2018 Winter Edition

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this first 2018 quarterly issue, the PKF Worldwide Tax Update newsletter again brings together notable tax changes and amendments from around the world, with each followed by a PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with 400 offices, operating in over 150 countries across our 5 regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

In this issue featured articles include discussions on:

- Key tax changes for 2018 in Romania and the Netherlands;
- Interesting (upcoming) European Court of Justice case law in Belgium and Germany;
- VAT developments in Rwanda, Switzerland and the United Arab Emirates;
- Automatic Exchange of Information developments in Hong Kong and Switzerland;
- Developments in the area of (international) personal income tax in Bulgaria, Cyprus and South Africa;
- Transfer pricing developments in Cyprus, Germany, Hungary and Mexico;
- An update on the US Tax Reform.

We trust you find the PKF Worldwide Tax Update for the first quarter of 2018 both informative and interesting and please do contact the PKF tax expert directly (mentioned at the foot of the respective PKF Commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at www.pkf.com/pkf-firms.

2018/19 Worldwide Tax Guide

Last year's PKF Worldwide Tax Guide featured 130 countries and was a resounding success with almost 2,000 distributed globally. We are extremely grateful to all those that provided country submissions, and of course, to each person who ordered a guide and supported this very marketable and impressive publication.

The production of the 2018/19 Worldwide Tax Guide is underway and we look forward to your continued support. An **Order Form** is provided at the end of this PKF newsletter. Thank you for your continuing support.

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Chartered Accountants
& Business Advisers

Austria

Supreme Administrative Court: Date of determination of actual and final asset losses in the event of the loss of an international intercorporate shareholding

Until a recent ruling of the supreme administrative court from March 2017 there was no legal certainty as to whether actual losses of an international intercorporate shareholding could be utilised.

Termination because of insolvency and liquidation

According to § 10 Abs. 3 KStG (Corporate Income Tax Act), changes in value (e.g. dividend payments, depreciation) regarding international intercorporate shareholdings are tax-neutral in case the shareholder did not take an option for tax exemption for the particular shareholding in the year of acquisition. Actual and final asset losses can be claimed whether the option for tax exemption was exercised or not. However, this is only possible if the shareholding ends because of insolvency or liquidation, there is no possibility to offset actual and final losses when the shareholding is sold. Dividend payments over the last five years reduce actual and final losses if the tax exemption has not been opted for in the year of acquisition. The remaining tax-deductible loss has to be taken into account for up to seven years according to § 12 Abs. 3 KStG.

VwGH 31 March 2017, Ro 2014/13/0042

The ruling is based on the following situation and argumentation. An Austrian limited company had a tax-neutral international intercorporate shareholding with a German public limited company. In 2009 an insolvency procedure for the German plc was initiated. The Austrian Ltd used the loss (taken into account for up to seven years) in 2009, the year of initiation of the insolvency procedure. The Austrian Ltd's argumentation for an actual and final loss was based on an economic point of view because no assets had been left so that the loss was final and the formal closing - perhaps in subsequent years - of the insolvency procedure would not have had a major effect on the tax assessment.

The date of determination of actual and final asset losses has been controversial. The Austrian Bundesfinanzgericht and the Austrian Tax Office had similar views and refused the determination of the loss in the year 2009 already (Judgment 16.06.2014 (GZ. RV/7101410/2012).

The Austrian Supreme Administrative Court confirmed the ruling of the Bundesfinanzgericht and the Tax Office. The legal wording of § 10 Abs. 3 KStG is not aimed at the date of the factual loss. The final asset loss will be realised after the insolvency procedure or liquidation has been finished. This interpretation also has been the intention of the Austrian legislation. The aim of § 10 Abs. 3 KStG is that all asset costs of the international intercorporate shareholding have to be claimed in the year of termination of the optional liquidation or in the year the insolvency procedure comes to an end.

PKF Comment

When a company acquires an international intercorporate shareholding it has to exercise an option, i.e. whether changes in value are tax-free or not. If the tax-free option is taken, actual and final losses can only be claimed when the shareholding comes to an end in case of insolvency or liquidation. Until the recent ruling of the Austrian Supreme Administration Court there was no legal certainty as to which date the loss could be claimed. The ruling from March 2017 confirms that an actual and final loss can only be claimed in the year of termination of the optional liquidation or in the year the insolvency procedure comes to an end. For further information or advice on Austrian taxation, please contact Stephan Rößlhuber at ***stephan.roesslhuber@roesslhuber.at*** *or call* ***+43 662 84 22 90****.*

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Belgium

Should interest derived from EU bank deposit be free of Belgium personal income tax?

According to Belgium tax law, interest income up to 1,880 EUR per annum derived from Belgium bank deposits is free of Belgium personal income tax. On 6 June 2013, the European Court of Justice (ECJ) has already condemned Belgium tax law since this personal tax exemption should be applicable to interest derived from bank deposits held with banks based in the European Economic Area (EEA). As a result, Belgium tax law was amended in order to include all "qualifying" EER bank deposit accounts. However, in daily practice it appeared that the Belgium

tax authorities still refused to apply the Belgium personal tax exemption based on the argument that non-Belgium bank deposits do not have the appropriate features (e.g. in terms of loyalty premium and the like) comparable to "qualifying" Belgian bank deposits. As a result, on 8 June 2017 (C-580/15, Van der Weegen & Pot case) the ECJ has again condemned Belgium saying that the way Belgium applies this rule in practice infringes EU freedoms.

PKF Comment

Individuals subject to Belgium personal income tax and who derive interest from a bank deposit from a bank based in the EEA should consider applying this exemption when filing their Belgium personal income tax return. The Belgium tax inspector may disagree, but both ECJ court cases are solid arguments to support such a position. Feel free to reach out to Kurt De Haen at ***kurt.dehaen@pkf-vmb.be*** *or call* ***+32 2 460 0960*** *for any further questions.*

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Are French-sourced dividends eligible for Belgium personal tax credit?

Belgium personal income tax law does not provide for a foreign tax credit (FTC) to mitigate double taxation if foreign-sourced dividends were subject to withholding tax (WHT) in the source country. Such foreign WHT is only deductible from the taxable basis in Belgium while – currently – 30% Belgium personal income tax is due on the net-at-the-frontier dividend income. However, on 16 June 2017 the Belgium Supreme Court ruled a particular case applicable to dividends distributed by a French tax resident company to a Belgium tax resident private individual and whereby 15% French dividend WHT was applied at source. However, according to a specific rule laid down in article 19 of the Belgium-France double tax treaty, the Belgium shareholder should be entitled to a "minimum FTC" being 15% French WHT in the case at hand. Since a tax treaty rule prevails over a Belgium domestic tax law rule, the Belgium Supreme Court concluded that the Belgium individual should be able to credit 15% French WHT against Belgium personal income tax, even though Belgium tax law does not provide for a FTC for Belgium personal income tax purposes.

PKF Comment

*Individuals subject to Belgium personal income tax and who derive French-sourced dividend income should consider applying this tax credit when filing their Belgium personal income tax return. The Belgium tax inspector may disagree, but this Supreme Court case is a solid argument to support such a position. Feel free to reach out to Kurt De Haen at **kurt.dehaen@pkf-vmb.be** or call **+32 2 460 0960** for any further questions.*

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Bulgaria

Further changes in reporting as per the Bulgarian Personal Income Tax Act (PITA)

Individuals will be allowed to file a corrective tax return once until 30 September of the following year if they find a mistake in their submitted annual tax return.

As of 2017, certain types of foreign-sourced income under article 38 of the PITA (e.g. dividends, interest, etc.), which were previously subject to quarterly reporting and taxation by Bulgarian tax residents, will now be reported and taxed under the individual's annual Bulgarian tax return for the respective year.

Successors will be able to file annual tax returns for the income of deceased individuals. If one of the successors submits a tax return, the others are exempted from this obligation.

