PKF International Limited

PKF worldwide tax update

SEPTEMBER 2021

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.

Contents

Welcome

This third quarterly PKF Worldwide Tax Update for 2021 brings together notable tax changes and amendments from around the world, each followed by a PKF commentary that provides further insight and information on the matters discussed. PKF is a global network with 400 offices, operating in over 150 countries across five regions. It boasts a community of tax experts that specialise in providing high-quality tax advisory services to international and domestic organisations in all its markets.

In this issue, articles include discussions on:

- (EU) VAT updates in Poland, Romania, Switzerland, Ukraine and the UAE
- Double tax treaty updates and related case law in Ecuador
- Recent comprehensive tax changes in Kenya, Malta and Nepal
- International tax developments (CFC, CbC Reporting, BEPS, MLI, Transfer Pricing etc.) in Croatia, Hungary, South Africa and the US

We trust you find this update both informative and interesting. Please do contact our PKF tax experts 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.

2021/22 Worldwide Tax Guide

The latest PKF Worldwide Tax Guide features 148 jurisdictions. Its resounding success is a result of the energy, time and support of individuals and firms within the PKF family. We are extremely grateful to all those who provided country submissions, and to each person who has supported this publication.

Bulgaria

New rules for personal voluntary insurance contributions applicable as from 1 January 2021

Changes to Bulgarian tax legislation increased the scope of personal voluntary insurance contributions which may qualify as a tax deduction. The amendments to Bulgarian Law were introduced last year and became effective at the beginning of 2021.

Until now personal contributions made in countries outside the EU/EEA did not qualify for personal income tax purposes. As per the new rules contributions in companies within an OECD member country are now also recognised as tax-deductible. Apart from the countries in the EU/EEA, those include Australia, UK, Israel, Canada, Mexico, New Zealand, USA, Turkey, Chile, Switzerland, South Korea, and Japan.

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PKF Comment

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

Colombia

Tax cost of indirect disposals of assets when specific condition in place

As from tax year 2019, anti-avoidance rules came into effect in the case of indirect transfers of assets held in Colombia through the disposal of shares or rights in offshore entities subjecting these assets to tax in Colombia. The underlying asset located in Colombia is deemed to be directly transferred, whereby the cost basis of the underlying asset corresponds to the asset holder's cost basis as if he had directly transferred it, and the sales price corresponds to the fair market value. As from tax year 2020, in case of a subsequent transfer of the asset, the cost basis corresponds to the amount paid for acquiring the shares or rights in the foreign entity that holds the underlying assets located in Colombia.

Decree 1103 of 2020 clarified that the definition of 'foreign entities' includes companies, trusts, collective investment funds, and private foundations. Additionally, it clarified that a 'transfer at any title' refers to any form of transfer of property, including through contributions made to foreign companies, liquidations of foreign companies, payments in kind, and reductions of capital. Decree 11003 also provided rules on the determination of the value of the transfer, filing of returns (i.e. Form 150), and payment methods.

Presence of a specific condition

The tax authorities, through Concept 630 of 2021, have analysed the tax treatment of the tax cost from the indirect sale of assets in Colombia, when the value of the sale is made up of a fixed part and a variable part subject to a condition.

One of the obligations of the indirect transferor of the underlying asset is to file a tax return in Colombia within a month following the date of the sale. However, when a condition has previously been agreed upon, the filing of income tax and supplementary income tax must be done within a month from meeting the condition, using Form 150, although no tax is generated upon the respective transaction.

This means that, regardless of whether a condition is agreed upon or not within the indirect transfer, only a filing of income and complementary taxes is done if the indirect transferor is not a tax resident in Colombia.

If it has been agreed that the entire payment of the indirect transfer is subject to a condition, once it is met and within the following month, the indirect transferor will be obliged to file the income tax and supplementary income tax return.

However, if only a part of the payment of the indirect sale is subject to a condition, the indirect transferor will be obliged to file the income tax and supplementary income tax return within the month following the date of sale taking into consideration the total value of said indirect disposal, i.e., taking into account both the fixed value and the variable part subject to condition.

In the latter case, it could happen that when the condition is met, the declared price may vary as a consequence of future and uncertain events, which may lead to the fact that the declaration initially presented needs to be corrected if the foreign selling company determines that as a consequence from the decrease in the sales price, a higher tax was paid than was required within the meaning of article 589 of the Tax Statute.

The indirect transfer may thus take the entire tax cost of the underlying asset into account in determining the taxable profit when it makes the aggregate payment of the indirect transfer. However, when it is subject to a condition, the tax cost of the underlying asset may only be recognised proportionally when not the whole entity that owns the underlying asset is disposed of or when not the whole underlying asset is disposed of.

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PKF Comment

If you believe the above measures may impact your business or require any advice concerning Colombia taxation, please contact John Rivera at **rcjohn@amezquita.com** or call **+57 1 208 7500**.

Multilateral Instrument (MLI) enters into force and introduction of new e-commerce VAT rules

Multilateral Instrument (MLI)

On 1 June 2021, the MLI entered into force concerning Croatia. Croatia signed the MLI on 7 June 2017 and deposited its final position on 18 February 2021, including the 65 treaties that it wants to be covered by the MLI.

E-commerce VAT rules

Amendments to the Value Added Tax Act further harmonised and implemented the provisions of Council Directive (EU) 2017/24552 and Council Directive (EU) 2019/19953 regarding the supply of services and distance selling of goods, which enter into force on 1 July 2021 and should lead to a simplification of certain rules regarding the provision of services and the sale of goods at a distance.

In this regard, the Value Added Tax Act prescribes four special taxation procedures:

1. Special taxation procedure for services provided by non-established taxpayers within the European Union;
2. Special taxation procedure for the distance sale of goods within the European Union, for supplies of goods within a Member State by electronic interfaces enabling such supplies and for services supplied by taxable persons established within the European Union but not established in the Member State of consumption;
3. Special taxation procedure for the distance sale of goods imported from third territories or third countries;
4. Special procedure for registration and payment of VAT on imports.

When the distance sale of goods exceeds the threshold of HRK 77,000, the sale will be taxed in the Member State in which the recipient of the goods who is not a taxable person has a residence. In addition, the foreign taxable person will pay Croatian VAT when the aggregate value of distance selling of goods, telecommunications services, radio, and TV broadcasting services and digitally performed services exceeds a EUR 10,000 threshold and vice versa. Croatian taxable persons will pay VAT in another Member State when the value of said supplies exceeds the threshold of HRK 77,000. This will be applicable from 1 July 2021.

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PKF Comment

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

Various tax updates

Tax guidance on Leases

A recent tax circular issued in June 2021 gives guidance on the tax treatment of leases.

The circular states that from now on leases registered with the Department of Land and Surveys (LDS) will be taxed under income tax based on articles 5(1) e and 5(2) d and not under capital gains tax according to article 10.

This means that the annual lease income will also be subject to special defence contribution and national health service just like rental income. Disposal of leases will continue to be subject to capital gains tax.

House passes changes to the Assessment and Collection of Taxes Law

The Cyprus Parliament voted earlier this month several changes to the Assessment and Collection of Taxes Law relating to the submission of the personal income tax return (Form TD1), the employer's tax return (Form TD7) and the payment of the second provisional instalment for the year 2020.

The changes are as follows:

- The deadline for submitting the personal income tax return for individuals (Form TD1) for the year 2020 as well as the payment of any taxes due based on the tax return to be submitted are extended from 31 July 2021 to 30 September 2021;
- The deadline for submitting the employers' return (Form TD7) for the year 2020 is extended from 31 May 2021 to 30 September 2021;
- The deadline for the payment of the second instalment of tax due based on the provisional tax return filed for the year 2020, which was due for payment on 31 December 2020, is extended to 30 September 2021 without the payment of interest and penalties.

The amended law went into effect after being published in the Cyprus Government Gazette on 20 April 2021.

DAC6 introduced to Cyprus tax system

The House of Representatives passed a law amending the Cypriot Law on Administrative Cooperation in the Field of Taxation, implementing the EU Directive on the mandatory disclosure and exchange of information on reportable cross-border arrangements (referred to as DAC6).

The legislation has come into effect retroactively from 1 January 2021. However, disclosure captures reportable cross-border arrangements made on or after 25 June 2018. In addition, a Ministerial Decree is expected to be issued which will provide clarity over the interpretation of key terms and provisions of the Law.

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PKF Comment

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

Updates on double tax treaties and online marketplaces

Double tax treaties

- On 20 May 2021, Italy ratified the amending protocol, signed on 13 December 2016, to the Ecuador-Italy 1984 double tax treaty;
- On 21 May 2021, the president of Ecuador signed Decree No. 1347 ratifying the Ecuador-United Arab Emirates double tax treaty.

