“It’s quite an exciting time, as we now move to rebalance the global approach to tax policy. We had BEPS to fight tax avoidance, and we have transparency to tackle tax evasion – we now need to have tax certainty to rebalance all of that.”

— Insights from Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development
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We are delighted to welcome Marlies de Ruiter, former Head of the Tax Treaty, Transfer Pricing and Financial Transactions Division (TTP Division) at the Centre for Tax Policy and Administration of the OECD, to EY. Under her leadership at the OECD, the TTP Division developed seven of the 15 actions of the BEPS Action Plan. Before joining the OECD, Marlies gained more than 20 years of experience in the fields of direct taxation and international tax issues within the Dutch Ministry of Finance. Her vast experience with international tax policy, and specifically with BEPS, will demonstrate our leading position in the market on BEPS-related matters.

Marlies is joining us to work on Tax Policy and International Tax Services.
As we head into the last quarter of the year, the themes that will dominate the next year are becoming clearer. Given diminishing forecasts for growth, it should come as no surprise that fostering growth and the role that tax policy can play to grow economies and address budget deficits is under active discussion. In fact, at the recent G20 summit in Hangzhou, China, the role of taxation in promoting innovation-driven, inclusive growth was a key agenda item.

As Jeffrey Owens explains on page 15, and Pascal Saint-Amans of the Organisation for Economic Co-operation and Development previewed at the EY aHead of Tax client event in June, the G20’s focus on boosting growth through tax could usher in another era of significant tax reform – one that will extend beyond the Base Erosion and Profit Shifting agenda and could encompass all components of countries’ tax systems. See the article on page 52 outlining what the US presidential candidates are thinking about US tax reform.

Another trend we’re seeing relates to the developments in digital tax administration. To cope with the growing pace and volume of taxpayer information flowing between governments and businesses, many tax authorities are increasingly relying on digital methods to collect and analyze this data. As the article on page 37 explains, it is critical that companies respond to the new era of digital tax compliance by reviewing their data management and analytics capabilities to check that they can meet the requirements and rapid turnaround times being demanded by tax authorities.

Meanwhile, in the European Union (EU), the intense focus on multinational companies’ tax affairs continues. To date, most of the attention has been on the alleged State Aid violations involving tax rulings granted by EU Member States to multinational companies. But, as Klaus von Brocke and Steve Bill explain on page 19, the EU’s tax agenda covers much more than the State Aid investigations. For example, the European Parliament has set up an inquiry committee into the so-called Panama Papers’ revelations. In addition, the European Commission has adopted a wide-ranging action plan intended to modernize the current EU value-added tax rules, is gearing up for a November relaunch of the common consolidated corporate tax base proposal and has proposed a directive that would require large multinationals to publicly report tax information on a country-by-country basis.

Continuing the interest in public reporting of tax, the UK has recently enacted new rules requiring certain businesses to publish their tax strategy as it relates to affects UK taxation (Paul Dennis and Geoff Lloyd provide more details on page 48). With the recent introduction in Australia of a voluntary tax transparency code, which encourages medium and large businesses to publicly disclose how much tax they pay and explain their tax strategies, such transparency initiatives could herald many more.

Companies should expect to see governments begin to require greater public transparency as to how their profits are taxed, where their intangible assets are located and the underlying rationale for their business decisions.

Once again, we are in a busy period of tax policy changes and proposals, leading to and driven by tax controversy. For businesses seeking to put this all in perspective and gain insight into what may come next, this edition of the Global Tax Policy and Controversy Briefing provides food for thought.
More than three months after the initial shock of the Brexit vote, the financial markets and the political environment seem to have stabilized. Although it is still early days, the vote’s initial impact on the UK economy seems to have been limited. However, as the challenges ahead of us start to become clearer, it is worth remembering this is only the beginning of a very long journey.

While taxation is a relatively undeveloped aspect of the *acquis communautaire*, given Member States’ reluctance to cede fiscal sovereignty to the EU, the tax implications of Brexit will be substantial, with the consequences being felt beyond the UK and the EU. Businesses will need to understand and be able to respond to changes in the tax landscape that are likely to be unprecedented in terms of both volume and speed of implementation. To do so, it will be crucial for companies to closely monitor and assess the Brexit process as it unfolds. This will enable companies to plan effectively for both the short and long term.

Where are we now?
The referendum result had an immediate impact on both the economy and the political landscape in the UK.

**Economy**
Although the consensus is that the UK economy will slow down as a result of the Brexit vote in the short- to medium-term, it has so far proved more resilient in the immediate aftermath than many economists had anticipated. The Organisation for Economic Co-operation and Development (OECD) recently revised upward its forecast for growth this year as a result of a stronger-than-expected performance in the first half of 2016 and action taken in August by the Bank of England to spur activity.

The OECD said it expects the UK economy to grow by 1.8% this year, a 0.1 point increase on its pre-referendum estimate, but then fall by more than it had previously envisaged, and grow by 1% in 2017. The output of the services sector – the steam engine of the UK economy – as well as retail sales seem to be holding strong.

While we still have no hard post-vote data on business investment, the area most vulnerable to Brexit-related uncertainty, official numbers so far offer cause to think that a negative reading for gross domestic product (GDP) growth in Q3 is a remote prospect. The EY ITEM Club now expects that GDP will expand by around 0.2% in Q3.

Overall, while the gloomier predictions around the Brexit vote are unlikely to be realized, the economy is not out of the woods yet, and the long-term impact of the Brexit vote on both the UK and global economies remains uncertain.

As for the short-term consequences for the UK economy, the *EY ITEM Club Summer Forecast*, published in July 2016, suggests that severe confidence effects on spending are very likely, only partially cushioned by a fall in the pound. The UK economy is expected to grow by 1.9% in 2016, followed by only 0.4% in 2017 and 1.4% in 2018, compared to pre-Brexit forecasts of 2.6% and 2.4% respectively. This slowdown in the economy has curtailed the chances of achieving a budget surplus by the end of the decade. We now expect to see borrowing of 1.7% of GDP for 2019–20. A new EY ITEM Club forecast will be published on 17 October.

**Politics**
The immediate political fallout from the vote saw the departure of many of the senior figures of the Remain campaign (the resignation of David Cameron and the sacking of George Osborne and Michael Gove). However, the political landscape removed additional uncertainty when the Conservative party avoided a lengthy leadership battle and a new Government under Theresa May emerged.
Who are the key players?

Within the UK, there have been changes of personnel and also changes in the institutional setup. For the tax world, the most significant change is the replacement of George Osborne, long-term Chancellor of the Exchequer under David Cameron, with Philip Hammond. Institutionally, the big innovations are the creation of two new departments of state dedicated to delivering Brexit.

- **Philip Hammond, Chancellor of the Exchequer**
  The new Chancellor has accepted that the Brexit vote means the economy is entering a “new phase” that will require a “different set of parameters” to reduce the deficit. He has ruled out the possibility of an Emergency Budget, preferring to wait for the Autumn Statement on 23 November. As head of Treasury, Hammond will play a crucial role in shaping the tax aspects of the Brexit process.

- **David Davis, Secretary of State for Exiting the European Union**
  He will lead and coordinate the cross-government policy work to support the UK’s negotiations to leave the EU. This will include handling the negotiations with the EU and bilateral discussions with other European countries.

- **Liam Fox, Secretary of State for International Trade**
  He will be responsible for developing, coordinating and delivering a new trade and investment policy for the UK. This includes developing and negotiating free trade agreements and market access deals with non-EU countries, multilateral trade deals and providing operational support for exports, as well as inward and outward investment.

At an official level, we have also seen the setting up, within the key tax departments (HM Treasury and HM Revenue & Customs), of dedicated units responsible for managing the Brexit transition.

Beyond the UK, the key players in the Brexit process will be the leaders of France and Germany and the Presidents of the various EU institutions (the Council, the European Commission and the European Parliament). The relative importance of these players will vary over the life cycle of the Brexit process. Previous experience tells us that when it comes to the big issues, discussions – even if informal – tend to take place between the key players before the European Commission gets involved. Once the exit procedure has been triggered, the EU institutions will come more into play, with a central role being played by the European Commission, which has appointed Michel Barnier as Chief Negotiator in charge of the Preparation and Conduct of the Negotiations with the United Kingdom, and Sabine Weyand, as Deputy Chief Negotiator.
What happens next?

Formal withdrawal talks will only be triggered when Britain invokes Article 50 of the Lisbon Treaty, which puts other EU leaders on notice that the UK intends to leave. The UK will have up to two years from when it invokes Article 50 to negotiate its separation from the EU. Prime Minister May has signaled that this will not happen until early 2017.

What do existing models tell us?

During the referendum campaign and after the vote, there has been a good deal of discussion about the different “models” that might be open to the UK in its future relationship with the EU (looking at the existing models operated with Norway, Switzerland and Canada). Faced with the reality of Brexit, it is clear that there is no “off-the-shelf” model that will apply directly to the UK, not least because of the size of the UK’s economy and the extent of its current integration within the EU. Rather, the model for Brexit will emerge from the detailed negotiations between the UK and its EU partners, with the crucial dimension focusing on the balance between access to the Single Market and the maintenance of the free movement of labor.

The greater access to the Single Market that the UK retains, the more it will be bound into the existing legal structures of the Union, including those affecting taxation. However, the more that the UK rejects the free movement of labor, the less likely it is to secure rights to access the Single Market.
What would change in the tax environment?

While the extent of change cannot be predicted with any certainty at this stage, there is a range of areas where Brexit could result in significant changes in tax and tax policy.

- **Customs and Excise**: As a current member of the EU, the UK applies the Common Customs Tariff to goods entering the UK from outside the Union. This is managed by the EU itself and so, if the UK wished to continue charging tariffs on imports, it would need to legislate for a domestic tariff system. Excise duties are not fully harmonized in the EU, and the UK would be able to maintain its present system. Furthermore, if a new model was not agreed upon, the UK would be able to maintain its current system.

- **VAT**: It is likely that the UK will largely retain the current system of value-added tax (VAT) on leaving the EU, particularly since VAT is directly enacted into UK law. However, taxpayers would no longer have a right of appeal to the Court of Justice of the European Union, and the UK Government would have additional flexibility on setting the rates and scope of VAT. Furthermore, UK businesses would find themselves exposed to VAT on purchases in the EU, with potentially a significant delay in getting refunds.

- **Withholding Tax**: UK groups would no longer be able to benefit from the withholding tax exemptions in the EU Parent-Subsidiary Directive and the Interest and Royalties Directive once the UK leaves. Not all existing UK tax treaties provide for a zero withholding tax; as a result, the updating of the tax treaty network is expected to be a high priority for these companies, which may wish to review where they rely on EU directives to mitigate withholding tax.

- **Treaties**: Many treaties between the US and EU Member States require EU membership for equivalent beneficiary treatment under the limitation of benefits clause of the treaty, a test which, once there has been a formal exit, the UK would no longer meet. This may affect those groups that have a UK tax resident-listed ultimate parent and flows of interest, dividends or royalties from their US subgroup to a financing, holding or intellectual property-owning company in Europe. These groups will need to review their current and any planned future structures to assess their ability to access treaty benefits post-Brexit.

- **Labor Mobility**: At present, the rules governing where mobile workers pay their social contributions and how their entitlement to social security benefits are aggregated are coordinated at the EU level. If the EU migrant worker regulation did not apply to the UK, employers sending workers cross-border would need to navigate a complex network of bilateral agreements. This may raise risks of greater complexity and increase administrative burdens when posting workers between the EU and UK.

- **State Aid**: The EU’s State Aid rules may no longer apply to the UK after it leaves. This may affect the development of ongoing investigations, and direct tax measures that in the past were found to constitute State Aid may be revived in the medium term.

- **EU Tax Initiatives**: Subject to the terms under which the UK leaves the EU, it is unlikely that the UK will be party to various tax initiatives currently in progress in Brussels, such as the EU Anti-Tax Avoidance Directive, public country-by-country reporting and the common consolidated corporate tax base. However, where the UK has supported these initiatives, we would expect the UK to continue to push ahead with similar legislation. The UK will also continue to participate actively in the OECD’s BEPS agenda.

What should be your key priorities?

The impact of Brexit on companies will depend on the extent of their business relationships with the UK. Of course, those companies with a physical location in Britain will feel those changes more heavily. But even those companies with a tangential relationship with the UK may be affected. Key areas that deserve special attention to assess the impact of Brexit are the following:
Scenario drivers for consideration

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<tr>
<th>Scenario drivers for consideration</th>
<th>Potential tax and legal implications</th>
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<tbody>
<tr>
<td>Trade</td>
<td>Forex/treasury</td>
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<tr>
<td>Exports to EU, access to markets, imports (supply chain) from EU, impact on customers</td>
<td>What are the tax consequences of managing your treasury position?</td>
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<tr>
<td>People</td>
<td>Trading model/operating model</td>
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</table>
| Impact on ability to hire skilled and unskilled staff, possible wage pressure, impact on existing staff | What are the trade, duties and VAT implications for your supply chain?  
  - How will your people functions be affected?  
  - How will you need to adjust your transfer pricing? |
| Regulation                        | Systems                              |
| Changes to regulation of products and services, impact on business model, standards and future investment | How will you manage an increased compliance burden, e.g., duties and VAT?  
  - As the profile of the workforce is set to change, how integrated are your immigration, employment and talent strategies? |
| Government policy                 | People                              |
| Access to EU research funding, taxation, greater flexibility in design and implementation of investment incentives including the UK competitive tax policy | What data do you hold on European nationals working for you in the UK and British citizens working in Europe?  
  - As the profile of the workforce is set to change, how integrated are your immigration, employment and talent strategies? |
| Legal structure                   | Regulatory change                    |
| Is your headquarters location fit for purpose?  
  - Could the removal of EU directives impact the tax and legal profile of your existing group structure? | Are you aware to what extent your business relies on EU regulations that might no longer apply in the future? |
| Government policy                 | Future of UK tax                     |
| Access to EU research funding, taxation, greater flexibility in design and implementation of investment incentives including the UK competitive tax policy | What do you need the UK tax regime to deliver to help you remain competitive? |

The dashboard below summarizes some of the key questions that will be important to address in assessing the impact of Brexit on individual businesses.

