting schemes. The new measures will apply from January 1, 2016, except the provisions on penalties, which will apply from July 1, 2015.

Additionally, on May 12, 2015, the Government began a consultation on exposure draft legislation and associated guidance to give effect to the 2015/16 Budget changes to ensure digital goods and services receive equal goods and services tax treatment regardless of whether they are provided by Australia-based or overseas entities. This amendment would make the supply of anything other than goods or real property to an entity that is not registered or required to be registered for GST potentially subject to GST if that entity is an Australian resident. A public consultation on amendments to the first draft began on October 7, 2015.[6]

Indeed, Australia is traveling a little too fast in reacting to the BEPS project for some, including Stephen Healey, President of the Tax Institute, who called for a "considered" response to what is a

"highly politicized" area of international tax. Healey warned that to do otherwise would "undermine the integrity" of the ongoing tax reform process.[7]

Nevertheless, the Australian Government appears rather proud of its recent track record in cracking down on BEPS, with then Assistant Treasurer Kelly O'Dwyer observing how Australia is already "ahead of the game internationally" in this area following the release of the final BEPS recommendations in October. Australia's taxpayers, on the other hand, might counter that pointing out Australia's need for further tax reform, particularly in the area of income tax, merely indicates how the country's tax regime has fallen behind the competition.

Unfortunately, given successive governments' failure to deliver in this area, and an unfavorable set of fiscal and political circumstances facing the current one, it seems that Australia is destined to continue lagging behind the leading pack for a while longer.

Endnotes

1 http://www.heritage.org/index/country/australia

2 http://jbh.ministers.treasury.gov.au/media-release/021-2015/

3 http://www.treasury.gov.au/~/media/Treasury/Publications%20and%20Media/Publications/2015/2015%20Intergenerational%20Report/Downloads/PDF/2015_IGR.ashx

4 https://www.acci.asn.au/news/give-tax-reform-fair-go-national-interest

5 http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/bills/r5549_aspassed/0000%22

6 http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2015/GST%20treatment%20of%20cross-border%20transactions/Key%20Documents/PDF/Consultation%20paper.ashx

7 http://taxinstitute.com.au/timediarelease/beps-intent-welcome-but-should-not-dominate-tax-reform-process?utm_source=dlvr.it&utm_medium=twitter&utm_campaign=ppdfeed

New ECJ Ruling Regarding VAT Exempt Asset Management

by Martijn Jaegers, Taxand, Netherlands

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Introduction

On Thursday December 9, the European Court of Justice (ECJ) released its ruling in the Dutch case of "*Fiscale Eenheid X*" (freely translated to "VAT group X"), Case No. C-595/13. This case regards the application of the VAT exemption for fund management services and impacts the entire fund management sector, although the facts primarily concern the management of real estate investment funds.

Case *Fiscale Eenheid X*

The case regards an external asset manager that renders management services to three real estate investment funds. The principal question in this case is whether the management of such real estate investment funds can for VAT purposes qualify as VAT exempt management of a fund for collective investment. For this purpose the fund needs to qualify as 'special investment fund'. If the fund qualifies as special investment fund, the second question is which of the services provided by the external asset manager actually qualify as fund management and can thus be charged to the real estate funds exempt from VAT.

Qualification As Special Investment Fund

To qualify as special investment fund, the investors have participation rights in the fund whereby their return on the investment depends on the performance of the investments made by the fund's managers over the period for which those persons hold those rights. The assets of the investors need to be pooled, whereas the risk borne by those beneficiaries must be spread over a range of assets.

The fact that the assets are in immovable property rather than in securities is of no consequence for determining whether management services can qualify as VAT exempt management of investment funds. To qualify as exempt special investment funds, companies must generally display characteristics identical to undertakings for collective investment as defined by the UCITS Directive. This EU Directive established common and basic rules for the authorization, structure, operation and activities of collective investment undertakings situated in the EU member states and the information they must publish.

Therefore, if a company is sufficiently comparable to such collective scheme, it should be considered in competition which such scheme. The fund management of such schemes should then be VAT exempt, principally to avoid distortion of competition between two comparable products (referred to as the principle of neutrality).

Specific State Supervision

The case of *Fiscale Eenheid X* makes clear that the ECJ puts more focus on the element of State supervision than ever before. Following the Opinion of the Advocate General in this regard, the exemption seems to apply only to investment undertakings that are subject to specific State supervision at national level, if not already subject to the supervisory rules dictated by EU law following the UCITS Directive.

Although an element of State supervision is apparently required going forward for, let's say, non-UCITS funds, the ECJ does not provide sufficient guidance to the required minimum level of State supervision. It only mentions that it should be "comparable." How should we exactly interpret this? We anticipate this will lead to even more uncertainty in the market on application of the VAT exemption.

From a Dutch VAT perspective, it could for example be argued that when the scope of the State supervision within a Member State sees to protect the financial interest of investors, application of the exemption is still possible. After all, "being subject to licensing and oversight rules" imposed by local Financial Services Authorities should in our view not mean that a VAT exemption can only be granted for the management of "licensed" funds. Other forms of governmental oversight might also be sufficient. We nevertheless expect that this element will again lead to new CJEU case law as market operators simply require more clarity on this aspect.

If such a scheme is subject to specific State supervision, then the VAT exemption can be applicable to fund management of investment funds in immovable property. It should in any case be expected that the national tax authorities within the EU member states may find new arguments in this case to argue differently.

All Services Rendered VAT Exempt?

Concerning the second question, the ECJ has provided guidance on which of the services provided by external asset managers qualify as VAT exempt fund management.

The ECJ rules that the actual management of the properties is not specific to the management of a special investment fund given the fact that these activities go beyond the various activities connected with the collective investment of capital raised. Thus where the assets of such a fund consist of immovable property, its specific activity for example includes activities relating to the selection, purchase and sale of immovable property as well as administration and accounting tasks.

As such, the objective of the actual management of properties such as rent collection, arranging

ordinary maintenance work and supervision thereof is not specific to the activity of special investment fund where it is intended to preserve and build up the assets invested. It is then inherent to any type of investment. The actual management of the immovable property is therefore considered subject to VAT.

Topical News Briefing: Another Cold GST Winter

by the Global Tax Weekly Editorial Team

India's continuing drive to improve its business tax reputation has taken another step forward.

As reported in this week's *Global Tax Weekly*, the Finance Ministry announced measures to enable the Central Board of Excise and Customs to more speedily resolve disputes concerning indirect taxes. This includes raising the monetary thresholds for government appeals to the Customs, Excise and Service Tax Appellate Tribunal and to the High Courts. Additionally, cases before the Tribunal and the High Courts will be withdrawn where precedents have already been set by the Supreme Court.

This follows a recent government announcement to curb the high number of tax disputes generally.

Good news, no doubt, for the many multinational companies already doing business in India, having suffered so much uncertainty under the previous government. More readily available access to speedy dispute resolution can only improve the business environment.

But this improvement is undermined by a constantly irritating fly in the indirect tax ointment: the slow progress on introducing a new goods and services tax (GST) regime in India.

