The Commonwealth Association of Tax Administrators

Newsletter

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The Underground Economy: Not Your Problem?

No. 4 of 2010 **December 2010**

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Editorial

CATA NIGERIA 2010: A TRUE EXCHANGE OF INFORMATION

Firstly I wish to convey my congratulations to the Federal Inland Revenue Service of Nigeria, in particular Mrs Ifueko Omoigui Okauru and her local organising team for hosting such a wonderful conference. The two topics for this year's conference were very topical and seemed to have raised the bar for future conference topics. This year we discussed *Taxation of Specialised Sectors* and *Exchange of Information: Domestic and International*. While CATA has focused in the past on issues related to tax administration there has been a gradual shift towards more current technical issues. It occurs to me that this may be a reflection of a number of factors including growth of Members human resource and technical skills and/or a growth in the tax market in general, in both developed and developing economies.

The depth of discussions at this year's conference bears testimony to the growth of tax knowledge and skills in CATA member states. I get the feeling we will soon say goodbye to the days when smaller countries tax policies were dictated by the larger more developed countries. Don't get me wrong - there is still a lot that can be learnt from larger countries but greater participation in the mainstream technical issues by the smaller countries has enhanced the knowledge and expertise of their human resources thus enabling them to fertilise their own ideas and create their own concepts of dealing with the more technical tax issues and fashion them to suit their own circumstances. Further, enhanced participation by all countries in areas such as exchange of information through entering into tax information exchange agreements and traditional double taxation avoidance agreements has enabled smaller jurisdictions to overcome the tax leakages that come with global business ventures.

The challenge for CATA is therefore to broaden its activities and to deepen cooperation between its Member States and with other international organisations so that Members may be encouraged to enjoy the numerous benefits that come with participation in global discussions and forums. Let us hope that the two topics discussed at this year's conference have done their bit to foster greater interaction between Member States as the benefits of open discussion were clearly visible from the intense discussions during the conference and during the various syndicate sessions.

Forthcoming developments to the Newsletter

In attempting to make the CATA Newsletter a little more interesting, in 2011 I aim to introduce a segment in the newsletter called **Member Focus**. In this segment during each edition of the newsletter we will focus on 2 Members. Country correspondents will be requested to provide details of events happening in their country together with statistical information on their country. The precise details of the format the segment will take will be communicated with country correspondents in the new year. I hope this will make the Newsletter a little more interesting. Any suggestions as to how we can further

improve our publication are also very welcome and may be addressed to me at t.bakwena@commonwealth.int or cata@commonwealth.int

Finally, I wish to take this opportunity to wish all our Members a very merry festive period and safety to their various holiday destinations and on their return.

Visit CATA website at www.cata-tax.org For all information about activities and forthcoming events

CATA NEWS

THIRTY-FIRST CATA ANNUAL TECHNICAL CONFERENCE 2010

The Thirty-First CATA Annual Technical Conference was held in Abuja, Nigeria from 10 to 16 October 2010. It was attended by 92 delegates, including special guests from non-member countries and international organisations. The Conference benefitted from high quality presentations from GTZ, Kenya, Malaysia, Mauritius, New Zealand, Nigeria, Singapore, Tanzania, Sri Lanka and United Kingdom.

In addition to the technical sessions, delegates enjoyed the extensive socio-cultural activities organised by various institutions in Nigeria as well as the wonderful hospitality extended by the Federal Inland Revenue Service (FIRS), Nigeria throughout the duration of the Conference. Delegates unanimously appreciated the efforts of the FIRS in making their stay enjoyable and memorable.

THIRTY-SECOND CATA ANNUAL TECHNICAL CONFERENCE 2011

The 32nd Annual Technical Conference of CATA will be hosted by Sri Lanka from 18 to 23 September 2011.

MEMBERS NEWS

Australia

Country Correspondent
Mr Brendan Shannon

ATO Celebrates 100 years

In 2010 the Australian Taxation Office (ATO) commemorates its centenary.

On 11 November 1910, the Federal Land Tax Branch of the Department of Treasury came into existence as the forerunner to the ATO. From its earliest days through to today's modern, sophisticated tax and superannuation administration that manages a wide range of taxes, payments and systems, the ATO has made a valuable contribution to the Australian community.

Our centenary year has been marked by a number of commemoration activities that captured the spirit of this milestone and allowed us to connect with the wider community.

Australia Post, our national postal service provider, issued a special commemorative stamp to honour and recognise our role as a key institution in supporting and developing Australia over the past 100 years. The stamp is available to the Australian public until the end of 2010.

Additionally, the Royal Australian Mint released a circulating 20 cent coin to mark this occasion. The design of the ATO coin was the result of our consultation, collaboration and co-design with the Australian community. The coin represents our pride in Australia and recognises the achievements of our nation supported by a fair and professional ATO.

The ATO's official history has also been chronicled in a book featuring not only the technical and official aspects of our organisation, but also personal accounts from both past and present members of our organisation. The book also highlights the achievements of the ATO and contributions to the Australian community over the past 100 years. Our official history book shows why our people are at the heart of our organisation, and why we work for the wellbeing of Australians.

Our employees have embraced the spirit of our centenary year and taken the opportunity to contribute items to a time capsule. The items preserved in the capsule paint a rich picture of what it was like to work in the ATO in 2010, including our work, culture, values and achievements.

The capsule will serve as a valuable resource for past, present and future ATO employees, helping us to understand our history and use this knowledge to shape our future and add value to our nation. It will be opened on our 150th birthday.

Our centenary has been an opportunity to reflect on our past; on the initiative and endeavour that brought us to a position of being a world-leading tax and superannuation administration. Just as we celebrate our past successes, our centenary year has been an opportunity to nurture the foundations for a future in which Australians value their tax and superannuation systems as community assets, and where willing participation is seen as good citizenship. We take pride in our journey and look ahead with confidence, determination and enthusiasm.

