THOMSON REUTERS

ISSUE 17, 29 April 2016

(Country reports by Terry Hayes, Mabel Joyce Vergara and Paul Vicente Curimao, V; Edited by Terry Hayes)

PRACTITIONER ARTICLES

ASIAN TAX AND TRADE NEWS AND UPDATES

INDONESIA

VIETNAM

CHINA

HONG KONG

INDIA

[9]. Commission paid to non-resident for services rendered outside India not taxable - *Farida Leather Company* case

[10]. APA for earlier year may apply, determining "tested party" - *Ranbaxy Laboratories Ltd* case

[11]. Concept of mutuality in the light of *Bangalore Club* case explained - *Air Cargo Agents Association Of India* case

[12]. Liechtenstein to negotiate DTA with India

Australia continues FTA negotiations with India – see para [28]

JAPAN

[13]. National Tax agency publishes guidance on new BEPS Action 13 TP documentation requirements

[14]. Support builds for delaying sales tax increase

[15]. Japan and Panama to negotiate TIEA

Australia signs Asia Region Funds Passport Memorandum with Japan – see para [30]

TAIWAN

[16]. Tax rebate offered to hi-tech finance firms in Taiwan

MYANMAR

[17]. Updated lists of economic activities for foreign investment

TAX AND TRADE NEWS OF WIDER INTEREST

BEPS

[18]. Implementing the BEPS package: 1st meeting with new associates in Japan

[19]. OECD Forum on Tax Administration meeting in China will focus on BEPS implementation priorities and impact

TRANSFER PRICING

[20]. WCO Valuation Agreement on transfer pricing and customs

[21]. The Link between Transfer Pricing and Customs Valuation – 2016 Country Guide: Deloitte

EU NEWS

[22]. EU states back plans for common tax havens' black list

[23]. Corporate tax information sharing welcomed

[24]. EU proposal for public disclosure of MNE tax info – vote soon

[25]. Accountants, journalist face "Lux Leaks" leaks trial in Luxembourg

OECD NEWS

[26]. OECD releases comments received on discussion draft on treaty entitlement of non-CIV funds

AUSTRALIA

[27] ATO releases 4 Taxpayer Alerts on profit-shifting arrangements

[28]. Australia working on FTA with the EU

[29]. Australia hosts Asia regional FTA negotiations

[30]. Asia Region Funds Passport - Memorandum of Cooperation signed

[31]. Australia imposes anti-dumping duties on imported steel from China

NEW ZEALAND

[32] NZ Government establishes Inquiry into its Foreign Trust Disclosure Rules

Australia signs Asia Region Funds Passport Memorandum with NZ – see para [30]

RECENT TAX ARTICLES

[33]. Recent tax articles of interest

PRACTITIONER ARTICLES

[1]. CHINA'S 13TH FIVE YEAR PLAN: AN IMPORTANT YET DIFFICULT ROAD TO A STRONGER TAXATION SYSTEM - *BY BILL YE, SENIOR CONSULTANT, BEIJING AND JEROME TSE, PARTNER, SYDNEY, KING & WOOD MALLESONS*

China's 13th Five Year Plan states that the Chinese Government will pursue stronger fiscal and taxation system reforms and establish a modern fiscal and taxation system that facilitates the transformation of economic development. The Plan focuses on forming a unified national market that promotes social justice and establishes a tax system with an optimal structure, fairer legislation and regulations, and effective tax administration. Further, the Plan aims to advance the initiative to balance the distribution of revenue between the central and local governments.

Being one of the most important fiscal levers available to the government, the tax reforms outlined in the Plan will play a crucial role in China's overall economic development. The Government's development goal for sustainability and the initiative to reduce the Government's role in economic administration coincides with the current supply-side structural reforms. The following highlights some of the key changes that are anticipated to occur in the coming years.

Adopting the modern VAT system

The Business Tax to Value Added Tax Pilot Reform (the VAT Reform) is an important tax reduction measure that will boost China's economy. The VAT Reform measures will commence on 1 May 2016 with the extension of the VAT Reform to the remaining 4 industries: construction, real estate, financial services and consumer services. The last chapter of the VAT Reform marks the end of Business Tax in China. Although the tax rates for different industries range between 6% and 17% (which is higher than the comparable Business Tax rate as it takes into account allowances under the credit system of the VAT regime), the tax reduction under the VAT reform is expected to reach hundreds of billions of RMB according to the Government's estimation.

The main characteristic of Business Tax is that it is a tax on the full transaction value. Consequently, the more transactions that are carried out, the more that double taxation occurs. The main purpose of the VAT Reform is to unify the different tax systems between the manufacturing and services industries to allow for more tax efficient transactions. Although some VAT costs in the supply chain will not be creditable under the VAT Reform plan (for example, VAT relating to interest expense is not creditable), the last chapter of the VAT Reform now allows most industries to claim VAT input credits for costs incurred while being subject to VAT on their business income (previously, the VAT Reform did not adopt a 'complete' VAT credit system for all industries). This will reduce double taxation throughout the vast majority of supply chains, leading to lower overall transaction costs for businesses.

Improving the individual income tax system with better tax administration

The Plan also proposes individual income tax reforms (IIT Reforms), which have been submitted to the State Council for review. The IIT Reforms constitute a comprehensive plan covering proposed changes to the current individual income tax (IIT) system. There have been discussions that the IIT Reforms may include a proposal to adopt an IIT system that allows for deductions of certain costs under a comprehensive categorised tax scheme for certain income. The new system would operate alongside revisions to the Tax Administration Law that improve the tax administration regime for high income individuals, with the purpose of balancing social wealth distribution and ensuring sustainable economic growth.

Implementing Real Estate Tax

There has been a fierce debate over the past 5 or so years on whether or not there is solid ground to enact and implement a Real Estate Tax. Although no details of any Real Estate Tax are provided in the Plan, it does allude to the inevitable introduction of some form of Real Estate Tax.

The Chinese economy had been largely reliant on the development of the real estate market. Whilst it brought great opportunities to the economy, there are also potential risks associated with a real estate bubble. Further, following the VAT reform, local Governments are aware of the need to identify a steady tax revenue stream to replace the loss of tax revenues resulting from the elimination of Business Tax revenues, which had been a very important source of local tax revenues in the past. Accordingly, the adoption of a Real Estate Tax is likely to be part of the solution to further balance the revenue distribution between the central and local Governments.

Enhancing the tax administration system

In addition to what has been included in the Plan in relation to enhancing global cooperation in tackling tax avoidance schemes, the whole tax administration system will significantly change when the revised Tax Administration Law is approved and becomes effective.

Among many proposed changes, the new tax administration system will connect each individual to their personal ID number, resulting in a more transparent tax filing system which is easier to use for tax administrative appeals and dispute resolution. The personal ID number reform will also improve the accuracy and reliability of China's credit regime in view of China's rising middle class.

