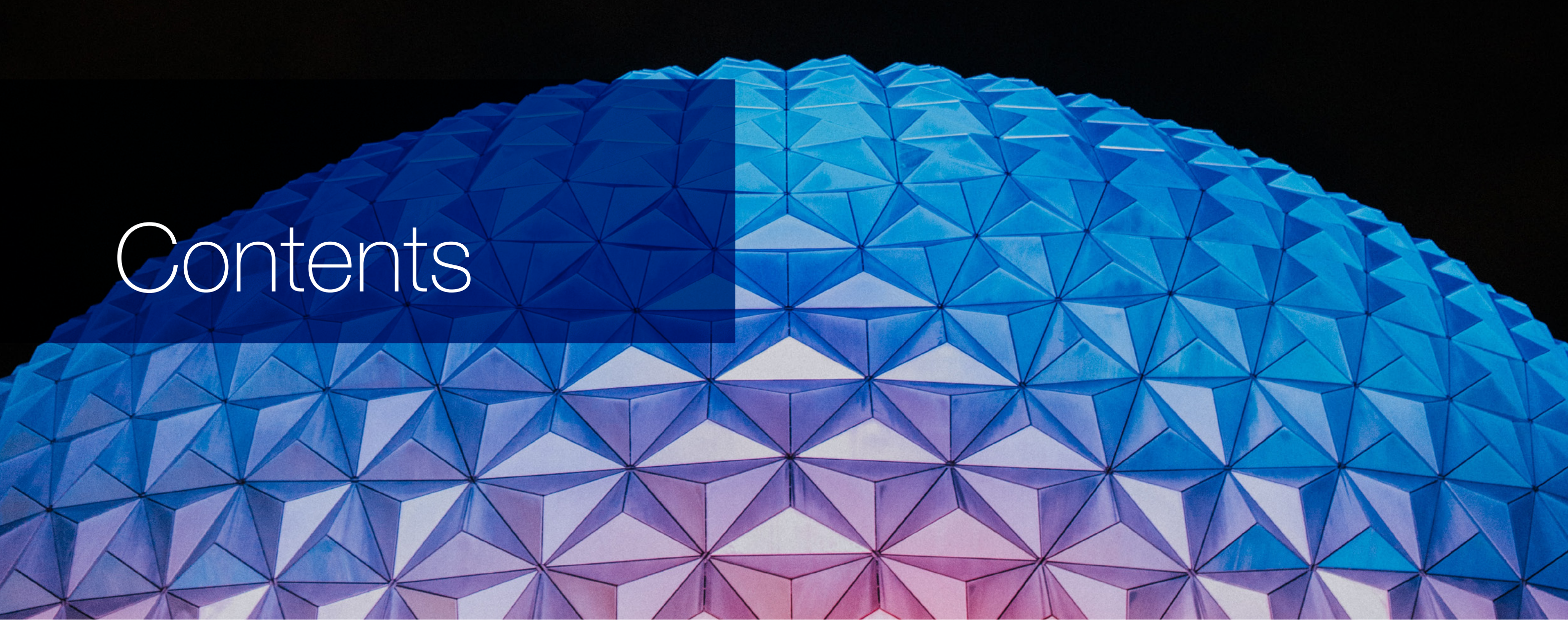
PKF International Limited

PKF worldwide tax update

SEPTEMBER 2022

LOCAL KNOWLEDGE, GLOBAL EXPERTISE

The content of this PKF Worldwide Tax News has been compiled and coordinated by Stefaan De Ceulaer (stefaan.deceulaer@pkf.com) of PKF International. If you have any comments or suggestions please contact Stefaan directly.



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Welcome

In this third quarterly issue for 2022, 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 480 offices, operating in over 150 countries across our five 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:

- (EU) VAT updates in Chile, Romania and Switzerland
- Significant personal and corporate income tax changes in Australia, Cyprus, Italy, Poland and Spain
- Recent comprehensive tax changes in Austria, Mexico, Nepal, Turkey, the United Arab Emirates and the United States
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in Ecuador, Germany, Hong Kong, Hungary and Switzerland.

We trust you find the PKF Worldwide Tax Update for the third quarter of 2022 both informative and interesting and please do contact the PKF tax expert directly (mentioned at the foot of the respective PKF commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at www.pkf.com/pkf-firms.

The International Tax and Legal Meeting will take place in Madrid from November 13th – 16th at the stunning Meliá Castilla Hotel. Our second tax meeting will reunite our global tax and legal communities and enable us to leverage our network's substantial expertise and knowledge.

Our three-day event will focus on our strategic tax pillars of Internationally Mobile Employees, Tax Structuring, Transfer Pricing, and Indirect Taxes, as well as facilitated discussion on current legal topics.

The team has arranged some outstanding dinners, social events and tours, including the Prado Museum and the Real Madrid soccer stadium.

We wish you a wonderful time in Madrid as we build on our relationships with each other.

Highlights:

- PKFI CEO Update, welcome new members and global overview
- ITC Chairman Update, Strategic Initiatives
- Interactive Client Event with local and international clients
- Tax Control and Tax Technology
- Quality Control and the IPSM
- International and domestic commercial law in overlap with Tax Pillars

Australia

Temporary loss carry-back

The temporary loss carry-back regime was one of the many measures that was introduced to help businesses deal with the impacts of the COVID-19 pandemic.

It provides cashflow support for companies that were previously in a taxable position but are now in a tax loss position.

Under this regime, a corporate tax entity is able to choose to carry back income tax losses (but not capital losses) to prior years. In broad terms, the rules apply to corporate tax entities that:

- have an aggregated turnover of up to AUD 5 billion in the relevant loss year;
- incurred a tax loss in 2019-20, 2020-21, 2021-22 and now extended to the 2022-23 income year (referred to as the loss years);
- have an income tax liability in the 2018-19, 2019-20, 2020-21 or 2021-22 income year; and
- have lodged the relevant income tax returns.

Essentially, where the loss carry-back is applied, an entity is able to receive a refund of tax that was previously paid. Ordinarily, a loss is only able to be carried forward to reduce future tax.

Next steps

Suggested next steps to determine the potential impact of the loss carry-back measure:

- Determine whether the company has aggregated turnover of less than AUD 5 billion for the loss year. It should be noted that aggregated turnover includes the turnover of associated entities, including foreign entities;
- Identify which of the income years (2019-20, 2020-21, 2021-22 or 2022-23) were or are expected to be loss years;
- Identify which of the income years (2018-19, 2019-20, 2020-21 or 2021-22) were or are expected to be tax liability years;
- Determine the franking account balance and franking account impact of the loss carry-back rules.

The ATO has recently released a loss carry-back tax offset tool, which helps taxpayers assess their eligibility. Please refer to https://www.ato.gov.au/Calculators-and-tools/Loss-carry-back-tax-offset-tool/

BACK

PKF Comment

The loss carry-back regime is optional, similar to the existing choice available to companies to carry forward and deduct prior year tax losses. A choice to carry back losses must be made by the day that the company lodges its tax return for the year in which the offset is claimed.

The immediate benefit of applying the carry-back rules is typically a cashflow benefit. In addition, choosing to use the loss rather than carrying it forward may reduce the risk that those losses become unavailable in the future. That is because carried forward tax losses are subject to the ongoing satisfaction of the loss rules (continuity of ownership and/or business continuity test). Generally, the longer a loss is carried forward, the more difficult it may be to satisfy those rules. On the other hand, choosing to carry back a loss will reduce a company's franking account and may therefore impact its ability to pay franked dividends in the future.

For further information or advice in relation to this, or with respect to Australian taxation, please contact Boris Kresic at **bkresic@pkf.com.au** or Emma Roulet at **eroulet@pkf.com.au** or call **+61 2 8346 6000**.

Austria

Various tax updates – corporate and personal income tax, investment allowance and capital gains on cryptocurrencies

Reduction of corporate income tax and personal income tax

As part of the eco-social tax reform, the federal government decided on a comprehensive relief package in 2021. Components of the reform include, among others, the reduction of corporate income tax and the progressive taxation of the income of individuals.

According to §22 (1) KStG, corporate income tax in Austria amounts to 25% since 2005. The agreed reduction of corporate income tax to 23% will take place in several stages. The first reduction will come into force on 1 January 2023 and amounts to 1%. On 1 January 2024, a further reduction of 1% will take effect, upon which the fixed corporate income tax rate of 23% will finally be reached. The reduction, which aims to increase the attractiveness of the country in international competition, will result in an annual relief of EUR 700 million.

The reduction of the first tax bracket according to §33 EStG from 25% to 20% was already implemented in 2020; the following two tax brackets will also be reformed. The second tax bracket (income between EUR 18,000 and EUR 31,000) was already reduced from 35% to 30% in mid-2022. The reduction of the third tax bracket (income between EUR 31,000 and EUR 60,000) from 42% to 40% will come into effect in mid-2023. In order to implement the rate changes during the year, a mixed tax rate of 32.5% will be applied to the second tax bracket in 2022 and a mixed tax rate of 41% to the third tax bracket in 2023. A relief in the amount of EUR 3.9 billion is expected.

Furthermore, reform of the tax-free profit allowance for individuals' business income also serves to relieve the burden on entrepreneurs.

An allowance of 13% of the profit can be deducted when determining the tax bases for income tax purposes for all business income up to 2021. For financial years beginning after 31 December 2021 this allowance will be increased to 15%. However, the tax-free profit allowance is limited to EUR 4,500.

Investment allowance §11 EStG

The investment premium, introduced in 2021 as a subsidy in connection with the COVID-19 pandemic, was intended to encourage business investments. In order to continue to pursue this goal, an investment allowance for depreciable fixed assets acquired or manufactured after 31 December 2022 was introduced. This regulation applies to all companies regardless of the legal form.

The investment allowance is considered as an additional operating expense amounting to 15% of the acquisition or production costs for ecological investments and 10% for any other investment. Claiming the investment allowance in the year of the investment has no effect on scheduled depreciation in the following years.

The investment allowance can be applied for investments up to a maximum of EUR 1 million per year. The assets must be attributable to a domestic business or a domestic permanent establishment and must have a useful life of at least four years. Furthermore, §11 EStG lists all assets to which the investment allowance is not applicable.

Capital gains tax on cryptocurrencies

For the first time, the eco-social tax reform provides for the taxation of cryptocurrencies in Austria due to their increasing relevance. The legislator has decided to equate cryptocurrencies with securities for tax purposes. Trading in these currencies leads to income from capital assets, which means that tax-free sale is no longer possible after a one-year holding period.

The classification as income from capital assets is accompanied by some special features. The taxation is to be carried out at a linear tax rate of currently 27.5%, no income-related expenses can be claimed and loss compensation with other income is restricted. Furthermore, service providers who hold, store or transfer cryptocurrencies (wallet operators) and service providers who offer the exchange of cryptocurrency into legally recognised means of payment are obliged to deduct capital gains tax. All service providers are obliged to do so if they have their registered office, place of residence, place of management, branch or permanent establishment in Austria.

