Tax & Legal Services update

PwC in the Caribbean

Welcome to another edition of our regional Tax & Legal Services newsletter.

The more astute amongst you will notice immediately that this is not the 'bi-monthly' newsletter I'd originally set out to establish. Quite simply, I am not a fan of sending out news updates for the sake of it. There is enough of this in the world and I'm sure your inboxes are already flooded with others purporting to bring you 'essential news' in some form or another! However, there is no doubt we continue to operate in a fast-moving environment when it comes to tax and legal matters in the Caribbean region (getting faster I suspect, by the way!) and it is still my intention to look forward through this fast paced environment to bring insights where we can so that the clients we work with across the region are equipped to plan. And plan forward.

So, these newsletters will be circulated as and when there is news to report. Probably less than bi-monthly. But more than once a year. And certainly keeping pace with the speed of change in our tax systems. Sound sensible? Good, I agree.

This month we have our PwC global paying taxes survey and look at a potential new structure for investments between Trinidad and Guyana. We also cover an update on the OECDs BEPS progress in our region, and include what I've always said will be a fast-emerging topic in our region over the next few years – Transfer Pricing (TP). As most will know, Jamaica is one of the only territories in our region with domestic legislation for transfer pricing. More countries are expected to follow in the coming years. However the key impact for businesses in terms of their ability to plan towards this future will not only be the timing of these laws, but also how governments will use these laws when it comes to audits, rulings and advanced clearances.

If developments in Europe, US and the G20 economies are anything to go by (and note, I think they certainly are!), then the biggest fights on transfer pricing could ultimately be between governments in The Caribbean and how they police Transfer Pricing and the resultant impact on their economies when it comes to items such as intellectual property and 'mobile' business assets. As the G20 have already shown us, principles embodied within transfer pricing laws can have a huge effect on future tax revenues and how and which governments are entitled to collect these.

So it wouldn't surprise me at all if, even after governments have introduced domestic laws, then we have a period (probably 3-5 years) where the uncertainty continues and businesses look to obtained certainty from tax authorities as to their TP position. We are currently working with a number of businesses to try and secure just that. It's not going to be easy. But certainly not impossible.

So on this theme, we also have an update from our Jamaica tax leader on our experience of TP in Jamaica and working with the local tax authorities there.

I hope you find this newsletter of value. We will remain forward-looking to help our clients plan for the huge uncertainty that we are seeing. If you wish to discuss any of the items included in this newsletter then please do not hesitate to get in touch with me directly, or any of your regional TLS leaders listed below.

David Prestwich,
Tax and legal services leader, Caribbean region

Our Insights

US tax reform developments

To keep up to date with the latest developments, news and implications of tax reform in the United States, visit the global tax services page The website is regularly updated, and brings together insights from business specialists across the globe. Some recent updates to note include:

- Tax reform readiness - The politics of implementation
- Tax reform readiness – Implications of the Section 965 proposed regulations (the 'toll charge' on deemed repatriated earnings)
- Tax reform readiness – Understanding the Section 199A proposed regulations (the deduction for qualified business income from a trade or business operated directly or through a passthrough entity)
- Tax reform readiness – Do the proposed depreciation regulations provide a bonus?
- House Ways and Means Committee approves 'tax reform 2.0' bills.
- IRS releases draft Section 59A form for computing BEAT. IRS releases draft Section 965 forms and new election templates
- IRS advises REITs on income from non-US subsidiaries, qualification rules
- Preliminary highlights of the proposed GILTI regulations under Section 951A (the determination of a US shareholder's global intangible low-taxed income (GILTI) inclusion)

Our Insights

Opportunities and Challenges in the BEPS era

Imran Ali
Tax Senior Manager, PwC East Caribbean

The global landscape of tax has shifted significantly in recent years. We are still experiencing change and this trend will continue in the short and medium term.