In light of the continuous fight against corruption, changing the tax administration system represents a significant effort by the Chinese Government to change the role it plays in the facilitation of the economic growth of China. The changes will improve tax transparency and bring greater certainty to businesses operating in China. Thus, it is an important opportunity and milestone for China.

What next?

In addition to the changes discussed above, the enactment of an environmental tax, changes to resources and consumption taxes and the possible abolition of the Land Value Added Tax are likely to be the subject of tax reform discussions in the near future. Overall, the Plan aims to implement a structured reduction of tax with an improved tax administration system. We look forward to seeing these changes being implemented to shape the foundation of economic development in China.

Return to top

[2]. AUSTRALIAN SENATE COMMITTEE TAX AVOIDANCE REPORT TABLED: HIGHLY CRITICAL OF MNES; NOT CONFIDENT BEPS WILL HELP – *BY TERRY HAYES, SENIOR TAX WRITER, THOMSON REUTERS*

The Australian Senate's Economics References Committee on 22 April 2016 tabled Part 2 of its tax avoidance Report - *Part 2: Gaming the system*. The Committee's inquiry into corporate tax avoidance began in October 2014, so it has been going for 18 months already.

In its second report on corporate tax avoidance, the Committee continued its consideration of the importance of transparency with particular emphasis on transfer pricing and the secrecy surrounding this activity. The Committee briefly touched on exemptions from general purpose accounting. It also looked at tax minimisation strategies including excessive debt loading and avoiding permanent establishment (PE) in Australia.

Among other things, the Committee said the evidence presented over the course of its inquiry indicated that transfer pricing provisions "do not serve Australia well". The Committee considered that the current transfer pricing principles need to be fully explored, and, where necessary, redrafted to ensure that transfer pricing cannot be manipulated to the detriment of Australian tax revenue.

The report

The Committee said its inquiry highlighted a number of the aggressive tax practices employed by foreign based multinationals operating in Australia. They include avoidance of permanent establishment (PE), excessive debt loading, aggressive transfer pricing, and the use of tax havens. The 50-page report said such practices appear in almost all industries "but seem to be most prevalent and egregious where there is significant intellectual property embodied in the value of the good or service, such as pharmaceuticals and activities relating to the digital economy".

According to the report:

"When asked about tax avoidance and aggressive tax minimisation, the multinationals in question justify such activities by arguing that these practices are consistent with the laws in each jurisdiction in which they operate and that they are paying the taxes calculated by the tax office. At issue is not the legality of the activities of multinationals, but whether their conduct aligns with the intention and spirit of the existing legal framework, and meets the expectations of the public. The central concern is

to what extent multinationals arrange their corporate structure and engage in practices deliberately intended to deny Australia its proper share of tax and whether they are held accountable for engaging in such practices."

In highlighting what it said was a need for increased transparency, the report said a consistent theme throughout the inquiry was the lack of public information about company tax affairs and "an unwillingness of certain companies to divulge this information". The Committee said it held "concerns about the lack of cooperation from multinationals and how this reflects more broadly on their conduct in Australia and their attitude to Australia's tax laws".

Based on the information gleaned from the public hearings, the report said it was clear "that some multinationals will go to extreme lengths to conceal their tax minimisation practices, even under the intense scrutiny of a parliamentary committee. The secrecy about their tax arrangements together with the complicated nature of such arrangements pose a challenge for the ATO in unravelling and assessing the legitimacy of transactions. It is evident to the committee that recent legislative changes may not be sufficient to address the multinational profit shifting problem."

Transfer pricing and interest deductions

The Committee identified 2 main areas - transfer pricing and interest deductions - where it said the "present system architecture is not adequate and further reform may be warranted".

Transfer pricing

The report said the transfer pricing regime favours multinationals with products and/or services that embody significant amounts of intellectual property and have highly integrated structures. Multinational companies with these characteristics include many of those involved in the digital technology and pharmaceutical industries.

While OECD transfer pricing principles may be the accepted practice, the report said the evidence provided to the Committee across a variety of industries "confirms that the current transfer pricing regime does not serve Australia well from a tax revenue perspective".

At para 2.36, the report states: "Recent legislative changes and proposed Base Erosion and Profit Shifting (BEPS) recommendations will not radically change how transfer pricing principles are applied and, as such, it would be reasonable to conclude that foreign-based multinationals will continue to avoid paying tax that reflects the value of the business activities they conduct in Australia".

The Committee considered that the current transfer pricing principles "need to be fully explored, and, where necessary, redrafted to ensure that transfer pricing cannot be manipulated to the detriment of Australian tax revenue".

Debt-related deductions

The Committee considered that another "questionable practice" employed by some companies that appeared before it was the use of internal loan arrangements to create debt-related deductions, "thereby manufacturing opportunities to shift pre-tax profits out of Australia".

While the Committee acknowledged there had been some work in this area, it believed that a "more concerted effort is required to ensure that multinational companies do not employ such practices in order to deliberately avoid paying their fair share of tax in Australia". However, consistent with the transparency theme underlying the interim report (Part 1), the Committee reiterated its view that it would be in the public interest if the ATO were to report on the significance of debt-related deductions to the overall problem of aggressive tax minimisation and avoidance. The Committee urged the Government to consider closely the impact and ongoing utility of corporate deductions, especially internal financing arrangements by multinationals.

Specific purpose accounts

The Committee said it doubted that the proposed voluntary tax transparency code "will provide the level of transparency that is required to hold multinationals to account".

The Committee's report said the Australian Accounting Standards Board (AASB) has recognised that the reporting entity concept, which determines reporting requirements, "is not working well in practice". The Committee said it agreed with the AASB and considered it in the broader public interest for significant global entities to be required to file general purpose accounts. The Committee urged the Government to amend the accounting standards and make significant global entities file general purpose accounts for their Australian activities which would be publicly available.

Stronger penalties

The Committee said the ATO noted that it faces difficulties in accessing information relating to tax plans, including supporting correspondence about tax plans and related contracts. The Committee said it faced similar frustrations when questioning representatives of Australian subsidiaries. In addition to the proactive approach of the ATO to levy tax assessments based on the best available information, the Committee urged the Government "to consider implementing stronger penalties to provide an additional incentive for companies to provide this information in a timely manner".

Greens comments

In additional comments, the Australian Greens recommended that the Government "implement a comprehensive response to corporate tax avoidance, starting with the establishment of a public register of beneficial ownership and a public register of tax settlements".

Inquiry extended due to Panama Papers

In light of information coming out of the Panama Papers and the ATO's investigations, the Committee said it will defer further consideration on the use of tax havens as a means of avoiding and, in some cases, evading tax in Australia, until there has been sufficient time to evaluate the data. It noted however, that at first glance, the papers seemed predominantly to involve individuals not multinationals. The Committee's one recommendation was that its inquiry be extended until 30 September 2016 to explore the implications arising from the Panama Papers.