The changes will come into force in two stages. Since 31 March 2022, current income and income from realised increases in value from cryptocurrencies acquired after 28 February 2021 are taxable at the rate of 27.5%. The automatic capital gains tax deduction must be carried out by the operators from 1 January 2024 at the latest, although it is already permitted for the years 2022 and 2023 on a voluntary basis and in compliance with the relevant legal provisions.

Since the service provider often is not aware of the acquisition costs, a flat-rate tax option is provided. If no acquisition costs are disclosed by the taxpayer, 50% of the sale proceeds are to be recognised as acquisition costs. In this case, 50% of the sales price is assumed to be profit and is taxable.

At EU level, the DAC-8 Directive is currently being drafted, which provides for comprehensive reporting obligations for cryptocurrencies among the Member States. In this respect, there will also be an approximation to securities here, which will make it more difficult to conceal income and avoid tax liability.

BACK

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Austrian taxation, please contact Nina Witting at **nina.witting@pkf-graz.at** or call **+43 316 826 082 49**.

Chile

VAT on services and exemptions

Law No. 21,420 was gazetted on 4 February 2022 reducing or cancelling certain tax exemptions. Several of the amendments affected VAT contained in the Sales and Services Tax Law, cancelling provisions that allowed remunerations for certain services rendered not to be subject to VAT.

The concept of 'service' that gives rise to a VAT taxable event is extended, with effect from 1 January 2023. Therefore, the provision of any service will be subject to VAT (at a 19% tax rate) from this date, unless it is expressly exempt.

The law introduces a VAT exemption for income from dependent and independent work. In this regard, Law No. 21,420 included a paragraph that extended the aforementioned exemption to the income of professional companies referred to in article 42, No. 2, of the Income Tax Law, classified as second category income.

Through its instructions, the Internal Revenue Service has specified the requirements for an entity to be considered a professional partnership, as follows:

- It needs to be a partnership;
- Its purpose must exclusively be the provision of services or professional advice;
- The services must be provided through its partners, associates or collaborators;
- All its partners, whether natural persons or other professional partnerships, must exercise their professions for the company;
- The professions of the partners may be identical, similar, related or complementary.

Consequently, services consisting of advice or consultancy will be subject to VAT as of 1 January 2023 if the partnership that provides them does not qualify as 'professional' in the terms indicated, as it would be, for example, in those cases where its members have adopted a legal structure other than a partnership of professionals (stock company or joint-stock company), or if it also includes within its line of business activities other than merely professional services, or if one of its partners were not another similar partnership.

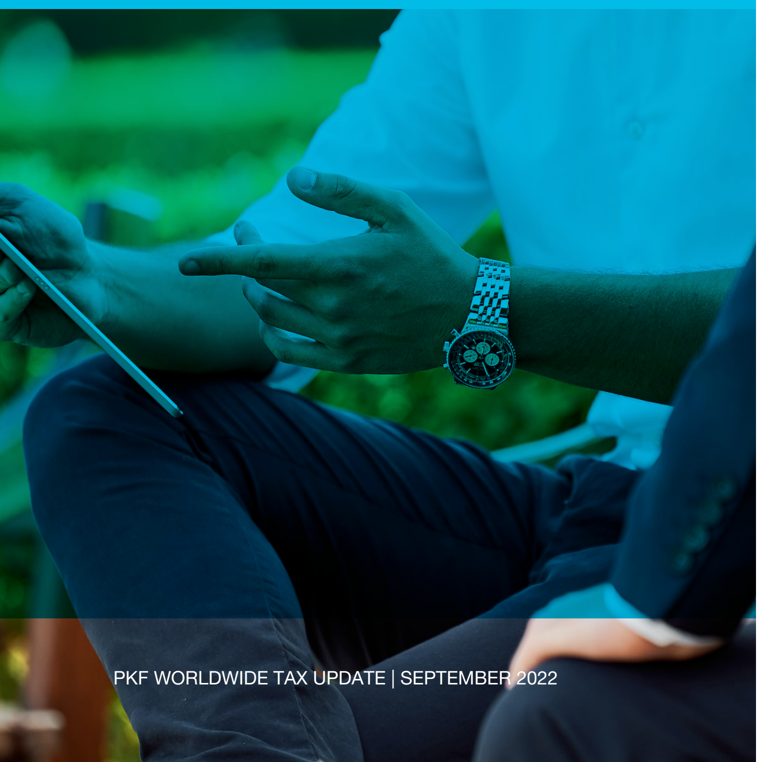
It should be noted that professionals and professional partnerships must issue a bill for their fees, being a tax document different from an invoice, while other taxpayers must issue an invoice for their income.

BACK

PKF Comment

In Chile there are many companies that, while not being professional partnerships, provide identical services to those provided by this type of partnership, which are currently not subject to VAT. This situation will be maintained until 31 December 2022 as the legal change will be applied from 1 January 2023. From this date some of the customers of such companies could see the cost of the fees increased if such customers could not use said tax as a VAT fiscal credit if they were not VAT taxpayers.

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



Cyprus

Cyprus enhances personal tax exemptions

On 26 July 2022 the legislation regarding articles 8(21) and 8(23) and the new articles 8(21A) and 8(23A), were published in the Official Gazette of the Republic.

These articles refer to the popular tax exemptions on the remuneration of Cyprus tax residents on employment which is exercised in the Republic by a person who was resident outside the Republic prior to the commencement of their employment in the Republic.

Article 8(21)

Article 8(21) provides for the application of the 20% tax exemption or EUR 8,550, whichever is lower, on employment which is exercised in the Republic by a person who was resident outside the Republic prior to the commencement of their employment in the Republic.

This article provided for a maximum period of five years following the year of employment and applies to employment which commenced up to the publication of the present amendment, i.e. 26 July 2022.

Article 8(23)

Article 8(23) provides for the application of a tax exemption of 50% for persons employed in Cyprus who were previously not resident in the Republic receiving an annual salary of at least EUR 100,000 for a period of ten years, subject to certain conditions.

Following the amendment, this article now only applies for employment which commenced up to the date of publication of the present amendment, i.e. 26 July 2022.

Amendments – new articles

The newly introduced tax exemptions provided under section 8(21A) and 8(23A) introduce the definition of first employment; such incentives apply to persons who are employed in Cyprus for the first time, noting that:

- A person is considered to have first employment when (s)he works on a salaried basis for an employer that is a resident or a non-resident of the Republic of Cyprus.
- This definition does not take into account occasional full or part-time employment that does not exceed 120 days in aggregate in a tax year.

Article 8(21A)

Article 8(21A) provides for an application of the 20% tax exemption or EUR 8,550, whichever is lower, for remuneration from first employment in the Republic by a person who for three consecutive years prior to the commencement of their employment in the Republic was employed outside the Republic for an employer not resident in the Republic.

This tax exemption is granted to a person whose first employment in the Republic commenced after 26 July 2022 and is available for a maximum period of seven years.

Article 8(23A)

Article 8(23A) provides for the application of a tax exemption of 50% for any person employed for the first time in Cyprus from 1 January 2022 who was previously not resident in the Republic for a period of at least ten consecutive years and who receives an annual salary of at least EUR 55,000. This exemption applies for a maximum period of 17 years, subject to certain conditions.

It should be noted that the new provisions apply subject to the following:

- That only one of the above exemptions may be claimed at any time (from both existing and new incentives);
- The 50% tax exemption may also be applied by persons whose first employment in Cyprus commenced between the years 2016 and 2021 with annual remuneration in excess of EUR 55,000, or whose annual remuneration is currently less than EUR 55,000 but exceeds EUR 55,000 by 26 January 2023.

PKF Comment

BACK

For further information or advice on any Cypriot tax matter, please contact Nicholas Stavrinides at **nicholas.s@pkf.com.cy** or call **+357 258 68000**.

Ecuador

Rules for applying foreign income tax paid as a tax credit

From fiscal year 2022, any foreign taxes paid by individuals or corporations with tax residence in Ecuador on income obtained abroad may be offset as a tax credit against the payment of income tax incurred in Ecuador. Previously this income was considered exempt.

Through Regulation NAC-DGERCGC22-00000026 dated 27 May 2022, the Internal Revenue Service issued regulations to quantify the thresholds of tax credit of those incomes to be used in the income tax return.

The available tax credit corresponding to these incomes will be the lower of:

- the tax effectively paid abroad; and
- the value obtained by multiplying the effective income tax rate applicable to the taxpayer in their determination of income tax of that period with the difference in income obtained from abroad minus the total attributable expenses to generate that income.

For the purposes of this provision, the effective rate of income tax is equal to the percentage obtained by dividing the total income tax incurred by the total taxable income.

Ecuador approves and ratifies tax information exchange agreement with the US

The National Assembly of Ecuador approved and ratified the tax information exchange agreement between the United States of America and Ecuador on 14 July 2022.

This bilateral agreement was signed on 7 April 2021 and aims to facilitate an effective exchange of tax information for the determination, settlement and collection of taxes. The purpose is to strengthen tax transparency in both countries and prevent tax evasion.

The exchange of information carried out by the tax administrations within the framework of this bilateral agreement may be automatic or spontaneous and both countries guarantee the confidentiality of the information exchanged.

BACK

PKF Comment

With these regulations, the government will be able to obtain more information that allows it to develop and implement new control processes to identify fraudulent information and prevent tax evasion.

If you believe the above may impact your business or require any advice with respect to Ecuadorian taxation, please contact Manuel García at **mgarcia@pkfecuador.com** or call **+593 4 236 7833**.

Cross-border group financing – news on arm's-length standard

In Germany, the interest rate on corporate loans is often a matter of dispute between taxpayers and the tax authorities. In a recent ruling, the Supreme German tax court has now ruled that cross-border inter-company loans can be at arm's length, even if no collateral is provided. This has consequences when loans are issued to foreign subsidiaries.

1. Facts of the case

A German GmbH had a receivable from its Belgian subsidiary in respect of which no security had been provided. The German parent company granted a debt waiver with a recovery certificate and booked the receivable as a profit reduction. The tax office did not accept this profit reduction under section 1(1) of the German Foreign Tax Act (AStG). The lawsuit was successful: the lower tax court made clear that an income adjustment was only possible if the interest rate agreed between the affiliated companies did not meet the arm's-length standard. The lower tax court criticised that the full write-off was corrected and not only the interest differential between the agreed and an 'appropriate' interest rate. Also, no evidence was provided that the agreed interest rate was not at arm's length. Subsequently, the case was submitted to the Supreme German tax court (BFH).