We would like to thank our international colleagues from countries right across our region and the world, and particularly our fellow CATA members for their special birthday wishes throughout the year.

Canada

Country Correspondent
Ms Debra Shalla

Second edition of the video contest on YouTube
The Underground Economy: Not Your Problem?

This past summer, the Canada Revenue Agency (CRA) launched the second edition of the video contest on YouTube “The Underground Economy: Not Your Problem?”.

The contest challenged Canadians to create videos that would tell us in their own words, using their own creativity, why the underground economy is bad for all of us. They rose

to the challenge! We received some incredibly creative, thought-provoking, and entertaining videos.

The winners of the video contest were announced by The Honourable Keith Ashfield, Minister of National Revenue. "The winning videos deliver strong messages that clearly demonstrate the negative impacts of the underground economy," said Minister Ashfield. "I would like to personally thank everyone who participated in this video contest; the videos help reinforce the CRA's position on the underground economy and remind Canadians of the risks involved for individuals who participate in the underground economy."

The videos show that those who participate in the underground economy are avoiding their tax responsibilities at the expense of all Canadians. Participation in the underground economy places an unfair burden on law-abiding businesses and individuals and reduces the amount of money available for important government programs for priorities such as health care, education and the environment.

A CRA selection committee determined the winners based on video quality, creativity and how effectively the videos showed the impact of the underground economy on society.

The winning videos have been posted on the CRA Web site at www.cra.gc.ca, specifically at: www.cra-arc.gc.ca/gncy/cntst/menu-eng.html

Cyprus

Country Correspondent
Mrs Athina Stephanou

Main Changes to OECD Model on Income and Capital

On 22nd July 2010 the 8th edition of the Model was issued by OECD. It has also been uploaded on the website of the OECD "the 2010 update of the Model" indicating the changes to the 2008 Model. Changes appear in strikethrough for deletions and bold italics for additions. Below is a summary of the 2010 update of the Model.

1. Article 7 of the Model

In the model there is only one change, the replacement of article 7 by a new article (p.3-4). In fact paragraphs 3-6 of the existing article are deleted meaning that the method of allocation of profits to a permanent establishment by apportionment of the total profits of the enterprise is no longer included in the model. Transactions between the permanent establishment and other parts of the enterprise need to be at arms length. It is also clearly stated that arms length price is applied for the purpose of articles 7, 23A and 23B. A new paragraph in the article specifies that where an adjustment is made to the profits of a permanent establishment by a Contracting state, the other state needs to make a corresponding adjustment for the elimination of Double Taxation.

"2. For the purposes of this Article and Article [23 A] [23B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise."

"3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other."

In the Commentary there are many changes. Some of the main changes are mentioned below:

1. Article 1- Persons Covered

Paragraphs 6.8- 6.39 were added (p. 4-13). Paragraphs 6.8-6.34 deal with Collective Investment Vehicles (CIV) and paragraphs 6.35 – 6.39 deal with entities owned by a State, its political subdivision or a local authority.

Per par 6.8 "…… the report by the Committee on Fiscal Affairs entitled the Granting of Treaty Benefits with respect to the income of CIV, the main conclusions of which have been adopted in the commentary of the model, the term CIV is limited to funds that are widely held, hold a diversified portfolio of securities and are subject to investor – protection regulation in the country in which they are established."

Per par 6.10 "the determination of whether a CIV should be treated as a person begins with the legal form of the CIV, which differs substantially from country to country and between the various types of vehicles".

"In most cases, the CIV would be treated as a taxpayer or a person for purposes of the tax law of the State in which it is established."

"The fact that the tax law of a country where such a CIV is established would treat it as a taxpayer would be indicative that the CIV is a person for treaty purposes. Contracting States wishing to expressly clarify that, in these circumstances, such CIVs are persons for the purposes of their conventions may agree bilaterally to modify the definition of person to include them"

Per par 6.11 "Whether a CIV is a resident of a contracting state depends not on its legal form (as long as it qualifies as a person) but on its tax treatment in the State in which it is established. Although a consistent goal of domestic CIV regimes is to ensure that there is only one level of tax, at either the CIV or the investor level, there are a number of different ways in which States achieve that goal. In some States, the holders of interests in the CIV are liable to tax on the income received by the CIV, rather than the CIV itself being liable to tax on such income. Such a fiscally transparent CIV would not be treated as a resident of the Contracting State in which it is established because it is not liable to tax therein."

Note: Per article 4 "the term resident of a contracting state means a person liable to tax therein by reason of his domicile, residence, place of management or any other criterion of similar nature……".

Per par 6.12 "By contrast, in other States, a CIV is in principle liable to tax but its income may be fully exempt, for instance, if the CIV fulfils certain criteria with regard to its purpose, activities or operation, which may include requirements as to minimum distributions, its sources of income and sometimes its sectors of operation."

"For those countries that adopt the view, reflected in paragraph 8.6 of the Commentary on Article 4, that a person may be liable to tax even if the State in which it is established does not impose tax, the CIV would be treated as a resident of the State in which it is established in all of these cases because the CIV is subject to comprehensive taxation in that State. Even in the case where the income of the CIV is taxed at a zero rate, or is exempt from tax, the requirements to be treated as a resident may be met if the requirements to qualify for such lower rate or exemption are sufficiently stringent."

Per par 6.13 "those countries that adopt the alternative view, reflected in par 8.7 of the Commentary on Article 4, that an entity that is exempt from tax therefore is not liable to tax may not view some or all of the CIVs described in the preceding paragraph as residents of the States in which they are established. States taking the latter view, and those States negotiating with such States, are encouraged to address the issue in their bilateral negotiations."

