



Shifting Paradigms

New Approaches
to Global Tax

Virtual Round Table Series
Tax Working Group 2017

Shifting Paradigms

New Approaches to Global Tax

There has been a discernible shift in attitudes to global tax.

Transparency has become a buzzword among tax professionals since the 'Panama Papers' leak rocked the world in 2016. Ongoing initiatives concerning transfer pricing, offshore entities and common reporting standards, among others, all now seek to increase the transparency around where profit is earned and wealth accumulated.

International bodies such as the OECD and European Union have sponsored these extensive initiatives, as have countries keen to receive a greater share of tax on profits and wealth derived within their jurisdictions or compiled by their citizens.

Aggressive tax planning and avoidance has become a dirty word and, as a result, the expertise of respectable tax lawyers and accountants is directed towards legal tax management and compliance with these new and complex codes.

For businesses and individuals with an international perspective, the task of complying with multi-jurisdictional tax regulations has become extremely complex. There is an increasing need for clear, appropriate and efficient tax advice across multiple jurisdictions.

With this in mind IR Global brought twelve members of its Tax Group together to discuss the shifting paradigms of international tax. The aim of this feature is to give members and their clients an insight into innovative approaches to tax management across a range of jurisdictions. We also assess how new tax regulations and initiatives, such as BEPS, CRS, FATCA and CBCR are being negotiated and implemented.

The following discussion involves IR Global members from the United States, Denmark, Japan, Mauritius, Lebanon, Cyprus, Malta, The Netherlands, France, Uruguay, New Zealand and Luxembourg.

The View from IR

Thomas Wheeler

MANAGING DIRECTOR

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners from the specific working group featured.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



LEBANON

Wissam Abousleiman

Managing Director,
Abousleiman & Co

Phone: +961 1 571093

Email: wissam@abousleimangroup.com

Wissam Abousleiman has over 18 years experience in the audit/assurance, risk management & tax advisory services, having worked with a diverse range of clients, including private businesses, nonprofit organisations and public & semi-public institutions. Since assuming the role of Managing Director at Abousleiman & Co, he has directed the firm with professionalism, increasing staff numbers to 40.

Wissam lectured for two years in Internal Controls & Audit at Kafaat Institute University and continues to lecture on International Financial Reporting Standards (IFRS) and the Lebanese tax code.

His biggest, current project is the development of diploma programs for the American University of Beirut's Continuing Education Center.



DENMARK

Neil Smith

International Tax Lawyer,
Nordeq

Phone: +45 30 80 30 98

Email: n.smith@nordeqmanagement.com

Neil Smith has been working for 15 years advising on cross-border deals with a particular emphasis on structuring international transactions involving Danish companies. He is a founder and one of the main shareholders of the Nordeq group, a boutique international corporate and tax group.

Neil is on BNA International's committee for its online service and holds an LLB (Hons) and a Diploma in Legal Practice. Neil's interests include sport and politics and he is an accomplished after dinner speaker. He also lectures American college students in the Finance Faculty of the Danish Institute of Study Abroad.



LUXEMBOURG

Stéphane Ebel

Partner, Duvieusart & Ebel

Phone: + 352 27 44 95 41

Email: stephane.ebel@duvieuartebel.com

Stéphane Ebel advises an international clientele on the tax aspects of Luxembourg and cross-border transactions, in particular real estate, private equity and finance transactions.

He is also involved in matters relating to insolvency and liquidation of Luxembourg companies, and to general business law and dispute resolution.

Prior to joining the Luxembourg Bar, Stéphane worked for a pharmaceutical multinational company and a consultancy firm as tax advisor. He has experience in international tax planning, corporate and personal taxation, VAT, liquidation of companies as well as general business law.

He is also a lecturer in the Institut de Formation Bancaire Luxembourgeois (IFBL) in corporate and international taxation and a member of IFA (International Fiscal Association), Luxembourg branch.



MALTA

Pierre Galea Musu

Partner,
UHY

Phone: +356 2131 1814

Email: pgm@uhymalta.com

A CPA by profession, Pierre Galea Musu is a Fellow Member of the Malta Institute of Accountants and a Council Member of the Malta Institute of Financial Service Practitioners. A CPA by profession, he has furthered his expertise through a post graduate diploma in international tax.

His expertise is within corporate services providing appropriate commercial and tax-efficient structures for International expansion and cross border ventures, regulatory compliance and audit.

UHY Pace, Galea Musu` & Co is a member of Urbach Hacker Young International Limited and forms part of the international UHY network of legally independent accounting and consulting firms.



MAURITIUS

Kamal Hawabhay

Managing Director,
GWMS Ltd

Phone: +230 4549670

Email: kamal@globalwealth-ms.com

Kamal Hawabhay has more than 16 years post-qualification experience in the professional accounting and global business industry. He is ex-KPMG (Durban) and has held senior management positions with leading offshore management companies.

He holds an Advanced Diploma in International Taxation from the Thomas Jefferson Institute of San Diego, USA and is the President of the Association of Management and Trust Companies in Mauritius.

He is also a Fellow of the Mauritius Institute of Directors, a full member of the Society of Estate and Trust Practitioners of the United Kingdom and the International Fiscal Association.



JAPAN

Toshio Miyatake

Managing Partner,
Adachi, Henderson, Miyatake
and Fujita

Phone: +81 3 3556-1031

Email: miyatake@ahmf.jp

Toshio Miyatake has more than 30 years of experience in international tax practice. His tax practice ranges from tax planning to handling of tax audits and tax litigation in various tax fields. He has also handled a considerable number of transfer pricing cases.

Toshio is a graduate (LL.B.) of Kyoto University and holds an M.C. L. from the University of Washington School of Law.

He taught Japanese international taxation at the Harvard Law School as a visiting professor in 1983, and taught at the Law Faculty of Sophia University and the Chuo University Graduate Course of Accounting for a number of years. He also writes and lectures extensively. His writings include the textbook Kokusai Sozei Ho (International Tax Law) in Japanese and various tax articles in Japanese and English.