2. Lack of collateral alone not crucial…

In its ruling of 13 January 2022 (Case No. I R 15/21), the BFH concluded that the lack of collateralisation of a group loan does not mean that the conditions are not at arm's length. Collateralisation is one criterion for the question of the arm's-length standard. However, the decisive factor is whether a third party would have granted a loan under the same conditions, taking into account possible risk compensation.

According to the BFH, the third party does not have to be a 'traditional bank'. The decisive factor is that a market for an agreed loan can be determined, which then forms the benchmark for the arm's-length comparison to be made. The absence of a single condition – in this case the lack of collateral – does not lead to a correction of income. In principle, the creditworthiness of the Belgian subsidiary is to be assessed on the basis of a 'stand-alone' approach. The subsidiary's affiliation with the German group may only lead to an improvement in its creditworthiness to the extent that third parties would take this into account.

3. ...rather the entirety of the overall objective conditions

In the reasons for its ruling, the BFH stated criteria for the arm's-length comparison that must be taken into account:

- provision of capital: provision of capital on a temporary or permanent basis;

- collateralisation: assessment of whether external lenders insist on collateralisation ex ante;
- orientation to the earnings situation.

If the examination shows that a third party would have been prepared to compensate for the increased risk of default due to the non-collateralisation by agreeing an interest surcharge, it must be examined whether the agreed interest rate is at arm's length. As a rule, the comparable price method is used to determine the arm's-length interest rate for loans.

4. Market decides

Irrespective of the result of the test, there is no scope for an income adjustment according to the AStG if a market for unsecured loans exists and is proven. If the conditions were at arm's length, any income correction is ruled out. Even if the agreed conditions were not at arm's length, a correction of the write-off value is not acceptable, but only a correction in the amount of the difference between the actual interest income and the interest income at arm's length. A correction of the write-off pursuant to the AStG can only be considered if no corresponding market for unsecured loans can be determined under the special circumstances of the individual case.

BACK

PKF Comment

Before concluding an inter-company loan, the respective market should be queried. This can be done, for example, via a bank. Interest should then be charged on the inter-company loan on the basis of this market assessment, so that the risk of an income correction is reduced.

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

Hong Kong proposes to revise its foreign source income exemption (FSIE) regime for passive income

Background

In October 2021, the EU expressed its concern over the potential double non-taxation of certain foreign passive income in Hong Kong and included Hong Kong on the EU Watchlist of non-cooperative jurisdictions for tax purposes. In response to the concerns of the EU, the Hong Kong SAR government ('HK government') issued a consultation paper on 4 July 2022 regarding refining the FSIE regime, which will effectively tighten the offshore tax exemption for passive income in Hong Kong.

After the consultation stage for the proposed refined FSIE regime, the HK government's plan is to introduce the amendment bill into the Legislative Council in October 2022 with a view to securing its passage by the end of 2022 and bringing it into effect from 1 January 2023. No grandfathering arrangements will be available based on the current proposed contents.

Key changes to Hong Kong's existing FSIE regime for passive income

Under the refined FSIE regime, offshore passive income (i.e. interest, intellectual property (IP) income, dividends or disposal gains in relation to shares or equity interest ('disposal gains') (collectively 'in-scope offshore passive income')) will be deemed to be sourced from Hong Kong and chargeable to profits tax if:

a) the income is received in Hong Kong by a constituent entity of a multinational enterprise (MNE) group irrespective of its revenue or asset size; and

b) the recipient entity fails to meet the economic substance requirement (if the income is non-IP income), or fails to comply with the nexus approach (if the income is IP income).

The above term 'MNE group' means any group which constitutes at least one entity or permanent establishment (PE) that is situated in a different tax jurisdiction from the ultimate parent entity and such constituent entity's financial results are consolidated on a line by line basis in the consolidated financial statements of the group.

It is important to note that the refined FSIE regime takes a broader approach than the Global Anti-Base Erosion (GloBE) rules as there are no revenue or asset size thresholds, i.e. the refined FSIE regime will likely affect a wide range of MNEs which have entities in Hong Kong, including those groups with a total annual revenue equivalent to or less than EUR 750 million.

Active incomes such as those arising from trading activities or provision of services are not in-scope offshore passive incomes, and are not affected by the refined FSIE regime.

Economic substance requirement (for interest, dividends or disposal gains)

A taxpayer will continue to be exempt from profits tax on its non-IP in-scope offshore passive income that is received in Hong Kong if it conducts substantial economic activities in relation to the relevant passive income ('relevant activities') in Hong Kong.

Broadly speaking, the relevant activities for a taxpayer which is not a pure equity holding company include making necessary strategic decisions, managing and assuming principal risks in respect of any assets it acquires, holds or disposes of.

Nevertheless, if a taxpayer is a pure equity holding company (i.e. its primary function is to acquire and hold shares or equitable interests in companies and only earns dividends and disposal gains in that regard), a reduced substantial activities test will be applied such that the relevant activities to be carried out in Hong Kong will only be limited to holding and managing the equity participation and complying with the corporate law filing requirements in Hong Kong.

In general, a taxpayer will need to employ an adequate number of qualified employees and incur an adequate amount of operating expenditure in Hong Kong in relation to the relevant activities so as to meet the economic substance requirement. That said, outsourcing of the relevant activities may be permitted if certain conditions are met.

There is no specific threshold in considering the adequacy of employees and expenditure as the Inland Revenue Department (IRD) will adopt the totality of facts approach on a case-by-case basis.

Participation exemption (for dividends and disposal gains)

In order to avoid double taxation, a participation exemption will be introduced in the refined FSIE regime to provide profits tax exemption for dividends and disposal gains even though the above economic substance requirement is not met. Hence, dividends and disposal gains will continue to be exempt from profits tax if the following conditions are satisfied:

1. the investor company is a Hong Kong resident person or a non-Hong Kong resident person that has a PE in Hong Kong;
2. the investor company holds at least 5% of the shares or equity interest in the investee company; and
3. no more than 50% of the income derived by the investee company is passive income.

The abovementioned participation exemption is subject to the anti-abuse rules such as the switch-over rule, the main purpose rule and the anti-hybrid mismatch rule.

Nexus approach (for IP income)

The nexus approach adopted by the OECD will be applied under the refined FSIE regime in determining the extent of offshore IP income to be exempt from Hong Kong profits tax.

Only income derived from qualifying IP assets (which refer to patents and other IP assets which are functionally equivalent to patents if those IP assets are both legally protected and subject to similar approval and registration processes, such as copyrighted software) may be entitled to tax exemption based on a nexus ratio, which is defined as the 'qualifying expenditures incurred to develop a qualifying IP asset' as a proportion of the 'overall expenditures incurred to develop the qualifying IP asset'.

The objective of the above approach is to ensure that, in order for a significant portion of IP income to qualify for tax benefits, a significant portion of the actual R&D activities must have been undertaken by the qualifying taxpayer.

To avoid over-penalising a taxpayer for acquiring IP (or incurring other non-qualifying expenditure) due to reasonable commercial rationales, when calculating qualifying expenditure, a 30% uplift on the qualifying expenditure can be applied if the taxpayer has incurred non-qualifying expenditure. The increased amount of qualifying expenditure is restricted to the overall expenditure.

Unilateral tax credit for the income deemed taxable by the refined FSIE regime

To ease the compliance burden and mitigate double taxation, a unilateral tax credit will be granted to those taxpayers who have paid taxes in those jurisdictions which have not entered into a comprehensive avoidance of double taxation agreement with Hong Kong in relation to their in-scope offshore passive incomes which are deemed chargeable to profits tax in Hong Kong under the refined FSIE regime.

BACK

PKF Comment

Broadly speaking, the refined FSIE regime primarily targets the Hong Kong entities of MNE groups which have no substantial economic activities conducted in Hong Kong.

The broad application of the new deeming rules will undoubtedly create complexity in the Hong Kong taxation environment. With the introduction of the economic substance requirement and the adequacy test for in-scope offshore passive incomes, it will be more difficult for taxpayers to substantiate why such income should be offshore sourced in the first place if they carry out the relevant activities in Hong Kong. The current offshore tax exemption status of some taxpayers for passive incomes may be jeopardised even though they might have genuine commercial grounds to have relevant structures established in the past. In particular, it is likely that profits tax exemption will no longer be available for royalty income arising from marketing-related IP assets (e.g. trademarks and copyright).

As some areas in the consultation paper are yet to be clarified, MNE groups should stay tuned for the administrative guidance to be issued by the IRD in the future.

For the time being, it is imperative for MNE groups to examine whether their holding structures, internal lending and inter-company recharge arrangements are still desirable under the refined FSIE regime, and take appropriate planning or restructuring exercises to mitigate the potential tax exposures arising from the aforesaid amendments to the relevant tax laws in Hong Kong.

For further information concerning the above or any service request with respect to Hong Kong taxation, please contact Jeffrey Lau (Tax Manager) at **jeffreylau@pkf-hk.com** and Henry Fung (Tax Partner) at **henryfung@pkf-hk.com** or call **+852 2806 3822**.

Various tax updates

United States terminates double tax treaty with Hungary

According to a press release on 15 July 2022 (published by the US Department of the Treasury), the US has terminated the 1979 Hungary–US double tax treaty, which will take effect from 1 January 2024.

Windfall taxes – cold tax shower during European summer heat

At the end of May 2022 the government decided to impose a total of HUF 800 billion (approximately EUR 2 billion) of windfall taxes on banks, insurers, energy and telecom firms and airliners, among others, in an attempt to rein in a swelling budget deficit and finance the costs of the government's energy price caps for households.

VAT law change triggered by an ECJ case

In line with EU law, in certain cases taxable persons will be entitled to an ex post reduction of the previously declared tax base. This is based on a decision by the European Court of Justice in case C-717/19 (Boehringer), a Hungarian VAT-related case.

Introduction of stricter transfer pricing rules

On 27 July 2022 stricter transfer pricing rules were gazetted:

- introduction of a new reporting obligation: taxpayers who need to prepare transfer pricing documentation will also have to provide data with respect to transfer prices in their annual corporate income tax return;
- introduction of new definitions of the arm's-length price and the arm's-length range in line with the OECD transfer pricing guidelines;
- a transfer pricing adjustment can only be applied if, without this correction, the tested party's profit/price should fall out of the arm's-length range. As a rule of thumb, in this case the price must be adjusted to the median, and not to the closer edge of the interquartile range;
- increase in the fee for advance pricing arrangements (APA):
  - from HUF 2 million to HUF 5 million for a unilateral APA
  - to HUF 8 million for a bilateral or multilateral APA.

BACK

PKF Comment

For further information or advice concerning the above or any advice with respect to Hungarian taxation, please contact Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu** or call **+36 1 391 4220**.