One major contributor to this change is the OECD BEPS ("Base Erosion and Profit Shifting") project, which is moving swiftly and forcing more country tax regimes and compliance authorities to follow additional rules on transparency, including mandatory Country by Country reporting ("CbCR") and exchange of information between national tax authorities. Across the Caribbean, only Bermuda has completed the legislative process to fully incorporate CbCR into their domestic law, however other countries are intending to follow suit. Also, most countries in the region have now formally joined the Inclusive Framework on BEPS, whose role includes the monitoring of the implementation of CbCR as well as other "minimum" BEPS action points. It is clear that BEPS will become a greater focus to many other countries in the region and the world, and therefore ever more likely that multinational businesses will become affected by these changes.

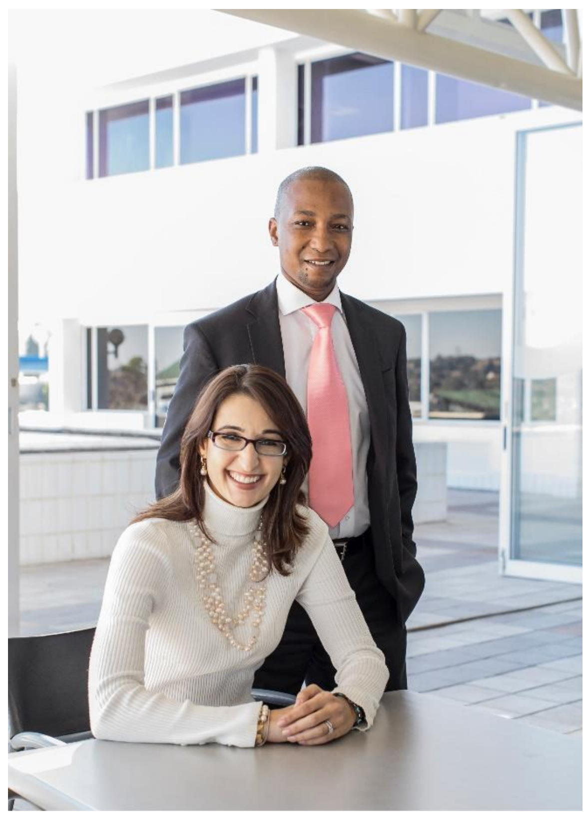
As a result of these changes, it is highly important that any tax structuring done by multinational groups is done with alignment to the commercial objectives of the group and implemented with foresight as to the likely approach of relevant tax authorities to such structuring. Specifically the substance around the implementation of such tax structures should be given the highest priority. Clients are rightly nervous about what the new landscape will mean for them. Deadlines for countries to amend or abolish their regimes in line with BEPS minimum standards are increasingly near, and there can sometimes be an information vacuum from governments which increases the uncertainty for businesses and their advisers. It also means that when changes need to occur, there will often be little time to implement, so it is important that clients are prepared to act quickly.

Our Insights

Opportunities and Challenges in the BEPS era
continued

Countries have joined the Inclusive Framework at different times. For example, Jamaica joined in July 2016, but Grenada and St Vincent & The Grenadines only joined in October 2018. These countries are working towards different time frames to amend their regimes and therefore consideration needs to be given to how structures in those jurisdictions are managed and whether there is scope to plan for changes in a proactive manner that maximise use of structures in different countries.

PwC can provide insight into how countries will likely change their regimes. The overarching agenda of the BEPS initiative can often be missed in the midst of technical papers and commentary, but it is imperative that clients take time to future proof their operations to not only survive but thrive in the new environment. At PwC we can coordinate across our network to provide you with advice that allows you to navigate through the uncertainty and flux in the next few years.



Our Insights

The Shorebase Connection – A PwC Contribution

Tonika Wilson-Gabriel
Tax Director, PwC Trinidad & Tobago

Guyana and Trinidad and Tobago (T&T) have been on different paths in their economic trajectories over the last two or more years. Over the period T&T's economy has contracted while Guyana's economy was projected to grow by 4% by the end of 2016. This can be attributed to several factors relating to both economies including the dramatic decline in oil and gas prices in the case of T&T and the expansion of the mining and services sectors in Guyana.

