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FYI

International Taxation NEWS

Swiss tax regime

... and further information from the international tax sector

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Newsletter
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Diary

Upcoming GGI International Taxation Practice Group (ITPG) meetings:

- **19 April 2016**
  Latin American WebEX, conducted in Spanish (Sergio Guerrero)
- **21 April 2016**
  GGI European Regional Conference (Oliver Biernat)
  Warsaw, Poland
- **12 May 2016**
  GGI North American Regional Conference (Doug Dickey), full day meeting on best practices
  Chicago, IL, USA
- **27 May 2016**
  Italian Business Summit (Oliver Biernat)
  Verona, Italy
- **24 June 2016**
  GGI Latin American & Iberian Regional Conference, conducted in Spanish (Sergio Guerrero)
  Madrid, Spain
- **13 September 2016**
  Latin American WebEX conducted in Spanish (Sergio Guerrero)
- **September 2016** (tbc)
  MEA WebEX (Graeme Saggers)
- **22 September 2016** (tbc)
  GGI Best Practices Conference (Doug Dickey)
  St. Louis, USA
- **20 October 2016**
  GGI World Conference (Oliver Biernat)
  Bangkok, Thailand

tbc = to be confirmed

Editorial

Oliver Biernat

Dear Readers,

This 2016-I edition of the GGI FYI International Taxation newsletter is the most comprehensive so far. This may give you an idea about many taxation changes that are constantly being made in tax jurisdictions all over the world. The topics in this edition range from an update on double taxation treaties via national tax changes with importance to foreign investors, to implementing BEPS in local tax jurisdictions. Special thanks go to our friend Abdullah Demir, CEO of Walser & Partner AG in Freienbach, Zug and Zurich, Switzerland, who kindly agreed to sponsor this edition of the FYI newsletter. His article concerns how thin capitalisation rules in Switzerland can be successfully circumvented within a legal framework.

Many of the authors participated in a tax meeting, which was held in Barcelona, Spain between 25 and 28 February 2016 and organised by Carlos Frühbeck from Ficesa Treuhand, S.A.P. and myself. More than 60 tax experts from 20 countries discussed international tax changes. Among these were a cross border self-disclosure case, a transfer pricing study over 6 countries, recent ECJ developments on recovery of input VAT for holding companies and not-for-profit entities, a comparison on expat tax regimes in Spain, France and Italy, a survey on CFC regulations, an update on BEPS Action Plan 2 (Hybrid Mismatch Arrangements), recent tax changes in Cyprus which have made it an attractive location for company headquarters, IP companies and funds, and last but not least, the newly introduced Patent Box Tax Regime in Italy.

If you are interested in any of these topics, then I would be pleased to put you in contact with the presenters.If you would like to obtain further details on the topics covered in this edition of the GGI FYI newsletter, please feel free to contact the author directly.

Oliver Biernat
Global Chairman, ITPG

Swiss tax regime

By Abdullah Demir

Switzerland's tax systems have different layers of taxation, which are designed on the basis of a formally consistent and uniform national tax legislation. However, tax rates differ substantially and, as in a free market, there is competition among comparable layers of taxation.

The differences in tax tariffs allow for arbitrage by taxpayers and taxes become a factor when choosing the location of where to set up a business. In Switzerland, the top layer of taxation (i.e. Federal) is also entitled to levy a fee on the issuance of stock, so the higher the equity the more one pays as a one-time fee. Conversely, a low equity (thin capitalisation) and a high debt portion in the financing mix would be required in order to save on the aforementioned fee.

According to the Bulletin No 6 of the Swiss Federal Tax Authority a maximum of 80% is allowed as debt when it comes to financing the purchase of real estate and a minimum of 20% needs to be financed by equity. The following case outlines how this 80/20-rule can be successfully circumvented.

Two tax subjects, let's call them A and B (Swiss citizens or foreigners), form a partnership called "A&B Real Estate", with the purpose of building and holding real estate. Later they decided to convert their partnership into a stock corporation leaving the purpose of business unchanged. The goal of A and B is to achieve an optimal ratio between debt and equity on the financing side. Basically this entails keeping the thin capitalization rule in mind as a cornerstone of such financing optimisation measures.