Electronic invoices and esterometro – new obligations in Italy from 1 July 2022

Starting from 1 July 2022, foreign transactions (including intra-community ones) will have to be reported in the so-called SDI (Sistema di Interscambio) by submitting electronic invoices and the former quarterly report, called esterometro, will be cancelled.

The new D.L. No. 73/2022 specifies that not only transactions substantiated by customs bills or electronic invoices through SDI remain excluded from the esterometro, but also those related to purchases of goods and services that are not territorially relevant for VAT purposes in Italy pursuant to Articles 7 to 7-octies of Presidential Decree No. 633/1972, as long as the amount does not exceed EUR 5,000.

The SDI was introduced in 2019 and all issued invoices needed to be pre-approved by the Tax Agency before they could be sent to customers, except for export invoices that started to be controlled through the esterometro quarterly report.

In 2021 taxpayers who decided to transmit their export invoices through SDI were already exempt from quarterly reporting obligations. However, as of 1 July 2022, all export invoices must be mandatorily submitted through the SDI system.

BACK

PKF Comment

In case of non-compliance with the new measure, the Italian Authority has introduced a EUR 2 sanction for each invoice not submitted via SDI up to EUR 400 per month (to be halved if the taxpayer sends invoices within 15 days of the deadline). Moreover, considering the system might appear complicated, it is recommended to start adapting to the upcoming obligations as soon as possible.

PKF TCL Group is available to provide assistance to foreign companies to comply with the mandatory requirements relating to e-invoices.

If you believe any of your clients may be interested in the above or should you need further information on the subject, please contact PKF TCL Group Tax Consulting Legal (Fabrizio Moscatelli) at **f.moscatelli@pkf-tclsquare.it** or call **+39 010 81 83 253** (Genoa office).

Treatment of Italian-sourced dividends derived by a foreign pension scheme

The Italian Tax Authority (tax ruling No. 338 of 23 June 2022) clarified that a foreign entity having the same features of a complementary pension scheme shall be subject to 11% withholding tax in Italy with respect to dividends received by an Italian company.

The Italian Tax Authority claims that this treatment is applicable because of the specific features of such a foreign investor, which doesn't carry out any commercial activity and has similar purposes and features as an Italian pension scheme.

Presidential Decree No. 600/1973, article 27(3), provides that the same tax treatment granted to dividends distributed to domestic complementary pension schemes (11% withholding tax) also applies to dividends distributed to similar pension schemes established in other Member States or in the EEA.

BACK

PKF Comment

PKF TCL Group is available to provide assistance to PKF firms or their clients in relation to the treatment of Italian-sourced dividends derived by a foreign pension scheme.

If you believe any of your clients may be interested in the above or should you need further information on the subject, please contact PKF TCL Group Tax Consulting Legal (Stefano Quaglia) at **s.quaglia@pkf-tclsquare.it** or call **+39 02 9285 4247** (Milan office).

Mexico

Recent tax news

Miscellaneous Tax Resolution for 2022

The Ministry of Finance and Public Credit has published the Fourth Resolution of Amendments to the Miscellaneous Tax Resolution for 2022 and its annexes 1-A, 9, 15 and 23, which reform several rules, including those in respect of related parties.

Taxpayers are obliged to submit information on their tax situation because they are related parties of the taxpayers obliged to report their financial statements. For the purposes of Article 32-H of the Federal Fiscal Code, they will need to do so whenever the amount exceeds MXN 13 million for the performance of business activities or MXN 3 million in the case of professional services.

Reference rate – Banxico

As a result of accumulated inflationary pressures, Banco de México (Central Bank) decided to increase the target for the interbank interest rate (TIIE) by 75 basis points to a level of 8.5%, which is in line with the decision of the US Federal Reserve that has increased the target range for the federal funds rate by 75 basis points for the second consecutive time and anticipates future increases.

Tax Administration Service – tax revenue

According to the quarterly reports on public finances, there was a 16.1% increase in income tax revenue, highlighting seven months of annual growth.

Additional deadlines granted for the fulfilment of certain obligations

On 15 July 2022 the Fifth Resolution of the Tax Administration Service (*Servicio de Administración Tributaria* (SAT)) was gazetted, which offers an extension to 31 December 2022 for the following procedures:

1. Companies are allowed to cancel invoices prior to the 2022 period;
2. The old version of the electronic invoices 3.3 will be allow until 31 December, after that only version 4.0 will be allowed, but at this point in time companies are allowed to use version 4.0 as well. The latter version will be mandatory from 1 January 2023;
3. The extension is granted to those taxpayers who have not enabled their Tax Mailbox or registered or updated their means of contact, so that a fine is not applicable during this period;
4. Create the electronic sign (e.firma) for individuals on the Simplified Trust Regime (Resico);
5. Coexistence of electronic invoice version 3.3 with version 4.0.

BACK

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Mexican taxation, please contact Jimy Cruz at **jimy.cruz@pkf.com.mx** or call **+52 (33) 3122 2081**.

Nepal

Changes in tax law by budget announcement for FY 2022-23

On 29 May 2022 the Finance Minister, government of Nepal presented the full budget for the FY 2022-23. The major changes in the tax laws introduced by the budget are as follows:

Direct taxes

i) Revision in the slab for the calculation of tax on remuneration income of a resident natural person. Applicable tax rates on the income of a resident individual in any income year shall be as shown below:

For resident natural persons opting single assessment

Existing		Amended	
Limit	**Rate**	**Limit**	**Rate**
Up to NPR 400,000	1%	Up to NPR 500,000	1%*
More than NPR 400,000 up to 500,000	10%	More than NPR 500,000 up to 700,000	10%
More than NPR 500,000 up to 700,000	20%	More than NPR 700,000 up to 1 million	20%
More than NPR 700,000 up to 2 million	30%	More than NPR 1 million up to 2 million	30%
In excess of NPR 2 million	36%	In excess of NPR 2 million	36%

For resident natural persons opting couple assessment

Existing		Amended	
Limit	**Rate**	**Limit**	**Rate**
Up to NPR 450,000	1%	Up to NPR 600,000	1%*
More than NPR 450,000 up to 550,000	10%	More than NPR 600,000 up to 800,000	10%
More than NPR 550,000 up to 750,000	20%	More than NPR 800,000 up to 1,100,000	20%
More than NPR 750,000 up to 2 million	30%	More than NPR 1,100,000 up to 2 million	30%
In excess of NPR 2 million	36%	In excess of NPR 2 million	36%

** This is the social security tax to be deposited in a separate revenue account (11211) provided for this purpose. However, taxpayers registered as a sole proprietorship or pension income or income from a contribution-based pension fund shall not attract social security tax (at 1%). If the taxpayer is depositing the amount in the social security fund (SSF) then for those taxpayers social security tax is not applicable.*

ii) Applicable tax rates on the gain on disposal of non-business chargeable assets (land and buildings) have been amended as follows:

Period of ownership	Applicable tax rate	
	Existing	**Amended (FY 2022-23)**
Less than 5 years	5%	7.5%
5 years or more	2.5%	5%

iii) The limit for deductible insurance premiums in respect of investment insurance for resident individuals has been increased from NPR 25,000 to NPR 40,000.

iv) A resident natural person having only income as per subsection 6(Kha), 6(Ga), 6(Gha) of section 95 (ka) shall not be required to file an income tax return.

v) 1% tax is to be levied on the income earned by a resident individual in foreign currency by providing services based on software programming, cloud computing, electronic services, business process outsourcing or similar information technology-related services outside Nepal. A new section 1 (4(Ka)) has been inserted in Schedule 1 of the Income Tax Act to cover the above provision.

vi) When considering a change in control as per section 57, the word 'shareholder' has been replaced with the words 'shareholder or partner'.

vii) 'Cash payment' under section 21 shall further exclude payment made through a digital wallet approved by the NRB.

viii) Revision of the applicable tax rate on transactions, except exempt transactions of cooperatives registered under the Cooperatives Act, 2074 as follows:

Operational area	Applicable tax rates	
	Existing	From FY 2022-23
Municipality level	5%	7.5%
Sub-metropolitan level	7%	10%
Metropolitan level	10%	15%

ix) Withholding tax (TDS) at 1.5% shall be applicable to royalty payments to a resident person for a literary article or composition.

x) Concessions on business income:

Industries (special industry as defined in section 11 of the Income Tax Act)	Concession
Income derived from agriculture business, vegetable dehydration business and cold store business by registered firm, company, partnerships and organised institutions	100% rebate on the applicable tax rate
Income derived by special industries established in Karnali province and hilly areas of the far western region providing direct employment to more than 100 Nepali citizens	100% tax exemption for the first 15 years from the date of commencement of commercial production or transaction
Income derived by a person licensed for production, transmission or distribution of electricity produced from hydropower, solar, wind and biological substances by mid-April 2027 (Chaitra of 2083)	100% tax exemption for the first ten years from the date of commencement of commercial production or transaction and 50% exemption for the next five years
Income derived by a reservoir or semi reservoir-based hydropower projects generating above 40 MW of energy and managing financial closure by mid-April 2029 (Chaitra end 2085)	100% tax exemption for the first 15 years from the date of commencement of commercial production or transaction and 50% for the next six years
Income from export of goods manufactured by manufacturing-based industry having source in Nepal during any income year	Additional 50% rebate on the applicable tax rate (in the previous year, the additional rebate was 35%)
Income derived by industry engaged in the production of vaccines, oxygen gas or sanitary pads.	100% tax exemption for the first five years from the date of commencement of production and 50% for the next two years
Income derived by industry established by mid-July 2025 (Asadh 2082) for the purpose of manufacturing or assembling four-wheel electric vehicles	40% rebate on the applicable rate for the first five years from the date of commencement of the commercial operation
Income derived by industry established by mid-July 2025 (Asadh 2082) for the purpose of manufacturing agricultural tools	100% tax exemption for the first five years from the date of commencement of production

Indirect taxes

Customs duties

i) Decrease in the customs duty of raw materials required by manufacturing industries by at least one level as compared to customs duty on import of corresponding finished goods.

ii) Exemption of 90% customs duty on import of sanitary pads. 1% customs duty will be applicable on the import of raw materials required by the manufacturing industries producing sanitary pads in Nepal.

iii) 1% customs duty will be applicable on the import of raw materials and parts required by the electric rickshaw, motorcycle or scooter manufacturing industry.

iv) On the recommendation of the Department of Industries, the exemption will be provided at the rate of 25% on custom duty and 50% on excise duty for the import of raw material and parts required by four-wheeler vehicle manufacturing or assembling industry.

v) Exemption of 100% customs duty will be provided at the local level for the import of one unit of agro-ambulance or agro-product transport vehicle. Similarly, a 50% exemption on customs duty will be provided to agro-based cooperatives on the import of one unit of vehicle for transportation of its product.

vi) 75% exemption of applicable customs duty on import of a maximum of two school buses will be provided to public or community schools.

vii) Where a GPS-installed lock or serialised sealed lock of a container used in internal transit is found in a tampered condition, an additional fine of 300% of the value of goods will be charged and then the goods will be released, or such goods will be confiscated and 200% of the value of goods will be charged as a fine.

viii) Increase in the customs duty on cigars, cheroots and cigarillos containing tobacco and other similar items from NPR 4,500 to NPR 9,000 per thousand sticks.

ix) Customs duty on motorcycles with cylinder capacity exceeding 200 cc has increased ranging from 10% to 50%.

x) Customs duty on electric vehicles with pickup power greater than 100 KW has been increased by 15% to 20%.

xi) Customs duty on energy drinks has increased from NPR 75 per litre to NPR 100 per litre.

