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## Case Law

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This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, ***Taxation*** in printed form, is sent through post and digital version of *Tax Review International* is made available for download at www.huzaimaikram.com.

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## Tax News



Kind regards

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## United States

### US court dismisses case against FATCA disclosures

The US District Court for the Southern District of Ohio has dismissed a case brought by Senator Rand Paul (R – Kentucky) and a group of individuals, who attempted to make several challenges to the Foreign Account Tax Compliance Act (FATCA) and the Report of Foreign Bank and Financial Accounts (FBAR).

The case, *Mark Crawford, et al vs. United States Department of the Treasury, et al (No. 3:15-CV-00250)*, sought to stop the enforcement of both the intergovernmental agreements (IGAs) negotiated by the US Treasury Department and the Internal Revenue Service (IRS) with other foreign jurisdictions to enforce FATCA, and also the account reporting requirements of both FATCA and FBAR.

FATCA, enacted by the US Congress in 2010, requires all financial institutions (FIs) outside of the United States to submit regular information to the IRS on financial accounts held by US persons with a value of at least USD50,000. Otherwise, certain payments of US-sourced income face a 30 percent withholding tax.

An FBAR must be filed with the Financial Crimes Enforcement Network (FinCEN) by American taxpayers who have one or more bank or financial account located outside the United States, or signature authority over such accounts, whose aggregate value exceeds USD10,000 at any time.

In their introduction to the case, the plaintiffs stated that the FATCA and FBAR "laws and agreements impose unique and discriminatory burdens on US citizens living and working abroad," and that "the challenged provisions are unconstitutional and the defendants [Treasury, IRS and FinCEN] should be enjoined from enforcing them."

The plaintiffs called IGAs unconstitutional, as they had not been submitted to the US Senate for its advice, consent or approval, while they also "nullify the right of individuals to refuse to waive foreign privacy laws that would otherwise prohibit their banks from disclosing their account information to the IRS."

Furthermore, it was noted that the FATCA and FBAR reporting requirements "require US citizens living abroad to report more detailed information about their local bank accounts than US citizens living in the United States."

Finally, it was claimed that the 30 percent "tax" imposed by FATCA on payments to foreign FIs when they "choose not to help the IRS pry into the bank accounts of their US customers … is not a tax at all but rather a penalty designed to accomplish indirectly through financial coercion what the US government cannot mandate directly through regulation."

However, the court decided that all of the plaintiffs lacked standing to sue in various ways. In particular, they had failed to establish that they had suffered an injury caused directly by the Treasury, IRS or FinCEN.

"No individual plaintiff has suffered an invasion of a legally protected interest, which is concrete and particularized, and actual or imminent, not conjectural or hypothetical," the court stated. "Moreover, no alleged injury is fairly traceable to the actions of the defendants, but rather, the actions of an independent third party. Finally, there are no allegations that it is likely that the alleged injury will be redressed by a favorable decision."

The court therefore granted the defendants' motion to dismiss the case, and none of the substantive matters in the case were deliberated. – *Courtesy tax-news.com*

## Finland

### Sin taxes put Finland top of 'Nanny State Index'

Finland's heavy taxes on alcohol, tobacco, and certain foods have earned it the dubious honor of topping the first ever "Nanny State Index," compiled by the European Policy Information Centre (Epicentre), a free market think tank.

The Nanny State Index is a league table of the worst places in Europe to eat, drink, smoke, or vape (electronic cigarettes) in terms of cost and government regulation. Finland, with "high scores in every criteria" according to Epicenter, was found to be the clear winner of the the first edition of the index.

"[Finland] has a range of food and drink taxes, an effective ban on e-cigarette sales and extremely high taxes on beer, wine, and spirits," Epicentre observed. It added that Finland was one of the few countries in the world to levy a special tax on confectionery, chocolate, and ice cream, although this tax is due to be rescinded in 2017.

Finland has the EU's highest beer tax, second-highest tax on spirits, and third-highest duty on wine, says Epicentre.

Second in the inaugural Nanny State Index is Sweden, which has the highest taxes on spirits, as well as some of the highest taxes on beer and wine.

The United Kingdom, Ireland, and Hungary were placed third, fourth, and fifth, respectively.

At the other end of the scale, the index confirmed the Czech Republic's status as a "haven of liberty in the EU," with its low taxes on beer and spirits, and absence of tax on wine. Tobacco taxes are also among the lowest in the EU.

Germany, Luxembourg, the Netherlands, Slovakia, Austria, and Bulgaria are also among the "freest" EU countries in the 2016 Index. – *Courtesy tax-news.com*

## Singapore

### Multilateral tax convention effective in Singapore

The Organization for Economic Cooperation and Development (OECD) Multilateral Convention on Mutual Administrative Assistance in Tax Matters became effective in Singapore on May 1, 2016.

Singapore ratified the Convention in January 2016 with a view to boosting tax transparency and combating cross-border tax evasion.

The Convention will allow the Inland Revenue Authority of Singapore to request information from other tax authorities, and seek assistance in collecting outstanding tax debts.

The Convention was developed jointly by the OECD and the Council of Europe in 1988. It was amended in 2010 to respond to a call by the Group of Twenty (G-20) nations that it be aligned to the new international standard on the automatic exchange of information and that it be opened up to all countries. – *Courtesy tax-news.com*

## United Kingdom

### HMRC's making tax digital project 'could hurt large firms'

Andrew Tyrie, the Chairman of the UK's Treasury Select Committee, has called on the Government to produce a comprehensive impact assessment for its Making Tax Digital project after concerns were raised about the effect it could have on large businesses.

Tyrie has published his correspondence on the subject with David Gauke, the Financial Secretary to the Treasury. He said: “The extra burden placed on small businesses by ‘Making Tax Digital’ was already a source of considerable concern. It now appears that large businesses could also be affected, if their software and systems are not compatible with HM Revenue and Customs’ (HMRC’s) requirements. This would make early implementation all the more unacceptable.”

As part of Making Tax Digital, by 2020, most businesses, self-employed people, and landlords will be required to “keep track of their tax affairs digitally and update HMRC at least quarterly via their digital tax account.”