Return to top

ASIAN TAX AND TRADE NEWS AND UPDATES

INDONESIA

[3]. INDONESIA'S PLANNED TAX AMNESTY COULD RAISE US$42 BILLION

A tax amnesty program planned by Indonesia's Government could potentially attract home 560 trillion rupiah (US$42.38 billion) of assets stashed offshore, Reuters said the Central Bank Governor told a parliamentary commission on 25 April 2016.

The amnesty program could also increase the government's tax revenue by 45.7 trillion rupiah, Governor Agus Martowardojo told the commission overseeing finance.

"The tax amnesty is part of an overhaul of the tax system. Therefore, it should lead to an improvement of people's welfare," he said.

Return to top

VIETNAM

[4]. NEW PM DIRECTS ACTION TO STOP REVENUE LOSSES

The Ministry of Finance (MoF) said newly-elected Prime Minister Nguyen Xuan Phuc held a working session with the Ministry of Finance (MoF) on 21 April 2016, focusing on measures to tackle state revenue loss and state budget woes.

He ordered the MoF to build specific and effective solutions to stop revenue losses, which were mostly caused by commercial fraud and tax-related violations.

Regulations asking all commercial shops, especially in big cities like Hanoi and Ho Chi Minh City, to have invoices, and making clear the customs duty charges were measures suggested by the Government leader to solve the problem which has been exacerbated by the recent cheap price of export oil.

The MoF was also requested to speed up the equitisation of State-owned enterprises, yet had to be careful to avoid asset losses and the appearance of interest groups.

The ministry – in charge of managing the State assets worth about 3.9 quadrillion VND (US$174.9 billion) and other financial funds – has to tighten its grip and report frequently to the Government over the use of State assets and its operations of those funds, he said.

According to economists, Vietnam's gross domestic product (GDP) growth reached only 5.46% in the first quarter of 2016, down from that of the same period last year. If no drastic measures are taken, the country will be difficult to reach the set yearly target of 6.7%.

The PM affirmed that the Government will not adjust the GDP growth rate for 2016.

Return to top

[5]. TO BOOST EXPORT REVENUES, EXPORTERS URGED TO CHANGE TO ADAPT TO EU MARKET

Vietnamese and Swedish trade officials have called on Vietnamese exporters to be proactive in making changes to boost their share in the European market.

The Ministry of Finance said that at a recent conference held in Hanoi, Vietnamese exporters were urged by Swedish and Vietnamese officials to carefully study the regulations and standards of the EU

Market in order to get headway over other exporters.

The exporters were told to conduct more market research to find out purchasing power, tastes and diversity of the EU market.

Tran Ngoc Quan, Deputy Head of the European Market Department, said the EU is one of Vietnam's key partners in the country's export strategy by 2020 with a vision to 2030.

Return to top

CHINA

[6]. SAT AUTHORITIES OUT IN FULL FORCE FOR VAT IMPLEMENTATION

Staff members from the State Administration of Taxation (SAT) made inspection tours to tax authorities and tax service halls at the grass-roots levels on 20 April 2016 before the nationwide implementation of replacing the business tax with value-added tax (VAT) on 1 May 2016.

County tax service halls will directly face the taxpayers, which is the last link in the process of replacing the business tax with VAT, said Wang Jun, head of the SAT, at the tax service hall in Wangdu county of Hebei province. He stressed that all related work must be completed and ensure that taxpayers benefit from the reform.

After 1 May, tax payments on second-hand housing sales will still take place at the local taxation departments, where they pay the former business taxes. VAT tax payment is simple, but the process of dealing with the tax is complicated. The trade information will first enter the price assessment system of local tax departments and then to the VAT management of the state taxation departments, which will delay the invoicing process. Real estate transactions are very active in some cities, where efforts should be made to prevent the invoicing process from slowing down the implementation of VAT, Wang said.

Return to top

HONG KONG

[7]. PANAMA PAPERS LEAKS PROMPT QUESTIONS IN HK LEGISLATIVE COUNCIL

The Panama Papers leaks recently prompted a question in the Legislative Council about Hong Kong was dealing with suspicious transaction reports, and especially re individuals or entities setting up companies outside of Hong Kong.

In response, the Secretary for Financial Services and the Treasury, Professor K C Chan, said that on receiving a suspicious transaction report (STR), the Joint Financial Intelligence Unit (JFIU), jointly run by the staff of the Hong Kong Police Force and the Customs and Excise Department, will conduct intelligence analysis, and examine the intelligence received in terms of the degree of suspicion, level of risks and severity, etc, according to its risk assessment mechanism. Cases which require in-depth investigation will be referred to the relevant law enforcement agencies (LEAs) for follow-up action or criminal investigation.

The Secretary pointed out that there is no law in Hong Kong prohibiting individuals or commercial entities from setting up companies in jurisdictions outside Hong Kong. There are therefore no statistics on the number of intermediaries in Hong Kong providing services in connection with the incorporation of offshore companies.

Nevertheless, under the Organized and Serious Crimes Ordinance, the Drug Trafficking (Recovery of Proceeds) Ordinance and the United Nations (Anti-Terrorism Measures) Ordinance, if any person (including any company service provider, law firm or financial institution) knows or suspects that any property is proceeds of a serious crime or drug trafficking, or a terrorist's property, the person must file an STR in relation to the information or transaction with the JFIU. Also, financial institutions must strictly comply with the requirements of customer due diligence and record keeping to ascertain the objectives and business information of customers and apply reasonable measures to identify and verify the beneficial owners of customers for mitigating the risk of money laundering and terrorist financing in accordance with the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance.

Regarding tax matters, the Secretary said the Inland Revenue Department (IRD) has taken note of the [Panama Papers] report released by the organisation concerned. "As always, IRD will take necessary actions against tax evasion and avoidance by taxpayers, based on information possessed by the department or received from other sources", he said.

Return to top

[8]. CONSULTATION ON DEVELOPMENT OF A TRADE SINGLE WINDOW IN HONG KONG

The Commerce and Economic Development Bureau has published a consultation paper on the development of a Trade Single Window (SW) in HK. The Government is considering the feasibility of changing HK's trade documentation requirement from post-shipment to pre-shipment in order to align current the current practice with international conventions.

At present, 51 business-to-government (B2G) trade documents are submitted to the Government for meeting regulatory requirements relating to the trading of goods into, out of and through Hong Kong. Notwithstanding various initiatives introduced over the years to ease the burden on the trading community and to speed up customs clearance, over half of these documents are still being processed by conventional paper means. The trading community also has to deal with various government departments separately at different points of time. The Bureau says this fragmented approach is not conducive to the efficient processing of incoming and outgoing goods.

A Government spokesperson said, "As announced by the Financial Secretary in his 2016-17 Budget Speech, we plan to set up an SW as a single information technology (IT) platform for the one-stop lodging of all 51 B2G documents for all trade declaration and customs clearance purposes. This will be an important initiative for maintaining Hong Kong's competitiveness in trade in goods and position as a logistics hub."