Yes, the rate of progress under Prime Minister Narendra Modi's Government is much improved than under the previous Indian National Congress (INC) party regime, but the legislation to introduce the new GST continues to be stymied by opposition parties, most notably (and ironically) by the INC, which initiated the original GST bill.

So it came as no surprise that the parliamentary winter session failed to pass the current GST Bill, despite the Government's best efforts, likely leading to a further (and costly, in business terms) delay in introducing the tax.

Another missed opportunity then. Which is a pity, as this is India's opportunity to steal some limelight by picking up some of the slack created by China's economic slowdown. China, meanwhile, has made great progress on replacing its business tax regime with a value-added tax, albeit with the advantage of having a one-party political system.

Sweeping aside the various state indirect taxes in India and replacing them with one GST regime would clearly be good for business there. Unfortunately, while states and opposition parties bicker and nitpick over the details, and remain blinkered to the potential of GST to help catapult India to among the very top developing economies, the likes of China will stay on top, keeping India firmly in its current place.

India Will Fail To Introduce GST On Schedule

India will miss the April 2016 deadline for the introduction of goods and services tax (GST), after lawmakers failed to adopt crucial legislation during the winter session of Parliament, which ended on December 23.

There were already doubts whether India would achieve the deadline earlier this year, with the opposition Congress Party said to be blocking the Government's efforts to finalize plans for the regime.

While India has made substantial progress towards an agreement on the scope and structure of the new regime, lawmakers have yet to agree on a revenue-neutral rate, among other things.

Under the GST proposals, the various elements of the existing indirect tax regime will be replaced by a comprehensive dual-GST system, with Central GST and State GST to be levied concurrently by the center (federal Government) and the states, respectively. The GST is the most significant economic reform before Parliament but it remains bogged down in the upper house, the Rajya Sabha, with the Congress Party standing in the way of the passage of the Constitutional Amendment Bill required to allow states to levy GST on services.

Ahead of the start of the winter session, Finance Minister Arun Jaitley told various media outlets during a trip to Dubai that the Government planned to reopen talks with opposition parties on the key Constitutional Amendment Bill. Now those talks have failed, even the introduction of GST during 2016 appears optimistic.

Singapore Issues Guide On GST Assisted Compliance Program

The Inland Revenue Authority of Singapore (IRAS) has published a new e-tax guide on the jurisdiction's goods and services tax Assisted Compliance Assurance Programme (ACAP), which is designed to help GST-registered businesses manage their tax risks more effectively.

According to IRAS, the ACAP provides "a set of guidance for GST-registered businesses to undertake a holistic review of the robustness and effectiveness of their internal control system that impacts GST compliance." The new guide is aimed at senior company executives such as chief financial controllers, tax managers, senior accountants, and other staff tasked with managing GST compliance.

The ACAP is most suited to large businesses with complex corporate structures and business models, and which undertake a high volume of transactions. It is targeted primarily at firms that have already established an effective control framework

and incorporated GST risk management to enhance their GST compliance capability.

As an incentive to join ACAP, eligible companies that IRAS accepts into the program will not be selected for a GST audit unless "significant anomalies" are found in their GST returns or fraud is suspected.

According to the guide, IRAS will also waive the penalties for voluntary disclosures of non-fraudulent errors for businesses that apply for ACAP participation by March 31, 2019.

Depending on how well a company has demonstrated that its GST controls are working effectively at three levels (Entity, Transaction, and GST Reporting), IRAS will award either "ACAP Premium" for five years or "ACAP Merit" for three years.

Companies accorded with ACAP status will enjoy the following benefits for either three or five years:

- Step-down of IRAS-GST compliance activities unless significant anomalies are noted in GST declarations;
- Expeditious GST refunds, if no anomalies are noted;
- A dedicated team to handle GST rulings and resolve GST issues expeditiously; and
- Auto-renewal of the GST schemes (*e.g.*, Major Exporter Scheme status), if applicable.

To be eligible for participation in ACAP, GST-registered businesses should meet all the following conditions:

- A proactive GST risk management system must be in place;
- The latest financial statements must have been audited and the auditor's opinion unqualified;
- Registered for GST for at least three years;
- Not undergoing a GST audit;
- Have a good compliance record across a range of taxes, including GST, income tax, property tax, and customs, and with no tax outstanding with IRAS; and
- Have committed to the appointment of a qualified ACAP Reviewer to conduct ACAP reviews.

In addition to the above conditions, a company must have established all key controls listed in the "Self-Review of GST Controls" for the three levels (*i.e.*, Entity, Transaction, and GST Reporting). A key control is considered implemented if 60 percent or more of the control features (listed in the check lists), or their equivalents, are present.

Italian Parliament Passes 2016 Budget

The Italian Government has received parliamentary approval for the Stability (Budget) Law, which would eliminate the local property tax on primary residences in 2016. It also outlines plans for a corporate tax cut in 2017.

Following the cancellation of IMU (the local property tax) on prime residences in 2014, the removal of TASI (the tax on local general services) in 2016 at a cost of EUR3.5bn (USD3.8bn) will mean that TARI (the local tax on environmental and waste services) will be the only local tax remaining on primary residences.

IMU imposed on agricultural land, and on factory fixtures and fittings, would be repealed under the law, and landlords of residential properties leased under controlled rents will pay IMU and TASI reduced by 25 percent. The regional tax on production (IRAP) will also be cancelled for the agricultural and fishing sectors in 2016.

Other significant provisions in the Budget include an increased depreciation allowance of 140 percent, which is immediately available for purchases of machinery and equipment in the period to December 31, 2016. The law will also renew, for a further year, the 50 percent tax credit for expenses (including furniture and large domestic appliances) incurred in restructuring buildings and the 65 percent tax credit for energy-saving spending on properties.

Additionally, the new Budget outlines plans to lower the corporate income tax rate from 27.5 percent to 24 percent in 2017.

The Budget has been drawn up on the assumption that the European Commission will allow Italy increased budget flexibility due to migration-related issues.

The approved Budget confirms the removal of the safeguard clause in the 2015 Stability Law, which would otherwise have been activated from January 1, 2016.

That clause – drawn up previously to ensure Italy reached its fiscal goals – provided that the current 10 percent and 22 percent value added tax (VAT) rates would be increased by 2 percent in 2016. A further 1 percent hike would take place in 2017, and the headline VAT rate would be raised by a further 0.5 percent in 2018.

A revised safeguard clause has been included in the 2016 Stability Law, which would activate on January 1, 2017. This would activate if the European Commission does not approve the inflated fiscal deficit, or if the Government's spending review fails to

yield sufficient results during 2016. The new clause combines all of the previous safeguard clause's VAT rate increases for 2016 and 2017 into a 3 percent hike to both rates in 2017, with a further 1 percent rise in the headline VAT rate in 2018.

Scotland To Retain Personal Tax Rate, Despite New Powers

Scottish Finance Minister John Swinney has announced that the Government will not vary the Scottish Rate of Income Tax (SRIT), meaning there will be no overall change in the level of tax individuals pay.

