2020 Spring

PKF O'CONNOR DAVIES
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ESTABLISHED IN 1891

tax newsletter

PKF Worldwide Tax Update

Welcome

In this second quarterly issue for 2020, the PKF Worldwide Tax Update Newsletter again brings together notable tax changes and amendments from around the world, each followed by PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with over 480 offices worldwide, operating in over 150 countries across 5 regions. Our 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:

- COVID-19 tax measures in Australia, Luxembourg, South Africa, Turkey and Ukraine
- DAC6 (reporting of cross-border tax arrangements in Austria and Croatia
- VAT developments in Bulgaria, Italy and Mexico
- GAAR (general anti-avoidance rule) in Peru and Poland
- Double tax treaty updates and related case law in Belgium, China, UAE and the U.S.
- Recent comprehensive tax changes in Chile, Croatia, Nepal and Rwanda.

We trust you find the PKF Worldwide Tax Update for the second quarter of 2020 both informative and interesting. 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.

2020/21 Worldwide Tax Guide

Last year's PKF Worldwide Tax Guide featured 140 countries and was a resounding success with almost 850 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 2020/21 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 continued support.

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& Business Advisers

Australia

Government Stimulus Package to counter economic downfall caused by COVID-19

A lot has changed quite rapidly in recent weeks with regards to the Coronavirus (or COVID-19) including decisions from policy makers and the general market and community reaction which in turn is affecting all of us.

The Australian Government has released an AUD 17.6 billion economic stimulus package, which has been marketed as a measure to protect the economy by maintaining confidence, supporting investment and keeping people in their jobs. There is still a bit of work involved to access though. The government has also earmarked a second round of support for businesses most at risk of collapse and this is expected to be announced well before the May budget. However at this stage it is still unknown.

As at 20 March 2020, the key tax and stimulus measures include:

Business Investment

- From 12 March 2020, the instant asset write-off threshold has been increased from AUD 30,000 (for businesses with an aggregated turnover of less than AUD 50 million) to AUD 150,000 (for businesses with an aggregated turnover of less than AUD 500 million) until 30 June 2020
- A time-limited 15-month investment incentive (through to 30 June 2021) which will operate to accelerate certain depreciation deductions. This measure will also be available to businesses with a turnover of less than AUD 500 million, which will be able to immediately deduct 50% of the cost of an eligible asset on installation, with existing depreciation rules applying to the balance of the asset's cost. As announced, this measure is proposed to only apply to new depreciating assets first used, or installed ready for use, by 30 June 2021.

Cashflow Assistance

- Tax-free payments of up to AUD 25,000 for eligible small and medium businesses (i.e., with a turnover of less than AUD 50 million that employ staff) based on their PAYG withholding obligations. This is not a cash payment, but it is a credit equal to 50% of the PAYG amounts withheld from salary and wages paid to employees.

Businesses that lodge activity statements on a quarterly basis will be eligible to receive the credit for the quarters ending March 2020 and June 2020. Business that lodge on a monthly basis will be eligible for the credit for the March 2020, April 2020, May 2020 and June 2020 lodgements.

If a business pays salary and wages to employees but is not required to withhold any tax, then a minimum payment of AUD 2,000 will still be made. The minimum AUD 2,000 payment will be applied to the first activity statement lodgement.

- Wage subsidies to support the retention of apprentices and trainees – Employers with less than 20 full-time employees may be entitled to apply for Government funded wage subsidies amounting to 50% of an apprentice's or trainee's wage for up to nine months from 1 January 2020 to 30 September 2020. The maximum subsidy for each apprentice/trainee is AUD 21,000.

Note also that each state government has or is in the process of issuing their own stimulus packages for businesses that will provide additional benefits – significantly regarding payroll tax concessions.

Individual Assistance

- Tax-free payments of AUD 750 to social security, veteran and other income support recipients and eligible concession card holders. It is estimated that around half of those who will benefit will be pensioners. These payments will be automatically made from 31 March 2020.

PKF Comment

*In light of the above, it is important to ensure you have adequate tax planning in place. You should immediately consider whether you qualify for the above measures given their limited time of application. Please contact Iain Spittal at ispittal@pkf.com.au or Emma Roulet at eroulet@pkf.com.au or call **+61 2 8346 6000** if you would like to discuss the above or would like further information with respect to Australian taxation.*

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Austria

Transposition of DAC6 into domestic law

On 22 October 2019, the EU-Mandatory Disclosure Act (EU-Meldepflichtgesetz) implementing European Union (EU) Directive 2018/822 of 25 May 2018 on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as "DAC6"), was published in the Official Gazette. Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements as from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The legislation will come into force as from 1 July 2020.

Non-fulfilment of reporting obligations can arise in the following cases:

- Failure to file a (complete) report
- Breach of the reporting deadlines
- Inaccurate reporting.

Penalties for each violation range from EUR 25,000 in case of gross negligence to EUR 50,000 in case of intentional breach.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Austrian taxation, please contact Michaela Moosbrugger at mm@pkf-graz.at or call **+43 316 826082 15**.*

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Belgium

No Belgium tax relief if double application of succession tax on offshore movable goods

On 27 March 2018, the Antwerp Court of Appeal has ruled that no tax relief is granted in Belgium when a movable good is subject to succession tax both in Belgium and

abroad. When a Belgium based individual passes away, that person's worldwide assets are part of the taxable basis for Belgium succession tax purposes. If that individual has real estate based outside of Belgium, Belgium succession tax law provides for tax relief in Belgium if the country where the property is located also applies succession tax to such real estate. However, Belgium succession tax legislation has no similar rule applicable to "movable goods" (e.g. shares, cash, jewelry, securities, etc.) kept outside Belgium. As a result, if the source-country (i.e. Spain in the case submitted to the Court of Appeal of Antwerp) also applies succession tax to these assets when the Belgium resident owner passes away, there is double application of succession tax: both in Belgium and abroad. According to the Antwerp judge, such double taxation for succession tax purposes does not come down to any infringement of the EU free circulation of capital and neither gives rise to discrimination.

PKF Comment

*This case law demonstrates that individuals should carefully reflect before they "stock" certain movable goods in a country other than their country of residence. Indeed, upon demise of the individual double succession tax can be due. In addition, given the ongoing trend of further transparency and disclosure requirements for international tax purposes, it becomes more and more pointless to even consider "stocking" assets abroad for reasons of discretion and anonymity. If you believe the above measures may impact your personal situation or require any advice with respect to Belgium taxation, do not hesitate to contact Kurt De Haen at kurt.dehaen@pkf-vmb.be or call **+32 2 460 0960**.*

»BACK

Increased personal permanent establishment risk as of 2020

As of 2020, a new definition of the concept "personal permanent establishment" has entered into force. The new definition is much broader than the previous one in order to cover a maximum number of cases as taxable permanent establishments (PE) in Belgium. In particular, so-called Principal-commissionaire cases are envisaged. In summary, a commissionaire is a commercial intermediary acting in its own name, but for the account of a foreign Principal. Hence, it is the Principal that derives the bigger part of a commercial transaction (e.g. a sale of goods to customers) whereas the commissionaire is only entitled to a commission on the overall transaction value.

When working via a commissionaire structure, the key question arises whether a commissionaire gives rise to a taxable PE at the level of the foreign Principal. In summary, this is generally not the case for genuine commissionaire structures which are embedded with sufficient substance as most tax treaties explicitly state that a commissionaire does not give rise to a PE at the level of the Principal in the commissionaire country.

However, one of the action points of the OECD BEPS (Base Erosion Profit Shifting) Action Plan aims to combat the artificial avoidance of PE cases and explicitly points at commissionaire structures. Basically, the OECD envisages situations whereby commercial contracts are negotiated in Belgium (by a Belgium commissionaire) whereas the contracts are formally signed-off (with hardly any amendments) abroad by the foreign-based Principal.

