



# CHAMBERS

Legal Practice Guides

## CORPORATE Tax

Edited by Paul W. Oosterhuis  
Skadden Arps Slate Meagher & Flom LLP

2014

CHAMBERS & PARTNERS  
LEGAL PUBLISHERS



**CHAMBERS**  
Legal Practice Guides

# **CORPORATE Tax**

Edited by Paul W. Oosterhuis  
Skadden, Arps, Slate, Meagher & Flom LLP

**2014**

# Chambers Legal Practice Guides

For more than 20 years, Chambers Legal Guides have ranked lawyers and law firms across the world. Chambers now offer clients a new series of Legal Practice Guides, which contain practical guidance on doing legal business in key jurisdictions. We use our knowledge of the world's best lawyers to select leading law firms in each jurisdiction to write the 'Law & Practice' sections. In addition, the 'Trends & Developments' sections analyse trends and developments in local legal markets. The 'Guidance and Warnings' sections, based on the views of clients with in-depth international experience, contain hard-won knowledge about typical local problems and how to overcome them – information usually missing from official guides.

**Disclaimer:** The information in this guide is provided for general reference only, not as specific legal advice. Views expressed by the authors are not necessarily the views of the law firms in which they practise. For specific legal advice, a lawyer should be consulted.

Publisher **Michael Chambers**  
Series Editor **Claire Oxborrow**  
Business Development Director **Brad Sirott**  
Editorial Contributions **Monica Fuertes-Britez**

Orders to: **Chambers & Partners Publishing**  
Published by **Chambers & Partners Publishing**  
(a division of Orbach & Chambers Ltd)

39 Parker Street, London WC2B 5PQ  
**Tel** +44 20 7606 8844 **Fax** +44 20 7831 5662  
**Web** [www.chambersandpartners.com](http://www.chambersandpartners.com)

Copyright © 2013  
Michael Chambers and Orbach & Chambers Ltd  
ISBN: 978-0-85514-682-5

<b>OUR EDITORIAL AND RESEARCH TEAM .....</b>		<i>p.3</i>
<b>INTRODUCTION.....</b>		<i>p.15</i>
<b>ARGENTINA .....</b>	<i>Guidance and Warnings</i>	<i>p.25</i>
	<i>Law &amp; Practice</i>	<i>p.28</i>
<b>BELGIUM .....</b>	<i>Guidance and Warnings</i>	<i>p.43</i>
	<i>Law &amp; Practice</i>	<i>p.47</i>
<b>BOLIVIA.....</b>	<i>Guidance and Warnings</i>	<i>p.57</i>
	<i>Law &amp; Practice</i>	<i>p.60</i>
<b>BRAZIL .....</b>	<i>Guidance and Warnings</i>	<i>p.73</i>
	<i>Trends &amp; Developments</i>	<i>p.76</i>
	<i>Law &amp; Practice</i>	<i>p.80</i>
<b>DENMARK.....</b>	<i>Guidance and Warnings</i>	<i>p.95</i>
	<i>Law &amp; Practice</i>	<i>p.98</i>
<b>DOMINICAN REPUBLIC...</b>	<i>Guidance and Warnings</i>	<i>p.111</i>
	<i>Trends &amp; Developments</i>	<i>p.114</i>
	<i>Law &amp; Practice</i>	<i>p.118</i>
<b>FRANCE .....</b>	<i>Guidance and Warnings</i>	<i>p.133</i>
	<i>Law &amp; Practice</i>	<i>p.136</i>
<b>GERMANY .....</b>	<i>Guidance and Warnings</i>	<i>p.155</i>
	<i>Trends &amp; Developments</i>	<i>p.158</i>
	<i>Law &amp; Practice</i>	<i>p.162</i>
<b>GUATEMALA .....</b>	<i>Guidance and Warnings</i>	<i>p.173</i>
	<i>Trends &amp; Developments</i>	<i>p.176</i>
	<i>Law &amp; Practice</i>	<i>p.179</i>
<b>ITALY .....</b>	<i>Guidance and Warnings</i>	<i>p.191</i>
	<i>Trends &amp; Developments</i>	<i>p.195</i>
	<i>Law &amp; Practice</i>	<i>p.199</i>
<b>JAPAN .....</b>	<i>Guidance and Warnings</i>	<i>p.213</i>
	<i>Law &amp; Practice</i>	<i>p.216</i>

# Contents

---

<b>LIECHTENSTEIN</b> .....	<i>Guidance and Warnings</i>	<i>p.239</i>
	<i>Law &amp; Practice</i>	<i>p.242</i>
<b>LUXEMBOURG</b> .....	<i>Guidance and Warnings</i>	<i>p.253</i>
	<i>Trends &amp; Developments</i>	<i>p.256</i>
	<i>Law &amp; Practice</i>	<i>p.260</i>
<b>MEXICO</b> .....	<i>Guidance and Warnings</i>	<i>p.273</i>
	<i>Trends &amp; Developments</i>	<i>p.276</i>
	<i>Law &amp; Practice</i>	<i>p.281</i>
<b>PANAMA</b> .....	<i>Guidance and Warnings</i>	<i>p.297</i>
	<i>Trends &amp; Developments</i>	<i>p.300</i>
	<i>Law &amp; Practice</i>	<i>p.304</i>
<b>PERU</b> .....	<i>Guidance and Warnings</i>	<i>p.315</i>
	<i>Trends &amp; Developments</i>	<i>p.318</i>
	<i>Law &amp; Practice</i>	<i>p.322</i>
<b>SPAIN</b> .....	<i>Guidance and Warnings</i>	<i>p.337</i>
	<i>Law &amp; Practice</i>	<i>p.340</i>
<b>SWITZERLAND</b> .....	<i>Guidance and Warnings</i>	<i>p.369</i>
	<i>Trends &amp; Developments</i>	<i>p.372</i>
	<i>Law &amp; Practice</i>	<i>p.376</i>
<b>UK</b> .....	<i>Guidance and Warnings</i>	<i>p.389</i>
	<i>Trends &amp; Developments</i>	<i>p.392</i>
	<i>Law &amp; Practice</i>	<i>p.396</i>
<b>USA</b> .....	<i>Guidance and Warnings</i>	<i>p.405</i>
	<i>Law &amp; Practice</i>	<i>p.408</i>
<b>VENEZUELA</b> .....	<i>Guidance and Warnings</i>	<i>p.425</i>
	<i>Law &amp; Practice</i>	<i>p.428</i>
<b>INDEX</b> .....		<i>p.443</i>

# Our Editorial Team

# Our Editorial Team

---

Here you can see our editors, deputy editors and researchers. They are all currently (August 2013) working full-time at our head office in central London. More biographical information can be found on the 'About Us' page of our website.

