2020 March

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this first quarterly issue for 2020, 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:

- Interesting Higher Court case law in Belgium
- Transfer pricing developments in the US
- BEPS and international tax developments in Bulgaria, Jersey, the Netherlands, Switzerland and the UAE
- Digital tax in Turkey
- VAT developments in China, Hungary and the UAE
- Double tax treaty updates in Cyprus, India and Ukraine
- Recent comprehensive tax changes in Ecuador, Mexico and Taiwan

We trust you find the PKF Worldwide Tax Update for the first 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 continuing support.

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PKF

Chartered Accountants
& Business Advisers

Belgium

Interpretation of subject-to-tax test of EU Parent-Subsidiary Directive

On 13 March 2019, the Brussels Court of Appeal ruled that the application of Belgium withholding tax (WHT) to a dividend distribution by a Belgium-based company (BelCo) to a Dutch tax resident investment fund comes down to an infringement of EU law. The particularity of this case is that, according to Dutch tax law, this Dutch fund is subject to 0% Dutch corporate income tax. The question hence arises whether the fund satisfies the subject-to-tax condition laid down in the EU Parent-Subsidiary Directive to be eligible for 0% dividend WHT. On this point, BelCo argued before that this subject-to-tax test in essence comes down to a “theoretical taxation” test and not to an “effective taxation test”. If so, the condition is complied with and 0% Belgium dividend WHT applies. Unfortunately, the European Court of Justice disagreed with this reasoning and confirmed in the so-called Wereldhave case (8 March 2017, C-448/15) that the subject-to-tax test is not met when a 0% corporate income tax rate applies. That is why the taxpayer highly welcomed the Brussels Court decision as this EU freedom/non-discrimination argument offers an alternative line of defense to apply 0% Belgium dividend WHT after all. In summary, the Brussels Court believes that the application of Belgium WHT comes down to unrightful discrimination since a Belgium shareholder would be able to credit such WHT whereas the Dutch fund cannot.

PKF Comment

*The subject-to-tax test laid down in the EU Parent-Subsidiary Directive is a complex matter which often gives rise to discussion upon a tax audit or before Courts. The Brussels Court of Appeals decision sheds a very interesting new light on this debate. In summary, this Court decision can be used as a relevant precedent during tax audits or upon other discussions with the tax authorities. 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

Hybrid mismatch rules transposed into Bulgarian corporate income tax law

New legislative changes have been introduced in Bulgarian corporate income tax law transposing EU Directives 2016/1164 (ATAD I) and 2017/952 (ATAD II) into domestic law. The changes are intended to eliminate the following types of hybrid mismatches that may result in:

- A deduction without inclusion, i.e. expenses that decrease the tax base in the taxpayer's jurisdiction without the same being recognised as taxable income in the jurisdiction of the recipient
- A double deduction, e.g. payments that decrease the tax base in the jurisdiction of the taxpayer and in the jurisdiction of the investor.

In case of the above hybrid mismatch situations, the financial result is to be adjusted for tax purposes by the corresponding amounts which would have been treated as taxable income or tax non-deductible expenses. The mismatch rules should be applied depending on various circumstances such as whether the tax result in the other jurisdiction was adjusted due to the hybrid mismatch, stipulations of a Double Tax Treaty defining a different treatment etc.

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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China

Discussion draft on VAT Law

The Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued the 'VAT Law of the People's Republic of China (PRC) (Discussion Draft)' which was released to the public on 20 November 2019 to seek their opinion. The deadline for feedback was 26 December 2019. The current Tentative Regulations on VAT of PRC were issued in 1993 and revised in 2008 by the State Council. Some highlights of the discussion draft on VAT Law are as follows.

Taxpayer

Entities and individuals that conduct transactions with a sales amount reaching the VAT threshold within the territory of the PRC, as well as the consignee of imported goods, shall be regarded as VAT taxpayers.

VAT threshold

The VAT threshold is RMB 300,000 for quarterly sales. If the sales amount does not exceed the threshold, the entity or individual is not considered the taxpayer.

Taxable transactions

Taxable transactions refer to the sale of goods, services, intangible assets, real property and financial instruments. Taxable transactions occurring within the territory of PRC pertain to:

- For the sales of goods: the departure or origin of location of the goods are within China
- For the sales of services and intangible assets (except for the right of natural resources): the seller is a domestic entity or individual, or the services and intangible assets are consumed in China
- For the sales of real estate and the right of natural resources: the real estate or natural resources are located in China
- For the sales of financial instruments: the seller is a domestic entity or individual, or the financial instruments are issued in China.

VAT rate and Levy Rate

- 13% for sales of goods, processing, repair and replacement services, leasing services of tangible movable property, and imports of goods
- 9% for sales of transportation, postal, basic telecommunications, construction services, leasing services of real property, sales of real property,

transfer of land use right, sales or imports of agricultural products

- 6% for sales of services, intangible assets, and financial instruments
- 3% VAT Levy Rate for calculating VAT by way of the simplified tax calculation method

General VAT calculation
VAT Payable = Output VAT of the Current Period - Input VAT of the Current Period

Output VAT = Sales Amount x Applicable VAT Rate

Sales amount refers to the full price charged in a taxable transaction, including all monetary or non-monetary economic benefits and excluding the tax payable.

If the input VAT amount exceeds the output VAT amount in the current period, the difference can be carried forward to the following periods for deduction or refund.

Simplified VAT calculation
VAT Payable = Output VAT of the Current Period

Output VAT= Sales Amount x VAT Levy Rate

PKF Comment

The discussion draft on the VAT law is not a final version and is still seeking public comments. The MOF and SAT will modify the discussion draft law and submit it to the State Council taking into account the comments and opinions. After the State Council has approved the discussion draft law, it will be submitted to the Standing Committee of the National People's Congress (SCNPC). The discussion draft law will then be reviewed, revised and approved by the SCNPC.

The final new VAT Law is widely expected to become effective in the first half of this year.

If you believe the above measures may impact your business or require any advice with respect to China taxation, please contact Jason Li at jason@pkfchina.com or call ***+86 21 6253 1800****.*

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Cyprus

Ratification of protocol on Double Tax Treaty with Ukraine

On 30 October 2019, the Ukrainian parliament approved the ratification of the Cyprus-Ukraine DTT protocol, which was signed in 2015.

The Protocol is now in force and will come into effect from 1 January 2020.

The main amendments effected by the Protocol to the existing treaty cover dividend, interest and capital gains resulting from the sale of shares of immovable property-rich companies.

Dividends

- The withholding tax on dividends remains the same at the rate of 5% on gross dividends if the beneficial owner of the dividends received is a company, which holds directly at least 20% of the capital of the dividend-paying company and it has invested the equivalent of at least EUR 100,000 in the acquisition of the shares or other rights of the dividend-paying company
- In all other cases the withholding tax will be 10% on gross dividends

Interest
The withholding tax on interest is increased from 2% to 5% if the recipient is the beneficial owner of the interest.

Capital Gains
Capital gains derived by a resident of a State from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other State, may be taxed in that other State, subject to certain exceptions, which exceptions include the sale of shares of public companies and gains resulting from a reorganisation. Any other disposal of shares is taxed in the State of the alienator.

It is important to note that Cyprus has managed to secure that if Ukraine entered into a Double Tax Treaty after 2 July 2015 with any country with more beneficial provisions in relation to dividends, interest, royalties and capital gains compared to the Cyprus/Ukraine Double Tax Treaty then the two countries have the right to renegotiate the same exception or reduction in rates.

Double Tax Treaty signed with Andorra

The new treaty was signed by the two states on 3 January 2018 and has entered into force on 11 January 2019 (effective date: 1 January 2020).

It is generally based on the OECD Model Tax Convention. The treaty applies to taxes on income as well as on gains from alienation of movable or immovable property.

The key provisions of the treaty are the following:

Dividend, interest and royalties
Withholding Tax (WHT) rates:

- Dividend 0%
- Interest 0%
- Royalty payments 0%

Capital Gains
Capital gains arising from the disposal of the property is taxed in the country where the property is located.

PKF Comment

Yet another treaty with a jurisdiction which increases the overall number of double tax treaties at quite favorable terms.

*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

Various tax reforms introduced

The law on tax simplicity and progressivity *(Ley Orgánica de Simplificación y Progresividad Tributaria)* was published on 31 December 2019 in the official Gazette. It will be applicable as from that date.

Salient changes can be summarised as follows:

- A temporary corporate income tax will apply to companies with a taxable income that not exceeded USD 1 million during fiscal year 2018. During fiscal years 2020, 2021 and 2022, such companies will be subject to a progressive tax rate of respectively 0.10%, 0.15% and 0.20%
- A simplified tax regime will apply to entrepreneurs and micro-businesses employing between one and nine workers and with annual net sales that do not exceed USD 300,000. Such entrepreneurs and micro-businesses will be subject to a single 2% tax rate to be levied on gross income derived from their activities
- Income tax will be withheld on dividends distributed to non-resident individuals and companies
- Rules establishing the obligation to make income tax advance payments will be cancelled
- Income derived from agricultural activities will be subject to a single tax, with progressive rates ranging from 0% to 1.8% for producers and local merchants, and from 1.3% to 2% for exporters
- Digital services rendered by online platforms and consumed by residents will be subject to VAT
- Specific goods (e.g. fresh flowers, some types of tractors, newspapers and magazines) will be subject to a 0% VAT rate.

Said law also includes:

- Certain amendments to the remittance tax exemptions
- Changes to the consumption tax (ICE) provisions
- Introduction of mechanisms for automatic tax refunds
- Incentives for taxpayers domiciled in certain provinces (e.g. Cañar, Cotopaxi, Bolívar and Chimborazo)

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Ecuador taxation, please contact Edgar Naranjo at enaranjo@pkfecuador.com or call **+593 4 236 7833**.*

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Germany

New reporting obligations for partnerships – Threat of fines

Since 2017, companies in Germany have been obliged to report into the transparency register. The register is intended to make corporate structures publicly accessible and thus helps to prevent money laundering and terrorist financing. A supreme authority of the Federal Republic of Germany recently announced that, in addition to reports into the commercial register, partnerships are obliged to submit further reports to the so-called transparency register.

