PPLI AND JURISDICTIONAL ISSUES

Whose Jurisdiction Is This?

Private Placement Life Insurance Defines and Simplifies

A proper understanding of jurisdictional issues is key to a successful ***Private Placement Life Insurance (PPLI) structure***. One cannot simply take the ***assets of wealthy international families*** and move them offshore and expect a good result. The tax residence of the family is paramount, as well as the tax residence of the beneficiaries. A PPLI structure that is successful in one country, might not work in another. These factors must be thoroughly researched for the wealthy international family to have a successful PPLI structure. Since these PPLI structures tend to be long-term the necessity for this thorough research is even more compelling.

What are the areas that must be looked at to produce a successful outcome? The jurisdictional issues involved in all these areas must be addressed: tax treaties; tax laws; insurance laws; forced heirship issues, trust domicile; location of the assets; and tax reporting issues.

For our examples which illustrate jurisdictional issues, we give you one news story and excerpts from an excellent scholarly article: "GILTI: "Made in America" for European Tax Unilateral Measures, Excess Profits & the International Tax Competition Game" by G. Charles Beller, UVA Law School, Class of 2018, Virginia Tax Review (forthcoming 2019).

As you will read our news story demonstrates how an unwanted intrusion by one jurisdiction into another can produce a very bad result. In the area of international taxation, individual countries are now competing with each other for international tax dollars. Governments are looking for a system that avoids unwanted intrusions at any level and respects the sovereignty rights of each country.

A key question posited by this article is: "How does Global Intangible Low-tax Income (GILTI), the U.S. global minimum tax on excess profits introduced with the "Tax Cuts and Jobs Act's" (TCJA) fit into the larger debate about international tax avoidance, "harmful tax competition," and taxation in the "digital economy"? As you will read, the article reaches a compelling new paradigm, partial developed from game theory, that could be a model for future international tax transactions.

Here are some key points from the article:

"Rather than perpetuate trans-Atlantic hostilities as Europe and the OECD consider the "digital economy," the U.S. tax and business communities should explain how GILTI promotes beneficial competition on productive factors, discourages base erosion and profit shifting by U.S. multinationals (MNEs), and provides cover for European and other developed countries to modernize international tax rules consistent with longstanding principles of tax territoriality.

Political developments in the European Union and OECD suggest that EU member states need not feel guilty about leveraging a GILTI-esque minimum tax tool to combat the challenging issues facing international taxation in the digital age. Indeed, Germany has suggested a GILTI like minimum tax tool as part of a multilateral OECD proposal to confront challenges in taxing the "digital economy" – "a kind of BEPS 2.0" that utilizes U.S. unilateral action to facilitate multilateral cooperation.

At the heart of the controversy over GILTI, "Digital Taxation," and the larger BEPS project is a debate about the propriety and benefits of tax competition. While tax competition is a controversial concept among economists and tax lawyers, recent scholarship provides a typology to talk productively about tax competition.

This paper draws on the theory of tax competition and language of international tax neutrality to argue that international tax policy must be viewed through the lens of "national welfare" when considering strategic incentives and thus positive predictions about nation state behavior in the international tax competition game.

Viewing tax competition and GILTI's global minimum tax through the prism of game theory yields important insights into the potential for unilateral U.S. action to alleviate global collective action problems. An important question in evaluating GILTI is whether it enables potential cooperative behavior among developed economies through signaling and minimum standards by a sovereign with "pricing" power to set global rate and base terms for MNEs.

In short, is GILTI a harmful unilateral measures that undermines cooperative efforts in the OECD and EU? Or is GILTI like FACTA — a veiled if unsolicited gift for developed EU economies? This paper answers these questions and highlights the potential of a global minimum tax on excess profits to further debate about international taxation in a digitized economy while retaining foundational principles of tax territoriality.

Sovereignty and multilateralism have become buzzwords defining battle lines in a global debate about political ideology and international relations. International tax policy is a technical field that must skirt ideological battles and avoid aligning with "pure" multilateralism or "radical" unilateralism. While BEPS took an ideological position in arguing that cooperation stands in conflict with unilateralism, this paper shows how unilateral measures can foster beneficial cooperation in certain areas of the international tax policy.