To align with international mainstream and best customs practices, the Bureau said the Government would also like to take the opportunity to consider the feasibility and possible benefits of switching Hong Kong's trade documentation requirement from post-shipment to pre-shipment. With the availability of pre-shipment information, the Customs and Excise Department will be able to carry out more effective risk-profiling and hence more targeted enforcement work. This would translate into smoother and seamless cargo clearance for traders.

Comments on the paper are due by 12 July 2016.

Return to top

INDIA

[9]. COMMISSION PAID TO NON-RESIDENT FOR SERVICES RENDERED OUTSIDE INDIA NOT TAXABLE - *FARIDA LEATHER COMPANY* CASE

The Madras High Court has held that commission paid to a non-resident for services rendered outside India is not chargeable to tax in India and is not liable for TDS: *CIT v Farida Leather Company*.

The case concerned the 2010-11 assessment year. The assessee is a firm engaged in a leather business under the name and style of M/s.Farida Leather Company. The AO disallowed a deduction of Rs.52,17,014/-, being commission paid to foreign agents, under s 40(a)(i) of the Income Tax Act, 1961. The CIT(A) allowed the assessee's appeal and the CIT appealed to the ITAT which allowed the assessee's appeal. The Revenue appealed to the High Court.

The Court said the non-resident agents were only procuring orders abroad and following up payments with buyers. No other services were rendered. Sourcing orders abroad, for which payments have been made directly to the non-residents abroad, does not involve any technical knowledge or assistance in technical operations or other support in respect of any other technical matters, the Court said. It also does not require any contribution of technical knowledge, experience, expertise, skill or technical know-how of the processes involved in the development and transfer of a technical plan or design.

The High Court had to consider whether a disallowance under s 40(a)(i) could be made with respect to payment of commission to non-resident foreign agents without deduction of tax at source in the light of insertion of Explanation 4 to s 9(1)(i) and Explanation 2 to s 195(1) of the Act, which was introduced by Finance Act, 2012, with effect from 1 April 1962.

The department contended that the judgment of the Supreme Court in *G. E India Technology Center P. Ltd., v CIT* (2010) 327 I.T.R. 456 (SC) was not good law. It was also contended that after the insertion of Explanation below s 9 (2) of the Act by the Finance Act, 2010, with effect from 1 June 1976, the income of foreign agents is taxable in India as fee for technical services (FTS) under s 9(1)(vii) of the Act and consequently tax needed to be deducted at source while paying the foreign agents.
The High Court rejected the contentions.

As the non-residents were not providing any technical services to the assessee, the Court said the commission payment made to them does not fall into the category of FTS and therefore, explanation (2) to s 9(1) (vii) of the Act, as invoked by the Assessing Officer, had no application to the facts of the assessee's case.
The High Court held that the commission payments to the non-resident agents are not taxable in India, as the agents remain outside India, services are rendered abroad and payments are also made abroad. The contention of the Revenue that the Tribunal ought not to have relied upon the *G.E.India Technology* case, cited supra, in view of insertion of Explanation 4 to s 9(1)(i) of the Act with corresponding introduction of Explanation 2 to s 195(1) of the Act, both by the Finance Act, 2012, with retrospective effect from 1 April 1962 is not correct.

When the transaction does not attract the provisions of s 9 of the Act, then there is no question of applying Explanation 4 to s 9 of the Act.

Return to top

[10]. APA FOR EARLIER YEAR MAY APPLY, DETERMINING "TESTED PARTY" - *RANBAXY LABORATORIES LTD* CASE

The ITAT Delhi has held that foreign related parties, that are the "least complex" entities in the transaction, must be selected as tested parties for the purpose of determining arm's length nature of international transactions. The Tribunal also gave due consideration to a prior advance pricing agreement (APA) reached between the taxpayer and the CBDT under which the facts were similar to the year under consideration: *Ranbaxy Laboratories Ltd. v ACIT*.

The assessee manufactures and sells active pharmaceutical ingredients. Its overseas associated enterprises act as distributors and secondary manufacturers for the assessee's products. During the Assessment Year 2008-09, the assessee entered into transactions with its AEs. The assessee used the TNMM method which the TPO rejected.

In its note on the case, KPMG said the Tribunal found that an earlier APA concluded for an earlier year, while not binding for the year under consideration, nevertheless had "persuasive value" because there had been no change to the assessee's function, asset, and risk analysis. The Tribunal concluded that the foreign related parties were to be considered as "tested parties" and that due weight was to be given to the APA.

Return to top

[11]. CONCEPT OF MUTUALITY IN THE LIGHT OF *BANGALORE CLUB* CASE EXPLAINED - *AIR CARGO AGENTS ASSOCIATION OF INDIA* CASE

The Bombay High Court has held that the contributions made by the members of the Air Cargo Agents Association Of India to the Association (the assessee) cannot be a subject matter of tax merely because the part of its excess of income over expenditure is invested in mutual funds: *CIT v Air Cargo Agents Association Of India*.

The case concerned the concept of mutuality and involved the 2007-08 assessment year. The Court had to consider whether the doctrine of mutuality was applicable to delete the addition of Rs.54,07,484/ made by the Assessing Officer on the Assessee.

The respondent assessee is an association of Air Cargo Agents in India. During the subject assessment year 2007-08, it received subscriptions/contributions totalling Rs.54.07 lakhs from its members in 3 forms ie annual subscriptions, member's annual conventions and member's training programmes. The assessee considered theses amounts were not subject to tax. The Assessing Officer (AO) however, did not accept this.

The Court said the concept of Mutual concerns not being subject to tax is based on the principle of no man can profit out of itself. Therefore the test to be satisfied before an association can be classified as a Mutual concern are complete identity between the members ie contributors and the participants, the action of the mutual concern must be in furtherance of its objectives and there must be no scope of profiteering by the contributors from a fund. These tests have in fact been reiterated in *Bangalore Club v CIT* 350 ITR 509 (SC). However, the facts therein are completely distinguishable, the High Court said.

Amongst the members of the Bangalore Club were certain banks. The Bangalore Club had invested its excess funds in member banks as well as non member banks in form of fixed deposits and earned interest thereon. The assessee paid tax on the interest earned on fixed deposits with non-member banks. However, so far as interest earned from member banks was concerned, the assessee sought to apply the doctrine of mutuality to contend that the interest on the fixed deposits received from the

member banks would not be assessable to tax as the dealing was with members only.

The Apex Court held that no sooner any amount is invested by an association claiming to be a mutual concern in a fixed deposit with the banks the complete identity between the contributors and the participants in the fund on the amounts invested in member banks is ruptured. It held that till the surplus funds were generated and was used only amongst the members/contributors, the complete identity between contributors and participants continued. However, the moment the funds are invested in fixed deposits with the banks and the funds are used for advancing loans etc by the Bank to its customers, the identity of participants and contributors is sapped. Thus the interest earned on fixed deposits is to be brought to tax. However, the High Court said it was to be noted that it did not result in the Bangalore Club being taxed on all contributions of its members.