Online marketplaces

The tax administration (SRI) has issued regulations by way of Resolution NAC-DGERCGC21-00000026 on the income and VAT implications for payments made to and received from payment aggregators and online marketplaces:

- A payment aggregator is defined as any entity providing as a service the processing of online or physical payments made to affiliated businesses;
- An online marketplace is defined as an entity registered to host buyers and affiliated businesses through technological platforms.

Said Resolution was gazetted on 28 May 2021 and is in force thereafter and it stipulates among others the following tax measures:

- Online marketplaces and payment aggregators need to pay to the SRI monthly income tax and VAT on payments received from credit/debit companies, financial entities and other payment aggregators, and they must withhold income tax and VAT on payments made to third parties and/or affiliated businesses that represent income for them;
- Credit/debit card companies and financial entities need not withhold income tax and VAT on payments made to online marketplaces and payment aggregators. Payments made between payment aggregators are also not subject to withholding tax and VAT;
- Payment aggregators and online marketplaces may issue a single withholding receipt per month regarding the same client, third party, and affiliated business and they need to issue withholding certificates, supporting documents, and invoices by way of data messages/electronic mail signed electronically and based on the most recent withholding certificate available on the SRI's website.

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PKF Comment

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

Temporary adjustment to the carry-back scheme

The first draft of the Amending Finance Bill for 2021 was presented before the French Council of Ministers on 2 June 2020. It provides for a measure to "de-cap" the French carry-back mechanism applicable to tax losses to improve the financial situation of companies impacted by the COVID-19 pandemic.

The current carry-back system results in a credit equal to said carried-back losses multiplied by the standard CIT rate applicable during the year concerned, which can be used to reduce the corporate income tax ("CIT") payable during the following five years (with a refund if not used after 5 years). However, it is currently subject to two limits: (i) limited to EUR 1 million (ii) you can only go back one year.

Article 1 of the draft Bill proposes to exceptionally allow the carry-back of tax losses generated during a FY ended between 30 June 2020 and 30 June 2021 and use those losses to offset the taxable profit of the three previous FYs without any amount limit. The CIT rate to be used to determine the corresponding credit would be the one applicable to FYs starting on or after 1 January 2022 (i.e., 25% standard CIT rate). The option to benefit from this new measure would have to be made by the expiration date of the deadline to file the tax return for a FY ended on 30 June 2021 (i.e., 30 September 2021) and no later than the final payment date of the CIT liability of the FY following the one for which said option is made.

This carry-back claim will not be able to benefit from the provisions of Article 5 of the Amending Finance Act for 2020, which allows for immediate repayment. As under the common law regime, companies will be able to use this claim to pay the CIT due for the next five years, with the balance being refunded after that.

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PKF Comment

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Germany

Tightening of Real Estate Transfer Tax – in particular for share deals

Important amendments to the Real Estate Transfer Tax Act (GrEStG) have been introduced with effect from 1 July 2021. The declared aim is to take consistent action against share deals by real estate companies with so-called RETT blocker structures, through which the real estate transfer tax (RETT) is largely avoided. However, these legal changes are much more far-reaching and affect all companies holding real estate and their shareholders.

Intention of the RETT amendment

When shares are transferred of companies that directly or indirectly hold real estate, RETT may be triggered. In practice, however, real estate transfer tax can be avoided to a large extent when transferring shares in companies (“share deals”) holding property through appropriate structuring. The Act is intended to prevent certain structuring measures concerning RETT. The key points are:

- Introduction of a new supplementary statute for corporations;
- Lowering of the participation threshold from 95% to 90%;
- Extension of the time limits to 10 and 15 years.

Applicable legal situation with 95% threshold for share deals

In principle, a share deal is a frequently used technique to avoid RETT in real estate transactions. According to the currently applicable legal situation, no RETT is due if less than 95% of the shares in a real estate company is transferred. However, if at least 95% of the shares are transferred, a distinction must be made between real estate corporations and real estate partnerships. In the case of corporations, in practice, a main investor often buys only 94% of the shares in a real estate company, while a co-investor buys the other 6% of the shares. All shares can therefore be transferred at the same time without

RETT, although not all of them should be acquired by the same person.

Note: The transfer in the second step may not be made to the same investor who has already acquired shares in the first step. If this is the case, RETT is triggered in relation to all shares, because at least 95% of the shares are “in one hand”.

New legal situation brings tightening

Since 1 July 2021, there will no longer be a differentiation between real estate corporations and real estate partnerships. In addition

- the threshold triggering the RETT will be lowered from 95% of the shares to 90%; and
- the lock-up period during which share acquisitions are to be aggregated will be extended to 10 years.

Regardless of the legal form, only a maximum of 89.9% of the shares can then be transferred within 10 years without triggering RETT. If the threshold of 90% is exceeded within that period, the acquisition of real estate is deemed to have taken place and real estate transfer tax is payable on the entire value of the real estate.

A further significant change has occurred at the level of real estate partnerships regarding the exemption provision of Section 6 GrEStG. Until now, real estate could be transferred from one business to another with identical participation, provided that the real estate is owned by the respective company for five years before and after the transfer. In the future, the lock-up period for the transferring company will be 15 years.

Note: As of 1 July 2021 it is essential to ensure that no more than 89.9% of the shares are transferred in aggregate. If not, the transfer will be subject to RETT both at the level of corporations and partnerships.

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PKF Comment

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

Hungary

Multilateral Instrument (MLI) enters into force and IPA signed with the United Arab Emirates

Multilateral Instrument (MLI)

On 1 July, 2021 the MLI entered into force with respect to Hungary. Hungary signed the MLI on 7 June 2017 and deposited its final position on 25 March 2021, including the 74 treaties that it wants to be covered by the MLI.

IPA with the UAE

On 15 July 2021 Hungary and the United Arab Emirates signed an investment protection agreement (IPA) in Abu Dhabi.

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PKF Comment

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Italy

Advantageous tax regime for "impatriates" into Italy also valid for sports(wo)men from non-EU countries

The Italian Revenue Agency, in an official reply dated 25 June 2021, provided clarifications regarding the applicability - to a professional sportsman - of the "impatriate tax regime" (Art. 16 of Legislative Decree 147/2015).

This rule provides that those who transfer their tax residence to Italy after having been tax resident abroad for 24 months (and remain in Italy for at least a further 24 months) may benefit from a 70% (or even 90% in specific regions of southern Italy) reduction in the tax base for income from employment, self-employment or business activities received in Italy, provided that the work is mainly carried out in Italy.

The reduction of 70% or 90% of the taxable income is applicable for five years, after which it can be renewed for another five years subject to certain requirements (the renewal provides for a reduction of 'only' 50% for the following 5 years).

The rule also applies to professional sportsmen, but they are entitled to a 50% (instead of 70-90%) reduction in the tax base.

In this specific case, the Italian Revenue Agency replied to the case of a football player, employed by an Italian football club with a subordinate employment contract, resident for tax purposes in Italy since 2020 following a transfer from a non-EU country.

In this regard, the Revenue Agency has clarified that for professional sports(wo)men there is no limitation whatsoever as to the country of origin or the country of residence.

Taking into account the State of origin or citizenship, the Revenue Agency's position results in all workers who have the characteristics required by law, regardless of citizenship, having access to the scheme.

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PKF Comment

The abovementioned rule regarding the advantageous tax regime for "Impatriates" and the related clarifications provided by the Italian Revenue Agency about its applicability to sportsmen and women from non-EU countries, appear highly interesting for taxpayers who consider relocating to Italy.

If you believe that some of your clients might be interested in taking advantage of this interesting opportunity, we welcome the opportunity to provide further information on the subject or any other advice with respect to Italian taxation.

You can reach out to Stefano Quaglia at **s.quaglia@pkf-tclsquare.it** or call **+39 02 9285 4246** (Milan office) or Matteo Macciò at **m.maccio@pkf-tclsquare.it** or call **+39 010 81 83 250** (Genoa office).

Kenya

Tax update – Finance Act, 2021

General comments on Finance Act, 2021 changes

The Finance Act, 2021 (FA 2021) was assented by the President on 29 June 2021. The FA 2021 came with a raft of changes affecting all the tax statutes like is the case every year.