Potential tax and legal implications

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<th>Considerations</th>
<th>Potential impact</th>
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<td>Forex/treasury</td>
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<td>Legal structure</td>
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<td>Regulatory change</td>
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<td>Future of UK tax</td>
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None of the questions above have a straightforward answer. The next couple of years will be crucial to assessing the impact of Brexit on companies and their employees. We are seeing companies plan for the future, but they need to avoid preemptsing the decisions that will follow from both the UK and the EU.

The key actions now are the following:

- Evaluate the potential risk areas
- Consider the timeline for those risks
- Develop an outline plan for responding to the risks
- Identify the triggers for action
- Monitor developments

All of this spans far more than tax alone, and leading companies are ensuring that the tax team is embedded in their Brexit steering committees. The vote on 23 June was only the starting point, and where the finish line leads is not yet known. In such an uncertain situation, new information is clearly needed. Look out for the Autumn Statement.
Appearing via video, Pascal Saint-Amans detailed the latest direction of the OECD’s post-BEPS tax work with business representatives at the EY aHead of Tax client event held in Barcelona, Spain, on 14-16 June 2016. Following is a transcript of his remarks.
Good morning to you all. I'm deeply sorry not to be with you in this wonderful city of Barcelona. I had to stay in Paris today because we are preparing for the first meeting of the inclusive framework for BEPS implementation, which will take place in Kyoto, Japan, less than 15 days from now.

I'm happy, however, to share with you some insights on the tax work that we are doing at the OECD. I think there is some BEPS fatigue among all of us, starting with me, but the BEPS project is still very high on our agenda.

**Transparency**

There is more to come on the international tax agenda. You, of course, saw the news that the transparency agenda has been refocused after the release of the Panama Papers and the other leaks related to the BVI and other jurisdictions. We have a lot of work to do in this area to improve access to beneficial ownership information. We're working with the Financial Action Task Force on this front, and there will be important steps on the way forward, particularly at the G20 finance ministers' meetings in July and October, and at the G20 leaders' summit in September.

**Tax and growth**

Beyond the transparency agenda, we are starting a new tax pillar with the G20. The G20 will push for better tax policies across the G20 and across the world to increase growth. The world today needs growth — jobs and employment — but we must also reconcile a pro-growth agenda with the need to reduce inequalities. The question we'll have to address is, how do we square that from a tax perspective?

**Tax certainty**

The G20 will also push for tax certainty as part of a pro-growth agenda. The idea here is to start work over the next two years, in particular when the German G20 Presidency starts on 1 December of this year, to deliver some practical outputs to improving tax certainty. So, there will be a macroeconomic survey of the impact of tax uncertainty on investment and, in turn, on growth and jobs.

Beyond that, we'll try to promote practical instruments to improve tax certainty. We'll promote the value of advance pricing agreements, and push for a better way to resolve disputes through mutual agreement procedures (MAP). We'll also try to get as many countries as possible to commit to mandatory binding arbitration, which will be included in the multilateral instrument to implement tax treaty-related BEPS measures that is being negotiated by more than 95 countries. To date, I think we have 96 countries — which covers more than 2,000 bilateral treaties — participating in the development of the multilateral instrument.

We expect to open it for signature by the end of this year, and hope to have countries begin signing it during the German G20 Presidency in the first half of 2017. The multilateral instrument will include an optional provision on mandatory binding arbitration, and the challenge here will be to get as many countries and jurisdictions as possible to “opt in” to the arbitration provision.

**Tax administration**

The OECD Forum on Tax Administration (FTA) will continue to promote the value of cooperative compliance between revenue bodies and large business taxpayers. I think the FTA MAP Forum's work on reviewing the minimum standard on MAP under BEPS Action 14 will be a game changer. Action 14 is focused on ensuring that treaty-related disputes can be effectively and efficiently resolved under MAP, so that taxpayers have more legal certainty.

The MAP Forum will be starting the peer review process very soon after the 30 June–1 July meeting in Kyoto on the new inclusive framework for BEPS implementation. We expect to see maybe 90, 100 countries join the framework.

**What’s next?**

So, you can see that we have a big agenda ahead of us. There is also the work that the OECD is doing with the IMF, the World Bank, and the UN to establish a Platform for Collaboration on Tax, which will enable us to join forces in terms of delivering technical assistance to a large number of developing countries on strengthening their tax capacity-building efforts and designing better tax policies.

We at the OECD have a lot to do, which may explain why I was not fortunate enough to be able to be with you today. But it's quite an exciting time, as we now move to rebalance the global approach to tax policy. We had BEPS to fight tax avoidance, and we have transparency to tackle tax evasion – we now need to have tax certainty to rebalance all of that. Taxpayers must pay their due to tax administrations. But, tax administrations must in return trust taxpayers that have demonstrated they can be trusted, and also provide more certainty and better tax policies.

The OECD is there to promote these policies, which I hope will be helpful to tax administrations, governments and taxpayers alike. So, I wish you a very fruitful meeting today and regret that I could not be with you. Thank you.
As expected, the G20 leaders pledged to use tax policy to promote innovation-driven, inclusive growth and to strengthen economic governance through heightened transparency and international tax cooperation.

In a communiqué released at the end of the G20 summit held 4-5 September in Hangzhou, China, the G20 leaders stated that while the global economic recovery is progressing and resilience has improved in some economies, numerous financial and political challenges remain and growth is “still weaker than desirable.” The leaders adopted a package of policies and actions that they believe will help achieve the G20’s goal of strong, sustainable, balanced and inclusive growth.

As part of the G20’s commitment to shoring up the global economic and financial architecture, the leaders stated that they will continue to support international tax cooperation measures that are designed to achieve a globally fair and modern international tax system and foster growth. This includes a timely, consistent and widespread implementation of the G20/Organisation for Economic Co-operation and Development’s (OECD’s) BEPS Action Plan, as well as an effective and widespread implementation of the internationally agreed standards on tax transparency.

The leaders stressed the need to improve transparency standards regarding beneficial ownership in order to protect the integrity of the international financial system and prevent the misuse of entities and arrangements for corruption, tax evasion, terrorist financing and money laundering. They asked the OECD’s Global Forum on Transparency and Exchange

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of Information for Tax Purposes and the Financial Action Task Force on Money Laundering to make initial proposals on ways to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information of legal persons and legal arrangements, and the exchange of such information. The proposals are expected to be presented at the G20 finance ministers’ 6 October 2016 meeting in Washington.

The leaders also highlighted the importance of using fiscal policy flexibly and making tax policy and public expenditure more growth friendly. “We emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting innovation-driven, inclusive growth, as well as the benefits of tax certainty to promote investment and trade,” they said. In that regard, the leaders asked the OECD and the International Monetary Fund (IMF) to continue working on the issues of pro-growth tax policies and tax certainty. China pledged to make its own contribution by establishing an international tax policy research center for international tax policy design and research.

Is structural tax reform the next big priority?

Given the G20’s aim of boosting growth through tax policy, structural tax reform is highly likely to become a key area of debate for governments and other intergovernmental and international organizations such as the IMF, the OECD, the United Nations (UN) and the World Bank.

But, unlike the G20/OECD’s BEPS project, which focused on modernizing the international framework for taxing the profits of multinational enterprises, this new tax reform effort will likely strive to be more far-reaching by encompassing all components of countries’ tax systems.

The drivers of tax reform

The G20’s inclusive growth project is likely to be driven by different factors – economic, social and political – that will vary among OECD countries, developing countries and emerging economies.

The need for revenue will undoubtedly be a major driver.

Many countries – even those that have cut back on expenditures – have significant budget deficits. Some governments will therefore look for new revenue sources through tax code changes.

Another driver will likely come from competition for foreign direct investment (FDI).

At the UN Conference on Trade and Development, held 17-22 July 2016 in Nairobi, Kenya, the attendees noted that FDI levels are still below what they were before the financial crisis.
This means that countries will continue to compete for that investment – both physical and intangible assets – by, for example, reducing certain tax rates or adding special tax regimes.

However, they will have to figure out how to use tax policy to satisfy the inclusive part of the G20’s growth agenda – that is, create wealth without exacerbating economic inequalities.

Carbon taxes?
The role of tax in climate change policy could also be a factor in the tax reform debate.

Under the Paris Agreement, which was reached at the UN Climate Change Conference in Paris on 12 December 2015, 195 countries pledged to keep the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

Although the agreement was hailed as a breakthrough, critics have pointed out that it does not bind countries to meet their climate targets, nor does it prescribe exactly how to meet them.

Economists are in near-unanimous agreement that if governments want to seriously tackle environmental issues, they must (re)consider the merits of carbon taxes.

Given the growing attention around the concept of corporate social responsibility and the debate over what role companies should play in preserving the environment, environmental taxes could factor into tax reform debates.

Finally, discussions may arise over how governments can achieve inclusive and sustainable growth while minimizing the administrative and compliance burdens on both tax administrations and businesses.

The perception in some quarters that the BEPS project will complicate the international tax framework and ultimately lead to further disputes and uncertainty could influence the direction that tax reform takes in some countries.

How tax reform could play out
The push for inclusive growth through tax policy could see governments reconsidering how their tax systems are structured.

Developed countries may continue to move away from corporate income taxes in favor of taxes on consumption, property, capital and wealth.

In contrast, developing countries – many of which rely too heavily on consumption taxes – would likely seek a more balanced tax structure by broadening their personal income tax base and strengthening their taxation of land and buildings.

In India, for example, less than 15% of the population is in the personal income tax base.

This rate-reducing and base-broadening trend is already emerging in a number of G20 countries.

The UK has legislated to cut its corporate headline rate to 17%, which would be the lowest in the G20, with the possibility of going lower.

Other European countries are likely to come under pressure to match this rate.

In the US, one of the few points for which there seems to be bipartisan support is that the nominal corporate tax must be cut.

Emerging economies
This trend can also be seen in emerging economies.

In the Philippines, for example, Finance Secretary Carlos Dominguez III said at a congressional hearing on 22 August 2016 that President Rodrigo Duterte’s Administration is working on a plan to reduce the corporate tax rate from 30% to 25%, as well as lower personal income tax rates.

The loss in revenue from the rate reductions would be offset by eliminating some value-added tax (VAT) exemptions, among other proposed measures.

Indonesian President Joko Widodo said at an event on 9 August 2016 that the Government is considering a plan to cut the corporate tax rate from 25% to 17% to match Singapore’s current rate.

The Indonesian Government also plans to change its VAT Law, Income Tax Law and General Taxation Provisions and Procedures Law.

Some governments may be looking very carefully at how India’s new goods and services tax (GST) regime plays out.

The Constitution Amendment Bill for GST was approved by President Pranab Mukherjee on 8 September 2016, following its passage in both houses of India’s Parliament in early August 2016 and ratification by more than 50% of state legislatures.

The new regime could become a game changer for India; some analysts have estimated that it could increase the country’s gross domestic product by 2%. (For more on the new GST, see page 33.)

India’s reform could inspire a country such as Brazil, which has a complicated, multiple-rate indirect tax system with tax levied at the state, federal and municipal levels, to consider whether it, too, should pursue a coordinated consumption tax regime.
Tax certainty and competition

With the focus now on increasing growth through tax, the G20 must be careful to avoid promoting tax policies that create further uncertainty.

Given that the global environment is already characterized by high degrees of political and economic uncertainty stemming from factors such as Brexit, the refugee crisis, terrorism and downgraded forecasts for economic growth in 2017, the G20 leaders must avoid adding tax uncertainty into this mix, especially as countries go about implementing the BEPS actions.

As part of the leaders’ commitment to identifying new avenues of growth via the G20 2016 Innovation Action Plan, governments should devote significant time to the question of how tax can be used to stimulate and bring investment in the areas of innovation and R&D.

This could reintroduce the debate on patent boxes and the challenges posed by the digital economy, which could in turn revive the broader questions around tax competition posed by Action 5 of the BEPS Action Plan.

Finding the right balance

The extraordinary G20 focus on tax – particularly the move toward greater tax transparency and the push to overhaul long-standing tax policies – is unlikely to diminish anytime soon.

However, the G20’s commitment to achieving strong, sustainable and balanced growth will create new challenges for governments.

Governments will now have to seek to craft tax rules that bring in much-needed revenue and drive innovation and growth, while also contributing to the perceived fairness of the tax system and helping to reduce inequalities in the distribution of income and wealth.
The EU's tax agenda for 2016/2017

The rapid adoption in 2016 of two major tax directives and the publication of an ambitious Action Plan on VAT reflect the tenacious new approach of the European Union (EU) to improving corporate tax transparency and tackling value-added tax (VAT) fraud. In the same way that the BEPS initiative of the G20/Organisation for Economic Co-operation and Development (OECD) has flourished following countries’ increased willingness to work collaboratively to modernize the international framework for taxing the profits of multinational enterprises, the public focus on tackling tax avoidance has drawn EU Member States to act together. Cooperation is now considered by the EU Member States as far more necessary, and action at the EU level far less a challenge to fiscal sovereignty.

The EU’s commitment to tackling tax matters in a timely, coordinated fashion has already produced results. As noted above, the European Commission (the Commission) successfully managed to get two key pieces of legislation – an EU Anti-Tax Avoidance Directive (the ATA Directive), which provides for a uniform legislative implementation of some of the OECD’s BEPS recommendations; and a directive to implement the automatic exchange of country-by-country reports, as required by BEPS Action 13 – adopted by the Economic and Financial Affairs Council of the European Union (ECOFIN) within a six-month period. Both pieces of legislation were included in an anti-tax avoidance package put forward by the Commission on 28 January 2016.1

As we close out 2016 and look ahead to 2017, we should expect to see multinational taxation, and corporate transparency in particular, remain high-priority items on the EU’s direct tax agenda. On the indirect tax side, the focus will likely be on proposals related to the Commission’s Action Plan on VAT, which was adopted on 7 April 2016.

Following is an overview of what has happened so far, and what may be next.

Direct tax developments

The ATA Directive is adopted

On 12 July 2016, ECOFIN formally adopted the ATA Directive. Unanimous political agreement on the directive had been reached on 21 June 2016 following several months of discussions and compromises.