## The Editors

The Editors are responsible for the overall content of their guides and for managing the research team.

**Claire Oxborrow**

Editor, Legal Practice Guides. Graduated with a First in Modern History from the University of St Andrews in 2005. During postgraduate studies at the LSE she worked as a visiting lecturer at the University of Roehampton. After completing the GDL and the LPC she spent time as a volunteer at the Brunel Museum.

**Andrés Jaramillo Mejía**

Latin America Editor. Graduated in Law from the Pontificia Universidad Javeriana in Bogotá, Colombia, and holds a Masters (LLM) Cum Laude in European Intellectual Property Law from Stockholm University. He is a qualified lawyer in Colombia, with significant experience in media, entertainment and intellectual property law.

**Dee Sekar**

Editor, Women in Law. Studied Law (LLB) at Queen Mary College, University of London and completed the Legal Practice Course at BPP Law School. Trained at a City firm and worked as a Project Finance solicitor. Also has a background in events and international marketing.

**Rieta Ghosh**

Editor-in-Chief. Graduated in Ancient History at Durham University. Former Client Information Manager with a European market research agency. Previously worked at a leading business advisory company.

**Alex Marsh**

Managing Editor, Chambers Confidential. Graduated with a First in English Literature from Manchester University. He also has an MA with Distinction in Contemporary Literature and Novel Writing. He has previously worked as a researcher with a City headhunting firm and at a business knowledge centre.

**Edward Shum**

Editor for Africa, Canada, the Middle East, Caribbean and Global-wide sections. Studied Law at Magdalene College, Cambridge. Previously worked at a South London law firm.

**David Lamb**

Head of Research. Read English and Philosophy at the University of Leeds before converting to law. Has spent a year teaching English in Japan.

**Antony Cooke**

Student Editor. Graduated from Durham University in Russian & French. Taught English at St. Petersburg State University. Previously worked at Michelin, and at PricewaterhouseCoopers as an audit associate in Investment Management. Fluent in Russian and French.

**Georgia Brooks**

Europe Editor. Graduated with an MA in Ancient History from UCL and a BA Hons in Classics from the University of Warwick. Previously worked in marketing and as a freelance translator and travel writer. Speaks Arabic, French and Italian.

## The Editors *continued*



### **James Cowdell**

UK Bar Editor. Barrister. Read Modern History at The Queen's College, Oxford. Practised at the Criminal Bar for five years and was a fee earner in the family department of a leading London law firm.



### **Jonathan Rubin**

UK Editor. Graduated with Honours in Law from the University of Kent in 2006. Completed the LPC at BPP College in London. Qualified as a solicitor in 2009, training with

a top American firm in London and Dubai. Studying for an LLM in Law and Political Justice at Birkbeck College, University of London.



### **Laura Mills**

USA Editor. Graduated with a BA in History and Middle Eastern Studies from the University of Pittsburgh and an MA in Middle Eastern Studies from the School of Oriental and African Studies, University of London. Has studied French, Arabic, Spanish and Turkish.



### **Shi-Ning Koay**

Asia-Pacific Editor. Graduated in Law from the University of Manchester. Completed the Bar Vocational Course and was subsequently called to the Bar in 2005. Trained with a leading Malaysian law firm and was called to the Malaysian Bar in 2006.



### **Stephen Wallace**

Editor, Chambers Confidential. Graduated in Law from the University of Kent at Canterbury in 2006.

## The Deputy Editors

The Deputy Editors work with the Researchers and the Editor to ensure the rankings and commentary are a true reflection of the market.



### **Bryony Hirsch**

UK Deputy Editor. Graduated with an honours degree in History from the University of York, did a GDL at the College of Law in York and is currently completing an LPC at the College of Law in Bloomsbury.



### **Christopher Teevan**

USA Deputy Editor. Graduated from the University of Warwick in 2006 with Honours in English Literature. Also holds an MA in Creative Writing from Royal Holloway, University of London.



### **Emma Dougan**

Global Deputy Editor. Graduated from Worcester College, Oxford in 2009 with a First in English.



### **Giles Thomas**

UK Deputy Editor. Graduated in International Relations from the University of Sussex in 2005.



### **Gregory Simkins**

Graduated with a degree in English from Cambridge University before obtaining a distinction for his Masters in Postmodern Literature at Royal Holloway. Previously worked as an English tutor in Moscow and Dubai.



### **Jamie Horne**

UK Deputy Editor. Graduated in 2008 from Emmanuel College, Cambridge, with an honours degree in History.



### **Jane Pasquali**

USA Deputy Editor. Graduated with a First in Spanish and Italian from Exeter University in 2007. Has lived and taught in Madrid and Barcelona, and worked for three years in a financial spreadbetting company in London. Awarded a PGCE with Distinction in Primary Education and Spanish in 2011.



### **Joanna Haber**

Global Deputy Editor. Graduated in Public Affairs and Management and International Development from Carleton University in Canada and holds a Postgraduate Diploma in Journalism from the London School of Journalism. Speaks French.



# Our Editorial Team

---

## The Deputy Editors *continued*

**Jon Comlay**

Graduated in History from the University of York in 2005.

**Kimberley Staines**

Graduated with a BA in English Literature, Film & Theatre from the University of Reading, before completing the Graduate Diploma in Law and Legal Practice Course at BPP Law School.

**Leila Afshar**

Latin America Deputy Editor. Graduated in Law from King's College London; holds an MSc in Development and Anthropology from the London School of Economics.

**Liam Whitton**

UK Deputy Editor. Graduated in English Literature from Balliol College, Oxford. Worked as a freelance writer and policy researcher for several UK national charities.

**Lidija Liegis**

Europe Deputy Editor. Graduated in Philosophy and Psychology from the University of Edinburgh (MA honours) and also holds a Master's degree in Investigative Journalism from City University. Previously worked in journalism, on a project in collaboration with the Financial Times. Speaks French, Latvian and Spanish. Oversees research in France, Italy, Finland and the Baltics.