CYPRUS

George Savvides

Managing Director,
Fiducenter

Phone: +357 25 50 40 00

Email: george.savvides@fiducenter.com.cy

George Savvides has a first class honours degree in Accounting & Finance from Lancaster University, UK and is a Chartered Accountant, member of the Institute of Chartered Accountants in England and Wales (ICAEW) and of the Institute of Certified Public Accountants of Cyprus (ICPAC).

He is an Associated Arbitrator, member of the Chartered Institute of Arbitrators (CIArb) and the originator and First President of the Cyprus Fiduciary Association, a body which has been established to represent the fiduciary service providers in Cyprus.

George has authored many articles on the tax system and other aspects related to the international business sector in Cyprus and has organised and/or participated in various conferences and other events abroad for the role of Cyprus in international business and tax planning.



USA

Stewart L. Appelrouth

Co-Founder, Appelrouth
Farrah & Co

Phone: (305) 444-0999

Email: stewart@appelrouth.com

Stewart L. Appelrouth has built a firm renowned for its creative financial and accounting advisors. The firm's strength derives from the founders' philosophy of accessibility and a hands-on approach.

Stewart has more than 25 years of experience providing specialised services including litigation support, auditing, fraud investigation, and business valuation as well as business and tax consulting. He has also served as an expert witness in Federal and Circuit Courts.

He is adamant about maintaining a high-level of service with personalised attention, utilising extensive resources and a breadth of knowledge that rivals large firms.

He is a Fellow of the American Board of Forensic Accounting.



NETHERLANDS

Friggo Kraaijeveld

Partner,
Kraaijeveld Coppus Legal

Phone: +31 20 333 0130

Email: fkraaijeveld@kclegal.nl

Friggo Kraaijeveld holds degrees in Tax Law and Civil Law and Philosophy from the University of Amsterdam. He also holds a postgraduate LLM in International Tax Law from the International Tax Centre of the University of Leiden.

Friggo worked in international taxation at PWC before joining a leading Dutch law firm. He specialises in tax issues with an international dimension, such as private equity structuring, cross-border investments, international trade and labour.

Friggo is a member of the Dutch Order of Attorneys (NOvA), the Dutch Association of Tax Advisors (NOB), the International Bar Association (IBA) and the International Fiscal Association (IFA).



FRANCE

Benoit Couty

Partner,
Pichard & Associés

Phone: + 33 1 46 37 11 11

Email: benoit.couty@pichard.com

Benoit Couty advises on the tax aspects of mergers & acquisitions, international group mergers, LBOs and share capital reorganisations. He also has considerable expertise in tax litigation including transfer prices.

He holds a Maîtrise degree in business law and a Masters degree (DESS) in International Business Law.



URUGUAY

Carlos Picos

Partner, Carlos Picos
Consultora

Phone: +598 2623 2326

Email: carlos@contadorpicos.com

Carlos Picos is dedicated to local and international business consultancy, providing accounting, administrative, fiscal and labour market advice to local and foreign companies.

Carlos has a professional staff with more than 20 years of experience in business consulting, accounting and taxation. The firm is motivated by excellence and is focused on achieving customer satisfaction.

The firm provides a personalised service to fit customer requirements, precisely defining services for each client.



NEW ZEALAND

Richard Ashby

Partner, Gilligan Sheppard

Phone: +64 9 309 5191

Email: richard@gilsherp.co.nz

Richard Ashby has more than 25 years' experience with New Zealand taxation matters, starting his career with the Internal Revenue Division before eventually becoming tax partner at Gilligan Sheppard.

He deals with clients of all types and sizes and provides tax opinions on the appropriate treatment of items of income and expenditure, assists clients with IRD risk reviews and audits and can assist clients who are having difficulties meeting their tax payment obligations to make suitable repayment arrangements with the IRD.

Richard strives to maintain a good work/life balance and outside of the office spends a large amount of time on his road bike, either training or competing in various events around the North Island.

Round Table Q&A

QUESTION 1

How important are double taxation treaties in your jurisdiction? Are you able to use them to the advantage of your clients?

Mauritius –Kamal Hawabhay (KH) Mauritius started implementing Double Taxation Treaties (DTTs) with its economic diversification strategy in 1990. Financial services are now the third pillar of the economy and the treaties allowed that industry to flourish, so they are very important for Mauritius.

We have a network of 43 DTTs in place, with 29 more being finalised right now, creating an expansive network. Interestingly we have 16 DTTs with African countries and Mauritius is developing into the regional International Financial Centre (IFC) for businesses with interests in Africa and India.

Our treaty with India is important, as is the DTT with South Africa. A lot of foreign clients use Mauritius to invest in the Indian Stock Markets or to structure private equity investments in India and Africa.

There has been significant growth in South African companies using Mauritius as a hub for their African business.

Denmark –Neil Smith (NS) Can I ask you about Kenya Kamal? Is Mauritius used to structure Kenyan investments?

Mauritius –KH The DTT has not been ratified by Kenya yet, nevertheless, Mauritius is used quite a bit by Kenyans.

Denmark –NS Denmark's network of DTTs are based on the OECD model. We have 80 in total, but they are relatively standard in approach. What has happened of late is that the Danish tax authorities are taking specific steps to look at anti-conduit structures.

So, if a Danish company makes interest or dividend payments, they will ask whether the recipient is the beneficial owner for treaty purposes. That has restricted the use of Danish companies as intermediate holding companies and it's something clients need to be aware of when structuring companies. A number of large investors have been subject to court cases concerning whether the recipient of the dividend was actually the beneficial owner and therefore entitled to any DTT exemption.

Japan –Toshio Miyatake (TM) Japan's tax treaty network follows the OECD model also. There are many types of investment incomes, including dividends, interest and royalties, where withholding tax can be reduced or exempted under a DTT; even capital gains from the sale of shares can be exempt. There are some provisions on that, but about half of the tax treaties recognise this.

Business income also cannot be taxed under a DTT, unless you have a permanent operation in Japan. The treaties are useful, but they do have limitation of benefits (LOB) provisions similar to the US model.