Par 6.14 deals with beneficial ownership. "Accordingly a vehicle that meets the definition of a widely held CIV will also be treated as the beneficial owner of the dividends and interest that it receives, so long as the managers of the CIV have discretionary powers to manage the assets generating such income (unless an individual who is a resident of that state who would have received the income in the same circumstances would not have been considered to be the beneficial owner thereof)"

Per par 6.16 "in order to provide more certainty under existing treaties, tax authorities may want to reach a mutual agreement clarifying the treatment of some types of CIVs in their respective states."

Par 6.17 suggests that treaty negotiators address expressly the treatment of CIVs. "Thus even if it appears that CIVs in each of the contracting states would be entitled to benefits, it may be appropriate to confirm that position publicly (for example through an exchange of notes) in order to provide certainty."

Per par 6.19 "a contracting state may also want to consider whether existing treaty provisions are sufficient to prevent CIVs from being used in a potentially abusive manner."

Par 6.21-6.34 deal with possible provisions in bilateral treaties for the treatment of CIVs.

Per par 6.35 "Paragraph 1 of Article 4 provides that the Contracting States themselves, their political subdivisions and their local authorities are included in the definition of a "resident of a Contracting State" and are therefore entitled to the benefits of the Convention".

Par 6.36 deals with entities set up and wholly-owned by a State or one of its political subdivisions or local authorities. "Some of these entities may derive substantial income from other countries and it may therefore be important to determine whether tax treaties apply to them e.g. sovereign wealth funds. In many cases these entities are totally exempt from tax and the question may arise as to whether they are entitled to the benefits of the tax treaties concluded by the state in which they are set up. In order to clarify the issue some states modify the definition of resident of a Contracting State in par 1 of article 4 and include in that definition a statutory body, an agency or instrumentality, or a legal person of public law of a state, a political subdivision or local authority, which would therefore cover wholly owned entities that are not considered to be a part of the State or its political subdivisions or local authorities."

Per par 6.37 " in addition many States include specific provisions in their bilateral conventions that grant an exemption to other States and to some State - owned entities such as Central Banks, with respect to certain items of income such as interest".

"Treaty provisions that grant a tax exemption with respect to the income of pension funds (see paragraph 69 of the Commentary on Article 18) may similarly apply to pension funds that are wholly-owned by a State, depending on the wording of these provisions and the nature of the fund".

Article 4 – Resident

A new par 8.5 has been added dealing with sovereign wealth funds. "For example when a sovereign wealth fund is an integral part of the State it will likely fall within the scope of the expression the State and any political subdivision or local authority thereof in article 4. In other cases par 8.6 and 8.7 below will be relevant".

Article 5 – Permanent Establishment

A new par 5.5 has been added "Clearly a permanent establishment may only be considered to be situated in a Contracting State if the relevant place of business is situated in the territory of that State. The question of whether a satellite in geostationary orbit could constitute a permanent establishment for the satellite operator relates in part to how far the territory of a State extends into space. No member country would agree

that the location of these satellites can be part of the territory of the contracting state under the applicable rules of international law and could therefore be considered to be a permanent establishment situated therein. Also the particular area over which a satellite's signals may be received (the satellites footprint) cannot be considered to be at the disposal of the operator of the satellite so as to make that area a place of business of the satellites operator."

A new par 9.1 has been added relating to telecommunication transactions. "Another example where an enterprise cannot be considered to carry on its business wholly or partly through a place of business is that of a telecommunications operator of a Contracting State who enters into a roaming agreement with a foreign operator in order to allow its users to connect to the foreign operator's telecommunications network. Under such an agreement, a user who is outside the geographical coverage of that user's home network can automatically make and receive voice calls, send and receive data or access other services through the use of the foreign network. The foreign network operator then bills the operator of that user's home network for that use. Under a typical roaming agreement, the home network operator merely transfers calls to the foreign operator's network and does not operate or have physical access to that network. For these reasons, any place where the foreign network is located cannot be considered to be at the disposal of the home network operator and cannot, therefore, constitute a permanent establishment of that operator."

An addition has been made to par 26.1 "An additional question is whether the cable or pipeline could also constitute a permanent establishment for the customer of the operator of the cable or pipeline, i.e. the enterprise whose data, power or property is transmitted or transported from one place to another. In such a case, the enterprise is merely obtaining transmission or transportation services provided by the operator of the cable or pipeline and do not have the cable or pipeline at its disposal. As a consequence, the cable or pipeline cannot be considered to be a permanent establishment of that enterprise."

Article 7- Business Profits

The whole commentary has been rewritten. I will point out main additions:

In the Preliminary Remarks:

Per Par 8 "The new version of the Article, which now appears in the Model Tax Convention, was adopted in 2010. At the same time, the Committee adopted a revised version of the 2008 Report in order to ensure that the conclusions of that report could be read harmoniously with the new wording and modified numbering of this new version of the Article. Whilst the conclusions and interpretations included in the revised report that was thus adopted in 2010 (hereinafter referred to as the Report), are identical to those of the 2008 Report, that revised version takes account of the drafting of the Article as it now reads (the Annex to this Commentary includes, for historical reference, the text of the previous wording of Article 7 and that revised Commentary, as they read before the adoption of the current version of the Article)".

The Annex will also be used for the interpretation of treaties signed prior to the issue of the 2010 Model.

In the **Commentary for the provisions of the Article:**

Per par 27 "The opening words of paragraph 2 and the phrase in each Contracting State indicate that paragraph 2 applies not only for the purposes of determining the profits that the Contracting State in which the permanent establishment is situated may tax in accordance with the last sentence of paragraph 1, but also for the application of Articles 23 A and 23 B by the other Contracting State. Where an enterprise of one State carries on business through a permanent establishment situated in the other State, the first-mentioned State must either exempt the profits that are attributable to the permanent establishment (Article 23 A) or give a credit for the tax levied by the other State on these profits (Article 23 B). Under both these Articles, that State must therefore determine the profits attributable to the permanent establishment in order to provide relief from double taxation and is required to follow the provisions of paragraph 2 for that purpose".