Before converting into "A&B Real Estate Corp.", we advised A and B to contact their banker and request a written, binding financing offer for a planned real estate purchase. They were offered the financing of 90% of the purchase price, instead of the usual 50% applicable in such a case. Thereafter, A and B decided to lend the 90% to their own stock corporation.

After assessing the taxable basis of "A&B Real Estate Corp." the Tax Authorities did not accept the 10% debt above the 80%, based on the Bulletin No 6 of the Swiss Federal Tax Authority. Instead they taxed the 10% as if it were additional equity, through the fee for issuance of stock. Moreover, they did not accept the cost of interest paid on the additional 10% and also taxed it as an "A&B Real Estate Corp." profit.

However, based on the written financing offer of the banker we were able to prove that this 90/10 financing ratio was in fact a real and existing option offered by a third party and consequently the Tax Authorities accepted this solution, despite it not matching the provisions of the Bulletin No 6 of the Swiss Federal Tax Authority.

In this way, our clients saved several thousands of Swiss Francs on the fee applied to the issuance of stock (a one-off saving) and tens of thousands in profit tax every year.

Conclusion: with intelligence and foresight it is possible to find solutions within a legal framework for the benefit of ones clients.

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Abdullah Demir

Walser & Partner Group focuses on the areas of accounting, taxation services for companies and individuals as well as on consultancy services. Our offices are located in Switzerland (Freienbach, Zurich and Zug), Dubai and Brazil. The Walser & Partner Group supports more than 700 clients from 37 countries.

Abdullah Demir is CEO/Partner and in charge of all subsidiaries in Switzerland. Since 2000, he has left no stone unturned in striving to provide clients with added value through dedicated support service and high expertise. Abdullah is fluent in German, English, French and Aramaic.

Walser & Partner AG

Tax consolidation regime: new opportunities for foreign parent companies

By Matteo Bedogna

The recent introduced International Decree has extended the field of application of the "Tax Consolidation Regime" for companies established in Italy that are subject to a common control by a foreign parent company with its head office in the EU or EEA. This was possible in the past only if the foreign parent company had a permanent establishment in Italy.

It must be noted that the Tax Consolidation Regime allows for groups of companies with a single certain taxable income, represented by the algebraic sum of each tax base of the group members. The Tax Consolidation Regime also allows for the optimisation of tax deductibility of the Group's financial charges, when certain group members are unable to entirely deduct their own payable interests.

The Tax Consolidation Regime is optional. Whilst it lasts 3 fiscal years, it can be renewed. The foreign parent company must simply have an Italian Tax ID and appoint a consolidating company from its Italian subsidiaries.

This new regime favours those sectors that rely on Special Purpose Vehicles such as the photovoltaic sector, particularly in Italy and with a strong presence in foreign capitals. Often, there are SPVs which coexist within the same group. Those that are not yet operative and offer tax losses and non-deductible interests to the Consolidation Tax Regime and those fully operative SPVs that are in a diametrically opposed tax situation.

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Matteo Bedogna

Studio Baldi was born from the merger between two GGI member firms: Studio Baldi (Tax & Accounting) and Studio Legale Baldi (Legal). It is a multidisciplinary professional firm specialising in Legal, Tax Consulting, Audit & Accounting and further Advisory services. Its sister company, Baldi Finance, extends the array of services to Corporate Finance.

Matteo Bedogna, who joined Studio Baldi in 2001, is head of the international tax department. He specialises in transfer pricing and international tax structures. He currently assists a number of multinational groups, both Italian and foreign based.

2016 Mexico Tax Reform

By José Carreras Benitez

In October 2015, Congress of the Union (the legislative branch of the Mexican government) approved several modifications to the tax regime applicable to the 2016 tax year. Most of these reforms came into force on 1 January 2016. They are intended to give certainty to taxpayers as well as stating international cooperation to reinforce Mexico's commitments under the OECD in combating tax evasion.

Some of the modifications are described as follows:

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Accelerated deduction – Companies who have obtained revenue in the prior tax year of up to MXN 100 million can apply an accelerated deduction for investments in new fixed assets which were acquired in the last quarter of the 2015 tax year, or in 2016 or 2017.