The ATA Directive establishes a minimum standard with respect to five areas: interest deductibility limitation, a general anti-abuse rule (GAAR), controlled foreign company rules, hybrid mismatches and exit taxation.

The directive’s provisions should be transposed into Member States’ national laws no later than 31 December 2018, and should take effect as of 1 January 2019. Derogations apply to the interest deductibility limitation rule and the exit taxation rule. Member States that have national targeted rules preventing BEPS risks that are equally effective to the interest deduction limitation rule can continue applying these rules until the OECD has reached an agreement on a minimum standard with regard to OECD BEPS Action 4, but no later than 1 January 2024. The exit taxation rule needs to be transposed in Member States’ national laws no later than 31 December 2019, and should take effect by 1 January 2020.

ECOFIN has further requested that the Commission put forward by October 2016 a proposal on hybrid mismatches involving third countries that provides for rules consistent with, and no less effective than, the OECD BEPS recommendations under Action 2. ECOFIN expects that an agreement on such a directive will be reached by the end of 2016.

Comment

The fact that the Commission successfully managed to introduce a legislative proposal for an ATA Directive and obtain ECOFIN’s approval within a six-month period is a remarkable achievement, given ECOFIN’s traditional resistance to harmonization measures in the direct tax field. While it may be tempting to characterize ECOFIN’s agreement as a Damascene conversion, a more accurate assessment is that the agreement represents some small expansions of the scope of the BEPS measures that 23 of the Member States (who participated directly in the development of the OECD’s BEPS Action Plan) had already accepted.

While rapid adoption of the ATA Directive is impressive, it appears that the expedited pace resulted in poorly drafted minimum standards that Member States now have to transpose into national law. It is not difficult to anticipate the controversies that may occur in applying the new GAAR (to take an obvious example) or resolving issues when the directive acts to the detriment of the taxpayer in contrast to more favorable double tax treaty provisions or national provisions. To a certain degree, this reflects the unwillingness of ECOFIN to go beyond the OECD guidelines, which themselves are not precise and leave room for differing interpretations.

CbCR Directive is adopted

On 25 May 2016, ECOFIN unanimously voted in favor of the amendments to the existing EU directive on exchange of information (Directive 2011/16/EU), which will implement Action 13 of the OECD's BEPS recommendations on country-by-country reporting (CbCR) within an EU context (the CbCR Directive).³

The CbCR Directive requires multinationals to report information on revenues, profits, taxes paid, capital, earnings, tangible assets and the number of employees on a country-by-country basis. This information must be reported for fiscal years starting on or after 1 January 2016 to the tax authorities of the Member State where the group's ultimate parent entity is tax resident. If the ultimate parent entity is not resident in the EU, the report would have to be filed through a surrogate parent (EU or non-EU based) or the EU-based subsidiaries. The CbCR Directive gives Member States the option to either require secondary filing for fiscal years starting on or after 1 January 2016 or to defer that obligation to financial years starting on or after 1 January 2017.

The CbCR Directive will require EU Member States to implement a CbCR obligation in their national legislation in line with the requirements of the directive within 12 months from the date of its entry into force. The first reports will have to be filed within 12 months from the end of the fiscal year to which they relate. Member States will have to exchange them within 3 months thereafter, except for the reports relating to fiscal years starting on or after 1 January 2016, where the term would be 18 months after the end of the fiscal year. The Commission will adopt the necessary practical arrangements for upgrading the existing common platform for automatic exchange in the EU to fit the needs of the new requirements.

Proposal for public reporting of tax-related information

On 12 April 2016, the Commission published a draft directive (the Draft Directive) that, if adopted, would amend Directive 2013/34/EU, the EU Directive regarding the disclosure of income tax information (the Accounting Directive).

The proposed amendments to the Accounting Directive would require large multinational companies operating in the EU to draw up and publicly disclose reports on income tax information, including a breakdown of profits, revenues, taxes and employees. The information would be reported separately for each Member State and each jurisdiction that is listed on a “Common Union list of certain tax jurisdictions” and on an aggregated basis for the rest of the world. The “Common Union list of certain tax jurisdictions,” i.e., the specific tax jurisdictions to be included, is still to be determined. These reporting obligations would apply to both EU and non-EU multinational companies doing business in the EU.

The Draft Directive is separate from the new CbCR Directive (described above), which will implement the OECD’s BEPS Action 13 recommendations regarding non-public CbCR. It is also different from a new EU directive, adopted by ECOFIN in December 2015, that will require Member States to automatically exchange information related to cross-border tax rulings and advance pricing arrangements (that information will not be made public).

The Commission’s Draft Directive is not as strong as an earlier suggestion by the European Parliament to introduce public CbCR. In July 2015, the European Parliament proposed amending the Accounting Directive to extend to all industry sectors the existing public CbCR obligations required of large undertakings in the banking, extractive and logging sectors. The conflict between these proposals is currently being discussed between the European Parliament and ECOFIN.

Because the Draft Directive is considered to relate to financial reporting obligations in respect to income taxation and not to the harmonization of taxes, it does not need ECOFIN’s unanimous consent in order to be adopted. The Draft Directive will instead be considered for adoption under the “ordinary legislative procedure,” which is intended to give the same decision-making weight to the Council and the European Parliament. Furthermore, ECOFIN can make its decision through a qualified majority, which would be met if 55% of Member States vote in favor (in practice this means 16 out of 28) that represent at least 65% of the total EU population.

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Comment
The content of the Draft Directive will likely be subject to intense discussions during the legislative process, given that it not only goes beyond the OECD BEPS recommendations in Action 13, but also does not completely follow the impact assessment study done by the Commission7 on which it was based.

More specifically, the proposal diverges from the impact assessment in the requirement to separately report information on jurisdictions outside of the EU and in the requirement for reporting the accumulated earnings and explaining the material differences between taxes accrued and taxes effectively paid. The Commission has made it clear that the purpose of the proposed reporting requirements differs from the OECD reporting recommendations, in that it is aimed at helping EU citizens understand how much tax EU companies pay, and where. On the other hand, the proposal does not go as far as suggested by representatives of the European Parliament, who would have liked an even more transparent environment.

The timing of this legislative procedure is very difficult to predict at this stage. The current proposal may go through as many as four readings (two at the European Parliament and two at the Council), two of which are not limited in time and the other two could take up to four months.

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7 “Banking and Finance,” European Commission website, ec.europa.eu/finance/company-reporting/index.htm
State Aid developments

The Commission explains State Aid and tax rulings investigations in working paper and notice

On 3 June 2016, the Commission’s Directorate-General for Competition (DG Comp), which is vested with special legal competence in relation to State Aid law matters, published a working paper that summarizes and explains its investigations into tax rulings by highlighting the history and procedures followed during these still ongoing examinations. It also presents some guiding principles on when a tax ruling may give rise to State Aid. The working paper serves only as a short summary of the Commission’s preliminary considerations, and merely sets out a number of its initial findings after having examined more than 1,000 rulings (600 of which were obtained following the November 2014 illegal leaking of Luxembourg tax rulings). It does not bind the Commission and is without prejudice to any further cases the Commission may open. DG Comp concludes that, under the EU Treaty and jurisdiction of the Court of Justice of the European Union, it has competence to investigate cases under State Aid rules in the field of tax rulings.

DG Comp indicated that it continues to focus in particular on transfer pricing rulings when the Commission believes there could be a manifest breach of the arm’s-length principle. The working paper followed a more general Notice on the notion of State Aid (Notice) that the Commission published on 19 May 2016 as part of the State Aid Modernization package. The Notice is intended to assist public authorities in identifying when, in particular, public investments do not entail State Aid under article 107(1) of the Treaty on the Functioning of the European Union. The Notice also contains general guidance on the scope and definition of the EU State Aid rules as they are applied by the Commission.

Ireland decision released

On 30 August 2016, the Commission released its decision in its investigation into the (alleged) State Aid issues associated with a multinational company’s (MNC’s) tax arrangements agreed with the Irish Government. The Commission concluded that two tax rulings issued by Ireland have substantially and artificially lowered the tax paid by the MNC in Ireland since 1991.

The Commission has ordered that Ireland must now recover the unpaid taxes in Ireland from the MNC for the years 2003 to 2014 of up to €13 billion, plus interest. The Irish Government has confirmed that it will seek Cabinet approval to appeal the decision, as it disagrees profoundly with the Commission’s decision. A press release issued by the Irish Department of Finance confirms that, “Ireland’s position remains that the full amount of tax was paid in this case and no State aid was provided.” The MNC has also said that it will appeal the decision.

More details provided in Luxembourg cases

On 9 June 2016, the Commission published its final decision in the State Aid case relating to Luxembourg, rendered on 21 October 2015, in which the Commission determined that Luxembourg had granted illegal State Aid to a Luxembourg-resident company that forms part of an MNC group. The Commission found under the EU State aid rules that Luxembourg granted a selective tax advantage in agreeing to transfer prices that allegedly deviate from market practices.

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The Commission ordered Luxembourg to recover the alleged advantage from the taxpayer (consisting of the tax benefit that the taxpayer has received since 2012). Luxembourg and the MNC have filed appeals.

In a separate case relating to Luxembourg, the Commission on 6 June 2016 published a non-confidential version of the opening decision in which it formally informed Luxembourg of its preliminary conclusion that two rulings granted to an MNC involving a Luxembourg company with US and Swiss branches constitute State Aid. The investigation, first announced in December 2015, focuses on the exemption granted in respect of profits attributable to the US branch and, in particular, the fact that these profits are not currently subject to tax in the United States, which was disclosed and analyzed in detail in one of the rulings. Contrary to the other ongoing State Aid investigations, this case does not concern transfer pricing arrangements, but instead focuses on the way the Luxembourg tax authorities have applied the 1996 Luxembourg-US double tax treaty. The Commission considers that the exemption granted by Luxembourg for the US branch profits should not have been granted based on the fact that the US branch was not subject to taxation in the US.

This case can be considered as the Commission applying the “New Extended Approach,” under which the Commission tries to apply what it may consider a universally applicable anti-abuse standard in the form of a subject-to-tax clause. At this stage, the Commission has not ultimately decided that State Aid exists. It is expected that a final decision in the investigation will take a considerable period of time.

Comment
In the wake of international tax policy developments, the Commission has continued combatting certain international tax planning strategies on the basis of the EU State Aid rules. At a 4 April 2016 hearing of the European Parliament's special committee on tax rulings and other measures similar in nature or effect (TAXE 2), EU Competition Commissioner Margrethe Vestager confirmed that the Commission's current moves are part of a broader agenda, saying that “no matter how well we apply the State Aid rules, we also need to work on improving our tax laws at national, European and international levels.”

On 3 June 2016, DG Comp confirmed that that it had looked at more than 1,000 tax rulings. DG Comp seems to not exclude any transfer pricing method from the outset from considering it acceptable under its own standards. However, DG Comp's focus still “is on cases where there is a manifest breach of the arm's-length principle.”

The formal investigations opened with respect to the rulings granted by some EU Member States, which has so far resulted in four negative decisions by the Commission with recovery, can be placed in this light.

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Panama Papers inquiry and other transparency initiatives

On 8 June 2016, the European Parliament agreed to set up an inquiry committee into the Panama Papers revelations. The committee, also known as PANA, is set to investigate whether EU laws on money laundering, tax evasion and tax fraud were breached in the structures revealed by the leak. On 12 July 2016, the German Member of the European Parliament, Werner Langen, was elected to chair this committee of 65 members. The committee is expected to start its work in late September 2016 and has a mandate of 12 months, at the end of which it is anticipated to deliver a final report.

On 21 June 2016, TAXE 2 adopted its report15 containing recommendations for making corporate taxation fairer and clearer. The report, which was also approved in the Parliament Plenary session on 7 July 2016, calls for an EU register of beneficial owners of companies, a tax havens blacklist, sanctions against noncooperative tax jurisdictions, action against abuse of “patent box” regimes, a code of conduct for banks and tax advisors, tax good governance rules in EU trade agreements, an EU Common Consolidated Corporate Tax Base (CCCTB) and a withholding tax on profits leaving the EU.

On 5 July 2016, the Commission published a communication on further measures to enhance transparency against tax evasion and avoidance. The Communication outlined the planned future work of the Directorate-General for Taxation and Customs Union, which will consist of harnessing the link between anti-money laundering and tax transparency rules, improving information exchange on beneficial ownership, increasing oversight of enablers and promoters of aggressive tax planning, promoting higher tax good governance standards worldwide and improving the protection of whistle-blowers.

Comment

So far, no concrete legal draft work has emanated from the 5 July Communication, since each proposal will need to be accompanied by a detailed impact assessment. The Commission’s focus for the rest of the year will likely be directed toward preparing a draft amendment directive to the ATA Directive regarding hybrid mismatch rules in relation to third countries, as well as the planned November 2016 relaunch of the proposed EU CCCTB Directive.

The revised CCCTB proposal is likely to be repackaged as a fair taxation measure, rather than a measure aimed at simplifying the way in which companies operate cross-border. However, to the extent that the proposal goes beyond the scope of measures agreed to under the OECD’s BEPS project, it is unlikely to make rapid, if any, progress in ECOFIN, since it would essentially represent a move toward direct tax harmonization within the EU. (For more on the CCCTB, see page 29.)
Indirect tax developments

Commission Action Plan on VAT

On 7 April 2016, the Commission adopted a wide-ranging Action Plan on VAT that sets out the Commission’s vision for modernizing the EU VAT system so that it can better support the Single Market, facilitate cross-border trade, and keep pace with the digital and mobile economy. The Action Plan addresses four main areas of concern.

The first is the removal of VAT obstacles to e-commerce in the Single Market, which is an essential part of the Commission’s Digital Single Market strategy. The Commission plans to put forward a proposal for a directive by the end of 2016 that will include, among other provisions, an extension of the one-stop shop used for e-services to cover business-to-consumer (B2C) distance sales of goods, together with the removal of the VAT exemption at import for small consignments imported from third countries. Given that ECOFIN was prepared to adopt a previous proposal by the Commission to modernize the EU VAT rules in respect of e-services, it is not unreasonable to expect that this proposal might make progress in ECOFIN.