PKF Comment

*The tax consultancy team of PKF Bulgaria has substantial knowledge and expertise and is in the position to provide assistance at each stage of Bulgarian tax planning and compliance procedures to both foreign and local individuals. We have successfully consulted our PKF clients who operate in various fields of business on how to be compliant with the rapid changes of the tax legislation in the ever changing business environment. For further information or advice concerning Bulgarian tax planning, please contact Venzi Vassilev on **venzi.vassilev@pkf.bg** or call **+359 2439 4242**.*

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Cyprus

Intra-group financing arrangements

The Cyprus Commissioner of Taxation issued a Circular guiding taxpayers in respect of the implementation of new rules relating to the taxation of intra-group financing arrangements.

The Circular applies to related party financing arrangements and more specifically where loans are granted by a Cyprus tax resident financing company to related parties, financed by loans, cash advances, bank loans and any other financial instruments. Two companies are considered as related parties if they fall under the scope of Article 33 of the Income Tax Legislation.

Substance requirements

The Circular specifies that Cyprus tax resident financing companies must have sufficient substance in Cyprus and have qualified employees to control the risks and transactions they are entering into.

Transfer pricing requirements

A Cyprus tax resident financing company is, from 1 July 2017, required to submit a transfer pricing study as a proof that each financing transaction has been executed on an arm's length basis. This would involve the Cyprus tax resident financing company to identify each financial relationship with related parties and commercially substantiate that the transaction has been entered into based on market conditions. An analysis will also be required of the functions performed, assets used and risks assumed by the Cyprus tax resident financing company.

Simplification measures

When a Cyprus tax resident financing company grants loans or other financial assistance to related parties, which are refinanced by loans obtained from other related companies, it is considered that for sake of simplification, the transactions will be deemed to comply with the arm's length principle, if the company receives a minimum after tax return of 2% on the assets.

Entry into force

The Circular applies from 1 July 2017, for all existing and future transactions. Any rulings issued prior to this date will no longer be valid for periods from 1 July 2017 onwards. If the intra-group financing transactions had been supported by a transfer pricing study and are still ongoing after the above date, the study will need to comply with the provisions of the Circular.

PKF Comment

Financing companies will either need to undertake the required transfer pricing analysis or alternatively, if eligible, use the simplification regime. The Circular provides for the minimum requirements for a transfer pricing analysis which is expected to be submitted by a licensed auditor providing an assurance on the quality of the transfer pricing analysis. For further information or advice on any Cyprus tax matter, please contact Nicholas Stavrinides at ***nicholas.s@pkf.com.cy*** *or call* ***+357 258 68000****.*

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Tax residency based on 60 days presence

As of 1 January 2017, an individual will be considered a Cyprus tax resident if he/she:

- does not spend more than a total of 183 days in any country within a tax year; and
- is not a tax resident of another country within the same tax year and satisfies the following three conditions:
  a) remains in Cyprus for at least 60 days during the tax year;
  b) carries on a business in Cyprus or is employed in Cyprus or holds an office in a Cyprus tax resident company at any time during the tax year; and
  c) maintains a permanent residence in Cyprus, which can be either owned or rented.

It is important to note that, if the employment/business or holding of an office as per (b) above is terminated, then the individual shall cease to be considered a Cyprus tax resident for that tax year under the 60 days tax residency scheme.

PKF Comment

We note that for employment purposes in Cyprus there are additional incentives which a Cyprus tax resident individual can enjoy. Furthermore, an individual is granted exemption from tax on dividends and interest received either in Cyprus or abroad, provided that such individual is considered as non–domiciled of Cyprus. For further information or advice on any Cyprus tax matter, please contact Nicholas Stavrinides at ***nicholas.s@pkf.com.cy*** *or call* ***+357 258 68000****.*

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Ecuador

New disclosure thresholds for financial institutions

Since 1 October 2017, local financial institutions are required by the tax authorities to disclose on a monthly basis transactions performed by the institution or by its customers, to or from tax havens, individually over 5,000 USD or its equivalent in other currencies, and transactions performed by the institution or by its customers, to or from countries which have double tax treaties with Ecuador, individually over 5,000 USD or its equivalent in other currencies. Credit or debit card consumptions or cash withdrawals are exempted from this requirement. Transactions under 5,000 USD performed with the same individual within one month should also be disclosed.

PKF Comment

For further information or advice concerning Ecuador tax, please contact Manuel García at **mgarcia@pkfecuador.com** *or call* ***+593 4 236 7833****.*

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Germany

Is Sec. 50d (3) EStG compatible with EU law?

Profit distributions made by a German corporation to its EU parent company are currently subject to German withholding tax at a rate of 26.375%. The tax is imposed irrespective of whether the foreign parent company is - as a qualifying EU parent company - entitled to a reduction of the withholding tax to 0%. A qualifying EU parent company is a company that meets the conditions of the Parent-Subsidiary Directive (Directive 2011/96/EEC, as amended by Directive 2014/86/EEC), and that is able to prove that it has a minimum holding of 10% in the capital of the subsidiary at the time the withholding tax arises.

In principle, the EU parent company must accept the withholding of the tax and has to apply to the Bundeszentralamt für Steuern (BZSt) (Federal Central Tax Office) for a refund. If the taxpayer has applied to the BZSt for an exemption, the German subsidiary is not required to withhold the tax as an exception to the general rule.

However, the reduction in withholding tax by way of a refund or exemption is available only where the taxpayer has met very strict conditions imposed by Section 50d (3) EStG (German income tax law), which is meant to counteract treaty or directive shopping. Under this section the parent company has to meet the following three conditions: (i) it must have business operations of its own, (ii) it must have economic or other significant reasons for having been interposed and (iii) it must participate in general economic commerce by means of a business establishment that is suitably equipped for the purpose of its business. However, these conditions need not be met unless there are persons holding a share in the parent company who would not have been entitled to the tax refund or exemption if they had earned the dividend income directly. These persons also have to meet the conditions of Sec. 50d (3) EStG.

The tax court in Cologne has now referred a question to the European Court of Justice (ECJ) for a preliminary ruling about whether Sec. 50d (3) EStG is compatible with EU law (C-440/17). The decision published on 17 May 2017 (2 K 773/16) relates to the version of Sec. 50d (3) EStG that has been valid since 1 January 2012. In its decisions to refer the matter to the ECJ made on 8 July 2016 (2 K 2995/12, ECJ file no. C-504/16) and on 31 August 2016 (2 K 721/13, ECJ file no. C-613/16) the tax court in Cologne had already doubted whether Sec. 50d (3) EStG was compatible with the European freedom of establishment and the Parent-Subsidiary Directive. These decisions related to Sec. 50d (3) EStG in the version that was valid prior to 2012.

The plaintiff, a Dutch holding company that has both office premises and staff of its own, demands a refund of withholding taxes from the BZSt. A German GmbH (limited liability company) owns 100% of the shares of the plaintiff (so-called meander structure). In 2013 the plaintiff applied with the BZSt for a refund of dividend withholding taxes retained by a German GmbH subsidiary (93% shareholding). The BZSt refused the refund with reference to Sec. 50d (3) EStG.

The tax court still has doubts about the compatibility with EU law although Sec. 50d (3) EStG (2012) has been amended in the meantime. In particular, it has doubts about whether the amended law sufficiently takes into account the principle of proportionality. The fact remains that an EU corporation may still be denied a tax refund even if its business has the required substance.

PKF Comment

Doubts about the compatibility of Sec. 50d (3) EStG with EU law are further increased by the ECJ's decision in the Eqiom SAS case of 7 September 2017 (C-6/16). In this decision the ECJ held that a rule under French law that – in the same way as Sec. 50d (3) EStG – does not grant a reduction of withholding tax unless the taxpayer is able to provide evidence that the company was not interposed for obtaining this reduction, violates the freedom of establishment and the Parent-Subsidiary Directive. Overall, doubts about the compatibility of Sec. 50d (3) EStG with EU law makes a very strong case in our opinion to recommend challenging any detrimental decisions of the BZSt, where applicable.

