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CORPORATE TAX 2018

VIRTUAL ROUND TABLE

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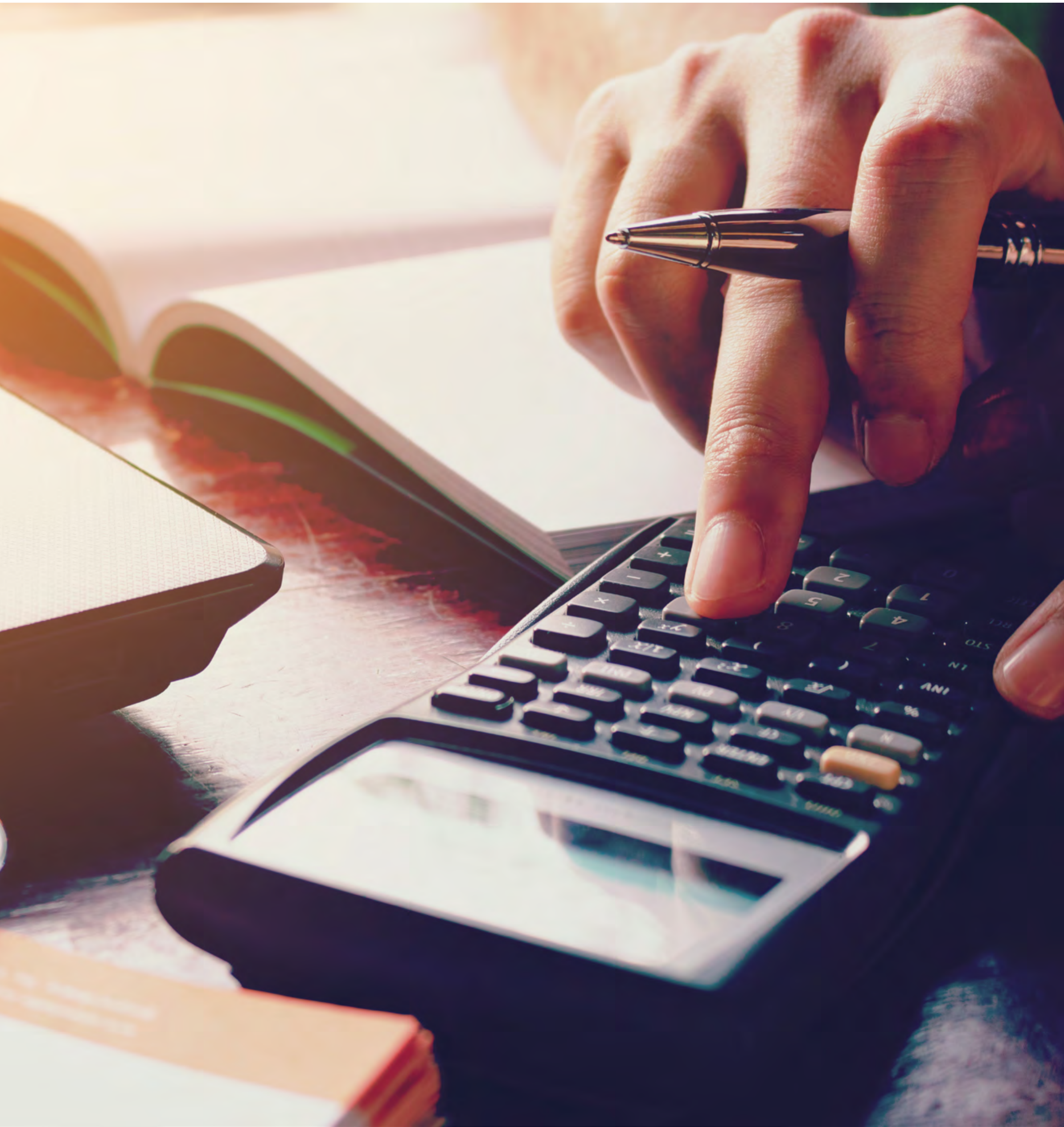

Introduction & Contents

The Corporate Tax Roundtable 2018 discusses the current landscape in five key jurisdictions. Our chosen experts discuss compliance issues, the impact of globalisation, available incentives and strategies to help minimise the impact of increasing tax costs. Featured countries are: Chile, India, Kuwait, Portugal, and United States.

James Drakeford
Editor In Chief

Meet The Experts

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Marjorie Rawls Roberts is a tax and corporate attorney based in St. Thomas, USVI. She heads a firm of four attorneys specializing in USVI tax, investment, and business law. She received her J.D. from Harvard Law School and her LL.B. from Cambridge University. Previously she served as an Attorney Advisor in the US Treasury Department's Office of Tax Policy, as Chief Counsel to the USVI Bureau of Internal Revenue, and as General Counsel/Vice President to a St. Thomas-based hedge fund manager.

Ms. Roberts is admitted to practice law in California, the District of Columbia (inactive), the USVI, before the Third Circuit Court of Appeals and the U.S. Tax Court, and is licensed as a Solicitor in England and Wales and in the British Virgin Islands.

Catarina Breia - Nexia Santos Carvalho & Associados
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As from April 2017 I have joined the firm as partner and leader of the tax division

Between Outober 1998 and March 2017, I have accumulated significant experience in the tax deparment and more recently in the transfer pricing department of a big 4 firm (namely as the in-charge of the transfer pricing department in the Porto office)

My professional experience, developed in several business sectors, has been established in the following areas:

- Support of clients (individuals and companies) in the definition/planning of local and global tax/transfer pricing policies, its effective implementation and documentation
- Coordination of global and local tax/transfer pricing projects
- Tax compliance
- Private wealth
- Support of clients in the application to tax and financial incentives
- Mergers and acquisitions
- Support in tax dispute resolution (namely in administrative, judicial and arbitrage processes) and in alternative dispute resolution processes (Advance Pricing Agreements with local tax authorities, Mutual Agreement Procedures, EU Arbitrage Convention)

Joseph Courand - Deloitte
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Joseph joined Deloitte in 1998 and is the Lead Partner of Tax & Legal.

He has more than 22 years of experience in providing tax advice and consulting services to both foreign and Chilean investors on a variety of International Tax subjects, involving interpreting domestic tax law and tax treaties in connection with complex cross-border transactions, designing incoming and outcoming investment structures, developing tax efficient exit strategies, and implementing reorganizations for large multinationals.

During two years Joseph led the Chile desk at the Deloitte International Core of Excellence group in New York.

Meet The Experts

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Jairaj (Jai) Purandare is the Founder Chairman of JMP Advisors Pvt Ltd, a leading

advisory, tax and regulatory services firm, based in Mumbai, India. Jai has three and half decades of experience in tax and business advisory matters and is an authority on tax and regulation.