Per par 28 "The separate and independent enterprise fiction that is mandated by paragraph 2 is restricted to the determination of the profits that are attributable to a permanent establishment. It does not extend to create notional income for the enterprise which a Contracting State could tax as such under its domestic law by arguing that such income is covered by another Article of the Convention which, in accordance with paragraph 4 of Article 7, allows taxation of that income notwithstanding paragraph 1 of Article 7. Assume, for example, that the circumstances of a particular case justify considering that the economic ownership of a building used by the permanent establishment should be attributed to the head office (see paragraph 75 of Part I of the Report). In such a case, paragraph 2 could require the deduction of a notional rent in determining the profits of the permanent establishment. That fiction, however, could not be interpreted as creating income from immovable property for the purposes of Article 6. Indeed, the fiction mandated by paragraph 2 does not change the nature of the income derived by the enterprise; it merely applies to determine the profits attributable to the permanent establishment for the purposes of Articles 7, 23 A and 23 B. Similarly, the fact that, under paragraph 2, a notional interest charge could be deducted in determining the profits attributable to a permanent establishment does not mean that any interest has been paid to the enterprise of which the permanent establishment is a part for the purposes of paragraphs 1 and 2 of Article 11. The separate and independent enterprise fiction does not extend to Article 11 and, for the purposes of that Article, one part of an enterprise cannot be considered to have made an interest payment to another part of the same enterprise. Clearly, however, if interest paid by an enterprise to a different person is paid on indebtedness incurred in connection with a permanent establishment of the enterprise and is borne by that permanent establishment, this real interest payment may, under paragraph 2 of Article 11, be taxed by the State in which the permanent establishment is located. Also, where a transfer of assets between a permanent establishment and the rest of the enterprise is treated as a dealing for the purposes of paragraph 2 of Article 7, Article 13 does not prevent States from taxing profits or gains from such a dealing as long as such taxation is in accordance with Article 7 (see paragraphs 4, 8 and 10 of the Commentary on Article 13)."

Per par 29 *"*Some States consider that, as a matter of policy, the separate and independent enterprise fiction that is mandated by paragraph 2 should not be restricted to the application of Articles 7, 23 A and 23 B but should also extend to the interpretation and application of other Articles of the Convention, so as to ensure that permanent establishments are, as far as possible, treated in the same way as subsidiaries. These

States may therefore consider that notional charges for dealings which, pursuant to paragraph 2, are deducted in computing the profits of a permanent establishment should be treated, for the purposes of other Articles of the Convention, in the same way as payments that would be made by a subsidiary to its parent company. These States may therefore wish to include in their tax treaties provisions according to which charges for internal dealings should be recognized for the purposes of Articles 6 and 11 (it should be noted, however, that tax will be levied in accordance with such provisions only to the extent provided for under domestic law). Alternatively, these States may wish to provide that no internal dealings will be recognized in circumstances where an equivalent transaction between two separate enterprises would give rise to income covered by Article 6 or 11 (in that case, however, it will be important to ensure that an appropriate share of the expenses related to what would otherwise have been recognized as a dealing be attributed to the relevant part of the enterprise). States considering these alternatives should, however, take account of the fact that, due to special considerations applicable to internal interest charges between different parts of a financial enterprise (e.g. a bank), dealings resulting in such charges have long been recognized, even before the adoption of the present version of the Article".

Per par 31 "Thus, for example, whilst domestic law rules that would ignore the recognition of dealings that should be recognized for the purposes of determining the profits attributable to a permanent establishment under paragraph 2 or that would deny the deduction of expenses not incurred exclusively for the benefit of the permanent establishment would clearly be in violation of paragraph 2, rules that prevent the deduction of certain categories of expenses (e.g. entertainment expenses) or that provide when a particular expense should be deducted are not affected by paragraph 2. In making that distinction, however, some difficult questions may arise as in the case of domestic law restrictions based on when an expense or element of income is actually paid. Since, for instance, an internal dealing will not involve an actual transfer or payment between two different persons, the application of such domestic law restrictions should generally take into account the nature of the dealing and, therefore, treat the relevant transfer or payment as if it had been made between two different persons".

Per par 32 "Variations between the domestic laws of the two States concerning matters such as depreciation rates, the timing of the recognition of income and restrictions on the deductibility of certain expenses will normally result in a different amount of taxable income in each State even though, for the purposes of the Convention, the amount of profits attributable to the permanent establishment will have been computed on the basis of paragraph 2 in both States (see also paragraphs 39-43 of the Commentary on Articles 23 A and 23 B). Thus, even though paragraph 2 applies equally to the Contracting State in which the permanent establishment is situated (for the purposes of paragraph 1) and to the other Contracting State (for the purposes of Articles 23 A or 23 B), it is likely that the amount of taxable income on which an enterprise of a Contracting State will be taxed in the State where the enterprise has a permanent establishment will, for a given taxable period, be different from the amount of taxable income with respect to which the first State will have to provide relief pursuant to Articles 23 A or 23 B. Also, to the extent that the difference results from domestic law variations concerning the types of expenses that are deductible, as opposed to timing differences in the recognition of these expenses, the difference will be permanent".

Per par 44 "The combination of Articles 7 (which restricts the taxing rights of the State in which the permanent establishment is situated) and 23 A and 23 B (which oblige the

other State to provide relief from double taxation) ensures that there is no unrelieved double taxation of the profits that are properly attributable to the permanent establishment. This result may require that the two States resolve differences based on different interpretations of paragraph 2 and it is important that mechanisms be available to resolve all such differences to the extent necessary to eliminate double taxation".