**Luke Kenison**

Europe Deputy Editor. Graduated from the University of Warwick in 2010 with a First in English and Comparative Literary Studies. Oversees research in Belgium, Iceland, Luxembourg and Malta.

**Madalena Andrade**

Latin America Head of Brazil Research. Graduated in English Literature with Publishing from Loughborough University. Previous experience includes teaching English as a foreign language and translating. Madalena is a Portuguese national.

**Michael Perkin**

USA Deputy Editor. Graduated in English Language and Linguistics from the University of Sheffield. Worked as a journalist for Hayters Press Agency and has had copy printed in a number of national newspapers, including the Daily Telegraph and the Mail on Sunday.

**Milena Bellow**

Europe Deputy Editor. Graduated in English Literature from the University of Glasgow in 2009. Has previously worked in probate and genealogy research. Oversees research in Austria, Cyprus, Greece, Switzerland and Turkey.

**Nicolás Obregón Fox**

Latin America Deputy Editor. Studied literature in Madrid before gaining substantial journalistic experience with a market-leading consumer magazine. Worked for three years as a researcher/writer for a travel magazine. Speaks fluent Spanish and intermediate French.

**Peter Whitfield**

USA Deputy Editor. Graduated from the University of Newcastle-upon-Tyne with a BA (Hons) in English Literature, and is currently studying towards a Master's degree in Philosophy at Birkbeck, University of London.

**Phil Roe**

Deputy Editor of Chambers Associate. Joined Chambers & Partners in 2007 from a global executive search firm, where he advised Private Equity clients. Has written extensively for both Chambers Associate and the Chambers Student Guide. Graduated with an MA in English from Oxford University, and is a theatre critic for London-based newspapers in his free time.

**Sarah Kogan**

Asia-Pacific Deputy Editor. Graduated from Oxford University in 2004 with a degree in English Language & Literature. Worked in the television industry for several years as a Researcher and Associate Producer. Subsequently completed the GDL (Graduate Diploma in Law) in 2011 at the College of Law.

**Sam Morris**

Student/Associate Assistant Editor. Graduated from the University of Leiden, The Netherlands with a First in Political Science in 2008 and from the London School of Economics with an MSc in Comparative Politics in 2009. Has worked for the Dutch Ministry of Foreign Affairs. Speaks Dutch and German.

## The Deputy Editors *continued*



### **Sara Veale**

Student/Associate Assistant Editor. Graduated Magna Cum Laude from the University of North Carolina at Charlotte with degrees in English and Dance, and recently completed an MA in English at University College London. She is a published poet and currently freelances as a literary critic.



### **Timothy Shaw**

Asia-Pacific Deputy Editor. Graduated with a BA (Hons) in French and Spanish from University College London in 2010 and spent a year abroad as an

ERASMUS scholar in Paris and Valencia. Subsequently completed the GDL and the LPC. Fluent in Mandarin and a native Cantonese speaker.



### **Ursula Ben-Hammou**

Latin America Deputy Editor. Graduated in Law from the Pontificia Universidad Católica del Perú and holds a Master in Laws (LLM) with specialisation in International Business Transactions from the London School of Economics and Political Science. She is a qualified lawyer in Peru, with significant experience in corporate and finance law. Fluent in English and Spanish and also speaks French.



### **Yvonne Berman**

Asia-Pacific Deputy Editor. Having completed a law degree (at the University of North London) became a member of the Bar of England and Wales (non-practising) and spent several years in industry and private practice in IP, specialising in trade marks and copyright.

## The Assistant Editors and Senior Researchers

The Assistant Editors and Senior Researchers are responsible for interviewing clients and lawyers and for assisting with the rankings and commentary.



### **Alexis Hercules**

Confidential Assistant Editor. Has a BA in Writing with English Literature and Cultural History from Liverpool John Moores University, an MA in Periodical Journalism from The University of Westminster, an MA in English Literature from Queen Mary, University of London.



### **Angela Castillo-Diaz**

Latin America Senior Researcher. Graduated in Journalism from Universidad Central de Venezuela, holds a Master's degree from Universidad Antonio de Nebrija and an MBA degree in Marketing from University of Wales, Cardiff Institute. Fluent in English and a native Spanish speaker.



### **Christopher Tooke**

Asia Senior Researcher. Graduated with a First in Russian, Czech and Slovak from UCL, where he submitted his doctorate in Russian literature in 2011. In addition to his experience within academia, editing journals and teaching at UCL, he has also worked in reference publishing, recruitment and translation.



### **Deborah Lewis**

UK/US Senior Researcher. Graduated from the University of Nottingham in 2009 with a BA in Law with Australian Law after spending a year abroad at the University of Melbourne. Subsequently completed an MA in Media Practice from the University of Sydney.



### **Eleanor Bramall**

Legal Practice Guides Assistant Editor. Graduated with a BA in Law from Magdalen College, Oxford. Previously worked in immigration at the Home Office.



### **Emma Beatty**

Legal Practice Guides Assistant Editor. Graduated in Law from Durham University in 2009. Completed a Masters in Public International Law (LLM) at Queen Mary University of London in 2012. In the intervening years spent time travelling as well as volunteering and living in Cambodia and Indonesia.



### **Fiona Wong**

Confidential Senior Researcher. Holds a BA (First) and an MPhil in English from the Chinese University of

# Our Editorial Team

## The Assistant Editors and Senior Researchers *continued*

Hong Kong, and a PhD in English and Comparative Literary Studies from the University of Warwick. Has been writing for publishing companies and an online magazine. Speaks Cantonese and Mandarin.



### **Francesca Lean**

Europe Senior Researcher. Graduated from Newcastle University in 2008 with a BA in French and German, with Spanish. Has previously worked in multilingual financial recruitment. Speaks French and German.



### **Francois Gill**

UK Assistant Editor. Graduated with a First in History from University College London in 2006. Went on to complete a Master's in the subject at UCL. Speaks French.



### **Georgina Watts**

UK/US Senior Researcher. Read Classics at The Queen's College, Oxford. Completed the GDL at The City Law School as a Lincoln's Inn Bar scholar.



### **Harriet Carter**

Global Assistant Editor. Graduated with a First in English from the University of York. Completed an MA in Aberystwyth and a PhD in Creative and Critical Writing at the University of East Anglia. She has taught English literature and creative writing at both school and undergraduate level, and written two novels.



