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SEMINAR H
Recent Developments in International Taxation

30 September 2016

Agenda

I. Interesting news on tax treaties

- The new US Model
- The India-Mauritius Protocol
- Survey of case law : Australia, China, the Netherlands, Switzerland, United Kingdom, United States

II. Source taxation on the rise

- India: Equalization levy on digital services
- South Africa/India/France: Service PE

III. Domestic developments with international repercussions

- UK: Brexit
- India: GAAR
- United States: Proposed U.S. Debt/Equity Regulations
- Switzerland: Corporate tax reform

Panelists

- Min Guo (PRC)
- Daniel Gutmann (France) *(Chair)*
- Bob Michel (Belgium) *(Secretary)*
- Xavier Oberson (Switzerland)
- Akhilesh Ranjan (India)
- David Rosenbloom (USA)
- Jonathan Schwarz (United Kingdom)

I. Interesting news on tax treaties

I. 1. Some news from the US and India

1. The new U.S. Model Income Tax Convention (17 February 2016)

- What is this document?
  - Ideal treaty?
  - List of topics for discussion?
  - Source of interpretative guidance for treaties in force?
  - Expression of policy?
  - Relevance in the developing world?

- Many steps removed from being “law”

1. The new U.S. Model Income Tax Convention (17 February 2016)

Overview of the new Model

- Maintains residence-favorable policies of prior U.S. models
- Pays considerable attention to treaty abuses, especially treaty shopping
- Many word changes, some apparently casual and some of questionable merit
- Most important aspect — offer of mandatory arbitration to the world

1. The new U.S. Model Income Tax Convention (17 February 2016)

Salient anti-abuse provisions

- Change preamble language to say that treaty goal is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance
- Remittance basis and forfait provisions, the latter in the resident article
- Triangular permanent establishment rule
- Article dealing with special tax regimes – *i.e.*, preferential tax treatment
- Article dealing with subsequent changes in law

1. The new U.S. Model Income Tax Convention (17 February 2016)

- Rule addressing contract-splitting in the permanent establishment article
- Special rules for "expatriated entities" — *i.e.*, U.S. entities owned by foreign parents as a result of inversions
- Modifications to the limitation on benefits article
- Concept of a "qualifying intermediate"
- Base erosion test for publicly traded companies
- Tightening of active trade or business test
- Introduction of derivative benefits test

1. The new U.S. Model Income Tax Convention (17 February 2016)

Principal changes not relating to treaty abuse

- Strict rule for dual resident companies
- Corresponding adjustment provision for permanent establishments
- Source rules for interest and royalties
- Elective dispositions rule

Conspicuously missing:

- Zero rate at source for dividends

2. New Protocol to the India Mauritius Tax Treaty (10 May 2016)

Context of the Protocol

- Treaty of 1982 – economic environment different in both countries
- Relaxation of controls in 1990s - significant FDI through Mauritius
- Serious concerns about treaty-abuse, round-tripping
- Primacy of bilateral treaty firmly established by courts and statute
- Change necessitated by developments over recent years:
  - Assertion of source taxation rights
  - Introduction of GAAR in Indian tax law
  - BEPS consensus – treaties not intended for double non-taxation
  - Political priority – rooting out 'black money'
- Firm resolve to preserve Indian tax base

2. New Protocol to the India Mauritius Tax Treaty (10 May 2016)

Main features of the Protocol

- Capital gains
  - Source taxation established for ‘shares in a company‘
  - Grandfathering of shares acquired prior to April 1, 2017
  - Transition period - gains arising during April 1, 2017 to March 31, 2019 to be taxed at 50% of normal rates
  - Concessional tax in transition period subject to dedicated Limitation of Benefits Article

2. New Protocol to the India Mauritius Tax Treaty (10 May 2016)

Main features of the Protocol

- Limitation of benefits
  - Specific to capital gains in transition period of two years
  - Principal Purpose Test – covers entities not having 'bona fide business activities'
  - Shell/conduit company – negligible or no business operation; or no real and continuous business activity
  - Not shell/conduit company if operational expenses exceed INR 2.7 million in specified 12 month period
  - Detailed LOB including PPT not ruled out in future

2. New Protocol to the India Mauritius Tax Treaty (10 May 2016)

Main features of the Protocol

- Interest
  - Earlier – source taxation at normal rates; some exemptions
  - Now – 7.5 % for beneficial ownership
  - Interest derived and beneficially owned by banks – exemption withdrawn for debt-claims arising on or after 1 April 2017
- Other changes for source taxation
  - Source taxation strengthened for services
    - new sub-paragraph for service PE
    - new Article on Fees for Technical Services
  - Other income – change to source taxation