The Action Plan’s second focus area is the need for further measures to reduce the VAT gap (the difference between VAT collected and the theoretical expected revenue). The Commission has put forward 20, mainly non-legislative, measures designed to enhance cooperation between tax administrations and improve VAT compliance by businesses. In this context (although not part of the Action Plan), it is worth noting that two Member States, Austria and the Czech Republic, have requested that the Commission make a proposal to ECOFIN that would enable them to introduce a generalized reverse charge mechanism. The Commission has previously resisted such requests, but there are signs that it may now be prepared to make such a proposal (it would need to be unanimously adopted by ECOFIN).

The third and most ambitious area addressed in the Action Plan is the Commission’s intention to present in 2017, proposals for a “definitive” VAT regime for intra-community business-to-business trade based on taxation in the country of destination and the principle that the supplier should charge VAT both on domestic and intra-community supplies. This would, as with the proposed reform of B2C sales, entail the use of a one-stop-shop mechanism for the reporting and collection of VAT charged. This would re-establish the self-policing nature of VAT whereby the tax is charged at every stage, and would thus help to eliminate the considerable fraud that takes place under the current “transitional” regime in which tax is not charged on intra-community supplies.

The final area covered by the Action Plan is the question of reduced rates. The Commission points out that under a definitive system based on taxation in the country of destination, there would be scope for Member States to have far greater autonomy in deciding their policy on VAT rates and, in particular, on reduced VAT rates. The Commission has acknowledged, however, that this is a highly political issue and that it would wish to obtain a political mandate from ECOFIN before making an appropriate proposal in 2017. In the meantime, the Commission has launched a public consultation on the issue of reduced rates for electronically supplied publications, with a view to making a proposal on this specific matter in 2016.

Other indirect tax measures

Financial Transaction Tax (FTT)

In 2016, one Council working party meeting took place on the proposal to introduce an FTT by enhanced cooperation in 10 Member States (Estonia formally withdrew from the group of participating countries in March 2016). However, the 10 Member States appear unable to agree on a number of issues, so there is no immediate sign of any adoption of this proposal.

Tobacco taxation

In 2015, the Commission presented a report to ECOFIN on the directives governing the structure and rates of excise duty applied to manufactured tobacco. Following ECOFIN’s discussion of this report, the Commission has been invited to consider what, if any, legislative changes are necessary. This includes consideration of “new generation products” such as heat-not-burn products and e-cigarettes. The Commission is now carrying out a detailed impact assessment and will launch a public consultation before deciding whether to make any legislative proposal in 2017.

Alcohol taxation

In a similar vein, the Commission intends to present a report to ECOFIN on the structure of excise duties applied to alcohol and alcoholic beverages to enable Member States to make any necessary changes.
The financial crisis, followed by the budgetary and economic crises, resulted in a “scissor effect”: the shortfall in tax revenues resulting from the recession coincided with the need to revive economic activity amidst an environment under the strain of public debt.

The pressure on public finances and, consequently, tax receipts, has raised the question of tax havens and, more generally, the means available to taxpayers to avoid tax. Against the backdrop of a globalized economy, governments have decided to establish a more integrated worldwide tax framework and re-examine many branches of international tax law. In the area of corporate taxation, this resulted in the G20/Organisation for Economic Co-operation and Development’s Action Plan on BEPS, which seeks to modernize the international framework for taxing the profits of multinational companies.

Another major initiative is taking place in the European Union (EU), in the form of a proposed Common Consolidated Corporate Tax Base (CCCTB) that would provide a single set of rules that cross-border companies could use to calculate their taxable profits in the EU, as well as reorganize how tax revenue is allocated among the EU Member States. The concept of an EU-wide CCCTB actually predates the BEPS Action Plan; the European Commission (the Commission) first began talking about developing a common, consolidated approach to the EU corporate income tax (CIT) base in the late 1990s.

The Commission eventually released a proposed CCCTB Directive in 2011, but negotiations among the 28 Member States stalled because of disagreements over the tax consolidation provision.

In June 2015, the Commission announced plans to relaunch the CCCTB, but with some changes to the 2011 proposal: the Commission now wants to make the CCCTB mandatory and implement it in phases (i.e., postpone the work on consolidation until after a common corporate tax base is agreed upon). The Commission is expected to release a legislative proposal in November 2016.

EY study analyzes tax competition in the EU

The announcement of the revived CCCTB plan provides an opportunity to examine the respective positions of the EU Member States with respect to CIT and the potential impact of the CCCTB on the definition of their CIT. EY conducted a study to indicate trends and call attention to the most significant impacts that could result from the transition to a new corporate tax base.¹

For the purposes of the study, EY selected 15 jurisdictions it considered as representative and indicative of fiscal policies in Europe. Fourteen of those jurisdictions are EU Member States of varying sizes and economic characteristics: Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland,

¹ A report setting out the study’s findings was released on 10 May 2016. The report is available in French and English at http://www.ey-avocats.com/fr/fr/newsroom/news-releases/ey-competition-fiscale-et-projet-dune-assiette-commune-de-limpot-sur-les-societes-en-europe.
Spain, Sweden and the United Kingdom. In addition, Switzerland — while not a Member State of the EU — was selected due to its geographic proximity and the fact that it is a major economic player recognized for its tax competitiveness.

The aim of the study was to contribute to the debate by presenting:

- A status report of the tax base choices made by EU Member States
- A summary assessment of the competitiveness of their CIT
- An analysis of the changes that would be necessary if the proposed common consolidated tax base is adopted, and the resulting budgetary consequences
- Some final conclusions that may be drawn in terms of fiscal policy

Indeed, the CIT remains a symbol of tax sovereignty of European jurisdictions today (but for how much longer?), and is therefore the most commonly used indicator to assess competitiveness and thus jurisdictions’ tax attractiveness.

The changes stemming from the Commission’s plans will have a genuine impact, both on economic policy choices made by Member States and on budgets with respect to the balancing of public finances. What is at stake, beyond this issue, is that Member States would potentially relinquish de facto their freedom to determine their fiscal policy mix. And yet today, the debate is still defined on essentially technical grounds, rather than in terms of sovereignty or a conception of European – federal or otherwise – construction.

The study therefore sought to propose key points for a rational understanding of an apparently technical subject, and to clarify a more political debate that exceeds this strict framework.

The study’s findings
Among the study’s key findings are the following:

- The tax base choices made by the reviewed jurisdictions show contrasting approaches, partly driven by considerations of economic policy and by the desire for attractiveness.
- Taking rates into account accentuates the competitive differences already observed in terms of tax base, thus further widening the gap between the countries.
- All else being equal, notably if tax rates were to remain unchanged, it emerges that the implementation of a common tax base is likely to lead to budgetary losses overall at a time when the public finances of Member States are encountering difficulties.
- Paradoxically, the countries that have publicly shown the most reticence with respect to a CCCTB are those that would be most favorably positioned to deal with it, and would probably benefit most in terms of relative tax competitiveness.

A possible solution: convergence
The issue of managing the transition from the current tax bases to the target tax base also warrants more profound analysis. Given the potential financial and budgetary impacts, an abrupt shift from one system to another is probably not the most effective way to proceed.

One possible solution – if the potential number of companies concerned or the related budgetary issues were significant – would be to set up a convergence mechanism spread over a few years, such as that used for the transition to the euro. Such an approach would allow Member States to move progressively toward the target system while managing the various effects of the transition as effectively as possible. However, that is a subject for another debate and perhaps another study.
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The better the question. The better the answer. The better the world works.
GST: A new era of cooperative federalism in India

After an intense debate of 11 long years from the time when the vision of “one nation, one tax” was first mooted in 2005, the Indian Parliament in early August 2016 finally approved the constitutional amendment required for the implementation of the Goods and Services Tax (GST). The GST is the largest-ever tax reform in the fiscal history of India. It charts a new course for fiscal federalism in India that focuses on cooperation instead of self-interests. It is a giant leap from the legacy tax system to one more suited to the needs of the dynamic and vibrant economy that India has today.

Good riddance to the legacy system

The spirit of cooperative federalism requires both the Union and the State governments to sacrifice their fiscal autonomy in favor of a collective decision-making process. The giving up of the fiscal autonomy is unprecedented and reflects that the modern economy of today calls for increasing cooperation among the economic players for the common good, instead of focusing on individual gains. The collective action is significant, given that the transactions are increasingly becoming global in nature and not confined to the boundaries of the States.

The current taxation system in India provides truncated taxation powers to the central government (the Centre) and the States and is not in tune with the modern businesses and the complex supply chains. For instance, the Centre cannot levy taxes on goods beyond the point of manufacture, and the States do not have the powers to tax services. The patchwork of taxes has led to balkanization of the common market and fragmentation of the supply chains. The differential taxes in different States give rise to arbitrage opportunities. Taxes such as central sales tax (an origin-based tax) and entry tax being non-creditable further add to the costs of businesses. To add to the woes, India has approximately 600 check posts. Goods carriage vehicles in India barely travel 280 km per day against a world average of 400 km per day. The World Bank has observed that 60% of truck drivers’ time is spent off-road, negotiating at check posts and at toll plazas.

The GST overcomes these gaps. While the States will get the power to tax both goods and services, the Centre will be able to levy taxes beyond the manufacturing point, across the full supply chain. At the same time, the tax provisions that restricted inter-State movement of goods within the country will now be dispensed with. These provisions are absolutely fundamental to modernizing the tax system and making it simple and efficient. GST will be supply chain neutral and will obviate the need for bundling or unbundling of goods and services for taxation purposes.

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Basic framework for GST design

The Constitution envisages certain key guiding principles for the GST design to be recommended by the GST Council. First, the tax will be levied concurrently by both the national and subnational governments (States). Presently, taxation powers of the Centre and the States are mutually exclusive. Second, it will apply to both goods and services and any mixture of the two. Third, the tax will apply to the full supply chain, i.e., to all transactions in the economy whether local or inter-State, manufacturing level or other points in distribution, and by way of sale or lease or any other arrangement. Fourth, the tax will apply only on a destination basis and not at the place of origin. Lastly, no tax can apply to impede the free flow of goods and services in the common market of India.

Long road ahead

The constitutional amendment, however, is only the beginning. It is a long road ahead to the destination of a good and simple tax. A GST type of tax has been implemented in more than 150 countries in the world, but none meets the specifications for the model envisaged for India. What is proposed for India is not a single national tax but a set of 38 taxes, i.e., a GST for each of the 29 States and seven federally administered Union territories, a federal GST and an integrated GST on inter-State supplies, all fully harmonized to look like a single tax.

The task of designing the GST is assigned to the GST Council, a collective forum of the States and the Union governments. The GST Council’s decisions will require three-quarter majority and the Union government will have weightage of one-third of the votes. The GST Council will decide very important aspects of the tax, including the base, rates, allocation of tax base among the States, administrative architecture and compliance procedures. Each of these design features can be a potential source of endless debates and controversies in a multiparty democracy such as India.

Model GST law released

The Union government has released the model GST law for stakeholders’ comments. The model law is a product of intense debates and controversies in the drafting committee of Centre and State officials. Many provisions of the law will need to be reviewed as they do not bode well for the ease of doing business that the shift to GST seeks to bring about. Despite the fact that GST in India will be a set of 38 different taxes, the governments have aspired for full harmonization of virtually all aspects of the Centre and State taxes, including the tax base and registration, reporting, payment, and refund rules and procedures. This is indeed the most unique and essential feature of the model law. It does not exist anywhere else in the world, and without it the GST reforms would come to naught.

While consensus on full harmonization is an outstanding achievement, it has not been easy and the Centre has had to concede to virtually all of the demands of the States. As a result, some of the provisions are harsh. For example:

- Taxable supplies have been defined expansively to catch any inter-State activities between two arms of the same person
- Complex valuation rules have been prescribed for supplies without consideration
- Credits will still be denied for construction inputs
- Credits will be delayed until tax is actually paid by the supplier
- Refunds of excess credits are subject to discretionary approval of officials, and harsh penalties and punishment prescribed for gaps in compliance
The States have insisted that dealers register for GST in each State from where they supply goods and services, and remain subject to their physical control and monitoring, much like under the current value-added tax. Each registration will be treated as a separate person. This means that they would need to file separate returns for each State where they are registered, and prepare and maintain financial accounts state-wise. Their output tax collections and input tax credit claims need to be segregated for each registration and each tax, and cannot be pooled. The model law embargoes any refund of the credit balance, except where it is on account of exports or inverted duty structure (inputs taxed at a rate higher than outputs).

The worst impacted would be those in the service sector with pan India operations, e.g., telecom operators, national airlines and financial institutions. Their annual tax compliance steps could go up from less than 20 (2 semiannual returns and 12 monthly payments) to as many as 1,600! The most challenging part of the model law is the valuation rules for taxation of self-supplies of goods and services between two arms of the same legal entity, the so-called “supplies without consideration.” The model law defines supplies to include any inter-State movement of goods, or inter-office activities or functions within an organization. The head office interacting with its production plant or distribution center in another State will now be considered to be rendering a service which would need to be valued and recorded in the books of account and then tax remitted on it. The same would apply to the marketing or business development support provided by a group in one State to fellow team members in another State.

This is the biggest question. The rules are similar to those for transfer pricing and customs valuation for international transactions. They will create inter-State fiscal frontiers, impeding free flow of goods and services within the common market of India. In the rest of the world, such activities within the domestic market are neither recognized nor made subject to tax. The tax is limited to transactions between two legal entities made for a consideration. Valuation rules are needed only in select cases such as for fringe benefits to the employees.

Consultations begun for early implementation

The government is making all-out efforts for an early rollout of the GST. In its roadmap for GST implementation, the Ministry of Finance envisages development of front-end and back-end processes of the GST Network, the organization set up to provide the information technology (IT) backbone for GST by the end of December 2016. It is focusing on the training of almost 60,000 officials of Centre and State governments on GST laws and IT framework. At the time of writing this article, both the Ministry of Finance and the Empowered Committee of State Finance Ministers are holding consultations with trade and businesses to understand their concerns.