New reporting obligations
In the opinion of the legislator, the obligation to register a partnership with the commercial register had previously been fulfilled if the guaranteed amount entered into the commercial register and the mandatory contribution agreed in the partnership agreement were the same. On the other hand, the Federal Administrative Office is now of the opinion that the reporting obligation is not fulfilled by the mere entry into the commercial register. This view is justified by the fact that the actual participation quotas cannot be tracked with certainty by inspecting the commercial register. For example, three shareholders could each be entered into the commercial register with a guaranteed amount of EUR 200,000, but the mandatory contribution to the partnership agreement would amount to EUR 30,000, EUR 20,000 and EUR 10,000. Although these cases are the exception, the participation quotas must now be indicated regularly in the transparency register.

Therefore, the legal representatives are now obliged to enter the beneficial owners into the transparency register. The beneficial owner is any natural person who holds more than 25% of the capital shares or more than 25% of the voting rights or exercises control in a comparable manner (e.g. as a managing director).

Required information on shareholders
The following information on the shareholder is to be disclosed:

- first and last name
- date of birth
- place of residence
- amount of capital shares/voting rights
- amount of the mandatory contribution
- function of the exercise of control

The information reported must be updated on an ongoing basis.

Entry into the transparency register
The first step is to register with the transparency register at www.transparenzregister.de. The entries into the register must be made in two steps.

1. enter company
2. register beneficial owners (shareholders)

Both the registration and the entries are free of charge. According to the Federal Office of Administration, higher fines will be imposed from 2020 onwards if the reporting obligation is breached. The missing information should therefore be reported at the earliest opportunity.

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.Ssheffbuch@pkf-wulf.de or call ***+49 711 69 767 238****.*

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Hong Kong

Revised deduction rules for foreign taxes

The Hong Kong Inland Revenue Department ("IRD") has recently revised its Departmental Interpretation and Practice Notes ("DIPN") No. 28, setting out its latest views on the Profits Tax deductibility for (i) foreign taxes paid on specified interest income and gains; and (ii) foreign taxes on gross receipts/income.

Specified interest and gains refer to interest income derived by financial institutions, funds or intragroup business, and gains from disposal or redemption of a certificate of deposit, bill of exchange, or regulatory capital security in certain circumstances. The deduction of the related foreign income taxes will only be allowed if the taxes are of substantially the same nature as the tax (i.e. Profits Tax) imposed in Hong Kong and will be restricted only to jurisdictions with no double tax agreements ("DTA") with Hong Kong. Meanwhile, a tax credit may be claimed for related foreign income taxes paid in DTA jurisdictions.

With regard to foreign income tax imposed by overseas jurisdictions on gross receipts/income (e.g. withholding tax on royalties, licensing fees, service fees and management fees), the IRD has changed its long-established practice of allowing a tax deduction for such overseas withholding tax. The IRD now takes the view that the payment of overseas income tax on a withholding basis is an appropriation of profits and thus not a deductible business expense incurred in the production of generating chargeable profits. However, similar to foreign income taxes on specified interest and gains, a tax credit may be claimed on such withholding taxes if they were paid in DTA jurisdictions and certain requirements are met. Meanwhile, turnover taxes such as goods and services tax (GST) and value-added tax (VAT) will continue to be tax deductible for Profits Tax purposes since they are not computed by reference to profits.

PKF Comment

Taxpayers should note that the change in the IRD's long established assessing practice may have a considerable impact on companies receiving income from non-DTA jurisdictions as neither a tax deduction nor a tax credit will be available for the overseas income tax paid in those non-DTA jurisdictions. Taxpayers with substantial amounts of service fee or royalty income received from overseas are recommended to review their existing business models and seek advice as to whether any restructuring of their cross-border inter-company charging arrangements is necessary.

*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, Candice Ng at candiceng@pkf-hk.com or Jeffrey Lau at jeffreylau@pkf-hk.com or call **+852 2806 3822**.*

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Hungary

VAT rate reduction for commercial accommodation services

The applicable VAT rate for commercial accommodation services will be reduced to 5% as of 2020 instead of the current 18%. The 5% VAT rate will apply to hotel accommodation and similar tourist short-stay accommodation services. The purpose of this measure is to revitalise the Hungarian tourism sector. Similar actions were recently taken by among others Austria, Romania and Slovakia.

To (partly) compensate for the lost Budget revenue, a 4% 'contribution to tourism development' needs to be paid by suppliers of accommodation services as from 2020.

PKF Comment

Although the VAT rate cut might result in a slight price reduction for hotel and other accommodation services, the extent of the reduction will depend on the supplier's specific considerations.

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VAT refund on bad debts

On 24 October 2019, the European Court of Justice ruled (C-292-19, PORR Építési) that article 90 of the EU VAT Directive (2006/112) should be interpreted as allowing the reduction of the taxable amount in cases where the taxable person can provide proof that its claim towards the debtor has become definitively irrecoverable, insofar as this situation does not constitute a case of non-payment capable of giving rise to a derogation from the obligation to reduce the taxable amount of VAT provided for in paragraph of said article.

Further to this ruling, an amendment to the Hungarian VAT Act has been introduced to allow VAT refunds at the level of suppliers in certain bad debt situations. Until now a supplier could not claim a VAT refund if the purchaser had not paid for the taxable goods or services.

The aforementioned amendment, which came into effect as from 1 January 2020, allows for a retroactive reduction of the VAT base when it is proved that the purchaser will not pay the amount owed for the goods and services and that the consequent bad debt is deemed to be unrecoverable.

VAT on bad debts can thus be recovered by way of self-assessment for claims that originated after 31 December 2015 if certain strict conditions are met (for example, prior notification is required to the debtor, the debtor should be an independent taxpayer, the claim expired at least one year ago, the supplier acted with due care while contracting, etc).

PKF Comment

The ECJ case allows for VAT refunds on bad debts, however, special attention is required during the process of self-assessment. Since neither the treatment of B2C transactions nor the statute of limitations are covered in line with the EU VAT directive, the newly enacted provisions seem to leave a certain margin for further improvement.

*For further information or 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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India

Double tax treaty updates and key rulings

Agreement and Protocol between India and Chile

The Union Cabinet chaired by the Prime Minister approved the signing of the Double Taxation Avoidance Agreement (DTAA) and Protocol between the Republic of India and the Republic of Chile for the elimination of double taxation and the prevention of fiscal evasion and avoidance with respect to taxes on income.

Major impacts of the same:

- elimination of double taxation
- clear allocation of taxing rights on matters such as interest, royalties and fees for technical services
- implementation of minimum standards and other recommendations of G-20 Organisation of Economic Co-operation and Development (OECD) Base Erosion Profit Shifting (BEPS) Project
- curbing of tax planning strategies which exploit gaps and mismatches in tax rules by inclusion of Preamble Text, a Principal Purpose Test, a general anti-abuse provision along with a Simplified Limitation of Benefits Clause as per the BEPS Project.

PKF Comment

Chile and India share close economic relations. DTAA between Chile and India is a step in the direction of strengthening the business relationship between the two countries.

Synthesised text of India-Japan tax treaty

The Central Board of Direct has released synthesised texts of the India-Japan Double Taxation Avoidance Agreement (tax treaty), as modified by the Multilateral Convention to implement Tax Treaty Related Measures to prevent base erosion and profit shifting.

The Key changes in the India-Japan tax treaties pursuant to the Multilateral Instrument (MLI) are as follows:

- Article 4: Provisions that provide rules for determining whether a person other than an individual shall be treated as a resident of one of the Contracting Jurisdictions for the purposes of the tax treaty (included in Article 4 of tax treaty)
- Article 6: Preamble language describing the intent of the Contracting Jurisdictions that the tax treaty will not create opportunities for non-taxation or reduced taxation (included in Preamble of tax treaty)
- Article 7: Provisions that deny the benefits under the tax treaty where the principal purpose or one of the principal purposes of any arrangement or transaction was to obtain those benefits (included in Article 27 of tax treaty)
- Article 9: Provisions for taxation on capital gains from alienation of shares or interests of entities deriving their value principally from immovable property (included in Article 13 of tax treaty)
- Article 10: Provisions that deny the benefits under the tax treaty with respect to certain income attributable to a permanent establishment situated in a third jurisdiction (included in Article 27 of tax treaty)
- Article 12: Provisions regarding an agent that is deemed to constitute a permanent establishment (included in Article 5 of tax treaty)
- Article 13(2): Provisions regarding an activity that is deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business (included in Article 5 of tax treaty)
- Article 13(4): Provisions for combining business activities carried on by closely related persons for the purpose of determining whether a permanent establishment exists (included in Article 5 of tax treaty)

- Article 15: Provisions for the definition of a person closely related to an enterprise (included in Article 5 of tax treaty)
- Article 17: Provisions regarding corresponding adjustments to taxation in accordance with arm's length principle (included in Article 9 of tax treaty)

Entry into effect
The provisions of the MLI shall have effect in each Contracting Jurisdiction with respect to the tax treaty between Japan and India.

In Japan:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occured on or after 1 January 2020, and
- with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

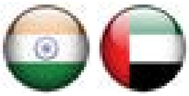
In India:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after the first day of the next taxable period that begins on or after 1 April 2020 and
- with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

PKF Comment

The signing of the MLI represents the dawn of a new era with respect to taxation of cross-border businesses between India and Japan.

Synthesised text of UAE and India tax treaty



The Central Board of Direct has released synthesised texts of the India-UAE Double Taxation Avoidance Agreement (tax treaty), as modified by the Multilateral Convention to implement Tax Treaty Related Measures to prevent base erosion and profit shifting.