The Scotland Act 2012 gave the Scottish Parliament the power to set a SRIT from April 2016. It provided that, in the case of Scotland, the UK Government would deduct GBP0.10 in the pound from the basic (20 percent), higher (40 percent), and additional (45 percent) rates of income tax. The Scottish Parliament would then be able to levy a Scottish rate that would apply equally across these three main bands. That rate would be applicable on top of the relevant UK rate(s). If the SRIT were not set at 10 percent, it would introduce two different income tax regimes in the UK.

In his 2016/17 Draft Budget, Swinney announced that the SRIT would be set at 10 percent for 2016/17. He explained: "Where we have the freedom to shape a taxation system that is fair and proportionate to the ability to pay, we have created a tax system that is progressive and helps those who most need it. I have today also proposed the first Scottish Rate of Income Tax and setting a [10 percent] rate means that there is no change to the overall tax rates paid by Scottish taxpayers."

"The income tax powers we currently have do not allow us to make income tax fairer, and I will not penalize the poorest taxpayers. This is the best decision possible with severely restricted powers."

The SRIT will apply to UK taxpayers whose main residence is in Scotland. Receipts from the SRIT will be collected by UK tax authority HM Revenue & Customs and paid to the Scottish Government.

Swinney also announced that the devolved Land and Buildings Transaction Tax (LBTT) will be maintained at current levels. The Government will however introduce an LBTT "second-homes" supplement on purchases of additional residential properties, including buy-to-let properties. A 3 percent rate will apply to the total price of properties costing more than GBP40,000.

This follows UK Chancellor George Osborne's announcement that he would establish a further 3 percent stamp duty land tax (SDLT) on the purchase of additional residential properties costing over GBP40,000.

Swinney said: "Our objective is to make sure that first time buyers have the greatest possible chance to enter the housing market. We are therefore

taking action to avoid the likely distortions which will arise in Scotland from the new UK SDLT surcharge on the purchase of additional properties – including buy-to-let and second homes – which could make it more attractive to invest in such properties in Scotland compared to other parts of the UK."

"Our LBTT additional homes supplement therefore seeks to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as strong as they possibly can. The proposed additional levy of three percentage points on transactions over GBP40,000 is proportionate and fair."

India's Customs Board To Resolve Disputes

Following the Indian Government's recent announcement of measures designed to curb the high number of tax disputes and improve the business environment, a similar initiative has been announced for the Central Board of Excise and Customs.

According to a statement published by the Finance Ministry on December 17, a "slew of measures" have been taken to "enable effective and speedy dispute resolution and to facilitate the trade and industry," including raising the monetary thresholds for government appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) to INR1m (USD15,000), and to the High Courts to INR1.5m. Additionally, all cases before the CESTAT and High Courts in which there is already a precedent set by the Supreme Court are to be withdrawn.

Also, Customs Board commissioners have been directed to hold monthly or bi-monthly meetings with all adjudicating staff and appellate authorities in their areas to advise them on making "good" adjudication and appeal orders. The statement warns Commissioners that: "Persistent ignoring of such advice would render the officer concerned liable to action."

Furthermore, a training institute is being established to "train officers on the qualities of a good adjudication order, advocacy, interpretation of statue, drafting of laws, *etc.*"

The announcement follows the publication of a circular by India's Central Board of Direct Taxes (CBDT) revising the monetary limits for the filing of legal appeals by the tax authority to reduce disputes with taxpayers.

The CBDT has also issued an Office Memorandum calling for the formation of an advisory board of Chief Commissioners of Income Tax, comprising two officers in each region. This board will consider the withdrawal of appeals filed by the Department to the High Courts in cases involving tax above the revised monetary limit if no question of law is involved, or if the issue is considered settled by the Department.

ATO Releases Corporate Tax Data

The Australian Taxation Office (ATO) has published information on the tax affairs of more than 1,500 large companies.

The ATO has published an entity-by-entity listing of public and foreign-owned corporations reporting total income of AUD100m (USD71.8m) or more in 2013/14. The figures in the report are taken directly from tax return labels or amendments advised by the companies themselves before September 2015. It contains the following information for each company: its Australian Business Number (ABN), total income, taxable income, tax payable, and amounts

of Petroleum Resource Rent Tax and Minerals Resource Rent Tax payable.

The ATO said that it anticipates releasing similar details of Australian-owned and resident private companies with a turnover of AUD200m or more in early 2016, following the passage this month of new transparency legislation.

Collectively, these 1,500 companies paid almost AUD40m in company tax in the 2014 fiscal year. Tax Commissioner Chris Jordan said that more than half of this group had been subject to an ATO review or audit over the past three years.

According to the report, 38 percent of these companies (579) did not pay tax in 2014, and 22 percent incurred a current year tax loss. Eight percent utilized prior year losses, and 7 percent used franking credits and offsets.

Assistant Minister Kelly O'Dwyer told a press conference that "just because they don't pay tax doesn't mean that they are avoiding tax." She added that "there are some reasons why it would be that some companies are not paying tax at all – particularly circumstances where there might be losses – and indeed it is for those companies to explain why it is that they have not paid tax in any particular year."

O'Dwyer stressed that the public can be confident that the ATO has the powers it needs to collect information on the structuring and arrangements of multinational companies and to ensure "that they're paying their fair share of tax."

Jordan said: "Most large corporates, particularly domestic Australian companies, meet their tax obligations, notwithstanding that we do have some significant disputes with some of them. As for the role of foreign-owned entities operating in Australia, investment from these companies should not be premised on no or very little tax being paid on significant profits generated in Australia. Some of these foreign owned companies are overly aggressive in the way they structure their operations."

"We will continue to challenge the more aggressive arrangements to show that we are resolute about ensuring companies are not unreasonably playing on the edge. If they do, they can expect to be challenged."

Jennifer Westacott, Chief Executive of the Business Council of Australia, said that the publication was "an important input to the transparency and integrity of the Australian tax system." However, she added that the data should be interpreted carefully and pointed out that "companies do not pay company income tax on revenue (total income) – they pay it on profits after paying all expenses including wages, capital replacement, supplier costs, fleet costs, and other operating expenses."

"Many small and medium-sized businesses, in particular, do not make a profit in a given year, and even large businesses go through cycles

where profits from large investments take time to be realized," Westacott explained. She urged that tax integrity measures must not undermine Australia's competitiveness and cause businesses to locate in other countries at the expense of Australian jobs.

Responding to the report, John Osborn, Director of Economics and Industry Policy at the Australian Chamber of Commerce and Industry, noted that "of the 570 companies not liable for company tax, 346 made a loss in the most recent year, 120 made a loss due to carried forward losses, and only 113 made a loss due to tax credits and offsets."

"That means the majority of companies paying zero company tax did so because of losses and not because of system complexities. There are usually good justifiable reasons why individual companies have lower company tax liabilities than the 30 percent headline rate and we should not rush to judgments without understanding the merits of each company's circumstances."

EU Pushes For Conclusion Of Japanese FTA Talks

Japan–EU free trade agreement (FTA) talks may fail if they are not completed in 2016, according to the European Commission's Deputy Director-General for Trade, Mauro Petriccione.

