PKF International Limited

PKF worldwide tax update

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LOCAL KNOWLEDGE, GLOBAL EXPERTISE

The content of this PKF Worldwide Tax Update 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

IIn this fourth 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 Italy, South Africa and Switzerland
- Case law with international implications in Austria and France
- Significant personal and corporate income tax changes in Chile, Hong Kong, the Netherlands, Papua New Guinea, Spain, and the United Kingdom
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing etc.) in Ecuador and Taiwan

We trust you find the PKF Worldwide Tax Update for the fourth 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.

Austria

Case law on permanent establishment definition

In a recent decision the Austrian Supreme Administrative Court (VwGH) had to decide whether the use of a desk in an office of another taxpayer constitutes a permanent establishment (PE) or not (VwGH, 22 June 2022, Ro 2020/13/0004).

In the case at hand the individual was resident in Hungary but the work was carried out in Austria by using a desk in an office of another taxpayer. The question as to whether art. 14 or art. 7 in connection with art. 5 of the double tax treaty is applicable was not analysed by the court. Due to the update of the OECD model convention, art. 14 was deleted and the prerequisites of art. 7 and art. 14 are considered as equal; consequently, the term 'fixed base' in art. 14 and the PE according to art. 5 are considered synonymous. Therefore, the only question was whether a PE is constituted or not.

The concept of a PE is defined in art. 5(1): *"The term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on."* In order to constitute a PE, the following conditions must be met: fixed place, presence and right of disposal. A fixed place of business requires more than a temporary connection to a certain point of the earth's surface. To fulfil this temporal component the place of business is required to exist for a longer period of time. This is also indicated by the word 'permanent' which precludes a purely temporary existence. Likewise, a kind of 'rootedness' of the business with the place of activity must be evident in order to meet the criteria as a physical presence of the business; the activity must be solidified in the state of activity. However, business relations with other companies or clients are not sufficient to constitute a PE. Since the individual did not have a fixed place of his own in Austria, the question arises as to whether the premises which were used could constitute his fixed place.

The settled opinion in literature and case law is that this can only be the case if the premises/offices are at one's disposal. Whether a place can be considered as at one's disposal has to be decided based on the power of disposition. No formal legal right to use the place of business is required, but an exclusive right of use must be granted. Exclusive right of use defines a legal position of usage, which cannot be revoked against the will of the user. The mere right to use a room in the interest of others as well as the sole possibility to use the room is not sufficient to constitute a PE. Moreover, when the physical location is also used by the client, a PE can only exist when this use is to a minor extent.

In the case at hand the court ruled that the possibility to use a desk at the office of another taxpayer is not sufficient to constitute a fixed place at a taxpayer's disposal. This understanding was already supported by literature but was not the opinion of the financial authorities.

A home office PE in particular proved to be an issue with respect to the interpretation by the financial authorities. However, with this decision it will be hard to argue that foreign companies constitute an Austrian home office PE, as the sole right of use is not sufficient to constitute a fixed place from an Austrian point of view. Only in cases where an employer provides the employee with their own office could a home office PE be constituted. Nonetheless, the rules regarding agency/service PEs have to be taken into consideration when analysing similar cases.

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PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Austrian taxation, please contact Stefan Frank at **stefan.frank@pkf.at** or call **+43 1 5128780 292**.

Chile

New taxation on income derived from the sale or redemption of shares and securities

From 2 September 2022, capital gains derived from the sale or redemption of certain securities will be subject to income tax at a rate of 10%. This tax is a single tax on income derived from operations carried out with the following securities:

a) Shares of publicly traded corporations incorporated in Chile with a stock market presence. Certain requirements must be met regarding the manner in which the shares have been acquired and disposed of (for example, the single tax is applicable when the shares have been acquired and disposed of on a stock exchange in the country).

b) Investment fund quotas. The application of the single tax requires, among other conditions, that the sale be made on an authorised stock exchange in the country and that 90% of the investments be destined for shares of public limited corporations with a stock market presence.

c) Shares of mutual funds with a stock market presence or whose investments consist of securities with a stock market presence. In both cases there are requirements related to the acquisition and sale of shares, the investment policy and others.

When the seller does not have a domicile or residence in Chile, the buyer or the stockbroker or securities agent acting on behalf of the seller must withhold the tax at the time the price is paid, remitted, credited to or made available to the seller. The withholding will be made at the rate of 10% on the profit obtained; the new legal regulation states the manner in which the profit must be determined for each operation.

In the event that there is not enough information to determine this capital gain, the withholding will be made at a rate of 1% on the total price of the operation.

If the withholding declared and paid has fully covered the tax, the taxpayer will be released from filing an annual income tax return. Otherwise, the taxpayer must file an annual tax return in the month of April of the following year and pay the difference between the amounts withheld and the amount of the applicable tax. If the total of the withholdings exceeds the tax amount that must be applied in the corresponding exercise, the balance that results in favour of the taxpayer will be refunded.

However, the profit on the sale of the applicable securities under the terms described above will not be subject to the single income tax when it is obtained by institutional investors with domicile or residence in Chile or abroad, as stated under point e) of article 4 bis of Law No. 18,045 on the Securities Market. This rule stipulates that institutional investors are banks finance companies, insurance companies, national reinsurance entities and fund administrators authorised by law. Entities designated by the Commission for the Financial Market, through a general rule, that meet the requirements detailed in this law will also have this qualification.

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PKF Comment

For many years, capital gains derived from operations with securities described above were totally exempt from income taxes. This exemption has currently remained in force only for taxpayers designated by law as institutional investors. However, the government has recently sent a tax reform bill to the National Congress which, among other proposed tax provisions, is to modify the single tax on capital gains already outlined, increasing the tax rate to 22%.

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**.

Croatia

Recent amendments to income tax law and regulations around the introduction of the euro

Amendments to income tax law

The Croatian Tax Administration has introduced new amendments to the Income Tax Regulation ('the Regulation'). Further to these amendments, certain amounts of non-taxable income are increased as follows:

- The increase in non-taxable income took effect on 1 October 2022.
- The ability to change the method of paying food expenses to employees during the year will take effect on 1 January 2023.

By amending the Regulation, art. 7, para. 2 from 1 October 2022, employers will be able to pay their employees the following amounts listed in the table below tax-free:

No.	Description	Coefficient	Value
5.	Occasional awards (Christmas gift, holiday bonus, etc.)	2.0	up to HRK 5,000
14.	Severance pay on retirement	4.0	up to HRK 10,000
18.	A gift to a child up to 15 years of age (who turns 15 on 31 December of the current year)	up to HRK 1,000 per year	
31.	Fees for the use of a private car for official purposes	up to HRK 3 per kilometre driven	
32.	Cash bonuses for work performance and other forms of additional remuneration for employees (supplementary salary, supplement to monthly salary, etc.)	3.0	up to HRK 7,500 per year
34.	Lump-sum cash allowances to cover the cost of meals for employees	2.4	up to HRK 6,000 per year

In addition, the tax-free amount of a donation in kind also increases to Croatian kuna (HRK) 1,000.

New regulation regarding the adoption of the euro: dual price reporting of Croatian kuna and euro

On 13 May 2022, the Act on the Introduction of the Euro as the Official Currency in the Republic of Croatia ('the Act') was adopted. The Act provides for mandatory dual price reporting in art. 42–53. The full numerical value of the fixed conversion rate to five decimal places on 1 January 2023 is EUR 1 = HRK 7.53450.

The obligation for dual price reporting of goods, products and services started on 5 September 2022 and will last until 31 December 2023. Businesses (as well as other institutions, corporations and banks) are obliged to dual report to consumers in the Republic of Croatia, i.e. B2C, and to employees (payslips, calculation lists, etc.). Dual pricing does not apply in a B2B relationship.

During this period of dual price reporting, monetary value indications in a currency other than the official currency are for information purposes only. Therefore, monetary value indications in EUR in 2022 are of an informative character and monetary value indications in HRK in 2023 are of an informative character only.

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PKF Comment

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

Ecuador

Preferential tax regimes list updated

With Resolution NAC-DGERCGC22-00000049, which was gazetted on 3 October 2022 and entered into force on the same date, the tax authority (*Servicios de Rentas Internas*, SRI) has updated the list of countries and territories with preferential tax regimes, by excluding the following:

- Gibraltar
- Luxembourg
- Isle of Man
- Channel Islands (Jersey and Guernsey)
- Liechtenstein
- Albania
- Cyprus
- Malta
- San Marino
- Ostrava Free Zone
- Ireland

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PKF Comment

The Ecuadorian government aims to maintain control and prevent tax evasion, without affecting its competitiveness on international markets. This decision could also be considered an incentive for taxpayers with assets in these states and jurisdictions to report them and comply with the regularisation of foreign-held investments.

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**.

France

Tax refund developments and new double tax treaties

Capital gains on shareholdings sold by a foreign company in a French company may be subject to tax in France if the shareholding exceeds 25%, in accordance with French law and tax treaties allowing for such taxation (e.g. Italy, Japan, etc.). Taxation modalities in France are being challenged on the basis of freedom of establishment and freedom of cash movements (AVM International 14 October 2020 and Runa Capital 20 October 2020). French legislation evolved at the end of 2021. There are still possibilities to try and obtain a refund of tax paid in the past by foreign companies. A claim for 2019 must be filed before 31 December 2022.

