PKF International Limited

PKF worldwide tax update

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

Contents

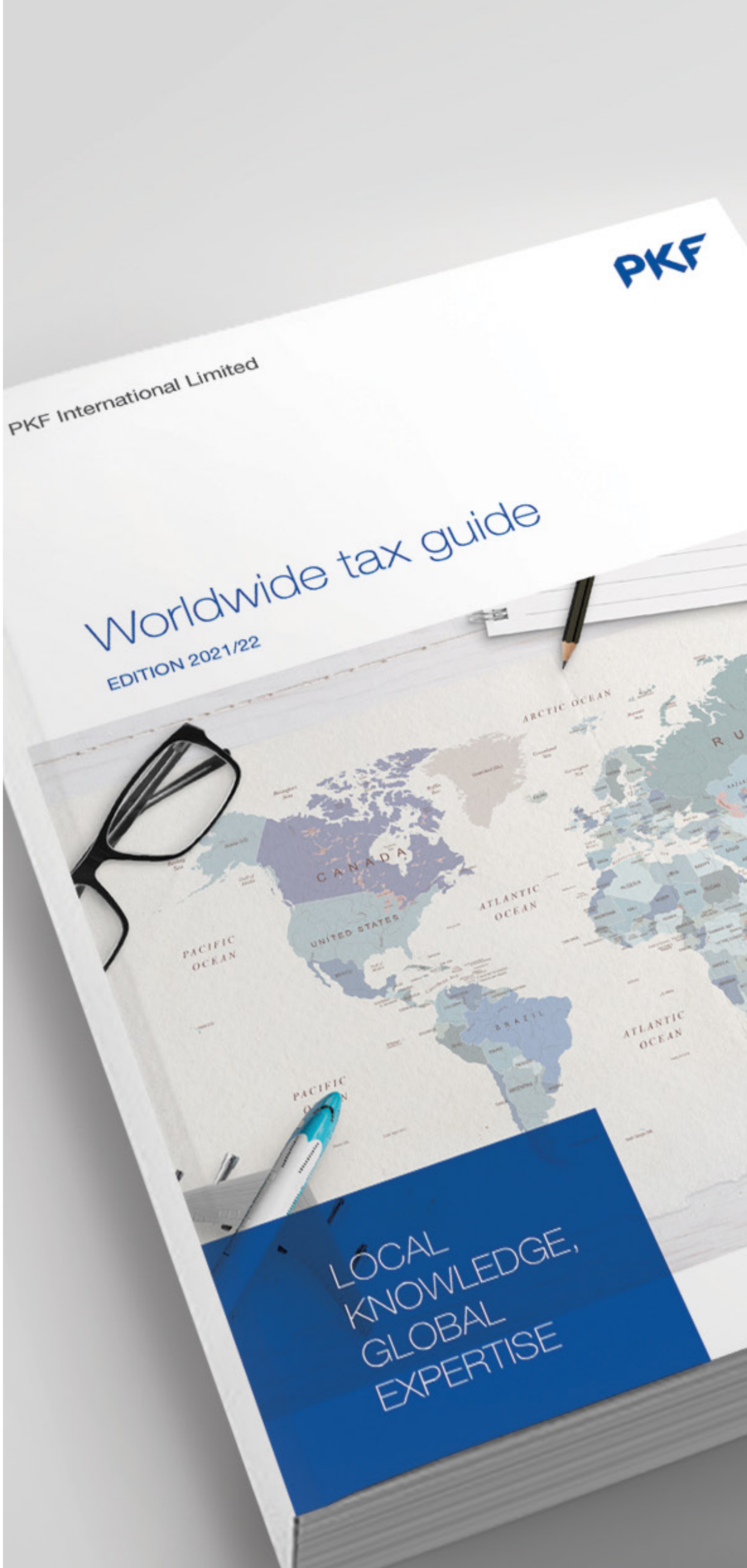
Welcome

In this first quarterly issue for 2021, the PKF Worldwide Tax Update newsletter again brings together notable tax changes and amendments from around the world, with each followed by a PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with 400 offices, operating in over 150 countries across our 5 regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

In this issue featured articles include discussions on:

- COVID-19 tax measures and guidelines in Austria
- VAT developments in Hungary
- Double tax treaty updates and related case law in Belgium and France
- Recent comprehensive tax changes in Chile, Croatia, Ecuador and Spain
- International tax developments (CFC, CbC Reporting, BEPS, Transfer Pricing) in Denmark, Germany, Ghana, South Africa, Ukraine and UAE.