The Key changes in the India-UAE tax treaties pursuant to the Multilateral Instrument (MLI) are as follows:

- Article 6: Preamble language describing the intent of the Contracting Jurisdictions that the tax treaty will not create opportunities for non-taxation or reduced taxation (Included in Preamble of tax treaty)
- Article 7: Provisions that deny the benefits under the tax treaty where the principal purpose or one of the principal purposes of any arrangement or transaction was to obtain those benefits (included in Article 29 of tax treaty)
- Article 16: Mutual Agreement Procedure for improving dispute resolution (Included in Article 27 of tax treaty)
- Article 17: Provisions regarding corresponding adjustments to taxation in accordance with arm's length principle (Included in Article 9 of tax treaty)

Entry into effect
The provisions of the MLI shall have effect in each Contracting Jurisdiction with respect to the tax treaty between UAE and India:

In UAE:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occuring on or after 1 January 2020, and
- with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

In India:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after the first day of the next taxable period that begins on or after 1 April 2020, and
- with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

PKF Comment

The signing of the MLI represents the dawn of a new era with respect to taxation of cross-border businesses between India and UAE.

Key Rulings

Bank of Tokyo Mitsubishi Ltd. vs. Commissioner of Income-tax (Income Tax Appellant Tribunal, Mumbai)
As per the provisions of the India- Japan tax treaty, a permanent establishment of a Japanese entity in India cannot be charged tax at a rate higher than comparable Indian taxpayers carrying on the same activities.

PKF Comment

The ruling is in line with the objective of Article 24 of the India- Japan DTAA which stipulates that a permanent establishment cannot be taxed less favourably than the tax levied on enterprises carrying on similar activities in India.

Van Oord India (P.) Ltd. vs. Deputy Commissioner of Income-tax (Income Tax Appellant Tribunal, Mumbai)
Provisions of Transfer pricing do not apply to companies covered under the Tonnage Tax Scheme and paying income tax based on the tonnage of the vessel.

PKF Comment

Companies covered under the Tonnage Tax Scheme in India pay taxes as per the tonnage of the vessel, irrespective of the actual income earned/expense incurred by them. The ruling settles the issue on applicability of transfer pricing regulations to these companies.

However, there is a very high probability that the revenue authorities shall challenge this ruling before the High Court.

If you believe the above measures may impact your business or require any advice with respect to india taxation, please contact Sudha Ashok at sudha.a@pkfindia.in or call ***+91 44 2811 2985****.*

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Jersey

Implementation of mandatory disclosure rules

The States of Jersey gave a political commitment to the EU Code of Conduct Group that it would introduce a mandatory disclosure regime (MDR). This legislation was to be in place by 31 December 2019.

Two models have been proposed:

- The EU model which includes amongst its obligations rules for the reporting of Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Structures
- The OECD model entitled “Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures” (Model Rules)

The second Model is the preferred one.

The Model Rules require disclosure in two areas, i.e. CRS Avoidance Arrangements and Passive Offshore Vehicles in Opaque Structures. The disclosure is required by an Intermediary, i.e. a Promoter or Service Provider. The rules are likely to provide that all tax advisers and entities regulated by the Jersey Financial Service Commission that provide services, should, based on the information they could reasonably be expected to hold, be able to identify a Structure or Arrangement for these purposes.

MDR has had consultation in Jersey with a view to legislation to be introduced shortly.

PKF Comment

It is expected that the MDR based on the OECD model will also be the preference in the other Crown Dependencies and the preferred model because it reflects the international consensus in this area. Also being an OECD product Jersey can take part in discussions as to their future development.

For further information or advice concerning the new MDR in Jersey or any advice with respect to Jersey taxation, please contact Rob Behan at robb@pkfbba.com or call ***+44 1534 858 490****.*

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Mexico

2020 Tax Reform approved and published in the official Gazette

On 30 October 2019, the Mexican Senate approved the final 2020 Tax Reform package, after which it was published in the official Gazette on 9 December 2019.

The Reform does not make any changes to the existing tax rates, but it includes various measures to tackle tax avoidance and/or evasion, based on the recommendations of the OECD under the BEPS action plan. Most of them were expected to become effective on 1 January 2020.

The most important measures, among others, are as follows:

- **Restrictions on tax deduction to net interest**
  Limitation of the tax deduction up to the amount determined by applying a 30% rate on 'adjusted tax profit' (i.e. tax profit less accrued interest and tax depreciation). This is in accordance with the recommendation established in action 4 of the BEPS project.

  The limitation is applicable when the non-deductible interest calculated under this new rule exceeds the one calculated under the thin cap test (3:1 debt-to-equity ratio), otherwise, thin cap rules will apply. The non-deductible net interest can be carried forward for up to 10 fiscal years.

  It is important to mention that this limitation does not apply to the first MXN 20 million of accrued interest, among others exceptions, and, in case of group entities, the calculation of the limitation will be made on a group basis.

- **Non-deductible payments through hybrid arrangements**
  Hybrid arrangements involve the use of entities, instruments, agreements or payments that result in a deduction in Mexico and no or only partial taxation at the level of the non-resident counterparty. Following up to action 2 of the BEPS project, payments related to hybrid arrangements and considered subject to tax in a tax haven will be non-deductible.

  Also, payments made to dual residents and to non-residents with a PE in Mexico will be non-deductible, unless thety recognise and accrue the income generated in Mexico in the other state.

- **Expansion of the PE definition in Mexican Income Tax Law**
  According to action 7 of the BEPS project to counter strategies used to prevent the existence of PE, including through agency oy commissionaire arrangements.

- **Taxation of foreign entities that provide digital services in Mexico**
  Residents and non-residents with or without a PE in Mexico that provide online intermediation services between sellers of goods or service providers and customers, as well as entities that provide, directly or indirectly, the use of online applications will be required to withhold income tax and VAT from individuals resident in Mexico who use those applications to facilitate the sale of goods or the provision of services, including lodging. This reform includes some tax obligations for these intermediaries and online platform operators.

The 2020 Mexican Tax Reform also includes other important changes or additions to various other Tax Laws, of which you will find a summary hereafter.

Income tax

- **Foreign legal vehicles and foreign transparent entities.**
  These types of entities will be treated as separate legal entities that are subject to tax in Mexico. They could also be treated as Mexican tax residents subject to tax in Mexico if their business is primarily managed and controlled in Mexico. Mexican residents will have to pay tax on income generated in proportion to their participation in such entities even if the income is taxed abroad. After a transition period, this regime will apply as from 1 January 2021.

- **New rules for private equity firms investing in Mexico**
  Those that are considered transparent in their country of residence and invest in Mexican resident corporations will be treated as transparent for Mexican income tax purposes. This only applies with respect to dividends, interest, capital gains and income real estate leases, and as a result such income will be deemed to flow through to investors. The Reform establishes some requirements needed to qualify for flow-through treatment. These rules will apply as from 1 January 2021.

- **Foreign tax credit for dividends**
  The indirect foreign tax credit is disallowed if the non-resident payer can claim a deduction for the dividends paid. A direct foreign tax credit could be disallowed if the tax is creditable in another country or jurisdiction, unless the credit derives from an indirect foreign tax credit or is also taxed as income in that other Country or jurisdiction.

- **Maquiladora (IMMEX) shelter programs**
  The current rules for maquiladora shelters (Mexican companies providing contract manufacturing services to multiple unrelated entities) will be made permanent. The four-year period under which foreign residents could operate through shelters without triggering a PE in Mexico is repealed. Foreign residents will therefore no longer trigger a PE while operating

through shelters. Maquiladora shelters must identify the operations performed by foreign residents and determine the taxable profits corresponding to each of them, through the application of safe harbor rules or by obtaining an advanced pricing agreement (APA), which will be subject to the 30% corporate income tax rate applicable to Mexican entities.

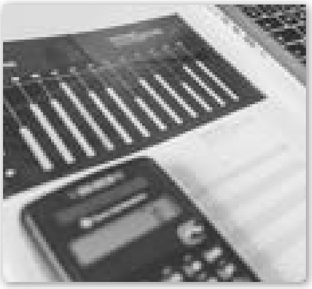
Federal Tax Code

- **General anti-avoidance rule**
  Added to the FTC, seeks to identify the economic substance for transactions that generate a tax benefit to prevent fictitious operations from receiving tax benefits as well as the erosion of the tax base that they generate.

- **Reporting of tax planning arrangements.**
  Mandatory reporting of certain tax planning arrangements was introduced. Tax advisors are obliged to register and report certain tax planning arrangements to the tax authorities. In certain instances, the taxpayer itself is required to report these arrangements. Reporting a transaction shall not imply that the tax authorities either approve or reject the transaction.

These rules will become effective on 1 January 2021. Reportable tax arrangements will include those designed, commercialised, organised, implemented or administrated as from 1 January 2020 or older that have an impact as from such date.

PKF Comment



Taxpayers in Mexico conducting operations with both domestic and foreign related parties should take into consideration that the Mexican tax authority may request them to demonstrate the economic substance that supports the validity of such operations. Therefore, PKF Mexico takes special care in its planning, analysis and documentation in order to fully comply with the regulatory legal framework.

*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 Jimy Cruz at jimy.cruz@pkf.com.mx or call **+52 (33) 3122 2081**.*

»BACK

Netherlands

Introduction of withholding tax on interest and royalty payments

As of 1 January 2021, a withholding tax of 21.7% (highest rate of corporate income tax in 2021) will be introduced on interest and royalty payments distributed by entities established in the Netherlands to affiliated entities established in low-tax jurisdictions (i.e. with a tax rate of less than 9%) and jurisdictions included in the EU list of non-cooperative jurisdictions for tax purposes. Each year the State Secretary for Finance prepares a list of countries that have low tax regimes or are non-cooperative for tax purposes. This blacklist currently includes: American Samoa, Anguilla, Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Cayman Islands, Guam, Guernsey, Isle of Man, Jersey, Kuwait, Qatar, Samoa, Saudi Arabia, Trinidad and Tobago, Turks and Caicos Islands, Vanuatu, United Arab Emirates and United States Virgin Islands.