Excise

i) Punishment under section 16(2)(B) with a fine of 200% of the disputed amount or NPR 100,000, whichever is higher, with confiscation of the goods subject to controversy, or imprisonment for a term not exceeding one year or both will also be charged in case of production, release, sale, distribution, storage or import of liquor, cigarette and tobacco products without using an excise duty ticket.

ii) A fine of 100% on applicable excise duty will be imposed if a shortage of excise tickets is observed during its inspection. If excess tickets are found, the surplus ticket amount should be recognised in income, and a fine of NPR 100,000 shall be imposed.

iii) Reassessment of excise duty under section 10(Gha) and punishment under section 16(1)(kha) shall also be charged where services subject to excise duty are provided without obtaining the licence.

iv) The rate of excise duty on edible nuts, peel of citrus fruits or melons has been increased from 5% to 15%.

v) Increase in excise duty of fish and crustaceans, molluscs and other aquatic invertebrates from 5% to 10%.

vi) Excise duty on scented nutshell without tobacco has been increased from NPR 281 to NPR 350 per kilogram.

vii) Excise duty on Paan masala without tobacco has been increased from NPR 812 to NPR 821 per kilogram.

viii) Excise duty on beer made from malt has been increased from NPR 198 to NPR 228 per litre.

ix) Excise duty on cigars, cheroots and cigarillos containing tobacco has been increased from NPR 21 per stick to NPR 30 per stick.

x) Excise duty on cigarettes containing tobacco without a filter has increased from NPR 618 per metre to NPR 710 per metre and cigarettes with a filter have increased from NPR 200 per metre to NPR 500 per metre.

xi) Excise duty on unmanufactured tobacco; tobacco refuse has been increased from NPR 118 per kilogram to NPR 130 per kilogram.

xii) Excise duty on undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher has increased by NPR 10 per litre.

xiii) Excise duty on all kinds of alcoholic fluids including spirits used as a raw material or wine or brandy is increased from NPR 198 per litre to NPR 228 per litre.

xiv) Excise duty on non-alcoholic beer has increased from NPR 20 per litre to NPR 30 per litre.

xv) Excise duty on energy drinks has increased from NPR 36 per litre to NPR 50 per litre.

xvi) Excise duty on playing cards and toys has increased by 5%.

xvii) Excise duty on motorbikes with reciprocating internal combustion piston engine of a cylinder capacity exceeding 250 cc but not exceeding 500 cc has increased by 10%.

xviii) Excise duty on electric vehicles (car, jeep, van) with pickup power greater than 100 KW shall be charged as below:

Pickup power (KW)	Excise duty (%)
100-200	30
201-300	45
Greater than 300	60

Value added tax

i) A non-resident person whose turnover from digital services in Nepal is over NPR 2 million in the last 12 months is required to register themselves under VAT as per the procedures prescribed by the Inland Revenue Department. Likewise, in case of cessation of business activities or closure of business by such person, the deregistration process of such person shall be as prescribed by the Department.

ii) A fine of NPR 20,000 shall be imposed on such a non-resident person where an electronic services business is operated without being registered for VAT.

Digital service tax

i) Digital service tax of 2% on the transaction value shall be collected on digital services provided by non-residents to Nepalese individual customers. However, such tax shall not be applicable in cases when the annual transaction value does not exceed NPR 2 million.

ii) Such service providers shall file the return and deposit the tax amount in each fiscal year.

BACK

PKF Comment

The government of Nepal (GoN) through the budget speech and finance ordinance has changed direct and indirect tax rates which may affect individuals and entities alike in Nepal. Taxpayers in Nepal and prospective taxpayers shall need to be aware of the new tax rules effective for FY 2022-23.

Major tax amnesties announced through the finance ordinance

TThe GoN announced various tax amnesties through finance ordinance to provide relief to those taxpayers already registered and also unregistered with the objective of bringing them into the ambit of taxation.

The brief overview of major tax amnesties is as below:

i) **Waiver of tax, fees and interest:** Fees and interest shall be waived if a person having taxable income in the past obtains PAN, pays the tax and files returns for FY 2075-76, 2076-77 and 2077-78 by 14 January 2023 (Poush end 2079).

Further, the tax, fees and interest for FYs prior to FY 2075-76 shall also be waived after the above compliance.

The tax, fees and interest shall be charged without any concession on failure to deposit the tax and file the return within the time limit as prescribed above.

ii) **Waiver of interest, penalty and additional charges to joint venture:** Fees, additional charges and penalties shall be waived where joint ventures have registered under the VAT Act 2052 but have not submitted returns or paid the applicable VAT up to 13 April 2022 (Chaitra end 2078) if the VAT return is filed and the outstanding VAT and 50% of applicable interest is paid by 14 January 2023 (Poush end 2079).

This waiver facility shall also be available to joint ventures that have filed returns up to 13 April 2022 (Chaitra end 2078) without a deposit of the applicable VAT amount.

iii) **Waiver of fees and penalty:** Private firms and companies that are registered under the Private Firm Registration Act, 2014 and Companies Act, 2063 and have not submitted their annual returns up to 2019-20 (FY 2076-77) and failing to renew their business can submit such returns and deposit 5% of applicable fees and penalties by 14 January 2023 (Poush end 2079) to be eligible for the waiver of the remaining fees and penalty.

iv) **Waiver of penalty and fees under the Excise Act:** Penalty and the remaining delay charges shall be waived where a licensee under the Excise Act, 2058 has failed to file excise returns and pay excise duty up to 13 April 2022 (Chaitra end 2078) but files excise returns and pays outstanding excise duty and 50% of delay fees by 14 January 2023 (Poush end 2079).

This waiver facility is also available to the licensees who have filed returns up to 13 April 2022 (Chaitra end 2078) without deposit of the applicable excise amount.

v) **Special provision for removal of stock record:** In the case of industries whose stock record removal is already recommended by the Inland Revenue Department through physical inspection and report but the same is pending decision and being outstanding for more than 15 years shall now be eligible to claim removal of stock record for such stock by filing an application with the respective Inland Revenue Office by 14 January 2023 (Poush end 2079).

vi) **Special provision for presumptive taxpayers and turnover-based taxpayers:** If the turnover amount declared by a presumptive taxpayer u/s 4(4) and turnover-based taxpayer u/s 4(4ka) has any deviations with actual turnover up to the FY 2020-21 (FY 2077-78), then such taxpayer can declare the actual turnover for each year and pay 1.5% tax on the differential turnover by 13 April 2023 (Chaitra end 2079). The revised turnover to the extent as declared and the tax of such a taxpayer shall be deemed to be final.

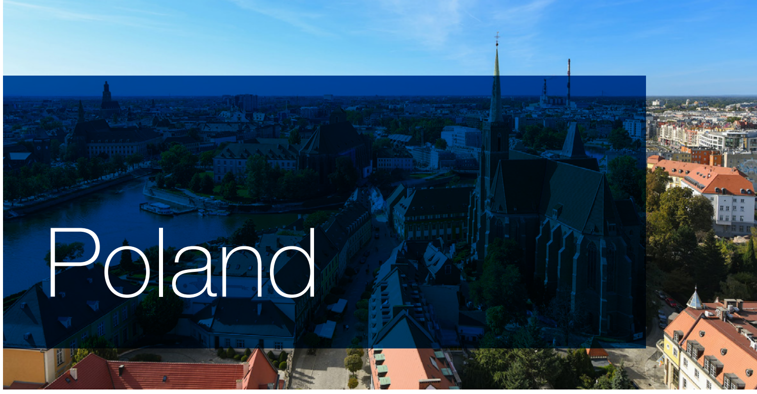
Tax, fees, additional charges and penalties shall be waived where the presumptive taxpayer and turnover-based taxpayer facing assessment under the VAT Act and reassessment under the Income Tax Act up to 28 May 2022 (14 Jestha 2079) for the difference in turnover declared and actual turnover withdraws the appeals made to various levels (Administrative Review, Revenue Tribunal, or in the Courts) and deposits 1.5% of such differential turnover by 13 April 2023 (Chaitra end 2079).

BACK

PKF Comment

The amnesty helps save the additional burden on taxpayers by discharging their liabilities at a concessional rate.

For further information or advice concerning Nepalese tax laws or if you have any specific query about a particular tax situation please contact Shashi Satyal at **shashi.satyal@pkf.com.np** or call **+977 01 441 0927**.



Poland

Introduction of the Polish holding company ('PSH') regime

On 1 January 2022, the Polish holding company ('PSH') regime was introduced into the Polish legal system. The regulations are aimed at Polish holding companies that have domestic or foreign subsidiaries. The PSH regime is an alternative to a tax capital group ('PGK') and exemptions within the special economic zone or the Polish Investment Zone.

The current PSH regime is based on two pillars:

1. exemption from corporate income tax (CIT) of 95% of dividends paid to the holding company by a subsidiary; and
2. full exemption from this tax on profits from the sale of shares (stocks) in subsidiaries. However, the exemption does not apply to the sale of shares or stocks in a so-called real estate company, i.e. a domestic or foreign subsidiary, if at least 50% of the assets' value is real estate or rights to real estate located in Poland.

The remaining part of the dividend (5%) is currently not exempted under Council Directive 2011/96/EU, which is why it is subject to CIT in Poland under the general regime at the 19% rate.

Statutory requirements for establishing a PSH

The main condition for the establishment of PSH is that the holding company owns at least 10% of the shares or stocks in the subsidiary for a period of at least one year. Moreover, a holding company cannot benefit from the exemptions provided for in the CIT Act and must conduct 'genuine business activity' within the meaning of the provisions on controlled foreign companies. The legislator also provided for restrictions on the shareholders of the holding company as shares/stocks in PSH may not be owned, directly or indirectly, by a shareholder with its registered office or management board in a country applying harmful tax competition or in a country with which Poland or the EU has not signed an agreement constituting the basis for the exchange of tax information. A number of requirements have also been set for the subsidiary PSH, among others the requirement not to own more than 5% of shares (stocks) in the capital of another company or not to take advantage of tax exemptions.