Industry, on its part, needs to engage constructively with the government and prepare for GST. The key to the successful implementation of the GST will be cooperation – between the Centre and the States, among the States, and between the governments and the businesses. One hopes that all the stakeholders recognize this aspect for the larger good and help India achieve its potential economic growth.
The tax and finance departments can deliver value in this new era of digital tax by embracing enterprise initiatives and transformations that facilitate enhanced data management – and using data analytics to manage risk, control costs and drive business decisions.
Driven by revenue pressures and shrinking headcounts, tax authorities across the globe are increasingly relying on digital methods to collect taxpayer data and administer their tax systems. Amid increasing demands for tax transparency by governments and supranational organizations, many tax authorities are building sophisticated data-gathering platforms that enable matching and sharing of taxpayer data. They are then using data analytics to mine this data to help increase tax collections, target compliance initiatives and improve overall efficiency.

Practically speaking, this means an unprecedented amount of taxpayer information is flowing between governments and businesses. This data is being analyzed and used in new and more expansive ways. The Organisation for Economic Co-operation and Development’s country-by-country reporting (CbCR) requirements mandate increased data collection and disclosure. With several countries, including the United States, having adopted the CbCR requirements and many more countries soon to follow, the volume and pace of data collection and analysis will only continue to grow.

In this environment, companies, and especially their tax and finance functions, need to know what information they are expected to share and have confidence that it is accurate, secure and formatted correctly. Data is the foundation upon which this new digital tax world is being built, and the quality of the outcomes that result will depend on the quality of the data that goes in. To match what governments are doing and stay one step ahead, tax departments must look at the tax function through the lens of big data and data analytics.

Big data refers to the increasing volume of data now available, as well as its variety and the speed at which it can be processed. Analytics is the means for extracting value from this data—the tool that generates actionable insights.

How tax authorities are using data analytics

Many tax authorities pull together data from a variety of sources to develop a more complete picture of companies’ tax profiles. Companies are increasingly being asked to submit client invoices, statements of accounts, customs declarations, vendor invoices and bank records, all in formats specified by the government—and on an accelerated schedule (often in real or near-real time). Moreover, the formats in which these data are submitted may differ from how companies track and collect the data themselves.

Tax authorities are using real-time or near real-time data analytics engines to validate invoices and lag discrepancies, verify sales and purchase declarations, verify payroll and withholding declarations and compare data across jurisdictions and taxpayers. Based on these analyses, tax authorities make determinations, including tax and audit assessments. While countries such as China, France and Russia have advanced digital authorities, some of the other leaders in digital tax are in the Americas, and we focus on them here.

A version of this article first appeared in the Daily Tax Report published by Bloomberg BNA.
Mexico

Examples of information required: digital tax receipts from electronic billing, value-added tax (VAT) invoices, electronic accounting records, transfer pricing, financial derivatives and tax returns (see page 46 for an article on a 6 July 2016 decision of the Mexican Supreme Court of Justice in which it declared certain electronic accounting requirements unconstitutional but validated others)

Frequency of submission: real time, daily, monthly, quarterly or yearly depending on type of information requested

The Mexican tax authorities have a program called “deep vigilance” through which they review taxpayers’ prior tax year information to determine if there has been any reduction in tax obligations or omission of tax information. Tax authorities also compare data against other taxpayers in the same industry or region to verify the taxpayer’s effective corporate tax rate, considering factors such as its size, industry, region and tax classification (large vs. regular taxpayer).

A significant number of audits arise from the program — in fact, in 2015, Mexican tax authorities collected MXN140m from audits, up from MXN98m in 2010. And the average assessment per audit during that same time period grew from MXN109m to MXN192m.

Canada

Examples of information required: tax returns and supporting documentation (paper or digital format)

Frequency of submission: varies depending on type of information required

The Canada Revenue Agency (CRA), like other tax authorities highlighted in this section, collects large amounts of taxpayer data and uses data analytics to gain “better business intelligence about taxpayer behavior” and support its compliance and collection efforts.

In a recent report to Parliament, the CRA identified some examples of how it uses data analysis, including:
- To predict the assessed value of certain unfiled returns and target follow-up action (resulting in CAD127m in additional assessments in the 2013–14 tax year)
- To identify accounts that would “self-resolve,” allowing the CRA to focus collection efforts on higher-risk accounts
- To predict which installment-payment taxpayers were likely to make payments; the CRA was then able to better target follow-up phone calls (resulting in CAD31m in additional negotiated payments in the 2013–14 tax year)

The CRA uses available business intelligence, including mandatory reporting of electronic funds transfers, to identify high-risk cases and emerging offshore arrangements through its Offshore Compliance Division. It also recently implemented an automated tool that links taxpayer information from its various databases and applies risk algorithms to calculate an automatic risk assessment for all “large files.”

Brazil

Examples of information required: digital tax accounting bookkeeping, electronic books with payroll information, VAT tax books, social contribution tax books and tax returns

Frequency of submission: real time, daily, monthly, quarterly or yearly depending on type of information requested

Tax audits in Brazil are based on wide cross-checking among tax obligations and are focused on large taxpayers (those with revenues over BRL78m), large representative economic sectors (such as agriculture and related services) and taxpayers suspected of illegal tax activity.

While large taxpayers make up only .01% of registered taxpayers in the country, this group paid 61% of total tax revenue in 2015. Large taxpayers also pay the bulk of audit assessments (77%), collection of which continues to steadily increase (up from BRL99b in 2010 to BRL121b in 2015), with the 2015 average penalty value at BRL12m.
United States

Examples of types of information required: monthly tax payments, withholding and tax returns

Frequency of submission: varies; tax returns and most third-party information returns filed annually, with the majority of third-party information returns filed electronically. These information returns include items such as Form W-2 reporting (wage and tax statement) and Schedule K-1 (partnership, S corporation and estate/trust distributions), among others.

While the United States uses data analytics for compliance risk and audit selection, it lags behind other countries in terms of overall digital tax administration. The US Internal Revenue Service (IRS) does, however, have an enforcement program (Automated Underreporter Program) to electronically match data from information returns against individual taxpayer accounts. After years of budget cuts and staffing shortfalls, audit rates are declining (1 million returns audited in 2014 compared to 2 million in 2013), although the amount of revenue collected from audits and document matching during this same period increased (US$18b in 2014 compared to US$15b in 2013).

The IRS is encouraging taxpayers to use online resources as an alternative to staffed interaction. Recent IRS publications outline goals for the agency that align with a more digital model. Examples include:

- A “web-first” service strategy whereby taxpayers can receive tax information and services online
- Tools that allow the IRS to match tax returns with information returns
- Increased use of data analytics
- Better digital tools that allow taxpayers to manage accounts, filings, correspondence, payments and data, as well as identify issues and resolve errors
- Service-wide electronic records management processes
- Systems, software and governance to facilitate secure transactions and data submissions
- Strategic relations and interactions with partners such as employers, payroll providers, software providers and state and local governments

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- Systems, software and governance to facilitate secure transactions and data submissions
- Strategic relations and interactions with partners such as employers, payroll providers, software providers and state and local governments

Chile

Examples of information required:
e-invoices, electronic purchase and sales books, tax returns and some tax forms

Frequency of submission: varies

In Chile, the local taxing authority has been proactive in its use of technology to enhance tax compliance. Significant investments are being made in technology, including new equipment and software, as well as improvements to the platform used for electronic invoicing. These investments have supported increases in value-added tax (VAT) audit rates (50,000 more VAT audits between 2013 and 2014) and revenue from VAT audits (up from CLP158m in 2013 to CLP800m in 2014). To help keep this momentum going, the government expects to continue to invest in and expand on its digital efforts.

Other Americas countries increasing investment in digital tax data collection and analytics

- **Argentina** has enacted several resolutions implementing digital tax measures such as requiring electronic invoicing and enabling the tax authority to undertake electronic inspections.
- **Colombia** requires its taxpayers to submit an annual report providing information on every third party with whom a taxpayer engaged in a transaction. The report requires information such as the parties’ tax ID numbers, addresses and the transaction amount. The tax authorities are then able to match the information reported by the parties and identify any discrepancies. And since FY 2012, corporate taxpayers electronically submit financial information (i.e., assets, liabilities, revenues, deductions), which are then compiled to build the front page of the income tax return. Colombia has adopted e-invoicing and is currently in the process of enacting implementing regulations.
- **Peru** requires e-invoicing for many taxpayers and requires certain taxpayers to electronically submit monthly accounting data.

As interest in digital methods and analytics continues to grow, we would expect to see more countries investing in this area.
What it means for companies

Tax authorities’ enhanced use of data analytics means that companies—and their tax and finance departments—need a shift in mindset around how they collect, store and analyze tax and financial data. Documents may be stored in various places, such as network shared drives, personal hard drives, external providers’ systems, document management systems and emails. Adding to the challenge, the requested information may be spread across different functions and geographic locations. This can make it hard to find data when it’s needed and know when that data has been collected or delivered. These challenges can be mitigated through development of a robust data management and analytics system.

The volume of requests and short response time for compliance means that companies need sophisticated data management and analytic capabilities that meet or exceed those used by tax authorities. They also need people familiar with these enhanced data requirements to develop and maintain those systems. Further, they must take proactive steps to create files that are “audit ready” when submitting requested information to tax authorities—particularly in this environment of increased transparency and information exchange.

Action steps

While companies can face significant challenges in modifying their data management and analytics capabilities to meet the requests and rapid turnaround times requested by tax authorities, it is critical that they face this challenge head on. We see forward-looking companies taking the following steps to develop a new approach to compliance in this digital environment:

- Performing detailed reviews of data requirements, processes and technologies that support digital tax authority requests across the globe
- Testing and reviewing submitted data to provide the company with visibility into what tax authorities are doing with the transmitted data—quantifying and mitigating risks as issues are found
- Developing multi-country data management and analytic capabilities to create efficiencies and provide real-time visibility into the transmitted data
- Shifting focus from traditional compliance activities to real-time digital audit readiness activities—changing technologies, processes and people to support this shift
- Keeping abreast of legislative and regulatory changes affecting tax data collection and submission—and providing input to policymakers as appropriate

Conclusion

As tax authorities rely more on data to make compliance and audit determinations, and are increasingly sharing this data with tax authorities in other jurisdictions, companies will face risks and exposure if their people, processes and systems are dated or out of sync with government requirements and expectations.

The tax department has an opportunity to deliver value in this new era of digital tax by embracing enterprise initiatives and transformations that facilitate enhanced data management. Companies can realize this value by harnessing data analytics to manage risk, control costs, and inform communications and business decisions.

The authors would like to thank Kathy Schatz-Guthrie and Barbara Kirchheimer for their contributions to this article.
Is your biggest tax obligation the one you can’t see?

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The better the question. The better the answer. The better the world works.
At a press conference on 1 June 2016, Japan’s Prime Minister, Shinzō Abe, announced that the consumption tax rate increase to 10% should be postponed for a second time. The Cabinet has proposed delaying the implementation of the rate increase from 1 April 2017 to 1 October 2019, as well as postponing the effective dates for introducing reduced rates for selected goods and new invoicing requirements. The National Diet (the Diet) is expected to consider the proposed postponement during an extraordinary session set to convene on 26 September 2016.

Background

The Act for Partial Amendment of the Consumption Tax Act and for the Drastic Reform of the Taxation System for Ensuring Stable Financial Resources for Social Security (the Act), promulgated on 22 August 2012, prescribed an increase in the consumption tax in two phases: first, an increase to 8% as of 1 April 2014, and then an increase to 10% as of 1 October 2015. However, the Act also included an “economic resiliency” clause that, if applied, would suspend the implementation of the tax rate increase. The clause stated that any increase in the consumption tax rate shall be made only after comprehensive consideration of the current economic climate based on various indicators, including the nominal and real economic growth rate, and commodity price trends.

The first increase to 8% was duly implemented on 1 April 2014 in accordance with the Act. However, in November 2014, Prime Minister Abe announced that the second stage increase to 10% should be postponed to 1 April 2017 based on an overall consideration of economic conditions. He said there should be no further delays. Pursuant to this announcement, the Act was amended to delay the rate increase as well as to repeal the economic resiliency clause.

However, Prime Minister Abe announced on 1 June 2016 that he had decided to postpone the consumption tax rate hike again to avoid disruption to domestic demand as policy measures are being taken against the backdrop of a global economy that presents significant risks. The Prime Minister said that the increase to 10% should be postponed to 1 October 2019, two and a half years later than the current deadline of 1 April 2017. This will require the Act to be amended.
The Cabinet approved the proposed postponement on 2 June 2016. In addition, the Cabinet on 24 August 2016 adopted a tax amendment proposal that would delay the effective dates of related consumption tax measures. Under the proposal, the introduction of reduced rates for selected goods would be postponed from 1 April 2017 to 1 October 2019, while the introduction of a new invoicing system would be postponed from 1 April 2021 to 1 October 2023. In addition, the applicable periods for small- and medium-sized enterprises (SMEs) to use simplified calculation methods for calculating output and input taxes on reduced rate transactions would be postponed by two and a half years. The simplified calculation methods are transitional measures designed to help SMEs cope with the administrative burdens of separating input or output transactions by tax rates.

The Cabinet is expected to submit the proposed amendments to the Diet in September 2016.

Impact of the postponement

Businesses had been rushing to update their transactions and systems for accounting and tax purposes ahead of the 1 April 2017 implementation of the 10% rate and introduction of reduced rates. The postponement, if enacted by the Diet, will therefore give businesses additional time to prepare for the changes.

While the new consumption tax rate of 10% will still be low relative to the rates of VAT and goods and service tax in many countries, it will nevertheless move Japan’s position closer to that of other jurisdictions.

Businesses can use the extended period before implementation to review the issues that arose when the rate was raised from 5% to 8%, negotiate improvements in contract terms with regard to consumption tax recognition standards, and consider and negotiate the content and timing of contracts eligible for the lower tax rates applied under transitional measures. As such, businesses will have the opportunity to more thoroughly explore the different responses they can make to the upcoming changes.
On 6 July 2016, the Mexican Supreme Court of Justice (the Supreme Court), ruling on a case litigated by Mancera, S.C., (Mancera) the EY member firm in Mexico, issued a final decision on the constitutionality of new electronic accounting obligations, an electronic audit procedure and electronic tax drop-box. The Supreme Court declared that certain provisions are unconstitutional but validated others.