Denmark –NS How is the limitations of benefits clause implemented in Japan? Is it done on a case-by-case basis?

Japan –TM We have limitations of benefits with the USA, UK, Netherlands, Australia and other industrialised countries. If a business is active, then limitations of benefits apply, and we use an active business test to establish this. Also, if 75% of a company's shares are owned by less than seven people then we don't apply limitations to those shares.

These are typical mechanisms that are quite common within the provisions of other countries also.

Mauritius –KH Most DTTs are generally negotiated between countries for the promotion of trade and investment. The outcome of such negotiations depends on the relationship between those countries. Most Mauritian DTTs do not have a limitation of benefits clause. A few have been re-negotiated recently, but we need to consider the older DTTs against the backdrop of action 15 of Base Erosion and Profit Shifting (BEPS) regulations dealing with the introduction of a multilateral instrument (MLI) to automatically amend DTTs.

Mauritius has opted to adopt the minimum standards under the MLI and a detailed LOB clause, giving Mauritius the right to negotiate bilaterally with treaty partners, something we believe will be advantageous for us.

Lebanon –Wissam Aboulsleiman (WA) It is said that there are more Lebanese outside Lebanon than there are in Lebanon, so it comes as no surprise that Lebanon has more than 30 tax treaties, especially when the country's diaspora is highly engaged in holding assets, investing in their homeland and sending savings back to family members.

Lebanon has always been regarded as a link between the East & West, and has established multiple treaties to facilitate investment opportunities between Europe, the Arabian Gulf and Africa, with relatively low tax rates (15% corporation tax, plus 10% on capital gains and dividends). As a result, DTTs have been used to the advantage of our clients on many occasions.

As an example, one of our clients set up a company in a European country with a branch in Lebanon to access Arabic speaking countries, and another in an African State to benefit from established tax treaties. This was complemented by effective transfer pricing arrangements between the jurisdictions, allowing access to three different markets.

Our membership of IR Global allows us to map tax treaties and legally setup tax efficient structures for our clients, allowing access to more markets.

Cyprus –George Sawides (GS) Cyprus has more than 50 DTTs with countries all over the world, creating a huge comparative advantage compared to other international business centres in attracting business from those countries.

We make use of Double Tax Treaties on a regular basis in relation to the business affairs of our clients and always strive to be in full compliance with the latest regulatory developments and their practical implementation. This is especially the case for some areas covered by such treaties, such as tax residency, permanent establishment and beneficial ownership.

Luxembourg –Stéphane Ebel (SE) The Grand-Duchy of Luxembourg is the largest centre for private wealth management in the European Union. One hundred and forty two international banks have been established within its borders, and numerous investment funds are domiciled in the country.

As a consequence, Luxembourg has a strong network of double tax treaties developed over several years. As at 26 January 2017, Luxembourg had 80 double tax treaties in force, 57 of which include article 26-5 of the OECD Tax Convention Model. There are 17 double tax treaties pending (under negotiation or not yet applicable).

The double tax treaty network is very useful, but is subject to strict substance requirements, consigning treaty shopping to history. The use of double tax treaties requires demonstration of sufficiently strong links with the residence State.

In this respect, we have to mention the recent adoption by the OECD of a multilateral convention negotiated by more than 100 jurisdictions, allowing a quasi-automatic amendment of all the bilateral tax treaties that are in force between the signatory states.

USA –Stewart L. Appelrouth (SLA) The US internal revenue code already provides protection similar to double tax treaties, you get a credit against the liability for income taxes paid in other jurisdictions. Some treaties provide the same protections by providing credits on taxes paid in the US as well.

You can take a deduction as opposed to a credit depending on where you are located, so, when we are dealing with our clients, there is often an educational process. We contact professionals in the relevant jurisdiction and help them understand the requirement of what they have to do and not do in the US to get a reduction in their overall tax liability.

Malta –Pierre Galea Musu (PGM) Malta operates a very extensive network of DTTs, giving us good flexibility as an international financial centre. The more diffuse the network, the more jurisdictions are attracted to do business in Malta, allowing us to use them to the advantage of our clients.

Netherlands –Friggo Kraaijeveld (FK) The Netherlands, like the smaller European jurisdictions, is centred around using DTTs for international tax planning. We function as a finance or investment hub into Europe and the rest of the world and this is a key part of our services. These are uncertain times, as projects such as BEPS, affect jurisdictions like The Netherlands and alter our status as an investment hub.

Malta –PGM BEPS is definitely a concern and it is unclear where it will end up; there are a lot of unclear issues.

France –Benoit Couty (BC) France is known for having one of the most extensive double tax treaty (DTT) networks and this is one of the drivers for choosing France as a potential investment hub. We also have an effective and efficient authority that can address double taxation issues, notably with respect to transfer prices, in a timely manner.

DTTs with other EU Member States are not as crucial as those with non-EU Member States, as EU rules are well integrated in French tax law and most often achieve absence of double taxation within the EU.

A key aspect is the non-resident capital gain provision regarding substantial shareholdings in France. Certain DTTs prevent French authorities levying non-resident capital gain tax on the sale by a non-resident entity of a substantial shareholding (25% or more) in a French company.

Other key aspects are (i) the definition of real estate companies in the DTT, which determines the right for France to levy capital gains tax on the sale of shares in companies owning real estate in France and (ii) the narrow versus wide definition of royalties and dividends for the purposes of French withholding tax.

Uruguay –Carlos Picos (CP) Uruguay is a member of the OECD and currently has twenty-eight agreements in force and three more with parliamentary approval. Ecuador (where Tax Sparing applies), Malta, United Kingdom, Luxembourg and Germany are among them.



Benoit Couty pictured during the 2017 Dealmakers' conference in Barcelona

The political and social stability that characterises the country, combined with its macroeconomic strength, reliability of its legal system and the existence of investment promotion and protection agreements make Uruguay an attractive country to invest in and also provides guarantees for the investor.

At all times our advice is integrated with the analysis of these agreements in order to benefit clients.