2. New Protocol to the India Mauritius Tax Treaty (10 May 2016)

Issues arising from the Protocol

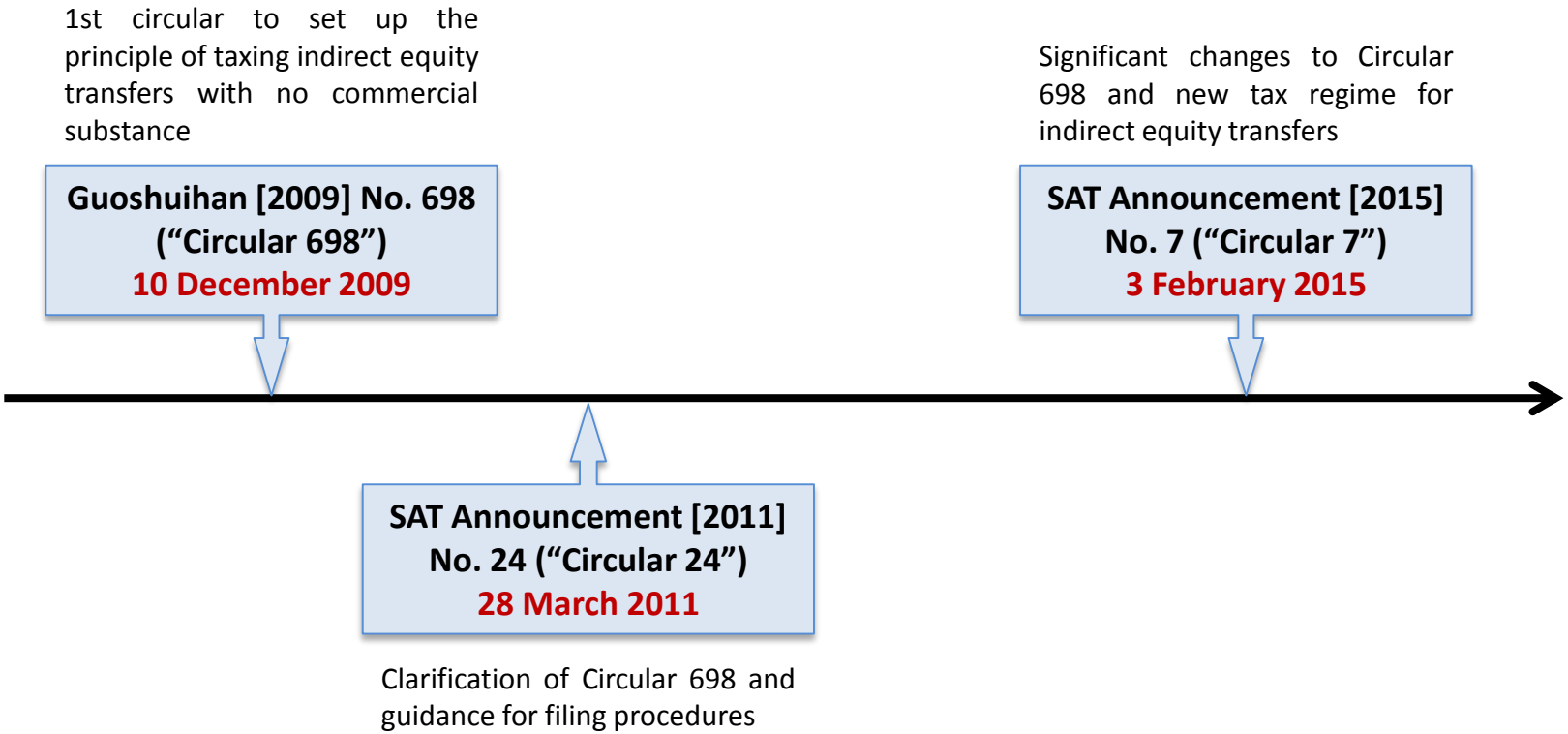
- Impact on investment into India – is the equity route closed?
- Will indirect transfers (without triggering the relevant rule) be the way out?
- Investment in LLPs – is it an option?
- Will investment flows shift towards debt financing?
- Capital gains on other movable assets like hybrid financial instruments and rights still taxable on residence basis
- Specific issues in the context of grandfathering or transition period – clarifications can be expected soon