According to the International Monetary Fund (IMF) World Economic Outlook 2016 Guyana is listed as one of the Caribbean economies that expected positive results for 2016. Meanwhile in T&T the Central Bank of T&T reports in its Economic Bulletin – March 2017 that production indicators of real economic activity suggest weaker performances in both the energy and non-energy sectors in the latter half of 2016. The report further discloses that the fourth quarter of 2016 the energy sector showed year-on-year declines in the production of crude oil (4.2%) and natural gas (10.8%). The recent report from the Central Bank also discloses that for the first half of 2017 crude oil production remained relatively unchanged from the previous year. The downstream sector suffered a similar fate owing in large part to the setbacks in the upstream sector.

Against this backdrop the government is forced to find or embrace creative alternatives to stimulate economic development. Attention is therefore being turned not only to the traditional sectors such as tourism, agriculture and manufacturing but also to emerging sectors within the wider oil and gas industry. T&T has been in this sector for over 100 years and has a rich history in the oil and gas space. As a result, it has developed sound expertise in all aspects of oil and gas operations from exploration and production to supply chain management.

It is therefore prudent for the country to leverage on its experience and competence in the oil and gas sector as one of the viable alternatives to stimulate economic growth.

The Shorebase Connection – A PwC Contribution
continued

In this regard, the concept of "shorebase" is therefore swiftly emerging as a relatively new economic activity in T&T that presents a sound framework for the diversification of the T&T economy and ultimately a critical contributor to the growth and development of the economy.

The importance of the shorebase model is amplified by the infrastructural challenges within the oil and gas sector in Guyana (and Suriname). In Guyana as a result of the discovery of oil in commercial quantities by Exxon Mobil and the increasing demand for related services such as drilling and other oil field services, there has been an unprecedented demand for certain infrastructural facilities such as a reliable port and storage facilities. The notable absence of these have led companies to turn to T&T for such support.

What is a shorebase?

A shorebase is a physical location through which resources and other logistics are managed and coordinated. The shorebase model entails multinational companies in particular upstream companies investing in Guyana, leasing a physical location in T&T usually in the Chaguaramas area to coordinate its logistics in relation to its Guyana or Suriname drilling or other operations. Generally, the following are the salient features of the shorebase model/structure:

i. The foreign company generally does not trade in T&T and therefore earns no income in T&T;

ii. The facility is used for storage of goods and equipment to be used in the overseas operations;

iii. Goods and equipment are transported from the shorebase location to the operations site;

iv. Typically, the facility is managed by expatriate personnel of the company who are based in T&T for the duration of the project or activity overseas.

The Shorebase Connection – A PwC Contribution

Continued

While the shorebase structure presents a viable alternative for government to diversify and stimulate the economy, the potential of the model as an economic stimulus has not to date been fully appreciated / leveraged by the authorities. For instance, there is no separate regime to regulate these companies and to ensure that the economic benefits received from the overseas activities at the very least redound to some benefit to the T&T economy and population.

The anomaly is that the local system has not been configured to encourage and promote investment through this structure. Companies are increasingly faced with challenges in obtaining work permits for their expatriate employees as well as undue delay in some cases in the importation of goods and equipment to be used to support the shorebase companies' activities. The tax authorities have not provided any clarity on establishing taxable presence in a non-treaty context as well as the challenge of obtaining VAT registration where a company is not registered for corporation tax.

Nevertheless, the model presents attractive opportunities including the following:

- Employment for locals
- Increased business for certain companies e.g. waste management, shipping, transportation, fuel distribution, brokerage
- Increase in revenue for Government through work permits, visas and other regulatory fees
- Increase in revenue through possible taxation of the companies.