Following such BEPS Action Plan, Belgium tax law has already been modified by the Law of 25 December 2017, be it with entry into force as of 2020. The new personal PE definition reads as follows: the standard rule is that any representative or intermediary who acts in Belgium on behalf of a foreign Principal gives rise to a taxable PE, even if that person is not authorised to conclude contracts on behalf of the foreign Principal. However, no taxable PE arises after all in the event of an "independent commercial intermediary" who acts in the ordinary course of his business. Notwithstanding the foregoing, if a person acts exclusively or almost exclusively for one or more closely related companies, that person will not be deemed to be an "independent commercial intermediary". The following persons are always deemed to be "closely related companies": (i) one person has an (in)direct stake of more than 50% in the other person, or (ii) in the event of a company, one person holds more than 50% of the voting power, of the share value and of the asset value of the other person, or (iii) both Principal and commercial intermediary are controlled by the same person pursuant to such 50% test. For the avoidance of doubt, the mere fact that Principal and commercial intermediary are not "closely related companies" does not automatically mean that no personal PE arises. Specifically, in such case, an in-depth factual analysis will need to demonstrate that the intermediary is genuinely independent vis-à-vis the foreign Principal.

PKF Comment

*As a result of the extended personal PE definition, a lot of foreign companies will have a taxable PE in Belgium whilst Belgium Principals may have a taxable PE abroad. As a result, it is strongly recommended to carefully review existing cross-border commercial contracts, in particular between related companies, against the light of these new rules. Possibly, the corporate tax compliance process and corresponding tax costs might be different than before. If you believe the above measures may impact your business or require any advice with respect to Belgium taxation, do not hesitate to contact Kurt De Haen at kurt.dehaen@pkf-vmb.be or call **+32 2 460 0960**.*

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Bulgaria

New rules for Bulgarian VAT registration applicable to foreign persons

The VAT threshold for foreign taxpayers who have no place of business in Bulgaria but make local taxable supplies have been removed. Those entities should register for VAT purposes in Bulgaria no later than seven days prior to the date on which the tax in respect of their first supply in Bulgaria becomes due.

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 everchanging 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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Chile

Introduction of 2020 tax measures

On 24 February 2020, the Tax Reform Package was approved by Congress and published as Law 21,210/2020. Said Law modified the Corporate Income Tax Act, the VAT Act and the Tax Code, the most salient features including among others:

- the highest bracket of personal income tax is increased to 40% (previously the top rate was 35%). This increase is applicable to compensation paid as from 1 March 2020 (second category tax/ employment withholding tax applicable for tax residents in Chile) and applies to monthly income exceeding CLP 15,500,000 (approximately USD 18,700). Regarding complementary global tax (annual Income tax applicable for tax residents in Chile on the annual income tax return), this change is effective for calendar year 2020 and the 40% top rate is applicable to annual income exceeding CLP 186,000,000 (approximately USD 225,000)
- modification of definition of tax residence: any person who remains in Chile, consecutively or not, for a period or periods that exceed 183 days in total within any 12-month period will be considered a resident for tax purposes
- property taxes are increased, and new relation rules are implemented for its calculation
- VAT at a rate of 19% on digital services rendered by non-resident companies
- mandatory electronic filing of VAT invoices
- retention of the Partially Integrated Regime for all companies with annual sales equal to or exceeding 75,000 UF (approximately 2.4 million USD), which will be subject to 27% corporate income tax while companies with annual sales below that threshold will automatically be placed under the Fully Integrated Regime, subject to a 25% rate
- Regarding fixed assets linked to investment projects and acquired between 1 October 2019 and 31 December 2021, the owners of said assets will be able to apply for instant depreciation (in a tax year) at 50% of the investment. The remaining 50% will then be subject to standard depreciation rules, including accelerated depreciation (one third of the useful life of the fixed asset).

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Chile taxation, please contact Antonio Melys Alvarez at amelys@pkfchile.cl or call **+56 22650 4332**.*

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China

Updated New Zealand-China double tax treaty effective as from 1 January 2020

A double tax treaty between New Zealand and the People's Republic of China was signed on 1 April 2019, came into force on 27 December 2019 and is applicable to taxes withheld on or after 1 January 2020.

Economic ties between New Zealand and China have been strengthened with the successful negotiation of a new tax treaty, which is an update to the existing double tax treaty ("DTT") from 1986. DTTs provide greater certainty of tax treatment, especially for cross-border investment flows such as dividends, interest, and royalties. The new DTT will reduce the withholding rates on certain dividend repatriations and eliminate double taxation.

Salient features

The major changes in the new DTT compared with the 1986 version include:

Items		New DTA	1986 DTA
Permanent Establishment Assessment	for building and construction	12 months	6 months; including supervisory activities in connection therewith
	for service	183 days within any consecutive 12-month period	6 months
	for natural resources exploration	183 days within any consecutive 12-month period	1 month
	for agent	Acting on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are a) in the name of the enterprise, or b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or c) for the provision of services by that enterprise,	Acting on behalf of an enterprise and has, and habitually exercises, an authority to conclude contracts in the name of the enterprise
Dividends		• 0% (if the beneficial owner is the Government with less than 25% of the voting power); • 5% (if the beneficial owner is a company holding directly at least 25% of the capital); • 15%	15%
Interests		0%/ 10% (Revised conditions applicable to tax exemption for interest)	0%/ 10%
Royalties		10% (Updated definition on royalty)	10%
Alienation of property		Added 2 clauses about the alienation of shares or comparable interests	
Principal Purpose Test		Included (Article 23 Entitlement to benefits)	n/a
Fiscally transparent		Included (Article 1 Persons covered)	n/a
Exchange of information		In no case shall limitations be construed to decline to supply information solely because: • it has no domestic interest; • the information is held by a bank, other financial institution; • it relates to ownership interests in a person.	

The treaty revisions are meant to be aligned with the OECD's recommendations contained in its BEPS Action Plan. On the one hand, the revised treaty provides for more favourite-like treatments, for example with respect to dividends. From a domestic point of view, China has shifted the burden on DTT invocation. From 1 January 2020, non-resident taxpayers shall judge by themselves whether or not they meet the requirements for entitlement to treaty benefits and shall prepare the documents for future assessments instead of submitting them for review to the local tax authorities.

On the other hand, the revised treaty tries to curb tax evasion by emphasising that treaty application will be denied if obtaining the benefit is (one of) the principal purpose(s).

PKF Comment

*We recommend that investors, enterprises and individuals engaged in trade and investment between China and New Zealand carefully review the new DTT and consider its possible impact on existing or planned business activities. If you believe the above measures may impact your business or require any advice with respect to China taxation, please contact Allan Jiang at allan.jiang@pkfchina.com or call **+86 21 6076 0876**.*

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New measures for non-resident taxpayers claiming treaty benefits

In October 2019, the State Administration of Taxation (SAT) issued measures on the administration of non-resident taxpayers invoking tax treaty entitlement (SAT 2019, No. 35, hereinafter referred to as the "new measures"). The new measures came into effect on 1 January 2020 and are aimed at considerably enhancing the convenience for non-resident taxpayers to enjoy tax treaty benefits. The new measures replace the former ones issued in August 2015 (SAT 2015, No.60) that required extensive supporting documents to be submitted.

The salient features of the new measures are as follows:

- Non-resident taxpayers shall judge by themselves whether or not it they can meet the requirements for entitlement to treaty benefits. At the same time, they shall collect and retain relevant supporting documents for future reference instead of submitting the documents for review to the local tax authorities, while China tax authorities would carry out the follow-up administration
- The new measures substantially simplify the (number of) forms to be submitted. There were 10 forms in place before. However, this has been reduced to just one with less content. Non-resident taxpayers only need to fill out the name, contact information and other basic information, and make a self-declaration to state that they are a tax resident of another tax jurisdiction and they would assume full responsibility to invoke the tax treaty benefit.
- The new measures clarify the responsibilities of non-resident taxpayers and withholding agents.
  - For non-residents, it is essential for them to judge whether they can meet the requirements, provide forms to withholding agents, and collect and retain relevant substantive materials for future examination by local tax authorities
  - For the withholding agent, in the past they needed to ascertain that the non-resident taxpayer could enjoy the tax treaty benefit. This could lead to underpaid taxes and penalties for the withholding agent when the non-resident was found to be unqualified for tax treaty entitlement. The new measures clarify that the withholding tax agent's responsibility is merely to verify that the non-resident has duly completed the form and facilitated the application.