In the current matter, the case of the Revenue was that having invested excess amounts in mutual funds, the concept of mutuality would not extend to the contribution made by the members of the association even though the contributions are used to achieve the objectives of the association. In fact, as pointed out above, the Apex Court in Bangalore Club did not hold so but only brought to tax the interest earned on fixed deposit with member banks. In this case, the High Court said it was not disputed that the income earned on account of investments made in Mutual Funds has been offered to tax. The respondent has in effect followed the decision of the Apex Court in *Bangalore Club*. However, as held in *Bangalore Club*, it cannot result in the respondent being charged to tax on the contributions received from its members. In fact, the decision of this Court in *Common Effluent* concludes the issue in favour of the assessee. The CIT's appeal was therefore dismissed.

Return to top

[12]. LIECHTENSTEIN TO NEGOTIATE DTA WITH INDIA

The Liechtenstein Government announced on 19 April 2016 that it intends to negotiate a double tax agreement (DTA) with India. Any resulting agreement would be the first of its kind between the 2 countries.

Return to top

JAPAN

[13]. NATIONAL TAX AGENCY PUBLISHES GUIDANCE ON NEW BEPS ACTION 13 TP DOCUMENTATION REQUIREMENTS

A new transfer pricing regime in Japan, effective 1 April 2016, generally puts into effect the provisions under BEPS Action 13 requiring country-by-country (CbC) reporting. The National Tax Agency has now published guidance on the new transfer pricing documentation requirements.

According to KPMG, taxpayers that are required to submit a CbC report are:

- Domestic corporations that are the ultimate parent companies of multinational entity (MNE) groups whose consolidated revenues are JPY 100 billion or more.
- If the ultimate parent company of the MNE group is located in a country that does not have in effect an agreement for the exchange of information with the Japanese tax authority, then domestic corporations (not the ultimate parent company) or foreign corporations of an MNE group that have permanent establishments (PEs) in Japan.

In addition, domestic corporations of MNE groups and foreign corporations of MNE groups that have PEs in Japan are required to submit the basic information of the ultimate parent company including the name, the principal place of business or the place of control over the business, the name of the representative person, and enterprise identification number (if available).

The CbC report is to be submitted electronically, to be made via an internet-based system known as "e-Tax." A multinational company that has consolidated revenue that is less than JPY100 billion in the preceding fiscal year is exempt from this requirement.

A taxpayer must submit the CbC report in the year following the fiscal year-end of the ultimate parent company of the multinational corporation group. For example, a Japanese ultimate parent company with a fiscal year-end of 31 March 2017 must submit the CbC report by 31 March 2018. The first submission requirement applies for the fiscal year starting on or after 1 April 2016.

KPMG notes that there is no requirement for the scheduled submission of the Local file. However, a taxpayer must prepare the Local file on a contemporaneous basis and must keep it for 7 years. The recordkeeping requirement can be extended to 10 years under certain circumstances.

A taxpayer with intercompany transactions less than JPY 5 billion (ie the total amount of both payment and receipt) and intangible transactions of a value of less than JPY 300 million is exempt from the Local file requirement.

The CbC report is required to be prepared in English.

A maximum penalty of JPY 300,000 may be imposed when a taxpayer fails to submit the CbC report.

KPMG warns that the deadline to prepare the Local file is the same date as the due date for filing the return, and this is a "tight" deadline in Japan. The taxpayer has only about 3 months after the fiscal year-end to prepare the tax return (when the consolidated tax return is not elected) including an extension. Therefore, KPMG suggests that advance preparation - including the preparation of the template, etc - would be prudent.

Return to top

[14]. SUPPORT BUILDS FOR DELAYING SALES TAX INCREASE

Nikkei reports that calls for postponing the consumption tax hike for next April are growing within Japan's ruling coalition, with concerns that the increase could weigh down the sputtering economy and hurt victims of the recent earthquakes on the island of Kyushu.

"There was already momentum building for a delay, which only became stronger after the earthquakes," a senior member of the ruling Liberal Democratic Party said.

"We don't need to rush into a decision on the tax hike if we rule out same-day elections," another official said.

Some within the ruling bloc suggested that the government announce the delay around the time of the Ise-Shima summit in May, and seek the public's judgment by holding both the upper and lower house elections on the same day in July similar to how Prime Minister Shinzo Abe dissolved the lower house in November 2014 for a snap election to gauge support for an earlier tax hike delay.

Return to top

[15]. JAPAN AND PANAMA TO NEGOTIATE TIEA

On 20 April 2016, Japanese Prime Minister Shinzo Abe and Panamanian President Juan Carlos Varela jointly announced that the 2 countries would begin negotiations for a tax information exchange agreement (TIEA). Any resulting agreement would be the first of its kind between the 2 countries.

Return to top

TAIWAN

[16]. TAX REBATE OFFERED TO HI-TECH FINANCE FIRMS IN TAIWAN

A 30% rebate on taxes is may become available for financial firms in Taiwan if they conduct research and development (R&D) on new and innovative financial systems and technologies.

According to *Taxation Info News*, the Financial Supervisory Commission of Taiwan announced on 21 April 2016 that it was examining implement tax breaks for the year 2016. The proposal is intended for financial service providers working on R&D activities.

The tax rebate would give financial technology companies a 15% cut on their tax bill spent on studies and advancement of new technologies, software, and systems. The rebate will be capped at 30% of the total tax obligations of the company for the year.

According to the Financial Supervisory Commission of Taiwan, the implementation will be by the end of May – allowing financial businesses to obtain the rebate for R&D conducted in 2016.

Return to top

MYANMAR

[17]. UPDATED LISTS OF ECONOMIC ACTIVITIES FOR FOREIGN INVESTMENT

New guidance issued by the Myanmar Investment Commission updates the rules concerning economic activities with respect to foreign investment. The activities range from those that are prohibited, to those that are allowed under specific conditions (such as activities allowed only in the form of a joint venture with citizens of Myanmar). The guidance is contained in notification 26/2016.

Prohibited economic activities generally involve actions that would affect the watershed and water resources, religious or traditional places, and pasture land or farms.

KPMG says there are changes to the types of activities that may be allowed as joint ventures with citizens of Myanmar. Previously listed items have been removed, and the new list does not include, for instance, the production and distribution of hybrid seeds or the manufacture of rubber products. These activities could potentially be conducted by a wholly foreign-owned entity. Other changes concern ecotourism and the production and distribution of vaccines in Myanmar.

Return to top

TAX AND TRADE NEWS OF WIDER INTEREST

BEPS

[18]. IMPLEMENTING THE BEPS PACKAGE: 1ST MEETING WITH NEW ASSOCIATES IN JAPAN

The OECD has agreed a new framework that will allow all interested countries and jurisdictions to work jointly for the implementation of the package of measures against BEPS. This framework is designed to bring together all interested countries and jurisdictions as Associates on an equal footing with OECD and G20 countries in the OECD's Committee on Fiscal Affairs to develop international standards related to BEPS and to review and monitor the implementation of the whole BEPS package.