Doubts settled in favour of the taxpayer

The provisions regulating PSH give rise to certain interpretation doubts, e.g. regarding the scope of the possibility of using the PSH regime in the event of using the exemption from the taxation of dividends in previous years. However, a positive line of interpretation is emerging, confirming that the use of the dividend exemption in previous years (before 1 January 2022) does not exclude the possibility of using the new preferences for holding companies (e.g. advanced tax ruling of 4 July 2022, No. 0111-KDIB2-1.4010.164.2022.3.AR). However, the question remains whether the 'use' of the exemption should be examined in relation to one tax year in which the subsidiary's shares are sold, or whether it should be checked whether the taxpayer has ever invoked the exemption after 1 January 2022.

In a tax ruling of 17 May 2022 (No. 0111-KDIB1-2.4010.88.2022.1.BD), the director of the National Tax Information, in turn, stated that the condition of not using tax exemptions under the CIT Act applies to dividend income received by PSH, and not dividends paid to the shareholder. Therefore, the requirement not to benefit from the dividend exemption applies to the holding company and not to its shareholders. Moreover, referring to tax rulings of 1 July 2022 (No. 0111-KDIB1-2.4010.228.2022.1. DP) and 31 May 2022 (No. 0111-KDIB1-2.4010.115.2022.2.DP), it is considered that the application by the holding company of the exemptions to dividend income and the disposal of shares against payment need not apply to all subsidiaries that meet the conditions of a 'domestic subsidiary'. It may apply only to selected subsidiaries. Thus, the taxpayer, assuming the requirements for obtaining the PSH status are met, may choose those subsidiaries to which the exemptions provided for in the regulations will be applied, and those which will not. However, it should be considered each time whether, as part of a specific dividend payment, the entity receiving the dividend meets the requirements of a holding company and whether at the same time the entity paying the dividend meets the requirements of a subsidiary (e.g. tax ruling of 14 June 2022, No. 0111-KDIB1-3.4010.163.2022.2.IZ). However, it is worth noting that the loss of the right to benefit from the preferences resulting from the regulations in question does not prejudge the impossibility of applying the general regulations provided for in the CIT Act.

Doubts concerning the regulations were also resolved by the director of the National Tax Information in a tax ruling of 26 April 2022 (No. 0111-KDIB1-1.4010.23.2022.2. JD), in which he indicated that it is impossible to use the PSH regulations if the shares in the subsidiary are sold before the end of one year of their ownership, even if after the sale of shares, the company still holds at least 10% of the subsidiary's shares, thus fulfilling the condition of their possession for one year after their disposal. In connection with this, the income from the sale of shares/stocks in a subsidiary may benefit from the exemption, provided that the sale is made by a company that meets the requirements of the PSH, and the subject of the sale is shares (stocks) in a subsidiary (domestic or foreign). It is important to note that these requirements cannot be met after the transaction date.

The decision to dispel taxpayers' doubts, although unfavourable from their point of view, was presented by the authority in a tax ruling of 1 August 2022 (No. 0111-KDIB1-3.4010.61.2022.1.IZ). The director of the National Tax Information indicated that the inability to obtain accurate information on indirect shareholders (stockholders) made it impossible to obtain PSH status. In such circumstances, it cannot be ruled out that the indirect shareholders (stockholders) of the company are also entities with their registered office or management board in the territory of a tax haven. Taking into account the content of the resolution, the above approach results from the willingness to address the discussed regulations to capital groups with a simple organisational structure.

Favourable change in regulations

On 20 June 2022, the commencement of work on changes to, inter alia, the PSH regulations was announced. The clarification and improvement of the regulations is aimed at adjusting the provisions for a larger group of entrepreneurs, including by:

- granting the right of use of the exemption from taxation of dividends by the PSH, which results from Council Directive 2011/96/EU;
- enabling a domestic subsidiary under the PSH regime to benefit from the exemption provided for by the so-called Polish Investment Zone or special economic zone;
- introducing a full dividend exemption from the current 95%.

BACK

PKF Comment

The Polish holding company regime is an interesting alternative for investors interested in investing capital in Poland. Taking into account the favourable interpretations of the tax authorities issued so far and the announced changes to the regulations of the functioning of the PSH regime, the creation of a holding company is well worth considering.

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**.

Romania

Various updates – income and dividend tax, salary tax, VAT and local taxes

Changes regarding dividend tax

From 1 January 2023, the tax rate on dividends will increase from 5% to 8%, for dividends distributed/paid to Romanian legal entities, as well as to non-residents, but also for dividends distributed/paid to privately managed pension funds and/or voluntary pension funds.

The increased rate will apply to dividends distributed after 1 January 2023.

Changes regarding micro-enterprise income tax

Numerous changes are brought to the micro-enterprise income tax system, with effect from 1 January 2023, including the following:

- The system becomes optional. Taxpayers can choose to apply this system starting with the fiscal year following the one in which they meet the conditions and as long as they were not micro-enterprise income taxpayers after 1 January 2023. With respect to the conditions for being considered a micro-enterprise, the following amendments are introduced:
  - The threshold of revenue obtained in the previous year is reduced from EUR 1 million to EUR 500,000;
  - Limitation of the revenue from consultancy and management services obtained by a micro-enterprise to 20% of total revenue obtained;
  - A micro-enterprise must have at least one employee (micro-enterprises without employees will be subject to 16% corporate income tax);
  - Introduction of the condition of holding shares by the same shareholder/associate in a maximum of three micro-enterprises, for those holding more than 25% of the shares. The decision regarding the companies that will continue under this system belongs to the shareholders/associates.
- The tax rate of 3% is cancelled, leaving a single tax rate of 1%;
- If, during a fiscal year, the conditions for being a micro-enterprise are not met (for example exceeding the revenue threshold of EUR 500,000 or obtaining revenue from consultancy and/or management services over 20% of total revenue), the taxpayer owes corporate income tax starting from the quarter in which the thresholds are exceeded;

- Newly established Romanian legal entities may choose to pay micro-enterprise income tax starting from the first fiscal year, if the conditions regarding the holding of share capital and the holdings of associates are met at the date of registration with the Trade Register and the condition regarding the employment of at least one employee is met within 30 days from the date of registration of the respective legal entity;
- Romanian legal entities that meet the conditions for applying the micro-enterprise income tax regime can opt for the corporate income tax system only starting from the next fiscal year;
- Taxpayers that carry out activities in the field of banking, insurance and reinsurance, gambling, exploration, development, exploitation of oil and natural gas fields are excluded from the application of the micro-enterprise income tax system.

Changes regarding specific tax

Starting from 1 January 2023, Law no. 170/2016 regarding the specific tax to certain activities is repealed. Taxpayers who were subject to Law 170/2016 until 31 December 2022 can opt to apply either the micro-enterprise income tax system, even if they do not meet the conditions for the application of this system, or the corporate income tax system.

Changes to the salary income tax regime

The salient features impacting salary income are as follows:

- From January 2023, the provisions relating to the application of the tax exemption for salary income earned by seasonal employees, i.e. for employees who had contracts concluded with employers paying the specific tax (hotels, restaurants, catering activities, etc.) will be revoked;
- The amendments have been introduced for facilities specific to the construction industry, food industry and agriculture;
- With effect from January 2023, a new cap on non-taxable income that employers can grant will be introduced. Thus, certain benefits granted monthly by an employer to its employees are exempt from cumulated income tax and social contributions, within the monthly threshold of 33% of the employee's gross base salary subject to certain conditions provided by law;
- With effect from January 2023, certain amendments to the rules for granting and calculating the personal deduction will come into force;
- Reintroduction, starting with the income for the month of August 2022, of the minimum calculation base for social security contributions due by the employee (i.e. health insurance contribution and pension contribution) at the level of the minimum gross basic salary in force in the month for which they are due, corresponding to the number of working days in the month in which the full/part-time employment contract was active, subject to certain exceptions.

Changes regarding VAT

- Increase in the VAT rate from 5% to 9% for accommodation in the hotel sector, restaurant and catering services and the delivery of chemical and pesticide fertilisers, starting from 1 January 2023;
- From 1 January 2023, non-alcoholic beverages falling under CN codes 2202 10 00 and 2202 99, respectively of non-alcoholic beverages containing added sugar or other sweetening matter or flavoured, are excluded from the scope of the 9%

reduced VAT rate, in addition to the exception already provided for alcoholic beverages;

- Also starting from 1 January 2023, the scope of application of the reduced rate of 5% will be restricted to the delivery of housing to individuals, in the sense that individuals can benefit from this facility only once. Thus, any individual can purchase, individually or jointly with another individual/s, a single home with a value not exceeding the amount of RON 600,000, excluding VAT, at a reduced rate of 5%.

Changes to local taxes

- The taxable base for residential/non-residential buildings has changed. This will be determined by the local authorities according to the values included in the Market Studies on indicative values regarding real estate properties in Romania, administered by the National Union of Public Notaries in Romania;
- The differences between the local tax rates on buildings owned by individuals/legal entities for the same type of building (residential/non-residential) are cancelled. Also, the minimum thresholds of tax rates are changed: for residential buildings the minimum will be 0.1%, while for non-residential buildings the minimum will be 0.5%;
- For buildings consisting of both residential and non-residential spaces, the building tax will be calculated by applying the rate corresponding to the majority allocation (over 50%) on the value of the entire building.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Romanian taxation, please contact Florentina Susnea at **florentina.susnea@pkffinconta.ro** or call **+40 213 173 190 / +40 722 209 753**.

Spain

'Tax options regime' under corporate income tax (CIT): tax reliefs, deductions and tax losses

Traditionally, Spanish CIT legislation considers tax relief an option, an alternative that the taxpayer can choose when submitting tax statements. In this respect, even if the company incurs losses, it is essential to submit CIT returns in due time and accurately record every tax benefit.

In this regard, filing a CIT return (M-200 form) correctly and in due time avoids problems with the recognition of tax reliefs, as well as possible penalties. In addition to deductions and tax losses registered in the current return form, the ones carried forward from past fiscal years should also be carefully reviewed. Moreover, all the required documentation should be attached to the return form, otherwise the Tax Administration could request it and the statute of limitations term would be suspended (four-year period).

A distinction should be made between the accreditation or recognition of tax credits and their application in the tax payment calculation. Apart from that, in Spain it is necessary to analyse both tax jurisdictions, i.e. state law and Basque law.

Tax loss carry-forwards

- **Recognition**

  Taxpayers have the right to claim tax losses at any time throughout the process of submission of a corrective return form, provided no tax audit procedure is open and the period from which tax losses are carried forward has not reached the statute of limitations.

- **Application**

  The Spanish Supreme Court in its judgement 4464/2020 of 30 November 2021 ruled that the offset of tax loss carry-forwards is a right and not an option to exercise. Therefore, offsetting tax losses can be exercised at any time, even after the CIT reporting period.