PKF Comment

The new mechanism simplifies the reporting forms, reduces the paperwork for non-residents, and facilitates the claiming of treaty benefits by non-resident taxpayers. Meanwhile, the new mechanism reduces the responsibilities of the withholding agents, and the withholding agent would therefore be more willing to help apply for treaty benefits. However, this does not alleviate the responsibilities of the non-resident taxpayers, instead the new mechanism brings more tax uncertainty for the non-residents. Once eligibility for tax treaty application is denied in the subsequent administrative process, the non-resident taxpayer would be subject to late payment surcharge in addition to the underpayment of tax. Moreover, tax authorities in different regions may have different practices and some local tax authorities are still requesting for cumbersome documents and raising challenging questions. It is highly recommended for non-residents to seek assistance from professional experts before starting the process of tax treaty application.

If you believe the above measures may impact your business or require any advice with respect to China taxation, please contact Allan Jiang at allan.jiang@pkfchina.com or call ***+86 21 6076 0876****.* »BACK

Croatia

Amendments to various tax laws

On 11 December 2019, Croatia gazetted several laws amending various tax laws. Salient features can be summarised as follows:

Amendments to personal income tax law

- increase in the monthly basic personal allowance from HRK 3,800 to HRK 4,000;
- reduction of personal income tax liability, up to an annual tax base of HRK 360,000 on the basis of self-employment, for which annual tax is paid at the rate of 24%, for:
  - 100% for young people up to 25 years of age
  - 50% for young people aged between 26 and 30 years

- changes to treat supplementary health insurance premiums paid by employers as employment income, above a prescribed amount (exempt up to the prescribed amount);

Amendments to corporate income tax law

- a 12% corporate income tax rate will apply for companies with annual revenues not exceeding HRK 7.5 million (currently HRK 3 million)
- an individual entrepreneur engaged in business activities with total gross income not exceeding HRK 7.5 million (currently HRK 3 million) may opt to be subject to corporate income tax instead of individual income tax.
- pursuant to EU Directives 2016/1164 and 2017/952 (the anti-tax avoidance directive or ATAD) the following are introduced:
    - an exit tax that may apply when assets are transferred out of the state or when a company transfers tax residency to another state. The exit tax will be calculated as the difference between fair value and tax value (hidden reserve) of the assets and will be subject to corporate income tax in cases where the assets are not disposed of, and
    - rules for elimination and neutralisation of hybrid mismatches that include double deduction or deduction in the source state and exclusion in the other state.

Amendments to VAT law

- the standard VAT rate will remain at 25%
- a reduced VAT rate of 13% (previously subject to the 25% standard VAT rate) will also apply to:
    - services of preparing and serving meals (including take away)
    - services and related copyrights of phonographic right holders
- an increase in the threshold to apply the cash accounting scheme for VAT from HRK 3 million to HRK 7.5 million
- a taxpayer will be able to adjust VAT if the acquirer of the goods and services not having a permanent establishment or habitual residence in Croatia notifies the taxpayer in writing that a VAT refund was not requested.
- introduction of a VAT exemption for supplies of public interest to all entities regardless of their institutional form

Adoption of DAC6

Parliament has also approved the Act on Administrative Cooperation in the Field of Taxation implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (the so-called 'DAC6').

The definitions in Croatian domestic law are closely aligned with the text of DAC6, in particular, the definitions of "intermediary", "relevant taxpayer", "associated enterprise", "marketable arrangement" and "cross-border arrangement" have the same meaning as in DAC6.

Penalties for an entity that does not comply with its reporting obligations range from HRK 2,000 to HRK 200,000 (approximately EUR 270 to EUR 27,200).

For a responsible person within that entity the penalties range from HRK 2,000 to HRK 20,000 (approximately EUR 270 to EUR 2,720).

If an individual is liable to submit the report, the penalty for late or incorrect submission ranges from HRK 1,000 to HRK 100,000 (approximately EUR 135 to EUR 13,600).

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Croatian taxation, please contact Diana Antičić at diana.anticic@porezni-savjetnik.com or call **+385 91 4000 333**.*

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Cyprus

10-year extension of the tonnage tax legislation

Following the formal assessment of the Cyprus tonnage tax and seafarer scheme, the European Commission has concluded that the assessed scheme of Cyprus is compatible with the internal market and in line with the Guidelines on State aid to maritime transport. The relevant Decision of the European Commission for the prolongation of the Cyprus tonnage tax and seafarer scheme was issued on 16 December 2019.

A relevant amendment Bill, amending principal Law 44(I)/2010, has been prepared for the extension of the validity period of the Merchant Shipping (Fees and Taxing Provisions) Law of 2010 (Law 44(I)/2010) until 31 December 2029.

PKF Comment

The tax benefits arising from the tonnage tax legislation are very important and form the basis of the very popular tonnage tax regime which has attracted a number of investors using Cyprus companies for their shipping activities.

The 10-year extension will add safety and comfort to the existing investors as well as attract new potential investors.

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Notional interest deduction rates published

The notional interest deduction rates have been published, which are based on the 10-year Government Bonds in the country where the new issued share capital has been utilised.

The Cyprus 10-year Government rate for 31 December 2019 was 0.536, meaning that the notional interest rate for the financial year 2020 will be 3.536%.

As a reminder, as from 1 January 2015 a notional tax deduction is allowed following the application of the NID to the amount of new equity injected into Cyprus tax resident companies and used for business purposes. It is granted annually as long as the new share capital issued is still in place.

Such notional tax deduction cannot exceed 80% of the taxable profit in a year.

PKF Comment

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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Germany

Organschaft (tax unit) - Requirements for variable compensation payments to external shareholders

In a ruling dated 3 April 2020, the Federal Ministry of Finance (BMF) specified the conditions under which variable compensation payments to external shareholders are possible in a tax unit.

1. External shareholders in a fiscal unit

In a fiscal unit, two or more legal entities are combined into one unit for tax purposes. A distinction is made between the controlling company (parent company) and the controlled company (subsidiary). For income tax purposes, a profit and loss transfer agreement (PLTA) must be concluded. Under this PLTA, the controlled company is obliged to transfer its entire profit to the controlling company. On the other hand, the controlling company is obliged to compensate for the losses of the controlled company. These obligations regarding the total profit or the total loss are also to be applied if the controlling company does not hold all shares in the controlled company. If other shareholders hold shares in the controlled company, they are referred to as external shareholders. External in this context means outside the group (commercial law).

2. Conditions for variable compensation payments

Because the controlling company receives the entire profit, an agreement must be reached for the external shareholders to receive compensation payments. This compensation payment will be charged to the entire result transferred. In principle, the compensation payments must be fixed amounts.

(1) Additional payments

Compensation payments must also be made in years in which losses are incurred. Variable compensation payments, which are based on the result of the controlled company, are only possible under certain conditions. In any case, a fixed minimum amount must be paid. In addition, variable components can be agreed upon, which are not to be paid in a specific financial year, e.g. because of a low or negative result of the controlled company.

(2) Maximum amount of the compensation payment

The compensation payment may not exceed the profit share which could have been paid without the PLTA. In determining this amount, the annual net income under commercial law before profit transfer must be adjusted as a starting point. In particular, allocations to reserves, amounts blocked from distribution and fictitious amounts of income tax are to be deducted. Amounts from the release of reserves formed during the period under fiscal unity must be added. The maximum amount must be determined separately for each fiscal year; it is not possible to make up for this.

(3) Economic test

According to this test, the amount in excess of the fixed minimum amount must be economically justified. In particular, purely tax-motivated variable compensation payments are incompatible with the so-called economic test. If the controlling company and the external shareholders are not in a close relationship with each other, there will generally be objective reasons for agreeing the additional compensation payments due to the existing conflict of interests, so that the economic test does not regularly prevent the tax recognition of the fiscal unity.