FTA negotiations began in March 2013. A statement after the Japan–EU summit in Tokyo in May this year had tasked the agreement's negotiators "with the mandate to settle the outstanding differences with a view to reaching agreement encompassing all the key issues preferably by the end of 2015."

With a 15th round of FTA talks to be held in February next year, those differences still remain. In particular, progress is still needed on the request from Japan for the EU to cut its import duties on automobiles, while the EU wants Japan to reduce its non-tariff barriers on automobiles and its tariffs on agricultural items, such as cheese, ham and wine.

With the positions of both sides now entrenched, Petriccione, the EU's top trade negotiator, said it is now time to search for compromises to successfully complete the FTA.

He indicated, for example, that the EU is looking for improved Japanese market access for its specific food and drink products, and not for cuts in tariffs for ultra-sensitive agricultural products. Similarly, if Japan eliminated its non-tariff barriers for imported vehicles, the EU would be able to provide a timetable for cutting its 10 percent import duty on cars from Japan, he said.

When they began their FTA negotiations, Japan and the EU, which together account for around one-third of the global economy, recognized the substantial common benefits that would accrue. While Japan is already the EU's second-largest trade partner in Asia (after China), a deal could increase EU exports to Japan by a 32.7 percent and Japanese exports to the EU by 23.5 percent.

EC: Greece Should Better Target Tonnage Tax

The European Commission has said that Greece's tonnage tax may breach EU state aid rules by allowing shareholders of shipping companies to benefit from favorable tax treatment.

The Commission has sent to Greece a set of proposals to ensure that state support for the maritime sector complies with EU state aid rules. Under EU Maritime Guidelines, member states can tax shipping companies on the basis of the tonnage of the fleet rather than the profits of the company. The Commission said that in order to avoid subsidy races between member states and to limit distortions of competition, these provisions must be applied consistently throughout

the EU and comply with the conditions set out in the Guidelines.

The Commission said it is concerned that the Greek tonnage tax system is not well targeted and may provide shareholders of shipping companies with advantages that should be reserved for maritime transport providers. It has asked Greece to review which vessels are eligible under its system and to exclude fishing vessels, port tugboats, and yachts rented out to tourists without a crew. According to the Commission, operators of such vessels should in future be subject to the standard income tax.

The Commission would also like Greece to abolish preferential tax treatment for insurance intermediaries, maritime brokers and other intermediaries, and shareholders of shipping companies.

Greece has two months to inform the Commission whether it agrees to the measures proposed. If it acquiesces, Greece would need to amend its national rules with effect from January 1, 2019, at the latest. The Commission may otherwise launch a formal state aid investigation.

EU, Philippines Launch FTA Talks

The EU and the Philippines are to launch negotiations in 2016 towards a free trade agreement (FTA) that will eliminate customs duties.

According to the European Commission, both sides will seek an agreement that covers a broad range of issues, including customs duties, barriers to trade, services and investment, access to public procurement markets, competition, and the protection of intellectual property rights. The Commission said that the FTA will also include a comprehensive chapter on environmental protection and social development.

EU Trade Commissioner Cecilia Malmström said: "Launching negotiations with the Philippines will represent an important milestone in the EU–Philippine relations and a further evidence of the EU's commitment to Southeast Asia. The Philippines has been one of the fastest growing economies in the region in recent years. We need to make sure our companies enjoy [the] right conditions to seize the great potential of that market of 100 million consumers."

The EU had launched negotiations toward a region-to-region FTA with the Association of South East Asia (ASEAN), of which the Philippines is a member. However, talks were paused in 2009 in favor of a bilateral format. To date, the EU has completed bilateral agreements with Singapore and Vietnam. The EU is the Philippines' fourth-largest trading partner.

Republicans Concerned About US CbC Reporting

Leading Republican lawmakers have criticized the proposed regulations recently released by the US Treasury Department concerning country-by-country (CbC) reporting requirements.

The proposed regulations affect US corporations that are the parent of a multinational enterprise (MNE) group with annual revenue for the preceding annual accounting period of USD850m or more. They require the US parent to report, in a master file, financial information for each tax jurisdiction in which a constituent entity of the MNE group is resident.

Such CbC information includes the profit (or loss) before income tax, income tax paid on a cash basis, accrued tax expense recorded on taxable profits (or losses), the number of employees on a full-time equivalent basis, and the net book value of tangible assets (other than cash or cash equivalents), in each jurisdiction.

In response to the draft regulations, the House of Representatives Ways and Means Committee Chairman, Kevin Brady (R – Texas), stated: "With the highest corporate tax rates in the world, American companies are already at a tremendous disadvantage in the global marketplace. New CbC reporting requirements on US companies must be limited and should not make it even harder for our companies to compete."

He added that he would closely review the regulation, together with House Ways and Means Tax Policy Subcommittee Chairman Charles Boustany (R – Louisiana). He added that "Congress will not allow Treasury to move forward with BEPS policies that enable foreign governments to misuse information reporting and exploit American companies."

Boustany noted that "critics argue the Internal Revenue Service's authority to request and obtain this information for BEPS purposes is questionable, and that it could place this sensitive data in jeopardy if foreign governments conduct fishing expeditions to obtain it."

As an initial response from the Republican Party, Boustany has introduced a bill into the House – the Bad Exchange Prevention (BEPS) Act – which would defer CbC reporting of information from US companies from the Treasury Department to any foreign jurisdiction until 2017.

It would also establish that, if a foreign jurisdiction abuses master file documentation requirements or fails to safeguard the confidentiality of information in the master file, Treasury will suspend further reporting to that nation. It clarifies that abuse of master file documentation requirements means instances where a foreign jurisdiction requests information deemed "inappropriate" by Congress.

Boustany said: "New CbC reporting requirements under the BEPS Action Plan threaten to put our companies and workers at a disadvantage by allowing foreign entities to troll for sensitive information. My BEPS Act will provide more time for the US Government to prepare for these new requirements, while putting strong protections against abuse in place to ensure American companies can compete and succeed."

US Congress Has Restricted REIT Spin-Offs

Provisions in the recently passed "tax extenders" legislation will make it extremely difficult for corporations to avoid US capital gains and corporate income tax by spinning off their tangible assets into independent, publicly traded real estate investment trusts (REITs).

US REITs do not pay corporate tax as long as at least 75 percent of their total assets are real estate assets and/or cash; at least 75 percent of gross income comes from real estate-related sources; and at least 90 percent of their taxable income is distributed to shareholders annually in the form of dividends.

The Internal Revenue Service (IRS) has recently accepted that non-traditional real estate assets (such as warehouses, shopping centers, health care facilities, and telecommunication assets) may be held in a REIT.

This has encouraged more American corporations to consider spinning-off assets into REITs. This is capital gains tax-free for both the distributing corporations and their shareholders, and enables them to limit their exposure to the US's 35 percent corporate tax rate. Subsequently, REITs normally lease the property back to the distributing corporations, to be utilized in the latter's operations.