Jai was Regional Managing Partner, Chairman–Tax and Country Leader–Markets & Industries of PricewaterhouseCoopers India.

Jai was earlier Chairman of Ernst & Young India (EY). Jai was the Country Head of the Tax & Business Advisory practice of Andersen India, before joining EY.

Jai has significant expertise in advising clients such as Bechtel, Citibank, GE, HSBC, Hutchison, Mahindra & Mahindra, Pepsico, Standard Chartered Bank, STAR and Tata Group. He has considerable experience on various issues in the Financial Services, Infrastructure, Power, Telecom, Media, Pharma and Auto sectors.

JMP Advisors has been recognised as a leading Tax firm in India in the International Tax Review (Euromoney) World Tax Directory for several consecutive years, including in the 2018 Directory.

International Tax Review (Euromoney), in its report - World's Leading Tax Advisors, has named Jai several times as among the leading Tax Advisors in India.

A frequent speaker at seminars in India and abroad, Jai has presented several papers in areas of his expertise including inbound/outbound investment structuring, international tax, transfer pricing, M&As, Indian Budget and Economy.

Jai is an Independent Director on the Boards of two listed companies.

Alok Chugh - Ernst & Young
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Alok is a Tax Partner and Head of the Tax Service Line for the Kuwait office.

Alok has lived and worked in Kuwait for over 20 years and has an expert's knowledge of the business and the taxes in Kuwait.

Qualifications and Professional affiliations

Alok is a member of the Institute of the Chartered Accountants of India and is an active member and frequent lecturer at the American Business Council and British Business forum.

J. Leonard Teti II - Cravath, Swaine & Moore LLP
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J. Leonard Teti II is a tax partner at Cravath, Swaine & Moore LLP in New York City. Len's practice focuses on advising clients on the tax aspects of complex mergers and acquisitions, spin-offs, private equity transactions and bank financings.

Q1. How will Brexit impact on tax law and the implications for companies doing business with and within the UK?

Marjorie Rawls Roberts

In our experience, Brexit has had little effect on USVI tax laws and we do not envision a significant impact going forward. The USVI is situated only a few miles from the British Virgin Islands ("BVI"), which is an overseas dependent territory of the UK, and there are many opportunities for coordination among the jurisdictions and across international business structures. For example, the BVI has a mutual fund statute, and since the USVI offers tax incentives for fund management companies as discussed below, some of the fund managers choose to locate their funds in the BVI due to the proximity and thus ability to meet with the fund administrators on a regular basis.

Joseph Courand

There could be an impact for countries that have signed tax or customs treaties with the EU and not individually with the UK. From a Chilean perspective, Chile does have in force a Double Taxation Treaty with the UK, yet there is no Free Trade Agreement with the UK as Chile had agreed a trade agreement with the European Union. However, the impact on the export of Chilean products should be limited since around 1% of Chilean exports have the UK as their final destination.

Q2. Can you outline how your jurisdiction's tax market is composed?

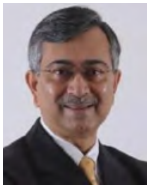
Marjorie Rawls Roberts

The Internal Revenue Code of 1986, as amended (the "Code"), applies in the U.S. Virgin Islands ("USVI") as the USVI tax code through use of a substitution scheme known as the "mirror" system. Pursuant to the mirror system the words "Virgin Islands" are substituted for the words "U.S." wherever they appear in the mirror Code. Also under the mirror Code, "any changes to, interpretations of, regulations and revenue rulings on and court interpretations of the substantive tax provisions of the Internal Revenue Code are applicable to Virgin Islands tax cases as long as the particular provision at issue is not manifestly inapplicable or incompatible with a separate territorial income tax…" The Code contains several sections — notably Code sections 932, 934, and 937 — that deal specifically with the USVI and, more particularly, govern the extent to which the USVI can grant tax incentives and how USVI residents and persons with USVI income file their income tax returns. In addition, the USVI has enacted local taxes including a 5% gross receipts tax on USVI source receipts of a business and a 12.5% hotel room tax. The USVI is outside the U.S. customs zone and also has enacted its own customs duties and excise taxes. The tax administrator in the USVI is the Virgin Islands Bureau of Internal Revenue (the "BIR").

Catarina Breia

Year after year the non-big four tax firms, especially those with a global presence, are gaining more relevance in the Portuguese tax market. This is mainly justified by the type of Portuguese businesses and industries (mainly exporters now), the typical typology of companies, our groups (SMEs) and by the way of doing business in Portugal, where a more personal contact and generalist tax expertise, from a more balanced cost and quality perspective, is an advantage.

Q2. Can you outline how your jurisdiction's tax market is composed?



Jairaj Purandare

In India, the tax year is from 1 April to 31 March ('Financial Year'). The scope of income that can be subject to tax in the hands of the taxpayer is based on the residential status of the taxpayer. Resident taxpayers are subject to tax in India on their worldwide income and non-resident entities are subject to tax income received/sourced in India. The broad heads of income are profits from business, salary, capital gains, house property and other sources.

The rates of tax are determined on the basis of the legal status of the taxpayer (except in the case of certain heads of income, where specific tax rates are provided in the tax law).

The types of taxpayers are individuals, Partnership firms, Limited Liability Partnerships, companies, etc.

The base rate of tax for domestic companies is 30% and for foreign companies is 40%. With effect from 1 April 2018, the base rate of tax for domestic companies is proposed to be reduced to 25% if the turnover or gross receipts in the Financial Year 2016-17 does not exceed INR 2.5 billion (~USD 0.04 billion). The tax rate is to be further increased for surcharge (if the income exceeds a particular threshold), and education cess and health and education cess.

A Minimum Alternate Tax ('MAT') is levied at a specified percentage on book profits of companies in case the normal income tax payable under the domestic law is less than the book profit. Similarly, a partnership firm/LLP is required to pay Alternate Minimum Tax (AMT) at the specified rate on its book profit. MAT provisions are not applicable to foreign companies whose income is computed on a presumptive basis under the domestic income tax provisions.

There is a separate regime for computation of tax on capital assets with different implications for assets held for a short term and those held for a long term. Exemptions exist in case of certain long term gains on the transfer of specified financial securities.

Specific provisions exist in respect of Place of Effective Management (POEM), transfer pricing, thin capitalisation, distribution of profits by companies etc. At present, there are no provisions relating to branch profits tax, controlled foreign companies, wealth tax, inheritance taxes and estate duties.

Under the transfer pricing provisions, there exists a process for an Advance Pricing Arrangement (APA) to determine the transfer price or the transfer pricing method for international transactions.

India has a wide treaty network and in the case of non-residents, beneficial provisions under the relevant tax treaty, if any, can be availed. Under most of India's tax treaties, provisions exist for entering into the Mutual Agreement Procedure (MAP).