Tyrie initially wrote to Gauke in February to alert him that “many small businesses, and their tax advisers, are deeply concerned about these proposals.” He sought reassurance that businesses will not be compelled to pay tax sooner than currently, and will not be required to provide quarterly updates requiring more burdensome record keeping.

In his response, Gauke stressed that “Making Tax Digital will not mean businesses will have to do four tax returns a year instead of one.” He said quarterly updates “will not involve all the complexity of a full tax return,” but will instead “be generated from the digital business records, with the data gathered electronically by the software and transmitted securely to HMRC.”

Tyrie wrote again to Gauke in April in response to a brief by the Institute of Chartered Accountants in England and Wales (ICEAW) that stated that “verbally we are told that using Excel is not digital record keeping: it will have to be accounting software.”

According to Tyrie, this would mean that businesses “would be required not just to submit information to HMRC online once a quarter, but that they would also be required to do all their record keeping in a prescribed digital format. This would entail the use of designated software packages. It would have an impact on large businesses (who may not currently have accounting systems which are compatible with HMRC’s requirements) as much as on small businesses (who may not use computers).”

He added: “Until [March] there was a general understanding among most tax professionals that businesses could use their own choice of package for their record keeping, as long as it was digital. Digital had not been clearly prescribed and was understood to include, for example, Excel. It was only recently that HMRC's apparent intended meaning – that businesses will be required to use particular software, and systems that are compatible with HMRC's – has become clear."

Tyrie also cited an ICAEW survey that suggested that 75 percent of all businesses, and 82 percent of sole traders, would need to change their record keeping systems to comply with Making Tax Digital. Tyrie told Gauke that if the ICAEW survey is representative, "it seems implausible that Making Tax Digital could generate large savings to business – as the Government is forecasting."

Looking forward, Tyrie said that the Government must now provide a comprehensive impact assessment of the proposals. "Full cooperation and consultation on it – with those most affected, and also with Parliament – will be needed. An acceptable plan for its gradual introduction is also essential," he argued.

Tryie added that the Government should reassure businesses that no changes will be imposed until these processes have been completed. – *Courtesy tax-news.com*

## Bangladesh

### Bangladesh's FM confirms new VAT regime from July 1

Bangladesh intends to proceed with introducing a uniform 15 percent rate of value-added tax (VAT) from July 1.

The change is to be effected alongside the implementation of Bangladesh's new value-added tax law, drawn up in 2012.

Speaking at a recent business forum, Bangladesh's Finance Minister, Abul Maal Abdul Muhith, told businesses that there would be no deferment of the VAT law's effective date and urged businesses to adapt their systems to the changes.

Exemptions will be in place for basic goods and services for lower income taxpayers.

As well as boosting revenues for Bangladesh, the new VAT regime is intended to make tax compliance significantly simpler, especially for smaller firms. – *Courtesy tax-news.com*

## China

### Chinese 'Double Tax' concerns for business travelers

The Global Business Travel Association (GBTA) has called for China to ensure that the introduction of value-added tax (VAT) to the hospitality sector, since May 1, does not significantly increase the tax burden.

According to the association, most hotels in China have typically charged guests a 15 percent "service charge" consisting of a 10 percent service charge and a five percent business tax. China has now replaced that five percent business tax with VAT at six percent.

The GBTA said that some hotels have simply added the six percent VAT onto the existing previous service charge, creating a 21 percent charge, rather than a new, replacement charge of 16 percent, comprising the 10 percent service charge and VAT at six percent.

The association has called on China to engage with hotels to ensure that travelers are charged according to the new policy.

"China is taking bold steps to transform [its] tax policy to foster a stronger economy," said GBTA Executive Director Michael W McCormick. "The industry must ensure it is meeting the spirit of the reform and encouraging increased travel and hotel occupancy."
*– Courtesy tax-news.com*

## Australia

### Morrison delivers tax-heavy Australian budget

In his first Budget as Australian Treasurer, Scott Morrison announced an overhaul of the company tax system, reforms to superannuation tax concessions, and a raft of new anti-avoidance measures.

Morrison delivered the Turnbull Government's inaugural Budget on May 3. Its centerpiece was what Morrison described as a "ten-year enterprise tax plan to boost new investment, create and support jobs, and increase real wages, starting with tax cuts and incentives for small- and medium-sized enterprises (SMEs)."

As part of this plan, the small business company tax rate will be cut from 28.5 percent to 27.5 percent from July 1, 2016, and the turnover threshold for access to the rate will be increased from AUD2m (USD1.5m) to AUD10m. The unincorporated tax discount will be increased from five percent to eight percent from July 1, 2016. The discount will then be progressively increased to reach a rate of 16 percent on July 1, 2026. The discount will be limited to small businesses with turnover of less than AUD5m, and will remain capped at AUD1,000 per individual per year.

Explaining how "Phase One" of the Government's enterprise plan will work, Morrison told Parliament: "Each year we will continue to step up the turnover threshold for the access to the lower company tax rate of 27.5 percent for more businesses, from AUD10m to AUD25m in 2017-18, to AUD50m in 2018-19, and AUD100m in 2019-20. This will mean [that] by 2020 more than half of all employees in companies in Australia will be in companies paying a lower tax rate of 27.5 percent. That's around 4.9 million employees, whose jobs will be supported by a lower tax rate in just four years."

Morrison added that in "Phase Two," the Government "will extend the lower tax rate of 27.5 percent to all businesses, by continuing to step up the threshold each year until 2023-24, before reducing the 27.5 percent rate for all businesses [from 30 percent] to 25 percent at the end of 10 years in 2026-27."

As part of its goal to improve the business tax system, the Government will also:

- Simplify the depreciation rules, and allow businesses to claim an immediate deduction for each and every asset purchased costing less than AUD20,000 until June 30, 2017;
- Give businesses the option to account for goods and services tax (GST) on a cash basis, and pay GST instalments as calculated by the Australian Taxation Office (ATO);
- Simplify BAS reporting requirements for small businesses with turnovers of less than AUD10m from July 1, 2017;
- Provide access to a simplified method of paying PAYG instalments, calculated by the ATO;
- Give businesses the option to avoid an end-of-year stocktake if the value of their stock has changed by less than AUD5,000; and
- Undertake an implementation study into the costs and benefits of adopting electronic invoicing.