Mancera is representing one of several taxpayers that have challenged the constitutionality of the new requirements and asked the courts to rule on the constitutionality in amparo trials. At this point, Mancera’s case is the only one in which the Supreme Court has issued a final decision on the constitutionality question. Under Mexican law, a decision of the Supreme Court constitutes a binding precedent only when the relevant legal issue is decided the same way in five consecutive cases by a majority vote of eight Justices in plenary sessions or four Justices when sitting in their respective Chambers. Thus, the reasoning given in the Mancera client’s decision does not yet constitute a binding precedent for the other cases.

Background

As a consequence of the 2014 tax reform, Mexican taxpayers must maintain electronic accounting records and electronically file some of them with the tax authorities on a monthly basis. Additionally, in 2014, the tax authorities initiated a new electronic audit procedure, in which they used a taxpayer’s electronic information and documentation to generate a preliminary tax assessment and then notified the taxpayer of the assessment through an electronic mailbox (the electronic tax drop-box).

The taxpayer had 15 days following the notification to produce evidence refuting the assessment or pay the taxes assessed. If the taxpayer did not file evidence refuting the assessment within 15 days, the preliminary tax assessment became final and the tax authorities could collect the assessed tax through administrative procedures (the tax authorities changed this provision in the electronic audit rules for 2016).
Several companies filed *amparo* actions against the Mexican tax authorities and asked the courts to grant a temporary suspension of the obligation to file the accounting records until a final decision on the constitutional question was issued by the corresponding courts.

Various Collegiate Courts issued differing and contradictory rulings on the temporary suspension issue. On 26 November 2014, the Supreme Court affirmed a Collegiate Court ruling (277/2014) that the temporary suspension requested by the taxpayer should be granted.¹ The Supreme Court’s decision bound the District and Collegiate Courts to grant temporary suspensions requested by taxpayers in *amparo* proceedings already filed, as well as those proceedings that could eventually be filed after the accounting record submission requirement took effect.

### Ruling

The Supreme Court’s 6 July decision involving Mancera’s client addressed the constitutionality of the electronic accounting obligations, the electronic audit and electronic tax drop-box. The Court held that the obligation to maintain and send accounting records electronically is valid and legal. However, it ruled that the technical guidelines for generating and submitting the electronic files, as set out by Annex 24 of the Administrative Tax Rules for 2015, violate the principle of legal certainty, because those guidelines were made by a foreign entity (i.e., a private consortium) and were written in a foreign language (i.e., English).

Therefore, the practical effect of the decision is that the taxpayer is not obliged to file new or previously unfiled accounting records electronically until the tax authorities modify the technical guidelines issued for that purpose.

Additionally, the Court held that the tax authorities could not collect taxes from taxpayers that received preliminary assessments but failed to object in time, because such a procedure violates the fundamental right to be heard. While the preliminary tax assessment procedure was modified in 2016, the Court’s reasoning could be fully applicable to the provision currently in force.

Finally, the Court held that the electronic tax drop-box is constitutional and therefore must be used by taxpayers for submitting any kind of writ, petition, informative reports or requests to the tax authorities.

### Next steps

Once five consecutive cases have been resolved in the same way, the holding will constitute jurisprudence and could be a basis for granting *amparo* protection for the other taxpayers who challenged the constitutionality of the electronic accounting obligations and audit procedures.

We are currently waiting for the Supreme Court to resolve the necessary precedents in order to integrate a binding precedent (jurisprudence), which could take between two and three months. The Supreme Court’s 6 July decision is a final resolution and cannot be challenged by the tax authorities.

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UK amends mandatory requirement for businesses to publish tax strategy

The Finance Bill 2016 introduced the requirement for certain businesses in the UK to publish their tax strategy as it relates to or affects UK taxation. This new tax transparency requirement will require qualifying businesses to publish their tax strategy online, for all to see, and thus has the potential to have a significant reputational impact. HM Revenue & Customs (HMRC) will have the power to issue penalties for non-compliance with the rules. With this in mind, businesses need to carefully consider if they are affected by this requirement, and if so, how to develop an appropriate tax strategy for publication.

From when will the requirement apply?

The first period affected by the legislation will be the first financial year that begins after 15 September 2016, the date that the Finance Act 2016 was granted royal assent. The strategy must initially be published before the end of the financial year. After this, the strategy must be published annually, and in any event no later than 15 months after the day on which the previous strategy was published, unless the business falls out of the scope of the legislation.

Which businesses are in scope?

HMRC has confirmed that businesses in scope for these measures are, broadly, those businesses that fall within HMRC’s Large Business Directorate; however, the scope of the legislation is wider than this population. The following entities will have a requirement to publish a tax strategy:

- UK groups and subgroups (including UK permanent establishments (PEs) of companies within the group) where the UK group/subgroup’s aggregated turnover (including that of UK PEs) is more than £200m, or the total of its balance sheet assets (including that of UK PEs) is in aggregate more than £2b in the previous financial year.
Other UK groups and subgroups (including UK PEs of companies within the group) in respect of which there is a mandatory reporting requirement under the UK country-by-country reporting (CbCR) regulations (or would be, if headed by a UK resident company)

Other UK companies or UK PEs of foreign entities not part of a UK group or UK subgroup that meet these turnover or balance sheet thresholds, or are members of a CbCR group as above

Partnerships that meet the above turnover or balance sheet thresholds

While it will be clear to some businesses whether they are within the scope of the legislation, the rules are complex and for some it will be less clear how they are affected. This applies in particular to PEs of foreign entities and to partnerships (where the definition of “UK partnership” is far from clear).

Furthermore, the legislation does not include a de minimis limit for UK turnover where an international group meets the CbCR requirement. Therefore, a UK company or PE with little activity will be required to publish a tax strategy by virtue of being part of a larger international group.

Similar complexity arises in determining whether a UK subgroup with more than £200m of turnover that is equally part of an international group with less than €750m of turnover (and thus does not qualify for CbCR) is subject to the tax strategy requirements.

Businesses should therefore first seek to understand how they are affected by the legislation and which entities have an obligation to publish. If it is not clear, then they should seek professional advice or contact their customer relationship manager at HMRC in order to determine whether they fall within the scope of the tax strategy legislation or otherwise.

What do businesses need to outline within their tax strategy and where should it be published?

A qualifying large business must publish its tax strategy on the internet, on an annual basis, for the period covered by the business’s annual report or accounts and before the end of each current financial year. There is no requirement that the strategy be published with or as part of the group’s financial statements.

The legislation stipulates that the published tax strategy must cover the following:

- Approach of the UK group to risk management and governance arrangements in relation to UK taxation
- Attitude of the group to tax planning (so far as affecting UK taxation)
- Level of risk in relation to UK taxation that the group is prepared to accept
- Approach toward dealings with HMRC
Additionally, the legislation contains a provision that allows the UK Treasury to bring forward regulations requiring CbCR qualifying groups to include a CbCR report in their published group tax strategy. These regulations, if introduced, will align with the existing UK regulations for CbCR but extend them through the publication requirement, which is not envisaged by the current CbCR model.

This additional element of transparency to CbC reporting is being discussed globally, but there is disagreement among countries as to whether CbCR should be made public, and therefore it remains uncertain as to whether the UK Treasury will consider implementing this provision in the future.

HMRC has also recently issued final guidance on the rules, which sets out its view on what businesses should be publishing in order to effectively comply with the legislation.1

The guidance explains that (among other details) businesses may wish to publish information on the following:

- The levels of oversight of the business’s board on tax matters and the board’s involvement with tax risk management
- The systems and controls in place to manage tax risk
- The motives of tax planning activities
- Whether the business’s internal governance prescribes a certain level of acceptable tax risk
- How the business works with HMRC to interpret the law and evaluate past, current and future tax risks

HMRC has highlighted that businesses can choose to publish supporting information to their tax strategies in order to add value, understanding or context. Some businesses have recognized that this is a good opportunity to raise their tax profile and approach to corporate social responsibility. Contextual information could, for example, include tax contribution data, which may help to evidence how an organization’s tax strategy aligns to its tax footprint.

Despite the fact that the legislation only requires businesses to publish their tax strategy as it relates to UK taxation, a number of multinational businesses are instead considering publishing a global tax strategy in order to demonstrate that their approach to tax is consistent across borders.

Indeed, more multinational businesses may follow suit following the Australian Government’s decision to launch a similar, albeit voluntary, tax transparency code. In May 2016, the Australian Government issued a paper2 setting out an approach to this code, the requirements of which are similar to many of those set by the UK tax strategy legislation. Businesses that choose to publish a global tax strategy will be well positioned to tackle these and other unilateral tax transparency initiatives.

What are the consequences of non-compliance with the legislation?

As well as a potential reputational impact associated with non-compliance, businesses that do not adhere to the legislation may be subject to penalties by HMRC. HMRC may assess penalties on a qualifying large business for each financial year that it:

- Fails to publish a tax strategy within the prescribed period that meets the legislative requirements or
- Fails to ensure that the tax strategy remains accessible on the internet for the prescribed period

The penalty is £7,500 for a failure that continues for up to six months, with a further £7,500 chargeable for every month that the failure continues after six months. Where groups have several stand-alone UK entities, each with separate tax strategy reporting requirements, these penalties, once aggregated, could be significant.

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What do businesses need to consider when developing a tax strategy?

Once a business has determined whether it is subject to the requirement to publish a tax strategy, it should then consider how it will go about documenting a tax strategy that meets the requirements of the legislation.

A published tax strategy could affect the brand of the business, so it is therefore important that all relevant stakeholders are involved in developing the tax strategy. A business needs to consider which individuals should be consulted with as part of the development process. A number of these individuals are likely to operate outside of the tax function, such as in public relations departments.

The tax strategy should also be consistent with other information reviewed by HMRC, such as the business risk review, senior accounting officer certification, transfer pricing master/local files and, in the future, CbCR for multinational groups.

Businesses should not forget that a wide range of external stakeholders other than HMRC will have visibility of a business’s tax strategy. Thus, there is a need to ensure that what is published is also consistent with other publicly available documents such as annual reports (notably tax disclosure notes), corporate governance documentation, and corporate social responsibility and sustainability reports.

As well as ensuring that what is published is consistent with other disclosures, it is important that businesses are in a position to evidence that the claims made within their tax strategies are aligned to working practices within their organizations, i.e., that their tax strategy has been appropriately “operationalized” within the business. Indeed, a number of businesses are seeking to determine what their approach to tax should be, and are documenting this within an internal tax policy that sets out the business’s expected standards of conduct over tax activities, before seeking to develop an external tax strategy. A business may go so far as making direct reference to its internal tax policy document within its external tax strategy, in order to help substantiate it.

The last stage in the development process will likely be the board’s ratification of the tax strategy. Those responsible for developing the tax strategy need to consider the most effective means of presenting the tax strategy to the board, including demonstrating the work that has been undertaken to evolve it into its current form.

What is best practice?

Many businesses impacted, both UK headquartered and UK inbound, are using face-to-face workshop sessions in order to develop a robust tax strategy that is appropriately customized and meets the following important criteria:

- Is reflective of the business’s internal tax risk management processes and can be easily evidenced to HMRC
- Is consistent with other tax and relevant non-tax disclosures and is therefore less likely to be challenged by stakeholders
- Benchmarks well to what industry peers publish
- Involves key internal stakeholders as part of the development process, including those from corporate social responsibility, public relations and marketing teams as necessary

Such an approach epitomizes the need for many parts of the business to draw together to produce a tax strategy that is complete and representative.
Trump released a detailed tax plan in September 2015 and announced revisions on 8 August and 15 September 2016. Clinton has not released a comprehensive tax plan; she has described her positions on a piecemeal basis, and her campaign has promised that additional detail is forthcoming.

The tax plans of the two candidates share some similarities but are different in many ways that include structure: Trump’s plan includes an overall tax reform framework with many details left unstated; Clinton’s plan is not comprehensive and includes detailed proposals only in discrete areas.

The clearest distinction to be made between the two positions is in terms of revenue: the Trump plan is estimated to include a US$2.6t to US$15.9t tax cut, depending on whether macroeconomic effects are taken into account. Clinton’s positions amount to as much as US$1.1t in tax increases.

In August 2016, the candidates began battling each other in earnest with respect to policy, delivering speeches in Michigan seeking to highlight aspects of their economic plans and to draw contrasts with one another, particularly on tax issues.

In an 8 August speech, Trump said, “Hillary Clinton – who has spent her career voting for tax increases – plans another massive job-killing US$1.3 trillion-dollar tax increase. Her plan would tax many small businesses by almost 50%.”