I. 2. Survey of case law

1. China: first judicial case on indirect equity transfer

Chinese tax regime of indirect equity transfers

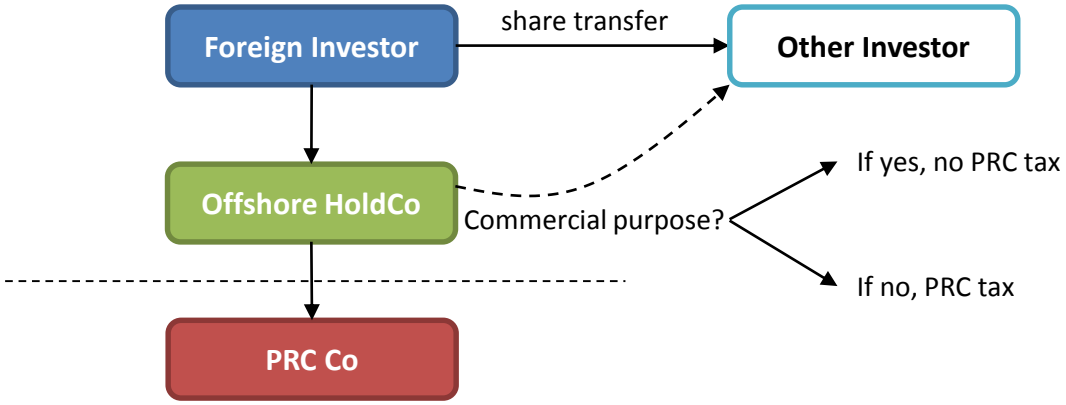
➢ Tax regime development



China: tax regime of indirect equity transfers

➢ Tax regime

- Foreign investors may be subject to PRC EIT on their transfers of equity in an intermediary holding that directly or indirectly holds a Chinese subsidiary if the arrangement is considered an *abusive use of company structure with no reasonable commercial purpose*. The transaction is thus re-characterised as a direct transfer of the Chinese subsidiary by the foreign investor.



- Practical difficulties in applications/filings: discretionary interpretation of "reasonable commercial purpose" by local tax authorities

China: tax regime of indirect equity transfers

- **Reporting**
- Voluntary self-reporting
  - Reporting parties: foreign seller and buyer + Chinese subsidiaries whose shares are to be indirectly transferred
  - When: within 30 days of the SPA signing
  - Documentation: SPA, shareholding structure before and after the transaction, annual financial statements of the intermediate holding for the past 2 years, self-assessment of the transfer and applicable PRC taxes
- Mandatory reporting
  - Reporting becomes mandatory upon PRC tax authority's request
  - Parties that participated in the planning of the transfer (e.g. legal advisor) may also be required to report the transfer
  - Requires more documents than voluntary reporting

China: tax regime of indirect equity transfers

➢ Tax implications

- Tax exposure
  - 10% WT on portion of the capital gains derived from the transfer of intermediate holding's equity that is attributable to the Chinese assets
  - Foreign seller is the taxpayer; foreign buyer has the withholding obligation
  - WT to be paid within 7 days after transfer is completed
- Penalties for non-payment of tax

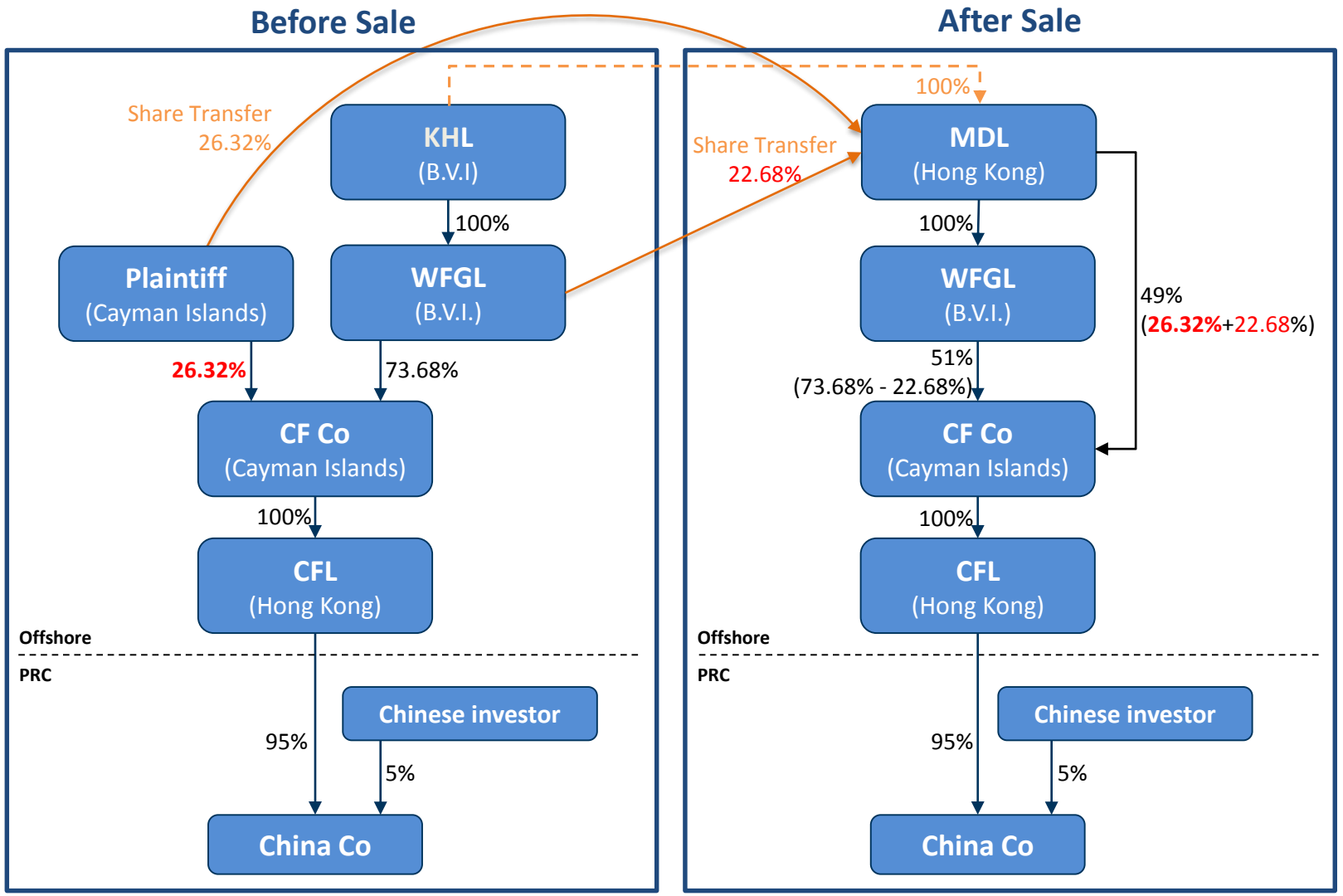
	If not self-reported	If self-reported
Foreign seller (taxpayer)	Daily interest on the unpaid tax amount calculated using the PBOC RMB loan base rate plus 5%	Daily interest on the unpaid tax amount calculated using the PBOC RMB loan base rate
Foreign buyer (withholding agent)	Fine of 50% to 300% of the unpaid tax amount	Reduced or waived fine