On the personal tax front, Morrison announced that from July 1, 2016, the Government will increase the upper limit for the middle-income tax bracket from AUD80,000 to AUD87,000. He noted: "Those earning average wages – full-time or otherwise – should stay in the middle-income tax bracket. This will stop around 500,000 taxpayers from facing the 37 percent second top marginal tax rate in each and every year."

This measure is expected to reduce revenue by AUD3.95bn over the next four years. However, the Government anticipates that it will be offset by the other revenue and integrity measures contained in the Budget.

Strikingly, the Budget included wide-ranging reforms to the superannuation system. Morrison said: "While protecting the overall architecture of our superannuation system, including retaining the tax-free status of retirement accounts, from July 1, 2017, we will be reducing access to the generous tax concessions for the most wealthy."

The Government will extend the 30 percent tax on concessional contributions to those earning more than AUD250,000, and reduce the annual cap on concessional superannuation contributions to AUD25,000. It will introduce a transfer balance cap of AUD1.6m on accounts moving into the tax-free retirement phase, "with balances able to transfer above this cap, on account of tax-free earnings, once transferred." A Low Income Superannuation Tax Offset for those earning less than AUD37,000 will replace the Low Income Superannuation Contribution when it expires on June 30, 2017.

In an effort to make the superannuation system more flexible, the Government will:

- Allow more employees and a wider range of self-employed people to claim a tax deduction for personal superannuation contributions;
- Encourage partners to make contributions to their low-income spouses' superannuation by extending the eligibility for individuals to claim a tax offset for these contributions;
- Remove regulations that restrict those aged between 65 and 75 from making contributions to their superannuation; and

- Allow people to roll over unused concessional caps to ensure that those with interrupted work arrangements are not prevented from making catch-up contributions to their super if they are later in a position to do so.

According to Morrison, "96 percent of Australians with super will be unaffected by or be better off as a result of our superannuation changes." He anticipates a net gain of AUD2.9bn over the next four years as a result of these changes.

The other tax-related measures announced in the Budget were focused overwhelmingly on tax avoidance and evasion. The Government will:

- Introduce a Diverted Profits Tax (DPT), which will impose a penalty rate of tax on large multinational companies that attempt to shift their Australian profits offshore to avoid paying tax;
- Introduce new anti-hybrid rules to prevent multinationals from exploiting differences in the tax laws of two or more jurisdictions to defer or avoid paying tax;
- Update the transfer pricing rules, to ensure they are in line with international best practice;
- Introduce a tax transparency code to encourage greater transparency within the corporate sector;
- Introduce protections for "whistleblowers" who disclose information about tax misconduct to the ATO;
- Develop new rules to require better disclosure to the ATO about potentially aggressive tax planning schemes;
- Increase penalties for breaches of tax reporting obligations for companies with global incomes of AUD1bn or more, and increase the maximum penalty for failure to lodge tax returns and similar documents from AUD4,500 to AUD450,000; and
- Launch a Tax Avoidance Taskforce at the ATO, with a focus on multinationals, private companies, and high-net worth individuals.

The Budget was welcomed by Jennifer Westacott, the Chief Executive of the Business Council of Australia. Commenting on the tax measures, she said: "The Budget has started the process of reconfiguring the tax system to support higher growth and jobs.

The Government has rightly recognized that durable budget repair will not be achieved by increasing the overall tax burden."

"The Government's 10-year enterprise tax plan is the signal that Australia's businesses need to drive greater investment, and create more jobs, better jobs, and higher-paid jobs. It's an immediate reduction for the small and medium business that need relief now. For big business, which operates on longer investment cycles, it's an important signal that their investment will be more competitive down the track." – *Courtesy tax-news.com*

**Australia launches new tax avoidance taskforce**

The Australian Taxation Office (ATO) will receive AUD679m (USD508.3m) in government funding to launch a new Tax Avoidance Taskforce that will focus on multinational companies, private companies, and high net worth individuals.

The four-year funding package was announced as part of Treasurer Scott Morrison's 2016 Budget. The Taskforce will be led by the Commissioner of Taxation, Chris Jordan. External experts will be appointed to review any proposed settlement arrangements, to ensure that they are fair and appropriate. In total, around 1,300 ATO staff will work on the project, including 390 new specialized officers.

The Commissioner will be required to provide regular progress reports to the Government. The first report will be due before the end of the year. According to Morrison, these reports "will give confidence to the public that the work underway in Australia is ensuring multinationals and high wealth individuals are paying the right amount of tax."

The Taskforce will also work closely with government partner agencies, including the Australian Crime Commission, the Australian Federal Police, and the Australian Transaction Reports and Analysis Centre (AUSTRAC). Legislation will be introduced to enable the ATO to improve information sharing with the Australian Securities and Investments Commission (ASIC).

The Taskforce is expected to raise more than AUD3.7bn in tax liabilities by July 2020.

In a joint release with Assistant Treasurer Kelly O'Dwyer, Morrison said: "Those seeking to do the wrong thing will be left with no doubt that deliberate tax avoidance and evasion will not be tolerated. Tax cheats will be tracked down and will face the full force of the law. It will put money back into the system and into the community while also deterring people from entering into aggressive tax planning arrangements."

The ministers added: "The Taskforce gives the Commissioner even more capacity to secure more revenue for the Australian community and ensure individuals and companies are paying the right amount of tax to support the services Australians need." – *Courtesy tax-news.com*

## United States

### US house democrats propose corporate exit tax

A bill has been introduced by Lloyd Doggett (D – Texas), a senior member of the US House Ways and Means Committee, with the support of 50 other Democrat Representatives, to impose an exit tax on corporations that undertake corporate tax inversions or otherwise renounce their American citizenship.

Inversion techniques are being used by some US multinationals to move their tax residences abroad – away from the high 35 percent US headline federal corporate tax rate – and to unlock their unrepatriated earnings held offshore (on which, under US tax rules, tax is imposed only when the income is brought back to the United States).