Related party transactions – Certain taxpayers are required to file information relating to transactions carried out with related parties by 31 December of the year after the tax year in which the transaction occurred, by way of the following returns:

- **Master informational return:** including information related to the multifunctional business group.
- **Local Informational return:** including information relating to the taxpayer and related party transactions.
- **Country by country informational return:** including information on a tax jurisdictional level, based on the jurisdictions in which the multinational group operates, so long as the taxpayer is the controlling multinational company, a Mexican tax resident or a foreign resident with a permanent establishment in Mexico and has been designated as the party responsible for presenting the tax return.

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José Carreras Benitez

INTEGROUP is an integral firm offering specialised services in tax, legal, audit and internal control. They have a group of experts with extensive experience who offer a personalised, ethical and highly professional service in order to provide effective and rapid responses to client requirements. **José Carreras** is the Tax Partner in charge of dealing with international businesses. Since the year 2000, he has gained experience in offering value added tax opinions and win-to-win ideas. José is fluent in both Spanish and English.

For non-residents on French property assets

5 key tax changes in 2015

By Prof Robert Anthony

1. There was much controversy concerning social taxes (CSG-CRDS) in France. Case law resulted in the government modifying the law for non-residents, with the result that non-French tax resident tax payers who had capital gains not over two years old in 2015 or income not over three years, reclaimed the excess tax paid. This tax was approximately 15.5% before tapering relief.
2. In January 2016, the government scrapped the tax article that taxed clients on secondary properties in France with countries that did not have a tax treaty or the beneficial owner was not known. This avoids

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Prof Robert Anthony is the Principal Partner of Anthony & Cie and Co-Founder of Anthony & Co UK Ltd. He is a Professor of International Tax Law (Thomas Jefferson School of Law, California). He is a Chartered Certified Accountant (UK) and Certified Financial Planner (France).

problems of taxing three times the rental value of properties in France for non-residents.

3. On 17 August 2015, France enacted the European directive for inheritance. Denmark, Ireland and the United Kingdom did not take part in the EU regulation 650/2012. This means that a will within certain countries within the European Union will be respected despite French forced heirship rules. This will naturally require scrutiny on a case by case basis.
4. French insurance policies had a problem whereby the tax office refused to recognise the last survivor and taxed on the first death. Case law challenged this with the result that an administrative notice definitively accepted the taxation of the last survivor on an insurance policy.
5. The amendment of the Franco-Luxembourg tax treaty was anticipated to take effect on 1 January 2016. This was not approved in the French parliament and is therefore now expected to come into force on 1 January 2017.

Tax risks for shareholders caused by departure from Germany

By Bernhard Schwechel

In 2013, Germany adopted new sect. 50i ITA which reserves Germany's right to tax disposal gains from a partnership's assets irrespective of any DTT provisions to the contrary.

This entitles Germany to tax disposal gains from corporate shares as well as from other movable business assets derived by a deemed business partnership.

The rationale behind 50i ITA is to target structures which used deemed business partnerships in order to avoid German exit taxation. Previously, German taxpayers wishing to relocate abroad could transfer to such deemed business partnership any corporate shares which would otherwise have become subject to exit taxation. Even if that partnership is exclusively engaged in asset management, the German tax authorities would treat such corporations as business assets of the deemed business partnership's permanent German establishment. Therefore, the German tax authorities proceeded on the assumption that Germany's right to tax profits from a future disposal of such corporate shares would remain unaffected upon the taxpayer/partner moving to a DTT state. As a result German tax authorities either did not levy any exit tax or granted binding private-letter rulings confirming that corporate shares transferred to a deemed business partnership would not be subject to taxation. When it transpired that the Federal Fiscal Court

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Bernhard Schwechel is a Managing Partner of FACT. He is experienced in the field of international taxation. His areas of expertise include tax and business advice for large multinational corporations, mid-sized companies and internationally-oriented individual clients. He supports his clients throughout inbound and outbound M&A projects.

Bernhard Schwechel

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was not willing to treat deemed business partnerships as enterprises for DTT purposes, the German legislator identified a risk of losing billions in tax revenues in the following cases: by not having levied exit tax in the past, and by future disposal gains from the assets held by deemed business partnerships being taxed in the partners' new state of residence only.

New sect. 50i ITA is meant to remedy those cases by reserving Germany's right to tax.

Tax incentives granted to new investments in the economic zone of Suez Canal

By Ashraf Abdel Ghani

The new investment 2015 law no. 117 is a real springboard for the development of the Suez Canal axis area projects. The new law was issued by virtue of a Presidential decree in mid-March 2015, introducing considerable facilities, privileges and tax, non-tax and customs incentives to investors. This is to encourage and attract new investments to Egypt and, in specific terms, to the economic zone of Suez Canal. Also, it aims at creating new employment opportunities and increasing the profit share of the company.