- The French Supreme Court confirmed (5 July 2022; Decision No. 463021) that parent companies may claim to have part of the tax credit derived from tax paid abroad in respect of dividends offset against their French tax, which is currently denied by French administrative guidelines. The amount of the foreign tax credit which may be offset against French tax will however need to be confirmed. Claims must be filed before 31 December 2022 for dividends subject to tax in France in 2019.
- On 4 February 2022, France and Denmark signed a new double tax treaty. As a reminder, the previous tax convention dated from 8 February 1957 and was denounced by Denmark in 2008. This denunciation took effect on 1 January 2009. The entry into force of the new text will only take place after the legislative ratification process in both states.
- A new double tax treaty was signed by France and Greece on 11 May 2022, replacing the treaty signed in 1963 and amended by the MLI (Multilateral Instrument to implement the actions of the BEPS plan by amending the bilateral agreements concluded). This new treaty is broadly in line with the OECD model convention and is very much inspired by the text of the MLI.

PKF Comment

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For further information or advice concerning French taxation, please contact Isabelle Vendeville at **iv@vendevilleavocats.com** or call **+33 (0)1 80 49 34 34**.

Germany

Short-time allowance to overcome crises

In times of crisis, companies in Germany can receive a so-called short-time allowance (*Kurzarbeitergeld*, 'KUG') from the government. This is intended to prevent employees from being laid off. Now, easier access has been extended until mid-2023.

1. Background

Short-time work in the employment relationship means the temporary reduction of regular working hours in a company. Short-time work may affect all or only some of the company's employees. The affected employees work less or not at all during short-time work. In the case of KUG, employers pay a higher wage than the reduced workload. The employer can be reimbursed for this additional payment.

2. Access facilitation

The law simplifies the eligibility requirements so that KUG can be paid out more quickly. KUG can already be paid out if at least 10% of employees are affected by a loss of pay instead of the regular one-third. In addition, working time accounts and vacation no longer have to be used up before KUG is paid out. It has also been made easier to report that a company is on short-time working.

3. Amount of KUG

In principle, employees receive 60% of the net pay for the lost working time as KUG, with employees who have at least one child receiving up to 67%.

For illustration purposes, a model calculation is set out below. The actual figures will depend on the specific case and will vary depending on tax class, federal state and wage scale.

An employee with a net wage of 100 works only 50% due to short-time work. For this reason, they also receive only 50% of their net wage (= 50). Compared to their previous wage, they therefore receive 50 less.

Of the 50 shortfall, 60% (67% for employees with children) is paid in the form of short-time allowance, i.e. 30 (or 33.5). The monthly income of an employee without children during short-time work is then calculated as follows: 50 (net wage) + 30 (KUG) = 80 (total). For an employee with children, the total amount would increase accordingly to 83.5.

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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**.

Hong Kong

Latest development of Hong Kong's refined foreign source income exemption regime

Highlights

- The refined foreign source income exemption (FSIE) regime was gazetted on 28 October 2022.
- Applications for the Commissioner of Inland Revenue's opinion on taxpayers' relevant tax position are now open until the enactment of the new FSIE legislation (i.e. 1 January 2023).

Introduction

Subsequent to the consultation stage for the proposed refined FSIE regime, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Bill 2022 ('the Amendment Bill') was gazetted on 28 October 2022 and was introduced into the Legislative Council on 2 November 2022 proposing that, starting from 1 January 2023, certain foreign-sourced income derived by a member of a multinational enterprise (MNE) group carrying on a trade, profession or business in Hong Kong is to be regarded as arising in or derived from Hong Kong and chargeable to profits tax when such income is received in Hong Kong.

Snapshot of the refined FSIE regime

Affected taxpayers:

- A constituent entity (including a permanent establishment) of an MNE group which is carrying on a trade or business in Hong Kong which receives in-scope offshore passive income in Hong Kong.
- An MNE group means any group that includes at least one entity or permanent establishment that is not located in the jurisdiction of the ultimate parent entity (i.e. involving two or more jurisdictions).

Affected offshore-sourced income:

- The in-scope offshore passive income generally includes interest income, dividend income, disposal gains and IP income arising in or derived from a jurisdiction outside Hong Kong.

Definition of 'received in Hong Kong'

- According to the Amendment Bill, a sum is regarded as received in Hong Kong in the following circumstances (not an exhaustive list):
  - The sum is remitted to, or is transmitted or brought into, Hong Kong;
  - The sum is used to satisfy any debt incurred in respect of a trade, profession or business carried on in Hong Kong; or
  - The sum is used to buy movable property, and the property is brought into Hong Kong.

Regarding the details of the refined FSIE regime including how to satisfy the requirements to enjoy the offshore tax exemption for the above in-scope offshore passive income, please refer to our previous PKF Worldwide Tax Update released in September 2022.

Application for Commissioner's opinion to confirm tax position

To alleviate the compliance burden on taxpayers and to provide them with tax certainty, the Inland Revenue Department (IRD) encourages taxpayers to seek the Commissioner's opinion ('the opinion') on compliance with the economic substance requirement (ESR) as a transitional arrangement before the passage of the Amendment Bill.

The application for the opinion is not compulsory and the opinion is not an advance ruling made pursuant to section 88A of the Inland Revenue Ordinance (Cap. 112). The Commissioner will, however, apply the enacted ESR in accordance with the opinion provided that the arrangements and parameters stated in the opinion are adhered to, and the enacted ESR is substantially the same as that proposed in the Amendment Bill. Taxpayers can rely on the opinion to report their compliance with the enacted ESR in their profits tax returns.

A taxpayer can apply for the opinion if it is an MNE entity carrying on a trade, profession or business in Hong Kong and accrues or receives in-scope offshore passive income on or after 1 January 2023. The application can be made either on an individual application basis or on a group application basis (including other Hong Kong entities of the same MNE group).

Upon the passage of the Amendment Bill and the enactment of the amendment ordinance, the transitional measure on the application for the opinion will cease, and taxpayers will then be able to apply for advance rulings on how the enacted ESR applies to their circumstances or arrangements. Certain fees will be charged by the IRD for making the advance rulings, subject to relevant rules and conditions.

Processing time and covered period

To minimise the administrative burden, the application for the opinion or an advance ruling may cover a maximum of five years of assessment commencing from the year of assessment 2022/23 or 2023/24. In other words, once the opinion or the ruling is granted, it can remain applicable for the subsequent five-year period.

The processing time of an application is normally around one month. Where the information available is not sufficient to form the opinion, the IRD will request that taxpayers supply further particulars.

New tax concessions for shipping-related businesses with operations in Hong Kong

Overview

In July 2022, the Hong Kong Legislative Council passed the Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022 ('the New Law'), which takes retrospective effect and applies to sums received by or accrued to qualifying shipping commercial principals on or after 1 April 2022.

The New Law aims to attract overseas shipping commercial principals to set up their business presence in Hong Kong, with a view to stimulating local demand for shipping-related services and promoting the development of these shipping activities in Hong Kong, thereby making the tax regime in Hong Kong competitive vis-à-vis major competitors in the Asia-Pacific region.

Notably, subject to certain anti-avoidance provisions, the New Law provides a dedicated tax concession regime that offers tax incentives to qualifying shipping commercial principals (i.e. ship agents, ship managers and shipbrokers) in Hong Kong as follows:

- Qualifying profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity in Hong Kong will be charged at a concessionary tax rate of 8.25%.
- Qualifying profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity for an associated shipping enterprise, which is entitled to a concessionary tax rate or income exemption, will also be eligible for the same tax concession as the associated shipping enterprise.

Under section 14P(1), 14T(1) or 23B of the Inland Revenue Ordinance, an associated shipping enterprise refers to a person who is a ship lessor, ship leasing manager, ship operator or ship owner entitled to tax concessions or exemption and (a) over which the qualifying shipping commercial principal has control; (b) which has control over the qualifying shipping commercial principal; or (c) which is under the control of the same person as the qualifying shipping commercial principal.

Eligibility criteria

In order to be an eligible qualifying shipping commercial principal, there are a few requirements that taxpayers need to observe:

Qualifying requirements	Details
Qualifying shipping commercial principals	A qualifying shipping commercial principal must exercise its central management and control in Hong Kong. It has to be a stand-alone corporation predominantly carrying out the qualifying shipping-related activities in Hong Kong, subject to the safe harbour rules discussed below. To obtain the benefit of the regime, taxpayers will also have to meet a minimum threshold of relevant qualifying activity during a year of assessment: • Ship agents are required to carry out not less than one relevant qualifying ship agency activity. • Ship managers are required to carry out not less than two qualifying ship management activities. • Shipbrokers concerned are required to carry out not less than one relevant qualifying shipbroking activity.

Qualifying shipping commercial principals *(cont'd)*	Under the safe harbour rules, a shipping commercial principal is allowed to engage in non-qualifying activities provided that (1) the amount of profits derived from the qualifying shipping-related activities is at least 75% of the total profits accrued to the corporation during the basis period; and (2) the value of the assets used to carry out the qualifying shipping-related activities is at least 75% of the total value of all assets of the corporation as at the end of the basis period. Where a corporation fails to qualify as a qualifying shipping commercial principal, it can obtain a determination from the Commissioner of Inland Revenue who may, on application by a corporation, determine whether it is a qualifying ship agent, qualifying ship manager or qualifying shipbroker.
Qualifying activities	A qualifying activity is one which is 'carried out in the ordinary course of the corporation's business carried on in Hong Kong'. The qualifying activities that produce the qualifying profits for a year of assessment must be carried out in Hong Kong by the corporation or arranged by the corporation to be carried out in Hong Kong, and must not be carried out by a permanent establishment of the corporation outside Hong Kong.
Substantial activities requirement	A ship agent, ship manager or shipbroker must meet the following substantial activities requirements: 1) employ not less than one full-time qualified employee; 2) incur not less than HKD 1 million of annual operating expenditure for carrying out the core income generating activities (CIGAs) in Hong Kong; and 3) the number of full-time qualified employees and the operating expenditure for carrying out the CIGAs are deemed adequate by the Commissioner of Inland Revenue.
Substantial activities requirement *(cont'd)*	The CIGAs can be outsourced to a group company. In that case, the employees of and the operating expenditure incurred by a group company will be taken into account if certain conditions are met (e.g. whether an arm's-length service fee is charged by the group company and the shipping commercial principal has exercised adequate monitoring of the CIGAs performed by the group company).
Opting into the regime	A taxpayer has the choice and the onus to opt into the regime; once the choice has been made it is irrevocable.