For further information or advice concerning German international tax law issues or any advice with respect to German taxation, please contact Thomas Rauert at ***thomas.rauert@pkf-fasselt.de*** *or call* ***+49 40 35552 137****.*

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Potential new transfer pricing rules for cross-border intercompany loans in Germany

Cross-border intercompany lending transactions must be consistent with the arm's length principle in order to avoid detrimental tax effects. In Germany three methods are recognised for determining whether the amount or rate of interest charged on a loan is consistent with this principle: the comparable uncontrolled price method (CUP), the resale price method and the cost plus method.

In its judgement given on 7 December 2016 (13/K 4037/13 – cfr. https://www.justiz.nrw.de/) the tax court in Münster gave its view on which of the three methods for determining reasonable transfer prices it considered to be appropriate where cross-border intercompany loans were concerned:

(1) Comparable uncontrolled price method: A comparison with bank loans taken out by the borrowing company was considered inadequate because the conditions under which the loans were granted (e.g. with regard to guarantees) were not comparable. A comparison with loan agreements between unrelated third parties was also considered inadequate because the underlying business relations were not comparable.

(2) Resale price method: The court held that this method was inadequate because there were no independent recipients of services with whom the borrower could reasonably be compared.

(3) Cost plus method: In the court's opinion, an estimate based on the cost plus method was the only reasonable method to be applied under the circumstances. Apart from borrowing costs, also the cost of equity at a rate of 150% of the borrowing costs had to be taken into account and a mark-up of 5% had to be applied. (Note: Whether the rate of 150% was considered adequate only in this particular case or whether it is to be applied generally remains unclear.)

Furthermore, the court considered the foreign financing company's failure to produce relevant documentation on the cost basis to be non-compliant with the company's duty to co-operate and provide documentation. This would justify the tax authorities' estimate of a reasonable interest rate for transfer pricing purposes.

PKF Comment

An appeal was lodged against the judgement (I-R 4/17) of the German federal tax court. Taxpayers involved in cross-border intercompany lending transactions should nevertheless be aware of these latest principles that the court established for calculating transfer prices consistent with the arm's length principle, particularly in view of the fact that in its judgement the court has confirmed the opinion adopted by the German tax authorities.

For further information or advice concerning German TP issues or any advice with respect to German taxation, please contact Dietrich Jacobs at ***dietrich.jacobs@pkf-fasselt.de*** *or call* ***+49 40 35552 131****.*

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Hong Kong

Hong Kong participates in the Multilateral Convention to accelerate the pace of carrying out the Automatic Exchange of Information ("AEOI")

The Hong Kong Inland Revenue Ordinance ("IRO") was amended in June 2016 to provide a legal framework for Hong Kong to implement Common Reporting Standard ("CRS") together with the AEOI and was further amended in June 2017 to expand the list of reportable jurisdictions to cover 75 jurisdictions, which comprises 14 confirmed AEOI partners and 61 prospective AEOI partners.

Under the laws, a reporting financial institution ("FI") in Hong Kong is required to identify the financial accounts held by the tax residents of reportable jurisdictions, i.e. tax residents who are liable for tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI arrangement. On an annual basis, the reporting FIs will need to collect and submit to the Hong Kong Inland Revenue Department ("IRD") the information of these reportable financial accounts. The IRD will then transfer the information collected from the reporting FIs to the tax authorities of the relevant AEOI partners. The first exchange will be conducted by the end of 2018.

Until recently, Hong Kong had to negotiate with other jurisdictions for AEOI on a bilateral basis, which was found to be a time consuming process. On 6 October 2017, the Inland Revenue (Amendment) (No. 5) Bill 2017 was gazetted to pave the way for Hong Kong's participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention") and to align the IRO with CRS by removing inconsistencies identified. The Multilateral Convention will be an effective platform for Hong Kong to implement with other jurisdictions the AEOI and other international tax-cooperation areas such as base erosion and profit shifting.

PKF Comment

Any non-Hong Kong entities or individuals holding financial accounts in Hong Kong should be aware that the reporting FIs in Hong Kong have already commenced their due diligence review procedures for AEOI purposes *since 1 January 2017. Reportable account holders should understand whether they will be regarded as Hong Kong tax residents under relevant local tax law and what information will have to be reported and exchanged. Also, the participation of Hong Kong in the Multilateral Convention will accelerate the pace of AEOI between Hong Kong and other CRS jurisdictions. For further information or advice concerning the implementation of AEOI in Hong Kong or any advice with respect to Hong Kong taxation, please contact David Cho at **davidcho@pkf-hk.com**, Henry Fung at **henryfung@pkf-hk.com** and Candice Ng at **candiceng@pkf-hk.com** or call **+852 2806 3822**.*

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Hungary

New decree on transfer pricing documentation obligations

For tax year 2018 new regulations will come into force in Hungary according to a new decree of the Ministry of National Economy from 18 October 2017 (for tax year 2017 these rules are optional.)

This new decree implements guidelines and requirements of BEPS Action 13, significantly extending obligations for transfer pricing purposes. However, prepared transfer pricing documentation should not be filed directly with the tax authorities. Only combined (master and local) documentation can be prepared from the beginning of tax year 2018.

A master file includes a proper and detailed presentation of the group to which the Hungarian entity belongs. It should contain among others an organizational chart, legal and ownership structure, business strategy of the group, considerable M&A transactions, supply chain of products and services exceeding 5% of total revenue, main agreements concluded between members of the group and a depiction of the principles of transfer pricing and value creation.

A local file also consists of several parts: demonstration of local management and activity, list of main competitors, characterization of controlled transactions, choosing the most reliable transfer pricing method, a benchmark study, etc. The benchmark should be updated at least every three years. However, financial data of selected comparable transactions or companies is to be refreshed annually at a minimum.

The arm's length mark-up on costs of low value-added services is tightened to a 3-7% range.

PKF Comment

*Hungarian companies cannot prepare proper transfer pricing documentation without co-operation from their group. If a master file is not prepared within 12 months after the last day of the relevant tax year, it is the Hungarian entity that is liable for preparing a master file (if not, a default penalty can be levied). For further information or advice concerning Hungarian transfer pricing rules or any advice with respect to Hungarian taxation, please contact Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu** or call **+36 1 391 4220**.*

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Italy

New rules for optional branch tax exemption

Through protocol no. 165138 issued on 28 August 2017, the Italian Tax Authorities have implemented the rules regarding the optional branch exemption provided for under article 168ter of TUIR (Consolidated law on income tax) entitled "Exemption of profits and losses of permanent establishments of resident companies".

The definition of the optional branch exemption refers to the option to exempt profit and losses arising from permanent establishments set up abroad by Italian resident companies. Introduced by Legislative Decree no. 147/2015 (Decreto Internazionalizzazione), this option has allowed for companies residing in Italy and having permanent establishments abroad not to grant tax effect to profits and losses generated by their establishments.

This tax regime is available for all resident taxpayers carrying out a business activity. Therefore, permanent establishments in Italy owned by non-resident companies are excluded. To have access to this tax regime, the following conditions must be met:

- presence of a permanent establishment in the foreign State according to the definition under the existing double tax treaty signed between Italy and the foreign State in question. In the absence of such a treaty, reference is then made to the criteria contained in article 162 of the TUIR regulating permanent establishments;

- the foreign State of the permanent establishment is a "white-listed" country.

This is an optional tax regime and its choice must be expressed in the tax return related to the tax year as from which the regime is deemed effective. A distinction has to be made as to whether the company already owns an establishment on 7 October 2015, i.e. the date on which Legislative Decree no. 147/2015 introducing the optional regime entered into force. In that case, the company may also opt for the branch exemption in the tax return related to the second tax year following the ongoing tax year, as clarified in the above protocol. Once it has been exercised, the option is irrevocable and the company will not be able to return to its regular tax regime.