China: tax regime of indirect equity transfers

- Published tax audit cases (no tax litigation)

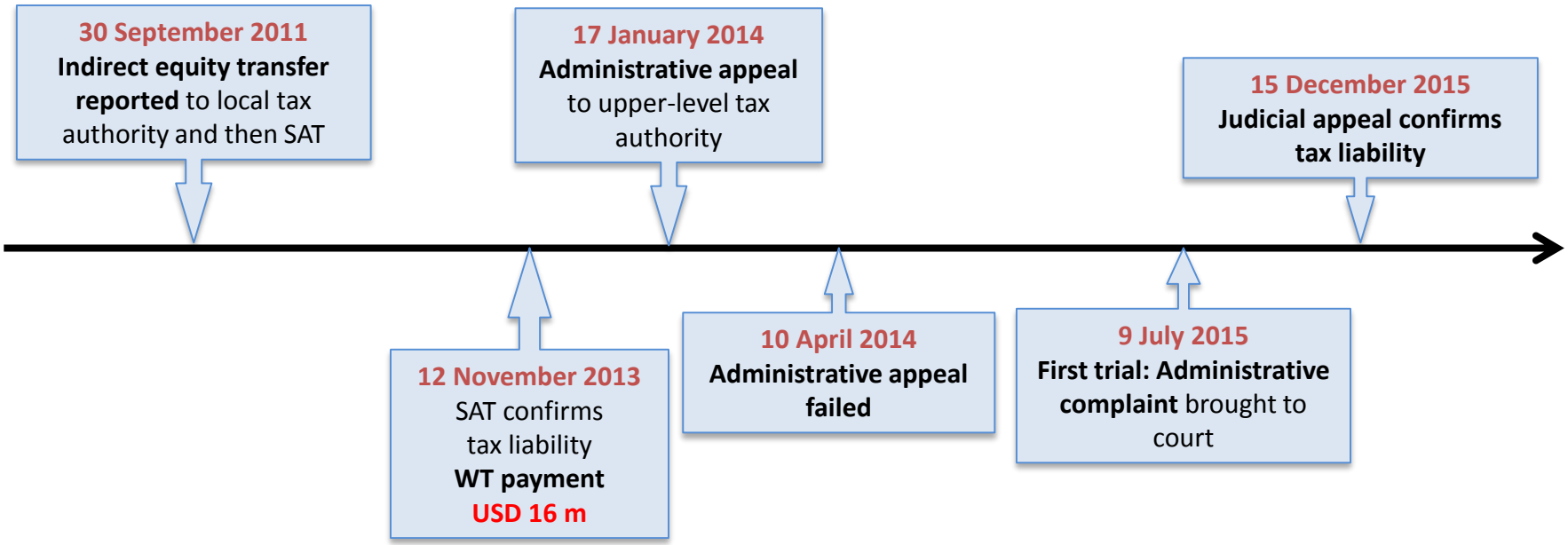
Case	Release year	Indirectly transferred Chinese company	Intermediary holding	Tax liability (million USD)
1	2008	Chongqing	Singapore	0.15
2	2010	Yangzhou, Jiangsu	HK	26.2
3	2011	Shantou, Guangdong	BVI	1.09
4	2011	Guiyang, Guizhou	BVI	4.77
5	2011	Ningbo, Zhejiang	BVI	0.64
6	2011	Kunshan, Jiangsu	Mauritius	6.67
7	2011	Shenzhen, Guangdong	HK	2.07
8	2011	Various subsidiaries in different locations	Cayman Island	46.36
9	2012	Qidong, Jiangsu	BVI	45.3
10	2012	Jincheng, Shanxi	HK	61.06
11	2012	Kunshan, Jiangsu	Not disclosed	0.97
12	2012	Shenyang, Liaoning	Mauritius	4.89
13	2012	Meihekou, Jilin	BVI	46.67
14	2012	Nanjing, Jiangsu	BVI	10.3
15	2013	Taizhou, Jiangsu	HK	14.89
16	2014	Qidong, Jiangsu	BVI	4.54
17	2014	Haidian, Beijing	Cayman Island	70.90
18	2015	Xianyang, Shanxi	BVI	2.39
19	2015	Huairou, Beijing	Singapore	4.13
20	2015	Zhengzhou, Henan	Cayman Island	1.86