We trust you find the PKF Worldwide Tax Update for the first quarter of 2021 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.



2021/22 Worldwide Tax Guide

Last year’s PKF Worldwide Tax Guide featured 144 countries and was a resounding success with almost 650 distributed globally.

We are extreme grateful to all those that provided country submissions, and of course, to each person who ordered a guide and supported this very marketable and impressive publication.

The production of the 2021/22 Worldwide Tax Guide is underway and we look forward to your continued support. An Order Form is provided at the end of this PKF newsletter. Thank you for your continuing support.

Austria

Corona relief measures and ATAD interest cap introduced

Relief measures to mitigate the economic hit sustained by companies due to the corona pandemic were a key feature of 2020 in Austria and presumably elsewhere, too. To explain each of them in detail would go beyond the scope of this article, so we will list the most important ones here:

- Hardship fund (for sole proprietors)
- Fixed cost subsidies
- Loss compensation
- Lost sales compensation (for certain sectors)
- Assumption of liability
- Possibility of temporarily reduced working hours.

At the same time, many fiscal (corona) supporting measures were taken, which we can also only list in brief here:

- Temporary investment premium for new investments actioned between 1 August 2020 and 28 February 2021
- Reduction of the minimum income tax rate from 25% to 20%
- Temporary halving of sales tax in many areas, e.g. catering, repairs, culture, events and publications
- The option to offset (carry back) losses incurred in 2020 against profits made in 2019
- An allowance of 30% of the declining balance on depreciation
- Accelerated depreciation for buildings
- Extensive interest-free or low-interest deferred payment options for taxes and levies.

As from 1 January 2021, an interest cap will be introduced in Austria.

This measure aims to implement compliance with the EU's Anti-Tax Avoidance Directive (ATAD) by restricting deductibility to limit excessive interest payments. Under the new regulation, interest surpluses will be deductible only up to 30% of the taxable EBITDA. The interest cap applies in addition to the existing prohibitions on deductions for leveraged investment acquisitions within the group and for interest payments to low-taxed group companies.

BACK

PKF Comment

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

Belgium

Antwerp Court of Appeal confirms 15% Belgium tax credit on French-sourced dividend

According to the wording of the Belgium–French double tax treaty, when a Belgium tax resident individual receives a dividend distributed by a French tax resident company, the Belgium shareholder should be eligible for a 15% tax credit in Belgium. In jargon, this is called the avoir fiscal.

However, according to current Belgium domestic tax law there is no longer a "tax credit" for "dividend" income. Indeed, Belgium tax law only provides a tax credit for interest and royalty income and that is why the Belgium tax authorities typically refuse the tax credit when dividend income is received, also in a Belgium–France cross-border context.

However, the Belgium–France tax treaty has very particular wording based on which one might conclude that any Belgium shareholder should "in any event" be entitled to a 15% tax credit in Belgium on French-sourced dividends, not in the least because in Belgium a tax treaty rule supersedes a domestic tax law rule. Specifically, and in line with earlier positive case law in this respect at the level of the Belgium taxpayer, on 17 December 2019, the Antwerp Court of Appeal also ruled in favour of the Belgium taxpayer. The Belgium tax authorities have announced though that they will not yet start reimbursing prior years' tax credits to taxpayers as long as other Brussels case law is still pending.

BACK

PKF Comment

This Antwerp case law bears excellent news for numerous Belgium investors holding French shares. However, it is extremely annoying that the Belgium tax authorities still won't rest their case and are awaiting the outcome of pending Brussels case law. Meanwhile, Belgium taxpayers should preserve their rights and file claims against earlier tax assessments. If you believe the above court ruling may impact your business or personal situation or require any advice with respect to Belgium taxation, feel free to reach out to Kurt De Haen at **kurt.dehaen@pkf-vmb.be** or call **+32 2 460 0960**.

How to apply the 30% fiscal EBITDA thin cap rule in practice?

As from 2019, the so-called 30% fiscal EBITDA thin cap rule applies in Belgium. A Royal Decree of 20 December 2019 has introduced further rules to allow Belgium companies and Belgium permanent establishments (PE) to effectively apply this rule in practice. What does it mean?