The tax concessions are only applicable for qualifying profits of qualifying shipping commercial principals in sums accrued on or after 1 April 2022.

Anti-avoidance principles

If a qualifying shipping commercial principal decides to apply the new regime, it should take into consideration the following specific anti-avoidance policies:

- Transactions between the qualifying shipping commercial principal and its associates in relation to any qualifying activities which are not charged on an arm's-length basis could be subject to transfer pricing adjustments.
- If the CIR deems that the main purpose, or one of the main purposes, of an arrangement entered into by the qualifying shipping commercial principal is to obtain a tax benefit under the Inland Revenue Ordinance or a tax treaty, the tax concessions would not apply.

The tax deduction for service fees paid by a party that is subject to profits tax at the normal tax rate of 16.5% to its connected qualifying shipping commercial principal that is subject to the concessionary tax rate of 8.25% would be reduced by reference to the amount of tax saving obtained by the service fee recipient.

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PKF Comment

Remaining competitive in the maritime business landscape, Hong Kong continues its lenient shipping tax regime. The newly introduced tax concessions under the New Law, which are primarily in line with the tax concessions and exemptions already provided to ship lessors and ship leasing managers in 2020, will provide a more comprehensive concessionary tax regime for shipping commercial principals (e.g. qualifying ship agents, ship managers and shipbrokers) to operate in Hong Kong. We believe that the New Law will strengthen Hong Kong's competitiveness in attracting more maritime enterprises to set up their business operations in Hong Kong, thereby fostering Hong Kong's position as a leading international maritime centre.

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

Italy

Tax treatment of dividends derived from non-portfolio participations from 1 January 2023

Pursuant to art. 27 of Presidential Decree No. 600/73, from 1 January 2018, dividends on non-portfolio participations derived by individuals not engaged in an entrepreneurial activity became subject to withholding tax at a rate of 26%.

A transitional rule provided that the old regime (which provided that such dividends were subject to the Italian income progressive tax, although on a reduced tax base) applied to profits registered before 31 December 2017 which were distributed from 1 January 2018 to 31 December 2022.

Therefore, on 31 December 2022, the transitional regime for dividends arising from the ownership of qualified shareholdings by non-entrepreneur individuals will no longer apply.

The Italian Tax Authorities, in response to tax ruling No. 454 of 16 September 2022, consider that the time frame identified by the transitional rule and the application of the principle of taxation on a cash basis for the taxation of dividends lead to the conclusion that the withholding tax or substitute tax at the rate of 26% is, in any case, applicable to dividends received from 1 January 2023 when such dividends are related to qualified shareholdings.

PKF Comment

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It may be advisable in certain cases to distribute dividends by 31 December 2022.

If you believe the above measure may impact your clients' personal position and need further clarification or support on this subject, PKF TCL Group's team will be available to provide any additional information you or your clients might need.

You can contact PKF TCL Group Tax Consulting Legal (Stefano Quaglia) at **s.quaglia@pkf-tclsquare.it** or call **+39 02 9285 4246** (Milan office).

VAT non-taxable regime for international transport services does not apply to sub-contracting carriers

Presidential Decree No. 633 of 1972, art. 9, para.1 transposes into Italian domestic law the provisions of European Articles 144 and 146 of Directive 2006/112/EC.

The EU Court of Justice has in fact clarified that Article 146 (1-e) of Directive 2006/112/EC means that the exemption provided for in that provision does not apply to a supply of services relating to a transaction involving the transport of goods to a third country, where such services are not provided directly to the consignor or consignee of those goods.

Italy's circular No. 5/E of 2022, in accordance with the guidance provided by the European Court of Justice in its ruling of 29 June 2017, stated that transport services must not only contribute to the actual realisation of an export or import transaction of goods, but must also be provided directly to the exporter, importer or consignee of the goods, according to the specific case.

Therefore, the VAT non-taxable regime, in principle, no longer applies to international transportation services that a principal carrier – engaged by the exporter, importer or consignee of the goods for transporting the goods abroad – entrusts to a third-party carrier (except for some specific categories, such as the freight forwarders category).

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PKF Comment

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 83 250** (Genoa office).

Amendment to the International Register of Shipping

Amendment to the International Register of Shipping

Article 41 of Decree-Law 144/2022 (the so-called *Aiuti-ter* decree) contains significant changes to the rules governing the International Register of Shipping.

The previous regulations already provided for the following tax and social security benefits:

- a tax credit equal to the personal income tax (IRPEF) due on income from employment and self-employment paid to seafarers embarked on ships registered in the International Register;
- the income generated by the use of such ships concurred to the formation of the company's tax base to the extent of 20%;
- exemption from the payment of social security and welfare contributions for personnel meeting the requirements of article 119 of RD 327/42 (Navigation Code) and embarked on ships registered in the International Register.

Article 41 extends the aforementioned benefits and also provides for further requirements to be met in order to be entitled to the benefit.

Besides having expanded the typology of registered ships that can benefit from the relief (also including ships carrying out activities assimilated to maritime transport, as listed in article 1, para. 1 of DL 457/97), the application of these reliefs has also been extended to resident and non-resident shipping companies having a permanent establishment in the territory of the State, pursuant to article 162 of the Consolidated Income Tax Law (TUIR), that use ships registered in the EU or EEA registries, or fly those countries' flags, to carry out international trade in relation to maritime transport or assimilated activities.

In order to benefit from the reliefs, provided the requirements are met, they are registered in a special list at the Ministry of Infrastructure and Sustainable Mobility.

Moreover, it is required that at least 25% of the company's fleet tonnage consists of ships registered in the EU or EEA Member States' Register or consists of ships flying these countries' flags. If this percentage is equal to or below 60%, the shipping company must increase or maintain the tonnage share of the above ships.

Furthermore, besides the main income derived from maritime transport activities and from assimilated activities, revenue derived from ancillary maritime transport activities may also benefit from the tax relief, provided that in each financial year it does not exceed 50% of the total allowed revenue generated by the use of the ship; where the threshold is exceeded, the relief scheme would not apply above 50%.

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PKF Comment

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 83 250** (Genoa office).

Updates on COVID concessions, GST and partnerships

Withdrawal of concession related to difficulties travelling to Jersey due to COVID-19

During 2020, at the beginning of the COVID-19 pandemic, Revenue Jersey announced that where companies' operating practices had to be adjusted to compensate for the coronavirus outbreak, the Comptroller would not determine that a company has failed the economic substance test. For example, this may have involved situations that prevented the directed and managed in Jersey requirement being satisfied where non-Jersey resident directors were prevented from travelling to Jersey to attend board meetings.

It was also previously announced that where a company incorporated in another jurisdiction had been tax resident in Jersey on the basis of control and management in Jersey, and the Comptroller considered that any changes dictated by the pandemic were temporary, then the changes would not disturb the determination of corporate tax residence from that prevailing before the pandemic.

As most travel restrictions have now ended, Revenue Jersey have announced that the concessions will be withdrawn for accounting periods starting on or after 1 November 2022.

Affected companies may therefore need to look at their operating practices to ensure they satisfy the economic substance test (where relevant) or to ensure that tax residence in Jersey is maintained.

Delay to date of mandatory GST registration for offshore retailers supplying goods to Jersey

There will be a six-month delay to the date from which large offshore retailers may be required to register for GST where the annual aggregated customer value of their supplies to Jersey residents exceeds GBP 300,000.

Registration will now only be required from 1 July 2023 where the annual turnover conditions are satisfied. Once an offshore retailer is registered, GST will be charged at the point of sale. Offshore retailers are still able to register voluntarily prior to 1 July 2023.