### **Indy Tsang**

UK/US Assistant Editor. Graduated from Regent's Park College, Oxford with a degree in English Literature. Was active in student drama and writes fiction in her spare time.



### **Isabel Story**

Latin America Assistant Editor. Holds joint honours in Spanish and Russian from the University of Nottingham and an MPhil in Russian Studies from Cambridge. Speaks Spanish and Russian.



### **James Booth**

UK/US Senior Researcher. Graduated from the University of Manchester with a BA in History and completed the Graduate Diploma in Law at BPP Law School. Has worked as a freelance researcher and writer.



### **Jurgita Meskauskaitė**

Europe Assistant Editor. Graduated with an MA in Development Management from the University of Westminster in 2007. Previously worked as a business journalist in Lithuania and freelanced in London. Fluent in Russian and Lithuanian.



### **Katherine Hughes**

Europe Senior Researcher. Graduated from the University of Leeds in 2007 with a First in Latin and Italian. Previously worked as a tour guide in Rome. Speaks Italian.



### **Keziah Mastin**

UK/US Senior Researcher. Graduated from the University of Edinburgh in Arabic and Spanish. Recently completed the GDL at BPP Law School and is currently studying for the LPC. Has previously worked in not-for-profit organisations and in the legal sector.



### **Lucy Craig**

Europe Assistant Editor for Germany. Graduated from the University of Oxford in 2011 with a BA in French and German. Previously taught English as a foreign language in Germany. Speaks French and German, and is currently learning Russian. Oversees research in Germany.



### **Mandeep Sran**

UK/US Senior Researcher. Graduated in Law from the School of Oriental and African Studies (SOAS) at the University of London, and completed the Legal Practice Course at the Nottingham Law School. Qualified as a solicitor in 2009 specialising in Litigation.



### **Matthew James**

Europe Senior Researcher. Graduated from Newcastle University with a First in History in 2008. Has previously worked in an IP firm in Australia and an investment bank.



### **Mayeni Jones**

Europe Senior Researcher. Graduated from the School of Oriental and African Studies (SOAS) in International Studies and Diplomacy. Also has a BA in Modern Languages from the University of Oxford. Has worked for humanitarian organisations in Brazil and Sierra Leone. Fluent in French, Portuguese and Spanish.



### **Miriam Urgelles-Coll**

Europe Senior Researcher. Graduated with an MA in Computational Linguistics before completing a PhD in Theoretical Linguistics, both from Essex University.

## The Assistant Editors and Senior Researchers *continued*



**Natalia Tejedor Sanz**  
Europe Assistant Editor. Graduated in English Studies from the University of Valladolid, and holds a Postgraduate Certificate in Research Training from the University of Hull. Speaks Spanish and French. Natalia oversees research in Spain and Portugal.



**Oliver Dimsdale**  
Asia-Pacific Assistant Editor. Graduated with an MLitt in Creative Writing from the University of St Andrews in November 2010. Also holds an MA in English Literature from the University of Warwick. Has previously worked as a writing tutor, in Scotland, and as a journalist in Tegucigalpa, Honduras. Speaks Spanish and German. Learning Italian.



**Paul Rance**  
Student/Associate Assistant Editor. Graduated from Exeter University with a First in English Literature, and also spent a year abroad at the University of Toronto to read Canadian literature. He completed his MA in English at UCL in 2010.



**Rachel Low**  
Asia-Pacific Assistant Editor (based in Hong Kong). Graduated with an MA in Sociology from Brandeis University (Boston) and a BA in Communication Studies from the Nanyang Technology University (Singapore).



**Raquel Holzmann**  
Graduated from UCL with a degree in European Social and Political Studies with French. Previously worked for the NHS and taught English as a foreign language in Brazil.



**Richard Metcalf**  
Europe Assistant Editor. Graduated with a First in German and Italian from the University of Bath in 2008 and holds an MA in Translation Studies from the University of Warwick. Speaks French, German and Italian.



**Shuma Hoque**  
Europe Senior Researcher. Holds a law degree and most recently worked in Spain where she completed her legal studies at Universidad Complutense de Madrid.



**Stella Heng**  
Global Assistant Editor. Graduated in Law from London School of Economics. Completed the Bar Vocational Course at the College of Law and was called to the Bar in 2010. Fluent in English and French, and also speaks Malay.



**Stefan Corre**  
UK/US Assistant Editor. Graduated from Leeds University with a degree in Philosophy. Subsequently attended the College of Law in London and qualified and worked as a solicitor in the West End of London.



**Talia Addleman**  
Europe Assistant Editor. Graduated from the University of Birmingham in 2008 with a BA in Ancient and Medieval History. Has completed the GDL and LPC at the College of Law. Oversees research in Ireland and Scandinavia.



**Tobias Waters**  
Asia Senior Researcher. Graduated from the University of Kent with a BA in English and American Literature, and also holds an MA in English Literary Studies from the University of Durham. Has lived, studied and worked in the United States and Japan.

# Our Editorial Team

---

## The Researchers

The Researchers are responsible for interviewing clients and lawyers, and for assembling the data needed for the rankings and commentary.



**Anna Bowen**

Graduated with a BA (Hons) in English Literature from St. Hilda's College, Oxford in 2008. Has lived and worked in Australia, and worked for various B2B and B2C publishing houses.



**Alice Saville**

Graduated from Oxford University with a First in English, then completed an MA in Medieval and Renaissance Studies at UCL. She also writes theatre criticism and features for several arts publications.



**Ben McCarthy**

Graduated from the University of Reading with a First in History, and also presented a paper at the International Children of War Conference in 2011. Currently writes for a film review site in his spare time.



**Aine Molloy**

Graduated with a Law LL.B. (Hons) Degree from Newcastle University in 2011 and an International Law LL.M. Degree from the University of Edinburgh in 2012. Competed in the 19th Annual Willem C. Vis International Commercial Arbitration Moot in Vienna, and has spent time volunteering in South Africa.



**Alistair Faiers**

Graduated in 2012 from the University of Warwick with a BA in English and Latin Literature. Writes and directs plays for his theatre company in his spare time.



**Cesare Omissi**

Graduated with a BA (Hons) in Ancient and Modern History from Corpus Christi College, Oxford in 2010. Has previously worked in private practice in the field of Intellectual Property, specialising in trade mark matters throughout the world.