Basque case

Recognition of tax losses is permitted at any time, provided there has been no CIT requirement regarding that fiscal year. Likewise, taxpayers can offset tax losses at any time, as long as the period in which the tax loss was generated has not reached the statute of limitations. However, Biscay´s administration is even more restrictive, and it would not be possible to offset tax losses in the case of a tax audit procedure if the CIT return was not submitted in due time or the maximum offset limit was not applied.

Deductions

- **Recognition**

  Until June 2022, the tax authorities allowed the recognition of deductions that had not been claimed in previous return forms, by allocating them to the current CIT return.

  On 24 June 2022 the Tax Administration criteria changed and taxpayers now have the right to claim tax losses at any time throughout the process of submission of a corrective return form, provided no tax audit procedure is open and the period from which tax losses are carried forward has not reached the statute of limitations.

- **Application**

  No clear criterion is set, so for the sake of caution the same criteria as for offsetting tax losses should be observed. Deductions should be applied at any time, even after the CIT reporting period.

Basque case

Alava and Gipuzkoa allow the recognition of deductions once the CIT return and payment term is finished provided there has been no previous CIT requirement of the Tax Administration and the fiscal year they originated from has not reached the statute of limitations. Once again Biscay's administration has more restrictive criteria in place, as it only allows deductions to be claimed within the CIT return period, after which only deduction amounts to a maximum of 50% could be corrected. Regarding the application of deductions, it could be done after the CIT return period subject to there being no previous CIT requirement.

BACK

PKF Comment

Concerning tax benefits for companies, it is highly recommended to take into consideration the CIT options regime which comprises some specific regulations and formalities that need to be precisely complied with.

Consequently, if taxpayers are not prudent enough with the submission terms, as well as the recognition and application of the different tax reliefs, this could definitely lead to misunderstandings with the Spanish Tax Administration that can result in the loss of considerable tax reliefs, suspensions of the statute of limitations, or even imposition of severe sanctions.

If you believe the above measures may impact your business or personal situation or require any advice with respect to Spanish taxation, please contact Esther Martin Garcia at **esther.martin@pkf-attest.es** or call **+34 945 137 426**.

Implementation of the OECD minimum tax rate in Switzerland

In October 2021, the OECD published key parameters for the future taxation of large, multinational companies. A minimum tax rate of 15% for multinational companies with a turnover of more than EUR 750 million has been agreed upon by 137 countries.

The Federal Council decided to implement the minimum tax rate agreed upon by the OECD and G20 member states by means of a constitutional amendment. Based on that decision, a temporary ordinance should ensure that the minimum tax rate can come into force on 1 January 2024. The law will be enacted subsequently in the conventional manner.

BACK

PKF Comment

Although most Swiss companies are not expected to be impacted by these changes (turnover of more than EUR 750 million required), the affected companies need to conduct an impact analysis and monitor the progress of the implementation of the global minimum taxation in Switzerland and other countries (an earlier implementation abroad may lead to additional taxes in such countries until Switzerland implements it in 2024).

Swiss VAT Act (partial revision): taxation of electronic platforms in Switzerland

During the assembled special session on 10 May 2022, the Federal Council debated the partial revision of the Swiss Value Added Tax Act. Next, the Council of States will review the revision of the proposed VAT law. If the National Council and the Council of States can agree on a joint text, a public referendum may take place in the final stage. Therefore, the revision of the VAT law might enter into force on 1 January 2024 at the earliest.

A key theme of debates was the taxation of electronic platforms in Switzerland. As per the new regulation, online platforms themselves are to be treated as suppliers. Consequently, suppliers are deemed to make a (VAT-exempted) sale to the platform and the platform is deemed to sell the products to the customers collecting VAT from the latter. Any person who renders services that consist of connecting sellers and buyers on the platform shall be treated as an electronic platform.

Amendment to the Federal Act on Withholding Tax

On 25 September 2022, the Swiss electorate will vote on the amendment to the Federal Act on Withholding Tax.

Currently, a withholding tax of 35% is levied on income from interest. Individuals living in Switzerland can claim this tax back if they declare the interest on their tax return. Withholding tax is only due on interest from bonds if the bonds were issued in Switzerland. This is a disadvantage for the Swiss economy because, in order to raise money, many companies issue their bonds in countries where no withholding tax is levied. Swiss companies should therefore be encouraged to issue bonds in Switzerland. This is why the new bill exempts domestic bonds from withholding tax.

The bill also cancels the sales tax on domestic bonds and other securities, currently payable when buying and selling securities. If accepted, both measures would benefit the Swiss economy and make Swiss bonds more attractive for investors.

OASI reform

On 25 September 2022, the Swiss electorate will vote on the supplementary financing of Old-Age and Survivors' Insurance (OASI) by increasing VAT and amending the Federal Act on OASI.

The reform provides for both savings and additional revenue. A uniform retirement age of 65 will now apply for both women and men. The retirement age for women will be gradually increased from 64 to 65.

Additional revenue will come from an increase in VAT. The reduced tax rate will be increased from 2.5% to 2.6%, and the standard rate from 7.7% to 8.1%. The reform also brings more flexibility: people will be free to choose a transition to retirement between 63 and 70 and to gradually reduce working hours while claiming a partial pension. Those who work beyond the age of 65 may now in certain cases close contribution gaps and thereby increase their pension.

BACK

PKF Comment

For further information or advice concerning Swiss VAT e.g. in light of the envisaged partial Act revision, implementation of the OECD minimum tax rate in Switzerland, Swiss bonds structuring in light of the planned amendments to the Federal Act on Withholding Tax or any advice with respect to Swiss unilateral and international taxation, please contact Margarita Baeriswyl at **margarita.baeriswyl@pkf.ch** or Rilana Wolf-Bayard at **rilana.wolf@pkf.ch** or call **+41 44 285 75 00**.

Turkey

An overview of recent tax updates

- **Wealth amnesty programme modified on 5 July 2022**

  Both individuals and companies can make use of wealth amnesty, which allows them to regularise their undisclosed assets in and outside Turkey. Declaration of the undisclosed assets must be submitted by 31 March 2023 at the latest.

  — 1% tax is calculated for declarations submitted by 30 September 2022

  — 2% tax is calculated for declarations submitted between 1 October 2022 and 31 December 2022

  — Declarations submitted between 1 January 2023 and 31 March 2023 will be calculated at a 3% rate and will be paid in cash to banks and intermediary institutions at the time of tax declaration.

- **On 27 June 2022, the Ministry's opinion on the prohibition of payment in foreign currency for receivables arising from export registered sales was published**

  Payment obligations on movable (all kinds of movable goods, including commercial goods) sales contracts concluded between residents of Turkey will have to mandatorily be settled and accepted in Turkish currency.

- **On 25 June 2022, new conditions were introduced for the use of Turkish lira commercial loans by the Banking Regulation and Supervision Agency (BRSA)**

  A new cash commercial loan in TRY currency will not be extended to:

  — Companies being subject to independent audit;

  — Companies having foreign currency (FX) cash assets of more than TRY 15 million; and

  — Companies whose FX cash assets exceed 10% of their total assets in TRY equivalent or the net sales revenue over the past year.

- **On 16 June 2022, the threshold requiring use of a tax identification number in foreign exchange transactions was increased**

  Before entering into transactions and contracts, authorised institutions established in accordance with Communiqué No. 32 on the protection of the value of the Turkish currency must observe an increased threshold from USD 3,000 to USD 5,000 to determine whether to use a tax identification number in effective/foreign exchange purchase and sale transactions and contracts with customers.

- **VAT communiqué on construction works for the manufacturing industry and tourism was published on 30 May 2022**

  Delivery of goods and performance of services related to construction works within the scope of the certificate for taxpayers holding investment incentive certificates for the manufacturing industry and tourism are exempt from value added tax until 31 December 2025.

- **On 14 May 2022, corporate tax communiqué on one-point discounted corporate tax on certain income generated from manufacturing and exportation was published**

  Corporate taxpayers will be able to apply a one-point reduced corporation tax rate to their earnings from both export and manufacturing activities.

- **On 26 April 2022, Communiqué No. 41 was gazetted, which includes amendments to the general communiqué on the application of VAT**

  One of the main salient features is the addition of a new section for optional full VAT withholding (reverse charge with regard to services and deliveries subject to partial withholding as stipulated under sections 2.1.3.2 and 2.1.3.3 of the VAT communiqué (with certain exceptions)).

  In addition to this, Communiqué No. 41 also includes, among others:

  — New provisions for partial VAT withholding on deliveries of steel and iron products;

— Increase in the VAT cash or credit refund threshold from TRY 5,000 to TRY 10,000 without a CPA report, tax inspection report or guarantee.

- **On 18 April 2022, the ratio applied in obligation to exchange portion of the export prices to the Central Bank was increased to 40%**

  As of 18 April 2022, 40% of the export prices tied to the export value acceptance certificate or the foreign exchange purchase certificate will mandatorily be sold to the bank that issued the export value acceptance certificate or foreign exchange purchase certificate.

BACK

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**.

UAE tax updates

Proposed corporate tax regime (including transfer pricing)

The Ministry of Finance (MOF) of the UAE announced in January 2022 that the UAE will introduce federal corporate tax (CT/UAE CT) (applicable across all Emirates) on accounting net profits (after certain adjustments) that will be effective for financial years starting on or after 1 June 2023.

Subsequently, in April 2022, the MOF released a public consultation document (PCD) containing a draft framework of the proposed UAE CT regime and seeking input/comments from interested parties on its main features and implementation. It was stated in the PCD that it does not reflect the final view of the UAE government and is not intended to comprehensively address all possible aspects of the proposed UAE CT regime. The PCD is released in advance of relevant legislation being finalised and promulgated on the basis that it is without prejudice to the final UAE CT regime.

The proposed CT law also includes provisions relating to transfer pricing (TP) applicable to transactions with 'related parties'/'connected persons'. Detailed TP rules are also expected to be prescribed as part of UAE CT law, along the lines of OECD guidelines.

Final UAE CT and TP law is expected to be published in the coming weeks.

Key features of the proposed UAE CT and TP law, based on the PCD, are summarised at: https://pkfuae.com/services/taxation/corporate-tax/

Economic Substance Regulations

Brief overview

The government of the UAE introduced the Economic Substance Regulations ('the Regulations'/ESR) on 30 April 2019 vide Cabinet Resolution No. 31 of 2019. These Regulations were amended retrospectively vide Cabinet Resolution No. 57 of 2020.

The Regulations (as amended) inter alia prescribe two types of annual compliance, namely:

i) Submission of the 'Information Notification' within six months from the end of the accounting year; and

ii) Submission of the 'Substance Report' within twelve months from the end of the accounting year.