Furthermore, this is an all-or-nothing option: article 2 of protocol no. 165138/2017 confirms the "all in, all out" criterion, according to which the exercise of this option is applicable to all foreign permanent establishments, including those set up at a later point in time without the need for a new option having to be exercised for each individual establishment.

With reference to past tax losses, a "recapture mechanism" was introduced. If in the five tax years prior to the effective date of the option the permanent establishment has generated tax losses accruing to the company, the income derived through the permanent establishment under the branch exemption will be included in the taxable income of the parent company up to the amount of previous net tax losses generated by the same permanent establishment. With respect to its 2016 draft, protocol no. 165138/2017 provides that this mechanism applies on a "state by state" basis. In each foreign jurisdiction reference is therefore made to a single permanent establishment divided into several production sites. This way the "recapture mechanism" regulating the losses in each individual State includes the sum of the income or losses generated by the permanent establishments present in the territory in the five tax years prior to the tax year in which the option became effective.

PKF Comment

*Among the benefits that can be derived from the optional branch exemption there is the improvement of the competitiveness of Italian companies operating in foreign markets as well as a lower tax burden in comparison to a permanent establishment subject to its regular taxation regime. The option for this regime appears to be advantageous for Italian companies owning a branch in a "white listed" country with lower taxation than the Italian one: by opting for branch exemption the income generated by the foreign permanent establishment results in being tax-neutral at the level of the Italian parent company. However, if it did not opt for such a scheme, the company would have to utilize the tax credit under article 165 of the TUIR, recognized in Italy to recoup taxes paid abroad and related to the income generated by the permanent establishment. For further information on this matter or any advice on Italian taxation, please contact Stefano Quaglia at **stefano.quaglia@tclsquare.com** or call **+39 010 818 3250**.*

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New tax benefits extended to vessels registered in EU Member States

On 27 November 2017, Law 167 of 20 November 2017 – also commonly known as "European Law 2017" – was published in the Official Gazette no. 277 in order to comply with the obligations arising from Italy's membership to the European Union.

Among the new rules introduced by this law, it is worthwhile to elaborate on article 10 entitled "Tax reliefs for ships registered in the registers of the European Union Member States or the European Economic Area". The article provides for an extension of a series of tax benefits, which are currently limited to vessels registered in the Italian International Register (RII), also "to resident and non-resident taxpayers with a permanent establishment in the territory of the State and using ships entered in the registers of the States of the European Union or of the European Economic Area exclusively in relation to international trade and transactions", as referred to in the first paragraph of article 10. This extended benefit, however, is subject to compliance with the cabotage restrictions provided for in article 1, paragraphs 5 and 3 of DL 457/1997, with the directives contained in the Navigation Code and concerning the formation and minimum number of the crew, as well as with the training of the crew itself.

The beneficial measures, thus also extended to vessels listed in the registers of the EU Member States and the European Economic Area, are the following:

- the allocation of a tax credit amounting to the personal income tax due on the income of employees and self-employed workers, paid to the crew aboard the ships and to be offset against the payment of the withholding tax at source on such income;
- 20% of the income generated by the use of vessels registered on the RII for the formation of the total income is subject to IRPEF (personal income tax) and IRES (corporate income tax);
- the value of production realized by using vessels registered in the RII is deducted from the IRAP (regional production tax) taxable base;
- the application of the "tonnage tax" regime, whereby the taxpayer's income is subject to a flat-rate provided they exercise the related option, which is irrevocable for ten years.

PKF Comment

*The extended rules may hopefully contribute to the recovery of the Italian maritime sector by enhancing its appeal for investors. This sector - more than others - has been negatively affected by the global economic crisis resulting in a drop in sales volume. We are happy to support foreign and Italian companies to apply the new rules. For further information on this matter or any advice on Italian taxation, please contact Fabrizio Moscatelli at **fabrizio.moscatelli@tclsquare.com** or call **+39 010 98 45100**.*

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Mexico

Electronic Invoicing - New version CFDI 3.3

Since a few years, Mexico has put in place a procedure for electronic invoicing (CFDI), which has recently been modified. As from 1 December 2017, use of the CFDI's new version 3.3 will be mandatory.

As part of this new version, new fields are added to the CFDI layout, the structure is modified and there are new catalogues to improve the accuracy of the data.

These days the tax authorities already have information on items and amounts invoiced by the taxpayer but they do not know when the corresponding revenues are collected.

With this new version a payment receipt complement will therefore be added to the CFDI, with the objective of having greater control, avoiding undue cancellations and duplication of revenues, and the taxpayer having more control over the collection.

This payment receipt complement must be included when the payment is made in instalments or in cases where the amount is due in a single payment but not covered at the time of issuance of the electronic invoice.

The penalties for not correctly issuing the CFDI range from 13,570 MXN to 77,580 MXN per invoice. The guidelines for using the CFDI as indicated by the SAT can be found in Annexure 20.

PKF Comment

*For further information related to CFDI 3.3 Electronic Invoicing, please contact Roberto Cruz at **rcruz@pkfmexico.net** or call **+52 55 4163 0900**.*

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New annual transfer pricing requirements: Master File, Local Report and Country-by-Country Report

In line with the BEPS Project— measures to prevent tax base erosion and profit shifting implemented by the Organization for Economic Co-operation and Development ("OECD") — Mexico recently introduced the obligation to submit three new information reports, which should be met by taxpayers carrying out transactions with related parties. Taxpayers who are obliged to submit these must do so by 31 December 2017 at the latest regarding fiscal year 2016. For subsequent years the information must be submitted no later than 31 December of the following year to which the information corresponds.

The Mexican Tax Administration Service ("SAT") has informed that the platform and the digital formats for the new informative reports (Master File, Local File and Country by Country Report), which must be presented in accordance with the regulations issued by the OECD, can be accessed on the SAT page as from 1 November 2017 in order for taxpayers to complete the returns.

PKF Comment

*PKF recommends reviewing in detail article 76-A of the Mexican Income Tax Law ("MITL") to verify whether your company meets any of the requirements to submit these reports We invite you to contact us for a thorough discussion on your transfer pricing policies and concerns. For further information related to the Master File, Local Report and Country-by-Country Report, please contact Jimy Cruz at **jimy.cruz@pkf-mexico.com** or call **+52 33 31 22 20 81**.*

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Netherlands

4% reduction of the Dutch corporate income tax rate announced

The Dutch government has announced a further reduction of the corporate income tax rate with 4%. This means that the rate which applies to the first EUR 200,000 of taxable profit will be subject to a rate of 16%, whereas the profit in excess of EUR 200,000 will be subject to a rate of 21%. The reduction will be implemented over a three year time period starting in 2019 with a reduction of 1%, followed by a further reduction of 1.5% in each of the following two years.

PKF Comment

*With the further reduction of the Dutch corporate income tax rate the Dutch government aims at further improving the Dutch investment climate for international companies, particularly for (regional) headquarters, research & development activities and high value adding services. For further information or advice regarding the benefits of establishing a company in The Netherlands, please contact Ruud van der Linde at **ruud.van.der.linde@pkfwallast.nl** or call **+31 15 261 31 21**.*

»BACK

Full exemption of withholding tax for intercompany dividend announced in Tax Plans 2018

In the Tax Plans that were announced for 2018, the Dutch government proposes to introduce a full exemption from Dutch dividend withholding taxes with regard to dividends paid by a Dutch company to a shareholder with a shareholding of at least 5%, which is a tax resident in a country with which the Netherlands has concluded a double tax treaty that includes a dividend article. Part of the proposal is also the introduction of a notification requirement for all dividends to which the exemption is applied. This notification requirement will also apply to EU resident shareholders.

The proposal also includes a new anti-abuse rule which denies the exemption of dividend withholding tax if the shareholding is considered "abusive". In addition, the proposal introduces a general dividend withholding tax obligation for cooperatives in order to create full alignment between a Dutch "Coop" and a Dutch "BV".