The proposal for broadening participation in the OECD/G20 BEPS Project was endorsed by the G20 Finance Ministers at their meeting on 26-27 February 2016 in Shanghai, China and was welcomed by the G20 Finance Ministers and Central Bank Governors at their meeting on 14-15 April 2016 in Washington D.C.

All interested countries and jurisdictions, including developing economies, can now express their interest in joining this inclusive framework. The OECD says the first meeting of the Committee on Fiscal Affairs including the new Associates will be held in Kyoto, Japan, on 30 June and 1 July 2016.

Return to top

[19]. OECD FORUM ON TAX ADMINISTRATION MEETING IN CHINA WILL FOCUS ON BEPS IMPLEMENTATION PRIORITIES AND IMPACT

The role of tax administrations in implementing the OECD/G20 work on the international tax agenda will be the focus of the 10th Plenary meeting of the OECD Forum on Tax Administration (FTA) to be held in Beijing, People's Republic of China, on 11-13 May 2016.

The OECD said that, reflecting the recent G20 endorsement of the BEPS package, a primary focus of the FTA Plenary will be on BEPS implementation priorities and the impact of the post-BEPS environment on tax administrations.

Against a backdrop of recent tax policy developments, such as the Common Reporting Standard (CRS), paired with the realities of increasing globalisation, increasing mobility for taxpayers and increasing information exchange between tax authorities, tax administrators will host discussions on working collaboratively to address cross-border tax evasion.

The meeting will also highlight innovations, leading practices, and future opportunities in relation to efforts by tax administrations to make better use of data and analytics as well as in the application of e-services and digital solutions. Participants will also consider the changing landscape of tax service providers.

In recognition of the global responsibility of FTA members to aid developing countries in the improvement of tax administration, the Plenary will also explore recommendations for improving the efficiency and effectiveness of technical assistance, and to enhance capacity building coordination and collaboration with other international organisations.

The Plenary will also host the second signing ceremony of the Multilateral Competent Authority agreement for the automatic exchange of Country-by-Country reports (the "CbC MCAA"), continuing the efforts to boost transparency by multinational enterprises (MNEs). The MCAA will enable consistent and swift implementation of new transfer pricing reporting standards developed under Action 13 of the BEPS Action Plan and will ensure that tax administrations obtain a complete understanding of the way MNEs structure their operations, while also ensuring that the confidentiality of such information is safeguarded.

Return to top

TRANSFER PRICING

[20]. WCO VALUATION AGREEMENT ON TRANSFER PRICING AND CUSTOMS

An important new instrument on transfer pricing and Customs valuation has been finalised by the World Customs Organisation (WCO) Technical Committee on Customs Valuation. It was finalised at the 42nd Session of the Technical Committee on Customs Valuation which took place in Brussels from 18 to 22 April 2016 under the Chairmanship of Ms Yuliya Gulis of the United States.

The instrument contains a case study illustrating a scenario where Customs took into account transfer pricing information in the course of verifying the Customs value.

The WCO Valuation Agreement sets out the methodology for establishing the Customs value, used as the basis for calculating Customs duties. The Agreement foresees that Customs may examine transactions between related parties where they have doubts that the price has been influenced by the relationship.

The OECD has developed Guidelines for establishing the transfer price, that is, the price for goods and services sold between controlled or related legal entities, in order to determine business profit taxes where businesses are related.

The WCO said that over recent years, the similar objectives but different methodologies of transfer pricing and Customs valuation have been noted, and it has been recognised that business documentation developed for transfer pricing purposes may contain useful information for Customs. An earlier instrument of the Technical Committee, Commentary 23.1, confirmed this principle.

The new case study provides an example of Customs making use of transfer pricing information based on the transactional net margin method (TNMM). On the basis of this information, Customs accepted that the sale price in question had not been influenced by the relationship. The case study (Case Study 14.1) will be made available in the WCO Valuation Compendium, subject to approval by the WCO Council in July 2016.

The OECD has provided valuable input to the Technical Committee discussions in the development of the new instrument which provides helpful guidance to both Customs administrations and the business community.

Both the WCO and the OECD advocate closer cooperation between Customs and tax administrations in order to strengthen governments' ability to identify the correct tax and duties legally due and enhance trade facilitation for the compliant business sector.

Return to top

[21]. THE LINK BETWEEN TRANSFER PRICING AND CUSTOMS VALUATION – 2016 COUNTRY GUIDE: DELOITTE

Deloitte has released it's the *Link Between Transfer Pricing and Customs Valuation – 2016 Country Guide*. It compiles information regarding the customs-related requirements and implications of related party pricing and retroactive transfer pricing adjustments in numerous key jurisdictions around the world. In all, some 51 countries were surveyed, including many from the Asia-Pacific region, including China, India, Indonesia, Japan, Malaysia, Australia, New Zealand, Philippines,

Singapore, South Korea, Taiwan, Thailand and Vietnam.

Information provided includes:

- the type of information and documentation required and accepted by local customs authorities in support of using transfer prices as transaction value;
- whether related party customs value is of high or increasing scrutiny by customs authorities;
- the impact of retroactive transfer pricing adjustments.

Return to top

EU NEWS

[22]. EU STATES BACK PLANS FOR COMMON TAX HAVENS' BLACK LIST

European Union states agreed on 22 April 2016 to work toward setting up a joint blacklist of tax havens by the end of the summer in the wake of the Panama Papers leaks.

Following the leaks, Reuters said EU Tax Commissioner Pierre Moscovici had urged EU states to find a compromise and set up a joint list with common sanctions against tax havens to combat tax evasion.

Currently, the 28 EU states have broadly different national lists of so-called non-cooperative jurisdictions on tax matters and are free to decide whether to impose restrictive measures.

"There is a unanimous support to set up a common EU black list of tax havens by the end of the summer," Moscovici told reporters at the end of a meeting of EU finance ministers in Amsterdam.

EU finance ministers backed this plan, Dutch Finance Minister Jeroen Dijsselbloem told a news conference after an informal ministerial meeting. But negotiations are expected to be complex and the number of jurisdictions to be included in the list remains unclear, Reuters said.

Plans to have a single EU list are not new but have been blocked in the past by national conflicting interests.

Ministers also agreed to automatically exchange information on the beneficial owners of companies, another move that may increase transparency and reduce tax evasion.

The European Commission will also present in the coming months new legislative proposals to crack down on banks and tax advisers who help their clients to hide money offshore.

Return to top

[23]. CORPORATE TAX INFORMATION SHARING WELCOMED

The European Commission's proposal for automatic exchange of corporate tax information among national tax authorities has been welcomed by Economic and Monetary Affairs Committee MEPs as a positive step in the fight against aggressive corporate tax planning. But MEPs also advocated adding further safeguards in the text to ensure that competition in the single market is not distorted by advantageous national tax deals with multinationals.