The Shorebase Connection – A PwC Contribution
Continued

As the government continues to evaluate its fiscal policies and legislative agenda for the next fiscal year, it is hoped that this area will be a key focus and that the appropriate legislation and policies will be implemented in the near future that will encourage and promote this type of model. Among the areas for consideration are as follows:

1. Legislation prescribing a separate regime in respect of the taxation of these entities/operations. The legislation should provide clarity on the tax treatment of these entities. It is suggested that an offshore taxation structure similar to the International Business Company (IBC) configuration available in several Caribbean territories be considered. Under this structure consideration can be given for these companies to be subjected to a less onerous tax regime provided that no further economic activity is pursued by the company in T&T other than the shorebase.
2. A simplified process for expatriate personnel to be employed at these shorebases where work permits, visa or similar documents can be easily obtained to allow these persons to exercise employment in T&T;
3. Appropriate local content legislation that ultimately seeks to maximise the utilisation of the talent pool available in T&T;
4. A mandatory fund established similar to the Green Fund Levy mechanism where these companies are required to contribute to the social development of T&T.

The above suggestions are not intended to be exhaustive but merely to set the tone for a holistic and comprehensive review of the model that will find a balance between promoting investment in T&T and at the same time encourage those companies preparing to launch into Guyana in this new wave of economic activities in the latter country.

For more information or assistance in setting up your shorebase operations reach out to any member of the PricewaterhouseCoopers Team. As always we stand ready to provide you with further clarification on the issue explored and answer any questions you may have as we work with you to solve your important problems and deliver the value you require.

Our Insights

Adoption of comprehensive transfer pricing rules in Jamaica, our experience so far

Brian J. Denning

Tax & Corporate Services Leader, PwC Jamaica

It is widely recognised that transfer pricing and other initiatives to counteract tax base erosion are part of an ongoing cultural shift in international taxation. In 2015, Jamaica enacted comprehensive OECD-based transfer pricing rules with these taking full effect in 2016. So what has our experience been so far?

The answer – it depends. The state of readiness amongst taxpayers to adopt these rules has been varied. It is no surprise that Multinationals headquartered outside the CARICOM region and operating globally have generally been better positioned to evaluate the transfer pricing implications of local transactions as they typically can leverage existing transfer pricing studies, rulings or internal experience elsewhere in their group.

In the absence of such global experience, regionally headquartered multinationals and local groups need to undertake more extensive work in an effort to comply. This includes conducting an initial risk assessment of **each** of their related party transactions in order to prioritise which ones are the most material and/ or susceptible to challenge by the tax authorities from a transfer pricing perspective. Priority transactions and activities then require further detailed evaluation (having regard to OECD guidance and internationally accepted practice) in order to determine whether their current pricing is acceptable, and if not, what adjustments are required for tax purposes. The preparation and maintenance of transfer pricing documentation on file is also necessary in order to support the transfer pricing methodology and price adopted for tax purposes.

Adoption of comprehensive transfer pricing rules in Jamaica, our experience so far

Continued

Jamaica's transfer pricing regime applies to all taxpayers and connected party transactions, whether domestic or cross-border. Transactions with counterparties located in low-tax jurisdictions are also **deemed** to be related party transactions unless demonstrated otherwise. As part of the annual income tax filing process, one is required to report all related party transactions annually and to impute an acceptable arms-length consideration for all such transactions in computing one's taxable income. This is proving onerous particularly for small and medium-sized taxpayers who may not have the resources needed to undertake the necessary due diligence work to comply. While the requirement to prepare and maintain comprehensive OECD-standard documentation to support pricing methodologies and pricing adopted for tax purposes is limited to taxpayers with gross annual revenues over J$500m (approx. US$3.7m at time of writing), all taxpayers must otherwise adhere to the rules so a certain level of due diligence must be undertaken regardless in an effort to both comply and manage tax risk.

The Jamaican regime also features an advance pricing agreement (APA) mechanism whereby taxpayers can approach the Jamaican tax authorities with a view to negotiating and agreeing on an arms-length price that would be acceptable to both parties in respect of specific connected party transactions subject to agreed conditions and applicable period (up to five years). The Jamaican tax authorities, to their credit, have been actively sensitising the business community on the APA process and encouraging the use of same.