PKF Comment

*The proposed legislation should apply as of 1 January 2018 and has a positive effect on shareholders located outside the EU which are not able to benefit from a 0% withholding tax rate under a double tax treaty concluded with the Netherlands. The introduction of a withholding obligation for Coops on the other hand has a negative impact on PE-structures that are structured through jurisdictions that do not have a qualifying double tax treaty with the Netherlands. For further information or advice regarding the upcoming changes in the DWTA in the Netherlands, please contact Ruud van der Linde at **ruud.van.der.linde@pkfwallast.nl** or call **+31 15 261 31 21**.*

»BACK

Full cancelation of dividend withholding tax announced, with the exception of dividends to low tax jurisdictions and introduction of a withholding tax on interest and royalties to low tax jurisdictions

On 9 October 2017, the new government announced in its coalition agreement that it will cancel dividend withholding tax from 1 January 2019, with the exception of dividends paid to low tax jurisdictions or in case the shareholding is considered "abusive". However, at the same time, a withholding tax obligation will be introduced with regard to interest and royalties paid to low tax jurisdictions.

PKF Comment

The cancelation of dividend withholding tax is one of the measures taken by the new government aiming to further improve the Dutch investment climate for international companies. However, in order to counter tax avoidance structures, it proposes to introduce a withholding tax on interest and royalties paid to low tax jurisdictions, which will likely affect many flow-through entities, including certain entities owned by Google, Apple and Starbucks. For further information or advice regarding the cancelation of dividend withholding tax in the Netherlands, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl*** *or call* ***+31 15 261 31 21****.*

»BACK

Peru

Income tax legislation aligned with BEPS rules

In October 2016, the Peruvian Congress passed Law No. 30506 in order to adapt Peruvian legislation to OECD standards and recommendations for exchanging information for taxation purposes, international taxation, transfer pricing, base erosion and fighting against tax avoidance.

The Government subsequently passed Legislative Decree No. 1312 introducing some amendments to Peruvian Income Tax Law, which basically introduces BEPS Action 13 (Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting).

The new documentation standards are enforceable since 1 January 2017 on a three-tier basis: (i) Master File (ii) Local File and (iii) Country-by-Country Reporting. Therefore, formal transfer pricing obligations such as the Annual Transfer Pricing Affidavit and Transfer Pricing Study have been replaced with the Local File, which applies to taxpayers performing transactions with related parties or low tax jurisdictions, and whose annual revenue exceeds 2300 Peruvian Annual Tax Units (for year 2017 9,315,000 PEN or approximately 2.8 million USD).

Likewise, effective as of 1 January 2018, new documentation requirements will apply to Peruvian taxpayers or MNEs belonging to an economic group who will have to file the Master File and the Country-by-Country Report if their annual revenue exceeds 81,000,000 PEN or approximately 24.8 million USD.

PKF Comment

The new documentation requirements can lead to a significant administrative burden for Peruvian taxpayers and MNEs. Although some Peruvian taxpayers and MNEs are affected by the new TP-documentation requirements, the BEPS-project will likely affect all taxpayers, since the objective of the Peruvian Tax Administration (SUNAT) seems to shift to transfer pricing assessments. Based upon our practice, a large number of taxpayers do not meet the minimum TP requirements. It is therefore recommended for all taxpayers to take a critical look at their TP documentation. For any further information on transfer pricing legislation or assistance with respect to any other Peruvian taxation issues, please contact Renato Vila at ***rvila@pkfperu.com*** *or call* ***+51 142 16250****.*

»BACK

Romania

2018 key tax changes

As from 1 January 2018, new tax provisions will become applicable in Romania. The major amendments can be summarised as follows:

VAT split

A VAT split payment mechanism has entered into force since the begining of October 2017, which is optional. However, as from 1 January 2018, it will become mandatory for all entities registered for VAT purposes. Taxable persons will also have to use a distinct bank account for cashing and payments representing VAT. VAT accounts will be opened, by default, with the various treasury units within the tax offices where taxpayers are registered. However, any taxpayer can opt to open an account with a commercial bank. The new VAT method does not modify any existing VAT rules.

Corporate tax

Limitations on the deductibility of borrowing costs for associated companies will be introduced. The limitation applies to the deductibility of debt related costs, which are defined as having a very wide meaning so as to cover a wide range of costs related to financing. Excess debt related costs, calculated as the difference between debt related costs and income from interest and other equivalent income incurred in a tax period exceeding the equivalent in RON of 200,000 EUR, can be considered deductible for corporate income tax purposes only within the limit of 10% of the following calculation base: gross accounting profit including corporate income tax payable minus non-taxable revenue plus excess debt related costs and tax depreciation. If the tax base described above is zero or negative, the excess debt related costs are treated as non-deductible for corporate tax purposes during the current tax period, but can be carried forward indefinitely.

Personal income tax

The social security contributions will be transferred from employer to employee (pension - 25%, health - 10%). Also, the personal income tax will decrease from 16% to 10% and wil apply to the majority of income sources obtained by individuals. Employers are required to pay the work insurance contribution of 2,25%.

Income tax for micro-enterprises

The threshold for applying the tax on micro-enterprises will be increased from 500,000 EUR to 1,000,000 EUR. All companies with income not exceeding 1,000,000 EUR at 31 December of the previous year will apply the micro-enterprise regime without the possibility of an option, irrespective of the industry they are active in. This category also includes companies that have opted to apply corporate income tax based on the size of their share capital. Micro-enterprises with at least one employee are subject to a tax rate of 1% while a 3% tax rate is applicable to micro-enterprises without employees.

PKF Comment

The VAT split payment mechanism will make the economic activity of taxpayers acting in good faith more difficult and will generate additional costs related to changing IT systems. Moreover, these changes need to be implemented within an extremely short time period.

We believe that by raising the threshold for micro-enterprises to 1 million EUR, 80% of the total number of companies registered in Romania will pay micro-enterprises tax as from 2018 onwards.

The transfer of social security contributions from the employer to the employee will trigger various implications for employees and employers. Employment contracts will most probably have to be modified, based on negotiations by the parties in order to accommodate for these tax changes. However, there will likely be cases where the net salaries of employees will decrease.

*For further information or advice concerning Romanian taxation, please contact Maria Popa at **maria.popa@pkffinconta.ro** or call **+40 21 317 31 96**.*

»BACK

Rwanda

Public ruling on filing of VAT input claim

There have been divergent interpretations in Rwanda on the application of Article 15 of the Law on Value Added Tax (VAT). In summary, this article provides that an input tax is allowed when taxable goods are acquired locally or imported. However, if at the time of VAT declaration for the tax period to which the VAT input tax relates, the taxpayer does not have in his possession the relevant documents for an input tax claim, this input tax is allowed in the first VAT period in which the taxpayer obtains such documents provided that a period of two years has not elapsed from the time the taxable goods that the input tax relates to were acquired or imported.

In a public ruling delivered in June 2017, the Commissioner General of the Rwanda Revenue Authority ruled that a taxpayer should claim VAT input in the first tax period in which he has in his possession the relevant documents for VAT input claim. This means that if a taxpayer who is in possession of the relevant documents for an input VAT claim but choses to file the VAT input in a subsequent tax period will not be allowed such VAT input in that subsequent tax period.

PKF Comment

*This public ruling has offered clarity on an issue that was previously contentious among Rwanda taxpayers. For further information or advice concerning Rwanda tax ruling decisions or any advice with respect to Rwanda taxation, please contact Gurmit Santokh at **gsantokh@rw.pkfea.com** or call **+250 788 454 746** or **+250 788 386 565**.*

»BACK

South Africa

Gone are the days of tax free salaries abroad

Many South African taxpayers earning a salary abroad have for many years been able to benefit from so-called “double non-taxation”. This would be the case where salaries are earned in countries where the employer

country would not tax salaries earned in that country, and where a domestic South African income tax exemption would also be available to such South African employees. The UAE for example is renowned therefore that it levies very little, if any, taxes on non-resident employees employed in that jurisdiction. This regime interacts quite well with the South African exemption from income tax provided to South African employees working abroad and in terms of which South Africa would in many cases also not levy income tax on salaries so earned abroad. In other words, a salary earned abroad may potentially not be taxed in either the country of source or residence (i.e. South Africa).