The withholding tax will also be levied if the interest or royalty payment is non-deductible in the Netherlands. If the withholding tax is not collected or recovered, then grossing up will be necessary. If, for example, 100 worth of interest is paid to an affiliated entity in Saudi Arabia and no withholding tax is collected, the Dutch entity would have to pay more than 27.7 of withholding tax (127.7 – (127.7 * 21.7% withholding tax) = approximately 100 net). For the sake of completeness, it should be noted that the withholding tax is not deductible.

The definition of interest in this regard is quite broad. It also includes costs relating to loans, such as arrangement fees, financing costs, intermediation costs, costs of preparing the loan agreement, handling fees, underwriting commissions and default interest. If no arm's-length interest rate is calculated, the tax will be levied on the adjusted arm's-length interest rate. Accumulating interest is also covered by this withholding tax. Financial lease and hire purchase agreements also fall within the scope of the withholding tax.

The term royalty payments includes payments for the use of, or for the right to use, copyright on a literary, artistic or scientific work – including cinema films and software – a patent, an industrial or commercial trade mark, a drawing or design, a plan or a secret formula or process. Payments for information regarding experience in the field of industry, trade or science are also covered by the concept of royalty payments.

A royalty payment will often be in the form of a periodic payment where the amount of the payment depends on the extent of the actual use of the property or rights mentioned above. A one-off payment is also a royalty payment if it applies to the use of the property or rights mentioned above and is not a payment for the acquisition thereof.

The withholding tax applies only to interest and royalty payments distributed to affiliated entities established in blacklisted countries. In this context, affiliated is understood to mean that one entity can – directly or indirectly – exercise such a decision-making influence that this can determine the activities of the other entity. In any event, this is the case if the direct or indirect interest represents more than 50% of the statutory voting rights. The entities are also affiliated if the Dutch entity and the entity established in a blacklisted country have a joint parent company. If there is a group of companies that, individually speaking, does not have a qualifying interest but that have made a coordinated investment in cooperation with one another, the entity in which the investment was made and the entities forming part of the cooperating group are affiliated.

The tax liability applies primarily to direct payments made to affiliated entities established in blacklisted countries. However, the withholding tax also needs to be levied in the case of payments to entities that are not established in a blacklisted country but that allocate interest or royalty income to a permanent establishment in a blacklisted country. The withholding tax will also need to be collected in the case of artificial structures with intermediaries that are designed to avoid the withholding tax.

PKF Comment

Many Dutch companies conduct business in countries which are on the blacklist even though they are not considered tax havens. This includes countries like Kuwait, Qatar, Saudi Arabia and the United Arab Emirates. It is recommended to quickly review the direct or indirect payments to affiliated entities in those countries in order to avoid the need to deduct a withholding tax of 21.7% as of 1 January 2021.

For the sake of completeness, the measure also applies when the paying entity and the receiving entity have a real presence – sufficient substance – in the Netherlands and the other country, respectively.

»BACK

Developments on anti-abuse law

Currently, certain anti-abuse provisions under the corporate income tax and dividend tax regimes include so-called substance criteria that function as a safe harbour. Under the influence of EU law, it is now proposed to introduce a rebuttal scheme for the tax inspector when these measures come into play. This would mean that the inspector is able to demonstrate that there is indeed abuse even if the substance criteria have been met. The anti-abuse provision would then also apply in these cases. On the other hand, the taxpayer would also be able to demonstrate that there is no abuse even if the substance criteria have not been met. These measures came into effect on 1 January 2020.

»BACK

Corporate income tax rate reduction

In 2019, the corporate income tax rate was reduced by means of the Business Sector Act 2019 (Wet bedrijfsleven 2019). In 2019, the low rate on profits of up to EUR 200,000 was reduced from 20% to 19%. The high rate for profits of EUR 200,000 or above remained at 25%, but was intended to be reduced in subsequent years. In the Tax Plan 2020, it has now been announced that contrary to previous announcements, the high rate will not be reduced in 2020. In addition, the Cabinet is proposing to reduce the high rate of corporate income tax in the structural situation by 1.2 percentage points less. From 2021 onwards, the high rate will become 21.7%, instead of the 20.5% previously announced. The low rate will fall to 16.5% in 2020 and to 15% in 2021. Summarised, this would give the following rates:

Year	Taxable amount	Rate	Taxable amount	Rate
2019	€0 – €200,000	19.0%	> €200,000	25.0%
2020	€0 – €200,000	16.5%	> €200,000	25.0%
2021	€0 – €200,000	15.0%	> €200,000	21.7%

PKF Comment

The phased corporate income tax rate reduction means that it may be attractive to postpone profits and bring costs forward (while remaining within the parameters of the tax system, of course). The changes may also affect the tax position in the annual accounts for 2019.

*If you believe the above measures may impact your business or require any advice with respect to Netherlands taxation, do not hesitate to contact Huub Nacken at huub.nacken@pkfwallast.nl or call **+31 10 450 40 20**.*

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Poland

Tax on income from buildings in Poland hits the hotel industry - controversy and disputes with tax authorities

As from 1 January 2019, all buildings, regardless of their classification, i.e. shopping malls, commercial real estate, office buildings, hotels, multi-storey car parks, halls, warehouses, etc. located in Poland, provided they generate revenue from rent, lease or other agreements of a similar nature are subject to a minimum tax on income from buildings.

Scope of taxation

Income tax on income from buildings that:

- are owned or co-owned by the taxpayer
- have been put into use in full or in part on the basis of a lease, tenancy or other similar contract.

Controversy

The purpose and justification of the Ministry of Finance to introduce a minimum tax was to counteract aggressive tax optimisation used by international companies investing in the commercial real estate market in Poland, e.g. shopping malls, office buildings.

It should be emphasised that, in contrast to the literal wording of this tax regulation, according to the tax authorities, entities deriving profits from lease contracts, lease of commercial buildings, including the provision of a hotel or other building of a similar nature as part of the provision of hotel, accommodation or short-term accommodation services, meet the conditions of taxation regarding building tax and are therefore subject to taxation.

The extended interpretation of the tax law provisions in this respect has caused uncertainty for taxpayers about the scope of taxation, including the lack of clear criteria as to the calculation of the tax base. Classifying hotel contracts as rental, tenancy or other similar contracts is unfounded and not supported by any legal basis. The lease agreement stipulates that the owner gives the tenant the item for use for a fixed or indefinite period, and the tenant pays the rent to the owner. In the case of buildings, the rent is a fee for using a specific area, while the hotel guest pays for the reservation service, reception staff, room cleaning, meals, use of the swimming pool, gym, parking lot, so (s)he is not and cannot be treated as a tenant . (S)he only uses the mere surface of the room. It is therefore unreasonable to assume that (s)he is renting the building or part of it.

Agreements similar to lease or tenancy agreements include, according to legal doctrine, lending or leasing agreements. However, the hotel owner does not lend reception services, nor does he ‘lease’ the swimming pool, and the use of common areas of the hotel does not constitute the commissioning of said hotel for any arbitrary use by the customer.

The application by the tax authorities of a broad interpretation of regulations resulted in an increase in individual interpretations put forward by taxpayers, but unfortunately the tax authorities have not changed their mind, which in turn translated into an increase in disputes with the tax authorities and lodging appeals regarding unfavorable interpretations before administrative courts.

The tax base

The tax base is the sum of revenues from individual buildings, reduced by PLN 10 million, regardless of the number and value of buildings owned by the taxpayer. Revenue is defined as the initial value of the building resulting from the records kept.

PKF Comment

The adoption of an expanding interpretation of the tax law provisions, which is inconsistent with the burden and purpose of the tax law, is unacceptable and constitutes a violation of the principles of a democratic state of law expressed in the Polish Constitution, which is why PKF Consult Polska recommends submitting applications to the Polish tax authorities for an individual interpretation and defense of the position before an administrative court.

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

New Tax Procedures Law

The new Tax Procedures Law, officially known as Law No. 026/2019 of 18 September 2019 on Tax Procedures was published in the official gazette on 10 October 2019 and came into force on the same day.

This new law repeals the previous Law No. 25/2005 of 4 December 2005 on Tax Procedures which had been in force since 2005. The following are the major changes brought about by the new law.

Electronic addresses and communication

The new law now recognises a taxpayer's electronic addresses as an official address for purposes of correspondence. As a consequence, electronic communication e.g. e-mail will henceforth be considered an official communications channel.

Where the law provides for a time limit within which certain acts or communications have to be made or delivered, the time is calculated from the date following the day on which the electronic message is delivered to a taxpayer's official electronic address.

PKF Comment

In our view, this will simplify communication between taxpayers and the tax administration.

Electronic invoicing

The new law has extended the mandatory use of an electronic invoicing system to all taxpayers. This has until now been a requirement for VAT registered businesses only.

PKF Comment

This move is aimed at deepening the tax net by improving visibility into transactions carried out by resident businesses. It is also aimed at curbing tax evasion.

Extension of tax declaration deadline

A taxpayer may request the Commissioner General for an extension of a tax declaration deadline. The request must be submitted at least 15 days prior to the deadline date and on his part, the Commissioner General is required to give a response which might be positive or otherwise but within 10 days after receipt of the request.

PKF Comment

The process of seeking extension has now been clearly defined but on the downside, it is important to note that the extension, if granted, only prevents fixed fines for non-declaration but does not protect the taxpayer from late payment fines and interest.

Tax assessments, audit and investigations

The new Law provides that a taxpayer can only be audited once by the Tax Administration for each type of tax with the following exceptions:

- Complicity between taxpayer and tax auditors with the intention to not pay tax
- If the first audit was based on forged documents
- In case of a comprehensive audit where the first was issue-oriented
- Where the Commissioner General cancels the first audit

PKF Comment

In our view, this provision creates some desired level of certainty for taxpayers with regard to matters of audits and assessments.