As an example, we recently helped a German airline with a Uruguayan branch to minimise tax by utilising the DTT with Germany. Our report concludes that the airline had no permanent establishment in Uruguay and, therefore, the income generated by the branch was not considered to come from a Uruguayan source. Uruguayan taxation was avoided and the administrative task of the company in our country was simplified.

Malta –PGM Malta has several different types of DTT, not just treaty relief. There is also common wealth tax relief which is extremely rare.

New Zealand –Richard Ashby (RA) With New Zealand's (NZ) geographical location and limited market size, expansion of business activities to the global marketplace is only a matter of time for most NZ businesses. The use of DTTs, particularly the residency and permanent establishment articles, is very important therefore, to ensure that taxation of income derived in a foreign jurisdiction is kept to a bare minimum where possible, thereby maximising the return on investment for NZ investors.

New Zealand presently has around 40 DTTs in existence and usually follows the OECD Model Tax Convention on Income and Capital in terms of drafting and subsequent interpretation.

QUESTION 2

How do you integrate offshore jurisdictions into your client tax planning? Is your government treating offshore tax planning with more scrutiny, in light of the recent 'Panama Papers' scandal?

USA –SLA We review our clients' goals and discuss their multi-jurisdictional tax planning with them. There is a difference between avoidance and evasion and we don't do evasion, but you have to be able to interpret the laws appropriately. The problems come when a client asks for something and you figure out a way to do it. That's not avoidance.

We were actually talking to our clients about Panama before the scandals happened. A firm needs to be known as creative but legal, so it's about making a decision as to what kind of firm you want to have. We don't want governmental agencies breathing down our necks for things that are on the wrong side of creative. You can have a thousand clients and it just takes one to destroy you.

Luxembourg –SE The Luxembourg tax authorities found strong opposition within the Luxembourg Bar, when they asked lawyers to disclose more details of entities named in the 'Panama Papers'. Lawyers were asked to provide details of the ultimate beneficial owners, but this was nothing more than a fishing expedition. The President of the Bar invoked the concept of lawyers' professional secrecy in order to refuse the request.

Malta –PGM We had one case with the 'Panama Papers' in Malta, involving one politically-exposed government official.

In Malta if you approach a bank to open an account with anything associated with an offshore structure, it is flatly refused since the fines are enormous – they will simply not consider the risk.

Anything not transparent is refused, but of course the downside is that offshore structures are not always used for evasion of tax. In recent times, when we have used offshore companies to act as shareholder nominees, aggressive countries like Italy and France want to know who is behind the company. If it is set up in Malta by a French company, it would be deemed by the French authorities as having income in France and be subject to tax in the home jurisdiction. This falls foul of the European Union principle of freedom of movement.

Netherlands –FK There is a distinction between corporate and private wealth, which is not a key to Dutch tax practice.

In The Netherlands we still use quite a lot of offshore entities for fund structuring, hedge funds or private equity funds. We also make use of offshore jurisdictions for financing activities and I expect that to continue because the structures need to be flexible due to international financing demands.

In Europe we are discussing an offshore blacklist without consequence. We will then add consequences to being on a black list. This is likely to take effect throughout Europe broadly.

France –BC Offshore structures are under high scrutiny and we have rather punitive tax laws in this respect. The French tax rules provide two separate sets of anti-offshore regimes, one regarding low-level tax jurisdictions and another regarding non-cooperative territories.

Low-level tax jurisdictions are those where the corporate income tax is in fact lower than 50% of the French corporate income tax that would otherwise apply in a similar context (notwithstanding the nominal corporate income tax). Generally speaking, low-level tax jurisdictions potentially trigger CFC taxation and increase of documentation requirements.

Non-cooperative territories are listed in an official decree that is updated every year based on the actual tax cooperation with said territories. The list currently includes Nauru, Guatemala, Brunei, Marshall Islands, Botswana and Nioue. Any transaction involving such territories would be heavily taxed through withholding, non-deductibility, and disallowance of any favorable tax regime unless the business substance of the entity and of the transaction can be proven.

Aside from low-level jurisdictions and non-cooperative territories, some territories generate bad goodwill with the French tax administration, for no legal reason. This is notably the case for Cayman, Barbados, British Virgin Islands, Panama or other typical offshore territories.

There are no clear rules on substance, but it needs to be shown that a company runs normally from a legal perspective, for instance they hold their meetings there in a physical place and have an office with someone working there. We are quite reluctant when it is only a fiduciary and an employee of a fiduciary.

Netherlands –FK How do US private equity or hedge funds invest into France using offshore jurisdictions then?

France –BC We don't say it is not possible, but you need business rationale for the transaction and the substance of the entity.

Denmark –NS During the last decade, offshore shareholders have invited more attention and scrutiny from the Danish authorities.

Withholding tax is payable if interest or dividends are paid directly to an offshore shareholder – as a result, there is normally another jurisdiction in there acting as an intermediary. The authorities are now questioning whether these intermediary holding companies in countries like Luxembourg or Cyprus are the beneficial owners, or simply a conduit or flow-through company used for the purposes of reducing withholding tax.

Lebanon –WA Offshore companies are quite attractive options in Lebanon being only subject to an annual flat corporate tax (~USD670) and exempt from both dividends distribution tax and capital gains tax (10%), with additional exemptions from inheritance tax, payroll tax and social security contributions for employees who are working outside Lebanon, or not permanently residing in its territory.

Consequently, for Lebanese clients doing business in Lebanon and abroad, we have recommended setting up two companies registered and based in Lebanon to reduce the corporate tax impact and benefit from the above mentioned offshore company tax regimes.

The scrutiny on offshore entities is likely to be more of an issue in the near future due to CRS and AML regulations, since banks are being more vigilant when it comes to foreigners using Lebanese offshore solutions.

Japan –TM Japan has a strong Controlled Foreign Corporation (CFC) regime directed at offshore jurisdictions with low tax. Japanese companies which own those offshore entities must pay tax on income earned through them.

This applies if an offshore entity owns shares that pay dividends to a Japanese parent company, or if the offshore company licenses intellectual property for royalty payments. The same is true if the offshore company leases aircraft or marine vessels.