**Aleksandra Luczak**

Graduated from King's College London with a BSc in Management, and from London School of Economics with an MSc in Accounting. Native Polish speaker.



**Andrew Dyer**

Graduated from the School of Oriental and African Studies, University of London, in 2011 with a BA degree in Japanese. Spent a year abroad at Kobe University. Speaks Japanese and French, and is learning Mandarin.



**Charles Davies**

Graduated in 2011 with a Masters Degree in Modern Languages (French and Spanish) from the University of Manchester.



**Alessandra Sulzer**

Born and raised in Puerto Rico. Graduated with an AB (Magna Cum Laude) from Harvard, a DPhil from Oxford (Corpus Christi College), and an LLB from BPP Law School. Previously a research analyst at a legal strategy consultancy in London. A native speaker of English and Spanish.



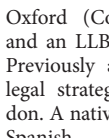
**Anna Winter**

Graduated with a BA in English Literature from Balliol College, Oxford. Took journalism qualifications following internships at The Observer and The New Statesman magazine.



**Chris Nicholson**

Completed BA and MA degrees in History at UCL, where he also submitted his PhD in History. He has co-edited two books on Central and Eastern Europe, and served on the editorial boards of two academic journals.



**Alessandra Sulzer**

Born and raised in Puerto Rico. Graduated with an AB (Magna Cum Laude) from Harvard, a DPhil from Oxford (Corpus Christi College), and an LLB from BPP Law School. Previously a research analyst at a legal strategy consultancy in London. A native speaker of English and Spanish.



**Becky Millar**

Graduated with a degree in Philosophy from Cambridge University before completing the GDL at the College of Law. Has previously spent time travelling, volunteering and studying Spanish in South America.



**Christopher Lambert**

Graduated in Law with Politics from the University of Manchester in 2010. Completed a Masters in Politics at the University of Leeds in 2012. Previously worked as a research analyst.

## The Researchers *continued*

**Claudia Solaro**

Graduated with a First in French and Classics from the University of Reading. Fluent in French and Italian.

**Cristina González**

Graduated in Law from the Universidad Complutense in Madrid, Spain. Trained at a Brighton-based law firm and worked in a multinational financial services corporation. She is involved in several visual arts organisations and speaks Spanish and French.

**Daniel Coyne**

Graduated with a BSc (Hons) in International Relations from the University of Southampton, and has since gained experience across a broad range of media and communications roles.

**David Greaves**

Graduated in English and Creative Writing from the University of Warwick before obtaining an MLitt (Distinction) in Creative Writing from the University of Glasgow. Speaks Spanish.

**David Watson**

Has a BA in Modern History from Keble College, Oxford, an MA in War Studies from King's College, London, and over 20 years' experience researching military historical matters for a Ministry of Defence Agency.

**Dennis Li**

Graduated with an MA (Merit) in Publishing from University College London. Considerable editing and project management experience in publishing. Native Mandarin speaker and also speaks German.

**Elizabeth Sands**

Graduated from the University of Warwick with a First in English Literature. Elizabeth also writes for theatre.

**Emma Roche**

Graduated with an LLB (Law) from King's College London and an MSc in Nationalism/ European and International Politics from the University of Edinburgh. Holds a NCTJ qualification in journalism from the University of Strathclyde.

**Fawkia Hammouda**

Graduated with an MSc in Political Theory from the London School of Economics; attained a previous BA in Political Science, International Law and International Relations from the American University in Cairo.

**Felipe Goralski**

Graduated with a BA (Hons) in Politics from UCL in 2006. Previously worked for a French medical assistance company in London. Studied GDL and LPC at College of Law and obtained the LL.B. Speaks Spanish and French.

**Francesca Wright**

Read Classics at University College London. Recently completed GDL and LPC at the College of Law.

**Georgina Gittens**

Graduated from Bristol University with a BSc in Philosophy and Politics in 2013. Volunteered at a legal charity and co-edited a magazine.

**Giverny Tattersfield**

Graduated with a BA in English Literature from the University of Cambridge. Recently worked as an editor and travel writer.

**Graham Gilbert**

Graduated in Ancient History from University of Exeter in 2010. Subsequently converted to law by undertaking GDL at City, where he also took the Bar exams.

**Hannah Campaigne**

Graduated from the University of Sheffield in 2009 with a BA in Politics and Philosophy, then completed the GDL at BPP in Manchester. Taught English in India, and spent time living in France.

**Henriette Mohr**

Graduated from the University of Aberdeen with advanced degrees in International Relations and Law, as well as International Studies and Diplomacy from the School of Oriental and African Studies, University of London. Speaks Norwegian.

**Idara Hippolyte**

Read English at Trinity College, Oxford, from which she has a DPhil in English Literature (2005) and an MBA (2002). She taught high school mathematics and worked for nearly a decade in a global energy company.

# Our Editorial Team

## The Researchers *continued*



### Jack Chitham

Graduated from Westminster University with a BA in Development Studies & International Relations, later attaining an MSc in Globalisation and Development from the School of Oriental and African Studies. Speaks Arabic.



### Jack Torbet

Graduated with an LLB (Hons) in Law and French Language from the University of Glasgow. Holds an LLM from SOAS in Human Rights, Conflict and Justice. Spent a year studying International Law at the Université de Strasbourg in France.



### Jack Watkins

Graduated with a BA Honours degree in History from the University of Sheffield in 2010.



### Jacob Moffatt

Graduated with a BA in Philosophy in 2011 and an MA in Social and Political Philosophy from the University of Exeter in 2012.



### James Course-Choi

Graduated with a degree in Biochemistry from Imperial College London in 2010 and then attained an MRes in Structural Biology at Birkbeck College in 2011.



### James Pulford

Graduated from the University of Manchester in 2012 with a BA in English Literature and an MA in Creative Writing. Also writes fiction, drama and criticism.



### Jamie Yule

Graduated with a degree in law from Oxford. Also holds an LLM with Distinction from Dundee University.



### Joaquín Sarroca

Graduated in Law from the Universidad de la República de Uruguay and holds an LLM from Queen Mary, University of London. A qualified lawyer in Uruguay, and fluent in English and Spanish.



### Joe Twomey

Graduated with a degree in Modern Languages (French) from New College, Oxford. Previously taught English as a foreign language in Paris, and worked for a book supply company on tender bids in Africa. Speaks French and is currently learning German.