China: first judicial case (2015)
Zhexingzhongzidi No.441, 15 December 2015



China: (2015) Zhexingzhongzidi No.441, 15 December 2015

- **First judicial case**



China: (2015) Zhexingzhongzidi No.441, 15 December 2015

➢ First judicial case

Plaintiff's claim:

CF Co (Cayman Islands) and CFL (Hong Kong) were incorporated before Circular 698. CF Co has:

- Registered capital of USD 107 m;
- Own business management activities, e.g. issuance (USD 225 m) and management of bonds, bond listing and rating
- Been seeking foreign IPO and investment projects
- Concluded many contracts with foreign third parties and assumed liabilities
- Paid USD 27 m in annual interest for bonds issued on Singapore stock exchange and value of shares is not solely determined by China Co
- Personnel, office and equipment compatible with its business
- Performed management functions

As such, the capital gains from the share transfer is not China-sourced income and should not be taxed in China.

Tax bureau and court's argument:

- CF Co and CFL were incorporated in zero or low tax jurisdictions
- CF Co and CFL do not have actual operational activities (e.g. manufacturing, trading, management of other substantial business) other than holding China Co
- CFL's only income comes from dividends received from China Co
- Share transfer prices were mainly determined by the value of China Co
- OECD BEPS principle and China EIT law provide that profits should be taxed in the jurisdiction where economic activities occur and value is created – China Co owns a 25-year concession right to operate a highway, which is the centre of the value chain, thus **China has the right to tax the gains.**

2. Tax Treaty Interpretation

UK: Fowler v HMRC, First-Tier Tribunal (Tax Chamber), [2016] UKFTT 234 (TC), *9 March 2016*

- South African diver working in UK North Sea
- UK Domestic law - If diver employed- deemed to carry on a trade (ITTIOA s 15)
- **Issue: Which distributive provision in SA-UK Treaty**
  - Business profits- Art 7, or
  - Employment income - Art 14 (OECD Art 15)?
- **Wider relevance:**
  - Role of Art 3(2) in interpretation
  - Role of OECD Commentary including later Commentary

UK: Fowler v HMRC

South Africa – United Kingdom Treaty

- Art. 7(1) Profits of an "enterprise"
- Art. 3(1)(g)"enterprise" applies to "any business"
- Art. 14 "employment"
- 3(2) … any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

UK: Fowler v HMRC

- **Article 3(2)**
  - A special rule of interpretation within Article 31(4) of the VCLT, as opposed to the general rules of interpretation in Articles 31(1)–(3)
  - Words in Article 3(2) are to be interpreted in accordance with the principles in Article 31
  - "shall" in Article 3(2) indicates a mandatory requirement to apply domestic law
  - "unless the context otherwise requires" - demands a compelling context for excluding domestic tax law meaning

3. Exchange of Information

(1) Stolen data: Switzerland, Federal Administrative Court, (A-6843/2014) 15 September 2015

- Request of information from France on a resident of Switzerland, asking for bank information on accounts directly or indirectly held and notably on French source income
- The FAT rejected the request, notably because:
  - A request cannot be based on documents obtained by a procedure which is a violation of Swiss law
  - Such request violates the „good faith principle" embodied in the Vienna Convention, the DTT and the Swiss federal Law on international administrative assistance in tax matters
- An appeal to the Swiss Supreme Court is pending

(1) Stolen data: The Netherlands, Supreme Court, (15/00008) 5 February 2016

Stolen bank data Liechtenstein, bought by Germany in 2008, shared with the Dutch authorities after they expressed their interest.