The Income Tax changes brought by FA 2021 indicate a clear intent by the government to align its Income Tax Regulations with international best practice as it seeks to shore-up its tax revenues. The changes have heavily borrowed from the recent changes and developments by the Organisation for Economic Co-operation and Development (OECD) relating to tax and the prevention of instances of profit shifting to low tax jurisdictions. The changes also demonstrate the Government's plan to adopt and implement certain action points of the OECD's Base Erosion and Profit Shifting (BEPS) project that aims at protecting its taxing rights on income derived or accrued in Kenya. Whilst a number of the changes had been proposed in the draft Income Tax Bill, 2018, which to date has never been tabled in Parliament, the introduction of these changes in the FA 2021 indicate the Government's intention to align itself with the recent changes and developments in taxation especially on the ever-emerging business models and advancements in technology. Noteworthy, the definitions of 'Control' and 'Permanent Establishment' have been expanded in line with international best practice and we anticipate seeing a myriad of changes to business setups because there could be adverse tax implications relating to Transfer Pricing arrangements and creation of tax presence in Kenya by non-resident persons. Additionally, there is a paradigm shift on the interest restriction criteria from the 3:1 debt-to-equity ratio that was previously under the thin capitalisation provision to the 30% of Earnings Before Interest, Tax, Depreciation, and Amortisation (EBITDA) provision. This amendment might be intended to align with international best practice but we envisage it will adversely affect all businesses whether locally or foreign-owned that are heavily geared.

The Value Added Tax (VAT) and Excise Duty changes have either sought to streamline discrepancies that have arisen from the recent changes to the various tax statutes or to reclassify items that are subject to VAT and Excise Duty to achieve additional revenues for the government and in some instances to promote and protect certain industries.

From a Tax Procedures Act perspective, there is recognition of international agreements in our Tax laws, the introduction of the Common Reporting Standard (CRS), and deletion of powers by the Commissioner to exempt suppliers from the Withholding VAT provisions which put them in a VAT credit position.

The East African Community Gazette Notice Vol. AT 1 – No.14 dated 30 June 2021 contains the raft of Customs duties changes at the East African Community (EAC) level that were effective from 1 July 2021. This EAC Gazette Notice is available in the public domain.

Our detailed analysis of the FA 2021 on the above tax changes is contained in the subsequent sections.

Expanded definition of 'Control'

The FA 2021 has expanded the definition of 'control' and instances that give rise to control. Previously, control entailed ownership of at least 25% of the shares or voting rights in the other company. The FA 2021 has now reduced this to 20%. Additionally, the FA 2021 has introduced the following scenarios as instances that will give rise to control:

- Where loans advanced by the person to another person constitute at least 70% of the book value of the total assets excluding loans from financial institutions not associated with the person advancing the loan;
- Where guarantees by the person for any form of indebtedness of another person constitute at least 70% of the total indebtedness of the other person excluding a guarantee from financial institutions not associated with the guarantor;
- Where the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;
- Where the manufacture or processing of goods or articles or business carried on by one person is dependent on the use of know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of a similar nature, which the other person has exclusive rights to;
- Where a person or a person designated by that person supplies at least 90% of his sales to another person and upon assessment, the Commissioner deems influences in the price or any other conditions of the supply;
- Where a person purchases or designates a person to purchase at least 90% of the sales of another person and upon assessment, the Commissioner deems an influence in the price or any other conditions of the purchase; and

- Where the Commissioner is of the opinion that the relationship, dealing, or practice with another person constitutes control.

The above change will have a significant impact on Transfer Pricing (TP) arrangements. The expanded scope of control from a TP perspective provides a catch-all rule for all cases where the facts and circumstances of transaction evidence that a person effectively exercises control over the business decisions of the other person even where there are no actual shareholding or voting rights.

Whilst Parliament has argued that the change is meant to safeguard against revenue leakage, the change will significantly change the TP landscape in Kenya and will greatly impact the choice of comparables for TP benchmarking analysis. Transactions that were previously deemed to be at arm's length will now fall under the scope of controlled transactions between related or associated entities.

To ensure totally independent party transactions that do not give rise to control are excluded from the definition of control, the FA 2021 compels the Commissioner to undertake an assessment on taxpayers with more than 90% of the sales or purchases to or from one person before making the determination that there is an influence in the price or other conditions between the supplier or the purchaser that would constitute control.

It would be important for the Commissioner to issue regulations that define certain terminologies like book value and total assets to avoid ambiguity in interpretation and determination of 'control' by taxpayers. Such ambiguity would result in a lot of tax disputes.

Effective date: 1 July 2021

Expanded definition of a Permanent Establishment

The FA 2021 has expanded the definition of a Permanent Establishment (PE) to cover the following additional scenarios that will result in the creation of a PE in Kenya:

- A warehouse in relation to a person whose business is providing storage facilities to others;
- A farm or plantation for agricultural activities;
- A building or construction site or project installation or any supervisory activity connected to the site or project that has existed for: (a) a period of 183 days or more; or (b) an aggregate of between 30 to 183 days when carried on in one or more periods of time; or (c) for more than 30 days if carried on by a related enterprise;
- Provision of consultancy services within Kenya for a period exceeding an aggregate of 91 days in a year;
- An installation or structure used in the exploration of natural resources where the exploration continues for a period of more than 91 days;
- A dependent agent of a person who acts on their behalf in Kenya including the negotiation and conclusion of contracts except where the activities are preparatory or auxiliary in nature.

This expanded definition on characterisation of a PE in Kenya is in line with international best practice on the expanded definition of PEs by Article 5 of the OECD Model Tax Convention to subject to tax business models that were hitherto not under the ambit of income tax.

Further, the expanded definition brought by the FA 2021 is in line with Action 7 of the BEPS Action points that brought changes to the definition of a PE to counter-strategies used by persons to avoid a taxable presence in a jurisdiction and ultimately lead to the shifting of profits.

In line with Action 7 of the BEPS report, the expanded definitions cure this deficiency through:

- Ensuring that where there are activities of an intermediary nature in Kenya that are intended to result in the regular conclusion of contracts to be performed by a foreign enterprise, the enterprise will be considered to have a taxable presence in Kenya;
- Restricting entities from fragmenting business operations into several small operations to take advantage of exceptions to the definition of a PE; and

- Preventing entities that have been taking advantage of the exceptions applicable to construction sites through splitting up contracts between closely related enterprises.

The expanded definition brought by the FA 2021 also indicates the intent by the Government to expand the scope of a PE because of numerous disputes that have arisen on the interpretation of certain Double Taxation Avoidance Agreements (DTAAs) between Kenya and other states e.g. DTAAs between Kenya and South Africa, France, and the United Arab Emirates. This is because the aforesaid DTAAs give Kenya the taxing rights to income that has been earned in Kenya by entities of those states only when those entities have a PE in Kenya.

It is however imperative to note that there is no timeline for the existence of a fixed place of business for it to be deemed to have created a PE. This ambiguity may result in disputes between taxpayers and the KRA.

Effective date: 1 July 2021

Overhaul of interest restriction provision

The FA 2021 has completely overhauled the thin capitalisation provision by repealing the former provision where interest payments in a year of income by a foreign-controlled entity were not either partly or fully tax-deductible depending on the debt-to-equity ratio which was 3:1 respectively. The FA 2021 has introduced the restriction of tax-deductibility of interest expense on any gross interest amounts paid or payable to related persons and third parties in excess of 30% of Earnings Before Interest, Taxes, Depreciation, and Amortisation (EBITDA).

This new provision shall be applicable to interest on all loans, payments that are economically equivalent to interest, and expenses incurred in connection with raising the finance and shall apply to all entities including those in the extractive sector with the exception of:

a) Banks or financial institutions licensed under the Banking Act; and

b) Micro and Small enterprises registered under the Micro and Small Enterprises Act, 2012.

The repeal of the thin capitalisation provision is retrogressive in the sense that it will discourage investments that are highly geared by restricting the amounts of interest that would previously be claimable even on local loans. The repeal is also detrimental to loss-making entities because they will not claim any interest expense and companies in the extractive industry whose operations are highly geared with no immediate revenues.

Whilst the amendment on the restriction of claiming interest expenses is retrogressive to many taxpayers, the amendment is in tandem with Action 4 of the BEPS project. Action 4 aims at limiting base erosion through the use of tax-deductible interest deductions and other financial payments. Action 4 recommends the restriction of an entity's net interest deductions to its level of economic activity, which is measured using EBITDA. The proposal has also been adopted by European Union member states who apply an interest cap that restricts taxpayers' deductible interest expenses to 30% of EBITDA.

Effective date: 1 January 2022

Repeal of special arrangements for relief from Double Taxation

The FA 2021 has overhauled the provisions governing special arrangements for relief from double taxation provided by the Double Taxation Avoidance Agreements (DTAAs) that Kenya has signed with other nations. The new provisions provide that all DTAAs shall be formulated in line with the provisions of the Treaty Making and Ratification Act, 2012 and not the Statutory Instruments Act, 2013 as had been the earlier case.