Alok Chugh

In Kuwait, tax is currently imposed only on foreign companies 'carrying on trade or business in Kuwait either directly, or through an agent'. There is no personal tax, value added tax or remittance tax. No further income tax is imposed on corporate bodies incorporated in any of the GCC countries that are wholly owned by the citizens of these countries. There are no indirect taxes in Kuwait, except for the customs duty. However, VAT is expected to be implemented shortly.

Q2. Can you outline how your jurisdiction's tax market is composed?

Joseph Courand

The Chilean tax market is dominated by the Big Four audit companies. There are several large and boutique law firms that have a strong presence in tax consultancy.

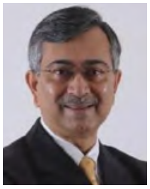
Q3. Have there been any recent regulatory changes or interesting developments?

Marjorie Rawls Roberts

Yes. First, the Tax Cuts and Jobs Act, signed by President Trump on 22 December 2017, is "mirrored" to the USVI so the changes enacted there apply to the USVI without further action on the part of the USVI. The USVI has enacted a 10% surtax on corporations, so the corporate rate is now 23.1% instead of 38.5%, for example. Second, the USVI was hit by two category five hurricanes in September 2017 – hurricanes Irma and Maria. As a result of these storms, the Internal Revenue Service ("IRS") issued IR-2017-183 which postponed all 2016 federal tax filing and payment deadlines falling between 6 September and the end of 2017 until 31 January 2018 for the USVI. On 22 March 2018, the IRS released IR-2018-69 which postponed the filing deadline for all federal tax filing and payment deadlines falling between 16 September 2017 and 15 April 2018 for 2016 and 2017 taxes through 29 June 2018. Finally, the USVI Legislature recently enacted measures designed to fast-track the application process for benefits under the USVI Economic Development Program, including placing final decision making on applications with the Economic Development Commission, rather than with the USVI Governor (as was the case previously).

Catarina Breia

To date, Portugal hosted the web summit twice. In fact, Portugal is seen as a start-up paradise since Lisbon, as well as all other major Portuguese cities have set up their own organisations to help companies with streamlining their bureaucracy, cutting taxes in promoting investment, as well as attracting the residency of persons that develop high value activities. After years of a continuous economic crisis, Lisbon now proudly calls itself the 'European Capital of Entrepreneurship' and a 'Start-up City,' with growing facilities for 'Co-Working-Spaces' and 'Business Angels' available to young entrepreneurs. Google and Amazon have recently announced big investments in Portugal, benefiting the availability of a young, skilled workforce and I am sure several others will follow.



Jairaj Purandare

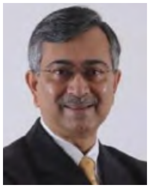
Goods and Service Tax (GST) was launched from 1 July 2017 with the objective of 'one nation, one market, one tax' to replace a plethora of indirect tax levies in order to prevent tax evasion and eliminate the cascading effect of taxes.

'IND AS' replaced the earlier 'Indian GAAP/AS' in line with global accounting practices followed worldwide i.e. IFRS.

Real Estate Regulation and Development Act, 2016 (RERA) was introduced to regulate the real estate sector and to improve transparency in this sector.

Insolvency & Bankruptcy Code, 2016 (IBC) was introduced for a speedy and time bound insolvency/liquidation process with minimal permissions to be obtained within a single forum.

Q3. Have there been any recent regulatory changes or interesting developments?



Jairaj Purandare

In order to encourage foreign investment in India and to make India a global financial services hub, Gujarat International Finance Tec-City (Gift City) was established to access large opportunities and tax incentives by setting up an International Financial Service Centre 'IFSC). The business opportunities in GIFT/IFSC are available for financial service operations, capital market and trading and Information Technology services.

Alok Chugh

There are quite a few tax and regulatory changes. Kuwait is keeping up with the regulatory challenges in the other parts of the world, such as the OECD initiatives of Base Erosion and Profit Shifting (BEPS) action plans and Multilateral Instruments, CBCR and CRS reporting etc. Kuwait has signed an Inter-Governmental Agreement with the United States (US) for implementation of US FATCA. With respect to the CRS, the Kuwait Ministry of Finance has issued additional guidelines laying the deadline for submission of the audit reports by 31 May 2018 for the year ending 31 December 2017.

With respect to the indirect taxes, the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE) have implemented VAT with effect from 1 January 2018. In Kuwait, the draft law is prepared and up for discussion with the concerned authorities. The law is expected to be discussed with the Council of Ministers and presented to the Kuwait National Assembly for approval to implement VAT as early as January 2019.

Other changes include revision of the Agency Law, which removed "exclusivity" and allows foreign companies to have more than one agent/distributor in Kuwait.

The above regulatory changes are new for business, and the awareness amongst businesses is limited. Therefore, consultation with tax advisors is essential.

Joseph Courand

Yes. A major tax reform took place in 2014, which introduced two different tax regimes as of 1 January 2017, among several other amendments in VAT and other Laws. In addition, the new President in office has announced a new tax reform in order to simplify the previous one and make it friendlier to investment. However, the government has not published details of the future bill, but it has said that its intention is to integrate the systems created under the passed reform, reduce the corporate tax rate and include measures to foster investment. In any case, given the lack of majority in Congress by the current government, the expectation is that the bill will be subject to a long discussion in Congress.

J. Leonard Teti II

Late in 2017, the US adopted a comprehensive change to its tax system. From a corporate perspective, the major changes included a reduction in the corporate tax rate from 35% to 21% and a departure from the "worldwide" system of international taxation to a "quasi-territorial" system.

The new quasi-territorial system taxes most income of foreign subsidiaries on a current basis, but at a lower rate, currently designed to be 10.5%. As an incentive to develop products in the US, the system also provides lower rates for income earned directly by US companies with respect to goods or services sold to foreign users for use outside the US. The idea behind these changes is to reduce the incentives for US corporations to invert and to eliminate incentives that had existed under prior law to run foreign businesses through foreign subsidiaries of US corporations.

Q3. Have there been any recent regulatory changes or interesting developments?

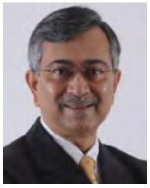
J. Leonard Teti II

Another noteworthy change to the US tax system is that a lower tax rate on individuals is now available for certain types of income earned through partnerships (or "pass-through" entities), including sole proprietorships. For partners who qualify for this lower rate, their profits will be taxed at a top effective rate of 29.6% rather than the 37% that otherwise would apply. Not all partnerships will qualify for this lower rate; most notably, partners in most professional service firms, such as law and accounting firms, are not eligible for the lower rates. But for many businesses that operate in pass-through form, including some very large businesses, the new rules will result in a lower rate of tax for their owners.