Per par 58 "Paragraph 3 shares the main features of paragraph 2 of Article 9. First, it applies to each State with respect to an adjustment made by the other State. It therefore applies reciprocally whether the initial adjustment has been made by the State where the permanent establishment is situated or by the other State. Also, it does not apply unless there is an adjustment by one of the States."

Per par 59 " As is the case for paragraph 2 of Article 9, a corresponding adjustment is not automatically to be made under paragraph 3 simply because the profits attributed to the permanent establishment have been adjusted by one of the Contracting States. The corresponding adjustment is required only if the other State considers that the adjusted profits conform with paragraph 2." "The other State is therefore committed to make such a corresponding adjustment only if it considers that the initial adjustment is justified both in principle and as regards the amount."

Note: Principle refers to attribution and amount refers to arms length.

Per par 61 "The issue of so-called secondary adjustments, which is discussed in paragraph 8 of the Commentary on Article 9, does not arise in the case of an adjustment under paragraph 3. As indicated in paragraph 28 above, the determination of the profits attributable to a permanent establishment is only relevant for the purposes of Articles 7 and 23 A and 23 B and does not affect the application of other Articles of the Convention".

Per par 64 "If there is a dispute between the parties concerned over the amount and character of the appropriate adjustment, the mutual agreement procedure provided for under Article 25 should be implemented, as is the case for an adjustment under paragraph 2 of Article 9".

Per par 65 "Paragraph 3 only applies to the extent necessary to eliminate the double taxation of profits that result from the adjustment."

Per par 66 "Paragraph 3 only applies with respect to differences in the determination of the profits attributed to a permanent establishment that result in the same part of the profits being attributed to different parts of the enterprise in conformity with the Article.

Per par 67 "Also, paragraph 3 does not apply to affect the computation of the exemption or credit under Article 23 A or 23 B except for the purposes of providing what would otherwise be unavailable double taxation relief for the tax paid to the Contracting State in which the permanent establishment is situated on the profits that have been attributed to the permanent establishment in that State. This paragraph will therefore not apply where these profits have been fully exempt by the other State or where the tax paid in the first-mentioned State has been fully credited against the other State's tax under the domestic law of that other State and in accordance with Article 23 A or 23 B".

Per par 68 “Some States may prefer that the cases covered by paragraph 3 be resolved through the mutual agreement procedure, (a failure to do so triggering the application of the arbitration provision of paragraph 5 of Article 25) if a State does not unilaterally agree to make a corresponding adjustment, without any deference being given to the adjusting State’s preferred position as to the arm’s length price or method. These States would therefore prefer a provision that would always give the possibility for a State to negotiate with the adjusting State over the arm’s length price or method to be applied. States that share that view may prefer to use the following alternative version of paragraph 3:

Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other Contracting State shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall eliminate any double taxation resulting therefrom by mutual agreement”.

Per par 69 “This alternative version is intended to ensure that the State being asked to give a corresponding adjustment would always be able to require that to be done through the mutual agreement procedure. This version differs significantly from paragraph 3 in that it does not create a legal obligation on that State to agree to give a corresponding adjustment, even where it considers the adjustment made by the other State to have been made in accordance with paragraph 2. The provision would always give the possibility for a State to negotiate with the other State over what is the most appropriate arm’s length price or method. Where the State in question does not unilaterally agree to make the corresponding adjustment, this version of paragraph 3 would ensure that the taxpayer has the right to access the mutual agreement procedure to have the case resolved.” “If the two Contracting States do not reach an agreement to eliminate the double taxation, they will both be in violation of their treaty obligation. The obligation to eliminate such cases of double taxation by mutual agreement is therefore stronger than the standard of paragraph 2 of Article 25, which merely requires the competent authorities to endeavour to resolve a case by mutual agreement”.

(N.B. To be continued in the next issue)

Malaysia

Country Correspondent
Mdm Ruedah Karim

Transformation of the Official Website of Inland Revenue Board of Malaysia

In the era where the world has been promoting e-Government or known to some as the digital government, Inland Revenue Board Malaysia (IRBM) too cannot absolve itself from taking part in creating a comfortable, transparent, and viable interaction between government and citizens and business enterprises. As Malaysia moves towards the e-governance, IRBM could not escape the intense needs for its own internet media as a worldwide involvement in the development of new networking technologies.

Initially, IRBM's official website was a mode of relaying information, notifying the public on issues and references on taxation affairs. It was also being used as a vehicle to promote on the awareness of one's obligation to pay tax for the development of the nation. Nevertheless, it was not a medium of a two way communication being an informative media and simultaneously a service provider.

Currently, e-services are no longer a new phenomenon. It is indeed a need and essence to each and every organisation. Be it large or on a small scale, enhancing communication via the web is an indispensable part of the environment.

Structurally, the IRBM's official website was designed as an informative media reaching out to the public providing information on a one-way basis. It used to be a 'site' pushing information such as notifications, policies, tax references and the income tax law through the net. History proved that the transformation of the website from being solely an informative source to a site that is informative providing e-services are just imminent.

IRBM's official website was first introduced in 1997 when the Inland Revenue Department was incorporated in 1996. The facility was upgraded in 2003 aligned with the newly rebranding slogan of IRBM which was "Friendly, Helpful and Satisfactory" agency. In July 2008, the domain for the official website has been changed to www.hasil.gov.my. The development of the official website persists on until the introduction of the latest updated version in July 2009. Advancement

and improvisation continues along with the modernisation of information technology.

Today, the official IRBM website aims to provide two-way communications between the agency and the public namely citizen, a business, or another government agency. Apart from being informative on updated issues and legislations, the site also carries the role of conducting e-transactions such as filing tax returns and payments as well as a medium for comments, critics and complaints.