To our knowledge, no taxpayer has yet sought and secured an APA in Jamaica – this more reflects taxpayers' reluctance to "*open the kimono*" rather than the tax authorities willingness to engage. In some respect, this is not surprising – taxpayers recognise that they need to undertake their own transfer pricing due diligence and analysis before initiating an APA process. Taxpayers will also need to feel assured that their participation in, and information provided during, an APA process cannot subsequently be used against them to trigger tax audits and assessments.

Adoption of comprehensive transfer pricing rules in Jamaica, our experience so far

Continued

While the transfer pricing regime in Jamaica is still somewhat in its infancy, in our view there are some insights that can be gained from the experience so far as similar transfer pricing regimes are being contemplated for implementation by Trinidad & Tobago and other jurisdictions within the CARICOM region. These include the following:

1. the merits of applying the transfer pricing regime to all taxpayers from the outset should be weighed against the relative risk of tax base erosion and taxpayers' capacity to comply in the short-term.

2. consideration should be given to implementing the regime on a phased basis with initial application focusing on the reporting of related party transactions.

3. Full application (i.e. imputation for tax purposes, documentation etc.) could be first confined to large taxpayers (as defined) and perhaps transactions with related parties in low-tax regimes (whether cross-border or local).

4. The regime's requirements could be scaled down for small and medium-sized taxpayers (excluding higher risk transactions) with initial application limited to the reporting of related-party transactions.

Adoption of comprehensive transfer pricing rules in Jamaica, our experience so far

Continued

5. The phased approach would also benefit tax authorities in the application of limited resources to pursue delinquent taxpayers and enable focus to be maintained on higher risk transactions.

5. A comprehensive public education and awareness programme about the regime is critical both in advance and during implementation.

6. In evaluating arms-length pricing assessments, it will be important for tax authorities in the region to be cognisant of the limited availability of information on external comparables within the region.

7. A successful APA process requires trust and collaboration between taxpayers and the tax authorities - this will involve a cultural shift from both perspectives.

5. The APA division should be distinct and separate from other parts of the tax administration (especially the audit division). Information shared by taxpayers during the APA process must be maintained on a highly confidential basis and cannot be shared or used for audit or assessment purposes.

The implementation of comprehensive transfer pricing regimes across the region combined with initiatives to target base erosion and profit shifting (BEPS) strategies are set to materially impact the local and regional tax environment. It is important however that these changes are implemented carefully in order not to overwhelm taxpayers and place a heavy strain on both their resources and those of the tax authorities.

In the media

Tax and Corporate Services team deliver advice on BEPS in the Eastern Caribbean

In August, Imran Ali, Tax Senior Manager and Javier Lemoine, Corporate Services Senior Manager delivered another important presentation to the business community in Barbados. They addressed the impact of being an Inclusive Framework Member and the minimum standards that are required including; countering harmful regimes, preventing treaty abuse, transfer pricing and dispute resolution mechanisms.

Corporate Services team launch directors survey at eagerly anticipated breakfast event

PwC Barbados has just conducted a survey for directors of Barbados companies which aims to understand where Barbados companies stand in the adoption of Corporate Governance best practice. The results were launched at the inaugural breakfast event exclusively for directors, led by Ronaele Dathorne-Bayrd, Regional Corporate Services Leader. Speakers, Catherine Bromilow, PwC US Governance Insights Centre Partner and Professor Bob Garrett, from the UK, also gave insightful presentations. The session concluded with a lively panel discussion. The report is now available for download on our PwC East Caribbean website