Q4. Are there any compliance issues or potential pitfalls that firms need to be cautious about?

Marjorie Rawls Roberts

Yes. Although the USVI is a U.S. territory, as indicated above, the BIR administers the income tax system whereby the IRS continues to collect estate and gift taxes for USVI residents as well as self-employment and social security taxes. This separation sets up distinctly different paths taxpayers must follow depending on respective circumstance. U.S. residents with USVI income have a dual filing obligation and where they must file their U.S. returns depends on whether they are making a payment. Separately, USVI residents satisfy their income tax filing requirements by filing their returns with and paying all tax due to the BIR. It is critical that persons seek professional assistance to ensure that they file the forms in the correct locations. In some cases, there are special forms for USVI filing. For example, for payroll purposes there are Forms W-2VI, W-3SS, 941 VI, and 501 VI that correlate with Federal forms with similar numbering. However, there is no special USVI 1040 or USVI 1120 (or most other forms) so the Federal forms are used. U.S. residents with USVI income pay their tax to the BIR on their USVI source income, but if they overpay their tax they must get a refund from the BIR and cannot credit the overpayment against their U.S. tax liability. In contrast, if a USVI resident has tax payments that were made to the IRS, the resident can request that the taxes be "covered-over" to the BIR so that the USVI resident gets credit for taxes paid to the IRS without seeking a refund. Due to these unique filing and payment factors, it is highly advisable that all USVI domiciled businesses retain a certified public accountant or tax attorney who is knowledgeable of the tax filing requirements of the IRS and the BIR for USVI businesses and residents and other businesses and residents doing business in the USVI.



Jairaj Purandare

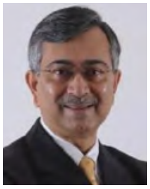
Apart from filing income tax returns, taxpayers who have gross receipts or sales turnover exceeding a specified threshold are required to get their books of account audited by a Chartered Accountant.

Taxpayers entering into 'international transactions' or 'certain 'specified domestic transactions' with their associated enterprises (AE) are required to enter into such transactions at arm's length price (ALP) and obtain a Chartered Accountant's certificate to this effect.

Further provisions have been introduced for maintaining and furnishing the documentation in Master file, Local file and Country-by-Country Reporting (CbCR) for transactions exceeding a prescribed threshold. The reporting is applicable to entities resident in India if they are constituents of an international group, where the parent entity is not resident in India from FY 2016-17 onwards.

With a view to keep a check on the high value transactions to curb black money,money laundering and terrorist financing, the Indian Income Tax Authorities have introduced the submission of an Annual Statement of Financial Transactions (SFT) for a particular financial year in a prescribed form wherein high value transactions need to be reported and furnished to tax authorities to serve as a database for the purpose of taxation.

Q4. Are there any compliance issues or potential pitfalls that firms need to be cautious about?



Jairaj Purandare

In order to regulate the indirect transfer provisions, where any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from assets located in India. Then the Indian concern needs to furnish prescribed information/documents to the Indian Income Tax Authorities.

As a result of some of these requirements, the compliance burden on taxpayers has increased substantially.

Alok Chugh

The Kuwait Tax Authorities' ('KTA') practices are not consistent. Unawareness of the Kuwait tax regime and practices of the KTA may result in huge tax costs and/or litigations.

Accordingly, there is a need for the foreign companies to remodel their tax departments and review their organisation structures to ensure compliance with the local Kuwait tax law and practice of the KTA.

It is important that the companies consult with the professional firms before entering into any agreement with Kuwait counter parties and make use of the tax planning opportunities.

Joseph Courand

In 2014, taxpayers are filling for the first time their tax returns under the tax regimes created by the 2014 Tax Reform. Unfortunately, the complexity of the tax regimes, tight deadlines imposed by the Chilean IRS on the filing of sworn statements, and last minute Chilean IRS´ interpretation have put companies in a very challenging position in order to fulfil on time their tax compliance obligations.

J. Leonard Teti II

Certainly, and particularly with respect to the changes in the US tax laws. The new rules, touted by politicians as simplifying the US tax system, instead add significant complexities and uncertainties as a new layer on top of the previous system. The new rules were written very quickly, and in its haste Congress made mistakes. Already lawmakers have taken note of mistakes that will need to be clarified, either by technical fixes in new legislation (which may be difficult to enact) or through administrative rulemaking. The complexity is increased by the fact that, in order to meet revenue requirements, many of the new provisions expire after a period of years; it is not clear whether they will be extended in the future.

In some cases, there is confusion about how the new rules should be applied in common contexts, such as within a larger consolidated group of US corporations. The US Internal Revenue Service will have its hands full for several years as it drafts regulations and other legal interpretations of the new law. In the meantime, taxpayers and their advisors will find it challenging to apply many of the new rules and structure affairs with certainty. In addition, because the tax legislation was passed solely with Republican votes in Congress, there is uncertainty about whether some of the changes will survive a future change in the political climate.

Q5. What are the implications of globalisation on taxation and tax policy?

Marjorie Rawls Roberts

The forces of globalisation have had several impacts on taxation and tax policy. First, countries have had to re-examine their tax policies and in particular their treatment of foreign income earned by individuals and entities. By moving to somewhat of a territorial tax system, the changes to U.S. tax policy enacted by Congress in December 2019 reflected the realisation that corporations are global and will structure their operations to minimise their worldwide tax burdens. It substantially eliminated the possibility of deferred taxation of foreign income within a U.S.-parented multinational group; income is taxed as earned or permanently exempted from tax. However, it also granted the benefit of a reduced rate to a new class of income – foreign derived intangibles income – although the income covered is much broader than "intangibles".

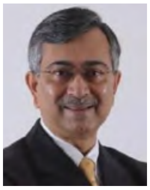
One issue, however, that arises with such changes is how do they apply to U.S. territories? For example, does the United States encourage investment in the USVI by permitting the USVI to offer incentives, and then discourage investors by treating the USVI and other territories as foreign countries so that U.S. corporate investors have the same benefits and burdens as if they invested in France or England? The USVI public and private sectors are working to resolve these issues and ensure that U.S. tax policy always encourages investment in the territories.

As tax policies are revised around the world, of course, it is important that their impact on various territories be examined and be clear. U.S. tax policy is also impacting foreign practices through such actions as the voluntary compliance program and coordination with foreign banks to provide information on U.S. account holders. This policy has apparently led to some foreign banks excluding U.S. citizens from being account holders across the board. Moreover, globalisation has led to a push for global transparency through such means as the Common Reporting Standard and the Foreign Account Tax Compliance Act, and going forward such reporting requirements will probably become more sophisticated and result in global norms regardless of the specific standard.