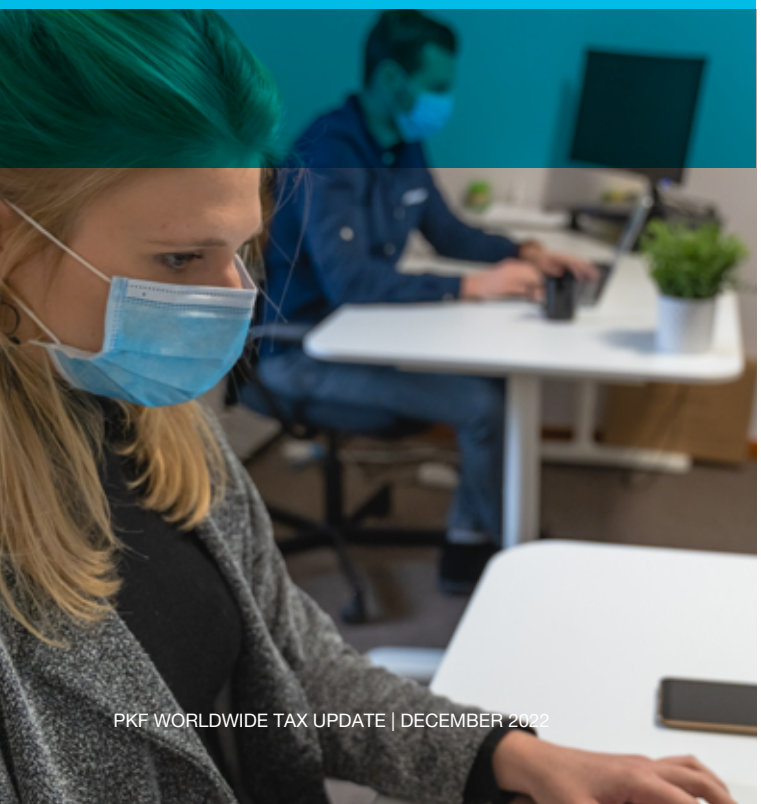
Draft law released that will require all Jersey partnerships to file tax returns from 2023

Following the introduction of new economic substance rules for partnerships in 2021, it is proposed that the partnership filing requirements are amended. All partnerships will be required to file a Combined Notification each year, which will be used to capture all relevant information relating to the partnership's economic substance and income tax. All resident partnerships and partnerships with Jersey partners liable to tax will have to file a Combined Notification, with the level of detail varying depending on the nature of each partnership.

BACK

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to Jersey taxation, please contact Anthony Chandlen at **anthonyc@pkfbba.com** or call **+44 1534 883 048**.



Netherlands

Tax changes for 2023 announced

On 20 September 2022, the Dutch government announced the tax plans for 2023. Among many other measures, it was announced that the 30%-facility for expats and the reduced corporate income tax (CIT) rate will change. These two changes are discussed below in further detail.

Capping of 30%-facility

Subject to certain conditions, expatriates sent to work in the Netherlands or employees recruited from abroad by a Dutch employer are able to apply for the so-called '30%-facility', which allows the employee to receive 30% of the Dutch taxable employment income as a tax-free allowance for up to five years to cover living costs and other costs related to working abroad.

So far, the rules did not include a maximum amount that can be granted as a tax-free reimbursement. In the tax plans, the government proposed that the facility will apply only up to a certain maximum amount of compensation (in 2022, EUR 216,000). This means that the tax-free amount will be maximised at EUR 64,800 per annum. The proposed effective date is 1 January 2024. Grandfathering rules will apply for existing arrangements.

Adjustment of the CIT bracket and increase of the CIT rate

In 2022, the CIT rate is 15% on the first EUR 395,000 of taxable income. Any excess is taxed at 25.8%. From 1 January 2023, the lower CIT rate will be increased to 19%. In addition, the regular CIT rate will apply to taxable profits above EUR 200,000.

PKF Comment

BACK

It is expected that the adjustment of the 30%-facility and the downward adjustment of the CIT rates will be accepted by Parliament. The tax revenues are used to finance tax reductions for individuals to compensate for the increased cost of living. For further information or advice regarding the Budget proposals, please contact Ruud van der Linde at **ruud.van.der.linde@pkfwallast.nl** or call +31 10 266 08 34.

Introduction of standardised reporting requirements for digital platforms (DAC7)

The legislative proposals regarding the automatic exchange of information for digital platform operators (DAC7) was presented to the Dutch Parliament. This proposal introduces standardised reporting requirements for digital platforms. These platforms will need to provide information on sellers on their platform to the Dutch Tax Authorities where the following activities are performed: the rental of real estate, the provision of personal services, the sale of goods or the rental of means of transport. The aim of the DAC7 directive is to achieve greater transparency about the revenues that citizens of EU Member States derive from digital platforms.

This legislative proposal does not deviate from the guidelines set in DAC7, meaning that the Dutch government opted for a so-called 'pure implementation'. When a digital platform does not comply with the EU directive, it can be sanctioned up to a fine of the sixth category (EUR 900,000). The sanction should, however, always be proportional and is intended to serve a deterrent function.

If the proposal is accepted by Parliament, digital platforms will have to start registering the required data from 1 January 2023. The first reporting deadline for digital platforms to supply the information would then be 31 January 2024.

BACK

PKF Comment

This bill will lead to more transparency and information for tax authorities. However, it can also lead to legal uncertainty for platforms. The legislator explicitly states that the Netherlands will interpret the bill in accordance with current and future OECD model rules, unless the interpretation is not in line with the directive. This will raise questions in certain situations.

For further information or advice regarding this legislative proposal and its consequences, please contact Eelco van der Vijver at **eelco.van.der.vijver@pkfwallast.nl** or call +31 20 653 18 12.

Papua New Guinea

Recent tax developments

New Income Tax Act 1959 rewrite

In 2019, PNG commenced the rewrite of the New Income Tax Act 1959 and since then it has undergone various consultations and submissions. Recently, in September 2022, the Treasury held a meeting with stakeholders to present the ninth draft legislation and those in attendance included the Internal Revenue Commission and tax agents.

The goal of the new Act is to make the legislation relevant, modern and simplified so that it better deals with the current evolving nature of the business environment in the global economy. The new Act is expected to be accompanied by explanatory documents, transitional provisions and regulations.

The new Act introduces capital gains tax which would apply to taxable assets at the rate of 15%. Specific provisions would include where taxable assets are defined as PNG real property and shares in companies where more than 50% of value is derived from PNG real property.

In line with other legislative rewrites, emphasis is on simplifying terminologies with the aim of maintaining the same legislation meaning and interpretation. These include terms used for allowable deductions, depreciation, foreign exchange gains and losses, management and technical fees. The Act also proposes to add a new inclusion to the definition of permanent establishment in tax treaty agreements with PNG and with the intention of aligning the service rule with the UN model tax treaty.

The Treasury announced their commitment to submit the new Act in Parliament this year. At this stage, the effective date may likely be 2024 but this would be subject to the legislative process.

Tax Administration Act

In the 2018 National Budget, the Tax Administration Act 2017 was introduced and was expected to commence in 2019 but it is yet to come into effect. The intention of the Act is to organise the administration of taxes by the Commissioner General of the Internal Revenue Commission which are also stated in the Income Tax Act 1959.

During a tax agent liaison meeting with the Internal Revenue Commission in August 2022, the Tax Administration Act tentative date was expected to commence in October 2022 subject to the Treasury's advice. However, no further update has been given as yet.

Statutory legislation

In November 2022, the Investment Promotion Authority held an awareness session on the new legislative amendments made in the Companies Act 1997 and Business Group Act 1974. The significant legislative amendments in the Companies Act are the changes to the companies' reporting and registration process, mainly the beneficial ownership and transfer of shares by PNG companies. On the other hand, the Business Group Act amendments included introducing requirements for committee member changes and annual returns. Amendments to these Acts are yet to come into effect.

Additionally, the Investment Promotion Act 1992 and the Associations Incorporation Act 1966 are currently undergoing review and are yet to be passed in Parliament.

BACK

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Papua New Guinean taxation, please contact Thomas Taberia at **thomas.taberia@ktk.com.pg** or call +675 321 6070.

Peru

Introduction of tax on remote gaming and sports betting

The tax is introduced by Law No. 31557 and is levied on the exploitation of remote games and remote sports betting developed on technological platforms that require authorisation from the authority for their exploitation. The taxable base of the tax is made up of the monthly net income minus the maintenance costs (equivalent to 2% of the monthly net income) of the technological platform for remote gaming or remote sports betting. The tax authority, through a superintendence resolution, will establish the form, terms and conditions under which the declaration and payment of the tax will be made.

The tax rate is 12% of the tax base and tax will be paid on a monthly basis. Taxpayers are: (i) legal persons incorporated in Peru; and (ii) branches of legal entities incorporated abroad that operate remote gaming and/or remote sports betting developed on technological platforms.

Law No. 31557 was gazetted on 13 August 2022 and will come into effect from the first business day following 60 days of the publication of the regulations of the law.

BACK

PKF Comment

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

Poland

Why are related parties exceptionally exposed to the control of the tax authority and how can this risk be reduced?

The reduction of pandemic restrictions causes our activity to return to its old tracks. This also applies to public administration bodies, including tax authorities. The restrictions had a significant impact on the functioning of the National Revenue Administration. This concerned in particular those areas where, for some reasons, personal contact between the official and the taxpayer was necessary or advisable. **The pandemic made it particularly difficult to conduct tax settlement audits and assessment proceedings.** It has also become a certain obstacle for the examination of cases by administrative courts.

However, the experience of the first half of 2022 shows that the National Revenue Administration is returning to its standard mode of operation. As a result, taxpayers may feel the **intensification of activities on the part of the tax authorities**. This applies not only to the initiation of new cases, but also to the intensification of inspections and proceedings that are already pending, and perhaps have been somewhat dormant so far.

Targeted controls

Over the years, there has been a visible trend in the form of a decrease in the number of initiated and conducted inspections and proceedings. This is the result of e.g. so-called **targeted control**. Recent reforms have meant that tax authorities have much more data on taxpayers. More and more progress is also being made in the processes of analysing this data. As a result, **there are generally fewer inspections, but they are more effective** from the perspective of the tax authorities.

It can be stated that based on the information available, entities are selected for inspection whose activities and available data allow to assume that there is a significant probability that the inspection will reveal irregularities.

National Revenue Administration (NRA) provides data according to which the effectiveness of control is gradually increasing. **In 2019, the control efficiency is 83%, and in 2024 it is to reach a level of not less than 85%**.