Taxpayer: exchange on request, but no identification: fishing operation

Supreme Court: spontaneous exchange, no formal requirements

Issues/challenging positions: exchange of stolen data

- Is this information obtainable 'under the laws or in the normal course of the administration of that or of the other Contracting State'?
    - Germany: stored and exchanged information about third country assets of a non-resident taxpayer?
    - The Netherlands: use of stolen data issue neutralized because received from Treaty Partner?

(2a) Group Request: Switzerland, Federal Administrative Court, (A-8400/2015) 21 March 2016

- Group request from Dutch tax authorities on Dutch residents holding at least an account with UBS, between 1, February 2013 and 31, December 2014 and who did not provide a proof of tax compliance, despite having received such a request from the bank
- The FTA rejected the request notably because:
  - The Dutch-Swiss DTT expressly requires „the name“ of the taxpayer (contrary to other treaties). Here, no names are provided
  - The request is a fishing expedition

(2a) Switzerland: Federal Administrative Court, (A-8400/2015) 21 March 2016

- The clear text of the DTT (in all three official languages) cannot be interpreted differently, despite par. XVI (c) of the Protocol (art. 26 should be interpreted so that it does not prevent an effective EOI) and subsequent competent authority agreement (CAA)

(2b) Switzerland: Supreme Court, 12 Sept. 2016

- In a public hearing, the Supreme Court reversed the judgement of the FAT
- The text of the Dutch-Swiss DTT may be interpreted more broadly and group requests are allowed

4. Transfer Pricing

(1) US: Altera Corporation and Subsidiaries v. Commissioner, US Tax Court, 145 T.C. No. 3 27 July 27 2015

- Though focused on a narrow question, has enormous implications
- Issue in contention was whether stock-based compensation (basically, options) needs to be shared under a cost-sharing agreement
- Extends beyond cost sharing, beyond transfer pricing in general, and conceivably touches many unrelated treasury regulations

(1) US: Altera v. Commissioner

Key concepts in *Altera* are:

- Arm's length is an empirical idea, and IRS adjustments must show actual transactions to support adjustments
- Treasury regulations are not valid unless they address all public comments on proposed regulations and reach conclusions based on "reasoned decision-making"

Case is on appeal — but tax court decision was issued by the entire court and was unanimous

(2) Australia: Chevron Australia Holdings Pty Ltd. v. Commissioner of Taxation, Federal Court, [2015] FCA 1092, 23 October 2015

- Is a major Australian decision, also now on appeal. Lower court decision was in favor of ATO
- The issue here was the appropriate pricing of a large unsecured, non-collateralized AUD loan from a U.S. Company to an Australian affiliate
- Lower court judgment rambles on for more than 200 pages. Professors Vann and Cooper see the extensive record and lengthy decision on what should be a relatively simple question as an indictment of current international norms in the transfer pricing area

II. Source taxation on the rise

1. India: reform of taxation of digital services: The Indian equalization levy

Context and nature

- Domestic resource mobilisation, a critical need
- Base erosion refers not just to ‘resident‘ tax base
- Market jurisdictions create value, particularly in digital economy
- The levy targets specified digital services provided B-to-B
- Consistent with principles of neutrality, flexibility etc.
- Consistent with G20/OECD BEPS reports
- Not a corporation tax/personal income tax; not covered in treaties as yet

1. India: reform of taxation of digital services: The Indian equalization levy

Features and issues

- Tax base: specified digital B-to-B services; online advertising for now
- Withholding on cross-border payments at nominal 6 % rate
- Corresponding exemption from corporation tax
- Underlying option – declare PE, or pay equalisation levy
- Minimal compliance burden for taxpayer, only payer files return
- Issues:
  - Double taxation?
  - Treaty override?
  - Incidence of tax on whom?

2. South Africa: Service PE

AB LLC and BD Holdings LLC v. SARS, Tax Court, [2015] ZATC 2, 15 May 2015

South Africa – United States Treaty

5(1) 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

5(2) 'permanent establishment" includes especially –

(k) the furnishing of services, including consultancy services, within a State by an enterprise through employees …, but only if activities … continue …within that State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the taxable year concerned.