Specifically, according to the 30% fiscal EBITDA thin cap rule, net interest expenses are only tax-deductible to the extent that they do not exceed 30% of the taxpayer's fiscal EBITDA. However, pursuant to a de minimis rule, up to EUR 3 million per annum net interest expenses are anyhow tax-deductible if they are at arm's length and have been incurred for the genuine purpose of the taxpayer's business. In summary, the following interest expenses are envisaged:

1. the thin cap rule mainly aims at interest expenses paid to third parties (e.g. a bank) and to beneficiaries based outside of Belgium
2. the interest should relate to a loan concluded as of 17 June 2016 or to a loan concluded before that date, but whose features have been significantly amended as of 17 June 2016, and
3. only "net" interest expenses are envisaged, i.e. interest expenses reduced by interest income. We should also underpin that the notion "interest" comprises not only traditional interest as we know it, but also payments that are deemed economically equivalent to interest payments.

If various Belgium affiliates have been part of the Group during the entire financial year, they in principle need to compute a consolidated fiscal EBITDA. In addition, if a Group consists of various Belgium-based companies and PEs, the amount of EUR 3 million needs to be spread over those various taxpayers. This should be done according to the following 4 steps:

- **Step 1:** At first, the amount of EUR 3 million is reduced by 30% of the Group's consolidated fiscal EBITDA
- **Step 2:** Per Belgium taxpayer, it is determined if there is a positive difference between that taxpayer's net interest expenses and 30% of its fiscal EBITDA
- **Step 3**: The positive difference resulting from Step 1 is then allocated to each Belgium taxpayer on a prorate basis whereby the positive difference resulting from Step 2 is used as an allocation key
- **Step 4:** 30% of the fiscal EBITDA of each Belgium taxpayer is finally increased by the prorate amount resulting from Step 3.

Some other observations as to these new rules:

(i) if one Belgium taxpayer has excess thin cap capacity to absorb net interest expenses, it can conclude an agreement with another Belgium affiliate (facing a shortage of thin cap capacity) to transfer that excess. If so, the latter affiliate has to pay an amount equal to the corporate tax benefit of that excess thin cap capacity to the first affiliate, and

(ii) to simplify the process, the Belgium Group members can also agree to share the amount of EUR 3 million on an equal basis.

BACK

PKF Comment

One can derive from the above considerations that the new 30% fiscal EBITDA thin cap rule is rather complex. Hence, taxpayers are strongly recommended to analyse the new tax rules well in time to be able to ascertain the impact on their specific situation and to take appropriate action, if and to the extent that this would be required.

If you believe the above measures may impact your business or require any advice with respect to Belgium taxation, feel free to reach out to Kurt De Haen at **kurt.dehaen@pkf-vmb.be** or call **+32 2 460 0960**.

Belgium government relaxes application of frontier worker tax treaty protection in corona times

The tax treaties concluded by Belgium with some of its neighbouring counties, i.e. respectively The Netherlands, Germany and Luxembourg, include so-called frontier worker tax rules. Although the wording of each treaty is different, the essence is that an individual living in one country (say Belgium), but working in another country (say Germany) is taxable on salary income in the working state and claims personal tax relief in the residence state. In such a case, the standard 183 days rule does not apply. Nevertheless, the individual should still spend a minimum number of days in the working state to be taxable over there and benefit from the special frontier workers tax regime.

However, due to the corona crisis, a lot of individuals living in Belgium were “forced” to work from home and could thus not spend business time at the office of their employer just across the border. The question thus arose whether this exceptional factual circumstance would put the application of the frontier worker tax regime at risk?

To take away this concern, Belgium has concluded agreements with its neighbouring countries to address the factual situation whereby frontier workers are forced to work from home due to measures taken by Belgium to deal with the corona crisis. Summarised, for the purpose of determining the personal tax liability of that frontier worker in both countries, days spent at the home office will be considered as working days at the place where that frontier worker would be supposed to work without such corona crisis measures taken by the Belgium government. As a result, the frontier worker tax regime comes into play after all. This transition period runs until 31 December 2020 regarding frontier workers working in Germany, Luxembourg and The Netherlands.

BACK

PKF Comment

This administrative tolerance provided by the Belgium tax authorities is highly welcomed as it gives comfort to many taxpayers and their foreign employers.