This year the Japanese CFC rules will change, however, and aircraft and ship leasing will be taken out of the regime, as will income from digital headquarters overseas. This is a popular move since a number of Japanese companies lease aircraft through Irish subsidiaries, where the tax rate is 12.5%.

The reason these activities have been excluded is that they are deemed to have substance. This shows that there is still a limited use for offshore entities, despite the CFC legislation working against them.

Cyprus –GS The word offshore has, over the last few years, become synonymous to sin. The use of such jurisdictions has reduced dramatically and the 'Panama Papers' scandal has made everyone even more concerned and cautious.

Cyprus Tax Authorities, as with most of their counterparts in Europe and elsewhere, are scrutinising transactions involving Cypriot companies with offshore entities and they frequently request supporting evidence in order to assess the validity and accuracy of such operations.

Mauritius –KH Financial services are important to Mauritius, but we are a diversified economy and I do not consider it an offshore jurisdiction, but rather an international finance centre.

The majority of our clients are international, but we also propose reputable vehicles in other jurisdictions for certain cross-border investments. We always advise clients where there are impediments to international business, such as CFC rules.

The Mauritian Financial Commission and Intelligence Unit did investigate individuals cited in the 'Panama Papers', but nothing untoward was found. To guard against these risks, we have a robust anti-money laundering (AML) and regulatory framework, meaning clients need to be licensed and monitored by the regulators. Everyone is bound by these rules, and while we do recognise the risks highlighted by the scandal, we believe our regulations deal with them effectively.

Denmark –NS The 'Panama Papers' have created more scrutiny in the EU around tax planning. This has been coming for some time, but it has been boosted by the recent revelations. In Denmark there has always been attention attached to offshore structures, but other jurisdictions like Luxembourg are coming under more pressure internationally.

There is still a recognition, however, that offshore companies are not in themselves problematic and can be used legitimately.

New Zealand –RA The 'Panama Papers' actually highlighted New Zealand as a potential tax haven due to our foreign trust regime and the potential opportunities it presents to non-residents attempting to hide wealth, a stigmatism the NZ Government naturally rejected. As a consequence, a full review of the foreign trust regime was undertaken by an independent expert and this resulted in the introduction of a new disclosure regime for foreign trusts which has recently been enacted and takes effect from 1st July, 2017.

The first thing we consider during tax planning is whether the level of client activity in the foreign jurisdiction will create a permanent establishment (PE) and consequently a taxing right for the foreign jurisdiction over the business profits attributable to that PE. This analysis in turn will dictate the nature of the business structure we will recommend to our clients considering offshore activity.

Uruguay –CP Our approach to tax planning structures has changed, as a consequence of the pressures that the OECD has imposed on countries, international double taxation agreements and the public alarm caused by incidents such as the 'Panama Papers.'

There have been modifications to Uruguayan laws of fiscal transparency around automatic exchange of information, beneficial ownership, transfer pricing and offshore companies. All of this normative change has influenced the way we help clients to plan, depending on their residence status and assets/investments in Uruguay.

Offshore structures are used as a means of obtaining financial benefits for clients by the deferment of tax payments, receipt of dividends or avoidance of double taxation.



Kamal Hawabhay pictured during the 2016 Annual Conference in Amsterdam

QUESTION 3

Common reporting standards (CRS) require automatic exchange of information between jurisdictions. How do you ensure corporate or HNW clients understand what is expected and the implications for their business?

Denmark –NS The short answer is that banks need to have full disclosure of all material beneficial owners. Denmark has an automatic exchange of information process with all developed countries and we explain to clients that we need to record information on ownership structures as part of our duties as a regulated trust company.

All our clients should assume that any information given will end up with the tax authorities in their home countries, so they should give their advisers all relevant information.

Mauritius –KH Mauritius has signed the Common Reporting Standards (CRS) agreement, along with about 90 countries. It commenced as of 01 January 2017, with reporting starting in July 2018.

All clients operating in the Mauritius IFC need to be licensed, with applications channelled through a licensed management company. Since the very beginning of the IFC, we have always had proper Know Your Customer (KYC) rules around ultimate beneficial owners, directors and officers associated with any client vehicles in our portfolio.

Our firm participated in the planning session with the authorities to finalise guidelines for CRS in Mauritius. It's quite comprehensive and we do ensure clients implement the requirements correctly.

There are fifteen main areas where the CRS allows jurisdictions to implement as suited, in order to provide for easier implementation without impacting on the purpose or effectiveness of the CRS. Mauritius has adopted options which are suitable to the nature of client business in our IFC.

We expect CRS to be a seamless process given our experience with FATCA in the US (Foreign Account Tax Compliance Act).

Japan –TM My advice to client is don't conceal any assets in an offshore jurisdiction. Automatic exchange of information is promoted by the Japanese Government, and it is better to comply with the requirements rather than conceal assets.

Cyprus –GS Our compliance department is in close communication with our clients and their bankers and other advisors in order to ensure that they are fully aware of all implications stemming out of the CRS and also comply with its onerous requirements.

We stay abreast of developments related, not just to CRS, but to all international and local developments affecting our sector, including base erosion and profit shifting regulations and the further EU anti-money laundering directive. This enables us to always be in a position to assess the implications for our clients and make sure they are always fully in compliance with requirements.

Lebanon –WA CRS should technically come into effect in Lebanon in January 2017, with reporting to start in 2018. This follows the legislation passed by parliament last September after many months of political deadlock.

The relevant legislation was passed to avoid being black-listed by the OECD, however the method of implementation is still under scrutiny, as this matter would damage a banking system built on bank secrecy laws. Although Lebanon has been known as the 'Switzerland of the Levant' for many decades now, opening bank accounts and going through the KYC process is much stricter than before.

The automatic exchange of data required by CRS legislation has led to long and fierce debates between the Central Bank (Bank du Liban), seeking to preserve secrecy within the banking industry, and the Ministry of Finance, seeking to comply with the OECD directives.

We have developed a tax diploma program with the American University of Beirut to educate people on their tax duties in compliance with the new OECD directives, including CRS. We have also been actively updating clients on the impact of these measures; since most have found this difficult to wrap around.