Settlement of tax disputes

The dispute resolution procedure has remained relatively unchanged but the articles on the amicable settlement and judicial appeal procedures are much clearer than before where there was a grey area with regard to initiation of judicial appeal in the event that both parties fail to reach an amicable solution.

PKF Comment

In our view, taxpayers now have the opportunity to exhaust all tax dispute settlement mechanisms before proceeding to court.

Tax recovery

The new law has gone a long way in enhancing the legal power of the tax authority to recover tax arrears which might have far reaching implications on taxpayer properties, debtors and bankers, directors and shareholders involved in Management and Tax agents.

However, it is not all doom and gloom as there are some positive developments as well. These include:

- Waiver of tax, interest and penalties in case of considerable financial difficulties. However this can only be granted by the minister in consultation with the Tax Policy Committee and in cases of waiver of principal, a cabinet decision is required.
- Introduction of a statute of limitation rule on the tax recovery power of the Tax Administration for taxes not recovered within a period of 10 years
- The extension of installment payment period from 12 months to 24 months
- Writing off of tax arrears in the event that a competent court declares a taxpayer insolvent or if the tax administration has exhausted all legal means to recover the tax arrears

PKF Comment

In our view, there are equally positive and adverse implications for both the tax administration and taxpayers in Rwanda.

Penalties and interest on late payment

In perhaps one of the most ground shifting developments, the new law has overhauled the previous administrative fine regime in a move that will come as a huge relief to most taxpayers.

PKF Comment

The tax penalty regime in Rwanda has previously been criticised for being too punitive and we find it encouraging that not only have the penalties been drastically reduced but also the severity of the penalties is pegged to the time period within which a taxpayer remains in tax default. This is especially beneficial to businesses that inadvertently default on tax payment due to short-term cash flow challenges.

Tax Policy Committee

The new law has introduced a Tax Policy Committee. The Minister of Finance is expected to give further direction on the roles and responsibilities of this Committee by way of a Ministerial order.

PKF Comment

This will go a long way in making the legal tax framework in Rwanda more robust in the coming years.

*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

Sweden

Transposition of DAC6 Directive

Background

The DAC6 Directive has been in force since 25 June 2018. The initial suggestion on how to implement the Directive in Sweden was presented by a Committee of Inquiry appointed by the government, on 19 January 2019 (SOU 2018:91). The suggestion contained several proposals in line with the Directive, but also some that were unexpected. What caused the strongest reactions was the recommendation to extend the disclosure obligations to include national (Swedish) arrangements. Furthermore, the proposal caused a certain degree of frustration due to the ambiguity that existed around several of the concepts central to the reporting obligation. Finally, the penalty system linked to the reporting obligation caused a minor shock. Non-compliance was proposed to cause penalties up to SEK 500,000 if reporting is not done within 30-60 days from an indefinite point in time. The penalty should apply per arrangement.

The Swedish Ministry of Finance referred the report to several bodies at the end of January 2019 for consultation. All responses had been received on 24 April 2019. Since then, we have waited impatiently for the government to publish the legislative proposal, which was released on 6 December 2019.

The legislative proposal will be examined by the Council of Legislation and then the government will present a bill to the Swedish Parliament. The provisions are proposed to enter into force on 1 July 2020.

PKF Comment

Our initial analysis of the legislative proposal is that it offered some surprises, but most were positive. The parts that are particularly worth commenting on are - the extension of the scope, the penalty system and the extensive ambiguity.

The scope

We note that the criticism from the referral bodies about the scope has been considered by the government. The previous proposal that certain arrangements should be reported even if they took place within Sweden is no longer included in the bill. However, the government states that the Government Offices are continuing to work on the issue of national events. We will see if national arrangements once again become a legislative matter.

The penalties

Regarding the system to ensure compliance with the rules to the maximum extent, there have been changes in the level of the penalty charged for failure to comply with disclosure obligations. The way the penalty is charged has also changed. Previously, it was proposed that an initial penalty of SEK 15,000 for advisers and SEK 7,500 for users would be charged if reporting was not received within 30 days. This penalty remains unchanged in the legislative proposal. It was previously suggested that a maximum penalty of SEK 500,000 for advisers and SEK 250,000 for users would be charged if reporting was not received within 60 days. This maximum penalty is reduced to SEK 150,000 for advisers and SEK 75,000 for users.

A new penalty is introduced that aims to create incentives to report even though the 60 days have passed. If reporting is done voluntarily after the 60 days have passed, the maximum penalty will increase to SEK 165,000 (the sum of penalties one and two). If the Swedish Tax Agency finds that reporting has not been done, this discovery will result in an additional penalty of SEK 150,000 for advisers and SEK 75,000 for users. The total maximum penalty then amounts to SEK 315,000 for advisers and SEK 157,500 for users, per unreported arrangement. The idea of a third penalty that can be avoided with self-correction is welcomed positively. The fact that the total maximum penalty is lowered is also welcome.

The ambiguity

What many find troublesome around the proposed reporting obligation is not that aggressive tax arrangements should be reported. Instead, the combination of unclear rules, short deadlines and high penalties created frustration when the proposal was released. Unfortunately, the legislative proposal does not provide a clear answer to some pivotal questions: what is an arrangement, how should the different characteristics be interpreted, what is a tax benefit and who should report when several advisers are involved in the arrangement? In this respect, the legislative proposal offered neither positive nor negative surprises.

PKF Comment

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»BACK

Switzerland

TRAF implementation: ordinances enter into force on 1 January 2020

During its meeting on 13 November 2019, the Federal Council approved three ordinances to the Federal Act on Tax Reform and AHV Financing (TRAF). These amendments concerning the tax component entered into force on 1 January 2020:

- The Ordinance on the Reduced Taxation of Profits from Patents and Similar Rights (Patent Box Ordinance) mainly governs the application of the OECD standard for patent boxes. In addition, it contains further details on the calculation of profits from patents and similar rights.
- The Ordinance on the Tax Deduction for Legal Entities' Self-Financing. With the deduction for self-financing, imputed interest on a portion of equity capital may now be deducted from taxable profit.
- The Ordinance on the Recognition of Foreign Withholding Taxes (formerly the Ordinance on Flat-Rate Tax Credits) governs how non-recoverable foreign withholding taxes on dividends, interest and royalties are taken into account for taxes owed in Switzerland.

The three ordinances were generally accepted during the consultation process. Accordingly, the Federal Council made only minor changes to the ordinances relative to the consultation draft.

PKF Comment

PKF Zurich is following the reform process closely, both from a political and an economic perspective. Our experts are able to provide you with regular and comprehensive insights into the current discussions. Should you wish to discuss and review how the TRAF measures impact the tax planning setup of your group in Switzerland, please contact us.

»BACK

Exchange of information with 75 countries on around 3.1 million financial accounts

Switzerland has committed itself to adopting the global standard for the international automatic exchange of information in tax matters. The legal basis for the implementation of the automatic exchange of information (AEOI) in Switzerland came into force on 1 January 2017.

Following the first exchange last year, the Federal Tax Administration (FTA) has exchanged information on financial accounts with 75 countries. Identification, account and financial information is exchanged, including name, address, state of residence and tax identification number, as well as information concerning the reporting financial institution, account balance and capital income. The exchanged information allows the cantonal tax authorities to verify whether taxpayers have correctly declared their financial accounts abroad in their tax returns. The exchange took place within the framework of the global standard on the AEOI. Next year, Switzerland's network of AEOI partner states will expand further, to around 90 countries.

PKF Comment

PKF Zurich's dedicated professionals would be more than pleased to provide you with comprehensive insights into the current discussions. Should you wish to discuss and review how the international automatic exchange of information in tax matters impacts your Swiss tax position, discuss the necessity and/or possibility to file a self-disclosure respectively the Swiss tax planning setup, please contact us.

For further information or advice concerning TRAF, AEOI or any advice with respect to Swiss unilateral and international taxation, 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

Taiwan

New tax rules on repatriated offshore Taiwanese capital and funds

The 'Management, Utilization, and Taxation of Repatriated Offshore Funds Act' was officially announced on 24 July 2019, entered into forced by the Executive Yuan on 15 August 2019 and will be in operation for the coming two years. Its background and highlights are summarised as follows:

Background

Due to the trade war between China and the U.S., some Taiwanese enterprises that were investing in China have gradually retreated from there. In order to encourage these Taiwanese enterprises to repatriate their capital back to invest in Taiwan, the Minister of Finance, Minister of Economic Affairs and Minister of Justice as well as the Financial Supervisory Commission worked together to draw up the 'Management, Utilization, and Taxation of Repatriated Offshore Funds Act' to provide tax incentives for those repatriations of capital. This set of special regulations has been officially announced in July 2019.

Scope

- Capital/funds of individuals remitted from abroad, including mainland China
- Investment profits of for-profits enterprises that are delivered and remitted from their investee enterprises located overseas, including mainland China, and over which they have control or material influence.

Procedures and prohibition

Individuals and for-profit enterprises should apply for approval from the competent tax authorities for this set of regulations to be applied to them. Only when the aforementioned approval is granted can an applicant open a ‘segregated foreign exchange deposit account’ and subsequently remit the funds to Taiwan and deposit them on this segregated account. The funds repatriated back to Taiwan are allowed to be used for building or purchase of constructions for self-production or for sales operations. However, those funds are prohibited to be used for the purchase of real estate, stocks and bonds issued or provided based on ‘Clauses of the Real Estate Securitisation Act’.

Taxation

For those who choose to be taxed based on this set of special regulations, the tax payable will be withheld from the funds that are remitted into their segregated accounts by the bank in charge. The tax rate for funds is as follows:

- For the first year from the enforcement of this Act, the tax rate will be 8%
- For the second year from the date following the last day of the first year from the enforcement of this Act, the tax rate will be 10%.
- For those who complete their actual investments within the designated time frame and obtain a certificate of completion from the Minister of Economic Affairs, applications for a 50% refund of the tax paid can be submitted to the competent tax authority-in-charge, i.e. the actual tax rate may be 4% or 5% respectively.