The report by Dariusz Rosati (EPP, PL) - approved by 45 votes in favour, to none against with 11

abstentions - sets out Parliament's recommendations to EU member states, which have to decide unanimously on the Commission's proposal, which is part of the anti-tax avoidance package.

"This first legislative proposal in the Commission's Anti-Tax Avoidance Package is an important step in the fight against unfair tax practices in the EU. It should enhance transparency and reduce harmful tax competition. This cannot be achieved by individual member states; it requires common action. If this to be taken up effectively, the Commission should be included in the exchange of country-by-country reporting", said Mr Rosati.

The proposal would oblige multinational firms with total consolidated revenues of €750 million or more to file a country-by-country report in the member state in which the ultimate parent entity of the group is resident for tax purposes. That member state should then share this information with other member states where the company operates.

Full access for the Commission

MEPs insist that the European Commission should have full access to the information exchanged among member states' tax authorities to enable it to assess whether member states' tax practices comply with state aid rules. This is especially important for small and medium sized enterprises that operate in one country only. "These companies usually pay an effective rate of tax that is much closer to statutory rates than multinational firms. (..) Domestic companies should not face disadvantages due to their size or lack of cross-border trade", the text says.

Sanctions

In order to ensure that the reporting obligation is enforced, MEPs want member states to introduce sanctions to be imposed on multinational companies that fail to file their CbC report.

Return to top

[24]. EU PROPOSAL FOR PUBLIC DISCLOSURE OF MNE TAX INFO – VOTE SOON

As reported at 2016 ATB 15 [37], a proposal made by the European Commission (EC) on 12 April 2016 seeks to amend the Accounting Directive (Directive 2013/34/EU) to ensure that large groups publish annually a report disclosing the profit and the tax accrued and paid in each Member State on a country-by-country (CbC) basis.

In a note on the proposal, Deloitte says the it is separate from the EU's proposed harmonised implementation of a CbC reporting requirement as part of the Anti-Tax Avoidance Package.

On 28 January 2016, the European Commission released an anti-tax avoidance package comprising 3 separate documents: a proposed European Union (EU) Anti-Tax Avoidance Directive (the ATA Directive), a proposed directive implementing the automatic exchange of country-by-country reports (the CbCR Directive), and a communication proposing a framework for a new EU external strategy for effective taxation – see 2016 ATB 4 [46].

According to Deloitte, the ATA Directive is scheduled for approval by the European Council on 25 May 2016 and must be approved by all 28 EU member states. Deloitte says it is unclear whether this will be feasible.

Return to top

[25]. ACCOUNTANTS, JOURNALIST FACE "LUX LEAKS" LEAKS TRIAL IN LUXEMBOURG

Reuters has reported that 2 former employees of a major accountancy firm went on trial in Luxembourg on 26 April 2016 along with a French journalist, accused of leaking details of corporate tax deals that have fueled global demands for reform.

The case, coming 18 months after revelations dubbed "LuxLeaks" sparked accusations the Grand Duchy conspired with multinational companies to deprive other EU states of tax revenue, has drawn strong criticism from civil rights and media groups who argue the men are whistleblowers in need of protection.

According to Reuters , analysts say the Luxembourg authorities face a dilemma between defending confidentiality within financial institutions on whose customers the tiny state's economy depends and avoiding damage to its public image that could discourage business.

Antoine Deltour, a French citizen like the other defendants, is accused of passing data on PwC clients to journalist Edouard Perrin for a French television broadcast made in 2012, Reuters said. Prosecutors say that data, as well as material allegedly supplied by the second former PwC employee Raphael Halet, was later used in the LuxLeaks revelations of November 2014 by the International Consortium of Investigative Journalists.

At the opening day of the trial on 26 April, Reuters reported that a PwC expert said Deltour copied 45,000 pages of documents that he was able to access because of a glitch in the firm's servers, which had since been fixed. "He found them while looking for training documents," the lawyer, Philippe Penning, told reporters.

Reuters said the charges carry a maximum penalty of 5 years in prison and fines of €1.25 million (US$1.4 million).

Luxembourg has a law protecting whistleblowers but it is limited to exposing illegality, such as corruption and money laundering. The government and companies involved say that the practices in this case were legal.

Return to top

OECD NEWS

[26]. OECD RELEASES COMMENTS RECEIVED ON DISCUSSION DRAFT ON TREATY ENTITLEMENT OF NON-CIV FUNDS

On 24 March 2016, the OECD invited comments to the questions included in a consultation document on issues and suggestions on the tax treaty entitlement of non-CIV (Collective Investment Vehicle) funds. The OECD has now released the comments received.

Commentators were invited to respond to the specific questions included in this consultation document in order to facilitate the analysis of these concerns and suggestions. The consultation document and the responses received are to be discussed at the May 2016 meeting of Working Party 1 of the OECD Committee on Fiscal Affairs.

Return to top

AUSTRALIA

[27] ATO RELEASES 4 TAXPAYER ALERTS ON PROFIT-SHIFTING ARRANGEMENTS

The ATO on 26 April 2016 released 4 Taxpayer Alerts dealing with concerns it has about emerging profit-shifting arrangements that may lead to tax avoidance:

- ***TA 2016/1 - Inappropriate recognition of internally generated intangible assets and revaluation of intangible assets for thin capitalisation purposes***. The ATO is reviewing arrangements where it considers internally generated intangible items have been inappropriately recognised as assets, or have been over valued or inappropriately re-valued, with the consequence of increasing an entity's maximum allowable debt limit for thin capitalisation purposes. The ATO is concerned that in some circumstances, entities are making choices to recognise internally generated items, where the item chosen falls outside the scope of the intangible asset recognition criteria in Australian Accounting Standards Board's standard AASB 138 *Intangible Assets* (AASB 138).
- ***TA 2016/2 - Interim arrangements in response to the Multinational Anti Avoidance Law*** (MAAL). This Alert cautions companies and their intermediaries about implementing arrangements to avoid the MAAL, which took effect on 1 January 2016.
- ***TA 2016/3 - Arrangements involving related party foreign currency denominated finance with related party cross-currency interest rate swaps***. The ATO says it is currently reviewing arrangements which appear to be designed to increase the cost of corporate borrowings by Australian companies from their overseas related parties and/or avoid interest withholding taxes. Under these arrangements, companies use their related party financing arrangements to create an alleged need to swap currencies and periodical payments for questionable commercial reasons.
- ***TA 2016/4 - Cross-border leasing arrangements involving mobile assets*** eg vessels. The ATO says its concerns relate to whether an inter-positioned company has been put there for the purpose of gaining favourable tax treaty treatment. The ATO is also concerned about whether the amount brought to tax is consistent with the contribution made by the Australian operations, including the use of the mobile asset, and whether this meets the arm's length requirements of the transfer pricing provisions of our tax laws.

Deputy Commissioner, Public Groups, Jeremy Hirschhorn said that while the majority of large corporates pay the right amount of tax in Australia "and are open and transparent in their dealings with us, we are concerned some arrangements may not meet the laws as intended".