Uruguay –CP Uruguay has joined the Common Reporting Standard (CRS) in the automatic exchange of financial information matter for tax purposes, effective from 2018.

On December 29th, 2016, the “Fiscal Transparency Law” was approved, which regulates the way in which the necessary information will be collected for the purpose of the exchange. The Executive Branch will soon dictate its implementation.

In our role as legal, tax and accounting advisors, we are particularly concerned that clients have an adequate understanding of the new legal regulations and that they adapt their operations to these requirements.

The implementation of the new law in Uruguay will require important and exhaustive work by professional services firms, in order to achieve an appropriate balance between correct compliance and safeguarding the security, reputation, trust and development of our clients' business.

Luxembourg –SE Local financial institutions are well prepared to provide the Luxembourg tax authorities with CRS reporting information.

Clients are slowly integrating the new business parameters, such as actual substance requirements, and have closed treaty shopping mechanisms. They have to accept this new 'tax way of life'.

From a practical perspective, clients who remain tax compliant in their state of residence in Luxembourg will not suffer from CRS, or more widely from exchanges of information.

Netherlands –FK CRS is more to do with jurisdictions that support wealth planning for HNW individuals or for jurisdictions that have a large financial industry. The Netherlands is primarily used for corporate structuring, so it's not a big thing in Dutch practice.

France –BC CRS is the equivalent of FATCA for the EU. It is a burdensome procedure for individuals and companies who want to open a bank account and who sometimes even request our assistance for this compliance requirement.

Malta –PGM We are geared to service both corporations and high net worth (HNW) individuals and have produced working documents on both options.

We have a very advantageous corporate tax refund scheme, while high net worth individuals can derive significant benefits from taking up residence in Malta. Our citizenship program is highly successful and all these opportunities and tax mechanisms are approved at EU Commission level.

Since Malta introduced them, others have followed suit with a number of opportunities that are beneficial to both corporations and HNW individuals.

USA –SLA The reality is that it's an educational process and you try to make sure that everybody understands what is required while demonstrating concern for their security. Governments want transparency, while clients feel that, as long as they are doing things legally, nobody has to know their personal activity. We explain the realities and the requirements about an automatic exchange of information between certain jurisdictions.

Netherlands –FK There is a best practice way to educate clients without costing your own firm any business. We live in a new world which involves explaining to clients what was possible a few years ago is not possible anymore. I don't want to lose money though by putting up these barriers, so it's about suggesting alternatives.

New Zealand –RA Our client base is predominantly SMEs, although we do act for a number of HNW individuals. Specific clients are advised directly of the new CRS rules as appropriate, and as a firm we provide a weekly tax update article on our website, including commentary on the progress of AEOI legislation (enacted in February 2017) and the recent introduction of a CRS implementation document by the Inland Revenue.

QUESTION 4

Base erosion and profit shifting (BEPS) regulations are becoming more onerous as part of an OECD initiative. What advice do you provide around this to your clients with operations in multiple jurisdictions?

Mauritius –KH As Chairperson of the foremost representative association of private sector operators in the Mauritius IFC, I led a team which collaborated on BEPS at an early stage with the Mauritian authorities. The aim was to ensure that business perspective was considered in BEPS deliberations and to identify which actions were relevant to Mauritius. We identified the following four actions:

- Action 5 - Harmful tax practices
- Action 6 - Treaty abuse (shopping)
- Action 14 - Dispute resolution mechanisms
- Action 15 – The Multilateral instrument (MLI)

Mauritius has adopted the four minimum standards under the MLI in respect of the three actions mentioned above and the country-by-country reporting. The minimum standard relating to treaty abuse is the most significant one for Mauritius. The other three minimum standards are likely to have minimal impact on Mauritius, if at all.

With respect to foreign operations in other jurisdictions, we advise clients on areas that will impact them and recommend that specific advice in those countries be sought from appropriate IR Global member firms.

Our licensing requirements were beefed up in 2015, in light of BEPS, as we continue to align economic substance with treaty benefits.

Japan –TM international tax rules are getting more complicated as a result of the BEPS project. We have to teach our clients the rules in detail.

- Action 1 – Japan adopted this action a couple of years ago, relating to taxing cross-border digital transactions.
- Action 2 - deals with hybrid companies and under Japanese tax law, dividends paid by foreign subsidiaries are tax exempt unless paid to a Japanese beneficiary.
- Action 3 – concerns CFC rules which Japan modified this year.
- Action 4 – interest paid to related foreign corporations is not tax deductible.
- Action 7 – artificial avoidance of permanent establishment (PE) status – there is a new definition of PE adopted under Action 15's multilateral instrument and Japan will be implementing this.

The other issue is around transfer pricing intangibles. Japan will follow the detailed rules from BEPS on the definition of intangible assets.

Denmark –NS With regard to transfer pricing and inter-group transactions between a Danish company and a jurisdiction without regulations, a company should make sure they are compliant with Danish law, because if the other party does not reclassify it, the Danish tax authorities will.

Most countries are gradually gravitating towards the specific BEPS agreements, but some countries will need to be dragged along. Once we have a critical mass, there will be a general movement to standardisation.

Cyprus –GS BEPS has been characterised as the most radical development in international taxation over the last few decades and not unjustifiably.

As the OECD is still working on the practical implementation for most Action Points, the project is still to show its teeth. However, with legislation enacted at EU and local level in order to incorporate its requirements, including the new provisions of IP regimes, country-by-country reporting and transfer pricing, the impact on international business structure is expected to be significant over the next few years.

We strongly recommend to our clients to have their structures reviewed and assessed based on the different BEPS Action Points in order to make sure they are fully compliant and carry out any changes that might be needed. We should not forget that, despite all the advancements in technology and business practices, changes, such as group restructurings, are not made easily.

Lebanon –WA When we advise our multinational clients on transfer pricing issues, we urge them to stay in line with the arm's length transactions principle.