If these conditions are not met, the tax recognition of the tax unity will be lost.

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to German taxation, please contact Daniel Scheffbuch at d.scheffbuch@pkf-wulf.de or call ***+49 711 69 767 238****.*

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Hong Kong

Arrangement with Mainland China for automatic exchange of Country-by-Country reports in effect

On 4 March 2020, the Hong Kong Inland Revenue Department ("Hong Kong IRD") announced that Mainland China and Hong Kong have entered into an arrangement for automatic exchange of country-by-country ("CbC") reports. This exchange arrangement would apply retroactively to accounting periods beginning on or after 1 January 2018 (i.e. for accounting periods ended on or after 31 December 2018) and is a long-awaited development welcomed by many multinational enterprises ("MNE") in Hong Kong with a Chinese ultimate parent entity ("UPE").

As a result of the automatic exchange of CbC reports between Hong Kong and Mainland China taking effect, Hong Kong entities of Reportable Groups whose ultimate parent entities are tax residents of China may now be relieved of their CbC return filing obligations in Hong Kong. However, these Hong Kong entities are still required to notify the Hong Kong IRD of their relief from local CbC filing obligations in Hong Kong annually via the CbC online portal within 3 months after the end of their relevant accounting periods (beginning on or after 1 January 2018).

Notwithstanding that the conclusion of the abovementioned exchange arrangement is viewed favourably by many MNEs, those with an established presence across Hong Kong and Mainland China should note that there will be more frequent and automatic exchanges of information between the Hong Kong and Mainland China tax authorities, which may cause relevant cross-border related party transactions to be subject to closer scrutiny from a transfer pricing perspective.

PKF Comment

Previously, a Hong Kong entity of an MNE group with a UPE that is a tax resident in Mainland China and also meeting certain conditions ("a Reportable Group") was still required to perform local filing of CbC reports in Hong Kong, even though the local filing of CbC reports was already required in Mainland China (which would be subject to their respective separate specific conditions and requirements). It was allegedly considered that such an arrangement had placed additional compliance burden on certain Reportable Groups.

For further information or advice concerning the above or any advice with respect to Hong Kong taxation, please contact Henry Fung at henryfung@pkf-hk.com or call ***+852 2806 3822****.*

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Hungary

Broadening online invoice reporting liability

As from 1 July 2018 an online data reporting obligation was introduced in Hungary in terms of invoices issued by domestic taxpayers (including simple VAT registered ones) to another domestic taxpayer where the VAT value of the invoice exceeds HUF 100,000 (approximately EUR 300). The purpose of this regulation was to create a tool that makes the economic life more transparent. After two years of application and in order to step up new measures are introduced in two phases.

Firstly, the HUF 100,000 threshold regarding the VAT value of the invoice to be reported will be abolished as from 1 July 2020. As a result, all transactions performed in Hungary between domestic taxable persons shall be reported to the tax authorities including domestic reverse VAT transactions.

In terms of manual invoices, the deadline for reporting is the day following their issuance. However, in case the charged VAT amount does not exceed HUF 500,000 this obligation shall be fulfilled within 4 calendar days following the issuance. In case of non-compliance the default penalty is up to HUF 500,000 per unreported invoice.

In line with the above, taxpayers shall report their incoming invoices to the Hungarian tax authority (HTA) regardless of the value threshold, provided that they (at least partially) exercise a right of deduction based on the relevant invoice. In addition - instead of the current 15-day deadline for issuing invoices – as from 1 July 2020 invoices shall be issued within 8 days following the chargeable event. Failing to comply with this shorter deadline can result in a default penalty of up to HUF 500,000 per omission.

As a second step, the online data reporting obligation will be extended to each and every invoice (except for electronically supplied services) as from 1 January 2021.

PKF Comment

Due to the above measures, more data shall be reported to the tax authorities and consequently more data will be available to them about taxpayers, which may result in more targeted tax audits. This will also have a positive impact on taxpayers since akin to the e-personal income tax system the tax authorities plan to prepare draft VAT returns as from Q1 2021.

*For further information or advice concerning the stricter online invoicing rules, or any advice concerning Hungarian taxation, please contact Krisztián Vadkerti at vadkerti.krisztian@pkf.hu or call **+36 1 391 4220**.*

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Italy

VAT treatment of intra-community services, with particular reference to trade fair-cultural events and related services

With their official answer No. 35 of 7 February 2020, the Italian Revenue Agency expressed their position with regard to the VAT treatment of services provided within the Community, with particular reference to trade fairs and cultural events and related services.

The territoriality of the provision of services in B2B operations at national level is regulated by Article 7-ter of the Presidential Decree 633/1972, while, at Community level, it is governed by articles 44 and 45 of Directive 2006/112/EC.

Said provisions stipulate that these types of services are considered to be carried out within the territory of the State when they are rendered to clients that are VAT taxable persons established within the territory of the State or when they are rendered to clients who are not taxable persons by taxable persons established within the State territory.

The case

The above-mentioned official answer pertains to a case of a German company (applicant) organising a conference in Italy at an Italian Foundation established there.

The Italian Foundation, after having incurred the costs related to the event, charges back (re-invoices) to the German entity all the necessary logistical and organisational services (e.g. catering, simultaneous translation, technical services, cleaning, coverage with technostructure, administrative services etc.) that were purchased by the Italian Foundation from Italian providers (services subject to national tax).

The invoices issued by the Italian Foundation to the German entity, pursuant to article 7-ter of Presidential Decree 633/1972, were considered operations not falling under the VAT scope, as they had the mention “reverse charge” on the invoice.

Moreover, the event described is also sponsored by several Italian companies to which the German company issues invoices under the “reverse charge” mechanism.

The ruling of the Italian Revenue Agency
The opinion provided by the Revenue Agency confirms the correctness of the operations carried out by the applicant.

The services consisting of the preparation of a seminar, a meeting, an event, like the services for setting up fairs and exhibitions, are considered generic services for VAT purposes. This category also includes the services rendered to the subjects organising the event, in addition to those connected directly to the setting up of the exhibition stands (e.g. preparation of the electrical or hydraulic systems for the exhibition stand).

The provision of services charged back by the Italian Foundation to the German company must be qualified as generic and unitary services provided for the organisation of an event, for which the rule of territorial relevance in the country of the client applies and therefore through the application of the “reverse charge” mechanism.

As for the VAT treatment of sponsorship services, rendered by Italian companies, the operations are territorially relevant in Italy and are subject to the standard rate of 22%.

In this case, again for domestic provision purposes, the national client must pay the tax in Italy by applying the “reverse charge” (through integration of the invoice received from the German entity).

PKF Comment

We focused on this specific matter not only because it is a typical issue for foreign companies operating in Italy, but also because we strongly hope that you, and your clients, will return to Italy soon to organise these types of events.

*If you believe the above measures may impact your business or require any advice with respect to Italian taxation, please contact Matteo Macciò at m.maccio@pkf-tclsquare.it or call **+39 0108 183 250**.*

»BACK

Jersey

Routier v HMRC

Jersey’s Attorney General wins UK Supreme Court argument on EU free movement of capital.

In a landmark constitutional decision for Jersey, the UK Supreme Court has accepted that the EU right of free movement of capital applies to movements between the UK and Jersey.

The Attorney General argued that Jersey was a third country and HMRC argued that Jersey was not. The case removed unnecessary uncertainty for Jersey in respect of EU rules governing capital movements.

The case was essentially that a gift in a Will was made for charitable purposes in Jersey and HMRC refused the charitable inheritance tax exemption as the charitable purpose was in Jersey. The Supreme Court allowed the exemption. The EU issue was that Jersey is not a member state as it is not part of the EU. A gift to a charity is a movement of capital. It is worth noting the rules in relation to the inheritance tax exemption were changed after this gift was made.