Net based services have taken an international flavour. Thus IRBM has broadened its focus to reach individuals not only domestic but internationally. The English version was developed to provide a bilingual platform in nature where users will have an option on language preference. This also facilitates to the fact that the adaptation of taxation terms, international agreements and essentially related editorials are mostly spelled out in English. As a result, worldwide participations were able to take place and visitors from every part of the world have benefited from the transformation. Based on the report by the IRBM's Corporate Service Department, in the year 2009 it was recorded that there were 3,587,573 'hits' on IRBM's official website as compared to 891,273 for the year 2006. These figures described a leap in the acceptance towards a friendlier and practical gateway.

To date, filing tax returns via e-filing is a major hit in the IRBM's official website. Alas, general perception is that the website provides no more than the service for individuals and businesses to file in their tax returns. In return, IRBM is focused on providing more information on tax substances plus various e-services and not just solely on filing tax returns, determining current tax balances and matters pertaining to one's taxation affairs.

A newly added feature is the e-payment of tax. With the existence of a new content and e-service based website, IRBM has made payment of tax through e-banking facilities available. This opens a new door for taxpayers to make payments via the IRBM's website. E-Payment is an electronic application for income tax payment through appointed banks. This service enables tax payment through the Financial Process Exchange (FPX) gateway. Apart from the vital e-filing and e-payments services, a list of e-service applications too has been added on to promote and enhance an up to date system of tax governance.

This active website will be a centre of reference for public to have a better understanding of Malaysia's taxation system as a whole. It aims to educate and facilitate the public creating a better comprehension on tax management, their responsibility to pay tax and on top of that, appreciating their contributions towards the development of the nation. The transformation has generated many positive returns. The official website has eliminated a number of processes in

filing returns and queries can now be entertained within adequately, let alone the cost and other intangibles related that were trimmed down the line.

The transformation of the website was in line with the development of electronic services that was promoted throughout elsewhere. The transformation into an e-service provider was promptly completed to cater the demand for such services.

Transparency has allowed the public to get closer and come into contact with us. Via e-mails, complaints and suggestions could be addressed within a timely manner. The term “tax is taxing” can be shouted out in a more subtle manner.

Today, IRBM continues to enhance and widen its scope of coverage in the aim of an improve tax governance. Information held could be shared widely, regardless whether an individual is situated in Malaysia or in some other parts of the world. Through this channel, we are open to critics and suggestions from all around for the betterment of the organization in futures to come.

Nigeria

Country Correspondent
Mr Malik Tukur

This Article is a continuation of an article that has been running in the last two editions of this Newsletter. Due to the size of the remainder of the article I have uploaded the full document on the CATA website and is available in the Members area for further reading. As a result no further versions of this Article will appear on the Newsletter.

2.5 Objectives of the Nigerian Tax System

The Nigerian tax system is expected to contribute to the well-being of all Nigerians and taxes, which are collected by Government should directly impact on the lives of the citizens. This can be accomplished through proper and judicious utilisation of the revenues collected by government. In line with the above, there are certain objectives, which the Tax System is expected to achieve.

These objectives include:

2.5.1 To promote fiscal responsibility and accountability

One of the primary objectives of the National Tax Policy is to create a tax system, which ensures that Government transparently and judiciously accounts for the revenue it generates through taxation by investing in the provision of infrastructure and public goods and services. Where this in place, Nigerians would have a tax system that they can fully relate to and which is a tool for National Development.

2.5.2 To facilitate economic growth and development

The overriding objective of the Nigerian tax system should be to achieve economic growth and development. As such, the system should allow for stimulation of the economy and not stifle growth, as it is only through sustained economic growth that the potential ability to offer improvements in the well-being of Nigerians will arise. The tax system should therefore not discourage investment and the propensity to save. Taxes should not be a burden, but should be applied proactively with other policy measures to stimulate economic growth and development.

2.5.3 To provide the government with stable resources for the provision of public goods and services

For Nigeria to pursue an active development agenda and carry out the basic functions of government, its tax system should generate sufficient resources for government to provide basic public goods and services (e.g. education, healthcare, infrastructure, security etc.). It is therefore a primary objective of taxation to provide the government with resources that it shall invest in judicious expenditure that will ultimately improve the well-being of all Nigerians.

2.5.4 To address inequalities in income distribution

Nigeria's tax system should take cognisance of our peculiar economic circumstances and seek to narrow the gap between the highest and lowest income groups. Those with the highest incomes should pay the highest percentage of tax and tax revenue should be utilised to provide Nigerians with affordable social amenities, basic infrastructure and other utilities.

2.5.5 To provide economic stabilisation

Nigeria should use its tax system to minimise the negative impacts of volatile booms and recessions in the economy and also to help complement the efforts of monetary policy in order to achieve economic stability.

2.5.6 To pursue fairness and equity

Nigeria's Tax system must be fair and shall institutionalise horizontal and vertical equity. Horizontal equity ensures equal treatment of equal individuals. The Nigerian Tax system should therefore seek to avoid discrimination against economically similar entities. Vertical equity on the other hand addresses the issue of fairness among different income categories. In this regard, the Nigerian Tax System shall recognise the ability-to-pay principle, in that individuals should be taxed according to their ability to bear the tax burden. Individuals and entities that earn high incomes should pay a corresponding high percentage of tax. The overall tax system shall therefore be fair, so that similar cases are treated similarly.

In addition, any ambiguity or conflicting provisions in the law shall be resolved in a manner as to ensure fairness to the taxpayers and the tax authorities.