The above leads to the conclusion that if a taxpayer has become the object of interest of the NRA, then, as a rule, it should assume that the authority initiating the inspection or proceedings has data that allowed it to conclude that the initiation of the verification procedure will most likely end effectively. Effectively for the authority.

What is most often inspected?

It is no secret that some issues are verified by the National Revenue Administration authorities more willingly than others. It should come as no surprise that the tax on goods and services is invariably the most popular when it comes to inspections. VAT indisputably provides the state budget with the largest revenues when it comes to tax revenues. In addition, due to its international nature, it is the subject of numerous, often sophisticated tax frauds. It is also worth considering that the popularity of VAT, when it comes to inspections, is significantly influenced by the data obtained as a result of the introduction of the Standard Audit File. It should also be noted that every year more and more solutions are proposed to support National Revenue Administration in the effectiveness of its actions. An example is the National eInvoice System.

CIT is also an important area of interest of the tax authorities. For obvious reasons, CIT audits must be less numerous than VAT audits. This is due to the number of VAT and CIT taxpayers. *“My practice shows that CIT audits very often concern complex and non-uniformly interpreted issues. The subject of CIT also seems to be extremely popular in inspections conducted by specialized customs and tax offices. I observe the growing interest of the authorities in the subject of arm's length arrangements adopted by taxpayers. Especially related ones,”* comments Marcin Bodziony, tax advisor at PKF Tax&Legal Chamera Orczykowski Sp. k., specialist in tax proceedings.

Affiliates in the crosshairs

Among the issues that are of particular interest to the authorities, there are related party transactions. Much attention is paid to:

- any **cash flows from the company to shareholders/management staff**, especially if it is noted that the Legislator plans to introduce the provisions on the so-called hidden dividend
- **transactions between affiliated companies** - this applies not only to directly related companies, but also to those with further or informal connections,
- entities that are somehow related to the so-called **tax havens** or countries that offer preferential taxation on at least some income.

Verification of related party relationships is usually very extensive and includes:

- fulfilment of formal requirements, i.e. **possession of transfer pricing documentation**,
- the actual implementation of concluded contracts, i.e. whether, for example, the so-called **blank invoices** that do not correspond to real activities (especially intangible services) are being issued,
- the **marketability of the arrangements adopted** to identify undervaluation or overestimation of prices.

TPR function in typing for control

The tax authority that undertakes the control of transactions between related parties may have an exceptionally large advantage over the taxpayer. Especially in the area number 3 indicated above. National Revenue Administration has a lot of information about the taxpayer himself and his current activities and knows, for example:

- what prices the taxpayer used and applies to related contractors, and which prices to third parties,
- what prices appear in transactions concluded by the taxpayer's competitors or entities similar to him.

The above-mentioned knowledge comes mainly from the analysis of data provided as part of the transfer pricing information form. It is a significant step forward in terms of the scope of information provided to National Revenue Administration compared to the previous simplified report (CIT-TP/TIN-TP). Since the end of 2020, TPR has been providing the tax administration with the most important information in a condensed form. Moreover, the tax office is not passive in the area of designing further modifications to the scope and method of reporting individual transfer pricing data. It is worth pointing out the significant changes introduced to the TPR form already in relation to the second year of its validity. It is also impossible not to mention the very extensive guides of the Ministry of Finance, which in practice constitute instructions for completing individual versions of the form, which also affects the subsequent possibility of efficient data analysis by the competent authorities.

Considering the above, **if the taxpayer does not take an active defence in the inspection or proceedings, the authority - using its advantage - will be able to relatively easily assume that the taxpayer uses non-market prices,** which, for example, shows too low income or loss. Let us remember that more than 80% of inspections are effective inspections.

What can be done?

In the case of inspections or proceedings, especially regarding transactions with related entities, it is worth using professional tax advice. How can a tax advisor help the taxpayer?

1) By presenting the **tax consequences** of planned transactions and business solutions.
2) It will identify **risks** and help reduce them.
3) **It will check** the taxpayer's previous settlements (selected or all) and indicate errors to be corrected. It will also help to correct them.
4) By developing **procedures** to limit penal fiscal liability of persons in managerial positions.
5) Based on access to databases, which are also available to tax authorities, it will present **price ranges** that can be adopted as the basis for calculating own prices.

6) Prepare professional **transfer pricing documentation**.

7) It will support as part of the proper completion of the **TPR form**.

8) It will help in obtaining security for the adopted solutions in the form of an **individual interpretation** or **a securing opinion**.

9) It will help to develop a control or conduct **strategy**.

10) Will **verify the documentation** submitted to the tax authority.

11) Take part in **auditions**.

12) Advice on the **evidence** that the taxpayer may present in his defence.

13) Prepare each pleading, including **objections to the record and appeal.**

14) He will file a **complaint** or a **cassation complaint** and will defend the interests of the taxpayer in **the courtroom**.

BACK

PKF Comment

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.

VAT – the importance of understanding the nature of services supplied

In the recent case of Rennies Travel v CSARS (20/2021) [2022] ZASCA 83 (6 June 2022), the Supreme Court of Appeal (SCA) was required to consider whether a certain commission derived by Rennies Travel, an entity conducting a travel agency enterprise, was subject to VAT at the standard rate or, alternatively, at a zero rate.

In terms of the facts of the case, part of the business of Rennies Travel is to make arrangements for international travel for its clients, including the sale of airline tickets for international flights. Rennies Travel derived the following sources of contractual income in this regard:

- a service fee charged to the client;
- a flat rate standard commission charged to an airline for the sale of an international airline ticket ('the Standard Commission'); and
- additional or increased commission charged to an airline if a certain target is reached ('the Supplementary Commission').

Section 11(2)(d) of the VAT Act No. 89 of 1991 provides for the zero rating of VAT in respect of a supply of services comprising the arranging of international transport for passengers.

SARS argued that the Supplementary Commission is subject to VAT at the standard rate and accordingly that VAT of approximately ZAR 8.6 million plus interest and penalties was due by Rennies Travel.

The Tax Court had sided with SARS and held that the Supplementary Commission had been paid for the supply of marketing services and promoting the sale of airline tickets – as distinguished from the zero-rated supply of services relating to the arranging of international transport. The Tax Court therefore held that the Supplementary Commission was subject to VAT at the standard rate.

On appeal, Rennies Travel maintained that it was providing only one service – the arrangement of international transport for individuals – and accordingly that this should be zero-rated.

SARS, however, argued that the Supplementary Commission is a commission earned for reaching a target – not for arranging international transport.

The SCA considered the matter and noted that VAT is levied in respect of the supply of a service or a good. The meeting of a target is not a supply of services, and therefore what was 'supplied' by Rennies Travel in exchange for the Supplementary Commission must be considered. The SCA held that the Supplementary Commission was paid for the sale of a particular volume of international airline tickets by Rennies Travel and furthermore held that the fact that the same services gave rise to more than one type of consideration did not alter the nature of the services. The appeal was therefore allowed.

This case illustrates the importance of understanding the nature of services supplied by an enterprise and distinguishing between a single contract with two supplies of services, as opposed to a contract relating to a single supply of services with two forms of consideration payable in respect of that supply of services. As is evident from the decision of the SCA, the VAT considerations in respect of these two scenarios may be vastly different.

PKF Comment

BACK

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to South African taxation, please contact Alexa Muller (Cape Town) at **alexa.muller@pkf.co.za** or call +27 21 914 8880.

Spain

Approval of Law 18/2022 from 28 September 2022 on the creation and growth of companies

On 29 September 2022, Law 18/2022 on the creation and growth of companies ('the Law'/'Create and Grow Law') was gazetted.

This legislation, which runs in parallel with the tax regulation but is undoubtedly closely related to it, constitutes one of the main reforms of the Recovery Plan, with the major aim of facilitating enterprise formation, fighting against commercial delinquency and favouring business growth and expansion.

The following is a description of some of the salient features established in the Law, focusing on those related to enterprise formation, commercial transactions and financing.

Corporate and commercial measures included in the Law

- **Incorporation of limited liability companies with one euro of share capital.** The minimum share capital requirement of EUR 3,000, which until this date existed for limited liability companies, has been abolished. In cases where the share capital does not reach the amount of EUR 3,000, the following rules will apply to protect the interests of creditors or third parties contracting with the company:

  i) 20% of the profit must be allocated to the legal reserve until this reserve together with the share capital reaches the amount of EUR 3,000.

  ii) If upon liquidation of the company there are insufficient assets to pay for the company's obligations, the shareholders will be jointly and severally liable for the difference between the amount of EUR 3,000 and the amount of subscribed capital.

- **Acceleration of the establishment of limited liability companies.** The telematic incorporation of companies is facilitated through the one-stop shop of the Information Centre and Business Creation Network, which guarantees a reduction in the time taken to establish a company and a reduction in notary and registration requirements.
- **Fight against commercial late payments.** The mandatory use of electronic invoicing in all economic relations between entrepreneurs and professionals is imposed. This measure, in addition to reducing the transaction costs and representing a step forward in the digitalisation of companies' operations, will allow obtaining reliable, systematic and agile information on effective payment periods, an essential requirement for reducing commercial delinquency.
- Companies that do not comply with the payment deadlines established in the Law on Late Payments (Law 3/2004) will not be able to access a public subsidy nor be a collaborating entity in its management.
- The **creation of a State Observatory on Private Delinquency** is envisaged, which will monitor and analyse data on payment deadlines and promote good practices. Its actions include the publication of an annual list of defaulting companies (legal entities that fail to pay more than 5% of their invoices on time and whose total amount of unpaid invoices exceeds EUR 600,000).
- Introduction of the obligation to include in the annual accounts the average payment period to suppliers. Furthermore, for listed companies, there is also the need to include the number of invoices paid in a period shorter than the maximum established in the late payment regulations.
- **Reinforcement of financing.** In the area of crowdfunding, the domestic legislation is adapted to EU regulations, introducing improvements in alternative financing instruments to bank financing, allowing these platforms to provide their services in Europe.