PKF Comment

*Free movement of capital is the only EU freedom which expressly benefits third countries as well as member states. This is good news for Jersey. For further information or advice concerning Jersey taxation, please contact Rob Behan at robb@pkfbba.com or call **+44 1534 858 490**.*

»BACK

Luxembourg

Tax ruling decisions obtained prior to 1 January 2015 no longer valid

As of 1 January 2020, the content of advance tax clearances, including advance pricing agreements, obtained by Luxembourg taxpayers before 1 January 2015 no longer binds the Luxembourg Tax Authorities.

A new administrative procedure is in place since 2015 regarding the submission and approval process of tax rulings in Luxembourg, which includes in particular:

- The analysis of a duly motivated ruling request – including specific statements and documentation, among others a summary of the ruling request – by the Advance Tax Clearance Committee (“Commission des Décisions Anticipées”)

- The filing of the standard form (777E) for the international exchange of information on advance cross-border rulings and advance pricing agreements
- A validity period of maximum 5 tax years for each tax ruling
- The payment of an administrative fee ranging from EUR 3,000 to EUR 10,000 for requests covering corporate taxation aspects.

PKF Comment

Luxembourg taxpayers who previously submitted tax rulings related to a structure currently in place should verify their validity periody.

The tax treatment described in an “outdated” ruling may still be applicable though. The structure and the operations included in the concerned “outdated” ruling should therefore be reviewed to verify whether the tax treatment described is still valid under the current legal framework or whether a new tax ruling should be filed.

»BACK

Administrative guidance issued on CFC rules

On 4 March 2020, the Luxembourg Tax Authorities issued administrative circular No. 164ter/1 providing some guidance on rules related to controlled foreign companies (“CFC”).

As a reminder, the new Luxembourg legislation implementing the Anti-Tax Avoidance Directive (“ATAD 1”) entered into force on 1 January 2019. CFC rules aim, in particular, at discouraging Luxembourg taxpayers – exercising a direct or indirect control over a subsidiary or owning a permanent establishment – from eroding their taxable basis in Luxembourg through the transfer of income to a low taxation jurisdiction where said subsidiary or permanent establishment is located (i.e. the CFC).

In that case, the non-distributed income artificially allocated to the CFC should be included in the taxpayer’s taxable basis and be subject to Luxembourg corporate income tax. The income to be reintegrated in the taxable basis of the Luxembourg taxpayer pursuant to the CFC rules is limited to the income generated by assets and risks related to significant people functions exercised by the taxpayer controlling the CFC. The reintegration is performed in line with the arm’s length principle pursuant to art. 56 and 56bis of the Income Tax Law (“ITL”).

Although the ITL itself does not provide for such obligation, the circular requires taxpayers to make available a transfer pricing analysis covering the functions and risks of the CFC in relation to its income and assets, which should include:

- A list of all direct and indirect CFCs of the taxpayer
- The identification of significant people functions managing/controlling the assets and risks for each CFC
- The location of these functions and the description of their role in the generation of income at the level of the CFC.

This documentation should be prepared annually and be provided to the Luxembourg tax authorities upon request.

The circular further states that any restructuring operations, whose purpose would be for the taxpayer to fall outside the scope of the Luxembourg CFC rules, would be considered an abuse when such operations are performed without valid commercial reasons reflecting the economic reality.

Additional details are included in the circular regarding the control test and the effective tax test (i.e. the two main conditions to fall within the scope of the CFC rules) as well as on other aspects of the law.

PKF Comment

Luxembourg taxpayers should review their tax position to assess whether they fall within the scope of the Luxembourg CFC rules, in which case additional compliance – including a TP functional analysis – would be required.

»BACK

Covid-19 tax measures in Luxembourg for companies and self-employed persons

The Luxembourg government has taken several measures to protect the Luxembourg economy during the Covid-19 crisis, in particular:

- Upon request: cancellation of the quarterly tax installments to be paid for corporate income tax ("CIT") and municipal business tax ("MBT") for Q1 and Q2 2020
- Upon request: possibility to obtain an additional payment term for CIT, MBT and Net Wealth Tax liabilities due, if the ultimate payment date of said liabilities falls after 29 February 2020 (additional payment term of 4 months);
- A reduction in the amount of the quarterly tax installments can also be requested.

PKF Comment

For further information or advice concerning Luxembourg tax ruling decisions, the interpretation of CFC rules or any advice with respect to Luxembourg taxation, please contact Aurélie Moline at aurelie.moline@pkf.lu or call ***+352 39 58 42 82.***

»BACK

Mexico

Withholding of VAT on certain services received

On 31 January 2020, certain amendments to Annex 7 of the Miscellaneous Tax Resolution for fiscal year 2020 were published on the website of the Tax Administration Service ("SAT").

Annex 7 has been amended by including normative criterion 46/IVA/N, which refers to the VAT withholding obligation established by article 1-A, section IV, of the Value Added Tax Law, which came into force as from 1 January 2020.

With the aforementioned provision a 6% VAT withholding obligation is established at the level of recipients of certain services (i.e. services that imply a secondment arrangement under which employees of the service provider are assigned to work for the recipient of the services).

In this respect, the normative criterion clarifies that when a legal person or a natural person with business activity, in his capacity as contractor, receives services in which he places himself at his disposal, it is understood that there will be withholding when the functions of said personnel are used directly by the contracting party or by a related party thereof.

On the other hand, there will be no withholding if the services provided correspond to a service in which the contractor's personnel perform functions that are directly used by the contractor himself.

The amendments to Annex 7 will enter into force on the day following their publication in the Official Gazette.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Mexican taxation, please contact Antonio Garcia at antonio.garcia@pkfmexico.com or call ***+52 (81) 8363 8311*** *or Jose Angel Trillo at jtrillo@pkfmexicocom.*

»BACK

Nepal

Recent tax updates

Double tax treaty between Nepal and Bangladesh

An agreement on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to tax on income has been duly signed by both countries. The agreement aims to eliminate double taxation, promotion of bilateral trade and providing settlement between the tax claims of the Government of Nepal and the Government of the People's Republic of Bangladesh.

PKF Comment

This agreement would eliminate double taxation on income earned by a person, investor and business in another country. Moreover, this is a step in the direction of strengthening the business relationship between the two countries.

Introduction of directive on implementation of VAT on transportation services in Nepal
Exercising power conferred by Section 61 of VAT Rules 2053, IRD has issued a directive on implementation of "VAT on Transportation Services, 2076" in order to bring transportation service providers in the ambit of VAT Act and for the effective implementation of the provision. VAT on transportation services was introduced by Finance Bill 2076 which was previously exempted under Schedule 1 of the VAT Act.

PKF Comment

The Inland Revenue Department (IRD) has brought transportation services, under the ambit of indirect taxation in Nepal. Now the transportation service providers, including cargo operators and freight forwarders, shall levy VAT on service fee at the time of issue of invoice for transportation both in foreign country and Nepal including adherence to all other compliances as per VAT law in Nepal.

Introduction of operating manual on VAT refund on electronic payment
IRD has issued an "Operating Manual on VAT Refund on Purchase of Goods or Services using Electronic Medium". On implementation of this manual 10% of VAT paid by the consumers will be refunded to their bank accounts automatically. However, only natural persons purchasing good or service for personal purposes up to the maximum transaction limit of NPR 100,000 shall be eligible for refund.

PKF Comment

The IRD has introduced this system to encourage cashless transactions in the country. This can be taken as a new approach of moving towards a digital Nepal.

Online tax clearance certificate
IRD has initiated the provision of online tax clearance certificates through taxpayer portal of integrated tax system of IRD. Going forward, a taxpayer filing tax return through D01 and D02 form and not having further tax liability will be able to generate a tax clearance certificate online.

PKF Comment

Taxpayers' as well as administrative workload of the government officers has been minimised. This can be taken as a step towards simplifying the procedure for taxpayers in Nepal to obtain tax clearance with minimum administrative hassle.

Deduction on contribution to Social Security Fund
With 10th amendment in Income Tax Rule 2003 Rule 21, the deduction limit which was up to NPR 300,000 has been enhanced to NPR 500,000 for the amount contributed in Social Security Fund (SSF).
A natural person contributing to SSF will be allowed to deduct amount minimum of the actual amount or 1/3 of assessable income or NPR 500,000.