The Corporate EXIT Fairness Act (Corporate EXpatriates and Inverters Tax Fairness Act) would make it more difficult for firms to avoid paying US taxes. The exit tax is said to be "analogous to a tax wealthy expatriating individuals owe when they renounce their US citizenship." Democratic Party presidential candidate Hillary Clinton has proposed a similar measure, and it has also been the subject of legislation recently introduced in the US Senate.

The exit tax proposed in Doggett's bill would have to be paid on all of a US multinational's deferred overseas profits before reincorporating in a new country. It would be the greater of two calculations: the tax owed on the accumulated deferred foreign income of the multinational's controlled foreign corporations (CFCs), or a tax on the appreciation in value of the CFCs.

The House bill differs from the proposed Senate legislation in that it also incorporates changes previously included in the Stop Corporate Inversions Act. These measures would include raising the minimum threshold for the percentage of shareholders of the new company who were shareholders of the foreign company (with which the US company is merging) from 20 percent to 50 percent, and adding a management-and-control test. – *Courtesy tax-news.com*

**Residence-based taxation put forward for Americans abroad**

With regard to the increasing talk in the US Congress on tax reform, American Citizens Abroad (ACA) has provided the House of Representatives Ways and Means Committee with a full reform proposal for the enactment of residence-based taxation (RBT) for American expatriates.

ACA has said lawmakers should enact RBT instead of the present citizenship-based taxation (CBT) system because it would reduce compliance burdens for expatriates, eliminate double taxation and costly double reporting, and improve competitiveness.

Under the current CBT, Americans abroad remain subject to US taxation as though they were still US residents. Under RBT, US residents, whether Americans or foreigners, would be subject to US income, estate, and gift taxation, while Americans resident abroad could elect to be treated in a manner analogous to non-resident aliens and only be taxed by the United States on US-source income.

Americans abroad would still be taxed through a system of withholding taxes on passive US source income (such as dividends, interest, and royalties); capital gains and rental income taxes on US real estate; and normal income taxation on "effectively connected" income earned in a trade or business in the United States. They would also remain subject to US estate tax on assets located there, including real estate and securities.

If a departure or exit tax based on the mark-to-market valuation of unrealized capital gains at the time of departure is a condition imposed by Congress, ACA's position is that there should be a "grandfather" clause shielding overseas Americans meeting certain residency minima from the tax, together with a high asset exclusion threshold for Americans leaving the United States and measures to help holders of illiquid assets meet their exit tax obligations.

Following an analysis of Internal Revenue Service (IRS) statistics, ACA also considers that a switch from CBT to RBT would be revenue neutral. Under CBT, the IRS already "recognizes the first right of taxation of the country of residence, and, due to the crediting of foreign taxes, collects no tax from the vast majority of Americans abroad."

The National Taxpayer Advocate has previously said that "about 82 percent of all Americans abroad owe no US taxes. For most Americans abroad, the real hardship of CBT is the cost, time, and legal risks involved in compliance."

Tax revenue from Americans abroad is found to account for less than 0.2 percent of total US tax collections. Under RBT, it is noted, the United States would be able to claw back revenue, mostly through withholding taxes on financial assets and taxes on US effectively connected income. – *Courtesy tax-news.com*

## Columbia

### British Columbia reforms film tax credit

The British Columbian Government has announced that it will reduce film tax credit rates from October.

In February the Government said that it would work with the film and television industry to address the rising cost of the province's production services tax credit for film and television. Under the current rates, the subsidy was forecast to cost nearly CAD500m (USD400.7m) in 2015-16, up from an average of CAD313m over the past three years and an average of CAD182m over the five years to 2012-13.

Subject to parliamentary approval and the implementation of the necessary regulations, the basic production services tax credit rate will be cut from 33 percent to 28 percent for principal photography beginning on or after October 1, 2016. The digital animation or visual effects (DAVE) tax credit will be reduced from 17.5 percent to 16 percent from the same date.

The Government will provide a transitional period to recognize investments already planned. For instance, all episodes in one season of a television series will be eligible for the current tax credit rates if principal photography for the first episode begins before October 1, 2016.

Finance Minister Michael de Jong said: "We are proud of the success we've seen in this industry, but we also need to safeguard the interests of B.C. taxpayers, who ultimately pay for subsidies, and ensure there is equity with other industries that drive B.C.'s economy. The province appreciates the industry's willingness to work together on this issue, allowing government to provide certainty for production companies. We are now in a position to continue supporting a healthy, robust film and television sector that attracts foreign investment and jobs to B.C. - from Hollywood to Bollywood and around the world." – *Courtesy tax-news.com*

## New Zealand

### New Zealand legislates for tax system improvements

New Zealand has introduced a "wide-ranging tax Bill" that proposed technical changes to improve, strengthen, and update the nation's tax rules.

Revenue Minister Michael Woodhouse said: "The Taxation (Annual Rates for 2016–17, Closely Held Companies, and Remedial Matters) Bill continues the Government's work in making sure our tax system remains fit for purpose. Changes in the economic environment and business practices can result in unintended consequences such as unfairness, inefficiencies, complexities, or uncertainty for taxpayers.

"That is why it is vital to ensure that tax rules continue to be responsive to change, work well in practice, and that compliance costs are minimized."

The first suite of measures in the Bill proposes changes to the "look-through" company rules and the dividend rules as they apply to closely held companies.

These measures aim to simplify the current rules to reduce compliance costs and ensure that the rules remain robust and true to their intended purpose, the Government said.

"While closely held companies typically have just a few shareholders, they are also a significant proportion of the total number of companies in New Zealand. It is important that the tax rules apply as intended and that the decision to convert a small business to a company is not driven by tax considerations," Woodhouse said, adding that it will result in a "much more workable set of rules."

The second suite of measures in the Bill proposes changes to bolster the rules around the tax treatment of interest earned in New Zealand by non-residents. Proposed changes to the non-resident withholding tax rules (NRWT) and approved issuer levy (AIL) rules will ensure the rules apply consistently.