  In addition, investor protection is strengthened and the creation of vehicles for group investors is allowed to reduce management costs. To broaden the universe of eligible business projects, the investment thresholds per project are raised (from EUR 2 million to EUR 5 million) and the investment limits per project for retail investors are modified to the higher of EUR 1,000 or 5% of wealth.

Entry into force

The Create and Grow Law entered into force on 19 October 2022, except for the following stipulations:

i) The legal regime for crowdfunding platforms, which entered into force on 10 November 2022.

ii) The electronic invoicing between entrepreneurs and professionals, the entering into force of which will depend on the annual turnover of the contributor. In the case of companies with an annual turnover of more than EUR 8 million it will enter into force 12 months after its regulatory development has been approved and, for the remainder of entrepreneurs and professionals, it will become fully effective after 24 months.

BACK

PKF Comment

Entrepreneurship is one of the main drivers of the economy and with the Create and Grow Law SMEs are placed at the centre of Spanish economic policy. Their importance in the productive fabric is recognised and a more agile and flexible legal framework is established, in line with the regulations of the most advanced EU countries.

The digital solutions and the modernisation of the legislative system reduce bureaucratic hurdles, placing the Spanish economy in a more favourable position to attract entrepreneurs and investors.

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.

Switzerland

Amendment to the Federal Act on Withholding Tax not passed in public vote

On 25 September 2022, the Swiss electorate voted on the amendment to the Federal Act on Withholding Tax. The amendment of the law did not pass the public vote. Therefore, the withholding tax of 35% is still 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. Further, the sales tax on domestic bonds and other securities, currently payable when buying and selling securities, is still applicable.

OASI reform passed in public vote – increased VAT rates from 1 January 2024

On 25 September 2022, the Swiss electorate also voted on the supplementary financing of Old-Age and Survivors' Insurance (OASI) by increasing VAT and amending the Federal Act on OASI. The reform passed, such that a uniform retirement age of 65 will now apply for both women and men. Further, 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.

PKF Comment

BACK

The outcome of the vote regarding the amendment of withholding tax is unfortunate, since this would have given the Swiss economy an additional boost when it comes to financing. The passing of the OASI reform was a close call but offers additional opportunities when it comes to closing gaps and increasing pensions.

Prolongation of agreements regarding international social security implications due to COVID-19

It was originally planned that the flexible application of the EU social security subordination rules under the Agreement on the Free Movement of Persons and the EFTA Convention applies until 30 June 2022. The members of the EU Administrative Commission for the Coordination of National Social Security Systems have now agreed to extend the application during a transitional phase until 31 December 2022, which also applies to Switzerland. Therefore, a person continues to be part of the Swiss social security legislation in cases where he/she works from a home office in his/her country of residence. Please note that this agreement has no impact on the applicable rules for direct taxes based on double tax treaties and respective bilateral agreements (i.e. in particular in connection with cross-border workers from Germany, France, Italy and Liechtenstein).

PKF Comment

BACK

The prolongation offers some legal security at least until the end of the year. It is hoped that future amendments to social security agreements will reflect the fact that a home office is becoming commonplace in the modern digital world.

For further information or advice concerning Swiss unilateral and international taxation, please contact Dominique Kipfer at **dominique.kipfer@pkf.ch** or Rilana Wolf-Bayard at **rilana.wolf@pkf.ch** or call +41 44 285 75 00.

Taiwan

CFC regulations to become fully effective in 2023

In order to prevent profit-making enterprises from evading tax regulations by setting up a controlled foreign company (CFC) in low-tax jurisdictions, the Executive Yuan has announced the timetable for implementing CFC rules in 2023 to align with international tax anti-evasion trends and preserve equity and fairness.

The Ministry of Finance (MOF) further stated that, starting from the filing of FY 2023 enterprise income tax returns, any holding of an overseas entity that meets the definition of a CFC along with capital criteria and which is not exempt from the CFC definitions, will be subject to CFC regulations. The profit of those overseas entities should be included in the consolidated enterprise income of that financial year.

A foreign company located in a low-tax country or region is defined as a CFC if a profit-making enterprise and its associated persons directly or indirectly hold more than 50% of the shares or capital in the foreign company, or if the profit-making enterprise has significant influence over that foreign company.

A profit-making enterprise is exempt from the CFC rules if the annual profit of its CFCs is less than TWD 7,000,000. However, if the aggregate annual business profits of all of its CFCs in a specific low-tax country or region exceed TWD 7,000,000, the CFC rules will apply.

For example, domestic profit-making enterprise Alpha owns three CFCs A, B and C directly. None of the three CFCs has any actual operating activity in the located country or region. CFCs A, B and C have TWD 1.5 million of losses, TWD 6 million of profit and TWD 5.5 million of profit respectively in FY2023.

Although no single CFC has profit of over TWD 7 million, the profit and loss of all three CFCs taken in aggregate is a net profit of TWD 10 million, which is over TWD 7 million and will be subject to the CFC rules. The revenue of CFCs B and C should be included in Alpha's income tax return filing of FY2023.

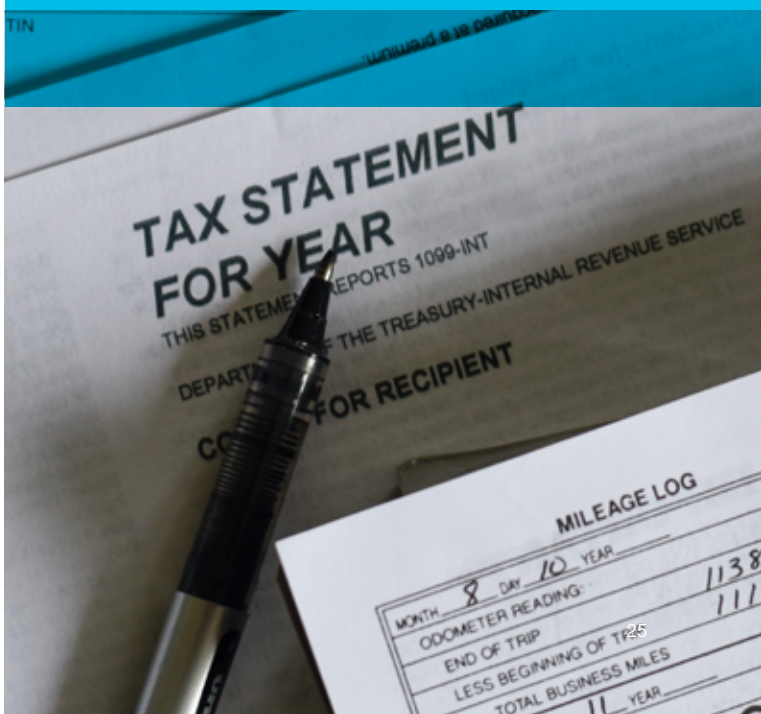
The definition of 'actual operating activity' must meet the following conditions: having a physical operating address, space and hiring a reasonable number of employees, while the aggregated income derived from investments, dividends, interest, royalties, rent and realised capital gains should not exceed 10% of the sum of the net operating income and non-operating income.

A taxpayer with CFCs is required to provide information such as its organisational structure or that of its associated persons, their percentage of shares or capital of the CFCs, financial reports of the CFCs, a chart of loss offsets of the CFCs for the past ten years, the distribution of investment income by the CFCs, etc. The relevant documents must be verified by the relevant authorities or diplomatic posts.

BACK

PKF Comment

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



United Arab Emirates

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 was 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 soon.

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 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 Report on or before 31 March 2023.

International tax developments

i) UAE's DTA network

The UAE has entered into and concluded double taxation agreements (DTA/'tax treaties') with 139 countries. The list of the countries/jurisdictions with which the UAE has entered into and concluded a DTA can be found at:

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

Furthermore, the UAE signed a DTA with Guyana on 24 March 2022. Also, a DTA signed by the UAE with Chile in 2019 entered into force on 28 July 2022. These treaties are now updated in the official list of the UAE's tax treaties, as published by the UAE MOF.

Also, on 30 August 2022, the Kuwaiti MOF announced that Kuwait and the UAE recently signed a DTA. However, the UAE MOF from its side has not made any announcements in this regard. Also, on 29 September 2022, the UAE MOF announced that it has signed a DTA with Tanzania. However, neither of these DTAs is reflected yet in the DTA list available on the MOF portal.

ii) New cabinet decision on determination of tax residency issued

Recently, the MOF issued Cabinet Decision No. 85 of 2022 ('the Cabinet Decision'), specifying the requirements and conditions for determining the tax residency status of a natural and a legal person in the UAE and for issuance of a **'tax residency certificate' (TRC) in the UAE**. The Cabinet Decision will **come into force on 1 March 2023**.