PKF Comment

This provision would be beneficial to the natural person earning income from employment and business and contributing to the Social Security Fund. Furthermore, such a limited increment will enhance the participation in the recent Social Security scheme introduced by Government of Nepal.

For further information or advice on Nepal tax laws or if you have any specific query about your particular tax situation, please contact Shashi Satyal at shashi.satyal@pkf.com.np or call ***+977 01 4410927****.* »BACK

Peru

Publication by tax authority of aggressive tax planning schemes

On 5 February 2020, the Peruvian tax authority ("SUNAT") published a catalogue of aggressive tax planning schemes on their website likely to be subject to the application of the general anti-avoidance rule ("GAAR").

Under the GAAR, the SUNAT may qualify the facts, situations and economic relations of taxpayers, by applying substance over form principles. In case of fictitious transactions, considered individually or together, with other transactions that result in an advantage for the taxpayer, the SUNAT may consider the substance of those transactions and then assign them a result based on this qualification. This provision is applicable in general to cases of tax avoidance and specifically to simulated transactions, and it expressly authorizes the SUNAT to assess tax or reduce the amount of deductions, credits, losses or benefits.

According to the SUNAT, the catalogue serves as a source of information to taxpayers, lawyers and tax practitioners with regard to aggressive tax planning schemes and the possible application of the GAAR.

The catalogue includes five schemes in particular that imply a potential breach of tax obligations for which the GAAR would apply, including schemes that may result in the improper determination of tax liability or in the taxpayer obtaining undue tax advantages, benefits, or tax relief:

- deduction of royalties in the framework of a trademark assignment between a resident individual and a resident legal entity, thus increasing the deductible expenses of the legal entity and decreasing the tax rate applied to the taxable income generated by the individual (from 30% to 5%)
- scheme in which a non-resident legal entity transfers the shares issued by a resident legal entity through a foreign trust or other similar entity. Under this scheme, the non-resident legal entity transfers its participation in the trust rather than the shares issued by the resident company
- scheme in which a non-resident legal entity holding shares issued by a resident legal entity changes its residence to another jurisdiction in order to benefit from the application of a tax treaty concluded by Peru with respect to the capital gains derived from the transfer of shares (typically covered by article 13 of a given tax treaty)
- scheme involving a trademark assignment from a resident legal entity to a non-resident legal entity that is not subject to tax on foreign income, resulting in royalties that are not subject to tax in Peru or in any other country and facilitating cash flows to be returned to the resident legal entity without being subject to taxation (i.e. through the use of a loan agreement and subsequent capitalisation of debts), and
- scheme involving a management contract entered into between two resident companies in order to increase the deductible expenses of one company and to offset tax losses of the other company.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Peruvian taxation, please contact Renato Vila at rvila@pkfperu.com or call **+51 142 16 250**.*

»BACK

Poland

GAAR may apply to any transaction regardless of its value

The general anti-avoidance rule (GAAR) was introduced into Polish domestic law on 15 July 2016 and is the result of implementing the recommendations of the OECD and the European Commission. It aims to curb activities of taxpayers that are merely, or primarily, aimed at circumventing the tax law, in particular to avoid taxation. The application of the rule enabled the tax authorities to challenge the tax consequences of a legal transaction or a set of transactions without the tax benefit arising from them.

From 1 January 2019, the use of the GAAR may apply to any transaction irrespective of its value and even if the tax benefit is not necessarily the primary objective of the taxpayer's actions. In cases where a GAAR-based decision is issued, the tax authority has the right to impose an additional tax assessment of up to 120% of the benefits achieved.

In the administrative courts' practice, a line of jurisprudence has developed over the past few years which is beneficial for taxpayers. In its judgment of 19 April 2018 (Provincial Administrative Court in Warsaw; case file No. III SA/Wa 2037/17), the court concluded that the mere fact of conducting tax-beneficial activities is not sufficient to recognise the apparent nature and must not be based on a presumption of the tax authorities, but on the appropriate evidence at hand. Equally, the Supreme Administrative Court in its judgment of 26 January 2018 (case file No. II FSK 112/16) noted that the tax authorites have no power to challenge the transaction, even in case of a transaction aimed at achieving the objective of the tax advantage.

Implementation of the GAAR and taxpayer criminal liability

As the Ministry of Finance indicated, it is allowed to lodge fiscal penal proceedings due to a violation of the GAAR. However, it should be emphasised that the essence of fiscal crimes to be considered as illegal acts is to infringe the law, not by "making use of" it in order to reduce the tax obligation. Criminal proceedings must not be initiated as a result of the authorities' allegation that the mechanism used by a taxpayer is a circumvention of the law. It is crucial to prove the unlawfulness of the taxpayer's action.

PKF Comment

The GAAR may be applicable even if the benefits were a side-effect of planned transactions. It is therefore crucial for taxpayers to carefully analyse the specifics of a planned transaction, including its actual motives and tax effects, taking into account the potential effects that would occur when choosing alternative and available action scenarios. The analysis should be documented, thereby significantly corroborating proof of the taxpayer's intentions, and taken into account both under the GAAR provisions, reporting tax schemes and fiscal criminal liability.

An alternative to mitigate the liability of falling into the scope of the GAAR is to obtain an advance decision for which the interested entrepreneur can apply, setting out the conditions to soothe the effects of tax avoidance. Taking into account the content of the decision, the taxpayer may reverse the effects of tax avoidance by submitting an adjustment to the declaration.

If you believe the above measures may impact your business or require any advice with respect to Polish taxation, please contact Agnieszka Chamera at agnieszka.chamera@pkfpolska.pl or call ***+48 609 331 330****.*

»BACK

Rwanda

Recent tax updates

The Prime Minister's orders relating to the Community Based Health Insurance Scheme subsidies was published in the special gazette on 13 February 2020 and came into force on the same day.

New Directive has introduced a raft of measures to increase funding for the Community Based Health Insurance Scheme

The Community Based Health Insurance scheme (Mutuelle de Sante) is a Government program which promotes Universal Health Coverage by increasing the financial accessibility of health care services.

Through this Prime Minister's order, Rwanda has introduced a raft of measures to increase funding for the Community Based Health Insurance Scheme (Mutuelle de Sante) to supplement the budgetary allocation from the Ministry of Finance and Economic Planning (MINECOFIN). Some of the new sources of funding include a percentage of the fees collected by selected Government Ministries, State Agencies and Local governments.

The more far reaching measures for the private sector are listed below:

Contributor	Contribution rate	Enforcement Agency
a) Employed persons in Rwanda	A contribution equivalent to 0.5 percent of the net salary of employee which is to be collected by the employer and remitted to the Rwanda Social Security Board (RSSB) on a monthly basis starting with the Month of February 2020.	Rwanda Social Security Board (RSSB)
b) Telecommunication companies	A levy of 2.5 percent of the company's annual turnover for telecommunication companies in first and second years after enactment of the order rising to 3 percent thereafter.	Rwandan Utilities Regulatory Authority (RURA)
c) Fuel companies	A levy of Rwf 20 per litre of fuel sold by oil marketing companies.	Rwandan Utilities Regulatory Authority (RURA)
d) Insurance companies	A levy of 5 percent of annual premiums collected by an insurance company in its medical insurance segment	Rwanda Social Security Board (RSSB)

PKF Comment

In our view, this new directive will go a long way in bridging the perennial financing gap that has been a challenge to the sustainability of the Community Based Health Scheme which is part of the broader Government objective of providing Universal Health Coverage for all its nationals. On the downside, we do expect this to have a ripple effect as players in the targeted sectors will see their operational costs increase and subsequently this will be passed on to consumers through increased calling rates, fuel prices and health premiums. Employees working in Rwanda will also see their household incomes decrease marginally.

*For further information or advice concerning Rwanda taxation, please contact Gurmit Santokh at gsantokh@rw.pkfea.com or call +****250 788 454 746*** *and* ***+250 788 386 565****.*

»BACK

South Africa

Tax measures to combat the COVID-19 pandemic

In light of the National State of Disaster and due to the potentially lasting negative impact on the economy, as a result of the national lockdown, government has introduced the following tax interventions to assist with job retention and to assist businesses in financial distress.