### Katherine Yu

Graduated with an MA in International Relations and Modern History from the University of St Andrews in 2009. Previously worked in local government before completing the GDL at the College of Law. Speaks Shanghaiese.



### Kielan Thompson

Graduated with a BA (First) in History and English in 2007, before completing an MRes in Russian Literature from the University of Keele in 2009.



### Kim Addison

Graduated in English Studies from the University of Leicester in 2009 and recently completed a commercial graduate training scheme with

a French car manufacturer. Currently studying the GDL at BPP Law School. Speaks French.



### Lara-Jane Ideo

Graduated with a BA (Hons) in English Literature from Homerton College, Cambridge. Previously interned as a script consultant. Speaks Italian and French and has lived in both countries.



### Louisa Hotson

Holds an undergraduate degree in Politics from Durham University and a Masters degree in US History and Politics from the University of London. Previously held a research internship with the Institute for Government, where her research focused on new models of governance and public services.



### Maria Harwood

Born in Moscow and raised in London. Graduated with a BSc in Philosophy, Logic and the Scientific Method from the London School of Economics in 2011. Studying part time for a Graduate Diploma in Law at BPP, with a training contract at a top City firm starting in 2015. Speaks fluent Russian.



### Marta Krzeminska

Graduated from St. Catherine's College, Oxford in 2011 with a First in Oriental Studies and holds an MA in Applied Translation from the University of East Anglia. Speaks Polish and Hebrew, and is currently learning Arabic.



### Matthew Adams

Has a DPhil in English from Merton College, Oxford.

## The Researchers *continued*



### **Matthew Juggins**

Matthew has a BA in History & Ancient History from the University of Exeter, obtained in 2012. He has lived, studied and worked in Hong Kong, China and Singapore, and in his spare time is a writer and an Artistic Director of an amateur theatre company he co-founded.



### **Megan Langham**

Graduated with a BA (Hons) in Modern History and German from Magdalen College, University of Oxford in 2011. Taught English in Germany for a year, as part of undergraduate studies, then completed the GDL at Oxford Brookes University as a Middle Temple Bar Scholar. Speaks German and French and is learning Italian.



### **Mersa Auda**

Graduated from University College London with an MA in Comparative Literature. Previously worked as a translator and theatre critic. Speaks Italian, Arabic and Spanish.



### **Mitchell Tulloch**

Graduated with an MA in Musicology from Durham University in 2010. Has spent the last two years working as a corporate paralegal with a magic circle law firm and volunteering abroad in Central America and India.



### **Montague Kobbe**

Graduated from the University of Bristol with a degree in English & Philosophy.



### **Ramani Rajaratnam**

Graduated from Nottingham University with BA (Hons) in History in 2011. Recently completed her GDL at BPP Law School, London.



### **Raquel Peres**

Graduated in Biology from the University of Kent in 2010. Completed an MSc in Clinical Microbiology from the University of Nottingham in 2012. Born and raised in Portugal but lived in Germany for six years before moving to the UK for higher education. Fluent in English and Portuguese, and also speaks German and French.



### **Ray Liu**

Graduated with an LLB from King's College London in 2011. Previously worked in a claims handler role at a Kent-based law firm. Fluent in Mandarin.



### **Ria Pal**

Graduated from University College London with a BA in French and Italian. Has previously worked as a music journalist and in the fashion industry.



### **Robert Li**

Graduated in Modern Chinese Studies from Leeds University, later completing the CPE at Westminster University. Previously worked in a domain name management company, helping clients to manage their intellectual property on the internet. Speaks Mandarin Chinese.



### **Roberta Abdalla**

Graduated in Law from São Paulo's Law School (EDESP-GV) in 2010 and was admitted to the Brazilian Bar Association (OAB) in the same year. Completed a Master of Arts in Global Ethics and Human Values at King's College London in 2012. Has previously worked in the non-profit and legal sectors.



### **Rosie Seville**

Graduated with a First in Chinese and French from the University of Leeds in 2012, and also studied at National Taiwan University.



### **Rupert Wilson**

Graduated from Trinity College, Cambridge in 2010 with a BA (Hons) in History. Has since studied the GDL and BPTC at City Law School, London.



### **Samantha Steele**

Graduated from the University of Oxford with a BA in Jurisprudence. Has taught English in Australia and New Zealand.



### **Sara Fantoni**

Born and raised in Italy, called to the Bar of England and Wales in July 2012. Graduated from King's College London with an LLB and from UNICRI with an LLM in International Crime and Justice. Has worked for UNICRI as a Junior Fellow. Speaks Italian and French.



# Our Editorial Team

---

## The Researchers *continued*



### **Shaun Tey**

Graduated with an LLB (Law) from Queen Mary, University of London and subsequently completed the Bar Vocational Course at BPP Law School. Previously worked at the BBC and also briefly worked in Singapore. He enjoys producing reports for community radio in his spare time.



### **Shereen Zaki**

Graduated from King's College London with an LLB (Hons) in Law in 2011. She has experience in Competition Law and Property Law.



### **Shuo Wang**

Graduated from Peking University in Journalism and Creative Industries Management before completing an MSc in Media and Communications at the London School of Economics. Previously worked for a London-based Chinese media company and a Chinese music channel.



### **Simon Christian**

Simon studied Law at University College London and has been called to the Bar at the Middle Temple.



### **Sophie Handler**

Graduated from the University of Nottingham in 2011 with a BA in History and French after spending a year abroad in Paris. Subsequently completed the GDL at BPP Law School. Speaks French and Spanish.



### **Steven Preston**

Graduated from University College London with an LLB.



### **Toby Eccleshall**

Graduated from the University of Birmingham with a BA in German and Russian Studies and subsequently completed the GDL at Brunel University. Has previously worked as an English teacher in Moscow and enjoys playing the guitar in his spare time.



### **Tom Bushnell**

Graduated in 2012 from Trinity Hall, Cambridge with a BA (Hons) in Law, then completed the Bar Professional Training Course at Kaplan Law School.



### **Vian Chowdhury**

Graduated in 2011 with an MSc in Development Economics. Previously lived in Indonesia.



### **William Robertson**

Graduated from Nottingham University with BA (Hons) in Geography in 2012. Previously a section editor for Nottingham University magazine Impact.