As the FACTA/BEPS histories and GILTI parallels suggest, cooperative action is facilitated under certain scenarios through unilateral action with cooperative potential. Global minimum tax rates can operate as a sovereign cartel tool without clear efficiencies for productive factor competition or tax diversity. GILTI takes a different approach. It does not attempt to impose a global minimum tax rate by way of multilateral horse-trading. Instead, GILTI implements a resident based global minimum tax on excess profits that enables productive factor competition. Moreover, GILTI respects traditional principles of tax sovereignty and territoriality. GILTI's resident based global minimum tax allows competing sovereigns to set their own rate and base terms. GILTI merely limits the benefit that foreign source rates confer on resident foreign profits.

As a result, GILTI's resident global minimum tax tool shifts international tax competition away from a cat and mouse game of tracking down and labelling "tax havens" or "harmful" tax competition. Instead, the hunt for "harmful" tax competition is replaced with a productive experiment among competing sovereigns for a diverse array of resident benefits that allow domestic firms to exploit excess profits at home and abroad. Under GILTI (and similar tax tools), resident MNEs share the surplus of excess foreign profits with the resident sovereigns that make those profits possible. By enabling resident sovereigns to share in excess profits while at the same time limiting the tax benefit of foreign low tax rates, GILTI furthers productive factor competition.

As EU member states seeks to develop international tax policy for the "digital age," productive factor competition should be a primary goal. Moreover, Europe must avoid a "two-hemisphere" mindset that targets digital tax revenues earned in the EU while dismissing identical proposals from developing countries targeting European revenues around the globe. GILTI bolsters productive factor competition while retaining the foundational principles of tax territoriality and sovereignty that protect resident firms when operating in foreign markets. That's why GILTI is a tax tool "Made in America" for European tax."

Our news story demonstrates a more confrontational jurisdictional dispute with a sad ending: "American Missionary Killed by Isolated Tribe Wrote of Confrontation With the Group," by Corinne Abrams and Rajesh Roy of the *Wall Street Journal*.

"As American missionary John Allen Chau sat aboard a boat near a remote Indian Ocean island known for its violent and isolated inhabitants, he wrote a message to his mother and father he made clear might be his last.

"You guys might think I'm crazy in all this but I think it's worth it to declare Jesus to these people," he wrote Friday. "Please do not be angry at them or at God if I get killed—rather please live your lives in obedience to whatever He has called you to and I'll see you again."

Within a day, Mr. Chau was missing. Five fishermen who took him to North Sentinel Island said they saw the body of someone resembling him being buried under the sand by members of the tribe that allegedly killed him.

Mr. Chau, 26, was visiting the island in India's Andaman and Nicobar archipelago to try to spread the word of God, according to diary entries released by police.

The tribe has a long history of violent resistance to outsiders and is protected by laws that bar visitors from docking boats within 5 nautical miles (5.75 miles) of the shore.

Mr. Chau's Instagram page shows a young man passionate about travel and new experiences. In July, he posted photos taken from a canoe and from a diving expedition with the hashtag #Andamans. Many of his posts are hashtagged #Solideogloria, the Latin phrase for Glory to God Alone.

In the journal, Mr. Chau wrote that he was on a mission to establish a kingdom of Jesus, Dependra Pathak, director general of police in the Andaman and Nicobar Islands said. Instead, he died during a "misplaced adventure in the highly restricted area," Mr. Pathak wrote in a statement.

The islanders, part of the Sentinelese tribe whose origins date back tens of thousands of years, have a long history of hostile reactions to outsiders.

“They are very aggressive and violent. Anyone trying to access the area gets showered with arrows,” Mr. Pathak said.”

Luckily, at ***Advanced Financial Solutions***, Inc. our job is not to decide what is right and proper for one jurisdiction in its relationships with other jurisdictions. **Our job is to arrange the jurisdictional elements of PPLI structuring to achieve the best possible result for our clients**. From our years of experience, this best possible result is a combination of outstanding tax savings, privacy enhancements, and asset protection benefits. We would like to help you achieve these benefits too. Please ***contact us*** with your worldwide asset structuring needs.

by Michael Malloy, CLU, TEP, @ Advanced Financial Solutions, Inc

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