2. South Africa: Service PE

AB LLC and BD Holdings LLC v. SARS

- US company provided strategic and financial advisory services in SA from February 2007 to in May 2008
- Employees in SA for over 183 days
- Customer provided boardroom with telephone - access only on weekdays during working hours
- Additional success fee paid in 2009 when milestone achieved
- Issues:
  - *PE existence*
  - *Profit attribution*
  - *Penalties and interest*

2. South Africa: Service PE

AB LLC and BD Holdings LLC v. SARS

PE existence

Taxpayer:

- Art 5(2)does not expand PE definition but merely illustrates it
- Art 5(1) requirements also must be met
- *The Queen v Dudney* [2000] 54 DTC 6169 - no fixed base in similar circumstances
- Art 5(2)(k) does not allow days counted for 2007 to again be counted for 2008

Court: rejected all arguments

2. South Africa: Service PE

AB LLC and BD Holdings LLC v. SARS

Profit attribution

- Success fee paid in 2009 when no PE existed was attributable to PE as it was earned when PE existed

Penalties and interest

- Misinterpretation v ignorance
- Compliance in residence state does not inform on conduct in source state

Comparison with Indian case law:

Linklaters LLP v. Income Tax Officer, Income Tax Appellate Tribunal , ITA No.4896/Mumbai/2003, 16 July 2010

- Revenue urged existence of PE under Article 5(2)(k) of India-UK treaty, as all ingredients of the sub-para were present
- Appellant‘s stand:
  - List in Article 5(2) only illustrative; requirements of 5(1) to be met
  - Only ‘rendering‘ services, no ‘furnishing‘ of services
- Held:
  - Article 5(2) has two categories – clauses (a) to (i) are illustrations while (j) and (k) are extensions of basic rule
  - 5(3) of UN Model Convention para materia with (j) and (k) – intended to be distinct categories
  - Distinction made between ‘rendering‘ and ‘furnishing‘ is pedantic

Linklaters LLP v. Income Tax Officer

Clear Indian View

- Decision of 2010 reiterated in 2014 by Tribunal in ITA No. 5730/Mumbai/2003 – issue not agitated further
- Authority for Advance Rulings – XYZ In Re [242 ITR 208(AAR)]
  - Inclusive definition in 5(2) adds to scope of primary definition – well established principle of statutory interpretation
- Supreme Court of India – Azadi Bachao Andolan [263 ITR 706]
  - Treaty must be interpreted liberally with a view to implement true intention of parties
- Intention of India in all such treaties – 'service' and 'installation' PEs are extensions of the fixed place criterion

Comparison with French Case Law:

Supreme Administrative Court, Frutas y Hortalizas Murcia SL, No. 368227, 7 December 2015

Penalties relating to « hidden activities » (failure to disclose the existence of a PE)

- No tax return + no activity disclosed to a centre of formalities or to the registry of the commercial court ➔ presumption of "hidden activity"…
- … Unless taxpayer is able to show that it made an error.
- Where the taxpayer complied with tax obligations in another State, the justification of the error made must be analyzed by taking into account :
  - the level of taxation in that other State
  - and the agreement on exchange of information between the tax authorities of the two States.

III. Domestic developments with international repercussions

1. Brexit

Brexit means...

- Article 50(3) TEU: The [EU] Treaties shall cease to apply to the State in question
  - from the date of entry into force of the withdrawal agreement or,
  - failing that, two years after the notification referred to in paragraph 2,
  - unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

1. Brexit

Brexit means...

- Loss of fundamental freedoms (except free movement of capital as a third country)
- Loss of benefits of Parent-subsidiary directive, Interest and royalties directive; Merger directive
- End to exchange of information and assistance in collection of taxes directives including 3rd country agreements
- End to prohibition on state aid
- Arbitration Convention - Art 20 Objection to extension Art 21 Call for revision?

1. Brexit

The Role of tax treaties

- Articles 10, 11 and 12
  - substitute for the Parent-Subsidiary Directive, Interest and Royalties Directive?
- Article 13
  - substitute for the Merger Directive?
- Article 24
  - substitute for fundamental freedoms?
- Articles 9 and 25
  - substitute for Arbitration Convention
  - BEPS Multilateral instrument?

1. Brexit

Treaties between remaining member states

- Will UK groups benefit from EU based holding, finance and licencing companies?
- Directive shopping and treaty shopping in the 21st Century?

1. Brexit

Future UK treaties with remaining member states

- Commission Recommendation on treaty abuse 28.1.2016 supports BEPS Action 7 on commissionaires
- UK does not
- Both agree PPT
- EU Anti-avoidance directive 2016/1164 applies to EU PEs of third countries

1. Brexit

Harmful tax competition

Commission communication on an External Strategy for Effective Taxation 28.1.2016 COM(2016) 24 final

- Fairer tax competition
- State aid provisions in third country agreements
- EU assessing and listing third countries

Brexit – A Swiss Perspective

- Switzerland has a long experience of extensive bilateral ties with the EU on tax matters while being outside (neither EU, nor EEA):
  - DTT based on OECD Model with all EU countries
  - EU – Switzerland bilateral agreement on:
    - Free trade agreement of the movement of goods (1972)
    - Freedom of movement of individuals (2001)
    - Schengen (2004)
    - Fraud Agreement (2004)
    - Agreement on the taxation of savings (2004)

Brexit – A Swiss Perspective

- These rules have important tax implications:
  - Non discrimination (individuals)
  - Rules similar to the Parent-Subsidiary and Interest/royalty Directive
- Withholding tax on saving interest to individuals in EU

- Extended rules of exchange of information (including automatic exchange with EU, as of 2018)

- State aid rules are not applicable in Switzerland

Brexit – A Swiss Perspective

- Outside of this legal framework, Switzerland is free to design its tax system, taking into account:
  - The OECD recommendations and standards notably (BEPS action plan)
  - The global development of tax rules
  - A recent example of this approach is the Reform of Enterprise Taxation III

- The Swiss experience could be of interest to the United Kingdom!