The main features of the new law include, but are not limited to, the following:

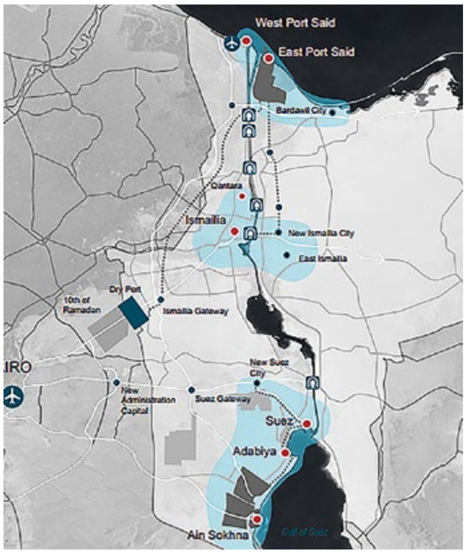
- a "one stop shop" system which is a "quantum leap" in establishing new companies in Egypt;
- a reduction in the customs rate from 5% to 2% as well as sales in the tax rate from 10% to 5% imposed on imported tools, equipment, & machinery required for project activities.

Further features include, reduced energy prices and returning utilities expenses to the investor after the operation of the project. In addition, the government will share the financial burden of technical training expenses and social insurance in addition to a discharge of liabilities upon liquidation (conditions apply). Furthermore, free zone projects are exempt from all kinds of taxes and the net profit tax rate for special economic zone companies has been reduced from 30% to 22.5%.

The new law is also flexible regarding land allocation to investors for new projects:

- Acquisition of land required for the project (conditions apply);
- Deferral of payment for land or providing payment facilities upon request of the investor for acquiring the land;
- Land provided at discounted rates.

The provisions of the new law are considered to be promising and they restore confidence in Egypt's investment climate.



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ATC Ashraf Abdel Ghani Accountants Tax Consultants provides the following activities and services: Tax consultations (corporate, salary, income, sales, etc.); Tax audit & preparation of tax returns; Auditing; Bookkeeping; Investment & company incorporation; Social insurance; Due diligence review.

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Dispute resolution arising from base erosion and profit sharing (BEPS)

By Aditya Kumar

Base Erosion and Profit Sharing (BEPS) is a package, negotiated in just over two years, which includes reports on fifteen "actions" ranging from countering harmful tax practices and treaty shopping to addressing transfer pricing, interest deductibility and transparency in exploring the tax implications of the digital economy.

Considering the amount of subjectivity the package is going to bring, there is a need for a proper dispute resolution mechanism. Furthermore, it is felt that BEPS should make arbitration binding. Because of the vagueness of the proposed BEPS rules, in practice they are likely to lead to major differences in interpretation and disputes between tax authorities. Action 14 identifies mainly non-binding ways to make dispute resolution mechanisms under bilateral tax treaties (the so-called Mutual Agreement Procedure or MAP) more productive. However, it falls short of imposing binding arbitration. Many countries have agreed to provide for mandatory binding arbitration in their bilateral tax treaties. However, no developing country is on this list, and future disputes between, for example, the United States and India or Brazil are those most likely to bog down the post-BEPS tax environment. In the wake of BEPS, tax disputes are likely to be multi-country income-based (rather than two-country transaction-based) disputes. In order to ensure a practical implementation of BEPS, active third-party arbitration will therefore be required. A new international tax regime is emerging, and with it novel ways of binding arbitration will need to be designed.

Full article can be found at ggiforum.com

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Aditya Kumar is an expert specialising in VAT/GST consulting in cross-border business in India and abroad. Having worked in every existing kind of indirect tax branch, he has experience and a vast working knowledge of all aspects of service tax, trade law, VAT and other related areas. Serving clients from national and international companies, he offers pragmatic solutions on a cost-effective basis.

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Unilateral overrides of tax treaties

By Robert R. Worthington

Tax treaties can mitigate double taxation, but domestic laws may override treaties. Courts have accepted unilateral treaty overrides in many situations.