However, the Protecting Americans from Tax Hikes (PATH) Act includes new measures providing that a spin-off involving a REIT will qualify as tax-free only if, immediately after the distribution, both the distributing and controlled corporation are REITs. In addition, neither a distributing nor a controlled corporation would be permitted to elect to be treated as a REIT for ten years following a tax-free spin-off transaction.

To protect companies that are already in the spin-off process, the provisions only apply to distributions on or after December 7, 2015. They do not apply to any spin-off that has been described in a ruling request submitted to the IRS on or before that date.

South Korea, China To Cooperate On Carbon Taxation

On December 21, the Korea Exchange (KRX) and the China Beijing Environment Exchange (CBEEX) signed a memorandum of understanding (MoU) for cooperation on carbon emissions trading.

KRX is the operator of the country's main stock exchange and of its emissions trading scheme (ETS), which commenced on January 12, 2015. South Korea, the world's seventh-largest carbon emitter, now has the world's second-largest ETS market, after the EU.

The ETS imposes a cap on greenhouse gas (GHG) emissions by over 500 of South Korea's largest companies, who are responsible for about 65 percent of the country's carbon emissions. During the first three years of the scheme's operation, from 2015 to 2017, companies and energy producers are allowed 100 percent of their benchmarked emissions limit without charge. They have to purchase credits if they wish to exceed their limits. Those that do not use their quota may sell their excess credits.

CBEEX was launched in November 2013. China is currently operating a pilot scheme through seven regional trading venues (five cities (Beijing, Tianjin, Shanghai, Chongqing, and Shenzhen) and two provinces (Hubei and Guangdong)). It plans to have a national ETS in operation from 2017, when it would then have the world's biggest carbon market.

In the pilot scheme, a cap is set on the total amount of GHG emissions in the trading venue, and then the limit is allocated to companies involved in the scheme in the form of carbon credits, based on historical data. Firms receive the initial credits for free, but those with excessive emissions will then have to buy credits from others.

Given the similarities between their schemes, KRX and CBEEX have decided to build a cooperative partnership for the development of their emissions markets.

The MoU covers market information exchange and the sharing of experiences. They have also agreed to explore how their markets could be linked, expanding upon ETS membership, the development of innovative carbon-related products, and joint seminars or forums. They will also cooperate on education and marketing activities.

CZECH REPUBLIC - CHILE

Signature

The Czech Republic and Chile signed a DTA on December 2, 2015.

HONG KONG - VARIOUS

Into Force

Hong Kong's TIEAs with Denmark, the Faroe Islands, Iceland, and Norway entered into force on December 4, 2015.

INDIA - JAPAN

Signature

India and Japan signed a DTA Protocol on December 11, 2015.

ISLE OF MAN - SPAIN

Signature

The Isle of Man and Spain signed a TIEA on December 3, 2015.

JAPAN - GERMANY

Signature

Japan and Germany signed a DTA on December 17, 2015.

PHILIPPINES - VARIOUS

Forwarded

The Philippines Senate on December 14, 2015, approved a law to ratify DTAs with Turkey, Italy, and Germany.

QATAR - JAPAN

Into Force

The Qatar–Japan DTA entered into force on December 30, 2015, Japan's Ministry of Finance announced.

SAUDI ARABIA - GABON

Signature

Saudi Arabia and Gabon have signed a DTA, the Saudi Ministry of Finance announced on December 17, 2015.

SPAIN - FINLAND

Signature

Spain and Finland signed a DTA on December 15, 2015.

UNITED KINGDOM - VARIOUS

Forwarded

On December 9, 2015, legislation was forwarded to the House of Commons to ratify the UK's pending DTAs with Jersey, Guernsey, and Kosovo.

ZIMBABWE - CHINA

Signature

Zimbabwe's tax authority announced the signing of a DTA with China on December 1.

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

THE AMERICAS

INTERNATIONAL TAX ISSUES 2016

2/9/2016 - 2/9/2016

PLI

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

Chair: Michael A. DiFronzo (PwC)

Key speakers: Peter A. Glicklich, Oren Penn, Paul M. Schmidt, David J. Canale, Rocco V. Femia, J. David Varley (invited), Thomas M. Zollo, among numerous others

http://www.pli.edu/Content/Seminar/International_Tax_Issues_2016/_/N-4kZ1z11j97?ID=259129

INTRODUCTION TO US INTERNATIONAL TAX – LAS VEGAS

2/22/2016 - 2/23/2016

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Chair: TBC

http://www.bna.com/intro_vegas2016/

AMERICAS TRANSFER PRICING SUMMIT 2016

2/23/2016 - 2/24/2016

TP Minds

Venue: Eden Roc Resort, 4525 Collins Ave, Miami Beach, FL 33140, USA

Key speakers: David Ernick (PwC), Mike Danilack (PwC), Graeme Wood (Procter & Gamble), Michael Lennard (United Nations), Mayra Lucas (OECD), Carlos Perez-Gomez (SAT), George Georgiev (Siemens Corporation), among numerous others

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

ADVANCED INTERNATIONAL TAX PLANNING – LAS VEGAS

2/24/2016 - 2/25/2016

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Key speakers: TBC

http://www.bna.com/ITP_vegas2016/

INTERMEDIATE US INTERNATIONAL TAX UPDATE – LAS VEGAS

2/24/2016 - 11/26/2015

Bloomberg BNA

Venue: Trump International Hotel, 2000 Fashion Show Drive, Las Vegas, NV 89109, USA

Key speakers: TBC

http://www.bna.com/inter_vegas2016/

THE 5TH OFFSHORE INVESTMENT CONFERENCE PANAMA 2016

3/9/2016 - 3/10/2016

Offshore Investment

Venue: Hilton Panamá, Avenida Balboa and Aquilino de la Gua, 00000, Panama

Chair: Derek R. Sambrook (Trust Services)

Key speakers: Ramses Owens (Owens & Watson), Michael Olesnicky (KPMG), Joe Field (Withers), Raul Zuniga (Aleman, Cordero, Galindo & Lee), Timothy D. Scrantom (SDI Advisors), among numerous others

http://www.offshoreinvestment.com/pages/index.asp?title=The_5th_Offshore_Investment_Conference_Panama_2016&catID=12383

8TH REGIONAL MEETING OF IFA LATIN AMERICA

5/4/2016 - 5/6/2016

IBFD

Venue: JW Marriott Hotel Lima, Malecón de la Reserva 615, Lima, Peru

Key speakers: TBC

http://www.ibfd.org/IBFD-Tax-Portal/Events/8th-Regional-Meeting-IFA-Latin-America

US INTERNATIONAL TAX COMPLIANCE WORKSHOP – SAN DIEGO

6/20/2016 - 6/21/2016

Bloomberg BNA

Venue: Marriott San Diego Gaslamp, 660 K Street, San Diego, CA 92101, USA

Key speakers: TBC

http://www.bna.com/compliance_sandiego2016/

ASIA PACIFIC

THE 4TH OFFSHORE INVESTMENT CONFERENCE SINGAPORE 2016

1/20/2016 - 1/21/2016

Offshore Investment

Venue: Raffles Hotel, 1 Beach Rd, 189673, Singapore

Chair: Nicholas Jacob (Wragge Lawrence Graham & Co)

http://www.offshoreinvestment.com/pages/index.asp?title=The_4th_Offshore_Investment_Conference_Singapore_2016&catID=12382