Finally, globalisation has given rise to a series of "black lists" by countries and states which may be as political as they are policy and often reflect a basic misunderstanding of the tax systems of countries that are on or off the lists. For example, the USVI was initially on the OECD black list due to reasons that as a U.S. territory were beyond its control since the USVI cannot alter the Code or enter into bilateral international agreements. In another case a country adopted another country's list which included the adopting country. Hopefully the existence of "black lists" will subside over time as countries learn more about other countries' tax systems.

Catarina Breia

Portugal is among the first countries to have implemented BEPS standards. To date, most action 15 implementation measures have been introduced in the Portuguese legislation.

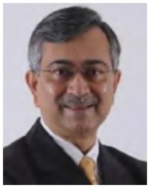


Jairaj Purandare

In order to align itself with the global taxation policies, India is a signatory to the Multilateral Convention to implement the OECD Base Erosion and Profit Shifting ('BEPS') recommendations. Various provisions implemented in line with BEPS recommendations are:

- Introduction of Equalisation levy to tax the income on B2B e-commerce transactions for certain specified services in the digital space. It is applicable to the consideration received by non-residents from residents in India carrying on business or profession or non-residents having a Permanent Establishment (PE) in India.

Q5. What are the implications of globalisation on taxation and tax policy?



Jairaj Purandare

- The definition of 'business connection' has been widened to include transactions in the nature of commissionaire arrangements to tap the cases where agents play a principal role, leading to the conclusion of contracts. The concept of "significant economic presence" has been introduced to bring into the tax net, increasing number of transactions in the digital world.

- Thin capitalisation provisions have been introduced to limit the deduction on interest paid to associated enterprises.

Additionally, Place of Effective Management (POEM) provisions have been introduced to modify the conditions for determining the residential status of foreign companies. As per these provisions, a foreign company is considered resident in India if its place of effective management in that year is in India.

With an effort to curb tax evasion, the General Anti – Avoidance Rules ('GAAR') have been introduced wherein an arrangement may be declared as an impermissible avoidance arrangement if the main purpose of the arrangement is to obtain a tax benefit. However, GAAR provisions will only be invoked if the aggregate tax benefit to all the parties to the arrangement exceeds INR 30 million in one financial year.

Joseph Courand

Chile is a member of the OECD and, therefore, it has implemented and will continue to implement the Actions resulting from the BEPS project However, we have to wait which will be the impact that the US Tax Reform may have in the Global Tax Reset.

Q6. In what way could you defend a tax authority challenge to transfer pricing arrangements, and how can you resolve a dispute that involves two or more countries?

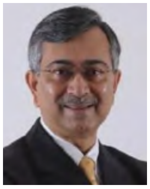
Marjorie Rawls Roberts

The USVI has a Tax Implementation Agreement with the United States which utilises a Competent Authority process to resolve transfer pricing disputes involving parties located in the United States and the USVI. This process is similar to the process utilised by the United States Internal Revenue Service Competent Authority process utilised under bilateral income tax treaties involving the United States. Code section 482 applies to transfer pricing disputes involving entities located in the United States and the USVI. Therefore, it is advisable to obtain a transfer pricing study or advanced pricing analysis for contracts between related parties located in the United States and USVI. However, United States tax treaties do not include the USVI, and therefore bilateral tax treaty procedures contained in such treaties are inapplicable to transfer pricing disputes involving countries other than the United States and the USVI.

Catarina Breia

It depends of the countries involved in the transfer pricing dispute. If both are within the European Union, I would strongly recommend the Arbitrage Convention. I have participated in several situations in which the double taxation was avoided.

Q6. In what way could you defend a tax authority challenge to transfer pricing arrangements, and how can you resolve a dispute that involves two or more countries?



Jairaj Purandare

Under the Transfer Pricing provisions, there exists a process for an Advance Pricing Arrangement (APA) to determine the transfer price or the transfer pricing method for international transactions.

In the case of the taxpayer not agreeing with the order passed by the revenue officer, then an appeal may be preferred before the first level of appellate authority / Dispute Resolution Panel (panel of three members) and subsequently before second level appellate authority.

Tax risks of multinational enterprises are expected to increase further post-BEPS as tax authorities across the globe are focusing more on their cross-border tax transactions to protect the tax base of their jurisdiction. The taxpayers are therefore seeking more certainty in managing their tax risks and potential exposure to risks.

Action 14 of the BEPS Action Plan, in particular, seeks to improve the effectiveness of the mutual agreement procedure ('MAP') in resolving treaty-related and transfer pricing disputes.

The Indian Income Tax Authorities recently released a clarification stating that it would accept requests for MAPs and Bilateral Advance Pricing Agreements ('BAPAs') in transfer pricing disputes with all countries, regardless of the existence of specific provisions in the tax treaty.

MAPs and BAPAs are internationally preferred alternate dispute resolution mechanisms in cases involving transfer pricing disputes. BAPAs are designed to deal with the dispute resolution procedure before the dispute arises, which has transfer pricing ramifications in multiple countries. BAPAs provide certainty to multinational companies in handling their transfer pricing exposures and compliances between related party transactions. On the other hand, MAPs provide procedural guidance once the dispute has arisen.

Previously, India had imposed an embargo on entertaining requests for entering into a MAP or BAPA with a country unless the DTAA with that particular country contained Article 9(2) which provided a 'corresponding adjustment'. This meant that unless provided under the tax treaty, transfer pricing disputes could be settled only through domestic litigation instead of the more efficient and internationally preferred mode of bilateral arbitration. This position was contrary to international standards and was criticised by several corporates.

Q7. What measures can be incorporated into wealth management services to maximise tax efficiencies and reduce investment and financial risks?

Marjorie Rawls Roberts

The U.S. federal estate tax is not mirrored to the USVI, but is administered by the IRS and applies to U.S. citizens domiciled in the USVI at death. The U.S. federal estate tax is payable by all U.S. estates having a value that exceeds the total of the exemptions granted by the IRS. While local (USVI) inheritance and gift tax regulations do exist, the applicable exemptions are so broad as to effectively exempt all gifts and inheritances from local taxation. U.S. citizens domiciled in the USVI may incorporate living trusts as part of their wealth succession planning to ensure use of their U.S. federal estate tax exemption and unlimited marital deduction. Trusts that are fully funded during an individual's lifetime will also provide efficient transfer of wealth to heirs by ensuring avoidance of probate administration in the USVI. Individuals acquiring their U.S. citizenship solely by reason of birth or residence within the USVI, or any U.S. possession, (referred to under the Code as a "non-resident not a citizen of the United States") are not subject to federal estate and gift taxes on assets located outside of the 50 states and the District of Columbia. For such individuals, ensuring investments are restricted to assets located outside of the 50 states and the District of Columbia will maximise the estate tax benefits associated with their status as a non-resident not a citizen of the United States.