In a U.S. case, William D and Judith A Jamieson (2009), the taxpayers were Canadian-resident U.S. citizens. They argued their U.S. alternative minimum tax was fully offset by a foreign tax credit, relying on the Canada-U.S. tax treaty. The U.S. tax code restricted the offset to only 90% of the U.S. tax. The court decided the domestic legislation prevailed, applying a "later in time" rule. The treaty was entered into before the domestic provision, so the override was effective.

In India, a unilateral treaty override was disallowed in WNS North America Inc. (2012). The taxpayer was reimbursed by a member of its corporate group for "lease line charges". The taxpayer argued the income was not taxable in India due to the India-U.S. tax treaty definition of "royalty". The tribunal held that the treaty prevailed over the retroactive domestic amendment.

Courts in Sweden and Germany have permitted unilateral treaty overrides. In a 2010 Swedish exit tax case (case 283-10), a taxpayer relied on the Sweden-Greece tax treaty that granted sole taxing jurisdiction to Greece. The court held that while the general rule is for tax treaties to override domestic law, domestic rules prevail when there is clear legislative intent. Similarly, in a 2010 German decision (case 13 K 1214/06 E), the issue was whether a pension payment was business income, in accordance with German domestic law, or pension income, consistent with the Germany-U.S. tax treaty. The court held domestic law could override a treaty, if a legislative intention to do so can be found.

Overall, courts tend to permit unilateral treaty overrides if the domestic legislation is clear and is enacted after the treaty.

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Cash sales – quo vadis?

By Sonja Eder and Manfred Leitinger

As of 1 January 2016, Austria has published a new law concerning cash sales. Similar legislation already exists in many other countries. It consists of two parts: first, issuing receipts for all sales (on paper or electronically); second, the necessity to acquire a cash register when total sales are more than EUR 15,000 and cash sales exceed EUR 7,500 a year. The EUR 7,500 limit on cash sales also includes debit and

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credit card sales. Exceptions to the cash register obligation are only made for open-air sales up to EUR 30,000 per annum, NPO-feasts, online-sales and vending machines. In contrast to other countries, consumers in Austria are not bound to take the retain receipts away, but in control cases they have an obligation to be co-operative.

Security feature needed

Starting from 1 January 2017, cash registers will need to have a security feature in addition to being registered with the financial authorities, which may possibly come into effect from 1 July 2016. A QR code has to be printed on every single receipt which includes, for example, the total sales to date only accessible to the financial authorities. The sales figures are not submitted directly, but must be available electronically in case of inspection.

With regard to the law that was finally published on 11 December 2015 with various transitional provisions, there are still many detailed questions yet to be answered by the officials. In fact there are three cases which have been brought to the constitutional court with the aim of actually annulling the law.

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Manfred Leitinger

Sonja Eder is tax consultant and working with a range of clients from one-man-enterprises to concerns with global businesses where English is spoken. She has specialised on corporate and income tax consulting (consulting in equity and capital income, cross-border consulting).

Manfred Leitinger is an expert who specialises in VAT consulting (consulting in cross-border business and foreign companies in Austria) and accounting. He has broken new ground in the field of accounting through the use of modern technology.

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Relinquishment of U.S. Citizenship

Replacement with existing alternate nationality(ies)

By Robert F. Loughran

The annual number of relinquishments of U.S. citizenship has grown exponentially in recent years and includes "incidental citizens" and a distinct subset of individuals whose lives have expanded outside of the United States. There are seven expatriating acts that may be performed voluntarily and with the intent to relinquish U.S. citizenship under the Immigration and Nationality Act. Renunciation may be the most commonly used term when referring to loss of nationality, but it is also the most highly scrutinised category. Specifically citing the act of renunciation, the Reed Act subjects these individuals to a potential "exit tax" and permanent exclusion from the USA, and the Federal Gun Control Act regards renunciants as felons for the purpose of ownership and possession of firearms. Even if permanent exclusion is not triggered, U.S. citizens who have relinquished their nationality may experience difficulty in securing a visa to return to the United States.

Many individuals choose to acquire a second or third nationality on the basis of which they relinquish their U.S. citizenship. Birth, philanthropic contribution, heritage and residency can all be the basis of alternate citizenships. A handful of countries offer citizenship by investment programmes that provide an alternate path with varying degrees of residency required as a prerequisite.