INTERNATIONAL TAX PLANNING – POST BEPS

2/24/2016 - 2/26/2016

IBFD

Venue: Conrad Centennial Singapore, Two Temasek Boulevard, 038982 Singapore

Key speakers: TBC

http://www.ibfd.org/Training/International-Tax-Planning-Post-BEPS

MIDDLE EAST AND AFRICA

INTERNATIONAL TAX ASPECTS OF CORPORATE TAX STRUCTURES

4/13/2016 - 4/15/2016

IBFD

Venue: Radisson Blu Gautrain Hotel, Sandton Johannesburg, Cnr Rivonia Road and West Street, Postnet Suite 2010, Private Bag X9, Benmore 2010, Johannesburg, South Africa

Key speakers: Shee Boon Law (IBFD), Boyke Baldewsing (IBFD)

http://www.ibfd.org/Training/International-Tax-Aspects-Corporate-Tax-Structures

TREATY ASPECTS OF INTERNATIONAL TAX PLANNING

5/22/2016 - 5/24/2016

IBFD

Venue: Hilton Dubai Jumeirah Hotel, Jumeirah Beach Road, Dubai Marina, Dubai

Key speakers: Bart Kosters (IBFD), Ridha Hamzaoui (IBFD)

http://www.ibfd.org/Training/Treaty-Aspects-International-Tax-Planning-1

WESTERN EUROPE

5TH ANNUAL IBA TAX CONFERENCE

2/8/2016 - 2/9/2016

IBA

Venue: etc.venues Monument, 8 Eastcheap, London EC3M 1AE, UK

Chair: Jack Bernstein (Aird & Berlis)

Key speakers: Andrew Loan (Macfarlanes), Simon Yates (Travers Smith), James Barry (Mayer Brown), Pascal Hinny (Lenz & Staehelin), Margriet Lukkien (Loyens & Loeff), Pano Pliotis (GE Capital), Barbara Worndl (Aird & Berlis), among numerous others

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=e4f0bf6f-997e-470b-971f-c884539fb93b

21ST ANNUAL INTERNATIONAL WEALTH TRANSFER PRACTICES CONFERENCE

2/29/2016 - 3/1/2016

IBA

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

Key speakers: TBC

http://www.ibanet.org/Article/Detail.aspx?ArticleUid=db061854-33d1-4297-b9bc-6058df392231

PRINCIPLES OF INTERNATIONAL TAXATION

2/29/2016 - 3/4/2016

IBFD

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

Key speakers: Bart Kosters (IBFD), Carlos Gutiérrez (IBFD), Boyke Baldewsing (IBFD)

http://www.ibfd.org/Training/Principles-International-Taxation-1

TRANSCONTINENTAL TAX

3/8/2016 - 3/9/2016

Informa

Venue: TBC, London, UK

Key speaker: Mark Davies (Mark Davies & Associates), Justine Markovitz (Withers), Clare Maurice (Maurice Turnor Gardner), Robin Vos (Macfarlanes), Maxim Alekseyev (Alrud), among numerous others

http://www.iiribcfinance.com/event/Transcontinental-Tax-conference

ITPA LUXEMBOURG WORKSHOP – MARCH 2016

3/13/2016 - 3/15/2016

International Tax Planning Association

Venue: Le Royal, 12 Boulevard Royal, 2449 Luxembourg

Chair: Milton Grundy

https://www.itpa.org/?page_id=10132

OFFSHORE TAXATION – PREPARING FOR D-DAY

3/15/2016 - 3/15/2016

Informa

Venue: TBC, London, UK

Key speakers: Emma Chamberlain (Pump Court Tax Chamber), Richard Cassell (Withers), Simon McKie (McKie & Co), Kristen Konschnik (Withers), among numerous others

http://www.iiribcfinance.com/event/offshore-taxation-conference

INTERNATIONAL TRANSFER PRICING SUMMIT 2016

3/15/2016 - 3/16/2016

TP Minds

Venue: Millennium Gloucester Hotel, London Kensington, 4-18 Harringdon Gardens, Kensington, London, SW7 4LH, UK

Key speakers: Brandon de la Houssaye (Walmart), Matthew Frank (General Electric), Andrew Hickman (OECD), Michael Lennard (United Nations), Andrew Propst (Starbucks Coffee), Andrea Bonzano (FIAT), among numerous others

http://www.iiribcfinance.com/event/TP-Minds-International-Transfer-Pricing-Summit

INTERNATIONAL TAX ASPECTS OF PERMANENT ESTABLISHMENTS

4/19/2016 - 4/22/2016

IBFD

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

Key speakers: João Félix Pinto Nogueira (IBFD), Carlos Gutiérrez P. (IBFD), Bart Kosters (IBFD), Tamas Kulcsar (IBFD).

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

CURRENT ISSUES IN INTERNATIONAL TAX PLANNING

6/29/2016 - 7/1/2016

IBFD

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

Key speakers: TBC

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

ASIA PACIFIC

India

India's Delhi High Court has ruled in another landmark case in favor of a taxpayer that appealed against a transfer pricing adjustment on the expenses it incurred on advertising, marketing and promotion (AMP) activities.

In its ruling, the Court challenged the decision of the Indian authorities that there was an "international transaction" that could be subject to Indian transfer pricing rules simply because there was a wide gap in the amount spent by the appellant on AMP compared with that spent by comparable entities.

The Court highlighted that, under Section 92B(1) of the Income-tax Act, there is a restrictive list of transactions that qualify as an "international transaction." For the purposes of the ruling, the relevant subsection includes a mutual agreement or arrangement between two or more associated enterprises for allocation or apportionment or contribution to any cost or expenses incurred or to be incurred in connection with the benefit, service or facility provided or to be provided to one or more of such enterprises.

Maruti Suzuki India Ltd (MSIL) contended that the tax authority failed to show the existence of any agreement, understanding or arrangement between MSIL and the associated enterprise (Suzuki Motor

A listing of recent key international tax cases.

Corporation, Japan (SMC)) regarding the AMP spend of MSIL. MSIL maintained that, in the absence of any such agreement, the tax authority was not justified in making a transfer pricing adjustment in relation to the AMP expenses incurred by the company for SMC.

The Court ruled that Indian tax officials cannot evidence the existence of an arrangement between related parties by looking at the disparity between the costs for both parties and what would occur at arm's length, in this case through the bright line test: "The very existence of an international transaction cannot be presumed by assigning some price to it and then deducing that since it is not an [arm's

length price (ALP)], an 'adjustment' has to be made. The burden is on the Revenue to first show the existence of an international transaction … An 'assumed' price cannot form the reason for making an arm's length price adjustment."

Earlier in the case report, the Court said: "The transfer pricing adjustment is not expected to be made by deducing from the difference between the 'excessive' AMP expenditure incurred by MSIL and the AMP expenditure of a comparable entity that an international transaction exists and then proceed to make the adjustment of the difference to determine the value of such AMP expenditure incurred for SMC. And, yet, that is what appears to have been done by the Revenue in the present case."