Accordingly, licensees with a financial year ending 31 December 2021 recently filed their Economic Substance Notification, their deadline being 30 June 2022 and are required to file their Economic Substance Report on or before 31 December 2022. Similarly, licensees with a financial year ending

31 March 2022 are required to file their Economic Substance Notification on or before 30 September 2022.

Recently, the MOF has uploaded Economic Substance Regulations Portal Frequently Asked Questions ('Portal FAQs'). They provide much-needed guidance on certain ESR portal issues faced by licensees during their compliance routine and thus proves to be very helpful and insightful for all licensees.

The Portal FAQs mainly provide guidance regarding accessing the ESR portal, providing solutions in case of non-receipt of activation emails, login issues, providing contact details (email IDs) for seeking assistance in case of any ESR portal issues, etc.

International tax developments

UAE DTA network

The UAE has entered into and concluded double taxation agreements (DTA/'tax treaties') with over 137 countries. The list of the countries/jurisdictions with which the UAE has entered and concluded DTAs can be found at: https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxtionAgreements/Pages/DoubleTaxtion.aspx

UAE VAT and excise tax update

With respect to VAT and excise tax, the UAE Federal Tax Authority (FTA) has recently released certain amendments/updates, as set out below:

Date	Tax	Type Of update	Particulars of update
May 2022	VAT	Federal Tax Authority decision	Setting the time limit for claiming refund of VAT by tourists
June 2022	VAT	Public clarification	Guidance on the application of the VAT legislation with regards to making charges received by gold jewellers (VATP029)
June 2022	Excise tax	Public clarification	Excise goods which are deficient or missing and the process for the destruction of excise goods within a designated zone

- **FTA Decision No. 04 of 2022 on 'Setting the Time Limit for Claiming Refund of VAT by Tourists'**
  - The decision issued by the FTA states that the operator of the tax refunds for tourist scheme shall set a one-year time limit for tourists to claim the refund of VAT, through bank card or by cash, from the date of verification of the refund request and should also include this time limit in its published list of terms and conditions.
  - In case the operator has any unclaimed amount by the tourists for over one year, the same must be delivered to the FTA within one month of the expiration of the time limit.
- **Public clarification providing guidance on the application of the VAT legislation with regards to making charges received by gold jewellers**
  - **Single composite supply:** Gold items and making charges will be a single composite supply if the price related to gold items and making charges cannot be separated and is supplied by the same supplier. In this scenario, the recipient may be required to account for VAT under the reverse charge mechanism
  - **Multiple supplies:** Gold items and making charges will be multiple supplies if the gold item and making charges are separately shown on the invoice. In this scenario, VAT will be charged on the making charges component.
- **Public clarification on 'Excise Goods which are deficient or missing and the process for the destruction of Excise Goods within a Designated Zone'**

  The public clarification explains the FTA's position on cases where relief from excise tax is available for deficient or missing excise goods within an excise designated zone. Further, it provides guidance on the information required to be included in the declaration and the possible responses from the FTA.

Source: https://www.tax.gov.ae/en

Comprehensive Economic Partnership Agreement

The UAE and India signed a Comprehensive Economic Partnership Agreement (CEPA) on 18 February 2022 that entered into force on 1 May 2022. This agreement represents a turning point in the UAE's economic trajectory. It aims to augment bilateral trade between the UAE and India from USD 60 billion to USD 100 billion in the next five years. This is one of the first UAE free trade agreements signed independently of other GCC countries.

The CEPA provides for tariff concessions on specified goods in different ways with some goods receiving an immediate concession and others in a phased manner.

The key highlights of the CEPA are outlined hereafter:

1. Key objectives of the CEPA:

- Provide UAE exporters greater access to the Indian market through tariff elimination or reduction on more than 80% of goods.
- Ensure that UAE products will not be subject to India's investigations where such products are merely transhipped.
- Ensure that each party receives national or most favoured nation treatment.
- Ensure customs duties are not imposed on electronic transmissions.
- Allow the UAE to access India's government procurement and grant a price preference of 10% in favour of national companies, SMEs and green companies in tenders for goods and services covered by the agreement.
- Set special qualifying rules for gold, steel and copper sectors to reflect the actual capabilities of those industries in the UAE.
- Encourage mutual investments by establishing UAE–India Technical Council on investments

2. Key sectors most positively impacted by the CEPA

- For UAE goods:
  - Chemicals
  - Pharmaceuticals
  - Glass and glassware
  - Mineral fuels
  - Aluminium
  - Copper
- For Indian goods:
  - Electrical machinery
  - Gold and jewellery
  - Cereals
  - Pharmaceuticals
  - Fruits and vegetables
- The CEPA not only benefits the trading of goods, but also has a profound impact on the services sectors. Key sectors with a positive impact are listed below:
  - Communications
  - Construction and engineering
  - Distribution
  - Education
  - Finance and insurance
  - Healthcare
  - Transport

3. Benefits for consumers:

The CEPA will provide consumers access to different varieties of high-quality goods and services at lower prices.

4. Benefits for small businesses:

The CEPA will assist UAE small businesses to expand into the Indian market and diversify their consumer base by giving access to information on export rules and requirements, establishing simple customs procedures and by creating opportunities to network with commercial partners in India.

BACK

PKF Comment

Considering the effective date of CT being financial years starting from 1 June 2023, further development towards the introduction of CT law can be expected in the coming weeks.

Businesses would be required to proactively carry out an initial qualitative impact assessment of the proposed introduction of the UAE CT and TP regime on their current/proposed businesses and be UAE CT compliant from the outset.

Businesses in the UAE which have identified themselves as in-scope for the purposes of UAE ESR are required to continue to comply with the prescribed filing requirements within the timelines provided by the MOF.

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

Businesses can evaluate provisions under the UAE–India CEPA and avail benefits provided thereunder.

For further information or advice concerning taxes in the UAE, please contact Mr. Shailesh Kumar at **skumar@pkfuae.com**, Mr. Chaitanya Kirtikar at **cgk@pkfuae.com**, Mr. Mradul Gupta **mgupta@pkfuae.com**, Mr. Ronak Desai at **rdesai@pkfuae.com**, Ms. Nandita Salgaonkar at **nsalgaonkar@pkfuae.com** or Ms. Radhika Doshi at **rdoshi@pkfuae.com** or call **+971 4 3888 900**.

United States

Transfer pricing considerations on a federal and state level in the US

Multinational enterprises (MNE) with operations in the US typically engage in cross-border transactions between related parties and consider transfer pricing rules and regulations on a federal level in the US and the country where the related party is located. MNEs need to make sure that related party transactions are in accordance with the arm's-length standard. According to the IRS, the arm's-length standard for a transaction between controlled taxpayers is met, 'if the results of the transaction are consistent with the results that would have been realised if uncontrolled taxpayers had engaged in the same transaction under the same circumstances.' The OECD and countries that follow the OECD guidelines are also using the arm's-length standard with a slightly different definition. The pricing of goods, intangibles and services between related parties can be subject to an examination by tax authorities to determine whether the transaction was used to shift income and led to tax base erosion.

A transfer pricing initiative in New Jersey highlights the fact that taxpayers should not only think of transfer pricing on a federal/international level but also should consider transfer pricing related issues on a state level.

New Jersey implementing transfer pricing initiative

The State of New Jersey opened on 15 June 2022 a voluntary initiative to work with corporate taxpayers to expedite the resolution of corporate inter-company pricing issues. The programme will continue until 2 March 2023 and has the following purposes:

- Fairly and consistently expedite the resolution of inter-company pricing issues subject to adjustment;
- Provide certainty and uniformity to taxpayers;
- Reduce time in disputes; and
- Form an efficient basis for resolution of this corporate tax issue for all open tax years.

The reason for inter-company pricing issues is that New Jersey corporate taxpayers may engage in transactions with members of an affiliated group (inter-company transactions) that have a negative impact on the net income allocated to the State of New Jersey. Inter-company transactions that lack economic substance or are not at fair market value can cause a taxpayer to inaccurately report net income attributable to New Jersey.

One of the main benefits for taxpayers to participate in the initiative is that New Jersey will potentially waive a portion or all penalties that are assessed. By participating in the initiative, New Jersey would also be willing to agree to a transfer pricing methodology or settlement for any unaudited open tax years.

The following taxpayers are eligible to participate in the initiative and must agree in writing by 15 September 2022 to participate:

- Taxpayers currently under audit;
- Taxpayers notified of an upcoming audit;
- Taxpayers with a case pending before the Conference and Appeals Branch; and
- Unidentified taxpayers with related party inter-company pricing.

The initiative does not apply to matters in any stage of litigation.

Transfer pricing issues overlooked on a state level

The transfer pricing initiative in New Jersey sheds some light on a topic that is often overlooked by entities under common control engaging in related party transactions within the US that cross state borders. Although not a frequent topic of discussion, there can be significant incentive to manipulate transfer pricing on a state level. States have different corporate income tax rates, ranging from 2.5% in North Carolina to 11.5% in New Jersey, and taxpayers might be looking for ways to shift income to lower tax jurisdictions. Another reason for shifting income can be to utilise net operating losses that have been generated in a state.

The means by which income can be shifted between states are as follows:

- Pricing of goods, intangibles and services exchanged between two entities under common control; and
- Allocation of income and expenses between commonly controlled entities.

The Multistate Tax Commission (MTC) has implemented a State Intercompany Transactions Advisory Service Committee that supports states seeking to address tax base erosion of income-based taxes due to inter-company transactions. The committee has issued an Information Sharing Agreement and as of 2 February 2022, five states have signed up to the agreement (Alabama, Louisiana, Mississippi, New Jersey and Washington). Taxpayers should expect that more states will sign the agreement and will start sharing information.

Adjustments on the state level might lead to double taxation as there is currently no competent authority mechanism between states. In general, US tax treaties include provisions related to competent authority procedures to avoid double taxation for taxpayers but US tax treaties are only applicable on a federal level.

It has to be noted that the inter-state transfer pricing issue does not exist if the entities are members of a controlled group that has to submit a combined or consolidated state tax return in both states as inter-company transactions would have to be eliminated when preparing the group financial statements.

PKF Comment

BACK

Taxpayers should review inter-state related party transactions and whether the transactions comply with the arm's-length standard. The review should start with analysing transactions and whether agreements between related parties are in place. Many states have adopted federal rules and regulations determining a proper transfer pricing methodology or have implemented similar provisions. Taxpayers should check whether they comply with these rules. Taxpayers should expect that more states will sign up to the MTC Information Sharing Agreement and will increase efforts to identify and analyse related party transactions on an inter-state level.

If you believe the above measures may impact your business or personal situation or require any advice with respect to US taxation, please contact Ralf Ruedenburg at **rruedenburg@pkfod.com** or call **+1 646 965 7778**.

right people
right size
right solutions

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