PKF Comment

This Act will only be in play for a limited period of time, which is like a tax amnesty, so the utilisation of funds repatriated is constrained. If the utilisation is not in compliance with the related regulations, the repatriated funds will still be subject to the original tax rate, which is 20% in total. Whether it is necessary to repatriate funds within the period limited by this Act has to be taken into careful consideration. If so, it is recommended that thorough planning for investment and evaluation for feasibility is conducted well in advance.

»BACK

Amendment to the Income Tax Act

An amendment to the Income Tax Act was passed in July 2019, through which two options are given for deduction purposes when salary/wage income is calculated: (i) deduction of a fixed amount and (ii) deduction of specific expenses. Individuals are free to choose an option to their preference. Regarding the deduction of a fixed amount, it concerns the current ‘special deduction of income from salaries/wages’ (for the year 2019, the amount eligible for deduction is TWD 200,000). If the said deductible expenses exceed TWD 200,000, the amount of the specific expenses - subject to verification - can be deducted from salary/wage income.

Specific expenses subject to verification that are considered deductible include expenses: (i) for special outfits for vocations, (ii) for professional training lessons, and (iii) for purchase of professional equipment. However, expenses deductible for each of the three categories above are limited to 3% of an individual’s annual salary/wage income. And those specific expenses, subject to verification, must be in compliance with the following four principles:

- the expenses should be necessary and directly related to the provision of services
- the expenses should effectively be paid by the individual taxpayer
- the amount of expenses must be material
- the total amount of expenses of each of the three categories mentioned above allowed to be deducted from salary/wage income is limited to 3% of the applicant’s annual salary/wage income.

PKF Comment

This amendment resulted from a judgment by the Constitutional Court in 2017 ruling that regulations of the Ministry of Finance related to people’s filing of salary/wage income violate the constitutional principle of equality. The Court demanded related regulations to be amended within a limited period of time. However, in reality, “deduction of specific expenses” might be beneficial only to people who work in certain industries.

»BACK

Amendment to Statute for Industrial Innovation

An amendment to the Statute for Industrial Innovation was passed in July 2019. Based on the filing of additional corporate income tax for undistributed earnings of 2018; if a company or an entity with limited partnership invests a certain amount of its undistributed earnings to construct or purchase buildings, software or hardware equipment or technologies for self-production or operation

necessary for operating its main business or ancillary business within three years from the year that generated such earnings, the invested amount can be deducted from the undistributed earnings when calculation is made for additional corporate income tax to be levied on undistributed earnings under the Income Tax Act for the current year.

PKF Comment

The additional corporate income tax is levied at the rate of 5%, so it would be beneficial for the taxpayer if the abovementioned amendment applies.

If you believe the above measures may impact your business or require any advice with respect to Taiwan taxation, please contact Ronnie Chang at rc@pkf.com.tw or call ***+886 2 8792 2628****.*

»BACK

Turkey

Introduction of digital services tax and various recent tax amendments

With the "Law on amendment of digital services tax law and various laws and Decree Law No. 375", numbered 7194 and published in the Official Gazette on 7 December 2019, the Digital Services Tax Law was introduced and certain regulations to new taxes and amendments to current taxes were also passed. A number of salient changes can be summarised as follows:

Digital services tax
Sales of all kinds of advertising services and any audio, visual and digital contents offered on the digital platform in Turkey and revenue from other services specified in the law are subject to the digital services tax. The rate of digital services tax is 7.5%.

With respect to digital services, those digital service providers generating a revenue not exceeding TRY 20 million from Turkey or EUR 750 million Euros or the equivalent amount in Turkish Lira globally, in the previous accounting period, are exempted from digital services tax. If both of the aforementioned thresholds are exceeded within the relevant accounting period, the exemption does not apply and the digital services tax liability takes effect as from the fourth taxation period following the taxation period in which the thresholds are exceeded. If the taxpayer is a member of a consolidated group with respect to financial accounting, the total revenue generated by the group for services falling within the scope of the digital services tax will be taken into consideration.

The digital services tax paid by the digital service providers can be deducted as an expense for the determination of the actual net income based on the income and corporate tax.

The digital services tax will enter into force as from 1 March 2020.

Adjusted income tax brackets
With the introduction of a new income tax bracket, they can now be summarised as follows.

Income other than salary (TRY)	Rate (%)
0 - 18,000	15
18,000 - 40,000	20
40,000 - 98,000	27
98,000 - 500,000	35
above 500,000	40

Salary income (TRY)	Rate (%)
0 - 18,000	15
18,000 - 40,000	20
40,000 - 148,000	27
148,000 - 500,000	35
above 500,000	40

Accommodation tax
A new 2% tax will be introduced on accommodation services rendered by hotels, motels, holiday resorts, guesthouses and the like. It will start to apply as from 1 April 2020 while the tax rate stays temporarily reduced to 1% until 31 December 2020.

Additional property tax

As from 2020, an additional property tax will be introduced with respect to residential houses located in Turkey with a value exceeding TRY 5 million. The tax rates vary depending on the value of the property as follows.

Property value (TRY)	Rate (%)
from 5 million to 7.5 million	0.3
from 7.5 million to 10 million	0.6
above 10 million	1

The taxable base is the residential property's value for real estate tax purposes, or the valuation made by the General Directorate of Land Registry and Cadastre, whichever is higher. The tax is levied by way of self-declaration through an annual filing in February of every year.

Foreign exchange tax

The foreign exchange tax is doubled from 0.1% to 0.2% and the President is given the authority to raise it to 10 times that amount.

This measure entered into force on 7 December 2019.

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**.*

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Ukraine

Ratification of double tax treaties and FATCA

In autumn of 2019, the Verkhovna Rada of Ukraine (the sole body of legislative power in Ukraine - parliament) has ratified five double tax treaties.

Protocol of amendment to the treaty between Ukraine and Switzerland for the Avoidance of Double Taxation and Prevention of Tax Evasion with respect to taxes on income and capital, signed on 24 January 2019 in Davos (Switzerland).

Changes provide:

- withholding tax rate on interest is decreased from 10% to 5%. At the same time, the exemption of interest payable on a bank loan or in connection with the sale on credit of equipment or merchandise is cancelled
- withholding tax rate on royalties is decreased from 10% to 5%. At the same time, the exemption for royalties payable for the use of, or the right to use, any copyright of scientific work, any patent, tradmark, design or model, plan, secret formula or process, or for information (know-how) con¬cerning industrial, commercial or scientific experience is cancelled
- addition of a new article to improve mutual agreement (tax disputes) by arbitration
- introduction of a Principal Purpose Test (PPT) in line with the standards of BEPS Action 6. The PPT will operate to deny treaty benefits where it is reasonable to conclude that "obtaining that benefit was one of the principal purposes" of the associated arrangement or transaction
- clarification on the provisions on exchange of information between the Parties.

The date of ratification is 18 September 2019 (entered into force on 10 October 2019).

Protocol of amendment to treaty between Ukraine and Turkey on Avoidance of Double Taxation and Prevention of Tax Evasion with respect to taxes on income and estate, signed on 9 October 2017 in Kyiv (Ukraine).

Changes provide:

- the list of taxes to which the treaty applies is brought in line with the national laws of the Parties;
- the term «resident» is brought in line with model provisions of OECD Conventions;
- significant expansion of the possibilities of the Parties with respect to sharing tax information without reservations about national requirements of tax interest;
- mutual assistance in recovery of tax arrears.

The date of ratification is 18 September 2019 (entered into force on 5 October 2019).

Treaty between Ukraine and Malaysia on Avoidance of Double Taxation and Prevention of Tax Evasion with respect to taxes on income and Protocol to the Treaty signed on 4 August 2016 in Putrajaya (Malaysia).

Changes provide:

- two separate withholding tax rates for dividends: 5% (if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company) or 15% (in all other cases);
- withholding tax rate on interest will be 10%
- withholding tax rate on royalties and technical service fees will be 8%
- gains from the alienation of shares or participation interest in a company deriving more than 50% of their value directly or indirectly from immovable property situated in the source state may be taxed in that state.

The date of ratification is 30 October 2019 (entered into force on 16 November 2019).

Protocol of amendment to treaty between Ukraine and Cyprus on Avoidance of Double Taxation and Prevention of Tax Evasion with respect to taxes on income signed on 11 December 2015 in Kyiv (Ukraine).

Changes provide:

- reducing the dividend withholding tax rate from 15% to 10% in case the reduced 5% rate does not apply (as before, a 5% rate applies if the beneficial owner holds at least 20% of the capital of the dividend-paying company or has invested in the acquisition of the shares or other rights of the company equivalent of at least EUR 100,000
- increasing the interest withholding tax rate from 2% to 5%.

The date of ratification is 30 October 2019 (entered into force on 26 November 2019).

Protocol of amendment to treaty between Ukraine and the United Kingdom of Great Britain and Northern Ireland on Avoidance of Double Taxation and Prevention of Tax Evasion with respect to taxes on income and property value gain signed on 9 October 2017 in London (United Kingdom).

Changes provide:

- the dividend withholding tax rate will increase from 10% to 15% (as before, the reduced 5% rate applies to dividends payable by a company in which the beneficial owner of the dividends holds directly or indirectly at least 20% of the capital;)
- setting a maximum interest withholding tax rate of 5%
- setting a maximum royalty withholding tax rate of 5%
- enhanced sharing capabilities regarding tax information.

The date of ratification is 30 October 2019 (entered into force on 29 November 2019).