Netherlands –FK The impact of BEPS is enormous. For the international business environment, there will be so much more uncertainty caused by the BEPS Actions including the new transfer pricing approach. Also due to new general anti-abuse provisions, we no longer know if a client is entitled to tax treaty benefits if a jurisdiction implements BEPS.

We implemented the first session of BEPS in the amendment of the Parent Subsidiary Directive and the Anti-Tax Avoidance Directive I, and now we are negotiating the second amended version including a common corporate consolidated tax basis (CCCTB) in Europe. I hope this will be blocked because it's getting ridiculous.

Malta –PGM It's actually difficult to bloc it, because the Anti-Abuse Directive was approved unanimously and for it to be revised, which is everybody's dream, it needs unanimous approval. I can't see it will be removed anytime soon, because it has far-reaching implications, while many jurisdictions in the EU have approved it not knowing what they are approving. It is legislation that needs to be overhauled dramatically, but I don't see that within this Presidency.

Netherlands –FK What we are most concerned about is the CCCTB within the EU that has been envisaged.

Malta –PGM That would be the end of Malta's life as a financial jurisdiction, it simply won't work for Malta.

France –BC In France, the politicians are pushing for the enforcement of BEPS because they think it's beneficial for us. France is leading the Country-by-Country Reporting (CBCR) Initiative and wants to implement it right away in an extensive form. They have already proposed a bill providing mandatory public disclosure, but it was rejected by the constitutional court and judged as unconstitutional.

Netherlands –FK If the foreign jurisdiction doesn't report, then The Netherlands will implement CBCR, which was introduced this year alongside CRS.

The socialist party in our government wants maximum transparency for central shareholder registers and full transparency around tax audits.

France –BC The political idea is that if you force companies to disclose the countries where they pay tax, they will naturally try to look good with their customers because they fear bad PR if they don't pay tax.

Malta –PGM If the tax environment continues to remain too highly regulated, there will be a shift of corporations out of Europe into places like Singapore, which is much more business-orientated. This happened when the Robin Hood tax was reintroduced a couple of years ago after the collapse of the banking sector in France.

A lot of businesses migrated to the UK, which did not implement the tax and I suspect something similar will happen with CRS, BEPS and CBCR. The SMEs will struggle and the mega giants will always find a way to circumvent the rules.

France –BC Exit taxes in France can be a significant concern for those businesses that want to relocate as you may have to pay immediately any latent capital gain and provide guarantee of payment to the Treasury for certain countries.

Malta –PGM That has been pronounced as an incorrect tactic by the European Court of Justice because it hinders freedom of movement.

France –BC This has been adapted to an assessment of the capital gains tax that would trigger, depending on the new jurisdiction.

USA –SLA Base erosion tax reduction strategies don't amount to tax evasion, but they need to be implemented using inter-company pricing arrangements that are fair. If all the tax authorities were in the same room they would have major disagreements on transfer pricing. We just need to keep clients educated and aware.

Denmark –NS Base Erosion and Profit Shifting (BEPS) regulations are far reaching, but will only have a limited effect in Denmark. The main reason is that a lot of the things listed were already there in the first place. The tax authorities have collected a range of anti-avoidance techniques used elsewhere, including a CFC regime developed a few decades ago and quite detailed interest deduction limitation rules introduced about seven or eight years ago.

I don't think BEPS will lead to a massive change in Denmark, but the way we look at it is that, if other countries adopt the BEPS regime, then it becomes a more level playing field, so that tax issues faced by advisers in Denmark will suddenly be present in other countries. When we have clients with an international structure, we make sure they are aware of the facts.

Luxembourg –SE Luxembourg recently introduced into domestic tax law the basic transfer pricing principles foreseen by Articles 8 -10 of the OECD BEPS report.

Luxembourg will have to implement the anti-tax avoidance directive which includes the principles set out by the OECD BEPS report as regards hybrid mismatch (Action 2), CFC Rules (Action 3), Limitation of Interest Deductions (Action 4) and the GAAR (Action 6).

On 24 November 2016, 100 jurisdictions agreed upon a multilateral instrument (MLI) which is aimed at the swift implementation of the tax provisions contained in the OECD BEPS report (Action 2 on hybrid mismatch, Action 6 on treaty abuse, Action 7 on avoidance of permanent establishment status and Action 14 on dispute resolution). The MLI will directly amend more than 2,000 bilateral tax treaties currently in force between the contracting states.

Finally, the country-by-country reporting was implemented in Luxembourg domestic tax law with the publication of the law dated 27 December 2016. Luxembourg entities falling within the scope of the country-by-country reporting will have to communicate economic, tax and financial information to the Luxembourg direct tax authorities (to be further exchanged with the foreign tax authorities).

Our main concern is to ensure that our clients are fully aware of what will be declared/exchanged.

Uruguay –CP The BEPS project may increase the tax burden of international commercial operations, but it will also deliver greater jurisdictional safety to multinational companies, by reducing the risk of controversy around the application of tax planning and strategy.

Our advice to clients is to optimise resources and make use of the opportunities provided by international agreements such as BEPS. The differential added value that our company provides, is based on the education, training and experience offered by multidisciplinary teams of lawyers, accountants, tax experts, and economists.

New Zealand –RA The New Zealand government has been very pro-active in its commitment to BEPS. Their present view is that NZ tax legislation is already well placed to deal with many of the recommended actions arising as a result of the BEPS project.

Consequently, advice to clients, particularly where there are cross-border issues at stake, has to be given on the basis that the world is becoming a much smaller place, and multi-jurisdictional structures are more likely to be identified and subject to a rigorous review. The potential cost of getting it wrong, or trying to be too clever, is ever-increasing, and the dangers are beginning to outweigh the benefits that may previously have been achieved via the use of various transfer pricing mechanisms across multiple jurisdictions.

QUESTION 5

The Foreign Account Tax Compliance Act (FATCA) has increased scrutiny on the tax affairs of US citizens living outside the US. What advice have you provided to clients considering giving up their US citizenship?

Mauritius –KH While we do have several US clients using Mauritius entities for their investments overseas, I haven't come across anyone with the motivation to renounce his/her US citizenship.