In terms of section 10(1)(o)(ii) of the Income Tax Act (58 of 1962), salaries earned abroad would be exempt from South African income tax if the salary is earned for services rendered outside of South Africa, and the employee would be absent from South Africa for at least 183 days in a tax year, of which at least 60 are consecutive.

In the annual national budget speech earlier this year, Government warned of its intention to withdraw relief for South African individuals working abroad and effectively achieving double "non-taxation" on salaries so earned. This threat has now been borne out by the proposed withdrawal of the exemption in section 10(1)(o)(ii) of the Income Tax Act, proposed in terms of the draft Taxation Laws Amendment Bill published on 19 July 2017. As is explained by the draft Explanatory Memorandum to the Bill: "It has come to Government's attention that the current exemption creates opportunities for double non-taxation in cases where the foreign host country does not impose income tax on the employment income or taxes on employment income are imposed at a significantly reduced rate."

The draft Bill proposes that section 10(1)(o)(ii) be deleted effectively for tax years commencing on or after 1 March 2019. This would effectively mean that South African residents will be taxable in South Africa on salaries earned abroad to the extent that the source country does not levy tax on the income so earned. To the extent however that income is taxed abroad too, South Africa should grant a credit against taxes payable here in terms of either an applicable double tax agreement or the provisions of section 6quat of the Income Tax Act.

It is noted that National Treasury has since, during the recent hearings in front of Parliament's Standing Committee on Finance, hinted at the current repeal only to be effected for foreign remuneration earned in excess of 1 million ZAR per year of assessment and that the number of days requirement be maintained. It has also been suggested for the (partial) repeal to be delayed for a further tax year, in other words to only take effect for years of assessment commencing on or after 1 March 2020. We await the final version of the Bill in anticipation to see whether these proposals are to be enacted.

PKF Comment

*The harsh repeal and proposed amendment of this section has resulted in many South Africans working across the globe to reconsider their residency status but one must be mindful of the CGT exit charge that would arise on a person ceasing to be resident in SA. It is recommended that proper advice be sought in this regard prior to making such a major decision. For further information or advice concerning South African taxation please contact Kubashni Moodley at **kubashni.moodley@pkf.co.za** or call **+27 31 573 5000**.*

»BACK

Switzerland

Swiss Federal Council adopts ordinance on automatic exchange of Country-by-Country Reports (CbCR)

In June 2017, the Swiss Parliament adopted a new federal law regarding the automatic exchange of CbCR for multinational corporations. The deadline for a referendum regarding this law expired on 5 October 2017. On 29 September 2017, prior to the 5 October deadline, the Swiss Federal Council enacted an ordinance in relation to the Law, providing more clarity and detail regarding the implementation of CbCR in Switzerland. This ordinance will come into force on 1 December 2017.

The quintessence of the Swiss CbCR regulations is:

i. A consolidated revenue minimum threshold of CHF900 million must be met or exceeded before Swiss tax-resident entities are required to prepare and submit a CbCR;
ii. The above obligation is for fiscal years (FYs) starting on or after 1 January 2018; however, voluntary filing is possible for Swiss Ultimate Parent Entities for FY16 and FY17;

iii. The FY18 CbC reports will be exchanged with partner countries beginning in 2020;
iv. Potential requests for a suspension of the automatic exchange of country-specific reports are to be addressed to the State Secretariat for International Financial Matters (SIF).

PKF Comment

The draft list of the partner countries with which Switzerland agrees to exchange CbCRs is expected to be published on the SIF website in the coming weeks. Swiss multinational groups that are subject to CbCR should consider voluntary filling of the CbCRs in Switzerland for FY16 and FY17 in order to address potential secondary filing obligations for the constituent entities. Furthermore, Swiss multinational groups should review the list of countries that Switzerland will exchange CbCRs with as soon as this is available, in order to identify if there are any countries for which a secondary filing would be required. For further information or advice concerning the aforementioned changes in the Swiss tax legislation or assistance with respect to any other Swiss taxation issues, please contact Rilana Wolf-Bayard at ***rilana.wolf@pkf.ch*** *or Margarita Baeriswyl at* ***margarita.baeriswyl@pkf.ch*** *or call* ***+41 44 285 75 00****.*

»BACK

Switzerland will exchange the information on advance tax rulings having a cross-border impact as of 1 January 2018

The Federal Council adopted the total revision of the Tax Administrative Assistance Ordinance and brought it into force on 1 January 2017. The new ordinance defines the framework and the procedures required for the spontaneous exchange of information including those that apply to the exchange of information on advance tax rulings. The first spontaneous exchanges of information with Switzerland will take place as from 1 January 2018 onwards and will apply to tax periods starting from then.

For the specific case of the advance tax rulings, the ordinance defines which categories are subject to spontaneous exchanges and which countries have to be informed. Regarding the relevant timeframe:

i. All new rulings (falling in one of the defined categories) will be subject to the spontaneous exchange of information as of 1 January 2018;
ii. Tax rulings (falling in one of the defined categories) issued after 1 January 2010 and still effective on 1 January 2018 (or 2017 in case of specific agreements) would be subject to the spontaneous exchange of information.

The countries receiving the information in the templates (not yet available) will be entitled to request further and more detailed information (e.g. a copy of the ruling) based on the applicable double tax treaty provision.

PKF Comment

Swiss taxpayers should be aware that Switzerland will share its tax ruling decisions (having a cross-border impact) with other jurisdictions. We recommend that taxpayers analyse all their Swiss tax rulings in place and assess which would be covered by the spontaneous exchange.
The taxpayer can decide to request the tax authority to cancel certain tax rulings before the end of 2017 or can file amended rulings. Furthermore, the taxpayer has the possibility to appeal against the exchange of the ruling information. For further information or advice concerning the aforementioned changes in the Swiss tax legislation or assistance with respect to any other Swiss taxation issues, please contact Rilana Wolf-Bayard at ***rilana.wolf@pkf.ch*** *or Margarita Baeriswyl at* ***margarita.baeriswyl@pkf.ch*** *or call* ***+41 44 285 75 00****.*

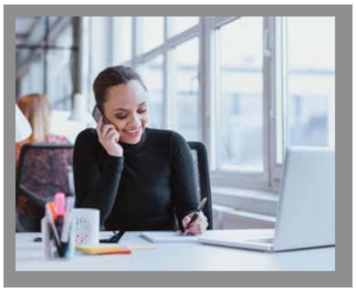
»BACK

Swiss VAT law places new obligations on foreign companies as of 1 January 2018

According to current Swiss VAT law and the relevant regulations, foreign companies are exempt from the registration obligation in the following circumstances:

i. A foreign company which generates less than TCHF 100 of turnover per year from taxable supplies in Switzerland is exempt from VAT;
ii. All supplies of services (not of goods, whereas the term 'supply of goods' is more broadly defined in Switzerland than in other (European) countries) carried out by a company where the place of supply is deemed to be in Switzerland for VAT purposes are subject to acquisition tax. VAT liability is thus transferred to the recipient of the supply. The foreign company has no obligation to register in Switzerland, irrespective of turnover;

iii. Low-value goods imported into Switzerland are exempt from import tax if the cost incurred does not exceed CHF 5.



The partial amendment to the Swiss VAT law coming into force on 1 January 2018 will impact companies not established in, but providing supplies toward (i.e. generating turnover in) Switzerland. Such foreign companies may be liable to pay Swiss VAT. In particular, the new VAT legislation will result in the following changes in VAT liability for foreign companies:

i. Tax liability for foreign companies, which supply goods to Switzerland or provide end users with telecommunication and electronic services, will no longer be calculated based on the turnover generated in Switzerland, but rather on the turnover generated worldwide. Accordingly, if a company generates less than TCHF 100 from such services in Switzerland, but at least TCHF 100 in global turnover, it will as from 1 January 2018 still be liable for VAT in Switzerland from the first franc of turnover;
ii. Foreign companies that exclusively provide services (whereas the term 'supply of services' is more narrowly defined in Switzerland than in other (European) countries), which are subject to acquisition tax in Switzerland, do not have to register for VAT in Switzerland. This applies irrespective of the amount of turnover generated.