We discuss in greater length the consequences of relinquishment of U.S. citizenship and options for acquiring citizenship by investment in the full article which can be found on **GGI Forum.**

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Robert F. Loughran is a Partner of **Foster LLP** and is Board Certified in Immigration and Nationality Law by the Texas Board of Legal Specialization. He has over 20 years of experience representing and advising Investors and Ultra High Net Worth individuals on U.S. and global immigration law. Having represented clients in these areas for over two decades, Robert F. Loughran is an expert in the immigration aspects of Relinquishment of U.S. Citizenship and Abandonment of Lawful Permanent Residency and acquisition of second nationalities.

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News from the USA

IRS faces House concerns about BEPS initiative's impact on U.S. companies

By Kenneth Lobo

Even the IRS has bad days. At a hearing of the House Ways and Means Committee on erosion of the U.S. tax base and targeting of U.S. businesses as a result of anti-BEPS transparency provisions, IRS was forced to defend itself, the OECD, and the EC.

New IRS regulations require country by country reporting for groups of a certain size ($750 million) based in the USA and automatic exchange of financial information. Although consistent with OECD recommendations, the measures offer insufficient privacy protections according to the Committee, which advised against disclosures to any country without a strong data protection record.

Members also raised concerns about smaller, privately-held U.S. companies that are covered by the regulations but lack expertise to analyse complex PE rules if multiple countries claim PE status.

The IRS agreed that European patent box regimes, which provide a reduced tax rate on revenue from IP licensing, may incentivise U.S. companies to move operations abroad. This led to attacks on corporate inversions, but new inversion rules are unlikely to be enacted before the 2016 election.

The Committee accused the EC of overstepping the mark in its investigations into advance tax rulings, and the October decision that both the Netherlands and Luxembourg provided selective advantages to Starbucks and Fiat. The IRS responded that the investigations were unanticipated and noted that the rulings may conflict with bilateral tax treaties between the USA and various EU countries.

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Kenneth Lobo is a US attorney whose practice is focused on cross-border investments, corporate re-organisations, and application of the U.S. estate and gift tax regime to U.S. citizens, U.S. residents and U.S. real estate owners.

The Common Reporting Standard

By Julie Bryant & Nerissa Haskic

Common Reporting Standard (CRS) is a concept introduced by the OECD and contains the reporting and due diligence standard that underpins the automatic exchange of financial account information. It is incorporated into both EU and UK law and will have a similar structure to FATCA (Foreign Accounts Tax Compliance Act) in practice. It goes slightly beyond FATCA in a number of ways, but namely in that financial institutions will be required to identify all tax residencies of customers and report various sets of data about account holders, potentially even those in non-participating jurisdictions. A total of 51 other jurisdictions have also implemented this regulation and the number will grow significantly over the next few years. The main effect in the UK will be the need for banks and other financial institutions to comply with the International Tax Compliance Regulations 2015. For your clients, this will involve mandatory reporting of their financial circumstances, income and capital gains by financial institutions in countries who are signatories to any of the information exchange agreements. It will also mean it is harder to open bank accounts, especially in foreign jurisdictions. In turn, there will be an increased need for professional advisers to become involved in any bank account opening process, ongoing advice around tax residency and advice on provision of any information required by financial institutions, particularly around residency and trust related matters.

If you or any of your clients are unclear on their tax residency and financial circumstances, how to deal with financial institutions in the current climate or how the CRS might affect you or your clients in the UK or abroad, please do not hesitate to contact us for assistance.

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United States

Real estate market targeted for money laundering

By Steven A. Braun & Helen Peng

The U.S. is expanding its battle against unreported income and money laundering to all-cash purchases of real estate. Sales of real estate to non-U.S. persons are treated the same as sales to U.S. citizens and residents. Foreign investors view U.S. real estate as a safe, stable and accessible investment. Since most of these transactions are all-cash purchases, the U.S. Treasury Department believes some overseas buyers who pay cash to purchase luxury properties are using U.S. real estate to secretly invest millions of “dirty money”.

Rules will require title insurance companies to report identities of beneficial owners of shell companies listed as all-cash purchasers of real estate in Manhattan and Miami-Dade County, Florida from March to August 2016 of more than USD 3 million in Manhattan and more than USD 1 million in Miami-Dade County. Depending on results, the initiative may be expanded to other areas for a longer duration.