The third suite of measures proposes various changes to the GST rules to ensure the rules continue to work as intended. They include taxpayer-friendly changes such as enabling businesses to deduct GST associated with the costs of raising capital, and allowing partially exempt businesses to use an alternative apportionment method. – *Courtesy tax-news.com*

## United States

### US expats continue to give up passports, green cards

According to Treasury Department statistics published in the Federal Register, another 1,158 US taxpayers gave up their passports or their green cards in the first quarter of 2016, in line with the 1,058 expatriations in the final quarter of last year.

As pointed out by international tax lawyer Andrew Mitchel, "only a few years ago, we would have been surprised by such a large quarterly number. Now having over 1,000 published expatriates per quarter appears to be the new normal."

The number of individuals giving up their citizenship has been notably greater in the last three years. In 2015, a record 4,279 US taxpayers gave up their passports or their green cards – over 25 percent more than the previous record of 3,415 set in 2014. The number in 2013 was 2,999, and the highest level in the years before that was 1,781 in 2011.

The acceleration in the number of individuals giving up their citizenship has coincided with increased actions by Treasury and the Internal Revenue Service to trace American undeclared assets and income held abroad, particularly by enforcing the Foreign Account Tax Compliance Act (FATCA) and the requirement to file a Report of Foreign Bank and Financial Accounts.

According to representative bodies, Americans living abroad are becoming increasingly aware of their US tax reporting obligations. In particular, US citizens are finding it more difficult to bank in foreign territories as a result of FATCA.

Treasury is required by statute to publish a quarterly list including the name of each individual who has lost or renounced US citizenship during the period. For the purposes of this listing, long-term residents or green card holders are treated as if they were citizens of the US who lost citizenship. – *Courtesy tax-news.com*

## United Kingdom

### HMRC's counter avoidance directorate collects GBP494m

HM Revenue and Customs's (HMRC) Counter Avoidance Directive collected an additional GBP494m (USD717.3m) in UK income tax from investigations into tax avoidance schemes in 2014-15, according to research by international law firm Pinsent Masons.

The Counter Avoidance Directorate was created in April 2014. It has the power to issue Accelerated Payment Notices (APNs) to suspected users of tax avoidance schemes, requiring upfront payment within 90 days of any tax avoided.

Paul Noble, Tax Director at Pinsent Masons, said: "Returns from investigations have been healthy this year, and HMRC will likely want to build on this success. High Net Worths (HNWs) and other wealthy taxpayers are likely to face further scrutiny as a result - both here and abroad. Whilst these particular cases constitute a small proportion of the total sum of unpaid tax uncovered each year, they often provide a focal point of public interest - rendering them a real priority area for HMRC."

Noble added that HMRC has been granted "huge new powers" to help it close and clear thousands of open avoidance cases. He stressed that the Department "needs to ensure that it makes use of some of its new and more contentious tools in a reasonable way - and that it focuses on activity which constitutes real abuse."

It also appears that public pressure is pushing HMRC to tackle these schemes. Pinsent Masons pointed out that a recent HMRC survey found that 63 percent of those questioned believed that the use of avoidance schemes was still widespread, while 61 percent said that their use was "never acceptable." Moreover, 37 percent of those surveyed felt that HMRC was putting "too little effort" into reducing the use of these schemes.

Noble commented: "The survey highlights the public's negative view of these schemes and the support for more action, and HMRC is likely to view this as further support for tackling schemes." – *Courtesy tax-news.com*

## UK CGT cut boosts confidence

A new survey of business leaders by the Institute of Directors (IoD) has revealed that investment in UK start-ups and growing businesses has become more attractive due to the changes to capital gains tax (CGT) and Entrepreneurs' Relief (ER) announced in the March Budget.

As a result of Chancellor George Osborne's Budget, the headline rate of CGT was slashed from 28 percent to 20 percent on April 6. The rate paid by basic rate taxpayers was also cut, from 18 percent to 10 percent. In addition, Osborne introduced a measure to extend ER to long-term investors in unlisted companies.

The IoD surveyed 1,200 of its members last month to determine their attitudes to the reforms. A substantial majority percent of those questioned said they thought the measures would draw investment to entrepreneurial companies. 24 percent agreed that the changes would make such investments "significantly more attractive," and 55 percent said they would become "slightly more attractive."

Stephen Herring, Head of Taxation at the IoD, commented: "The Chancellor rightly reformed taxes on capital gains at the Budget to encourage investment in the entrepreneurial firms that will create the innovative products of the future, and new jobs with them. Today we have the first signs the reforms will pay off, with business leaders overwhelming saying that changes to CGT and Entrepreneurs Relief will draw investment towards start-ups and fast-growing companies."

Participants were also asked their views on the Chancellor's plan to implement deeper cuts to corporation tax in 2020. The rate was scheduled to fall to 18 percent, but will now be reduced to 17 percent. 42 percent of respondents said the cut will attract foreign investment, and 47 percent agreed that Osborne was right to make cutting corporation tax his priority. However, 30 percent believed that other business tax reforms should have been given greater priority, and 27 percent felt that Osborne should have focused on tax reliefs for entrepreneurial companies.

Herring said: "Cutting corporation tax has the great benefit of helping all companies, and the Chancellor deserves to be commended for giving the UK a very internationally competitive rate. Now the good work has been done, at future Budgets the Government should consider whether reliefs targeted at entrepreneurial companies could bring more bang for the taxpayers' buck."

Participants were divided over the pace of Osborne's planned increases to the entry threshold for the 40 percent rate of income tax. The Conservative Government has pledged to raise the threshold to GBP50,000 (USD72,504) by 2020, and an initial increase from GBP42,385 to GBP43,000 took effect last month. 48 percent of respondents thought the Chancellor's pace was "about right," but 44 percent feared it was "too slow." – *Courtesy tax-news.com*

## Hong Kong

### Hong Kong to retain anti-parallel trading measures

After having earlier taken action to prevent Chinese nationals from profiting from selling goods purchased in Hong Kong tax-free in the Mainland, Hong Kong has confirmed it will retain parallel trading countermeasures.

Hong Kong decided to operate a "one trip per week" for Chinese nationals in an effort to curtail parallel trading activity, whereby Mainland parallel traders were taking advantage of the multiple-entry visa policy to buy stock tax-free in Hong Kong to resell in Mainland China at a profit. They were purchasing supplies in Hong Kong, which does not charge a sales tax, and taking them across the border to the Mainland in small quantities to avoid paying import duties.