The FA 2021 has further widened the scope of persons who can access the benefits of the DTAAs that Kenya has signed with other countries (limitations of benefits clause) to include both natural and non-natural persons that have at least 50% of the underlying ownership held by persons who are residents of the other contracting state. Further, the FA 2021 has defined the aforesaid persons to include individuals, companies, partnerships, trusts, government or similar bodies or associations while underlying ownership shall mean interest held directly or indirectly through an interposed person or persons, by an individual or by a person not ultimately owned by the individuals. Previously, access to the benefits of the DTAAs was only possible if the aforementioned underlying ownership was by individuals/natural persons who are residents of the other contracting state. Companies of the other contracting state which are listed on a stock exchange in that other contracting state are still exempt from the limitation of benefits clause.

The amendment to have DTAAs formulated in line with the provisions of the Treaty Making and Ratification Act, 2012 means that the DTAA formulation process shall be subject to public participation which was not the case earlier.

Effective date: 1 July 2021

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PKF Comment

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Malta

Recent tax updates and case law

2021 tax updates

- The reduced income tax and duty rates on the inter-vivos/lifetime transfer of immovable property of 5% and 1.5% respectively for the first EUR 400,000 and the reduction from 8% to 5% on those selling the property will continue also on promises of sale agreement registered by 31 March 2021, provided that the contract is entered into by 31 December 2021;
- Tax is at a reduced rate of 3.5% when buying a property for residential purposes only, even if not a first-time buyer;
- During 2021, all profits derived from the assignment of rights on a promise of sale relating to immovable property will be taxed at a final tax rate of 15% on profits on the first EUR 100,000;
- Government is committed to attracting start-ups to Malta through the establishment of a Government fund to be invested in Venture Capital Funds in a bid to establish such an industry to Malta;
- A new scheme will be introduced to companies that employ less than 50 people and undertake innovative projects. The scheme will be administered by Malta Enterprise and will cover up to 50% of the investment cost incurred, capped at EUR 200,000 per company. Those companies who collaborate with local and international research institutions will also benefit from a further EUR 35,000;
- Grants to be given to farmers and fishermen equivalent to their tax due on qualifying produce. Such will be linked to their investments in projects that reduce produce waste and in systems that control the volume of produce put on the market;
- Government will be allocating EUR 220 million which will be available in grants to businesses, as part of the Recovery and Resilience Facility for investments directed to the environment and climate, and also digital sector;

- The issue of “Green Bonds” by investors will be incentivised to finance renewable energy projects and projects aimed at decreasing air pollution;
- NGOs whose profit does not exceed EUR 50,000 will be tax exempted;
- A new program has been issued in 2020, now referred to as The Granting of Citizenship by Naturalisation for Exceptional Services by Direct Investment. The process involves a 3-layer stage to which one must be subject when compared to the former 2-layer stage; being the Residency Stage, the Eligibility Stage and the final Citizenship Stage. The main new differences include increased due diligence fees and the addition of specific administrative fees. The actual investment amount required has also been incremented, as the amount to be invested depends on whether citizenship is applied after 36 months residency or by exception after 12 months residency. The investments in government bonds have been replaced with a EUR 10,000 donation to a registered NGO.
- Residence programmes are branded under a new name – Malta Permanent Residence Regulations 2021. The programme has retained the 2 options between property purchase and rental for 5 years but introduced an increase in government contribution from EUR 30,000 to EUR 68,000 for property purchase option and to EUR 98,000 for property rental option. Nonetheless, the requirement of holding government bonds or stocks has been removed to streamline the process. Furthermore, a EUR 2,000 donation to an NGO has been added;
- In virtue of Council Implementing Decision (EU) 2021/753 of 6 May 2021, by means of LN 222/2021 of 25 May 2021 which brings in force the provisions of LN 463/2020 of 18 December 2020, the VAT for small undertakings, thresholds for taxable persons whose economic activity consists principally in the supply of services shall, with effect from 1 July 2021, be increased as follows:
  - Economic activities consisting of services with a low value-added:
    - Entry threshold from EUR 24,000 to EUR 30,000
    - Exit threshold from EUR 19,000 to EUR 24,000
  - Other economic activities (services):
    - Entry threshold from EUR 20,000 to EUR 30,000
    - Exit threshold from EUR 17,000 to EUR 24,000.

Double tax treaties

- In terms of the Double Taxation Relief (Taxes on Income) (The Swiss Federation) (Amendment) Order, 2021 (Legal Notice 198 of 2021) (the ‘Protocol’), Malta has effectively implemented the revisions agreed to with Switzerland on 16 July 2020 to the Convention between Malta and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income signed on 25 February 2011 (the ‘Malta-Switzerland Treaty’).
- In terms of the Double Taxation Relief on Taxes on Income with the Republic of Poland (Amendment) Order, 2021 (Legal Notice 64 of 2021) (the ‘Protocol’), Malta has effectively implemented the revisions to the Convention between the Government of Malta and the Government of the Republic of Poland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes and capital signed on 24 November 1994 (the ‘Malta-Poland Treaty’), as contemplated in an agreement reached between Malta and Poland on 30 November 2020.

Case law

The European Court of Human Rights, Busuttil v. Malta (application no. 48431/18) delivered on 3 June 2021:

- The case concerns criminal proceedings against the applicant, as a director of a company, in which he was found guilty of failing to pay tax dues, with the use of legal presumptions. Prior to his resignation, the applicant was, from 2001 to 2006, a co-director (owning 25% of the shares) of company M. During the period 2003-2006 company M. failed to submit to the authorities the relevant tax forms and payments (provisional tax and national insurance contributions on behalf of their employees). After the applicant’s departure (in 2006), under the management of the two other directors, the company went bankrupt. In 2011 the tax authorities ordered the applicant to pay, on behalf of company M., approximately EUR 323,500 in outstanding tax.

- The applicant complained that a presumption of guilt was applied against him on the basis that he was the director of company M., despite no proof being presented of his criminal intent and the fact that the situation had been hidden from him and that this went contrary to Article 6 para. 2 of the Convention which reads as follows: “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”.
- However, the Court unanimously held that there has been no violation of Article 6 para. 2 of the Convention;
- Furthermore, the court ruled that the right to the presumption of innocence is not an absolute right, due to other presumptions of law and fact. The defence of impossibility had not been proven as indeed the plaintiff had testified and had his testimony dismissed during proceedings before the Maltese courts.
- Ultimately, Maltese law provides that directors are responsible for the acts of a company and member states such as Malta may penalise individuals on the basis of facts irrespective of whether their actions were backed by criminal intent.
- link: http://hudoc.echr.coe.int/eng?i=001-210281

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Malta taxation, please contact George Mangion at **gmm@pkfmalta.com** or call **+356 21 484 373**.

Nepal

Various tax updates - Budget Announcement for FY 2021-22 and major tax amnesties

Changes in Tax law by Budget Announcement for FY 2021-22

On 29 May 2021 the Finance Minister, Government of Nepal presented the full budget for the FY 2021-22. The major changes in the tax laws by the budget are as follows:

Direct Taxes

i) Tax at the rate of only 1% will be applicable on taxable income for FY 2020-21 for hotel, travel, trekking, transportation and airlines, cinema industry (production, distribution, and presentation), party palace, and media house having annual turnover in excess of Rs 10 million. Taxable loss incurred by such businesses in FY 2019-20 and 2020-21, if any, shall be carried forward for 10 years (instead of 7 years of normal carry forward period).

ii) 100% tax exemption for the first 5 years from the date of commencement of transaction for income derived by start-up business as prescribed by IRD having annual turnover up to Rs 10 million based on innovative knowledge, skills, technology and methods.

iii) 50% rebate on tax rate for first 3 years from the date of commencement of transactions and 25% for next 2 years for industry engaged in manufacturing of new products by using materials that have a direct impact on environment as its raw materials.

iv) Tax on capital gains from disposal of shares listed on stock exchange has been revised. Advance tax at the rate of 7.5% shall be applicable on short-term capital gain (for shares held up to 365 days) and at the rate of 5% on long-term capital gain (for shares held more than 365 days).

v) Taxpayers shall deposit total undisputed tax amount and 50% of disputed amount including fees and penalty as a security deposit or arrange equivalent bank guarantee for filing an appeal to the revenue tribunal. On calculation of such deposit or equivalent bank guarantee amount, 25% of disputed amount deposited at time of administrative review shall also be included.

vi) The contributions made during FY 2020-21 to corona infection prevention, control and treatment fund set up by the federal, provincial or local governments shall be allowed as deductible expenses for computation of taxable income of such income year.

Indirect Taxes

Customs Duties

i) Exemption from customs duties on import of equipment required for the establishment of oxygen industry, import of medicine used in the treatment of COVID19.

ii) Reduction in applicable customs duties on import of electric vehicles, electronic equipment like refrigerator, grinder, rice cooker, fan, induction etc.

iii) Waiver of applicable customs duties on import of machinery and their parts to be used in the sector of tea, motion picture, jute, pashmina, hatchery industry & agriculture and nursery farm.