# Introduction

# Introduction

*Contributed by Skadden, Arps, Slate, Meagher & Flom LLP*

**Skadden, Arps, Slate, Meagher & Flom LLP** is very highly regarded for international work, with a great tax group located across the world. With the ability to serve clients in every major international financial centre, they can provide specific legal advice companies across a spectrum of industries worldwide. A corporate heavyweight, they have received high praise for their tax expertise.

**Paul W. Oosterhuis** is the global head of Skadden's regulatory practices and represents clients in a wide range of international and domestic tax matters. Mr. Oosterhuis has extensive experience in international mergers and acquisitions, post-acquisition integration transactions, spin-off transactions, internal restructurings and joint venture transactions. He also represents multinational companies in non-transactional international tax planning and IRS controversy matters.

**Tim Sanders** is a chartered tax adviser and head of the European tax practice based in the London office. He works on corporate and banking taxation matters, including mergers and acquisitions, securitisations, debt restructurings, private equity transactions, cross-border and domestic structured finance, corporate reorganisations and restructurings related to international joint ventures.

**Moshe Spinowitz** advises clients on a range of tax matters related to corporate transactions, including public and private company mergers and acquisitions, and cross-border transactions.

## International Tax Update

In the 60 years following World War II, most developed countries and multinational organisations worked together to reduce source-based taxation and increase residence-based taxation of cross-border income. Bilateral treaties exempting royalties and interest from withholding tax mushroomed in the 1960s, 1970s and 1980s, with 179 treaties concluded between the introduction of the OECD draft model in 1963 through its first publication in final form in 1977 (Holmes, *International Tax Policy and Double Tax Treaties* 58 (2007)). Most of the treaties have also eliminated taxes on the sale of local country company stock by treaty residents. The implementation of the Maastricht Treaty throughout the EU in 1993 saw the elimination of withholding taxes, including dividend withholding taxes, amongst member states. In the past decade, the United States entered into a number of treaties reducing or eliminating withholding taxes on dividends paid to corporate affiliates.

One outgrowth of the move toward residency-based taxation, perhaps not so surprising in retrospect, has been a dramatic expansion of corporate affiliates of multinational groups resident in relatively low-taxed jurisdictions with extensive tax treaty networks. The use of finance companies, intellectual property holding companies and “entrepreneurial” risk-taking companies in places like Luxembourg, Switzerland, Ireland and Hong Kong has grown

by leaps and bounds. Contract manufacturing and limited risk distribution arrangements that maximise risk and return in low-taxed jurisdictions are now commonplace.

With hindsight, the last few years may be seen as the peak of planning designed to take advantage of residency-based rules to allocate income to low-taxed jurisdictions. We may now be seeing the beginning of a new reassertion of the primacy of source-based taxation.

This can be seen in recent efforts by certain governments and the OECD to address and combat some of the planning facilitated by residence-based taxation. For example, in December 2012 the UK House of Commons Committee of Public Accounts held a series of highly publicised hearings that criticised the tax practices of several large multinational companies. The companies that were the focus of the hearings have significant operations and sales in the UK, but pay relatively little UK corporate income tax by virtue of the location of their intellectual property and risk-taking activities. Similarly, in February 2013 the OECD released the first report of its Base Erosion and Profit Shifting (“BEPS”) project. The report presented many of the issues raised by residency-based taxation, including the ability to separate the location of income for tax purposes from the location of the underlying activities, and the ability to achieve double non-taxation of income through various planning techniques. The OECD’s report calls for further study and multilateral action to address these issues.

But the new assertion of source-based taxation, if it occurs at all, is not likely to occur through withholding taxes. Transfer pricing rules that focus on activities more than financial risks and that treat intangible value as earned in the country where intangibles are used are creeping into the rules and enforcement practices of a number of countries. Limitations on interest deductions, and particularly on related party interest deductions, are expanding. In some countries the substance of special purpose treaty entities holding stock, debt or intellectual property is being challenged, and in some cases “long arm statutes” are taxing indirect gains on the sale of stock.

This overview highlights many of the key developments that may mark a coming trend. The country by country reviews provide an in-depth insight into where we are and where we might be going in the future.

## **Source-based taxation of non-residents on capital gains**

As a broad assertion of source-based taxation, no international tax case has grabbed more headlines than the Vodafone case in India. In 2007, Vodafone purchased a controlling interest in a Cayman Islands company that in turn owned the Indian business of Hutchison Telecommunications, an international telecommunications company. The transaction involved a non-Indian purchaser, a non-Indian seller, and a non-Indian asset – the stock of the Cayman holding company.

Nonetheless, Indian tax authorities claimed that Vodafone was liable for more than USD2 billion in Indian withholding taxes due on the purchase. India imposes capital gains taxation on non-resident sellers of Indian assets, and a corresponding withholding tax obligation on purchasers. In this case, the Indian tax authorities claimed that they could disregard the Cayman Islands holding company and treat this as a sale of Indian property. An Indian

lower court initially agreed with the tax authorities and upheld the assessment. However, on appeal to the Indian Supreme Court, Vodafone prevailed, with the court holding that the tax authorities could not disregard the Cayman holding company.

The saga did not end there. Soon thereafter, the Indian Finance Ministry introduced legislation to effectively overturn the Indian Supreme Court's ruling and grant authority to the tax authorities to treat sales of non-Indian holding companies as sales of Indian property. The legislation has a clear impact on future transactions – sellers and buyers of the stock of non-Indian companies may be subject to Indian tax on those transactions if the sale involves an underlying Indian business. Vodafone is currently in discussions with the Indian tax authorities regarding the application of the new legislation to Vodafone's 2007 transaction.

China has seen similar legislative and enforcement activity. China, like India, subjects non-resident companies to tax on gains from the sale of Chinese property. And like India, China has recently been more aggressive in taxing gains from the sale of non-Chinese companies that hold Chinese assets. Under Directive 698, released in 2009, indirect sales of Chinese property can trigger Chinese capital gains taxation, and corresponding withholding obligations on the part of the purchaser. Common techniques used to minimise Chinese capital gains taxation, including the use of Hong Kong holding companies, can no longer be relied upon.

The Chinese and Indian examples evidence a trend among countries that have rejected the residence-based approach to capital gains taxation common among developed countries. For those countries that impose source-based capital gains taxation – and those investors who invest in such countries – common techniques used to avoid those taxes may no longer be reliable, and capital gains taxation will need to be a consideration in those investment decisions.