The ruling is consistent with the landmark ruling in *Sony Ericsson* (2015), in outlawing the use of the bright line test to evidence the existence of an international transaction. However, the latest ruling is expected to broaden protections for taxpayers, because the earlier *Sony Ericsson* case involved a distributor rather than a manufacturer of its own goods, such as is the case for the appellant.

Indian tax authorities have consistently challenged transfer prices where a company has apportioned "excessive" AMP expenses in India (compared with market norms) where the arrangement reduces taxable income there.

This judgment was released on December 11, 2015.

http://lobis.nic.in/ddir/dhc/SMD/judgement/11-12-2015/SMD11122015ITA1102014.pdf

Delhi High Court: *Maruti Suzuki India Limited v. Commissioner of Income Tax*

Australia

The High Court of Australia has dismissed an appeal stemming from a decision of the Full Court of the Federal Court of Australia. The High Court held that a former officer of the International Bank for Reconstruction and Development (IBRD) was not entitled to an exemption from taxation in respect of monthly pension payments he had received.

Section 6(1)(d)(i) of the International Organisations (Privileges and Immunities) Act 1963 (IOPI Act) and regulation 8(1) of the Specialized Agencies (Privileges and Immunities) Regulations (SAPI Regulations) confer upon a person who holds an office in an international organization to which the IOPI Act applies an exemption from taxation on salaries and emoluments received from the organization. The exemption is set out in Item 2 of Part 1 of the Fourth Schedule to the IOPI Act. The IBRD is an international organization to which the IOPI Act applies.

The appellant, Mr. Macoun, a former sanitary engineer with the IBRD, received monthly pension payments from a Retirement Fund established under the IBRD's Staff Retirement Plan (SRP) in the 2009 and 2010 income years, when he no longer held an office in the IBRD. The Commissioner

– the respondent – included the monthly pension payments in Macoun's assessable income for the 2009 and 2010 income years.

Macoun sought review of the Commissioner's decision in the Administrative Appeals Tribunal (AAT). The AAT set aside the decision and substituted the decision that the monthly pension payments did not form part of Macoun's assessable income and were exempt from Australian income tax.

The Commissioner appealed to the Full Court of the Federal Court of Australia. The Full Court allowed the appeal, holding that regulation 8(1) of the SAPI Regulations confined the privileges specified in Part 1 of the Fourth Schedule to the IOPI Act to persons currently holding an office in an international organization to which the IOPI Act applied. As Macoun did not hold such an office in the IBRD in the 2009 and 2010 income years, the exemption from taxation was not available to him. By grant of special leave, Macoun appealed to the High Court.

The High Court unanimously held that Macoun was not entitled to an exemption from taxation for the relevant part of his monthly pension payments because he had ceased to hold an office in the IBRD when he received them, and because he received them from the Retirement Fund established under the SRP rather than from the IBRD. The High Court also held that Macoun's monthly pension payments did not fall within the phrase "salaries and emoluments" in Item 2 of Part 1 of the Fourth Schedule to the IOPI Act, and that Australia's international obligations did not require Australia to exempt the monthly pension payments from taxation.

This judgment was released on December 2, 2015.

http://eresources.hcourt.gov.au/showCase/2015/HCA/44

Australian High Court: *Commissioner of Taxation v. Macoun ([2015] HCA 44)*

WESTERN EUROPE

United Kingdom

The UK First-tier Tribunal (FTT) Tax Chamber has ruled against a taxpayer that brought an appeal on the basis of the Tribunal's earlier decision in *Reed Employment*, only to have its almost-identical appeal dismissed. The case concerned VAT imposed on the fees it received from clients for introducing temporary workers (temps) and managing other administrative aspects.

The case concerned Adecco UK Limited and the services it rendered as part of providing non-employed temps to clients under tripartite agreements. Adecco had accounted for VAT on the full charge paid by its client – specifically, on the element of the charge paid by the client that was equivalent to or represented the wages paid to the temp (including amounts paid in tax); and on the element of the charge effectively retained by itself, for the introductory service.

Adecco brought a claim for the period April 1, 2007, to December 31, 2008, totaling some GBP11.12m (USD16.86m) following the FTT's ruling in *Reed Employment* in March 2011. In that case, the Tribunal found that Reed Employment, in providing non-employed temps to its clients, had supplied introductory services in return for a commission and found that it was not liable to account for VAT on the element of the charge representing the wages that it received from its clients and paid to the temps.

HMRC rejected Adecco's claim however, arguing that it had supplied the services of the non-employed temps as well as the introductory services.

Despite not appealing the ruling in *Reed*, HMRC successfully argued in *Adecco* that the economic reality in this case is consistent with a *Redrow* "follow the liability to pay" analysis. In its eyes, the temps (on taking up an assignment) provided to Adecco the service of agreeing to carry out the assignment as instructed by Adecco's clients in return for payment by Adecco; Adecco then made a supply of the temps' services to its clients.

The appellant's position was that, whatever duties a temp owed Adecco under the contract with Adecco, under Adecco's contract with its client, it had no responsibility for the work performed by the temp and therefore its services were no more than introductory, with certain administrative services, such as operating the payroll, tacked on. This would have been in line with the ruling and circumstances in *Reed*, where the Tribunal placed importance on the fact that Reed and the temp owed each other no obligation to offer or to accept assignments (under "zero-hours contracts," as in *Adecco*); and there was a lack of control by Reed over the temp's work at any time.

The FTT Judge in *Adecco* looked at the facts of the case afresh.

In its decision, the Tribunal in particular looked at to whom the temps supplied their services. The Tribunal agreed that, in reality, Adecco did not monitor the performance of its temps. Further it found that it would be Adecco's client, rather than Adecco, that would terminate an assignment in the event that a temp's performance was unsatisfactory, although both were empowered to do so.

However, the Tribunal instead in particular relied on the terms of the contracts between Adecco and temps and Adecco and its clients to arrive at its decision. It found that Adecco assumed the liability of paying the workers for the work that they performed, rather than facilitating those payments.

The Tribunal highlighted that, within the contract, Adecco agreed with its clients that it would be liable for paying the workers, with the client being absolved of any liability to pay the temps. It said: "If the intention had been that Adecco merely discharged the client's liability to pay the workers, the contract with the client would not have required Adecco to contract directly with the temps, nor

would it have required the client to sign timesheets … The contract was clearly drafted to protect Adecco's position on the mutual understanding that Adecco was liable to pay the worker for the work irrespective of whether its client paid it."

Further the Tribunal attached importance to the fact that clients very often did not know the rate of pay earned by the temp; they only knew this information from their own calculations, if they had negotiated a percentage-based commission with Adecco. The Tribunal further highlighted that, after the temp was introduced to the client, no contract was signed between the client and the temp, suggesting that Adecco's services, as a whole – and its role in the transaction – went beyond introductory services.