Expansion of the employment tax incentive
The Employment Tax Incentive (ETI) currently allows an employer to claim ETI in respect of employees between the ages of 18 and 29 years and who earn remuneration of less than ZAR 6,500.

Before the amendment the maximum monthly ETI claimable per employee was limited to ZAR 1,000 in the first year of employment and ZAR 500 in the second year of employment. ETI could only be claimed for the first 24 qualifying months of the employee's employment contract.

The draft Explanatory Notes on COVID-19 Tax measures recently released by National Treasury proposes the following relief from 1 April – 31 July 2020:

- an increase of the maximum amount of ETI claimable during this four month period for employees eligible under the current ETI Act (those between 18 and 29 years) from ZAR 1,000 to ZAR 1,500 in the first year and from ZAR 500 to ZAR 1,000 in the second year.
- an additional monthly ETI claim of ZAR 500 during this four month period for employees between the ages of:
  - 18 to 29 years who are no longer eligible for the ETI as the employer has claimed ETI in respect of those employees for two years, and
  - 30 to 65 years who are not eligible for the ETI due to their age.

Treasury will accelerate ETI refunds from twice a year to monthly as a means to assist compliant employers from a cash flow perspective. It should be noted that the above ETI relief only applies to employers that were registered with SARS as at 1 March 2020.

Deferral of the payment of employees' tax liability
Employers are required to submit a return (EMP201) and to make payment of PAYE withheld from employees to SARS within seven days after the end of the month for which the PAYE was deducted. Administrative penalties may be imposed for later payment.

The proposal provides the following relief for tax compliant small to medium-sized businesses (annual turnover not exceeding ZAR 50 million) for the same four-month period as referred to in the ETI relief:

- a deferral of payment of 20% of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof
- the deferred PAYE liability must be paid to SARS in equal instalments over the six-month period commencing on 1 August 2020 (first payment must commence on 7 September 2020).

It must be noted that the relief will not be granted where the tax affairs of the employer are not up to date. In particular, this would be the case where the employer has:

- failed to submit any return as required by the Tax Administration Act, for example VAT or Income Tax returns
- an outstanding tax debt, other than an amount owing to SARS:
  - where an instalment payment agreement or compromise agreement is in place
  - where suspension of payment was granted pending the outcome of an objection or appeal, or
  - is less than ZAR 100.

Deferral of the payment of provisional tax liability
Taxpayers are required to estimate their total taxable income for a year of assessment and submit the required provisional tax returns on a bi-annual basis. The first payment, which is 50% of the total estimated liability, must be made within six month after the commencement of the year of assessment and the second payment, which is the total estimated liability reduced by the first payment, must be made by no later than the last day of that year of assessment. Non-compliance can result in SARS penalties and interest.

The proposal provides the following relief for tax compliant small to medium-sized companies (annual turnover not exceeding ZAR 50 million) for a twelve-month period beginning 1 April 2020 and ending 31 March 2020:

- deferral of a portion of the payment of the first and second provisional tax liability to SARS, without the imposition of administrative penalties and interest for late payment of the deferred amount
- The first provisional payment, due from 1 April 2020 to 30 September 2020, will be based on 15% of

the estimated total tax liability, while the second provisional tax payment from 1 April 2020 to 31 March 2021 will be based on 65% of the estimated total tax liability

- Provisional taxpayers with deferred payments will be required to pay the full tax liability when making the third provisional tax payment in order to avoid interest charges (six months after the year end).

The eligibility criteria for individuals carrying on a business have not yet been finalised.

Non-compliant taxpayers will not obtain relief as detailed under the previous heading.

It should be noted that interest and penalties will apply in instances of underestimation of the provisional tax liability.

PKF Comment

*If you believe any of the above measures may impact your business or require any advice with respect to South Africa taxation, please contact Deon van Zyl at deon.vanzyl@pkf.co.za or call **+27 41 398 5600**.*

»BACK

Turkey

Introduction of COVID-19 tax measures

In Turkey, certain COVID-19 tax measures have been introduced, the salient features of which are:

- The filing date for the personal income tax return and the first instalment payment date have been extended until 30 April 2020
- Accommodation tax will be postponed until November 2020 (this was to be applied in April 2020)
- The VAT rate for domestic airline transport will be reduced from the current 18% to 1% for three months
- Payments of withholding tax, VAT and social security premiums from April to June 2020 will be postponed for six months for the following sectors: automotive, cinema/theatre, textile/garment, retail, iron/steel, transportation, logistics, food and drinks, housing, event organisation

PKF Comment

*If you believe any of the above measures may impact your business or require any advice with respect to Turkish taxation, please contact Emrah Cebecioğlu at e.cebecioglu@pkfistanbul.com or call **+90 212 426 00 93**.*

»BACK

Ukraine

COVID-19 measures

Further to the global spread of COVID-19, Ukraine has also put in place quarantine measures.

In order to alleviate the tax pressure on businesses during this tough economic period, the Ukrainian Parliament has adopted several measures aimed at introducing tax benefits (among other things) for citizens and entities during the quarantine. The measures were adopted on 17 March 2020 and came into force on the same date. Measures implemented and aimed at business support during the quarantine are as follows:

- employers are entitled to ask their employees to work remotely from home (if applicable) or to put them on non-paid leave for the entire quarantine period
- establishing liability (both administrative and criminal) for the violation of quarantine measures: penalties ranging from UAH 17,000 (approximately USD 610 or EUR 570) up to UAH 170,000 (approximately USD 6100 or EUR 5700), detention for six months or imprisonment for up to three years
- invoking quarantine as force majeure, entities can now apply to the Ukrainian Chamber of Commerce and Industry for a Certificate of force majeure
- a three month exemption period from import duties and VAT on medicines, medical devices and/or medical equipment needed to prevent the occurrence and spread of COVID-19
- individuals registered as private entrepreneurs, freelancers or farmers are exempt from the mandatory payment of Unified Social Contribution (USC) for the period from 1 March 2020 until 30 April 2020
- Non-residential property – other than land – owned by individuals and legal entities will be exempt from real estate tax for the period from 1 March 2020 until 30 April 2020
- establishing a moratorium on documentary and factual tax audits from 18 March 2020 until 31 May 2020 and on documentary audits on issues concerning USC from 18 March 2020 until 18 May 2020

- non-application of certain tax penalties for infringements committed between 1 March 2020 and 31 May 2020, and non-application of penalties for infringements concerning USC committed between 1 March 2020 and 30 April 2020
- the deadline for filing the 2019 personal income tax return is postponed from 30 April 2020 to 30 June 2020
- deferral of entering into force of the obligation to use the cash register for all entrepreneurs.

PKF Comment

Ukraine have taken their first steps in supporting taxpayers amidst a challenging time of preventing the emergence and spread of COVID-19. These measures are aimed at preventing the global negative economic impact that Ukraine is currently experiencing. However, the business community is awaiting further financial supporting measures from the State during this tough period.

For further information or advice concerning the application of FATCA within Ukraine or any advice with respect to Ukrainian taxation, please contact Sviatoslav Biloblovskiy at s.biloblovskiy@pkf.kiev.ua or Dmytro Khutornyy at d.khutornyy@pkf.kiev.ua or call ***+380 44 501 25 31****.*

»BACK

United Arab Emirates

Updates on economic substance regulations, CbC Reporting, double tax treaties and VAT and excise tax

Economic Substance Regulations (ESR)

- All UAE businesses are required to evaluate whether they are in-scope for the purposes of UAE ESR or not (i.e. required to identify whether they are conducting any of the prescribed Relevant Activities under UAE ESR);
- In case the entity is considered to be in-scope for UAE ESR, the following compliances are required to be made:
  - Information Notification Filing
    - Notify respective Regulatory Authority whether the entity is carrying on prescribed Relevant Activities along with required details
    - Due date for filing this Information Notification is likely to be 31 March 2020 (as indicated by certain Regulatory Authorities in the UAE)
  - ESR Return Filing
    - Entities carrying out a Relevant Activity are required to submit a report to the Regulatory Authority along with required details which include type of relevant activity conducted, amount and type of income, operating expenses, assets, employee information, etc.
    - Due date for filing this Return is 12 months from the end of financial year
- The UAE Ministry of Finance (MoF) has created a separate section on its official website to provide guidance and to facilitate businesses in identifying obligations under UAE ESR. Such section includes various Frequently Asked Questions (‘FAQs’), Relevant Activities summary and ESR flowchart
- Non-compliance with ESR may have adverse consequences ranging from levy of non-compliance penalties to even suspension/cancellation of an entity’s trade licence.