### **Source-based taxation of other cross-border income**

In addition to capital gains taxes, much of the attention of the tax authorities and practitioners has shifted to the taxation of other types of income at its source. Here, there are three major trends of note: first, the increasing interest in formulary apportionment as an alternative to the now-prevalent separate-accounting and transfer pricing regimes; second, the divergence between the OECD countries and large developing economies over the transfer pricing methods to be used to allocate income; and third, the changes at the OECD itself regarding the approach to transfer pricing for intangible property.

### **Formulary apportionment in the EU**

On 16 March 2011, the European Commission published a proposal for a Directive that would implement an optional formulary apportionment system within the EU for multinational enterprises operating therein. Entitled the Common Consolidated Corporate Tax Base ("CCCTB"), the proposal would offer companies the option of calculating their taxable income on a consolidated basis using a single set of rules for determining the tax base. All EU affiliates and other affiliates with a taxable presence in the EU would be treated as a single corporation for these purposes; intragroup transactions would be ignored. Once

calculated, the taxable income of the group would then be allocated within the group using a three-factor formula giving equal weight to assets, labour (determined based on both payroll and numbers of employees), and sales. Income as allocated would then be taxed in the member country at local tax rates.

The CCCTB does not cover non-EU affiliates of a multinational enterprise without a taxable presence in the EU – ie, non-EU affiliates that do not operate through a permanent establishment in the EU. The income of such affiliates would still be determined on a separate-accounting basis, with transfer pricing rules applying to transactions between EU affiliates and non-EU affiliates within a corporate group.

The CCCTB would represent a radical departure, at least within the EU, from the separate-accounting and transfer pricing principles that have prevailed for decades.

## **Transfer pricing in China, Brazil and India**

While the EU moves towards a formulary apportionment system, other large economies are bucking the OECD consensus on transfer pricing, and adopting their own approaches that serve to allocate more income to local country activities and sales.

In China, while the arm's-length principle prevails, tax authorities have required allocations of income to take into account Chinese-specific factors that they consider relevant, including reduced labour costs, access to China's large and growing consumer market, and unpaid pollution charges. These factors serve to increase the amount of profit allocated to Chinese members of a multinational enterprise.

India, which also requires arm's-length pricing, requires the prices for intangibles to reflect the functions and risks associated with the development and exploitation of the intangible property. This approach has the effect of allocating additional income to Indian affiliates involved in developing and marketing intangible property, even where such property is owned and funded by a different affiliate.

Finally, Brazil has adopted a series of profit allocation formulae that apply a fixed percentage profit return unless a taxpayer can prove otherwise. With respect to intangible property, Brazil generally exempts payments associated with such property from arm's-length pricing altogether, instead imposing special rules limiting the deductibility of payments for intangibles and subjecting such payments to withholding taxes in Brazil.

## **OECD attribution of profits and transfer pricing**

The OECD, which has long been the arbiter of transfer pricing principles in the international arena, has also been making significant changes in its approach. In June 2012, the OECD released its draft working paper on intangibles and transfer pricing, adopting an approach whereby returns on intangibles would be determined based on functions performed, assets used, and risks assumed – and not simply legal ownership. Under the OECD approach, relevant factors would include the functions that an entity performs through its employees related to the development of the IP.

Despite the OECD's efforts, what remains lacking is an international consensus on these transfer pricing issues – whether they should be eliminated altogether (such as through for-

mulary apportionment), substantially revised (as per China, Brazil and India), or simply left alone. Despite the divergence in views, one can detect an emerging trend toward allocating more profit to jurisdictions in which functions are performed and sales made, and less to those where intangible property is owned and funded.

### **Residency-based taxation of cross-border income**

Recent years have seen the implementation of significant international reforms by several large developed economies. Most notably, the United Kingdom and Japan abandoned their worldwide, residence-based taxation systems in favour of territorial systems with CFC rules that place a greater focus on preserving the tax base in the UK and Japan respectively than on the taxation of income earned outside of the home country. The changes implemented by Japan and the UK have left the United States as the only large developed economy that imposes worldwide taxation on its multinational enterprises, though proposed reforms may see the United States move in the direction of territoriality as well.

The UK's international tax reforms have involved three major components – lower tax rates, the implementation of territoriality, and a reform to its CFC regime. The UK has reduced its corporate tax rate to 24%, and additional proposals would further lower the rate to 22% by 2014. At the same time, it has adopted a territorial tax system that generally exempts UK corporations from tax on dividends received from non-UK subsidiaries and capital gains realised from the sale of such subsidiaries. Finally, it has substantially liberalised its CFC regime so that profits from business and financing activities will generally not be subject to UK tax unless a series of tests are flunked. These changes have made the UK a far more attractive location for corporate domicile. Perhaps not surprisingly, 2012 saw a number of high-profile corporate redomiciliations – including by public companies Aon and Rowan – where formerly US-based companies relocated to the UK in part to realise the tax benefits of a UK domicile under these new rules.

Japan has similarly reduced its corporate tax rate while adopting a territorial system that exempts non-Japanese income of multinational enterprises from Japanese tax. In the case of Japan, income of a foreign subsidiary will only be subject to tax in Japan if the subsidiary's effective tax rate is less than 20% and the subsidiary is not engaged in an active business, does not manage that business in its country of residence, and does not conduct its business primarily in its home country.

The reforms in the UK and Japan have left the United States as the only major developed economy that taxes its domestic corporations on their worldwide income. Legislative proposals have been put forth that would change that. Representative Dave Camp, Chairman of the tax-writing House Ways & Means Committee, has authored a draft international tax reform proposal that would reduce the corporate rate to 25%, and adopt a participation exemption whereby dividends from foreign subsidiaries and capital gains realised on the sale of foreign subsidiaries would be 95% exempt from US tax. The discussion draft also includes a series of base erosion proposals that would impose thin capitalisation rules to limit interest deductions, and would reform the current CFC rules to impose taxation on CFC income that is either low-taxed or represents an excess return on intangible property.

The precise terms of the Camp proposal – most notably its base erosion proposals – are the subject of much discussion among practitioners and policy makers, and the outcome of these discussions remains uncertain. Whether and in what form the Camp proposal might be enacted remains subject to the uncertainties of the legislative process.

## **Conclusion**

At this stage the trend towards expanded source-based transactions is focused principally on the major developing countries. Whether these trends are spreading to other countries is an important topic for discussion in this year's – and future years' – country analyses.