Thought Leadership & Publications

Worldwide Tax Summaries
The latest Worldwide Tax Summaries 2018/19 is now available. This free reference guide provides quick and easy access to details about corporate tax systems in 152 territories, including the PwC in the Caribbean territories. Each country update is written by local PwC tax specialists and continuously enhanced with additional content, including the latest changes in legislation, residency, gross income, deductions, tax credits and incentives, tax administration and other taxes and tax rates.
Download the PDF or eBook versions of the latest guide at www.pwc.com/taxsummaries. There, you will also find tax information that is updated in real-time for all 152 territories through our enhanced online and quick chart tools.
Quick charts
Worldwide Tax Summaries Online

Tax Function of the Future
Evolving trends are changing the way tax functions are operating – both day-to-day and with long-term strategic planning. The Tax Function of the Future will look surprisingly different from today's...are you prepared? Download here.

Tax Transparency and Country by Country Reporting - BEPS and beyond
Since we published our last briefing on tax transparency and country by country reporting nearly two years ago, the introduction of mandatory tax reporting rules has accelerated. Download here

Paying Taxes 2019
Look out for the latest edition, Paying Taxes 2019, due to be **released on 20 November 2018**. This year's publication looks at how new tax software, real time reporting systems and data analytics are changing the way companies meet their tax compliance obligations and how tax authorities monitor and enforce those obligations. We consider the balance between labour and income taxes, as economies consider the impact of the changes to the nature of work and the impact this has on revenue streams. And we look at some of the different approaches taken by tax authorities to tax audits and to the provision of training for both tax auditors and taxpayers.

Alerts, Updates & Perspectives

PwC Tax Research & Insights

Tax reform readiness: Implications of the Section 965 proposed regulations
The 2017 tax reform act (the Act) includes significant international tax provisions, including Section 965, which imposes a 'toll charge' on deemed repatriated earnings. On August 1, Treasury and the IRS released a 249-page set of proposed regulations under Section 965, addressing a wide range of issues regarding the toll charge.

Find out more about this part of the new tax reform here

TP Talks Podcast Series
PwC Partners and thought leaders discuss and provide valuable insights on transfer pricing developments from around the world. Our podcasts not only provide you the latest regulatory changes and developments, but also inform you how they can impact your business. Access TP Talks here

Global Annual Review 2018
Explore our Global Annual Review here for facts, figures and videos on how we're working together to make a difference.

Alerts, Updates & Perspectives

PwC Tax Research & Insights
Continued

EU initiatives on tax avoidance
With large corporations under scrutiny for recent and well publicised tax avoidance, the EU Commission are leading the way to curb further avoidance are now well established. This is one of the most important and prevalent tax topics across the world. Keep up-to-date here

Forthcoming US Tax webcasts
13 November – 2pm EDT
Tax Function of the Future: Legal entity strategy and simplification post-tax reform
14 November – 2pm EST
Tax reform readiness: Section 263A reg
11 December – 2pm EST
Tax Function of the Future: Legal entity books and forecasting

For any of the above webcasts register here

Helpful Links

Subscribe to our global tax publications

Join or listen to our PwC US Tax Webcasts

US & International Tax Research & Insights

Contact us

Please reach out to me:

David Prestwich
Tax & Legal Services Leader, PwC in the Caribbean
E: david.prestwich@pwc.com

In your territory:

Barbados
Gloria Eduardo
Tax Leader, PwC East Caribbean
T: +1 246 626 6753
E: gloria.eduardo@pwc.com

Ronaele Dathorne-Bayrd
Regional Corporate Services Leader
T: +1 246 626 6652
E: ronaele.dathorne-bayrd@pwc.com

Bermuda
Scott Slater
Tax Services Partner
T: +1 441 299 7178
E: scott.slater@pwc.com

Cayman Islands
T. C. Leshikar
Tax Services Partner
T: +1 345 914 8616
E: tc.leshikar@pwc.com

Jamaica
Brian Denning
Tax and Legal Services Leader
T: +1 876 932 8423 or +1 876 361 0312
E: brian.denning@pwc.com

Trinidad & Tobago
Angelique Bart
Tax Services Leader
T: +1 868 299 0722
E: angelique.bart@pwc.com