Country-by-Country Reporting

Country-By-Country Reporting (‘CbCR’) requirements in the UAE are applicable to ‘financial reporting years’ starting on or after 1 January 2019. Accordingly, for the financial reporting year starting on 1 January 2019, businesses have filed CbCR notification by the financial year-end as per 31 December 2019 and CbC report (if applicable) for the same is required to be submitted at the latest by 31 December 2020.

Further, Multi National Entities (MNEs) with revenues exceeding the prescribed threshold of AED 3.15 billion (approximately USD 857 million), having an ultimate parent company and/or constituent entities located within the UAE and having financial year-end as per 31 March 2020 are required to make arrangements to comply with the notification filing requirements on or before 31 March 2020.

Double tax treaty UAE-KSA
Double Taxation and Prevention of Tax Evasion Treaty between UAE and Kingdom of Saudi Arabia (KSA), which came into force on 1 April 2019 is now applicable with effect from 1 January 2020. This is the first bilateral tax treaty signed between two GCC member states and incorporates minimum standard provisions of the Multilateral Instrument to prevent Base Erosion and Profit Shifting.

Businesses are recommended to evaluate and review their operating structures in light of the provisions of this newly implemented tax treaty and analyse cross border transactions in order to identify any benefits that can be availed under the said tax treaty.

VAT and excise tax
The UAE Federal Tax Authority ('FTA') has issued several important public clarifications since our last tax update. Some of these updates released recently by the FTA are given below:

Date	Tax	Type of Update	Particulars of Update
November 2019	VAT	User Guide – Updated Version	Clarifications
December 2019	VAT	User Guide – Updated Version	Input Tax Apportionment: Special Methods
January 2020	VAT	User Guide – Updated Version	New Residences VAT Refund User Guide
January 2020	VAT	Public Clarification	Time-frame for recovering Input Tax
January 2020	VAT	Cabinet Decision	Cabinet Decision No. 1 of 2020 on Refund of Value Added Tax Paid on Goods and Services Connected with Expo 2020 Dubai
February 2020	VAT	User Guide – Updated Version	Refund of VAT Paid on Goods and Services Connected with Expo 2020 Dubai
February 2020	VAT	Business Bulletin	Education Sector (Schools and Nurseries)
December 2019	Excise	Public Clarification	Stockpiling of Excise Goods
January 2020	Excise	Public Clarification	Deregistration of Stockpilers
January 2020	Excise	User Guide – Updated Version	Excise Tax Returns User Guide
March 2020	Excise	Public Clarification	Renewal of Designated Zone Registrations

PKF Comment

International tax perspective
Businesses in the UAE are required to undertake the exercise of ESR impact assessments and accordingly, identify the reporting requirements under the new regulations. This new era of periodic reporting and compliances is bound to usher in a busy year for professionals and businesses alike.

VAT & Excise tax perspective
VAT user guides and public clarifications continue to provide valuable guidance in assessing the VAT implications of various transactions and provide further clarity thereon.

Taxable persons registered as Stock Pilers in order to comply with the new excise tax levy on sweetened beverages, sugary drinks and electronic smoking devices and pay Excise tax thereon, were required to deregister as per the provisions of Excise Tax Laws. Non-compliance of such provisions may result in levy of penalties.

Contact us
*For further information or advice concerning taxes in the UAE, please contact Ms. Sarika Dhameja at sdhameja@pkfuae.com or Mr. Chaitanya Kirtikar at cgk@pkfuae.com or Mr. Ronak Desai at rdesaipkfue.com or call **+971 4 3888 900**.*

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United Kingdom

No more late payment interest on interest and royalties paid to EU members where UK tax may be reduced under a treaty

HMRC will no longer charge late payment interest on payments of interest and royalties to EU members where UK tax may be reduced under a treaty.

Current position
Under current UK tax legislation, when UK companies make interest payments to a company or individual resident outside of the UK, they are required to deduct income tax at source at the basic rate (20%) and pay it over to HMRC, unless clearance is obtained from in advance. Royalty payments are also subject to withholding tax, unless there is a reasonable belief that the recipient is entitled to a reduced rate under a double tax treaty – however, unlike interest advance clearance is not required.

Where no advance clearance has been obtained, companies must report and pay income tax to HMRC on a quarterly basis, using a CT61 quarterly return. Interest is charged on any withholding tax not paid under s87 of the Taxes Management Act 1970, from the due date to the date when the tax is paid, or until double tax treaty clearance is obtained from HMRC.

HMRC have previously charged this late payment interest where UK withholding tax should have initially been paid and then refunded under the terms of a double tax treaty.

Going forward

The decision of the Court of Justice of the European Union, in case C-553/16, held that charging default interest on any payments between companies or individuals resident in the EU where withholding tax is reduced under a double tax treaty is in contravention with EU law.

Following this decision, HMRC have updated their guidance such that they will no longer charge late payment interest, even if double tax treaty clearance has not been obtained in advance, where interest and royalties are paid to a company or individual resident in the EU. However, HMRC will continue to impose penalties for failure to submit a CT61 quarterly return.

Where UK taxpayers have already paid late payment interest to HMRC in contravention of EU law, it should be possible to reclaim the amounts paid. It is therefore recommended that UK taxpayers review their records of late payment interest paid in respect of cross-border transactions. However, HMRC have not yet clarified the approach for such claims.

Neither is it clear what impact (if any) Brexit will have on late payment interest charged on EU payments, particularly after the end of the transition period.

For payments to companies or individuals resident outside of the EU, HMRC will continue not to provide relief from the late payment interest charge, even where UK withholding tax may be reduced (or exempt) under a double tax treaty.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Alex Turnbull at alex.turnbull@pkf-francisclark.co.uk or call **+44 (0) 117 403 9800**.*

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United States

Hybrid structures and Limitation on Benefits in U.S. tax treaties

Recently, tax authorities in the U.S. have been paying more attention to the Limitation on Benefits rules in U.S. tax treaties, to make sure that foreign persons are eligible for the tax treaty benefits that they claim to reduce the tax rate on U.S. source income.

U.S. source income such as dividends, interest or royalties which are received by a foreign person are subject to U.S. tax of 30%. A reduced rate may apply subject to certain conditions if there is a tax treaty between the foreign person's country of residence and the U.S.

Limitation on Benefits rules are one of the main requirements in modern tax treaties in determining eligibility for tax treaty benefits. The more complex the foreign structure, the more difficult it can be to determine if the Limitation Benefits provisions are met. Further, if foreign persons operate with transparent entities (such as partnerships) receiving U.S. source income, proving the residency of the ultimate recipient can be challenging for U.S. tax purposes. This impediment can be overcome by making the transparent entity untransparent for U.S. tax purposes (by making a "Check the box" election). However, the use of this hybrid structure requires tax planning in advance to understand the consequences. As a result, it is typically done in the early stage of entering the U.S. market and during the process of registering for U.S. tax purposes.

PKF Comment

*Foreign persons need to be aware that Limitation on Benefits rules in U.S. tax treaties can be complex, in particular when using foreign transparent entities that receive U.S. source income. Challenges can be overcome by careful tax planning in advance. If you believe the above measures may impact your business or require any advice with respect to US taxation, please contact Ralf Ruedenburg at rruedenburg@pkfod.com or call **+1 646 965 7778**.*

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