Excise

i) Excise duty is waived on refrigerators, freezers and other refrigerating or freezing equipment, electric or other.

ii) Excise duty is waived on electro-mechanical domestic appliances such as rice cooker, fans, grinders etc., with self-contained electric motor, other than vacuum cleaners.

Value Added Tax

i) Exemption from VAT on carriage service (except supply related), rental on transportation vehicle, cargo service, E-Library, deposit guarantee fund, trekking and tour package, certificate of origin etc.

ii) Exemption from VAT on import, production and sales of oxygen gas, liquid oxygen, oxygen cylinder, oxygen concentrator and other lifesaving goods and medicine until 14 January 2022.

iii) Provision for requirement of attestation of VAT sales and VAT purchase register on annual basis from tax officer has been removed.

iv) Compulsory registration with VAT based on the nature of business has been removed.

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 in Nepal. (Prospective) Nepal taxpayers shall be aware of the new tax rules effective for the FY 2021-22.

Major Tax Amnesties announced through the Finance Ordinance

The Government of Nepal (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. A brief overview of major tax amnesties is as follows:

i) Amnesty on withdrawal of appeals on disputed tax: If any taxpayer withdraws the appeals made to various levels (Administrative Review, Revenue Tribunal or in the Courts) on account of dispute for tax assessment order (except for cases relating to false and fake invoices) issued until 15 July 2020 under the Income Tax Act, Value Added Tax Act, and Excise Act by paying principal taxes including 50% of the applicable interest (interest calculated up to application date of availing this waiver facility) by 15 December 2021, applicable fees, additional charges, penalty and remaining interest will be waived.

ii) Amnesty on payment of outstanding dues under prevailing laws: If any taxpayer pays outstanding taxes as per assessment or amended assessment order issued until 16 July 2019 (except for cases of outstanding payables relating to false and fake invoices) and applicable interest (interest calculated up to application date of availing this waiver facility) under the Income Tax Act, Value Added Tax Act, and Excise Act and applicable interest (interest calculated up to application date of availing this waiver facility) by 14 January 2022

iii) **Amnesty for Private Firms and Companies:** If private firms and companies (those registered under Private Firm Registration Act and Companies Act) have not submitted their annual returns up to FY 2018/19 submit such returns and deposit 10% of applicable fees and penalties by 17 October 2021, remaining 90% fees and penalties will be waived

BACK

PKF Comment

The amnesty provides an opportunity for taxpayers to settle their disputes by reviewing their petitions at various appellate authorities and consider withdrawing such cases where there is a likelihood that the decision will not be in their favour. The amnesty also helps saving of additional burden of taxpayers by discharging their liabilities on concessional rate.

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

Poland

ECJ case law on the deduction of input tax on intra-Community acquisitions of goods

On 18 March 2021, the European Court of Justice (ECJ) issued a judgment in case No. C-895/19 concerning domestic provisions in the VAT Act regarding the reporting of output and input tax on intra-Community acquisitions of goods in two different accounting periods. The ECJ ruled that these provisions are incompatible with VAT Directive 2006/112/EC.

Existing domestic regulations

In accordance with the existing domestic regulations, the right to reduce the amount of tax due by the amount of input tax paid is subject to the following conditions:

- the taxpayer receives an invoice documenting the delivery of goods, constituting an intra-Community acquisition of goods, within three months from the end of the month in which the tax obligation arose in relation to the purchased goods;
- the taxpayer takes into account the amount of tax due on intra-Community acquisitions of goods in the tax return, through which he is obliged to settle this tax, no later than within three months from the end of the month in which the tax obligation arose in relation to the purchased goods.

If the taxpayer includes the amount of tax due in the tax return through which he is obliged to settle this tax, more than three months after the end of the month in which the tax obligation arose in relation to the purchased goods, the taxpayer may increase the amount of input tax accordingly settled for the tax period for which the deadline for submitting a tax return has not yet expired.

The effect of such regulations was a situation whereby, in the event of failure to settle intra-tax value within three months from the end of the month in which the tax obligation arose, the taxpayer had to settle the tax due by correcting the historical return. On the other hand, the input tax could only be settled in the current tax return. The correction of the historical return without the possibility of deducting the input tax therein resulted in the obligation to pay interest, which would not arise if the input tax could be deducted in the same period.

ECJ judgment

The ECJ stated that this type of regulation is incompatible with the VAT Directive indicating that "Articles 167 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, should be interpreted in that they preclude the application of national provisions according to which the exercise of the right to deduct VAT in connection with an intra-Community acquisition in the same tax period in which VAT is due is subject to demonstration of the VAT owed tax declaration, submitted within three months from the end of the month in which the tax obligation arose in relation to the purchased goods".

BACK

PKF Comment

It is worth noting that the provisions in question have been subject to many disputes with the tax authorities, and a favourable judgment has consequences for Polish taxpayers in relation to both future and past settlements, i.e. it may constitute the basis for the recovery of unduly paid interest in connection with the subsequent settlement of intra-Community acquisitions of goods.

The ECJ judgment paves the way for the resumption of these proceedings. The judgment in question was published in the Official Journal of the EU on 10 May 2021, which means that from that date onwards the deadline for resuming completed tax and administrative court proceedings and for submitting overpayment applications in order to receive full interest, i.e. interest for the period from the date of overpayment up to the date of the return, must be adhered to and any proceedings and applications therefore have to resumed/submitted within 30 days from the date of publication of the judgment in the Official Journal, so by 9 June 2021.

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 on DAC6, beneficial owner statement and VAT

Changes made regarding Mandatory Disclosure Rules (MDR) and DAC6 legislation

Romania has made certain amendments to hallmarks in categories B and E from Annex no. 4 to the Fiscal Procedure Code in relation to its mandatory disclosure rules which are as follows:

Hallmarks B

While defining hallmark B1, the reference to artificial cross-border transactions defined according to art. 11 para. (3) of the Fiscal Code has been eliminated.

Hallmark B3 is aligned with the text of the DAC6 Directive and will include "circular transactions resulting in a round tripping of funds […]," whereas the previous wording referred to "circular transactions resulting in money laundering [...]".

Hallmarks E

Hallmark E2 is supplemented to state that the definition of hard-to-value intangibles will take into account the meaning set forth by the Transfer Pricing Guidelines issued by the Organisation for Economic Co-operation and Development (OECD) for multinational companies and tax administrations.

Hallmark E3 amends the definition of earnings before interest and taxes (EBIT), now referring to the expected annual profits (instead of income).

Non-fulfillment of the reporting obligation triggers a penalty of up to RON 100,000.

Deductible expenses in relation to work-from-home activities

According to Law 296/2020, which amended the Fiscal Code, the possibility was introduced for employers to grant employees a monthly amount of up to 400 lei, to support work-from-home activities, without it being subject to income tax and social contributions (CAS, CASS). The amounts can be used to support utility expenses at the place where employees work, such as electricity, heating, water and data subscription, and the purchase of office furniture and equipment.

The amounts will be granted without the need to present the supporting documents, do not represent taxable income within the meaning of income tax and are not included in the monthly basis for calculating social insurance contributions.

Extension of the deadline for submitting the ultimate beneficial owner annual statement

As per the Emergency Ordinance no. 43/2021 the deadline for submitting the ultimate beneficial owner annual statement of legal entities subject to registration with the Trade Registry for the year 2021 has been extended until 1 October 2021 compared to the initial deadline of 15 days from the approval date of the annual financial statements.

The possibility to submit the statement via electronic means or by post/courier services was also introduced.

One Stop Shop system (IOSS)

Starting from 1 July 2021 the area of operations that are the subject of the One Stop Shop system (IOSS) declaration has been expanded. Apart from telecommunications, broadcasting & electronic (TBE) services provided to persons not registered for VAT purposes, the following operations are added to the system:

- Distance sales;
- Other services which take place in another Member State provided to persons not registered for VAT purposes.

The IOSS system is designed to simplify the collection of VAT from other Member States without registration for VAT purposes in each State where the goods or services supplied are deemed to be in the state of consumption:

- Collection of VAT with the VAT rate from the Member State where the operation takes place;
- Submitting a special VAT return in Romania declaring all the VAT amounts collected from each member state;
- Payment of VAT in Romania, following that Romania will transfer the VAT to each member state.

The new meaning of distance sales is defined based on the concepts below:

- **distance intra-community sale** means delivery of goods from a Member State other than that in which the carriage ends to a customer not registered for VAT purposes, except for new means of transport and goods which are delivered after assembly;
- **distance selling of goods imported from third territories or third countries** means a delivery of goods dispatched or transported from a third territory or from a third country to a customer not registered for VAT purposes in a Member State, except for new means of transport and goods which are delivered after assembly.