International banks operating in Mauritius do apply a high level of scrutiny to US clients though and at least one bank in Mauritius does not open accounts for US companies or US persons.

I wouldn't be surprised if this eventually led to people renouncing their US citizenship but we haven't witnessed it yet.

Denmark –NS Denmark is not generally a home to US expatriates. There is a form of expatriate tax for highly skilled workers, providing a lower rate for five years, but that is used relatively sparingly for big pharma or senior staff in international groups.

Generally, US citizens living here are married with families and are not interested in aggressive tax planning. Denmark is quite stringently enforcing CRS regimes and has taken a lead from the Foreign Account Tax Compliance Act (FATCA) on that.

Japan –TM Times have changed. My advice is don't hide your money in a foreign bank account; maybe it was possible in the past but not now. Giving up citizenship is a big thing and you have to consider various aspects of that carefully. To many people, keeping their citizenship is more important than keeping their money in a foreign bank account.

Mauritius –KH It has been reported that, last year, 5,000 people renounced their US citizenship and I understand there is a strong lobby in the States for Trump to do away with FATCA. It has impacted a lot of people.

Denmark –NS I won't get involved in Trump's policies, but I think it's a legitimate point when you read stories of people with no great wealth or money being denied a bank account because they are US citizens. That seems fairly remarkable.

Lebanon –WA Most clients with US citizenship had never declared and so we used the streamlined process to get them back on track and report their income tax declarations to US authorities.

To date none of the dozens we have worked with had any interest in renouncing citizenship, as it is of great importance for Lebanese to maintain double citizenship status for travel purposes when the Lebanese passport can only be used to travel freely without a visa to a select few countries.

Cyprus –GS We do not have many clients affected in any way by FATCA. For those clients for whom FATCA is more relevant, we are assessing all implications, together with their bankers and other advisors, and responding accordingly. We haven't experienced anyone willing to relinquish their US citizenship so far.

Luxembourg –SE Several Luxembourg-based banks have refused to accept US clients to avoid FATCA-related reporting. However, as one of the major financial centres in the world, Luxembourg's financial industry has integrated the FATCA consequences in its business model.

One of our major challenge in this context is to demonstrate how tax compliance advice can be valuable.

Uruguay –CP The FACTA regime can represent a threat to privacy and confidential rights, but the international measures about tax transparency and exchange of information worldwide make it almost impossible to escape from those requirements.

So far our Company hasn't participated in cases involving FATCA, but we would always advise full compliance with current legislation, since there are serious risks and legal consequences if it is not complied with.

Malta –PGM My take on this is that quite a few US clients I have encountered hate it. This is a very tedious process that has affected the banking sector worldwide and I don't see it leading anywhere good – it's extremely complicated.

Netherlands –FK Europe copied FATCA with CRS, so it won't change in the coming years. We can just do our best to provide advice on this.

Malta –PGM There is a movement to have it abolished in the future.

France –BC I often have exchanges with M&A lawyers who consider that tax advisors don't provide tax advice any more, just advice on tax compliance. The new contest is about how compliant a company can be and how an adviser can help them to be compliant.

As legislation is very complex, clear advice on how to comply is still valuable.

USA –SLA We have had several clients that have expatriated and several clients who have taken a lesser step, but, believe it or not, while finances are a part of this, there is a loyalty aspect. We have several clients who have technically expatriated, but they don't have that loyalty to the USA.

The US social structure is attractive with its pension plans, Medicare and social security. Some of the people who expatriated have changed their minds because of social benefits.

Malta –PGM FATCA affects anyone with investments touching the US and that is a much larger spectrum of people.

USA –SLA If the US Government finds out that you did not fully disclose your affairs upon taxation, that's a problem and they will revoke that expatriation and come after you, unless you are in a place like Costa Rica.



From left to right: Benoit Couty, Wissam Abousseiman, Carlos Picos and Joan Lluís Hereter pictured during the 2017 Dealmakers Conference in Barcelona.

Contacts

UK HEAD OFFICE

IR Global
The Piggery
Woodhouse Farm
Catherine de Barnes Lane
Catherine de Barnes B92 0DJ
Telephone: +44 (0)1675 443396

www.irglobal.com

info@irglobal.com

KEY CONTACTS

Thomas Wheeler
Managing Director
thomas@irglobal.com

Ross Nicholls
Business Development Director
ross@irglobal.com

Nick Yates
Contributing Editor
nick.yates@scribereconsultancy.com
www.scribereconsultancy.com

CONTRIBUTORS

Wissam Abousleiman (WA)
Managing Director, Abousleiman & Co, Lebanon
irglobal.com/advisor/wissam-abousleiman

Stewart L. Appelrouth (SLA)
Co-Founder, Appelrouth Farrah & Co, USA
irglobal.com/advisor/stewart-appelrouth

Richard Ashby (RA)
Partner, Gilligan Sheppard, New Zealand
irglobal.com/advisor/richard-ashby

Benoit Couty (BC)
Partner, Pichard & Associates, France
irglobal.com/advisor/benoit-couty

Stephane Ebel (SE)
Partner, Duvieusart & Ebel, Luxembourg
irglobal.com/advisor/stephane-ebel

Kamal Hawabhay (KH)
Managing Director, GWMS Ltd, Mauritius
irglobal.com/advisor/kamal-hawabhay

Friggo Kraaijeveld (FK)
Partner, Kraaijeveld Coppus Legal, Netherlands
irglobal.com/advisor/friggo-kraaijeveld

Toshio Miyatake (TM)
Partner, Adachi, Henderson, Miyatake and Fujita, Japan
irglobal.com/advisor/toshio-miyatake

Pierre Galea Musu (PGM)
Partner, UHY, Malta
irglobal.com/advisor/pierre-galea-musu

Carlos Picos (CP)
Partner, Carlos Picos Consultora, Uruguay
irglobal.com/advisor/carlos-picos

George Savvides (GS)
Managing Director, Fiducenter, Cyprus
irglobal.com/advisor/george-savvides

Neil Smith (NS)
International Tax Lawyer, Nordeq, Denmark
irglobal.com/advisor/neil-smith