Deputy Commissioner, International, Mark Konza said the MAAL was designed to counter the erosion of the Australian tax base by multinational entities using artificial and contrived arrangements to avoid attributing profits to a permanent establishment in Australia. "Our view is that interim arrangements must reflect the economic and commercial reality of operating in Australia and we continue to engage with taxpayers and review these interim arrangements to ensure they do not themselves amount to tax avoidance schemes," Mr Konza said.

Return to top

[28]. AUSTRALIA WORKING ON FTA WITH THE EU

Australian Trade Minister Steven Ciobo says he is working with the European Union (EU) and member state authorities to prepare the way for free trade agreement negotiations. An Australia-EU Free Trade Agreement (FTA) will open new export markets, creating opportunities for Australian

businesses that will drive economic growth and create jobs, he said.

An Australia-EU FTA will also attract vital new investment into the Australia, creating more local jobs, as European businesses look to Australia as a gateway to Asia.

During the week 26-29 April 2016, the Minister said he would visit Berlin, Frankfurt, London, Rome and Brussels to promote Australia's trade, investment and tourism credentials with the EU.

He will meet with the European Commissioner for Trade, Cecilia Malmström while in Brussels to discuss an Australia-EU and prepare for the launch of negotiations. He will also meet with the new UK Minister for Trade and Investment, Lord Mark Price CVO, and the UK Secretary of State for Business, Innovation and Skills, The Rt Hon Sajid Javid.

The EU is Australia's second largest trading partner and largest source of foreign investment. In 2014-15 two-way trade was worth AUD$83 billion and investment stock totalled AUD$959 billion. An Australia-EU FTA would further fuel this important trade and investment relationship.

The Minister said the Government continues to pursue an ambitious trade agenda to create new opportunities for Australian businesses to export, expand and employ more people. He said the Government continues to progress FTA negotiations with India, and Indonesia, pursue an FTA with the Gulf Cooperation Council and maintain momentum on the Regional Comprehensive Economic Partnership (RCEP) negotiations.

Return to top

[29]. AUSTRALIA HOSTS ASIA REGIONAL FTA NEGOTIATIONS

The Minister for Trade Steven Ciobo has announced that Australia is hosting the 12th round of negotiations towards a major new free trade agreement – the Regional Comprehensive Economic Partnership (RCEP).

RCEP brings together China, Japan, Korea, India, New Zealand and the 10 Member States of ASEAN. These countries – including the economic giants of the Indo-Pacific region – cover 9 of Australia's top 12 trading partners and almost 30% of global GDP, the Minister said.

Mr Ciobo said RCEP countries currently account for around 60% of Australia's 2-way trade, 70% of its exports and 15% of Australia's 2-way investment. RCEP will drive Australian jobs and growth as it creates more opportunities for local businesses to provide goods and services to the region's rapidly growing middle classes.

Removing trade barriers remains a key priority for the Government in Australia's transitioning economy, the Minister said. Any agreement that expands trade and investment adds to regional prosperity and benefits Australia as new jobs are created.

RCEP will establish a rules-based framework for trade and investment in the region and encourage countries to work collaboratively to promote economic growth and address problems. RCEP will provide increased opportunities for Australian industry to participate in regional supply chains. It will also assist Australian business to access regional technology and capital to boost jobs and innovation in Australia.

Return to top

[30]. ASIA REGION FUNDS PASSPORT - MEMORANDUM OF COOPERATION SIGNED

Australia's Assistant Treasurer, Ms Kelly O'Dwyer, on 28 April 2016 signed the Asia Region Funds Passport's Memorandum of Co-operation (MoC) with Japan, Korea and New Zealand. The Assistant Treasurer said the Passport is an international initiative that facilitates the cross-border offering of eligible collective investment schemes while ensuring investor protection in economies participating in the Passport. The MoC sets out the internationally agreed rules and cooperation mechanisms of the Passport.

The Assistant Treasurer said the Passport will create a single market for managed funds encompassing economies across the region. Ms O'Dwyer added that the Passport will better enable Australian fund managers to provide financial services to Asia's growing middle class, boosting Australian exports, while giving investors greater investment choices.

Ms O'Dwyer said the MoC comes into effect on 30 June 2016 and any other eligible economy that signs the MoC before then will be an original participant in the Passport. The MoC also ensures any other eligible APEC economies are able to participate in the Passport even after it comes into effect. Participating economies have up to 18 months from 30 June 2016 to implement domestic arrangements. Activation of the Passport will occur as soon as any 2 participating economies implement the arrangements under the MoC. The Assistant Treasurer said the Australian Government "is committed to implementing the arrangements as a matter of priority".

Return to top

[31]. AUSTRALIA IMPOSES ANTI-DUMPING DUTIES ON IMPORTED STEEL FROM CHINA

Australia's Anti-Dumping Commission on 22 April 2016, imposed anti-dumping measures in the form of interim dumping duties on rod in coils exported from the People's Republic of China. Anti-dumping Notice 2016/47 provides the details.

Return to top

NEW ZEALAND

[32] NZ GOVERNMENT ESTABLISHES INQUIRY INTO ITS FOREIGN TRUST DISCLOSURE RULES

As a result of the recent release of the "Panama Papers", concerns have been raised about rules covering foreign trusts registered in New Zealand. The NZ Cabinet has therefore decided to initiate a review of New Zealand's disclosure rules relating to foreign trusts registered in New Zealand to ensure New Zealand's reputation is maintained.

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, in its combined Phase 1 and Phase 2 Peer Review Report of 2013, rated New Zealand "compliant" – the highest possible ranking. Nonetheless, the Panama Papers concerns have prompted the inquiry.

The inquiry will examine, among other things:

- New Zealand's existing foreign trust disclosure rules eg: (i) record-keeping requirements, including records required to be provided to the New Zealand Government; (ii) enforcement of the rules; (iii) exchange of information with foreign jurisdictions; and (iv) practices for complying with the rules.
- Whether the existing foreign trust disclosure rules and the enforcement of those rules are

sufficient to ensure New Zealand's reputation is maintained when considered alongside things such as New Zealand's commitment to the OECD BEPS action plan.

The Inquiry is to report its findings in writing by 30 June 2016.

Return to top

RECENT TAX ARTICLES

[33]. RECENT TAX ARTICLES OF INTEREST

[Citing tax and related articles from various journals of interest to practitioners, advisers and corporate tax departments; a useful research and reference tool]

Hong Kong Lawyer [Law Society of Hong Kong] – April 2016

"Face to face with Professor K C Chan" – Interview with Treasury Secretary following 2016 Budget [p 15] – by Cynthia G Claytor

[NOTE: From time to time, the Asia Tax and Trade Bulletin [formerly the ASEAN Tax Bulletin] will contain cross-references to different Issues of the Bulletin. They will appear as, for example, 2016 ATB 1 [12] – this means Issue 1 para [12] of the 2016 Asia Tax and Trade Bulletin.]

Return to top