The threshold for distance sales can be applied only by taxable persons established in the EU, has been standardised at EUR 10,000 and is determined by cumulating all deliveries of distance sales as well as TBE services. A taxable person in Romania can perform distance sales or provide TBE services to a person not registered for VAT purposes in another member state, whereby the following shall apply:

- If the threshold of EUR 10,000 (46,337 lei) is not exceeded in the prior year or during the current year, the VAT rate applicable in Romania can be applied;
- If the threshold of EUR 10,000 (46,337 lei) is exceeded in the prior year or during the current year, the IOSS system can be applied or it can get VAT registration in each member state of delivery and use the VAT rate applicable in the state of consumption.

The IOSS system requires the use of at least one of the special registration regimes for VAT purposes:

- **Regime for non-EU** that is mandatory for all taxable persons not established in the EU and provide services to persons not having registration in the EU for VAT purposes:
  - TBE services; or
  - other services based in the state of consumption.

- **Regime for EU** that is optional for the following:
  - TBE services and other services based in the state of consumption provided by the taxable persons established in the EU other than the state of consumption;
  - Distance intra-community sales performed by EU and non-EU persons;
  - Local deliveries performed by an electronic interface that facilitates these deliveries.
- **The special regime for distance sales of goods imported from third territories or third countries** that involves the distance selling of goods imported from third territories or third countries covering only the goods, with the exception of products subject to excise duty, in lots with an intrinsic value not exceeding EUR 150. The regime is applicable to:
  - any taxable person established in the EU who carries out distance sales of goods imported from third countries or from third territories;
  - any taxable person who carries out distance sales of goods imported from third countries or third territories and who is represented by an intermediary established in the EU;
  - any taxable person established in a third country with which the EU has concluded a mutual assistance agreement which carries out distance sales of goods from the respective third country.

The new provisions aim to reduce the administrative burden for companies by simplifying the procedure for reporting and paying VAT, corresponding to the e-commerce carried out on EU territory (i.e., centralised submission and payment of VAT), respectively, to reduce the competitive differences between EU and non-EU sellers.

Authorised tax representative

Starting from 1 April 2021, persons not established in Romania that perform intra-community deliveries from Romania subsequent to an import in Romania, have the possibility to assign an authorised tax representative in order to delegate all the tax liability arising in Romania.

Persons not established in Romania can perform imports of goods in Romania and transfer the goods into other member states without having registration for VAT purposes in Romania.

BACK

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Romanian taxation, please contact Narcisa Chirila at **narcisa.chirila@pkffinconta.ro** or call **+40 21 317 31 96**.

South Africa

Offshore assets - SARS issuing letters to affected taxpayers

In February 2021, SARS issued a media release that SARS had received from 87 jurisdictions across the world, information detailing the offshore financial assets of South African taxpayers and that SARS intended to undertake a careful review of the information and audit it, where necessary.

In recent months, SARS has started issuing letters to taxpayers advising them that SARS has received information through the Automatic Exchange of Information regarding South Africans who have offshore assets. SARS is however willing to engage with the taxpayer and give the taxpayer an opportunity to disclose to SARS what offshore assets and dealings the taxpayer has. SARS is not disclosing to the taxpayer what SARS already knows or what information they have but only mentions that they are in possession of ‘information’. Below is an example of some of the information that SARS is requesting the taxpayer to furnish:

- Confirmation that the taxpayer has offshore assets;
- Details of such offshore assets;
- The years of assessment during which the taxpayer held such assets;
- The nature of assets held and the jurisdictions where the assets are held;
- The nature of the investment and the source of the funds that were invested;
- The capital amount invested and the movements thereon;
- Income earned on the investments, i.e. dividends and interest;
- What tax obligations have been discharged with regard to these assets, e.g. declaration of foreign income; and
- Where taxpayers have not complied with disclosure of these assets in their tax returns, SARS requires an explanation of why this was not done.

Taxpayers should note that the above is just an example and each letter might be different depending on the specific circumstances of the taxpayer. SARS ordinarily requires the taxpayer to respond and submit the requested information within 21 working days. Failure to submit the requested information may constitute a criminal offence and penalties may apply.

The welcome part is that SARS is still allowing taxpayers to utilise the Voluntary Disclosure Programme ('VDP') to regularise their affairs. Under the VDP programme, SARS considers applications submitted voluntarily by taxpayers to disclose tax defaults. VDP offers more favourable terms in respect of understatement and other administrative penalties. Usually, when SARS has issued a letter of verification to a taxpayer, the taxpayer cannot apply for VDP as SARS has approached the taxpayer first. The disclosure ceases to be voluntary. However, with the recent letters that SARS is sending to taxpayers, SARS is indicating that should the taxpayer wish to utilise the VDP, it can still do so within 21 working days. In the VDP application SARS requires the taxpayer to still disclose or provide all the information they have requested in their letter.

SARS advised that the above-mentioned request for information is for risk assessment purposes and that it ,therefore, does not constitute the commencement of an audit process (which would impact the ability to submit a VDP application).

Affected taxpayers should ensure that they obtain professional advice on how to deal with these letters and respond to SARS. It is recommended that taxpayers who have offshore assets regularise their affairs even if they have not received such letters as the automatic exchange of information process and systems within SARS and between the various tax jurisdictions are likely to improve at a fast pace. Therefore, it may only be a matter of time before all taxpayers with unregularized assets will receive such letters.

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 South Africa taxation, please contact Deon van Zyl at **deon.vanzyl@pkf.co.za** or call **+27 41 398 5600**.

Withholding tax: the dispatch on an amendment to the Withholding Tax Act adopted on 15 April 2021

On 15 April 2021, the Federal Council adopted the dispatch on an amendment to the Withholding Tax Act as well as opened the consultation process on an extension of the group notification procedure for withholding tax. It is expected that the withholding tax reform will be passed by parliament at the end of 2021 at the earliest. Due to the necessary adjustments at the ordinance level, it is unlikely that it will enter into force before 2024. The withholding tax reform is subject to an optional referendum.

- Currently, a withholding tax of 35 % is levied on interest payments on a domestic bond. Switzerland is therefore less attractive as an issuing location by international standards. Swiss groups very often avoid this withholding tax by issuing their bonds through a foreign group company. Intra-group financing activities are also frequently not carried out in Switzerland because of the withholding tax.
- The withholding tax reform is intended to strengthen the Swiss debt capital market. The reform mainly provides for the following measures:
    - Abolition of withholding tax on interest income (does not apply to withholding tax on interest on customer deposits held with banks and insurance companies by natural persons domiciled in Switzerland).
    - Abolition of the transfer stamp tax on domestic bonds.
- Simplification of withholding tax notification procedures: as with interest payments, a 35% withholding tax is currently levied on dividend distributions. In intra-Swiss group relationships, the notification procedure can be applied instead of payment and subsequent reclaim of the withholding tax by the dividend recipient. Currently, participation of at least 20 % is required for the application of the notification procedure. In future, the threshold to apply the notification procedure shall be reduced to 10 %. Furthermore, in an international context, an approval must be obtained for the application of the notification procedure (Form 823/823B/823C), which is currently valid for three years. Going forward, this approval shall be valid for five years.

Tonnage tax: consultation process ended 31 May 2021

On 24 February 2021, the Federal Council opened the consultation process (ended on 31 May 2021 / the results have not yet been published) on the federal law on tonnage tax on seagoing vessels. Introducing a tonnage tax in Switzerland aims at strengthening the Swiss shipping sector and maintaining Switzerland's economic and fiscal attractiveness:

- The draft law provides for the introduction of a tonnage tax regime that includes the flat rates per day of operation of a seagoing vessel based on its registered net tonnage;
- Where a vessel meets certain ecological requirements, the tax amount may be further reduced. The requirements and reduction amounts will be set by the Swiss Federal Council;
- Maritime vessels (freight and passengers) that would be eligible for such a tonnage tax regime include those engaged in goods transport, passenger transport, rescue and assistance operations, laying cables and installing pipes, construction of offshore structures, and oceanographic research;
- All profits from the operation of a qualifying vessel would be subject to said tonnage tax. Profits from ancillary activities carried out on qualifying vessels up to a maximum of 50% of the profits from the operation of the vessel would also be subject to such a tonnage tax;
- The tax would be optional, and companies could choose instead to be taxed by current methods;
- In order to benefit from such a tonnage tax, at least 60% of the fleet (i.e. 60% of all ships owned and operated by the enterprise and subject to this tax) should be registered with the Swiss register.