PKF Comment

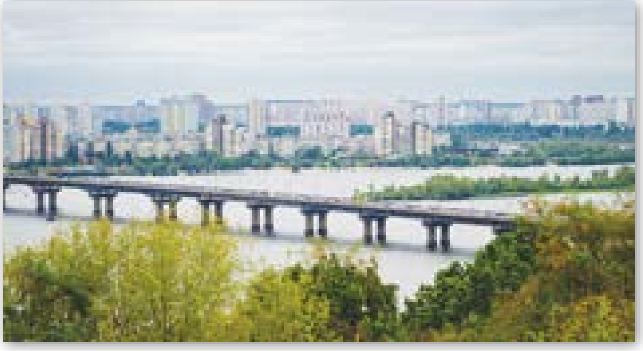
In order to further develop legal relations between the States, there was a need to amend the existing international double tax treaties. At the same time, the treaty and protocol between Ukraine and Malaysia will first of all be to avoid double taxation, but also the prevention of tax evasion and finally the mutual reduction of tax obstacles to foreign investment and trade.

*For further information or advice concerning Ukrainian double tax treaties 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**.*

Ratification of FATCA

On 29 October 2019, Ukraine ratified an Agreement with the United States of America to Improve International Tax Compliance and to Implement FATCA, signed on 7 February 2017 in Kyiv (Ukraine).

Under this Agreement, financial institutions operating in Ukraine will be obliged to identify reportable accounts maintained by US taxpayers in Ukraine (e.g., US citizens, resident individuals, partnerships, corporations, trusts, non-US entities with one or more US controlling persons) and report specific information to the Ukrainian financial authority.



The information above would apply starting from the year 2014 and going forward, subject to certain exceptions identified by the Agreement.

FATCA levies a fairly high 30% withholding tax on US-source payments of fixed or determinable, annual or periodical (FDAP) income unless its prescriptive requirements regarding payee documentation are met. Beginning in 2019, the withholding tax of 30% will also apply to gross proceeds from the sale or other disposition of any property of a type that can produce US-source FDAP income, further expanding the law's reach.

It can be assumed that the above changes, in particular, are intended to create a legal framework not only for the application of FATCA requirements in Ukraine, but also for the application of the new international model of automatic exchange of information for tax purposes within the framework of the Common Reporting Standard (CRS) provided by the Ukraine Ministry of Finance in the Roadmap for the implementation of international standards for the exchange of tax information starting from year 2017.

PKF Comment

The ratification of FATCA aims at increasing compliance within the framework of international tax law. It is also one of the steps towards the country's integration into the international tax information exchange system.

*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**.*

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United Arab Emirates

Introduction of new economic substance regulations

In continuation to Economic Substance Regulations issued in the form of Cabinet Resolution No. 31 of 2019 ('ESR') and Additional Guidance issued in the form of Ministerial decision No. 215 for the year 2019, the UAE Ministry of Finance ('MoF') has recently issued Cabinet Resolution No. 58 of 2019 determining the Regulatory Authorities concerned with the businesses mentioned in the ESR.

A summary of the Regulatory Authorities concerned with the respective business/relevant activities is as follows:

Sr No	Relevant Activity	Concerned Regulatory Authority
1	Banking Business	• UAE Central bank • Competent Authority in Financial Free Zones
2	Insurance Business	• Insurance Authority • Competent Authority in Free Zone / Financial Free Zone
3	Investment Fund Management Business	• Securities and Commodities Authority • Competent Authority in Free Zone / Financial Free Zone
4	Lease Finance Business	• UAE Central bank • Competent Authority in Free Zone / Financial Free Zone
5	Headquarters Business	• Ministry of Economy • Competent Authority in Free Zone / Financial Free Zone
6	Shipping Business	• Ministry of Economy • Competent Authority in Free Zone / Financial Free Zone
7	Holding Company Business	• Ministry of Economy • Competent Authority in Free Zone / Financial Free Zone
8	Intellectual Property Business	• Ministry of Economy • Competent Authority in Free Zone / Financial Free Zone
9	Distribution and Service Centres Business	• Ministry of Economy • Competent Authority in Free Zone / Financial Free Zone

All UAE businesses should evaluate their obligations under ESR to avoid any adverse consequences for non-reporting /compliance.

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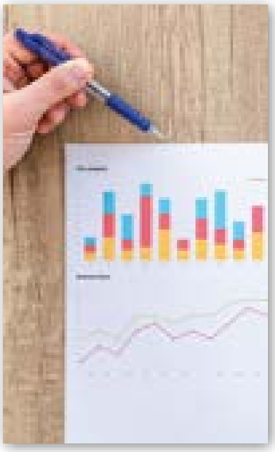
Introduction of Country-by-Country reporting



Country-by-Country Reporting ('CbCR') requirements 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 are required to file notification by the financial year-end and the CbC report must have been submitted at the latest by 31 December 2020.

To facilitate businesses in the UAE to file notification as per the CbCR Resolution, the UAE MoF has created a separate section on its official website to enable filing of CbCR notification by the businesses required to comply with the said requirements. Such notification form is divided into 4 parts, as given below:

- Section I: Details of Ultimate Parent Entity (UPE)
- Section II: Details of Reporting Entity
- Section III: Details of constituent entities in UAE
- Section IV: Contact Details.

Accordingly, businesses in the UAE are required to undertake the exercise of impact assessments and to identify reporting requirements under the new regulations.

Further, Multi National Entities (MNEs) with revenues exceeding the prescribed threshold of AED 3.15 billion, having ultimate parent company and/or constituent entities located within the UAE and having financial year-end as per 31 December 2019 were required to make arrangements to comply with the notification filing requirements on or before 31 December 2019.

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VAT and excise tax update

The UAE Federal Tax Authority ('FTA') has issued several important public clarifications since our last tax update. Some of these updates released in the fourth quarter of 2019 from the FTA are given below:

Date	Tax	Type of Update	Particulars of Update
October 2019	VAT	User Guide – updated version	Clarifications (say changes in process of making a request seeking tax technical clarification)
October 2019	VAT	User Guide – updated version	Refund for Business Visitors Guide
October 2019	VAT	Public Clarification	Business-to-Business Supplies of Healthcare Services
October 2019	Excise	Cabinet Decision	Ministerial Decision No. 236 of 2019 - Implementation of the Cabinet Decision No. 52 of 2019 w.e.f. December 1, 2019
October 2019	Excise	Cabinet Decision	Ministerial Decision No. 237 of 2019 - Implementation of the Cabinet Decision No. 55 of 2019 On Excise Price for Tobacco Products
October 2019	Excise	Public Clarification	Moving Excise Goods which are Marked with a Digital Tax Stamp Not Containing End-to-End Traceability
November 2019	Excise	Public Clarification	Stockpiling of Excise Goods

VAT user guide
The user guide has been updated by FTA. Below is the summary of updates in the guide;

- Change in process of submitting the Tax Technical Clarification form:
  - Clarifications Form is now available on the website's homepage under 'E-Forms'
  - Form required to be compiled and submitted online on the official website of the FTA
  - Any request received after 3 PM on a specific business day will be deemed to have been received the following business day
  - Prior to this change, the form was required to be filled up in the pdf format which was required to be emailed to the FTA
- Change in response from the FTA on Clarification is also updated to 45 business days and it may take a further 45 business days in case more information is required or sought.

VAT user guide on Refund for Business Visitors Guide
The guide provides a list of countries eligible for the VAT refunds for Business Visitors with reciprocal arrangements. The approved list of countries has been updated to include "Korea".

For the calendar year 2018, 2 October 2019 was the last day for submission of business visitors refund application.

VAT public clarification on Business-to-Business Supplies of Healthcare Services
The Public Clarification clarifies the VAT treatment on business-to-business supplies of healthcare services. Accordingly, the FTA has clarified that a supply of healthcare services may only be zero rated if the recipient of the supply is also the person who receives the treatment.

Excise Tax public clarification on Moving Excise Goods which are Marked with a Digital Tax Stamp Not Containing End-to-End Traceability
FTA has implemented a Digital Tax Stamp ("DTS") regime which requires marking of certain Designated Excise Goods with a physical and digital marker – also referred to as "marks".

Public clarification provides guidance on Excise Goods which have been marked with a Digital Tax Stamp under the workaround solution (i.e. not including end-to-end traceability) and have been legitimately imported into the UAE, may remain in the UAE market beyond 1 August 2019.

Similarly, any such products which have been entered into an Excise Tax Designated Zone (with a customs check) in the period from 1 May 2019 until 1 August 2019, are allowed to be moved into the UAE mainland or Duty-Free areas after 1 August 2019 and will still be considered compliant with the DTS regime.

It is also clarified that all filing and reporting obligations regarding such products will still apply in these scenarios and should be fully compliant with the provisions of issued legislation.

Excise Tax public clarification on Stockpiling of Excise Goods

- The public clarification explains the Excise Tax obligations for stockpilers of sweetened drinks, electronic smoking devices and tools, or liquids used in such devices and tools, which are held for business purposes as per 1 December 2019
- Further, the public clarification also explains Excise Tax obligations for stock pilers holding tobacco products as per 1 December 2019, resulting from a revision in excise prices of tobacco products as per the provisions of Cabinet Decision No. 55 of 2019.

PKF Comment

International tax perspective
Businesses in the UAE are required to undertake the exercise of impact assessments and accordingly, identify the reporting requirements under the new regulations.

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

Excise tax on sweetened beverages, sugary drinks and electronic smoking devices effective 1 December 2019 reflects the efforts of the UAE MoF to reduce the negative effects of consumption patterns harmful to public health. The levy is intended to support national efforts to curb unhealthy practices that cause chronic diseases.

On the business front, businesses manufacturing or importing or having inventories of such newly added Excise Goods stockpiled in the UAE should have registered themselves prior to 1 December 2019 and should be in a position to undertake the required compliance as per the provisions of the UAE Excise Tax Law.