Q7. What measures can be incorporated into wealth management services to maximise tax efficiencies and reduce investment and financial risks?

Catarina Breia

Managing wealth means balancing a wide number of concerns: protecting and growing your wealth, managing risk, planning for its eventual transfer or family succession. Having the right tax advisor as a partner, that not only understands your goals, but also works closely with you to provide you several timely and appropriate (and not one-size-fits-all) solutions to your unique circumstances, can make all the difference in maximising tax efficiencies and reducing risks.

Q8. How, if at all, has the tax landscape changed since the Panama Papers leak in 2016? Do you expect the recent Paradise Papers leak to have any lasting impact?

Marjorie Rawls Roberts

Recent data breaches in the tax planning space have brought the issue to the forefront. This occurrence will not likely lead to drastic changes in the tax laws, as nothing is inherently wrong with the tax planning, but rather will result in new practices, and possibly new laws and regulations related to how a firm maintains data. To be sure, media did not question the legal sufficiency of the structures or the choice of planning device by the persons revealed to have engaged in offshore planning, but rather it seized on the name recognition aspect and sheer volume of information leaked. We expect there to be some public scrutiny of existing tax laws but little long-term negative impact to the tax regimes of the affected jurisdictions, and of course the USVI was not one. As a U.S. territory, the USVI is covered by Federal banking and securities laws and there is a Tax Implementation Agreement between the USVI and the U.S. for the mutual disclosure of certain information. It is important, of course, that professional advisors have appropriate background checks for their prospective clients and then carefully navigate the regulatory structures that each client faces.

Alok Chugh

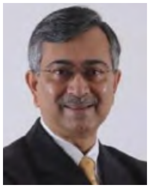
The KTA are under tremendous pressure to ensure balanced taxation and compliances. The Panama Paper leak further raised awareness of the possible tax avoidance in Kuwait as well. As a result, the KTA have become more stringent in their practices and are following an aggressive approach towards the foreign companies operating in Kuwait. The most recent examples of such aggressive attitude being the rejection of tax treaties and follow-ups on 5% tax retention provisions. In addition, as I mentioned, Kuwait is already working with the other Governments on the implementation of BEPS and FATCA and CRS etc. and this should in fact contribute to a tax transparent environment. In my opinion, although the impact of paper leak, per say, made fade away, the practices of the KTA should continue.

Joseph Courand

The Panama Papers leak and other leaks made taxpayers aware of their exposure to public scrutiny and potential reputational damage when using tax havens to conceal operations or tax structures. Taxpayers are starting to understand the benefits that derive from transparency to both the general public and tax authorities. However, since tax havens will continue to exist and companies will continue to use them for many other purposes than just tax planning, companies using tax havens within their corporate structures should have in place a communicational plan/strategy to explain and justify their usage.

"As a U.S. territory, the USVI is covered by Federal banking and securities laws and there is a Tax Implementation Agreement between the USVI and the U.S. for the mutual disclosure of certain information."
- Marjorie Rawls Roberts -

Q9. How can you determine whether something is considered to be acceptable tax planning, avoidance, aggressive tax avoidance or evasion?



Jairaj Purandare

The framework of taxation in India has undergone several changes over the past few years. Previously, treaty shopping was considered acceptable to attract foreign investment in India. The Supreme Court of India had held, in a landmark judgment, that as long as a taxpayer held a valid Tax Residency Certificate from its home country tax authorities, it was eligible to claim relief under the tax treaty.

However, over a period of time, there has been a significant change in the thinking of the law makers and the Revenue Authorities. The focus has shifted to substance of the transaction rather than form. Treaty benefits and treaty shopping is viewed in the context of General Anti-Avoidance Rules (GAAR) provisions.

The aspects of acceptable tax planning, tax avoidance or evasion have undergone considerable change over a period of time. This is also evidenced by the recent amendments in the Indian tax treaties with Mauritius, Singapore and Cyprus. In order to curb tax planning and control impermissible tax planning activities, the aforesaid tax treaties were amended to tax capital gain on sale of shares of an Indian company at source rather than in the country of residence.

Courts and tax tribunals are inclined to pass judgments taking cognisance of the changing international tax scenario to curb incidences of base erosion and profit shifting.

This may be illustrated by some of the recent legal pronouncements. In the case of Formula One World Championship Ltd, the Supreme Court of India has held that as long as a non-resident has control over the activities in India, has an Indian presence, and is in a physically defined geographical area, permanence in such fixed place could be relative having regard to the nature of the business i.e. duration/stay is not important.

In another ruling pronounced by the second level appellate authority, it has been held that physical stay is not important to constitute a Service PE in the present digital era and services rendered from offshore could also constitute a PE.

Joseph Courand

Chilean legislation recognises that taxpayers are entitled to opt between different alternatives to undertake a given operation; however, Chile recently introduced GAAR under which an operation is disregarded for tax purposes when a tax court qualifies it as abusive or simulated. Therefore, as a general rule, planning is acceptable as long as an economic purpose exists other than the mere tax benefit. Tax evasion constitutes criminal tax fraud and requires from the taxpayer a wilful action to break the law.

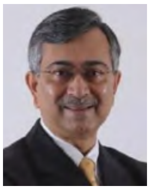
Q10. Does your jurisdiction offer any tax incentives for new investment?

Marjorie Rawls Roberts

Yes, the USVI has two primary programs, the Economic Development Program ("EDC") and the Research and Technology Park Program ("RTPark"). Each Program offers exemptions and reductions to both direct and indirect owners of beneficiaries if the owners are bona fide residents of the USVI. A beneficiary under either Program receives a 90% tax credit against its income tax liability on income from the business for which benefits are granted. There is no withholding tax on payments to U.S. corporations or U.S. individual residents. Further, Program beneficiaries with foreign owners are exempt from withholding tax on interest payments and enjoy a reduced withholding rate of 4.4% on dividend payments overseas. This includes the 10% surcharge on corporations. In addition, no income tax is payable on interest paid to non-resident alien individuals or foreign corporations and the tax rate on dividends and royalties paid to non-resident individuals or foreign corporations is 4%. Beneficiaries receive an exemption from the USVI gross receipts tax, excise tax, and property tax. An RTPark or EDC beneficiary's customs duties are reduced from 6% to 1% on raw materials and component parts imported from outside the USVI. Materials made in the U.S. are exempt from any customs duty. In order for income to be eligible for benefits under either Program, the income must also satisfy applicable federal source and effectively connected income regulations.

Catarina Breia

Portugal has a multitude of very interesting tax incentives to attract new investment (e.g. contractual tax incentives, patent box, research and development, investment promotion, urban rehabilitation, notional interest deduction, among others), but also high value activities (e.g. non-habitual regime, golden visa).



