UPDATES & OTHER TIDBITS

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ONE-TIME SOFTWARE PAYMENTS NOT ROYALTIES IN INDIA

The Mumbai Income Tax Appellate Tribunal ruled that a sale of "off-the-shelf" software packed in shrink wrap and embodied in a disc, thumb drive, or other comparable delivery mode is a sale of goods rather than a license to use copyright.

In a case put before the tribunal, Capgemini Business Services (India) Ltd. purchased software from QAD Singapore Pvt. Ltd., which it treated the payment as an expense, and claimed a deduction in 2007. The Indian tax authority allowed the deduction but argued this payment was made for the use of the copyright and was therefore subject to withholding tax. The tribunal applied the more favorable definition of royalty found in the India-Singapore tax treaty and treated the software like a literary work, with the one-time payment being for its sale. The tribunal found that under the India-Singapore tax treaty a payment made by an Indian entity for an off-the-shelf sale by a Singapore-based company cannot be considered a royalty, and therefore, such a payment is not subject to withholding tax in India.

This favorable ruling is not likely to be the last time the issue is raised in a court proceeding in India. The Delhi High Court recently ruled on a copyright matter involving the India-U.S. Income Tax Treaty, and the Korean company Samsung Electronics Co. Ltd. has petitioned the Supreme Court to rule on how and where cross-border software sales involving an Indian business should be taxed.

GREECE PROMISES PARTIAL AMNESTY ON OFFSHORE CASH

In an effort to fix the banking system and increase tax revenue, Greece is asking its citizens to repatriate funds hidden overseas in exchange for partial amnesty and other incentives.

Tax evasion and trade are alleged to reduce Greece's national tax revenue by an estimated €15 to €20 billion per year, according to the Deputy Finance Minister. Seeking to rectify this situation, the country has imposed fines on purported tax evaders on the "Lagarde List" – a spreadsheet containing Greek account holders with HSBC's Geneva branch, which the government received from current head of the I.M.F., then Finance Minister of France, Christine Lagarde in 2010. The amnesty plan would not forgive everything but would incenti*vize* citizens to participate.

SLOVAK COMPANIES MOVING TO TAX HAVENS

Research shows that more than 4,700 Slovakian companies have moved to more tax-friendly jurisdictions in 2015. Among the favored tax havens are the Netherlands, for its lack of dividend tax; Cyprus because it is not subject to double taxation in the E.U., the Seychelles because it offers absolute ownership anonymity and a zero tax rate; and the U.S. because it provides a high rate of ownership anonymity, low sovereign risk, and low state tax for individuals in Florida and Texas. Federal tax is not reduced by a move to any particular state in the U.S.

Although tax is clearly a consideration, it is not the only driver for Slovakian companies deciding to leave the country. Benefits such as a stable legal system, corporate flexibility, intellectual property protection, and an efficient banking system are also drivers in determining whether and where to move.

CBC REPORTING AFFECTED BY THE PANAMA PAPERS

Once again, questions are being raised about tax reporting and information sharing, as a recent leak of documents from Panamanian law firm Mossack Fonseca reveals data on the offshore assets and financial dealings of wealthy and powerful people worldwide, including heads of state, sports stars, and celebrities. Mossack Fonseca has more than 40 offices globally and specializes in commercial law, trust services, investment advising, and international structuring. Individuals already linked to the leak include football player Lionel Messi, golf legend Nick Faldo, actor Jackie Chan, the children of Pakistani Prime Minister Nawaz Sharif, the president of the U.A.E., and Icelandic Prime Minister David Gunnlaugsson.

Over the past year, confidential files were leaked to the press, who began reporting on the information this month on a global basis. The files revealed possible underhanded tax planning, money laundering, and filing of false financial statements by the rich, the famous, and the politically influential. Leading banks have worked with the firm, presumably believing that politically exposed persons were investing their own money.

In light of the leak, members of the European Parliament have complained that the CbC reporting plan is too weak as drafted. According to these members, the threshold for reporting should be lowered so as to include more companies and the results should be published. Professional groups will have to identify members and clients that have been involved with Mossack Fonseca and work to isolate fallout from the matter. Some advisers fear that the good old days of moving money are officially over.

The source obtained terabytes of information, which it offered to the Munich-based newspaper *Sueddeutsche Zeitung* through an encrypted channel in exchange for security measures but no compensation. The German newspaper then verified the authenticity of the data by comparing it to legal records available.

The question that remains is the identity of the source. Mossack Fonseca is claiming it is the victim of a hack by foreign servers. At this point in time, it seems that the leak, which affects 214,488 companies and 14,153 clients, could have come from any source anywhere in the world. It is not likely to be the work of random criminals because there have been no reported blackmail attempts. According to Gerard Ryle, the director if the I.C.I.J., the source "claimed to be concerned about what he or she saw in the documents." One alternative theory coming from the Kremlin is that a security agency opposed to Russian President Vladimir Putin – a supposed holder of over $2 billion in offshore assets – hacked the files for political reasons and delivered the entire data dumped to the newspaper to cover its tracks.

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