As a consequence of the traders' activity, law enforcement agencies in Hong Kong had to implement a series of countermeasures to reduce the nuisance caused, and to improve order at railway stations and boundary control points.

Secretary for Commerce and Economic Development Gregory So said that parallel trading activities have now subsided. However, the Government will continue to take targeted measures against such activities and monitor the effect of the one trip per week measure, he said. It will liaise with the Chinese Government on the overall arrangements for Mainland residents travelling to Hong Kong. – *Courtesy tax-news.com*

## Sweden

### Sweden's vattenfall repeats nuclear tax warning

State-owned energy producer Vattenfall has issued another warning about the impact of the country's nuclear tax on Sweden's energy supply.

Announcing a five percent year-on-year increase in profit to SEK8.1bn (USD1bn) in the first quarter of 2016, Vattenfall's President and CEO, Magnus Hall, said that nuclear power generation in Sweden increased in the first three months of the year. However, he warned that its operations in Sweden remain "challenged as a result of the nuclear tax."

Hall added that the SEK0.07 per kilowatt hour tax "needs to be abolished in order to secure Sweden's energy supply and enable the transition to a fully renewable energy system."

Hall has already cautioned that the nuclear tax puts the Swedish nuclear power industry in a "critical position," a comment which was made following the announcement of record losses for the company in 2015, totaling SEK19.8bn.

A challenge to the nuclear tax by OKG AB, which owns three nuclear reactors in Sweden, was knocked back by a ruling of the European Court of Justice in October 2015, which said that the tax does not fall within the scope of European law and is therefore a domestic matter.

According to the Swedish energy association Svensk Energi, the tax costs the power generation industry approximately SEK4.6bn per year.

"The unique Swedish tax has no connection to either the environment or safety, but is only about getting money to the treasury," Svensk Energi Managing Director Pernilla Winnhed claimed in a recent statement. "With the low electricity prices that prevail... it means that nuclear power can not be sustained if the output tax remains in its current form." – *Courtesy tax-news.com*

## UAE

### DIFC signs agreement with Dubai Economic Council

The Dubai International Financial Centre (DIFC), a free trade zone in the United Arab Emirates (UAE), signed a strategic partnership agreement with Dubai Economic Council (DEC) on April 27, 2016.

The agreement mandates the two sides to share best practices in preparing financial studies, on research, and on corporate governance.

The DIFC and the DEC will cooperate in developing programs and projects that achieve their mutual strategic objectives and enhance the economic initiatives of Dubai and the UAE. In addition, they will cooperate on promoting Islamic finance.

"Given our mutual goal to further drive Dubai's leading position as a global financial hub, we are confident this partnership with DEC will succeed in augmenting trade and business growth in the emirate and boost the development of the financial services sector in Dubai, the wider UAE, and the region as a whole," Essa Kazim, Governor of the DIFC, said.

The DIFC offers a number of perks to firms established in the center, including zero percent income tax guaranteed for 50 years. It allows 100 percent foreign ownership and has no exchange controls. – *Courtesy tax-news.com*

**2016 TRI 303 (Trib. Ind.)**

**INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI "D" BENCH, MUMBAI**

## B.R. Baskaran, Accountant Member and Sandeep Gosain, Judicial Member

### FACTS/HELD

**S. 263 revision cannot be initiated to conduct roving inquiries whether share application money share premium constitute undisclosed income**

(i) The scope of interference u/s 263 is not to set aside merely unfavourable orders and bring to tax some more money to the treasury nor is the section meant to get at sheer escapement of revenue which is taken care of by other provisions in the Act. Power under Section 263 cannot be exercised for starting fishing and roving enquiries.

(ii) We have also perused the orders passed by the coordinate Mumbai bench of ITA Nos. 4148 to 4152/Mum/2013 in case of 'M/s. Turakhia Ferromet Pvt. Ltd. vs. CIT' And ITA Nos.3966 to 3969/Mum/2013 in case of 'M/s. Standard Conduits Pvt. Ltd. vs. CIT' wherein also the issue before the coordinate bench of ITAT was same i.e. u/s 263 of the Act and the companies named above are the recipient companies who received the money and issued the shares. In their case also the CIT(A) for the year under consideration and for other years had passed orders u/s 263 of the Act on similar grounds and the coordinate bench in the case of recipient company had set aside the order of the CIT(A) u/s 263 of the Act and it is noteworthy that the coordinate bench orders setting aside the order under section 263 of the Act is in respect of recipient company who actually received the money from the assessee and issue the shares.

(iii) In the present case although the AO has mentioned regarding the submissions of documents and discussion carried out but still the CIT has mentioned while passing the order u/s 263 of the Act that the order of AO is erroneous and prejudicial to the interest of revenue. In this respect we would further like to mention that the order of AO in the present case may be brief but that by itself is not a sufficient reason to held the order of assessment as erroneous and prejudicial to the interest of the revenue. The scope of interference u/s 263 is not to set aside merely unfavaourable orders and bring to tax some more money to the treasury nor is the section meant to get at sheer escapement of revenue which is taken care of by other provisions in the Act. Power under Section 263 cannot be exercised for starting fishing and roving enquiries. In the garb of exercising power under Section 263, the Commissioner cannot initiate proceedings with a view to starting fishing and roving enquires in matters or orders which are already concluded.

(iv) We have also perused the judgement relied upon by the ld. DR decided by ITAT Kolkata Bench in case of 'Bisakha Sales (P.) Ltd. vs. CIT' however in the above cited case the assessee had received share application money with huge and unjustified share premium from corporate entities but in the present case the assessee has not received share application money or share premium from corporate entities. Since the facts of the cited case are different and are not similar to the facts of the present case hence the cited judgement is distinguishable and is not applicable to the facts of the present case. Similar is the position of another case decided by Kolkata High Court titled 'CIT vs. Maithan International' facts of the afore mentioned case are also different and distinguishable and therefore the said judgment is also not applicable to the facts of the present case.