Jairaj Purandare

Currently there are a few tax incentives for new investment. The incentives which were available earlier are being phased out gradually.

A taxpayer, engaging in specified manufacturing activity and which begins to manufacture or produce before 31 March 2021 in a unit located in a notified Special Economic Zone will be allowed a deduction equal to 100% of such profits and gains for the first five years and 50% for the next five years.

An additional deduction is available for new investment in plant and machinery made by entities located in certain specified areas provided the investment is made up to 31 March 2020.

Expenditure on scientific research undertaken in-house or contributions to notified research institutions is eligible for a weighted deduction.

Capital expenditure incurred for certain specified businesses is eligible for deduction.

In case of start-up entities which are engaged in specified businesses, the profits derived from such business are fully exempt for any three consecutive years out of the first seven years.

To encourage employment, 30% of the amount of additional employee cost incurred on new employees is allowed as a deduction subject to certain conditions.

Q10. Does your jurisdiction offer any tax incentives for new investment?

Alok Chugh

The Kuwait government is promoting the foreign direct investment in the country through implementation of Law 116 of 2013. Within the law, the licensed entity may be eligible for the tax and custom duty exemption provided that the investing entity is able to demonstrate the value addition to Kuwait. The value addition may be in terms of technology transfer, which includes creating R&D hub in the country, training centres for the Kuwaiti nationals etc. The other criteria for grant of license incudes national labour job creation and economic benefit to the state of Kuwait. The authority, Kuwait Direct Investment Promotion Authority (KDIPA) is reporting a very good progress in granting of licenses.

Joseph Courand

There are incentives most of which are focused on the acquisition of fixed assets.

VAT exemption (Article 12, letter B, N° 10 of the VAT Law): Investors that receive foreign investment in the form of capital assets, are VAT exempt on the import of said assets if used for the development, exploration or exploitation in Chile of mining, industry, forestry, energy, infrastructure, telecommunications, investigation and technology development, medical, or science development projects. The minimum amount for the investment is USD 5 million.

VAT refund (Article 27 Bis of the VAT Law): Tax incentive that allows taxpayers to: (a) offset carried forward VAT credits against any kind of domestic taxes owed, including withholding taxes, or against any customs duties or other charges collected by the Chilean Customs Service; or (b) request a cash refund of the VAT paid.

Tax credit for the acquisition of fixed assets: Tax credit against FCIT for taxpayers who acquire; construct or acquire through lease purchase new fixed assets. The credit is equivalent to a percentage of the value of the fixed assets, which varies from 6% to 4% depending on the average of their annual sales in the three prior years.

The annual amount of the credit may not exceed 500 UTM (USD 35,552 approx.)

Accelerated Depreciation for fixed assets: Taxpayer may opt to depreciate their fixed assets in 1/3 of their useful lifetime.

R&D Tax Credit: Expenditures paid by companies in R&D are subject to a 35% tax credit, capped at approximately USD 1.6 million.

Q11. What strategies or measures can a business implement to minimise the impact of increasing tax costs?

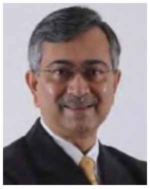
Marjorie Rawls Roberts

Businesses relocating to the USVI can enjoy all the benefits of a diversified modern economy while realising substantial tax savings. Although the nominal tax rates are the same as those on the U.S. mainland, the USVI offers a blend of targeted tax incentives to attract businesses to the USVI through the EDC and RTPark Programs described above as well as benefits for fishermen and farmers, international banks, and captive insurance companies. In addition, the USVI provides a stable business climate and the added benefits of the U.S. Flag, U.S. currency, and a nonvoting delegate to the U.S. House of Representatives to advocate favourable legislation. The USVI has a Federal District Court with two Federal judges and is in the Third Circuit Court of Appeals along with Pennsylvania, Delaware, and New Jersey. It also has a robust local court system with Superior Courts and the USVI Supreme Court. The USVI is covered by the United States' extensive network of bilateral investment treaties and treaties of friendship, commerce, and navigation, but not tax treaties.

Q11. What strategies or measures can a business implement to minimise the impact of increasing tax costs?

Catarina Breia

In general, companies that consider tax as a strategic area and adopt a continuous planning and monitoring strategy with an informed tax partner normally obtain better results and effectively lower its taxes.



Jairaj Purandare

As mentioned earlier, the Indian Finance Minister had announced in the past that the base corporate tax rate will be reduced from 30% to 25% over a period of four years and simultaneously, tax incentives will also be eliminated in a phased manner. Hence, currently, there are not many provisions in the tax law for tax planning.

A deduction is available for preliminary expenses relating to preparation of: a feasibility report, project report, conducting market survey or other surveys necessary for the business of the taxpayer, engineering services, legal fees for drafting any agreements relating to setting up or conduct of the business, expenses relating to issue of shares, etc., incurred either prior to, or after commencement of business. The said deduction is available in five equal instalments beginning from the financial year in which the taxpayer commences business.

A deduction is available for bad debts written off in the books of account of the taxpayer. Interest expenditure incurred by the taxpayer is deductible fully, except in certain cases where the corresponding income is tax exempt and thin capitalisation provisions for interest paid to associated enterprises.

Expenditure on scientific research undertaken in house or contributions to notified research institutions is eligible for a deduction and a weighted deduction in certain cases, subject to conditions.

Deduction is available for capital expenditure incurred on specified businesses such as laying and operating a cross country natural gas pipeline network, operating a new hotel, operating a new hospital, housing projects, setting up and operating an inland container depot or container freight station, etc.

Weighted deduction is available for expenditure incurred in connection with certain notified projects such as skill development, agricultural extension project, etc.

In the case of non-resident taxpayers, there are few additional provisions for tax relief. For instance, profits and gains derived by non-residents from certain businesses may be taxed a presumptive rate. The rates of presumptive tax for shipping business, exploration of mineral oils, operation of aircrafts and civil construction business on a turnkey basis are 7.5%, 10%, 5% and 10% respectively.
Incentives available for new investments are already discussed above.

Alok Chugh

The immediate action could be to assess the tax functions of the business to evaluate if a tax team is required for the business or if the function could be outsourced. Another important need of time is a health check. This is to ensure that the existing tax compliances are up to date, identify the tax leakages, and design the remedial action in light of the recent BEPS initiatives.

We are already serving a number of our clients in health check and group re-structuring assignments, and this has indeed resulted in appropriate tax payments.

Q11. What strategies or measures can a business implement to minimise the impact of increasing tax costs?

Joseph Courand

There are several alternatives and they depend on the type of investment, type and investor´s residency and other considerations. For example, a typical strategy would be to finance an investment with a mix of debt and equity, since interest payment is subject to lower WHT rate than dividends and dividends are deductible as long as necessary to produce taxable income.