Payment term for VAT refunds reduced

On 7 April 2021, the Swiss Federal Tax Administration reduced the VAT refund term from 60 days to 30 days to agree with the general payment term for commercial transactions. However, interest due by the Swiss Federal Tax Administration for late refunds will still commence accruing as from the 61st day following the lodging of the VAT return.

BACK

PKF Comment

For further information or advice with respect to Swiss unilateral and international taxation, please contact Rilana Wolf-Bayard at **rilana.wolf@pkf.ch** or Margarita Baeriswyl at **margarita.baeriswyl@pkf.ch** or call **+41 44 285 75 00**.

Taiwan

Integrated Housing and Land Tax aims for prevention of tax avoidance

Generally, gains derived from transactions in movable property and property rights are taxable as ordinary income unless exempted. A special regime applies to gains from immovable property transactions.

A separate capital gains tax on the transfer of buildings and land was introduced on 5 June 2015 and became effective on 1 January 2016. Amendments to the scope and rates of tax were passed on 9 April 2021, have been effective since 1 July 2021, and apply retrospectively to buildings and land acquired after 1 January 2016.

The purpose of said newly passed "Integrated Housing and Land Tax" is to prevent individuals from committing tax avoidance by means of carrying out real estate transactions through for-profit entity stock transactions. Stock transactions that meet certain criteria, including a percentage of entity stock ownership, an amount of capital invested in the entity, and a percentage of the real estate take up (compared with the total asset of the entity) will be considered real estate transactions.

Current regulation

Gains from private company stock transactions for individuals and for-profit businesses are taxed based on Income Basic Tax (alternative minimum tax, AMT) at a rate of 12% for for-profit businesses, and half the amount if the real estate is sold three years after the purchase. For individuals, the AMT exempt amount is TWD 6,700,000, a 20% tax rate, whereby the AMT result needs to be compared with the result on the basis of Individual income tax, which has a progressive tax rate ranging from 5% to 40%. The final tax payable will be the higher one of the two.

New regulation

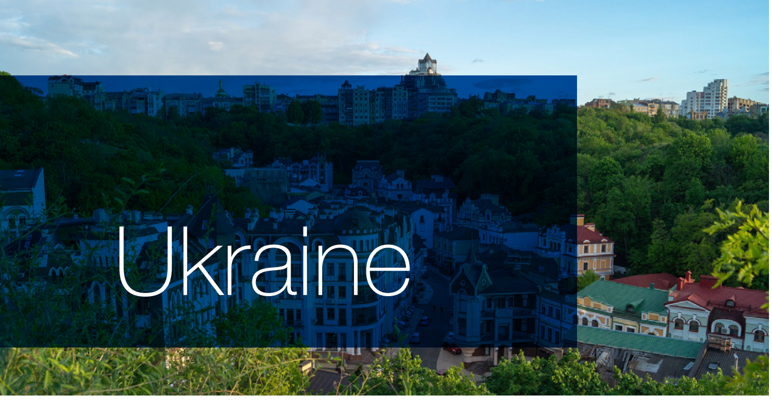
To prevent using stock transactions to carry out real estate transactions, if more than 50% of the stock of the private company is directly or indirectly owned by an individual or for-profit business, and the asset of this private company is mainly (i.e. > 50%) composed of real estate on Taiwan soil, the stock transaction of this private company will be considered a real estate transaction instead. Such transaction will no longer enjoy AMT but will be taxed based on the holding period of the real estate.

Pre-sold house	Current regulation	New regulation
Income type	Gain from Pre-sold house transaction will be considered property transaction income.	Gain from Pre-sold house transaction will be considered real estate transaction income and will be taxed according to the "Integrated Housing and Land Tax"
Tax rate	• Individual: Progressive tax rate of Individual income tax ranging from 5% to 40%. • For-profit business: Profit-seeking Enterprise Income Tax @ 20%.	15% to 45%
Holding period calculation	No	Yes
Taxing method	File by May of next year along with Individual income tax.	File within 30 days from the next day of the transaction date.

BACK

PKF Comment

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



Ukraine

New VAT rules on electronic services supplied by non-residents

On 2 July 2021, Law No. 1525-IX of 3 June 2021 entered into force introducing a special VAT procedure when supplying electronic services by non-resident companies to natural persons living in Ukraine (“end users”).

The legislator substantiated said introduction by referring to the principles of equality and neutrality of taxation as for non-residents’ supplies to Ukrainian companies a special mechanism is in place whereby VAT is accounted for by the buyer. However, there is no effective mechanism to tax similar supplies by non-residents to Ukrainian natural persons.

Similar rules are already being introduced in the EU, Australia, Belarus, Kazakhstan etc. This novelty, therefore, follows international practice.

Electronic services are services supplied via the internet, automatically and using informational technologies, mostly without human involvement, i.e. by installing a special application on smartphones, tablets, TVs, or other digital devices.

For tax purposes, electronic services include: downloading movies, books, and magazines; access to databases and search engines; access to TV channels and electronic resources; online learning services; cloud services; software delivery; providing advertising services via the internet etc.

However, car rental services, product delivery services, passenger transport services, distance learning services directly between teacher and student using applications or other electronic resources, consulting services via e-mail, and the rendering of internet access services will not be considered electronic services.

According to the new rules, if the overall sales of electronic services supplied by non-residents to Ukrainian end users (only natural persons, not companies) during the preceding calendar year exceed UAH 1 million (approximately EUR 31,000), said foreign company will be required to:

1. register as a VAT payer in Ukraine using a special procedure via electronic tax portal;
2. file simplified electronic VAT returns (quarterly);
3. pay Ukrainian VAT at a rate of 20% charged on top of the value of electronic services supplied in Ukraine.

Given that the new taxation procedure focuses on non-residents, the VAT returns may be prepared and filed either in Ukrainian or in English, while the VAT liabilities may be paid in EUR or USD.

In case of non-registration as a VAT payer, the non-resident will be subject to a penalty amounting to 30 minimum wages (approximately EUR 5,500).

If a non-resident has a representative office in Ukraine, the abovementioned rules will not apply.

The effective date is 1 January 2022. Nevertheless, if in 2021 the total value of the supplied electronic services exceeds UAH 1 million, a non-resident must register as a VAT-payer in Ukraine by 31 March 2022.

Moreover, as from 1 January 2022, Ukrainian legal entities and individual entrepreneurs will not be subject to the 20% withholding tax levied on service fees for production and/or distribution of advertisement payable to non-residents.

BACK

PKF Comment

Non-residents without a Ukraine representative office providing services to Ukrainian natural persons should prepare for the new rules on conducting business in Ukraine. They first need to analyse whether their services qualify as “electronic services” within the meaning of the Ukraine Tax Code and then whether said services are provided to “end users” for an amount of more than UAH 1 million. If the answer is ‘yes’ twice then VAT registration in Ukraine is most strongly recommended.

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Ukraine taxation, please contact Sviatoslav Biloblovskiy at **s.biloblovskiy@pkf.kiev.ua** or Dmytro Khutornyy at **d.khutornyy@pkf.kiev.ua** or call **+380 44 501 25 31**.

United Arab Emirates

Various tax updates – Economic substance regulations, and VAT and excise duties

ECONOMIC SUBSTANCE REGULATIONS ('ESR') - UPDATES

Compliance under UAE ESR

Covered Licensees for UAE ESR purposes undertook ESR compliance as per the requirements under ESR provisions.

Given below is a summary of two-fold compliance requirements under UAE ESR for ready reference:

- Notification Filing:
  - Licensees/Exempt Licensees who undertake relevant activity are required to submit the notification on the UAE Ministry of Finance ('MOF') portal made available;
  - Time frame for compliance with the requirement of Notification Filing is on or before the expiry of six months from the relevant financial year-end;
  - MOF has published the template of 'Information Notification' and related guidance on its website.
- Reporting:
  - Licensees carrying out a relevant activity and earning income therefrom are required to submit a report containing requisite information and prescribed documentation;
  - Report is required to be submitted within 12 months from the financial year-end of the Licensee;
  - MOF has published the template of 'Substance Report' and related guidance on its website.

The above compliances are required to be filed on an annual basis. Accordingly, the Licensees in the UAE will have to re-evaluate the applicability of ESR every year and undertake the prescribed compliance as mentioned above.

Link to access MOF website

The notification template, reporting template, related guidance and amended FAQs can be accessed on the following link:

https://www.mof.gov.ae/en/StrategicPartnerships/Pages/ESR.aspx

The above link was last updated by the MOF on 24 June 2021.