Low-value deliveries will still be exempt from tax upon import. However, under the new VAT legislation, (online) retailers that generate over TCHF 100 per annum in turnover in Switzerland through the supply of goods will be liable to VAT, i.e. obliged to charge Swiss VAT on the goods supplied.

PKF Comment

To protect your business reputation as well as to simplify your dealings with Swiss VAT, it is important to clarify your VAT situation and plans in Switzerland well in advance and, if necessary, to timely register your business with the Swiss VAT authorities. We will be happy to explain the advantages, risks, costs and responsibilities that lie ahead as well as to assist with the VAT registration, if required. For further information or advice concerning the aforementioned changes in the Swiss tax legislation or assistance with respect to any other Swiss taxation issues, please contact Rilana Wolf-Bayard at ***rilana.wolf@pkf.ch*** *or Margarita Baeriswyl at* ***margarita.baeriswyl@pkf.ch*** *or call* ***+41 44 285 75 00****.*

»BACK

Swiss reduction of VAT rates to enter into force on 1 January 2018

On 24 September 2017, Swiss voters rejected the Federal Act on the 2020 pension reform. The public vote has resulted in a change of Swiss value added tax (VAT) rates as of 1 January 2018. The rate reductions are:

i. The standard VAT rate will be reduced from 8% to 7.7%;
ii. The special VAT rate for accommodation services will be reduced from 3.8% to 3.7%;
iii. The reduced VAT rate of 2.5% will remain unchanged.

Accordingly, taxable persons will have to adapt their systems (including VAT codes and invoice templates), pricing and various agreements that are influenced by the VAT rates, including online and paper marketing material or offerings.

PKF Comment

It is important to carefully analyse well in advance whether to charge the current 2017 VAT rate or the new VAT rate applicable as of 1 January 2018. This concerns supplies of goods or services rendered during the phase-in between the end of 2017 and the beginning of 2018. We will be happy to assist you and your business with any technical analysis in this regard as well as with proper Swiss VAT compliance obligations, if required. For further information or advice concerning the aforementioned changes in the Swiss tax legislation or assistance with respect to any other Swiss taxation issues, please contact Rilana Wolf-Bayard at ***rilana.wolf@pkf.ch*** *or Margarita Baeriswyl at* ***margarita.baeriswyl@pkf.ch*** *or call* ***+41 44 285 75 00****.*

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United Arab Emirates

UAE VAT - Registrations underway, Executive Regulations released

The UAE Federal Tax Authority (FTA) commenced VAT registrations from 1 October 2017 through its new website www.tax.gov.ae. As per the FTA's website, awareness seminars and - now confirmed through the Executive

Regulations [Cabinet Decision No. (52) of 2017] - certain threshold limits have been set for VAT registration in the UAE:

Mandatory registration:
A taxable person is required to register if it is a business that is resident in the UAE and is making taxable supplies of goods or services in the UAE exceeding AED 375,000 in the last 12 months.

Voluntary registration:
If a person is not required to register under the mandatory criteria, they may be eligible to apply for registration if either their taxable supplies or taxable expenditure (which were subject to VAT) exceeded AED 187,500 in the last 12 months.

For the purposes of understanding whether a registration obligation exists, a taxable supply refers to a supply of goods or services made by a business in the UAE that may be taxed at a rate of either 5% or 0%. Imports are also taken into consideration for this purpose, if a supply of such goods or services would be taxable if made within the UAE.

The VAT Executive Regulations were released on 28 November 2017. They seek to clarify most of the open-ended issues that the VAT Law had presented. The FTA has also been issuing clarificatory awareness materials on various lines of business/key areas through its website. A few important clarifications for some key areas and industries are listed below:

Free zones

- Designated zones have been defined as those free zones that have a specific fenced geographic area and have security measures and Customs controls in place to monitor entry and exit of individuals and movement of goods to and from the area. [Free zones like Jebel Ai Free Zone, Dubai Airport Free Zone and Sharjah Airport International Free Zone that have Customs gates may possibly get covered by the definition of designated zones];
- Importing goods into designated zones from outside the UAE is not considered an import for VAT purposes;
- Services rendered out of or received into designated zones will not have any benefits and will be subject to VAT at the standard rate;
- Transfer of goods from one designated zone to another may not be subject to VAT.

Real estate sector

- Rental income from residential buildings is exempt from VAT;
- Rental income from commercial buildings is subject to VAT at the standard rate;
- Bare land is exempt from VAT;
- Foreign companies owning real estate in the UAE will be required to register for VAT in the UAE if their taxable supplies (income from rent of commercial premises) exceeds the minimum threshold limit.

Financial services

- Financial services will be subject to 5% VAT where they are supplied for:
  - an explicit fee;
  - discount;
  - commission;
  - rebate; or a
  - similar type of charge;
- Financial services if remunerated by way of an implicit margin (like a life insurance/reinsurance contract) will be exempt from VAT;
- Generally, VAT will be applied in the same way to an Islamic financial arrangement as to a non-Islamic financial product that is intended to achieve the same result as an Islamic financial product.

Other important clarifications
Rules regarding reverse charge mechanism, place of supply for goods and services, supplies considered out of scope for VAT purposes, capital asset scheme and profit margin scheme have also been clarified along with other key areas.

Zero rated supplies
VAT will be charged at zero percent in respect of certain supplies such as:

- Export of goods and services outside of the GCC States that implement VAT;
- Exported telecommunication services;
- International transportation services for passengers and goods [and related supplies];
- Supply of certain means of sea, air and land transport [such as aircrafts, ships, buses, trains];

- Certain investment grade precious metals [gold, silver and platinum of 99% purity and in a form tradeable in global bullion markets];

- The first sale or a lease of a building specifically meant for charity purposes;
- Newly constructed residential properties, that are supplied for the first time within 3 years of their construction;
- Supply of certain education services, and supply of relevant goods and services;
- Supply of certain healthcare services, and supply of relevant goods and services.

Exempt supplies

The following supplies will be exempt from VAT:

- The supply of some financial services;
- Residential properties;
- Bare land;
- Local passenger transport.

Excise law kicks off as planned

The FTA released the Executive Regulations ["Cabinet Decision no (37) of 2017 on Executive Regulation on Excise Tax"] pertaining to the excise law on 27 September 2017 and went ahead with the promised implementation of the excise law as from 1 October 2017. The implemented excise tax (on select items) has been nicknamed a "sin tax" by industry observers due to the nature of the products it covers:

- Carbonated drinks – 50%;
- Tobacco products – 100%;
- Energy drinks – 100%.

The excise tax affects the above mentioned specific "excise" goods that are produced in the UAE, imported into it or stockpiled in the UAE, as well as subject-to-excise goods released from a designated zone.

PKF Comment

The UAE was due for a policy regime change for some time and the advent of excise and VAT is a harbinger for such times. It is clear that the UAE wishes to be perceived as more than just a tax haven or tourist destination. With whispers of corporate tax on the anvil and the recently introduced indirect taxes and UAE signing and becoming party to International transparency forums for exchange of information, the government has given a strong signal that it is taking BEPS (base erosion and profit shifting) seriously and is gearing up itself and businesses for an era where the UAE will be recognised as one of the regional leaders when it comes to adoption and implementation of best tax practices from around the world.

*For further information or advice concerning VAT in the UAE or any advice with respect to UAE taxation, please contact Ms. Sarika Dhameja at **sdhameja@pkfuae.com** or call **+971 4 38 88 900** or Mr. Chaitanya Kirtikar at **cgk@pkfuae.com** or call **+971 4 38 88 900**.*

»BACK

United Kingdom

UK tightens grip on taxation of UK land and property

Not too far in the distant past, the disposal of UK land and property by non-UK resident persons was only subject to UK tax in limited circumstances. Changes since 2012 have seen a gradual change to this position and have seemingly culminated with significant changes being announced as part of the Autumn Budget.