2.5.7 To correct Market Failures or Imperfections

One of the objectives of the Nigerian tax system is the ability to correct market failures in cases where it is the most efficient device to employ. In this regard taxes may be reviewed upwards or downwards as may be necessary to achieve Government's intentions.

Market failures which the Nigerian tax system may address are those that are as a result of externalities and those arising from natural monopolies.

2.6 Features of the Nigerian Tax System

This section provides the fundamental features that taxes in the Nigerian tax system must exhibit. Accordingly any tax that substantially violates these fundamental features should not be part of the tax system of Nigeria.

2.6.1 Simplicity, Certainty and Clarity

Taxpayers should understand and trust the tax system, and this can only be achieved if Nigerian tax policy keeps all taxes ***simple***, creates ***certainty*** through considerable restrictions on the need for discretionary judgements, and produces ***clarity*** by educating the public on the application of relevant tax laws.

It is therefore imperative that the Nigerian Tax system should be simple (easy to understand by all), certain (its laws and administration must be consistent) and clear (stakeholders must understand the basis of its imposition).

2.6.2 Low Compliance Cost

To enable a high level of compliance, the economic costs of time required, and the expense which a taxpayer may incur during the procedures for compliance, shall be kept to the absolute minimum at all times. Furthermore, taxpayers should be regarded as clients with the right to be treated respectfully.
The convenience of the taxpayer and minimal compliance cost should guide the design and implementation of every tax in Nigeria***.***

2.6.3 Low Cost of Administration

A key feature of a good tax system is that the cost of administration must be relatively low when compared to the benefits derived from its imposition. There must therefore be a proper cost - benefit analysis before the imposition of any taxes and the entire machinery of Tax Administration in Nigeria should be efficient and cost effective.

2.6.4 Fairness

Nigeria's tax system should be fair and as such observe the objective of horizontal and vertical equity as mentioned above. Based on the foregoing, there must be

overwhelming reasons for granting tax incentives and concessions to some preferred sectors over others within the economy. Otherwise incentives and concessions shall as much as possible be general and apply to all tax-payers.

2.6.5 Flexibility

Taxes in Nigeria should be flexible enough to respond to changing circumstances. Prevailing circumstances should also be considered before the introduction of new taxes or the review of existing ones.

2.6.6 Economic Efficiency

The Nigerian tax system shall at all times strive to minimise the negative impact of taxes on economic efficiency by ensuring that the marginal tax rates do not distort marginal propensity to save and invest.

Pakistan

Country Correspondent
Mr Abdul Rashid

Pakistan holds Tax Treaty Negotiations with Sudan, Seychelles Republic and Mexico

The latter half of the year 2010 saw International Taxes wing of the Federal Board of Revenue, Pakistan thoroughly engaged in negotiating Tax Treaties. Pakistan finalized one treaty and took negotiations to advanced stages with two prospective treaty partners.

Pakistan – Sudan

Pakistan's tax treaty team comprising of Mr Saeed-ur-Rahman, Chief (International Taxes) and Mr Abdul Rashid, Secretary (International Taxes Policy), Federal Board of Revenue, Islamabad visited Sudan from 20th to 23rd June, 2010 to hold final round of negotiations on the Treaty for Avoidance of Double Taxation. The Sudanese delegation was headed by Ms Efat Hassan Osoman, Director, Taxation Chamber, Sudan. After extensive negotiations, the two sides succeeded in reaching agreement on all issues and initialed the Treaty, which will be signed as soon as formalities on both sides are completed.

Pakistan – Seychelles Republic

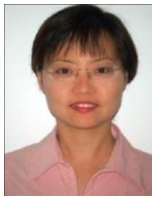
Mr. Abdul Rashid, Secretary (International Taxes Policy), Federal Board of Revenue, Islamabad visited Seychelles Republic from 19th to 22nd July, 2010 to hold the first round of negotiations on Avoidance of Double Taxation. The Seychelles delegation was headed by Mr. Rupert Simeon, Director General Policy and Strategy Division, Ministry of Finance. Both sides made efforts to finalize the Treaty; thus all issues, except one, were agreed upon. The draft treaty was initialed by Mr. Abdul Rashid on behalf of Pakistan and Mr. Ahmed Afif, Principal Secretary for Finance, on behalf of Seychelles Republic.

Pakistan – Mexico

First round of negotiations on Avoidance of Double Taxation between Pakistan and Mexico was held in Mexico city from 2nd to 5th August, 2010. Mr. Saeed-ur-Rahman, Chief (International Taxes), Federal Board of Revenue, Islamabad represented Pakistan. The Mexican delegation was headed by Mr. Armando Lara Yaffar, Director General, Under-ministry of Revenue of the Ministry of Finance and Public Credit. The two sides made substantial progress on the draft Treaty and affirmed their resolve to finalize it in the second round of negotiations to be held in Pakistan. The draft treaty was initialed by Mr Saeed-ur-Rahman on behalf of Pakistan and Mr Armando Lara Yaffar on behalf of Mexico.

Singapore

Country Correspondent
Ms Angeline Chan



IRAS Embarks on GIRO Promotion Campaign

In line with national effort to raise productivity, IRAS has embarked on a 3-year campaign to promote payment of tax by GIRO (General Interbank Recurring Order), an electronic payment mode where the payers arrange with the banks to allow money to be deducted directly from their bank accounts to pay their bills.

GIRO will increase productivity for taxpayers, banks and IRAS. For taxpayers, GIRO eliminates the need to monitor payment due dates, write and post cheques, or queue at payment kiosks. GIRO also eliminates manual cheque processing by banks thereby freeing up banks' resources and raising their productivity. For IRAS, GIRO is a cost-effective collection mode which enables higher certainty of tax collection and greater efficiency.