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 call ***+971 4 3888 900****.*

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United States

Transfer Pricing and the Base Erosion Anti-Abuse Tax: BEATing the Aggregation Principle … Let the BEAT Go On

As companies deliberate the closing of their calendar fiscal year-end financial records, transfer pricing issues are often given prominent consideration for optimising on potential opportunities and minimizing risks of tax exposure. This has become even more paramount with the conclusion of the final Base Erosion and Anti-Abuse Tax (BEAT) [or Section 59A of the Internal Revenue Code (IRC)] and the U.S. Treasury Regulations (Treas Regs) promulgated thereunder. These rules were enacted by the Tax Cuts and Jobs Creation Act (TCJA) of 22 December 2017, effective for taxable years ending on or after 17 December 2018.

As middle-market companies are looking for near-term ways to minimise their potential BEAT liabilities - and are completing their 2020 financial forecasts for the coming year of operations - a company’s management may not consider that the recently finalised BEAT regulations would apply to its business operations since the rules have a de minimis gross receipts threshold of USD 500 million, and a company would have made a base erosion payment of 3% or more of all deductible expenses, with certain exceptions. However, here is how the “aggregation principle” of the BEAT regulations “snares you in” and how you can mitigate its potential impact on your business operations.

Broadly speaking, base erosion payments do not include cost of sales incurred from purchases of tangible products from foreign affiliated parties, intercompany services accounted for under the Services Cost Method (SCM), or other intercompany transactions determined to be arm’s length. Nonetheless, the BEAT regulations are of particular importance to companies that are part of multinational enterprises with U.S. inbound intercompany transactions which make deductible payments for tangible products, intangible property, financial arrangements, management services, or cost-sharing contributions, as components of each of these intercompany transactions could be determined to have been conducted at a non-arm's-length price and, consequently, subject to the imposition of the BEAT.

Aggregation Principle

An aggregate group of company members encompasses affiliated entities within a commonly controlled group of companies – applying a 50% rather than an 80% ownership threshold – inclusive of a multinational corporation's (MNC) non-U.S. operations. Hence, even if the U.S. operations of a multinational conglomerate may be small, but the payments made to a foreign affiliated entity with aggregated three-year average gross revenues exceeding a USD 500 million threshold, the U.S. company can be scrutinised under the BEAT regulations, if a base erosion payment exceeds more than 3% of all deductible expenses. Conversely, if a MNC's gross revenue base falls below the USD 500 million threshold, the BEAT will not "beat" a U.S. company engaged in outbound intercompany transactions with a foreign affiliated party.

Netting provisions

The base erosion payment is generally determined on a gross payment basis (i.e., there are no offsets). Although the regulations do not provide any further guidance with respect to cost-sharing arrangement payments, or those conducted under a profit-split arrangement, the BEAT regulations acknowledge that there are certain "global-dealing financial trading positions" that may be co-owned and would, henceforth, be excluded from BEAT consideration. The BEAT regulations, however, do not make exceptions for passthrough payments, unless these are determined to include a U.S. base erosion component. These non-conclusory ambiguities of the regulations, upon which the preamble did not provide any further guidance, are in need of further review.

Services Cost Method (SCM) Exemption

The more things change, the more they stay the same, as the final BEAT regulations still exempt payments made for intercompany services that qualify under the Services Cost Method which enable companies to charge for the provision of intercompany services at "actual cost" (i.e., management, technical, marketing, legal, etc.) as opposed to employing a cost plus profit mark-up methodology if the following criteria are met:

- The service is a "specified covered service" which represents common support services among taxpayers that do not generally exceed a profit mark-up significantly greater than a "median" mark-up on total service costs;
- The services are a "low margin covered service" for which the median mark-up does not exceed 7%, using an interquartile range principle to calculate the profit mark-up. It should be noted that any BEAT would apply explicitly only to the profit mark-up and not to the total transaction charge for intercompany services provided.

Only the cost amount of the payment is exempt; any mark-up amount would still be treated as a base erosion payment if it otherwise qualifies. The SCM, however, cannot include the following excluded activities:

- Manufacturing or production
- Extraction, exploration, or processing of natural resources (e.g., oil, gas, minerals)
- Construction
- Reselling, distribution, or sales, purchase, commission agency
- Research and development or experimentation
- Engineering or scientific
- Financial transactions or guarantees, and
- Insurance or reinsurance.

Lastly, regulations state that the SCM cannot be applied "at cost" if the provision of intercompany services contributes "significantly" to the fundamental risks of a business' success or failure. However, this rule does not apply in determining whether payments otherwise eligible for the SCM method are exempt from treatment as a base erosion payment.

Documentation Requirements

In order to mitigate a potential BEAT assessment and to allow for the verification that the SCM is applicable, the books and records evidencing the taxpayer's intention to employ the SCM must be maintained, specifically stating that this transfer pricing methodology is applied, including a description of the services rendered and the intended recipient thereof. Since the only component of an intercompany service that may be subject to the BEAT charge is the profit mark-up, certification that there is none will support a taxpayer's position to avoid an imposition of BEAT by the U.S. Internal Revenue Service.

PKF Comment

Taxpayers should begin reviewing their intercompany transactions to identify their intercompany tangible products transactions and potentially "unbundle" the transfer prices for these, to the extent that they embody discernible arm's-length product cost, imbedded value of intangible property or services, which can be more accurately determined to be arm's length and, hence, would not be subject to the potential imposition of BEAT. Documentation of intercompany transactions that meet the arm's-length standard is still the pillar on which to avoid getting BEAT!

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Treasury releases final BEAT regulations

The Treasury released final regulations implementing the Base Erosion and Anti-Abuse Tax (BEAT) on 6 December 2019, along with new proposed regulations. The final regulations, in particular, provide welcome guidance for taxpayers by including changes from the 2018 proposed regulations which are taxpayer-friendly. Enacted as part of the Tax Cuts and Jobs Act (TCJA), the BEAT targets corporate taxpayers that make significant deductible payments to foreign related parties. If a corporation has a base erosion percentage (base erosion payments over total deductions) of over 3% (2% for banks and securities dealers) and USD 500 million in average annual gross receipts over a three-year period, they are subject to the BEAT. The changes from the 2018 proposed regulations are numerous. The following are the most important headlines for taxpayers from the final and new proposed regulations.

Transfers in non-recognition transactions not base erosion payments

The final regulations exempt transfers of property in non-recognition transactions (such as tax-free reorganizations and liquidations) from treatment as base erosion payments. The proposed regulations did not; thus, transfers of depreciable property in such transactions would have been treated as base erosion payments.

Taxpayers can forego deduction

The new proposed regulations would allow a taxpayer to forego a deduction in order to get below the base erosion percentage threshold for the tax year. The taxpayer must forego the deduction for all federal income tax purposes. This should lessen concerns for taxpayers who find themselves near the threshold.

No blended rate for first year

The final regulations clarify that taxpayers use a 5% rate on modified taxable income to determine their base erosion minimum tax amount for all tax years beginning in 2018, not just those coinciding with the calendar year. The 2018 proposed regulations would have provided for a blended rate for non-calendar year taxpayers in 2018, mixing the 5% rate applicable for 2018 and the 10% rate applicable for 2019.

Transfers of built-in loss property not base erosion payments

The final regulations clarify that a sale or transfer of property to a related party resulting in a deductible loss does not create a base erosion payment. Treatment of such transactions was unclear in the 2018 proposed regulations.

Simplified application to aggregate groups

The base erosion percentage and gross receipts tests for whether the BEAT applies to a corporation are determined at an aggregate group level, so a taxpayer must include the gross receipts and deductions of other corporations that are at least 50% related in its calculation. The final regulations require the taxpayer to take into account the gross receipts and deductions of group members' tax years ending with or within that of the taxpayer. This is a welcome change from the 2018 proposed regulations which would have required a much more complicated method which would have caused a significant compliance burden.

PKF Comment

Companies who've determined that they are at risk of being subject to the BEAT need to consider how the new regulations affect their calculations. In most cases, the new final and proposed regulations should provide better results than the 2018 proposed regulations.

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German Federal Council approves Research Allowance Act

For the first time, Germany will offer a tax credit for certain R&D projects. The Research Allowance Act came into effect on 1 January 2020 and will be available for certain R&D activities such as basic research, industrial research, and experimental development. Pure product development is not eligible. The R&D activities must meet the Organisation for Economic Co-operation and Development (OECD) standards for such activities.

Companies, regardless of size and industry sector, can take a credit of up to USD 500,000 per year for R&D projects started on 1 January 2020.

The credit amount will be:

- Credited against tax liability, or
- Paid in cash if the tax credit exceeds the tax liability.

Funding is open for three types of R&D projects:

- A company's own R&D projects
- Cooperative projects (for example, with a university), and
- Contract research. Note that a credit for contract research is only available to the payor on the contract, and only if the R&D contractor is based in the EU/EEA.

Companies need to apply for a certificate to make sure that the R&D activities qualify for the tax credit. Details regarding the certification process were planned to be published by the end of 2019.

The amount of the credit is 25% of direct R&D personnel costs, plus the employer's social security contributions, up to EUR 2,000,000 (for a maximum credit of EUR 500,000). For contract research, the credit is 25% on 60% of the contract value.

The credit limitation of EUR 500,000 per company and year applies to corporate groups, as defined in the German corporate law. The new instrument allows an ex-post application for funding and improved predictability due to legal entitlement to the R&D tax credit.

PKF Comment

Businesses with existing or planned R&D activities in Germany need to investigate which of their activities are potentially eligible for the tax credit. They also need to make sure that the proper documentation is prepared and maintained to prove tax credit eligibility to the German tax authorities. Receiving the tax credit in cash is especially interesting for start-up companies that usually do not pay tax in the first years.

Please contact Leo Parmegiani at lparmegiani@pkfod.com or call ***+1 646.699.2848****; Peter D. Baum at pbaum@pkfod.com or call* ***+1 914.341.7088****; or Ralf Rüdenburg at rruedenburg@pkfod.com or call* ***+1 646.965.7778*** *for further information on these topics.*

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