UAE VAT AND EXCISE TAX UPDATE

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

Date	Tax	Type of Update	Particulars of Update
June 2021	VAT	VAT Guide	Automotive Sector
June 2021	Excise Tax	FTA Decision	The Mechanism for Calculating the Average Retail Selling Price of Excise Goods in the Market
May 2021	VAT	Public Clarification	VAT registration of 'Sole Establishments'
May 2021	VAT	Public Clarification	Redetermination of Administrative Penalties Levied Prior to the Effective Date of Cabinet Decision No. 49 of 2021
May 2021	VAT	Public Clarification	Amendment of Penalties
April 2021	VAT	Cabinet Resolution	Amendment to Administrative Penalty Provisions
April 2021	VAT	Public Clarification	Temporary Zero-rating of Certain Medical Equipment
April 2021	VAT	VAT Guide	VAT Refund User Guide Business Visitors – Updated
April 2021	VAT	VAT Guide	Real Estate Guide – Updated

Summary of some of the above key updates are discussed hereafter:

- **VAT guide on Automotive Sector**

  The guide is issued by the FTA to provide guidance on how VAT affects businesses that operate within the automotive sector.

  Accordingly, it provides guidance around the VAT treatment of supplies made by motor vehicle dealers in the UAE including but not limited to the supply of new cars, the supply of used/second-hand cars, supplies under warranty and the export and import of cars.

- **Decision on Mechanism for Calculating the Average Retail Selling Price of Excise Goods in the Market**

  The FTA published a decision on a mechanism for the calculation of the average retail selling price of excise goods in the market.

  As part of this decision, the FTA has provided a method to determine the value of excise goods not intended for retail sale in the UAE (e.g. imported excise goods to be exported or used in the production of a new excise good). It is clarified that the taxable person can use the value of imported excise goods as a substitute for the average retail selling price.

- **Cabinet Resolution on Amending Some Provisions of Administrative Penalties Imposed for Violating the State's Tax Laws**

  The FTA has recently issued Cabinet Resolution No. (49) of 2021 amending some Provisions of Cabinet Resolution No. (40) of 2017 on Administrative Penalties Imposed for Violating the State's Tax Laws. The effective date for such Cabinet decision would be 60 days after the date of issuance of the Cabinet Decision, i.e. 60 days from 28 April 2021.

  Apart from a considerable reduction in administrative penalties on violation of provisions of UAE VAT Laws, the cabinet resolution has introduced an amnesty scheme that would enable registrants to pay 30% of an applicable penalty amount that was levied prior to the effective date of said resolution and which remains unpaid, if such amount is paid prior to 31 December 2021, subject to certain conditions.

- **VAT Public Clarification on amended penalty provisions**

  As further guidance to amended provisions of Cabinet Resolution No. (49) of 2021, the FTA issued two public clarifications, namely TAXP001 and TAXP002.

  TAXP001 on 'Amendments to the Penalties Regime' provides a summary of amended penalty provisions and certain examples as to how these amended provisions would be applied practically.

  TAXP002 on 'Redetermination of Administrative Penalties Levied Prior to the Effective Date of Cabinet Decision No. 49 of 2021' provides clarity on the ability of re-determination of penalty/ availability of reduction of penalty under the new penalty provisions.

- **VAT Public Clarification on Temporary Zero-rating of Certain Medical Equipment (VATP025)**

  The zero rating of specified medical equipment (such as face masks, gloves etc.) pursuant to Cabinet Decision No. (9/12 O) of 2020, has been extended to 31 December 2021.

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

PKF Comment

BACK

Businesses in the UAE that 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 provides further clarity thereon.

Contact us

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

Treasury Green Book: Proposals to change U.S. tax rules impacting foreign investors

The U.S. Treasury published "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals" on 28 May 2021. The document, that is also called the "Green Book," includes President Biden's proposals to make changes to the Internal Revenue Code (Code). The changes would not only modernise and improve tax administration but would also raise revenue. This article provides an overview of major tax proposals that would have an impact on tax planning of foreign investors in the U.S.

Major Tax Proposals in the Green Book Impacting Foreign Investors in the U.S.

Increased ordinary tax rates for corporations

The Tax Cuts and Jobs Act of 2017 (TCJA) introduced a flat federal tax rate of 21% on taxable business income of C-Corporations. The flat tax rate replaced a graduated tax schedule where most corporate income was taxed at a marginal and average rate of 35%. The proposal would increase the flat tax rate to 28%.

Reform the taxation of capital income

Currently, realised long-term gains and qualified dividends are taxed on a federal level at graduated rates, with 20% being the highest. Under certain circumstances, a net investment income tax of 3.8% must be added so that the total capital gain tax rate is 23.8%.

It is planned to tax capital gain at ordinary income tax rates for taxpayers with an adjusted gross income of more than USD 1 million. 39.6% would be the highest and the net investment income tax of 3.8% would also have to be added under certain circumstances. Thus, the total capital gain tax rate could be as high as 43.4%.

The new rules would be effective for gains to be recognised after the date of announcement. Thus, taxpayers must closely follow the legislation process and make any tax planning decisions accordingly.

New minimum tax on book income

A 15% minimum tax on worldwide book income has been proposed. Corporations with book income in excess of USD 2 billion would have to pay the minimum tax. Generally, the minimum tax would be calculated as follows.

15 percent on Worldwide Pre-Tax Book Income (book income less book net operating loss deductions)
Less General Business Credits (including R&D, clean energy and housing tax credits)
Less Foreign Tax Credits

The minimum tax on book income would equal the excess, if any, over regular tax.

Limits on interest deductions for disproportionate borrowing in the U.S.

Currently, interest expenses are generally deductible from regular taxable income. However, they are limited to the sum of

- Business interest income,
- 30% of adjusted taxable income, and
- Floor plan financing interest.

The proposal would introduce a new limitation on interest deductions for entities that are a member of a multinational group that is preparing consolidated financial statements under U.S. GAAP, IFRS or any other method under regulations to be published.

Generally, interest expenses for U.S. tax purposes would be limited if the entity has net interest expenses exceeding its proportionate share of the financial reporting group's net interest expense reported on the group's consolidated financial statements. The entity's proportionate share would be calculated based on the proportionate share of the group's earnings reflected in the group's consolidated financial statements. The earnings would be computed by adding back net interest expense, tax expense, depreciation, depletion, and amortisation.

Interest expenses exceeding the entity's share of the group's earnings would be disallowed for U.S. tax purposes but could be carried forward indefinitely.

Replacement of BEAT with SHIELD

The TCJA introduced a tax on certain corporate taxpayers in addition to their regular tax liability. Taxpayers with three-year average gross receipts in excess of USD 500 million and a "base erosion percentage" exceeding a specific threshold are potentially liable to pay this tax.

The proposal suggests repealing BEAT and implementing a Stopping Harmful Inversions and Ending Low-Tax Developments rule (SHIELD). SHIELD would disallow deductions to a domestic corporation or branch in whole or in part related to all payments that are made (or deemed made) to "low-taxed" members. A "low-taxed" member would be any financial reporting group member whose income is taxed at an effective tax rate that is below a minimum tax rate to be determined.

Repeal of the deduction for foreign-derived intangible income (FDII)

The TCJA changed the Code to introduce a deduction to domestic corporations on their foreign-derived intangible income. 37.5% is allowed as a deduction for any taxable year beginning after 31 December 2017, and 21.875% for any taxable year beginning after 31 December 2025.

The proposal would repeal the deduction allowed for FDII.

Changes to Global Intangible Low-taxed Income (GILTI) and subpart F income

Currently, certain income can be excluded from GILTI and subpart F income under the high-tax exception. If the relevant net item of income is subject to tax in a foreign country at an effective rate of greater than 90% of the maximum U.S. corporate tax rate, the exclusion can be applied.

The proposal would repeal the high tax exception for both GILTI and subpart F income.

The proposal would also reduce the section 250 deduction to 25% from 50% when calculating the GILTI tax. This would increase the GILTI tax from currently 10.5% to 21%.

Another change would impact U.S. shareholders with subsidiaries in multiple countries. GILTI inclusion and foreign tax credit (FTC) limitations would be determined on a country-by-country basis. This would prevent businesses from reducing tax using excess FTCs from high-tax jurisdictions that currently can be credited against GILTI inclusions from low-tax jurisdictions. The country-by-country limitation would also apply to branch income.

BACK

PKF Comment

None of the suggested changes are implemented yet and a lot of open questions are unanswered. The proposed changes would need to be approved by Congress and signed by the President. Most of the proposed changes would be effective for tax years beginning after 31 December 2021. Some changes are proposed to be effective for transactions completed after the date of enactment. Foreign investors should follow the discussion and consult with their tax advisors to consider potential changes when structuring U.S. investments.

If you believe the above measures may impact your business or personal situation or require any advice with respect to U.S. taxation, please contact Ralf Ruedenburg at **rruedenburg@pkfod.com** or call **+1 646 965 7778** or Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 646 699 2848**.

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