Currently, 51% of taxpayers who pay their income tax and property tax electronically pay by GIRO. IRAS aims to achieve 70% of GIRO participation rate from this group of taxpayers by 2013. To encourage taxpayers to pay their taxes by GIRO, IRAS will be conducting lucky draws annually over the next 3 years from 2011 to 2013, with cash prizes totalling $360,000.

IRAS Launches Official Page on Twitter

Currently, IRAS employs various public communication channels such as website, media releases, radio programmes and seminars, to communicate and disseminate general information to members of the public and stakeholders. To further enhance our public communications, we have launched an official page on Twitter, a real-time information network that allows users to stay plugged into news and conversations that they care about. Twitter users can post news or brief messages (called "tweets"), which can be published and read through different channels, including Twitter.com, various third party Twitter sites/tools and various desktops and mobile applications or widgets. Recognising the value of Twitter as an information network, IRAS will be using Twitter to deliver short, up-to-date information to help us in engaging taxpayers so as to improve our service delivery and interaction with them. IRAS' official Twitter page can be accessed via http://twitter.com/iras_sg.

GST Guide on Imports

IRAS has published an e-Tax guide to provide basic information on GST matters relating to the importation of goods, including GST reporting requirements and various related schemes available. Besides information on the computation of GST on imported goods, the guide also highlights the circumstances under which GST-registered businesses are allowed to claim the GST incurred on importation of goods, how to rectify errors made on importation of goods, and the circumstances under which import GST will be suspended. The e-Tax guide can be accessed via http://www.iras.gov.sg/pv_obj_cache/pv_obj_id_6B413D121448411234E78F0671E2DCEA90E30200/filename/GST%20Guide%20on%20Imports.pdf.

United Kingdom

Country Correspondent
Ms Angelia Burke

Tax Information Exchange Agreements – signed

A new Tax Information Exchange Agreement (PDF 31K) (TIEA) between the United Kingdom and Liberia was signed on 1 November 2010. The new TIEA will enable the UK and Liberia to exchange information to OECD and international tax standards to ensure that the right amount of tax is paid in each country in the future.

A new Tax Information Exchange Agreement (PDF 47K) (TIEA) between the United Kingdom and Netherlands Antilles was signed on 10 September 2010.The new TIEA provides for comprehensive exchange of information to the OECD and international tax standard in respect of taxes of every kind and description.

Entry into force

The Double Taxation Agreement between the United Kingdom and Qatar entered into force on 15 October 2010.

Double Taxation Treaty Passport Scheme

HM Revenue & Customs (HMRC) has launched a new form DTTP2 under the Double Taxation Treaty Passport (DTTP) Scheme to enable UK corporate borrowers to inform them about a loan from a Double Taxation Treaty Passport Holder. The Scheme applies only to loans taken out on or after 1 September 2010 and **does not** apply to individuals.
An overseas corporate entity - or concern treated by its country of residence as corporation for tax purposes - may apply for recognition as a Double Taxation Treaty Passport Holder. If successful, A UK corporate borrower (or a foreign corporate borrower making UK source interest payments) may then apply the "treaty rate" of withholding tax from the start of the loan, relying on the lender's passport holder status.

Double Taxation Digest

HMRC has revised the Double Taxation Digest (PDF 410K) to include more information about UK personal allowances and the categories of non-residents that may claim them.

Visit CATA website at www.cata-tax.org
For all information about activities and forthcoming events

COMSEC NEWS

Officials thrash out ways to improve the management of local government finances
(4 November 2010)

Commonwealth programme examines local revenue sources, property taxation, and alternative cost-effective options for delivering services.

Tackling complex issues relating to local government finances was the focus of the Sixth Commonwealth Executive Programme on Finance for Sub-national and Local Governments.

This programme, organised by the Commonwealth Secretariat, took place at the University of Birmingham, UK, from 18 to 22 October 2010.

The event saw officials managing local government finances knock heads and discuss how best to improve operations and services.

The workshop covered issues geared towards enhancing local revenue sources, property taxation and intergovernmental fiscal transfers. Participants also discussed alternative cost-effective options for delivering services, and innovative financing options for municipal infrastructure projects.

The 30 participants from across the Commonwealth who attended the workshop also held detailed discussions with senior management officials from Birmingham City Council. They exchanged ideas on issues such as prudential borrowing by local authorities and the role of regulatory committees on the Council.

Eye opener

“The programme…has been an eye opener, especially for me who is very much involved in the Local Government Reform of my country” - Olsen John Vidot, Principal Secretary in the Ministry of Community Development, Youth and Sports, Seychelles.

“The discussions on intergovernmental fiscal transfers and budgeting were particularly stimulating,” said Adams Kargbo, Director of Local Government at Sierra Leone’s Ministry of Finance and Economic Development. “The programme is surely suitable for officials engaged in local government finance at both national and sub-national levels of government.”

Emmanuel Kwadwo Danso, Principal Operations Officer, District Assemblies’ Common Fund, Ghana, said: “It is a good opportunity for me and my organisation to improve on our sharing criteria, resource management and monitoring of policy implementation at the local government level.”

John Wilkins, Acting Director of Governance and Institutional Development at the Commonwealth Secretariat, said: “A key thrust of the programme was to help local government officials understand that there are ways of devising alternative forms of delivering services, such as bringing in private sector money and expertise.”

He added: “With the decentralisation of powers to local government also comes a huge responsibility. We assist member governments with up-to-date financial management techniques and tools.”

Participants at this event were also enrolled on the Commonwealth (Local Government) Finance Officers Network (CFONet), an online community of practitioners.
This online network facilitates discussion on issues such as inter-governmental transfers and borrowing by local governments. It also promotes stewardship and fiduciary responsibility as fundamental principles.

Email localgovernment@commonwealth.int if you are interested in becoming a member of CFONet.

Visit CATA website at www.cata-tax.org For all information about activities and forthcoming events