In an 11 August speech that was viewed as a rebuttal, Clinton said it is a myth that Trump will act to “stick it” to the rich and powerful. “He would give trillions in tax cuts to big corporations, millionaires and Wall Street money managers,” she said. “That would explode our national debt and eventually lead to massive cuts in priorities like education, health care and environmental protection.
Revenue estimates

Sources: Citizens for Tax Justice (CTJ), Tax Policy Center (TPC) and Tax Foundation (TF) estimates. The three organizations estimate slightly different policies, so are not strictly comparable.
### Corporate taxes

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<th>Trump</th>
<th>Clinton</th>
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<tr>
<td>Top corporate tax rate</td>
<td>15%</td>
<td>• No specifics on rates</td>
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<tr>
<td>Top pass-through rate</td>
<td>15% (new business income tax rate within the personal income tax code that matches the corporate rate)</td>
<td>• Call for unspecified business tax reform to generate US$275b in five years to go toward infrastructure spending</td>
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<tr>
<td>Taxation of future foreign earnings</td>
<td>Immediate worldwide taxation; repeal of deferral</td>
<td>• “Reform our tax code to reward businesses that invest in workers and production here in America, rather than … overseas”</td>
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<td>Mandatory tax, untaxed accumulated foreign earnings</td>
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<td>Inversions</td>
<td>Discouraging inversions to grow the economy</td>
<td>• Exit tax</td>
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<td>• 50% Sec. 7874 test</td>
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<td>Offshoring</td>
<td>35% tariff on goods imported into the US by US companies that have moved overseas</td>
<td>• Claw back tax breaks if corporations ship jobs overseas and use proceeds to invest in America</td>
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<td></td>
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<td>• Provide tax incentives to encourage investment in the hardest-hit manufacturing communities</td>
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<td>Cost recovery</td>
<td>100% expensing for manufacturers</td>
<td>(No stated position)</td>
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<td>Manufacturers electing to expense capital investment lose the deductibility of corporate interest expense</td>
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<td>Derivatives</td>
<td>(No stated position)</td>
<td>Require that derivative contracts be marked to market annually</td>
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<tr>
<td>Other business provisions</td>
<td>Most eliminated, except for R&amp;D credit</td>
<td>• Eliminate tax incentives for fossil fuels</td>
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<td></td>
<td></td>
<td>• End “Bermuda reinsurance loophole”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Impose tax on high-frequency trading</td>
</tr>
</tbody>
</table>
## Individual taxes

<table>
<thead>
<tr>
<th></th>
<th>Trump</th>
<th>Clinton</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Individual tax rates</strong></td>
<td>12%, 25%, 33%</td>
<td>No rate changes, but:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 4% “fair share” surtax on annual income over US$5m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Buffett Rule minimum 30% rate for income over US$1m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 28% cap on the benefit of itemized deductions for high incomes</td>
</tr>
<tr>
<td><strong>Capital gains and dividends</strong></td>
<td>• Existing capital gains rate structure</td>
<td>• Ordinary income rate for assets held less than two years (+3.8% net investment income tax)</td>
</tr>
<tr>
<td></td>
<td>• 3.8% net investment income tax (NIIT) repealed</td>
<td>• Gains from assets held less than two years taxed at 39.6% (+3.8% NIIT)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Gains from assets held two to three years taxed at 36% rate (+3.8% NIIT)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Rate declines by 4 percentage points each year asset held until reaching 20% (+3.8% NIIT) at year six</td>
</tr>
<tr>
<td><strong>Dividends</strong></td>
<td>Unchanged but NIIT repealed</td>
<td>Unchanged</td>
</tr>
<tr>
<td><strong>Carried interest</strong></td>
<td>Ordinary income</td>
<td>Ordinary income</td>
</tr>
<tr>
<td><strong>Estate tax</strong></td>
<td>Repealed, but capital gains held until death will be subject to tax, with the first US$10 million tax-free</td>
<td>• 2009 regime of US$3.5m exemption, 45% rate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Lifetime gift tax exemption set at US$1m</td>
</tr>
<tr>
<td><strong>Dependent care</strong></td>
<td>Full deductibility of average-cost child care expenses</td>
<td>• Cap child care costs at 10% of income</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Tax credit for caregivers of elderly, disabled relatives</td>
</tr>
<tr>
<td><strong>Other itemized deductions</strong></td>
<td>Capped at US$100,000/US$200,000</td>
<td>Cap all itemized deductions at a tax value of 28%, with exception for charitable contributions</td>
</tr>
<tr>
<td><strong>Retirement policy</strong></td>
<td>(No stated position)</td>
<td>Close the “Romney loophole” on individual retirement accounts</td>
</tr>
<tr>
<td><strong>Personal exemption phaseout (PEP) and the Pease limitation on itemized deductions</strong></td>
<td>In September 2015, proposed “steepening the curve” of PEP and Pease; current position unclear</td>
<td>(No stated position)</td>
</tr>
<tr>
<td><strong>Personal alternative minimum tax</strong></td>
<td>Eliminated</td>
<td>Retained</td>
</tr>
<tr>
<td><strong>Life insurance buildup</strong></td>
<td>Included in income for high earners</td>
<td>(No stated position)</td>
</tr>
</tbody>
</table>
Trump’s plan

Trump’s tax plan generally follows the formula of a number of Republican tax reform plans in recent years, of lower rates combined with base broadening. He proposes:

- A 15% CIT rate
- A new business income tax rate within the personal income tax code matching the 15% CIT rate
- Individual income tax rates of 12%, 25% and 33%, the same as the House Republican tax reform Blueprint released 24 June

In his 8 August speech, Trump pledged to work with House Republicans on tax issues and, in addition to adopting their proposed individual rates, brought his plan closer to theirs by announcing support for immediate expensing of new business investments. The House plan proposed expensing in conjunction with eliminating the deductibility of net interest expense. In conjunction with a 15 September speech to the Economic Club of New York, Trump clarified that expensing will be limited to manufacturers, and those who elect expensing will lose the deductibility of corporate interest expense.

In his 8 August speech, Trump pledged to work with House Republicans on tax issues and, in addition to adopting their proposed individual rates, brought his plan closer to theirs by announcing support for immediate expensing of new business investments. The House plan proposed expensing in conjunction with eliminating the deductibility of net interest expense. In conjunction with a 15 September speech to the Economic Club of New York, Trump clarified that expensing will be limited to manufacturers, and those who elect expensing will lose the deductibility of corporate interest expense.

The Trump campaign also stated that most corporate tax expenditures would be eliminated, except for the R&D Credit. In addition to reflecting Trump’s call for repeal of the estate tax, campaign documents indicate that a step-up in basis would be disallowed for estates over US$10 million: “The Trump plan will repeal the death tax, but capital gains held until death will be subject to tax, with the first US$10 million tax-free as under current law to exempt small businesses and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent’s relatives will be disallowed.”

Trump has proposed capping itemized deductions at US$100,000 for single filers and US$200,000 for married filers, and has highlighted the benefits of his proposals for working Americans and the middle class. “By lowering rates, streamlining deductions, and simplifying the process, we will add millions and millions of new jobs. In addition, because we have strongly capped deductions for the wealthy, and closed special interest loopholes, the tax relief will be concentrated on the working and middle class taxpayer ....,” he said, “This is a working and middle-class tax relief proposal.”

The fact sheet proclaims that Trump’s economic proposals would add 25 million jobs over a decade, which equates to 200,000 new jobs per month. Trump’s latest tax reform plan revision generated considerable confusion regarding his previously proposed 15% business income tax rate for pass-through entities, which is intended to match a 15% statutory CIT rate. The latest statement from the Trump campaign suggests that small business owners who elect to be taxed under the 15% business tax rate will not face double taxation. Owners of large businesses will incur dividend taxes. Trump continues to call for a 10% tax on repatriation, saying, “Many larger businesses will want to repatriate trillions of dollars that they now keep abroad to avoid taxes.” Trump has said that it is not hard to understand why companies will not bring profits back if they are subject to the full corporate tax rate. “I think it’s going to be something that will be so phenomenal, far beyond what people even think,” he said. “By taxing it at 10% instead of 35%, all of this money will come roaring back into our country and lots of good things will start to happen.”

His latest campaign materials do not indicate whether Trump continues to support repeal of deferred taxation of foreign earnings.

On 13 September, Trump detailed his child care plan to allow working parents to deduct from their income taxes child care expenses for up to four children and elderly dependents, capped at the average cost of care for the state of residence. The deduction would be available to taxpayers who take the standard deduction as well as itemize deductions, but only those earning US$250,000 per year or less for individuals and US$500,000 for couples.

The eldercare exclusion would be capped at US$5,000 per year. Additional child care spending rebates would be provided to lower-income taxpayers through the Earned Income Tax Credit. Trump also proposes creating Dependent Care Savings Accounts that would allow both tax-deductible contributions and tax-free appreciation year-to-year. He also would guarantee six weeks of paid maternity leave by amending the existing unemployment insurance that companies are required to carry.
Clinton’s plan

The details released thus far by Clinton do not amount to a tax reform plan per se, and do not directly change statutory individual income tax rates or the corporate tax rate. Instead, she seeks to use tax changes affecting corporations and high-income individuals to pay for infrastructure and education investments.

“We are going to tax the wealthy who have made all of the income gains in the last 15 years,” Clinton said during an 17 August campaign event in Cleveland, OH. “The super wealthy, corporations, Wall Street, they’re going to have to invest in education, in skills training, in infrastructure because, we have to grow this economy. We do need to have the resources to do that.”

Clinton wants business tax reform to provide US$275b in infrastructure investment over five years, but has not provided reform details and has not proposed to change the current system of taxing the foreign earnings of US multinational corporations or any other structural changes to the corporate tax system. (President Obama has long called for a 14% one-time tax on previously untaxed foreign income to fund infrastructure investment.)

During an 11 August speech in Michigan, Clinton said she would work with both parties to put Americans to work building and modernizing roads, bridges, railways, ports and airports.

“We are way overdue for this,” she said.

Clinton has called for a “more progressive, more patriotic tax code that puts American jobs first,” including by: ending the ability of corporations to write off the cost of outsourcing of jobs and production; clawing back the US tax benefits received by outsourcing companies; and establishing an exit tax for inverting companies. More generally, she called for cracking down on “tax gaming by corporations.”

Clinton specifically targets certain current benefits, including by proposing to end the “Bermuda reinsurance loophole” and tax gaming through complex derivative trading. “High-income money managers have used loopholes related to foreign reinsurance – often located in Bermuda – to avoid paying their fair share. And they take advantage of complex derivative trades to lower their tax bill,” according to Clinton campaign materials that said she would build on proposals from President Obama and Republicans in Congress to close down the two “loopholes.”

She would also “impose a tax on harmful high-frequency trading and reform rules to make our stock markets fairer, more open, and transparent,” and end tax subsidies for the oil and gas industry.

Clinton has proposed a 15% tax credit for companies that share profits with workers, with the US$20 billion cost paid for through the closure of tax loopholes that she will identify as part of an agenda to be detailed later.

To a large extent, Clinton’s tax plan continues the general themes and many of the specific proposals of the Obama administration. She promises to be the candidate to make “those at the top pay their fair share of taxes,” including through: the “Buffett Rule” proposal that calls for an effective tax rate of 30% on those making more than US$1 million per year; a new tax on multimillionaires (a 4% “Fair Share Surcharge” on Americans who make more than US$5 million per year); and eliminating the preferential tax treatment of carried interest.

Under Clinton’s capital gains proposals:
- **Gains from assets held less than two years** taxed at 39.6% (+3.8% NIIT)
- **Gains from assets held two to three years** taxed at 36% rate (+3.8% NIIT)
- **Thereafter, rate declines by 4 percentage points each year asset held until reaching 20% (+3.8% NIIT) at year six**

On 23 August, Clinton unveiled a small business package that calls for: allowing small businesses to immediately expense up to US$1 million in new investments; 100% tax exclusion on capital gains for long-term small business investments; expanding and making permanent the New Market Tax Credit; and a new standard deduction for small businesses.

On 22 September, Clinton updated her campaign materials to reflect an increase in estate taxes over what she previously proposed, including up to a 65% rate on estates worth US$500 million (US$1 billion for couples), and her intention to limit the tax benefits of like-kind exchanges that she said are used to prevent capital gains taxation on certain sales.

Clinton’s previous position on the estate tax was a return to the 2009 regime of a US$3.5 million exemption and 45% rate. This position has been updated to add higher rates on larger estates that Senator Bernie Sanders (I-VT) proposed during his presidential campaign. A previously released Clinton fact sheet on “Investing in America by Restoring Fairness to Our Tax Code” – which continues to repeatedly reference a desire to dismantle the “private tax system” for the wealthy – was updated to retain that proposal but “go further than that for estates valued in the tens and hundreds of millions, with higher rates as values rise, up to a 65% rate on estates valued at over US$1 billion per couple.”

The Committee for a Responsible Federal Budgets, which first detailed the new proposals, said Clinton adopted the Sanders proposal of a 50% rate on estates between US$10 million-US$50 million, 55% rate for estates in excess of US$50 million, then the top rate of 65%.
The updated document also reflects Clinton's intention to eliminate the “step-up in basis” that allows accumulated capital gains to go untaxed when assets are passed on to heirs, and to treat bequests as a realization event. The document said her proposal will “include exemptions to ensure this change only affects the high-income families who by far benefit the most from this loophole, and protects middle-class families;” and “contain careful protections and flexibility for small and closely-held businesses, farms and homes, and personal property and family heirlooms.”

The document also reflects Clinton's intention to “rationalize the Affordable Care Act's net investment income tax to prevent gaming by high-income taxpayers.”

### Hillary Clinton – proposed capital gains rates

<table>
<thead>
<tr>
<th>Holding period</th>
<th>Clinton rate</th>
<th>Current top rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>43.4%</td>
<td>43.4%</td>
</tr>
<tr>
<td>1-2 years</td>
<td>43.4%</td>
<td>23.8%</td>
</tr>
<tr>
<td>2-3 years</td>
<td>39.8%</td>
<td>23.8%</td>
</tr>
<tr>
<td>3-4 years</td>
<td>35.8%</td>
<td>23.8%</td>
</tr>
<tr>
<td>4-5 years</td>
<td>31.8%</td>
<td>23.8%</td>
</tr>
<tr>
<td>5-6 years</td>
<td>27.8%</td>
<td>23.8%</td>
</tr>
<tr>
<td>6+ years</td>
<td>23.8%</td>
<td>23.8%</td>
</tr>
</tbody>
</table>
## Corporate income tax (CIT) rates