*Appeals allowed.*

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**I.T.A. No. 2795/Mum/2014 (Assessment Year : 2004-05) & I.T.A. No. 2794/Mum/2014 (Assessment Year : 2004-05).**

**Heard on: 7th December, 2015.**

**Decided on: 23rd March, 2016.**

**Present at hearing: Ajay R. Singh, for Appellant. Ajit K. Shrivastva, for Respondent.**

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## JUDGMENT

*Per Sandeep Gosain:– (Judicial Member)*

The Present Appeals have been filed by two Assessee's against the order of Commissioner of Income Tax-9, dated 28.03.2014 for A.Y. 2004-05. This is common order covering the disposal of two appeals which have been preferred by two separate assessees against two separate orders of the ld. CIT, Mumbai both dated same passed u/s 263 of the Act pertaining to Assessment Year 2004-05.

2. Since both the parties agreed that the facts and the issues involved in both these appeals are identical, therefore the cases have been heard and dispose off by this common order for the sake of convenience and brevity.

2. First we will take up ITA No. 2795/Mum/2014 filed by the assessee, M/s. Rachna Finance and Investments Pvt. Ltd. for A.Y. 2004-05 and the outcome of the same will be applicable to other analogous appeal i.e. ITA No. 2794/Mum/2014 filed by another assessee namely, M/s. Repute Properties Pvt. Ltd. for A.Y. 2004-05.

3. In appeals of assessee, M/s. Rachna Finance and Investments Pvt. Ltd., the impugned order dated 28.03.2014 which has been passed by the CIT wherein the CIT has invoked his jurisdiction u/s 263 of the Act for AY 2004-05 which is under consideration before us.

4. The brief facts of the case are that the CIT was of the firm belief that the assessment order u/s 143(3) r.w.s. 147 passed on 28.10.2011, was erroneous inasmuch as it was prejudicial to the interest of the revenue. The entire issue revolves around investments of Rs.25 lakhs by way of share application and share premium in share of M/s. Turkhia Group of Companies. The CIT(A) was also of the belief that the Assessing Officer has not verified the issue regarding high share premium paid by assessee to M/s. Turkhia Group of Companies and the money trail while completing the assessment u/s 143(3) r.w.s. 147 for AY 2004-05. Accordingly, the CIT has passed an order u/s 263 of the I.T. Act,1961 thereby holding that the assessment order u/s 143(3) r.w.s. 147 dated 28-10-2011 for AY 2004-05 is set aside with the direction to the AO to frame afresh assessment in the light of observation made in impugned order against which the assessee has filed present appeal before us on the grounds mentioned herein below.

1. *"On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax has erred in coming to the conclusion that assessment order passed u/s 143(3) r.w.s. 147 dated 28.10.2011 is erroneous and prejudicial to the interest of the revenue without appreciating the facts of the case.*
2. *On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax has erred in setting aside the assessment order passed u/s 143(3) r.w.s. 147 dated 28.10.2011 with a direction to the Assessing Officer to frame fresh assessment.*
3. *The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off."*

2. The brief facts of the case are that the assessee filed return of income for AY 2004-05 on 15.11.2004 declaring total income at Rs.6,658/-. Thereafter the case was reopened on 31.03.2011 after obtaining prior approval of Addl. CIT, Range 9 (3), and Mumbai. After considering the case of both the parties, the AO passed assessment order u/s 143(3) r.w.s. 147 of the I.T. Act on 28.10.2011. Whereby the total income of assessee company was assessed at Rs.6,658/-. CIT noted that the assessee has invested an amount of Rs.25 lakhs by way of share application and share premium in share of M/s. Turkhia Group of Companies and noticed that the assessing officer has not verified the issue regarding the high share premium paid by assessee to M/s. Turkhia Group of Companies therefore after serving show cause notice and considering reply, the CIT passed order u/s 263 of I.T. Act,1961.

3.1 Aggrieved by the said order the assessee filed the present appeal before us on the grounds mentioned herein above.

<u>Ground No. 1&2</u>

4. Since all the grounds raised by the assessee are inter-connected and interrelated therefore we thought it fit to dispose off the same through the present common order.

4.1 At the very outset ld. AR representing the assessee submitted before us that the assessment order passed u/s 143 r.w.s. 147 dated 28.10.2011 by the assessing officer is neither erroneous nor prejudicial to the interest of revenue and the provision of section 263 were not at all attracted under the facts and circumstances of the case. It was further submitted by ld. AR that the assessment was reopened on the ground of examination of source of investment made by assessee of Rs.25 lacs towards acquisition of shares from one company M/s. Turakhia Feromat Pvt. Ltd. The amount was received from Shirdi Industries Ltd and the bank statement was also submitted on record where in the amount received by the assessee company was reflected. The copy of bank statement of Shirdi Industries Ltd and copy of acknowledgement of said company were also submitted before the AO. Assessing Officer after detailed examination and making full inquiries in the matter passed the assessment order and therefore there is no case of the said order being erroneous. Specific stand taken by the ld. AR is that the assessment order was passed on the basis of evidence on record and inquiries to the source of money and investment made by Assessee Company. And since there is no other new evidences which has been brought on record to substantial the ground taken by CIT therefore there is no justification in passing the impugned order u/s 263. The ld. AR further submitted that the department made inquiries for justification of premium for issuing of shares in the case of recipient company who received the money and issued the shares and since no share application money was received by the assessee therefore the examination of justification of share premium was not at all warranted in the case of the assessee for which the assessee also relied upon judgement of co-ordinate bench in case of M/s. Turakhia Feromat Pvt. Ltd. Passed by ITAT Mumbai Bench and as per the aforesaid mentioned judgement ITAT was pleased to set aside the similar order passed u/s 263 of the I.T. Act in the said case.

5. On the other hand ld. DR representing the revenue has relied upon the orders passed by CIT(A) u/s 263 of the I.T. Act and it was submitted by ld. DR that since the assessing officer failed to examine the issue of share application and share premium while completing the assessment u/s 143 r.w.s 147 dated 28.10.2011 therefore, the ld. CIT(A) was right in passing the order u/s 263 of I.T. Act.