Salient features of the Cabinet Decision are as follows:

a) *Applicability to legal persons*

- **A legal person established, formed or recognised** in accordance with the legislation in force **in the UAE** shall be considered a UAE tax resident.
- A legal person **considered as a tax resident under the applicable tax law** in the country shall also be **considered a tax resident**.
- Branches of a foreign company/entity in the UAE **shall not** be considered a UAE tax resident.

b) *Applicability to natural persons*

- A natural person shall be considered a UAE tax resident if any of the following conditions are met:
  - If their usual or principal place of residence and the centre of their financial and personal interests are in the UAE, or if they meet the conditions and criteria specified by a decision of the MOF.
  - If they have been physically present in the State for a period of 183 days or more, during the relevant 12 consecutive months.
  - **If they have been physically present in the country for a period of 90 days or more**, during the relevant 12 consecutive months, **and** hold the nationality of the State or hold a valid residence permit in the State or hold the nationality of any of the member states of the Gulf Cooperation Council, **and meet any** of the following:
    A. Having a permanent place of residence in the country.
    B. Exercising a job or business in the country.

c) If any international agreement stipulates specific conditions for determining tax residency, the provisions of that international agreement regarding determining tax residency shall be applied for the purposes of that international agreement.

d) A person seeking a TRC will be required to submit an application to the Federal Tax Authority (FTA) in the prescribed form and manner.

UAE VAT and excise tax update

With respect to VAT and excise tax, the UAE FTA has recently released certain amendments/updates which are set out below:

Date	Tax	Type of update	Particulars of update
October 2022	VAT	Amended VAT decree-law	Federal Decree-Law No. 8 of 2017 and its amendment effective 1 January 2023 on VAT
October 2022	VAT	Cabinet decision	Refund of input tax incurred on the construction and operation of mosques
October 2022	VAT	Federal Tax Authority decision	Maximum amount of TRS cash refund
September 2022	VAT	Cabinet decision	List of charities that may recover input tax
October 2022	Excise Tax	Amended excise tax decree-law	Federal Decree-Law No. 7 of 2017 and its amendment effective 14 October 2022 on excise tax

A summary of the updates is as follows:

- **Federal Decree-Law No. 8 of 2017 and its amendment effective 1 January 2023 on VAT**
  The FTA has recently amended the VAT Decree-Law (Federal Decree-Law No. 8 of 2017 on VAT) vide Federal Decree-Law No. 18 of 2022 on VAT with effect from 1 January 2023.

The new provisions or amendments have streamlined certain provisions and removed ambiguity on certain interpretations under UAE VAT law, which have been summarised below:

<table>
<tr><th>Sr#</th><th>Explanation</th></tr>
<tr><td>1</td><td>
Insertion of statute of limitation for tax audit/tax assessment by FTA [article 79 bis]

• The FTA has provided a statute of limitation for conducting a tax audit/tax assessment by the FTA, which is summarised below:
<table>
<tr><th>Situation</th><th>Time period for conducting a tax audit/tax assessment by FTA</th></tr>
<tr><td>Tax audit/tax assessment by FTA for situations other than the ones specifically mentioned</td><td>Before the expiration of five years from the end of relevant tax period</td></tr>
<tr><td>Notification for commencement of audit has been sent before the expiration of five years</td><td>Within four years from the date of the notification</td></tr>
<tr><td>Voluntary disclosure (VD) is submitted in fifth year from the end of tax period</td><td>Within one year from the date of submission of VD</td></tr>
<tr><td>Tax evasion</td><td>Within 15 years from the end of the tax period in which tax evasion occurred</td></tr>
<tr><td>Tax registration failure</td><td>Within 15 years from the date on which person should have registered</td></tr>
</table>
• No VD may be submitted after five years from the end of relevant tax period.
</td></tr>
<tr><td>2</td><td>
Time limit to raise a tax invoice in case of continuous supply and tax credit note [article 26, 62(2), and article 67(1)]

The FTA has now prescribed a time limit to raise a tax invoice in case of continuous supply and tax credit note which was not prescribed earlier:
<table>
<tr><th>Particulars</th><th>Explanation</th></tr>
<tr><td>Tax invoice in case of continuous supply of goods or services</td><td>A tax invoice shall be issued within 14 days from the date of supply</td></tr>
<tr><td>Tax credit note</td><td>A tax credit note shall be issued within 14 days from the date on which instances for issuing a tax credit note occur</td></tr>
</table>
</td></tr>
<tr><td>3</td><td>
Value of deemed supply in case of related parties [article 36]

The value of a deemed supply between related parties would be equal to ‘market value’ on fulfilling certain conditions mentioned in article 36 of the decree-law.
</td></tr>
<tr><td>4</td><td>
Clarification of the scope of reverse charge for hydrocarbons [article 48]

The FTA has clarified the scope of tax payable under the reverse charge mechanism on ‘any hydrocarbons’ to ‘pure hydrocarbons’, which has been defined under article 1 of the decree-law.
</td></tr>
<tr><td>5</td><td>
Inclusion of certain import transactions as part of zero rating [article 45]

The FTA has amended the article on supplies which are subject to zero rate by including certain categories of import of goods or services in the list. These are outlined below:

• Air, sea and land means of transport for transportation of passengers and goods
• Concerned goods related to the supply of means of transport mentioned above and which are designated for the operation, repair, maintenance or conversion of these means of transport
• Air or sea rescue and assistance aircrafts or vessels
• Crude oil and natural gas
• Concerned related goods in context to preventive and basic healthcare services.
</td></tr>
</table>

<table>
<tr><td>6</td><td>Changes with respect to place of supply [article 27 and article 30]

The FTA has amended provisions of place of supply with respect to the continuous supply of goods.

<table><tr><th>Particulars</th><th>Explanation</th></tr><tr><td>Continuous supply of goods</td><td>Place of supply would be the UAE in cases of a continuous supply of goods where the ownership of goods is transferred inside the UAE</td></tr><tr><td>Transport-related services</td><td>Place of supply for transport-related services will be where transportation starts</td></tr></table></td></tr>
<tr><td>7</td><td>Documentary requirement on recovery of input tax in case of import of goods and services [article 55]

While the documentation requirement for taxable persons accounting for due VAT on import of concerned goods and services was already covered under clause 5 of article 48 of the Executive Regulations, the FTA has now specifically prescribed that input tax on import transactions can only be recovered if the following documents are received, amongst other conditions:

• In case of import of goods – invoice and import documents
• In case of import of services – invoice provided by foreign supplier

The amendments introduced under article 55 of the decree-law are broadly in line with the requirements mentioned under the Executive Regulations.</td></tr>
<tr><td>8</td><td>Exception from tax registration [article 15]

By this amendment, the FTA has clarified that registration exception can be availed by a taxable person who is only making zero-rated supplies irrespective of their VAT registration status.</td></tr>
</table>

<table>
<tr><td>9</td><td>Clarification on instances for adjustment of output tax [article 61(1)]

A registered person can adjust the output tax after the date of supply in certain circumstances which now also include application of incorrect treatment of tax.</td></tr>
<tr><td>10</td><td>Recovery of input tax by government entities and charities [article 57]

Government entities or charities specified in the applicable cabinet decision can recover the full amount of input VAT for the purpose of their sovereign activities and relevant charitable activities respectively.</td></tr>
<tr><td>11</td><td>Place of residence of principal [article 33]

The place of residence of a principal would be determined based on the place of residence of its agent in any of the cases specified under article 33.</td></tr>
<tr><td>12</td><td>Widening the base for cases which shall not be considered as supply [article 7]

The FTA has widened the base for cases which are not to be considered as supply under UAE VAT law by including ‘any other category which would be specified in the Executive Regulations’ under the subject provision.</td></tr>
<tr><td>13</td><td>Changes in relation to tax deregistration [article 21]

• The FTA may issue a decision for deregistration if it is of the view that keeping registration of a registrant would prejudice the safety of the tax system.
• It is stated that VAT deregistration would not impact the FTA’s right to recover any tax dues or administrative penalties from the person deregistered from UAE VAT law.</td></tr>
<tr><td>14</td><td>Insertion of definitions [article 1]

The FTA has inserted definitions on relevant charitable activity, pure hydrocarbons, tax evasion, tax audit, tax assessment, voluntary disclosure, tax procedures law as part of Federal Decree-Law No. 18 of 2022 on VAT.</td></tr>
</table>

- **Refund of input tax incurred on the construction and operation of mosques**
  Cabinet Decision No. 82 of 2022 issued by the FTA states the eligibility, process and effective date of refund of the input tax incurred on the construction and operation of mosques. Below are the key highlights:
  - Eligibility criteria for refund of input tax incurred on the construction of mosques:
    - The donor has incurred input tax on goods or services directly in connection with the construction of mosques.
    - The construction was approved by the competent authority.
    - The donor has a Mosque Operation Commencement Certificate.
  - Eligibility criteria for refund of input tax incurred on the operation of mosques:
    - The operator has incurred input tax on goods or services directly in connection with the operation and maintenance of mosques.
    - The mosque is registered as a mosque with the competent authority.
    - The operator holds a written time-limited permit issued by the competent authority for the operation of the mosque during the period for which a refund request is made.
  - Effective date of refund entitlement: The donor or operator may claim a refund of input tax incurred from 1 January 2018 on the construction and operation of mosques.
- **Maximum amount of TRS cash refund**
  The decision given by the FTA states that the maximum cash refund of VAT under the Tax Refunds for Tourists Scheme (TRS) will be AED 35,000 per overseas tourist per 24 hours.
- **List of charities that may recover input tax**
  The FTA vide Cabinet Decision No. 69 of 2022 with effect from 10 August 2022 has amended the list of charities that may recover input tax.
- **Federal Decree-Law No. 7 of 2017 and its amendment effective 14 October 2022 on excise tax**
  The FTA amended the excise tax decree-law (Federal Decree-Law No. 7 of 2017 on Excise Tax) via Federal Decree-Law No. 19 of 2022 with effect from 14 October 2022, and recently issued EXTP009 (public clarification on this amendment), which have been summarised as follows:

<table>
<tr><th>Sl. No</th><th colspan="2">Description</th></tr>
<tr><td>1</td><td colspan="2">Insertion of Statute of Limitation for tax audit/tax assessment by FTA [Article 25(bis)]

The FTA has provided the following statute of limitation for conducting a tax audit/ tax assessment by the FTA, which is summarised as follows:</td></tr>
<tr><td></td><td>Situation</td><td>Time period for conducting a tax audit/ tax assessment by FTA</td></tr>
<tr><td></td><td>Tax audit/ tax assessment by FTA for situations other than mentioned specifically</td><td>Before the expiration of 5 years from the end of relevant tax period</td></tr>
<tr><td></td><td>Notification for commencement of audit has been sent before the expiration of five years</td><td>Within four years from the date of the notification</td></tr>
<tr><td></td><td>Voluntary disclosure (VD) is submitted in fifth year from the end of tax period</td><td>Within one year from the date of submission of VD</td></tr>
<tr><td></td><td>Tax evasion</td><td>Within 15 years from the end of the tax period in which tax evasion occurred</td></tr>
<tr><td></td><td>Tax registration failure</td><td>Within 15 years from the date on which person should have registered</td></tr>
</table>

2	**Exception from registration [article 6]** • A person not registered under excise laws is not allowed to import excise goods. • However, it has been clarified that the FTA may exclude the following persons from registering under the excise tax laws: — Persons who will not regularly import excise goods; or — Persons who import for purposes other than conducting business; however, the person is obligated to pay due tax on the import. *(This category of person added under the subject amendment.)* **Points to be noted:** • The person shall inform the FTA within the applicable timeframe if they become liable for tax registration at any given time. • The person would be liable to pay any due tax or any administrative penalties even if they are excluded from tax registration.
3	**Payment of amount received as excise tax [article 19]** Any amount collected as excise tax or reflected in the invoice as excise tax (even if this is collected in respect of goods which are not excise goods) must be reported and settled with the FTA as excise tax.
4	**Insertion of definitions [article 1]** The FTA has inserted definitions on tax audit, tax assessment, voluntary disclosure and tax procedures law as part of Federal Decree-Law No. 07 of 2022 on Excise Tax.

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

Other developments

UAE FTA to launch new integrated platform 'EmaraTax'

A new tax platform has been designed by the UAE FTA to provide a better experience for taxpayers managing their tax obligations. It is stated that EmaraTax will enhance the FTA's ability to administer taxes in the UAE, enabling better, faster decision-making and earlier engagement with taxpayers that need support.

It is further stated that EmaraTax will significantly enhance the way that taxpayers can access the FTA's services, pay their taxes and obtain refunds.

The FTA has also announced that the EmaraTax system is currently in the final stages of readiness and is intended to go live in November 2022. However, the exact launch date has yet to be announced.

PKF Comment

BACK

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 soon.

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.

The new rules for the issuance of a TRC are quite comprehensive and in line with internationally accepted principles.

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.

Significant amendments made to the UAE VAT decree-law have brought in much needed clarity on many aspects apart from the increase in time limits for conducting enforcement by the authorities. Further, 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.

For further information or advice concerning taxes in the UAE, please contact Mr. Stany Pereira at **stany@pkfuae.com** or Mr. Shailesh Kumar at **skumar@pkfuae.com** or Mr. Mradul Gupta at **mgupta@pkfuae.com** or Ms. Nandita Salgaonkar at **nsalgaonkar@pkfuae.com** or Ms. Radhika Doshi at **rdoshi@pkfuae.com** or Ms. Megha Lohia at **mlohia@pkfuae.com** or call **+97143888900**.

United Kingdom

Following the departure of the former UK Chancellor Kwasi Kwarteng, most of the changes announced in the 'mini budget' published in September have been cancelled. However, below are some tax policy changes which remain in place.

Reduction in National Insurance rate and reversal of the health and social care levy

Effective from 6 November 2022, the UK National Insurance (social security) rates have been reduced by 1.25% for employees, employers and the self-employed for the remainder of the 2022/23 tax year ending 5 April 2023. In effect, the decrease in the National Insurance rate has reversed the 1.25% increase, which was introduced on 6 April 2022. The 1.25% reduction in National Insurance rates covers Class 1 employee and employer, Class 1A, Class 1B and Class 4 National Insurance contributions.

Following the end of the tax year, the National Insurance rates were to reduce to the 2021/22 rates while the health and social care levy was to be introduced – a separate new tax of 1.25% payable by pensioners as well. Following the November reduction of the National Insurance rate, the health and social care levy will no longer be going forward.

Changes to the Company Share Option Plan

The Company Share Option Plan (CSOP) is a tax advantaged share scheme, under which – if the conditions are met – there will not be a taxable income arising at the point of exercising share options. From 6 April 2023, the maximum CSOP options limit of the market value at the time of grant per employee will be doubled from £30,000 to £60,000. Furthermore, restrictions have been lifted regarding share classes where a majority of shares had to have been acquired by external investors (open market shares) or employees with control of the company. By lifting these restrictions, the intention is for the CSOP to align more closely with the Enterprise Management Incentive (EMI) scheme.

Increase in the Seed Enterprise Investment Scheme limits

Start-up companies can raise money using the Seed Enterprise Investment Scheme (SEIS) if the conditions are met. SEIS offers tax relief to individual investors. From April 2023, the lifetime allowance companies can raise under SEIS will increase from £150,000 to £250,000 and the investment limit for SEIS investors in a tax year will increase from £100,000 to £200,000.

In addition to this, there was a sunset clause for SEIS and the Enterprise Investment Scheme (EIS), meaning the legislation could be discontinued from 6 April 2025. This clause has been removed, and the schemes will continue beyond 2025.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to UK global mobility, please contact Louise Fryer at **lfryer@pkf-l.com** or call **+44 (0)20 7516 2446**.

United States

Ownership disclosure requirement for US entities starting in 2024

In an effort to help prevent tax fraud and other unlawful financing activities, the Financial Crimes Enforcement Network (FINCEN) has issued final rules related to ownership disclosure obligations for US entities. The final rules will be effective from 1 January 2024.

FINCEN may already be known to US persons from the requirement to disclose their financial interest in or signature authority over foreign financial accounts through a Report of Foreign Bank and Financial Accounts (FBAR). The FBAR is typically filed together with the US tax return of an individual or entity and tax preparers assist with the preparation of the report.

With this new rule, FINCEN will extend its reach and require certain entities to provide information about their beneficial owners by filing a Beneficial Ownership Information (BOI) report if certain requirements are met. The information collected through the BOI report will be accessible to US government departments and agencies, law enforcement, tax authorities and financial institutions in a centralised database. One of the main goals for the introduction of the rules is to fight money laundering in the US and promote financial transparency. The new disclosure requirements were mandated under the 2021 Corporate Transparency Act (CTA) and will provide the US with a centralised aggregation of the information about who controls, operates and/or owns private US entities.

Who must file a report

Under the rules, the following types of companies would have to comply with the reporting rules and disclose beneficial ownership:

- Domestic reporting companies: US corporations, limited liability companies (LLC) or any other entity created by the filing of formation documents with a state or any similar office under the law of a state or native American tribe.
- Foreign reporting companies: Companies that are formed under the law of a foreign country, treated as a corporation or LLC for US purposes and registered to do business in any state or tribal jurisdiction.

Although not specifically mentioned, limited liability partnerships, limited partnerships and other US legal entities will have to report as all of these are formed by filing documents with authorities in a state or tribal jurisdiction.

There are twenty-three specific exemptions from the definition of reporting company under the CTA. These include accounting firms, banks, SEC reporting issuers, credit unions, governmental authorities, money transmitting businesses, brokers and dealers, VC funds and other investment advisers. Broadly, those exempt from the reporting rules are those which already have ownership disclosure requirements through other regulatory oversight.

The final rule defines a beneficial owner as any individual who, directly or indirectly,

- exercises substantial control over a reporting company, or
- owns or controls at least 25% of the ownership interests of a reporting company.

Substantial control essentially exists if anyone can make important decisions on behalf of an entity. The standards and mechanisms to determine a 25% ownership cover certain scenarios such as holding ownership interests in a trust.

What information must be provided

A reporting company will need to identify itself and disclose the following about the beneficial owners:

- name
- date of birth
- address
- unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document)

An analysis will be required to determine whether an individual or company has authority over a reporting entity and to work through the indirect ownership rules in identifying 25% owners.

Currently, FINCEN has estimated that 26 million entities would meet the definition of a reporting company out of an estimated 33 million active businesses in the US.

Due dates for the reporting

- Reporting companies created or registered before 1 January 2024 will have one year (until 1 January 2025) to file their initial reports, while reporting companies created or registered after 1 January 2024, will have 30 days after receiving notice of their creation or registration to file their initial reports.
- Reporting companies have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier reports.

BACK

PKF Comment

Investors need to consider the new rules when planning to incorporate an entity in the US or when reorganising the ownership structure of an already existing US subsidiary.

As always, if you need any assistance, please reach out to your PKF O'Connor Davies client service team or Ralf Ruedenburg, CPA at **rruedenburg@pkfod.com**, Christopher Migliaccio at **cmigliaccio@pkfod.com**, or Eve Belyavski at **ebelyavski@pkfod.com**.

right people
right size
right solutions

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