The Tribunal Judge highlighted that, "when considering what a person has actually agreed to do under a contract, the court considers the genuine contractual terms, which will be terms that have been agreed to for commercial reasons, whether or not they represent a negotiated compromise and whether or not the appellant might have preferred a less onerous term. The fact is that, in its contract with the temp, the appellant agreed to pay the temp for his work. And that is, in my view, very significant in defining what it was Adecco provided to its client under the client contract discussed below."

Further, looking at the nature of the fees received – comprising an initial one-off fee and an ongoing fee – the Tribunal highlighted that an introductory service is a one-off supply and the supply of staff is continuous until the contract comes to an end. The presence of both suggested there were two separate supplies, it said.

Ruling against the appellant, the FTT Judge concluded: "Adecco's position seems to be predicated on the basis that an agreement by A with B to provide goods or services to C as a matter of economic reality must be seen as a supply by A to C as the goods/services effectively move directly from A to C. But that is a wrong legal analysis. It is wrong to say that the supply must be by A to C because the economic reality is that the goods/services in reality move directly from A to C. It is clear that 'economic reality' means something else … The contractual position is that the temp has agreed with Adecco to do what the client tells it to do, based on its contract with Adecco."

The FTT Judge further stated that she expects the ruling to be appealed, given the FTT's earlier ruling in favor of Reed Employment (which was not appealed by HMRC). It highlighted that *Reed* concerned the same tax issue and "similar if not completely identical facts."

The judgment was released on November 27, 2015.

http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j8715/TC04743.pdf

UK First-tier Tribunal: *Adecco UK Ltd v. HMRC [2015] UKFTT 0600 (TC)*

Switzerland

Hervé Falciani, who leaked details of accounts held by his former employer HSBC Private Bank in Switzerland to foreign tax authorities, was convicted while absent for economic espionage by the Swiss Federal Criminal Court.

The Court sentenced Falciani to five years in prison. He was cleared of other charges of data theft and violating commercial and banking secrecy. As a French (and Italian) citizen residing in France, however, he cannot be extradited to Switzerland.

HSBC welcomed the judgment stating that the ruling demonstrated that the leak of the data was for the "sole purpose of reselling them for his own enrichment." Adding: "The evidence received by the Court show that the intentions of Hervé Falciani were not those of a whistleblower."

The ruling, announced on November 27, may be appealed before the Federal Court.

The Court's written opinion has yet to be published.

Swiss Federal Criminal Court: *Swiss Government v. Falciani*

Dateline December 31, 2015

There is a New Year tradition in Scotland known as "first footing." First footers (being the first to visit after the midnight bells have been rung) bring gifts – one perhaps being a lump of coal to signify keeping the house warm. Nowadays, that lump of coal will much less likely come from a British mine.

On December 18, the **United Kingdom's** last deep seam coal mine closed. But is this closure due to a reduction in UK coal power stations, in support of the Government's greener fuel policies? The short answer: No.

According to the mine manager, it cost GBP43 (USD63.8) to dig out a tonne of coal at the mine, compared with around GBP30 a tonne in **Russia** and **Colombia**. Therefore, on the face of it, it is more economical to import coal from thousands of miles away to fuel the coal power station located just seven miles by rail from the closed mine.

I'm all in favor of the global economy and the competition it brings. However, I do question just how logical – and ecologically damaging, in terms of additional emissions – this closure really is for the UK, for a number of a reasons. First, there are the lost corporate income tax revenues from the mine. Second, there are lost labor taxes (income tax and National Insurance Contributions). Third, other local businesses – shops, pubs, retail services, *etc.* – will see less footfall (possibly closure), hence lower or no profits, leading to even lower tax revenues, including VAT. Finally, areas of deprivation and unemployment are costly to local and national governments: welfare benefits have to be paid out of the public purse, after all.

Perhaps tax revenue loss and welfare costs would make a tiny dent in the GBP43 per tonne cost. But in a UK tax code already littered with allowances, reductions, benefits and exemptions, one would think there might be a little room for an exemption or incentive – as already provided for the oil sector in the face of falling oil prices and diminishing reserves – for a mine with another 10–15 years' worth of coal in its seams.

Meanwhile, in the US, as the holiday season approached, the now customary **Senate and Congress** dash to pull together a tax-and-spend package – including striking a deal on tax extenders – began in earnest, to bring a deal that the President would pass in time for Christmas. And again, the usual suspects from both sides reiterated the need for tax reform.

However, much like in **Australia** (as highlighted in this column last week), it is questionable just how much, if any, progress can be made on tax reform in the US anytime soon. Much will depend on the result of next year's presidential elections, of course. And the response so far to the OECD's final BEPS recommendations is fueling concerns

that meaningful reform is currently impossible given the continuing discord between and within the GOP and the Democrats.

The **European Union** meanwhile has no such doubts on how to respond to BEPS, even if some of its member states do. Its bureaucratic machine is steaming full ahead (albeit not fueled by British coal – a portent of the UK's upcoming referendum on EU membership, perhaps) to implement the BEPS recommendations. Amid all this, some sympathy must be had for the US, which feels the EU is gunning for a crackdown on US companies seen to be exploiting various loopholes in and deals brokered with EU member states. I say *some* sympathy, considering the US has lumbered foreign financial institutions and tax authorities with FATCA, with all its burgeoning cost implications, which the OECD in turn used in its BEPS project as inspiration for wider automatic information exchange. The phrase "what goes around, comes around" springs to mind …

With many individual nations also jumping on the BEPS bandwagon (such as the UK, Australia, New Zealand, France, and Mexico), it will be interesting to see if this is incentive enough for opposite sides in the US tax reform debate to band together and actually *do* something about the US's uncompetitive tax code. I won't hold my breath, though.

It will also be interesting to see just how long the likes of **Hong Kong**, **Singapore**, the **United Arab Emirates** and other world financial centers can hold out against the seemingly unstoppable reach of the BEPS project. Will any territory be left untouched? One can but dream.

Now, I'm no human rights expert, but I'm surprised there hasn't been wider protest against the recent moves by the **US legislature** to revoke, deny or limit a US citizen's passport for owing more than USD50,000 in tax.

Similar actions have been proposed for those leaving to fight in Syria. But the question arose whether revoking or confiscating a passport while the individual is abroad could lead to that individual becoming "stateless" – which is prohibited under international conventions.

Hence the question: is there any possibility that a US citizen living abroad could be made stateless by the US Government revoking their passport, therefore denying that individual a guaranteed right to identity, travel documents and administrative assistance under those conventions? This in turn could restrict errant taxpayers from traveling to any country where a passport is required for entry, effectively imprisoning them in their country or region of residence, and restricting their right to claim citizenship there.

There will be exceptions for those who are actively disputing the debt, or who need to travel for emergency or humanitarian purposes, which I suppose is the US Government's let-out clause.

As I've stated before, tax evasion cannot be condoned. However, considering restrictions for US citizens with tax debts under the same umbrella as those siding with terrorist extremists seems excessive. And bearing in mind the impact of FATCA, whereby some US citizens abroad are being denied access to accounts in foreign financial institutions, let's hope this does not signal the start of another trend that further diminishes the rights of taxpayers worldwide.

As Rick says in *Casablanca*, this is a crazy world. But it just goes to show that things really can get a lot crazier.

The Jester