J. Leonard Teti II

In the US, tax costs are now going down because of the new tax law. Rates for corporations have come down fourteen percentage points, from 35% to 21%. As a result, benefits from typical tax-reduction strategies (e.g. increasing deductible payments) have been reduced simply by virtue of the reduction in the tax rate. In addition, the new "base erosion" anti-abuse rules provide for a special minimum tax aimed at very large companies that pay excessive amounts of deductible payments to affiliates.

Nevertheless, even under the new rules, certain benefits continue. Interest remains deductible, albeit only to the extent it does not exceed 30% of EBITDA, which means that funding with debt may produce a tax benefit. This limitation becomes stricter starting in 2022. In addition, bonus depreciation has been expanded to allow taxpayers, through 2022, to expense, on a current basis, 100% of the cost of tangible depreciable property acquired or otherwise put into service. This will accelerate tax benefits relative to prior law.

Q12. What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

Marjorie Rawls Roberts

Although the USVI experienced widespread damage during Hurricanes Irma and Maria, the rebuilding of infrastructure with greater resiliency is creating new opportunities for businesses seeking an attractive near-shore, U.S. flag investment destination. Over the coming year the USVI's economic outlook will improve steadily with rebuilding in the hospitality, service and alternative energy sectors. The future will likely bring continued economic growth buoyed by strong government support of private businesses and the continued success of the tax incentive programs in attracting new businesses to the USVI that hire and train residents, invest in the Territory and diversify the economy.

Joseph Courand

The trend tends to be global exchange of information between jurisdictions. When the BEPS actions are implemented and adopted by the countries, I would like to see consistency and certainty around their application, as this would provide security and certainty to the investors.

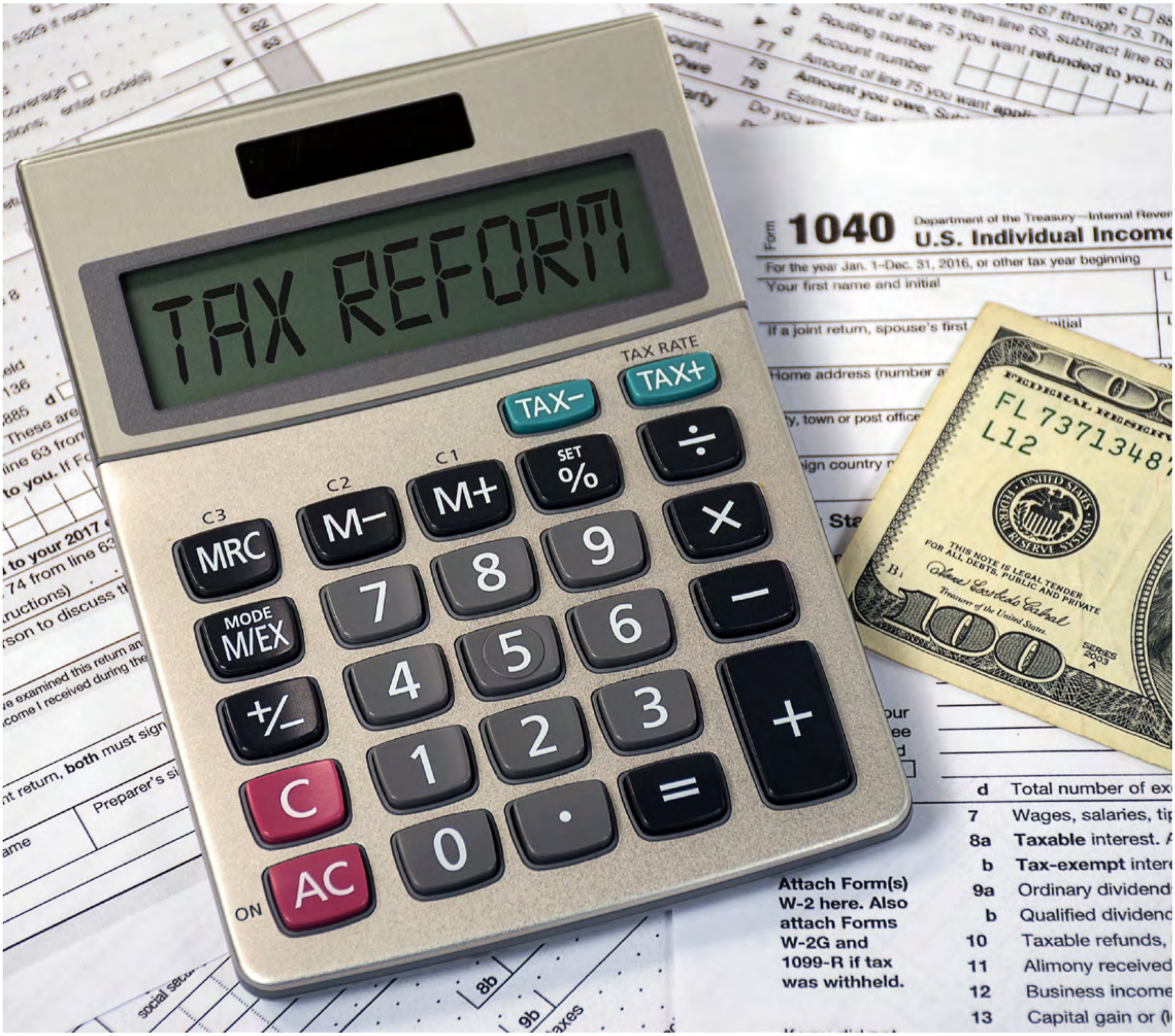
"The new "base erosion" anti-abuse rules provide for a special minimum tax aimed at very large companies that pay excessive amounts of deductible payments to affiliates."
- J. Leonard Teti II -

Q12. What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

J. Leonard Teti II

US tax reform will cast a long shadow over the coming year. It will affect M&A activity and administrative rulemaking in the US. It will also affect state budgets and legislative reactions, as state lawmakers think of ways to offset one of the tax reform's key changes for individuals – the elimination of deductions for state and local taxes in excess of $10,000.

Tax reform also promises to be a centrepiece of the upcoming American congressional political campaign. In 2018, all 435 seats in the House of Representatives will be contested, and one-third of the seats in the Senate. Democrats, none of whom (in either house of Congress) supported the tax reform package, will hope to use the tax reform bill against the Republicans. Republicans, on the other hand, will hope that taxpayers have had a chance to change their views on the law. The law was seen to be quite unpopular at the time it was passed, but in the time since passage, polls are noting an uptick in popularity. Moreover, individuals began to see an increased take-home pay in their pay cheques only in February 2018, when the IRS updated withholding tables to reflect the new law.



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