6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by the lower authorities and after considering the same and reading section 263(1) it makes it clear that the pre-requisite to the exercise of jurisdiction by the commissioner *suo motto* under section 263 of the Act isthat the order of the AO is erroneous in so far as it is prejudicial to the interest of the revenue. The commissioner has to be satisfied with the twin conditions:

(i) the order of the AO sort to be revised is erroneous and

(ii) it is to be prejudicial to the interest of the revenue. If one of the condition is absent it cannot be invoke jurisdiction u/s 263 of I.T. Act for these observations, we find support from the decision of Hon'ble Supreme Court, in case of '*Malabar Industrial Co. Ltd vs. CIT*' (SC) 243 ITR 83. We have noticed that in this case order of assessment was passed and subsequently the case was reopened u/s 147 on the similar grounds which have been raised by the Commissioner and thereafter the assessment u/s 143 r.w.s. 147 was completed on 28.10.11. Since in the present case the assessment was reopened on the ground of examination of sources of investments made by the assessing officer of Rs.25 lakhs towards purchase of shares from one M/s. Turakhia Feromat Pvt. Ltd, in this respect it was submitted by assessee that the amount was received from Shirdi Industries Ltd and the bank statement of Shirdi Industries was also submitted on record along with copy of bank statement of Shirdi Industires and copy of acknowledgement of return of the said company along with the bank statement of assessee company. In the present case the assessing officer after detailed examination of records had passed the assessment order and the said facts are also mentioned by the assessing officer while passing the order u/s 143 r.w.s. 147 of the Act wherein it has been categorically mentioned by the AO that the representative of the assessee furnished relevant details and after discussing the total income of the assessee company was assessed which shows the consideration of all the documents and application of mind by the AO. It is also an undisputed fact that there is no further evidence which has come on record after passing of order by AO. Since the AO has examined the issue by making necessary enquiries, the assessment order cannot be held erroneous. Since the view taken by the AO is one of the possible views the assessment order cannot be held to be prejudicial to the interest of revenue.

6.1 We have also perused the orders passed by the coordinate Mumbai bench of ITA Nos. 4148 to 4152/Mum/2013 in case of '*M/s. Turakhia Ferromet Pvt. Ltd. vs. CIT*' And ITA Nos.3966 to 3969/Mum/2013 in case of '*M/s. Standard Conduits Pvt. Ltd. vs. CIT*' wherein also the issue before the coordinate bench of ITAT was same i.e. u/s 263 of the Act and the companies named above are the recipient companies who received the money and issued the shares. In their case also the CIT(A) for the year under consideration and for other years had passed orders u/s 263 of the Act on similar grounds and the coordinate bench in the case of recipient company had set aside the order of the CIT(A) u/s 263 of the Act and it is noteworthy that the coordinate bench orders setting aside the order under section 263 of the Act is in respect of recipient company who actually received the money from the assessee and issue the shares.

6.2 We have also perused the paper book filed by the assessee which contains all those documents which were filed before the AO as well as the CIT including copy of return of income, computation of income and annual accounts, copy of notice u/s 148 dated 31.03.2011, copy of reply dated 14/10/2011 submitted to the assessing officer along with details of investment and advances along with confirmation of accounts, copy of bank statement of the assessee as well as recipient company and copy of annual accounts of Shirdi Industries.

6.3 In the present case although the AO has mentioned regarding the submissions of documents and discussion carried out but still the CIT has mentioned while passing the order u/s 263 of the Act that the order of AO is erroneous and prejudicial to the interest of revenue. In this respect we would further like to mention that the order of AO in the present case may be brief but that by itself is not a sufficient reason to held the order of assessment as erroneous and prejudicial to the interest of the revenue. The scope of interference u/s 263 is not to set aside merely unfavaourable orders and bring to tax some more money to the treasury nor is the section meant to get at sheer escapement of revenue which is taken care of by other provisions in the Act. Power under Section 263 cannot be exercised for starting fishing and roving enquiries. In the garb of exercising power under Section 263, the Commissioner cannot initiate proceedings with a view to starting fishing and roving enquires in matters or orders which are already concluded.

6.4 We have also perused the judgement relied upon by the ld. DR decided by ITAT Kolkata Bench in case of '*Bisakha Sales (P.) Ltd. vs. CIT*' however in the above cited case the assessee had received share application money with huge and unjustified share premium from corporate entities but in the present case the assessee has not received share application money or share premium from corporate entities. Since the facts of the cited case are different and are not similar to the facts of the present case hence the cited judgement is distinguishable and is not applicable to the facts of the present case. Similar is the position of another case decided by Kolkata High Court titled '*CIT vs. Maithan International*' facts of the afore mentioned case are also different and distinguishable and therefore the said judgment is also not applicable to the facts of the present case.

7. After considering the entire facts and material evidences brought on record reproduced elsewhere in the order by us, in our considered view the order of CIT u/s 263 of the Act does not stand on its own leg, we accordingly set aside the order of CIT u/s 263 dated 28.3.14 and restore that of the AO. This ground raised by the assessee in the appeal is allowed.

Ground No.3 is general in nature and needs no separate adjudication.

8. Now, we will take up the appeal filed by the assessee M/s. Repute Properties Pvt. Ltd. ITA No. 2794/Mum/2014 (A.Y. 2004-05).

8.1 The impugned order in the aforesaid appeal dated 28.3.14 has been passed by the CIT u/s 263 of the Act where in the CIT has invoked its jurisdiction for AY 2004-05 on similar issue was involved in the appeal of assessee i.e. Rachana Finance Investments Pvt. Ltd. wherein we have already given our thoughtful consideration to the grounds raised by the ld. Counsel of the assessee as well as the ld. DR and considering the entire facts and the material brought on record, we have already set aside the order passed by CIT u/s 263 of the Act. Since the facts and circumstances of this appeal under consideration are similar. Therefore, following our own decision given in the afore said appeal, we also allow the present appeal of the assessee, namely M/s. Rachana Finace & Investments Pvt. Ltd. and set aside the order dated of CIT u/s 263 of the Act.

7. In the result, the Assessee's appeals are allowed.

*Order pronounced in the open court on 23rd March, 2016*