Back in 2012, the UK introduced ATED-related capital gains tax on high value UK residential property. From 6 April 2015, the disposal of all residential property by non-UK resident persons was brought within the scope of UK CGT albeit with various exceptions. Then in 2016, changes to the transaction in land rules looked to ensure that development profit arising on the disposal from UK property development could not escape the UK tax net.

HMRC recently released a consultation document which announced plans to bring the disposal of all UK land and property within the scope of UK tax, regardless of the residence of the person selling the land.

These changes are due to have effect from April 2019 (1 April for companies and 6 April for non-corporate entities such as individuals and trusts). As a result, the disposal of all residential and commercial property will be subject to UK tax, either corporation tax or capital gains tax.

The main changes are:

- All UK land and property will be subject to UK tax, thus reducing the current limitation of residential disposals only;

- Removal of some of the exemptions currently available on residential disposals e.g. disposals by widely-owned non-resident companies will be taxable;
- Indirect disposals: the disposal of an interest in an entity that substantially derives its value from UK immovable property will be subject to UK tax.

Existing UK land and property owned by non-residents which will be brought within the scope of UK tax for the first time in April 2019, will be rebased to market value in April 2019. This means that only growth in value after this date will be subject to UK tax.

An anti-forestalling rule is in place which has effect from 22 November 2017. This rule will counter-act arrangements undertaken to avoid the impact of the new rules by taking advantage of provisions within the UK's treaty network, essentially preventing treaty shopping.

It is likely that further changes are on the way with the strong prospect of UK commercial property being brought into the scope of UK IHT regardless of ownership structure.

PKF Comment

Detailed draft legislation has not yet been released and the outcome of the consultation document is likely to have some influence on the final legislation. However, HMRC have stated that the core provisions outlined in the document and summarised above will be implemented in April 2019. We will continue to monitor developments over the next few months and will share our thoughts and comment as we continue to consider the implications of the impending changes. For further information or advice on UK land tax or any advice with respect to UK taxation, please contact Adam Kefford at ***adam.kefford@pkf-francisclark.co.uk*** *or call* ***+44 1392 667000****.*

»BACK

United States

US House and Senate pass the Tax Cuts and Jobs Act Bill

The Unites States House of Representatives and Senate signed the "Tax Cuts and Jobs Act" (H.R. 1), during the week of 21 December 2017. The Bill was forwarded to President Trump for his signature, who signed it into law on 22 December 2017. As advertised, it is the most significant tax law change in a generation or more and will affect all US taxpayers.

Below are some of the key provisions for individuals and businesses as well as some international provisions.

Individuals

Please note that all of the individual tax changes will expire after 2025.

Tax rates: There will be seven tax brackets ranging from 10% to the top bracket of 37%. The top rate of tax has been lowered from 39.6%.

Standard deduction: Temporarily to be set at 24,000 USD for joint filers, 18,000 USD for head of household filers, and 12,000 USD for single filers.

Personal exemptions: Would be repealed.

Child tax credit: Temporarily increased from 1,000 USD to 2,000 USD, and up to 1,400 USD would be refundable.

Itemized deductions: Have been slashed beginning 2018 as follows:

- State and Local Taxes: Under the final bill, only 10,000 USD in property, state and local taxes, and sales taxes may be deducted. Individuals would not be able to deduct in 2017 prepaid 2018 state income taxes;
- Mortgage Interest: Limited to interest paid on acquisition indebtedness up to 750,000 USD. Second home indebtedness would be eligible within this dollar limitation. Interest on home equity indebtedness will no longer be deductible. For acquisition indebtedness incurred before 15 December 2017, the conference bill allows current homeowners to keep the current limitation of 1 million USD (500,000 USD in the case of married taxpayers filing separately);
- Miscellaneous Itemized Deductions: Suspends the deductions that were previously subject to the 2% of AGI floor.

Individual alternative minimum tax: Would remain; however, the exemption amount will be increased and the AGI phase-out will begin at a much higher level. The conference bill would temporarily increase the exemption amount to 109,400 USD for married filing jointly and 70,300 USD for others. The phase-out of the exemption starts at 1 million USD of AMT income for joint filers and at 500,000 USD for others.

Estate tax: The bill would double the current estate and gift tax exemption from 5 million USD to 10 million USD, indexed for post-2011 inflation adjustments. The scheduled exemption for 2018 is 5.6 million USD per person. Thus, the 2018 exemption could exceed 11 million USD.

Alimony: Eliminates the deduction for alimony payments under divorce or separation agreements entered into or modified after 31 December 2018. Payments will not be treated as income for the recipient spouse either.

Business

Tax rate: A new corporate tax rate of a flat 21% would be effective 1 January 2018.

Corporate AMT: Would be repealed.

Corporate net operating loss carry-forwards: Would be limited to 80% of taxable income. Carry-forwards will be allowed for an indefinite period subject to the 80% limitation. The two-year carry-back and special NOL carry-back provisions would be repealed.

Bonus depreciation: The bill would increase the expensing allowance from 50 to 100% for property placed in service after 27 September 2017 through 2022 and removes the "original use" requirement. The amount of allowable bonus depreciation would then be phased down over four years: 80% would be allowed for property placed in service in 2023; 60% in 2024; 40% in 2025; and 20% in 2026.

Interest deductions: The conference bill generally caps the deduction for net interest expenses at 30% of adjusted taxable income, among other criteria. Exceptions would exist for small businesses, including an exemption for businesses with average gross receipts of 25 million USD or less. Any disallowed interest deductions could be carried forward indefinitely.

Pass-through businesses: The bill provides for a 20% deduction on domestic "qualified business income" ("QBI") generated by a partnership, S Corporation or sole proprietorship, subject to certain limitations and income thresholds. QBI includes any trade or business other than specified service businesses (defined below) and does not include reasonable compensation of an S corporation shareholder nor guaranteed payments to partners.

Limit based on wages and capital: For taxpayers whose taxable income does not exceed 157,500 USD for individuals (315,000 USD if married filing jointly) there are no limitations. Above those thresholds, the amount of the deduction is limited to the greater of 50% of the W-2 wages, or the sum of 25% of the W-2 wages plus 2.5% of the unadjusted basis of all qualified property. Only those wages that are properly allocable to qualified business income are taken into account. Qualified property includes depreciable tangible property.

Special further limitation for specified service businesses: The deduction does not apply to "specified service businesses," except for taxpayers whose taxable income does not exceed 207,500 USD (for individuals) or 415,000 USD (if married filing jointly). The benefit of the deduction is phased out for these taxpayers over a 50,000 USD range (100,000 USD if joint return) for taxable income exceeding the 157,500 USD for individuals, and 315,000 USD if married filing jointly. A "specified service business" means any trade or business activity involving the performance of services in the fields of health, law, accounting, actuarial sciences, performing arts, consulting, athletics, financial services, brokerage services, investment management, trading, dealing in securities, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its owners or employees. It does not include engineering or architecture trades or businesses.

International Provisions

The Conference Agreement moves the United States into a territorial system.

Dividend received deduction: In general, the bill provides for a 100% exemption for Foreign Source Dividends from foreign corporations in which the U.S. corporation owns at least 10 percent.

Mandatory tax on tax-deferred foreign earnings: The Conference Agreement provides for a one-time transitional tax on 10% or more U.S. shareholder's pro rata share of a foreign corporation's post-1986 tax-deferred earnings. The tax rate is 15.5% on earnings attributable to cash and cash equivalents and other short-term assets and 8% on remaining assets.

Foreign tax credit (FTC): No FTC or deduction would be available for any taxes paid for earnings attributable to exempt foreign dividends.

PKF Comment

*If you have any questions about your particular tax situation, please contact Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 646 699 2848**.*

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