**Table 1. Global CIT rates – largest 50 "economies" or "jurisdictions" by GDP, sorted by tax rate**

Note: Where applicable, rates include an average subnational (state/provincial) tax rate in addition to the national/federal rate.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>GDP 2015 (US billions)</th>
<th>2016 CIT rate (national statutory rate only)</th>
<th>2016 CIT rate (national and subnational, average)</th>
<th>Worldwide vs. territorial taxation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>293</td>
<td>40.00%</td>
<td>40.00%</td>
<td>Worldwide</td>
<td>The CIT rate is 25%. An income tax for equality (CREE) is levied in addition to the CIT at a rate of 9% on net income; a temporary CREE surcharge applies for the 2015-2018 tax years for taxpayers whose net income exceeds COP800 million (the rate of the surcharge is 6% in 2016).</td>
</tr>
<tr>
<td>United States</td>
<td>17,947</td>
<td>35.00%</td>
<td>39.00%</td>
<td>Worldwide</td>
<td>The CIT is increased by a 3.3% surcharge for companies with a turnover exceeding EUR763 million on the part of their liable tax payments in excess of EUR763,000. Companies with a turnover exceeding EUR 250 million are subject to a temporary surtax of 10.7%.</td>
</tr>
<tr>
<td>France</td>
<td>2,422</td>
<td>33.33%</td>
<td>38.00%</td>
<td>Territorial</td>
<td>A surcharge of 7% and 12%, and an educational cess of 3% are also added to the statutory corporate tax rate. After applying the surcharge and educational cess, domestic companies are taxed at 34.68%, 33.063%, or 30.90% and foreign companies are taxed at 43.26%, 42.024%, or 41.20%.</td>
</tr>
<tr>
<td>Argentina</td>
<td>586</td>
<td>35.00%</td>
<td>35.00%</td>
<td>Worldwide</td>
<td>The 10% additional surtax is levied on net taxable income exceeding BRL240,000 per year. In addition, a social contribution tax (CSLL) of 9% is imposed on net taxable income.</td>
</tr>
<tr>
<td>India</td>
<td>2,091</td>
<td>30% (for domestic companies); 40% (for foreign companies)</td>
<td>34.61% (for domestic companies); 43.26% (for foreign companies)</td>
<td>Worldwide</td>
<td>A surcharge of 7% and 12%, and an educational cess of 3% are also added to the statutory corporate tax rate. After applying the surcharge and educational cess, domestic companies are taxed at 34.68%, 33.063%, or 30.90% and foreign companies are taxed at 43.26%, 42.024%, or 41.20%.</td>
</tr>
<tr>
<td>Brazil</td>
<td>1,773</td>
<td>15.00%</td>
<td>34.00%</td>
<td>Worldwide</td>
<td>The statutory CIT is applied at a progressive rate, based on the tax unit (UT). The 22% or 15% tax rate is also applicable for companies meeting with certain UT threshold.</td>
</tr>
<tr>
<td>Venezuela</td>
<td>240</td>
<td>34.00%</td>
<td>34.00%</td>
<td>Worldwide</td>
<td>Companies with taxable income less than EUR322,500 may be taxed at the marginal rates of 24.25%, 31% and 34.5% (24.98%, 31.93% and 35.54% including 3% surcharge).</td>
</tr>
<tr>
<td>Belgium</td>
<td>455</td>
<td>33.99% (including 3% Surcharge)</td>
<td>33.99%</td>
<td>Territorial</td>
<td>The 6.5% surcharge previously imposed on oil, gas and energy companies (with revenues exceeding EUR3 million and taxable income exceeding EUR 300,000) was declared unconstitutional. A regional tax on productive activities (IRAP) is imposed on the net value of production at a basic tax rate is 3.9%. Different rates apply to certain sectors: In any case each region may apply a higher or lower tax rate according to the types of taxpayer;</td>
</tr>
<tr>
<td>Pakistan</td>
<td>270</td>
<td>32.00%</td>
<td>32.00%</td>
<td>Worldwide</td>
<td>The CIT rate will be reduced to 31% in tax year 2017 and 30% in tax year 2018 and onwards. The CIT rate for banking companies is 35%.</td>
</tr>
<tr>
<td>Italy</td>
<td>1,816</td>
<td>27.50%</td>
<td>31.40%</td>
<td>Territorial</td>
<td>The 6.5% surcharge previously imposed on oil, gas and energy companies (with revenues exceeding EUR3 million and taxable income exceeding EUR 300,000) was declared unconstitutional. A regional tax on productive activities (IRAP) is imposed on the net value of production at a basic tax rate is 3.9%. Different rates apply to certain sectors: In any case each region may apply a higher or lower tax rate according to the types of taxpayer;</td>
</tr>
<tr>
<td>Germany</td>
<td>3,358</td>
<td>15.00%</td>
<td>30.18%</td>
<td>Territorial</td>
<td>Solidarity surcharge of 5.5% and trade tax ranging from 7% to 19.25% also apply.</td>
</tr>
<tr>
<td>Australia</td>
<td>1,224</td>
<td>30.00%</td>
<td>30.00%</td>
<td>Territorial</td>
<td>The 30% or 28.5% of corporate tax rate is applicable for small business entities.</td>
</tr>
<tr>
<td>Mexico</td>
<td>1,144</td>
<td>30.00%</td>
<td>30.00%</td>
<td>Worldwide</td>
<td>An education surcharge of 2% is also imposed on net taxable income.</td>
</tr>
<tr>
<td>Nigeria</td>
<td>490</td>
<td>30.00%</td>
<td>30.00%</td>
<td>Worldwide</td>
<td></td>
</tr>
<tr>
<td>Philippines</td>
<td>292</td>
<td>30.00%</td>
<td>30.00%</td>
<td>Worldwide</td>
<td></td>
</tr>
</tbody>
</table>

Source: EY Worldwide Corporate Tax Guide; IMF; and OECD Tax Database.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>GDP 2015 (US$ billions)</th>
<th>2016 CIT rate (national statutory rate only)</th>
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<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>4,123</td>
<td>23.90%</td>
<td>29.97%</td>
<td>Territorial</td>
<td>The CIT rate that applies to corporations with capital exceeding JPY100 million reduced to 23.9% from 25.5% on 1 April 2015. Corporations with capital not exceeding JPY10 million are taxed at 15% or 23.9%. Local taxes, inhabitants tax, consisting of maximum 16.3% of corporate tax plus national local corporate tax of 4.4% also apply.</td>
</tr>
<tr>
<td>Greece</td>
<td>195</td>
<td>29.00%</td>
<td>29.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td>313</td>
<td>28.00%</td>
<td>28.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>192</td>
<td>28%</td>
<td>28.00%</td>
<td>Worldwide</td>
<td>The basic rate of federal corporate tax for 2015 is 38%, but it is reduced to 15% by an abatement of 10 percentage points on a corporation's taxable income earned in a province or territory and a general rate reduction of 13 percentage points on a corporation's full-rate taxable income. Provincial and territorial tax rates are added to the federal tax and generally vary between 10% and 16% of taxable income.</td>
</tr>
<tr>
<td>Canada</td>
<td>1,552</td>
<td>38.00%</td>
<td>26.70%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>10,983</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Worldwide</td>
<td>Although, China’s general enterprise income tax (EIT) rate is 25%, there are exceptions to the rate for thin-profit companies, and high and new technology companies; thin-profit companies are generally subject to a 20% tax rate6 and high and new technology companies are subject to an EIT of 15%.</td>
</tr>
<tr>
<td>Spain</td>
<td>1,200</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>859</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Worldwide</td>
<td>The 25% corporate tax rate applies for companies having taxable income up to EUR200,000. A flat tax rate of 5% applies to qualifying income (“innovation box” income) derived from “R&amp;D activities.”</td>
</tr>
<tr>
<td>Netherlands</td>
<td>738</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>389</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Territorial</td>
<td>The most recent round of data collection was completed on 1 June 2015 covering for the Paying Taxes indicator calendar year 2014 (1 January 2014–31 December 2014).</td>
</tr>
<tr>
<td>Islamic Republic of Iran</td>
<td>388</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Worldwide</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>374</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Israel</td>
<td>296</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Bangladesh</td>
<td>206</td>
<td>25%</td>
<td>25.00%</td>
<td>Worldwide</td>
<td></td>
</tr>
<tr>
<td>Korea</td>
<td>1,377</td>
<td>22%</td>
<td>24.20%</td>
<td>Worldwide</td>
<td>A special surtax ranging from 10% to 40% is imposed on capital gains on real property if certain conditions are met. In addition, a local tax is applicable at a 10% rate on CIT liability.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>665</td>
<td>8.500%</td>
<td>24.00%</td>
<td>Territorial</td>
<td>Because taxes are deductible, the effective federal CIT is approximately 7.8%. Municipal rates vary widely ranging from 6% and 24%.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>296</td>
<td>24.00%</td>
<td>24.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Chile</td>
<td>240</td>
<td>24.00%</td>
<td>24.00%</td>
<td>Worldwide</td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>331</td>
<td>22.50%</td>
<td>22.50%</td>
<td>Worldwide</td>
<td>Oil and gas exploration and production companies are taxed at a rate of 40.55%. The Central Bank of Egypt, the Suez Canal Authority and the Egyptian Petroleum Authority are taxed at a rate of 40%.</td>
</tr>
</tbody>
</table>
Table 1. Global CIT rates – largest 50 “economies” or “jurisdictions” by GDP, sorted by tax rate

Note: Where applicable, rates include an average subnational (state/provincial) tax rate in addition to the national/federal rate.

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</thead>
<tbody>
<tr>
<td>Portugal</td>
<td>199</td>
<td>21.00%</td>
<td>22.50%</td>
<td>Territorial</td>
<td>In addition to the statutory tax rate of 21%, a state surtax of 3% is imposed on taxable profit over EUR1.5 million and up to EUR7.5 million, 5% on profit over EUR7.5 million but not exceeding EUR35 million, and 7% on profits exceeding EUR35 million. Also a municipal tax of 1.5% may be added to the federal rate.</td>
</tr>
<tr>
<td>Sweden</td>
<td>493</td>
<td>22.00%</td>
<td>22.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>295</td>
<td>22.00%</td>
<td>22.00%</td>
<td>Territorial</td>
<td></td>
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<tr>
<td>United Kingdom</td>
<td>2,849</td>
<td>20.00%</td>
<td>20.00%</td>
<td>Territorial</td>
<td>From 1 April 2015, a diverted profits tax at a rate of 25% applies to multinational companies that divert profits overseas for the purpose of avoiding the UK tax through the use of artificial arrangements.</td>
</tr>
<tr>
<td>Russia</td>
<td>1,325</td>
<td>20.00%</td>
<td>20.00%</td>
<td>Territorial</td>
<td>The 20% statutory CIT rate consists of 2%, which is allocated to the federal government, and 18%, which is allocated to the regional governments.</td>
</tr>
<tr>
<td>Turkey</td>
<td>734</td>
<td>20.00%</td>
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<td></td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>653</td>
<td>20.00%</td>
<td>20.00%</td>
<td>Worldwide</td>
<td>The CIT rate for companies in upstream business of oil and hydrocarbon products is 85%. The rate for entities in natural gas investments ranges from 30% to 85%. Any remittance of profit to non-resident partners is subject to withholding tax at 5%.</td>
</tr>
<tr>
<td>Thailand</td>
<td>395</td>
<td>20.00%</td>
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<tr>
<td>Finland</td>
<td>230</td>
<td>20.00%</td>
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<td></td>
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<tr>
<td>Vietnam</td>
<td>191</td>
<td>20.00%</td>
<td>20.00%</td>
<td>Worldwide</td>
<td></td>
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<tr>
<td>Poland</td>
<td>475</td>
<td>19.00%</td>
<td>19.00%</td>
<td>Worldwide</td>
<td></td>
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<tr>
<td>Taiwan</td>
<td>524</td>
<td>17.00%</td>
<td>17.00%</td>
<td>Worldwide</td>
<td>A zero tax rate is applicable for companies with taxable income under NTD120,000. For companies with taxable income over NTD120,000 is taxed at a rate of 1.7%.</td>
</tr>
<tr>
<td>Singapore</td>
<td>293</td>
<td>17.00%</td>
<td>17.00%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Hong Kong SAR</td>
<td>310</td>
<td>16.50%</td>
<td>16.50%</td>
<td>Territorial</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>238</td>
<td>12.50%</td>
<td>12.50%</td>
<td>Worldwide</td>
<td>A 25% CIT rate applies for specific industries including petroleum activities, mining and mineral extraction. Passive income including interest, foreign dividends and rental income are also subject to a 25% tax rate.</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>345</td>
<td>0.00%</td>
<td>0.00%</td>
<td>N/A</td>
<td>Although no federal taxation currently exists in the United Arab Emirates (UAE), each of the individual Emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain) has issued corporate tax decrees that theoretically apply to all businesses established in the UAE. Taxes are currently imposed at the Emirate level only on oil and gas producing companies in accordance with specific government concession agreements, and on branches of foreign banks under specific tax decrees or regulations or in accordance with agreements with the Rulers of the Emirates in which the branches operate.</td>
</tr>
</tbody>
</table>

Source: EY Worldwide Corporate Tax Guide; IMF; and OECD Tax Database.
2016 CIT rate

Note: Where applicable, rates include an average subnational (state/provincial) tax rate in addition to the national/federal rate

Figure 1. 2016 CIT rates – largest 50 “economies” or “jurisdictions” by 2015 GDP

Figure 2. “Economies” or “jurisdictions” taxing worldwide income

Figure 3. “Economies” or “jurisdictions” taxing territorially

Source: EY Worldwide Corporate Tax Guide; IMF; and OECD Tax Database.
The trend toward a reduction of statutory corporate income tax (CIT) rates started with the tax reforms in the United Kingdom and the United States in the mid-1980s, which broadened the tax base (for example, by making depreciation allowances for tax purposes less generous) and cut statutory rates. CIT rates have continued to be cut in recent years, accompanied by various base-broadening measures, including limitations in interest (and other business expenses) deductibility, more limited use of losses and restrictions in depreciation allowances.

The table below shows that statutory CIT rates in Organisation for Economic Co-operation and Development (OECD) member countries dropped on average by approximately seven percentage points between 2000 and 2016, from 31.72% to 24.76%. This trend seems to be widespread, as rates have been reduced in more than 90 countries globally. Within the OECD area, the rate has stayed constant in the United States, as well as in non-OECD countries such as Brazil. Almost 95% of OECD countries have reduced their CIT rates since 2000; only Chile and Hungary have 2016 rates that are higher than their 2000 rate.

The 2016 Tax Policy Outlook indicated that jurisdictions' desire to possess a competitive, “low-rate, broad-base” business tax environment has not diminished. Seven jurisdictions (Denmark, Israel, Japan, Malaysia, Norway, Spain and Vietnam) have either enacted or plan to enact reductions to their headline CIT rates in 2016. At 18% of the 38 jurisdictions surveyed, this is slightly lower than the 22% who reduced their rates in 2015. Spain's three percentage point reduction from 28% to 25% represented the reduction of the largest magnitude. Interestingly, three of the five jurisdictions — Denmark, Japan and Spain — also reduced their CIT rates in 2015. While only India has increased its CIT rate, and only for domestic companies, 29 jurisdictions anticipate no change in CIT rates.

Figure 1. Statutory CIT rates, 2000 and 2016
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### EY Americas

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</tr>
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# EY EMEIA

## Jurisdictions

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<td>Romania</td>
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## EY Japan

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<td>Tax policy and controversy leaders</td>
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