2. India: GAAR

Main features

- Targets impermissible avoidance arrangements after April 1, 2017
- Arrangement whose main purpose is a tax benefit, and
  - Creates non-arm's length rights/obligations, or
  - Results directly or indirectly in abuse of tax law, or
  - Lacks commercial substance in whole or in part, or
  - Not for bona fide purposes
- Denial of tax benefit (including treaty benefit)
- Limited treaty override

2. India: GAAR

Qualifying checks

- De minimis threshold – INR 30 million
- Investments made till March 31, 2017 grandfathered
- Foreign Institutional Investors not seeking treaty benefits excluded
- 3-Stage time-bound process of approval
- Declaration of impermissibility by independent Panel headed by Judge of a High Court – binding on Revenue/taxpayer
- Option to approach Authority for Advance Rulings on applicability

3. United States:

Proposed U.S. Debt/Equity Regulations

- Probably the single most controversial tax issue in the United States today
- Regulations situated under 1969 statute that authorized determination "whether interest in a corporation is to be treated . . . as stock or indebtedness"
- Statute did not receive much attention for many years; prior attempts to issue regulations foundered

3. United States

- Proposed regulations have four main provisions:
  - Authorization to Internal Revenue Service to recharacterize instruments as part debt and part equity
  - Respect for debt characterization conditioned on development and production of documentation that would be expected for a loan to an unrelated party
  - Automatic recharacterization of debt as equity when debt does not reflect an increase in corporate capital but merely a reshuffling of existing capital structure
  - Highly controversial "funding rule" provides for recharacterization of debt issued within three years before or after issuer makes a distribution, acquires stock, or acquires property in a reorganization

3. United States

- Various de minimis and other thresholds, but statute is generally automatic within a broad range of circumstances
- Applies to both inbound and outbound (and foreign to foreign) circumstances, though doubtless aimed principally at inversions and thus the inbound situation
- Regulations will doubtless be relaxed before being issued in final (and therefore legally binding) form
- Likely relaxations will extend to cash pools, effect of reclass on qualifications for special corporate status (second type of stock), foreign-to-foreign transactions, and effects on banks and other regulated financial service entities
- Treasury has declared it will issue in final before end of year

3. United States

- Controversies range over many points, including authorization to issue regulations calling for automatic recharacterization of purported debt on the basis of circumstances surrounding issuance
- Statute on its face calls for IRS to name factors to be used in categorizing instruments
- Regulations provide that recharacterization is for all purposes of the code; that means there will be many collateral consequences, some very harsh and, in light of the funding rule, retroactive

3. United States

- Policy goals beyond challenging inversions are not entirely clear
- One additional target is planning technique for repatriating foreign untaxed earnings without U.S. tax consequences
- Hundreds, if not thousands, of comments have been submitted to IRS, and members of congress have protested, but it is not clear what effect all the shouting will have. Treasury is not going to abandon this regulation project

4. Switzerland: Corporate Tax Reform

I. The international context

- Letter of the EU Commission to the Swiss Federal Council of February 2007 (violation of the 1972 FTA between EU and Switzerland ?)
- Dialog between Switzerland and the EU
- In 2010, The EU Commission requires Switzerland to follow the EU Code of Conduct of 1998
- Implementation of the OECD BEPS project
- Joint declaration of the EU and Switzerland of 1 July 2014 (implementation of the Reform of enterprise taxation in Switzerland and standstill on the EU side)

4. Switzerland: Corporate Tax Reform

II. General framework – the four pillars

- Abolition of the special cantonal regimes (holding company, auxiliary and mixed company status)
- Introduction of specific tax measures compatible with OECD standards (in particular patent box, notional interest deduction, R&D special deduction)
- Compensatory measures
- Decrease of the cantonal ordinary tax rate

4. Switzerland: Corporate Tax Reform

III. Reduction of the ordinary tax rate

The cantons are free to modify their corporate tax rate.

Many cantons have decided to reduce their ordinary rate.

Changes under way:

- VD 13.79% ;
- FR 13.72% ;
- GE 13.49% ;
- ZH 18.2%.
- BE 16.37% (17.9%);
- Zug 12%;
- Luzern 12.32%;
- Solothurn 15%.

The end…