Using LLCs and other entities to purchase real estate is legal and common. These entities are frequently recommended by tax advisors in cross-border real estate purchases, by U.S. real estate developers to assemble parcels for future development and by high-profile individuals for personal safety. Many are all-cash purchasers and are likely to be included in the information reported to Treasury. As long as buyers have nothing to hide, they can continue to use such entities if it is economically beneficial.

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New tax treaty between Germany and the Netherlands

By Robin de Raad

On 1 January 2016, the new tax treaty between Germany and the Netherlands entered into force. The treaty is almost entirely based on the OECD treaty model and replaces the treaty of 19 June 1959. The main differences between the old and new taxes are shown in the table below.

Postponement for individuals: For individuals whose tax position under the new treaty is less beneficial than under the old one, the tax treaty provides an option to postpone implementation until 1 January 2017.

	Old tax treaty	New tax treaty
Pensions	Pensions are subject to tax in state of residence.	Pensions are subject to tax in state of residence. In case pensions exceed € 15,000 per annum, the total is (also) subject to tax in the source state*.
Directors' remuneration	Taxation of directors' remuneration follows the rules for employees.	Remuneration is subject to tax in country of residence of the entity for which the person is director.
Substantial interest shares	No explicit provision.	Former country of residence retains the power to impose taxes on accrued capital gains on shares for individuals with a substantial interest who have emigrated.
Participation dividend**	10% reduced rate with strict ownership requirements.	5% reduced rate for entities holding at least 10% of the capital of the distributing entity.

**) A 6 year transitional scheme applies for German residents with pensions subject to tax in the Netherlands.*
***) According to EU Parent-Subsidiary Directive, a 0% withholding tax can be applicable in many cases.*

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Zirkzee Group is the professional partner for financial and fiscal matters. As a proactive, critical and reliable partner, they offer one-stop-shopping for all financial, taxation and administrative matters to individuals, small and medium-sized enterprises, both the profit and non-profit sectors. As a top 75 accountancy and tax law firm in The Netherlands, they enable their clients to focus on their core business. **Robin de Raad** is a registered tax advisor with an eye for innovative tax solutions for companies and individuals.

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International tax and royalties

By Eric Longley & Harold Peterson

The international and domestic tax treatment of royalties can be a tricky subject. What constitutes a royalty can depend on both domestic and international legislation. The OECD Model Tax Convention and its treatment of royalties is closely followed by most international tax treaties. It provides consistency of approach removing the need for recourse to the competent authority rules over interpretational disputes.

The OECD Model definition of royalties is very wide and can encompass film rental payments, some leasing arrangements and payments to individuals such as sound producers who have no claim to copyright at all.

It is not always preferable to have payments treated as royalties. For example payments to a non-treaty territory will usually incur tax withholding in the payer territory. However, where such payments constitute profits of a trade or employment remuneration they may escape tax in the payer territory and be paid without any deduction.

Where a person is collecting income worldwide to pay to the original copyright holder in the same territory, such as publishers/record companies paying writers/recording artists, there is scope for misunderstanding of how the withholding tax on royalties works and substantial under accounting to the copyright holder. All too often the benefit of the withholding tax credit is not passed on by the collector/payer to the copyright holder.

Full article can be found at ggiforum.com

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South Africa's transfer pricing documentation

Requirements set to change

By Graeme Saggers

For some time, South African taxpayers have been waiting for the South African Revenue Service ("SARS") to issue guidance for documentation required to discharge a taxpayer's onus to prove their cross-border transactions have been conducted at arm's length (as is required by law in South Africa). Now finally, with the release of a draft Public Notice on 15 December 2015, SARS have provided some indication as to the potential documentary requirements. South African taxpayers are therefore advised to start gathering the required information.

The draft notice provides a list of documents that all persons who are members of a group with a consolidated South African turnover of ZAR 1 billion or above. The list is detailed and descriptive and hence provides clear guidance as to what these taxpayers are required to provide to SARS on an annual basis. Other persons are merely required to keep and retain the records, books of account or documents that enable the person to comply and SARS to be satisfied that the person's potentially affected transactions are conducted at arm's length.

It is interesting that the Draft Notice makes no reference to the Master File and Local File transfer pricing documentation approach as recommended by the OECD under the BEPS Action 13. It is important to note, however, that this notice may still change as it has only been issued in draft form and will only be enforceable when published.

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