If you believe the above measures may impact your business or require any advice with respect to Belgium taxation, feel free to reach out to Kurt De Haen at **kurt.dehaen@pkf-vmb.be** or call **+32 2 460 0960**.

Bulgaria

New rules for advance corporate tax payments applicable from 1 January 2021

A new tax declaration for Advance Corporation Tax (ACT) instalments is being introduced which should be filed from 1 March to 15 April. The payments of ACT will be calculated on the basis of net turnover for the year before the previous one. E.g., the ACT payments for year 2021 will be based on year 2019 net turnover.

Newly incorporated entities do not make ACT instalments for the year of establishment and for the subsequent year.

The deadlines that are introduced are:

- Changing the ACT instalment amount - to be determined by 15th of November of the current year
- Payment of the last ACT instalment (monthly or quarterly) - 1st of December of the respective year.

The allowable excess of the overall Corporation Tax over the ACT instalments paid for the corresponding year has been increased to 25%.

BACK

PKF Comment

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

Chile

Recent tax updates

- On 25 January 2021, Chile and the Netherlands signed a double tax treaty (DTT), in Santiago. The Dutch State Secretary of Finance signed the treaty digitally. The treaty is duly aligned with the OECD model and BEPS guidance. Currently, Chile has 33 DTTs signed and in force and 4 pending ratification. The DTTs pending ratification and not yet enforceable are those with the US, UAE, India and the Netherlands.
- The minimum monthly salary and the family and maternity allowances were adjusted with effect from 1 September 2020 (Law 21,283 amending Law 18,987 gazetted on 7 November 2020):
  - o the minimum salary for workers between age 18 and 65 is increased from CLP 320,500 to CLP 326,500 (approximately USD 425) while the minimum salary for workers under 18 and over 65 years old is CLP 243,561.
  - o the minimum monthly income for non-remunerative purposes is CLP 210,458.
  - o family and maternity allowances range from CLP 2,599 to CLP 13,401 for workers whose monthly income does not exceed CLP 779,882 (approximately USD 1,013). The family subsidy is CLP 13,401 (USD 17.5).
- On 26 November 2020, Chile became the 57th country to deposit its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). The convention will enter into force in respect of Chile on 1 March 2021.

BACK

PKF Comment

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

Significant 2021 tax amendments

Croatia has issued a number of 2021 reform Acts, including on corporate income tax, personal income tax, VAT and fiscalisation. The most salient features are summarised hereafter.

Corporate income tax

Amendments to the CIT Act enter into force on 1 January 2021 and are applied to the submission of the CIT return for 2021 and further, i.e. for tax periods starting from 1 January 2021.

- reduction of the CIT rate from 12% to 10% for taxpayers who earn up to HRK 7.5 million
- reduction of the withholding tax rate on dividends and profit shares to foreign legal entities from 12% to 10%
- reduction of the withholding tax rate from 15% to 10% on performances by foreign performers (artists, entertainers, athletes) when the fee is paid under a contract with a foreign legal entity
- credit institutions can treat expenses with respect to the write-off of receivables from unrelated natural or legal persons as tax deductible, regardless of the type of loan, which were previously impaired and reserved in accordance with CNB regulations
- The obligation at the level of the taxpayer to check and, if necessary, adjust the prices and contracts between related parties for each tax period in order to rationalise procedures related to transfer pricing and prevent misunderstandings, corrections to tax returns and court or arbitration proceedings.

Personal income tax

Personal income tax rates will be reduced as follows:

- From 24% to 20% on employment income below HRK 30,000/month, other income, income from stock option plans and all other income currently subject to the 24% rate
- From 36% to 30% on employment income in excess of HRK 30,000/month, other income exceeding said threshold and all other income currently subject to the 36% rate
- From 12% to 10% on dividends, interest income, capital gains rental income and all other income currently subject to the 12% rate.

Other salient features:

- Tax treatment of the national allowance for the elderly (HRK 800/month as from 1 January 2021): not considered as income subject to personal income tax and not taken into account when determining the right to personal deduction for dependent members, which means that a person receiving a national allowance for the elderly will still be able to be a dependent member
- So-called ‘digital nomads’ (third country (therefore not EU) nationals employed and performing work via communication technologies for a company, or their company established abroad and not performing work for or providing services to Croatian employers) will not be subject to personal income tax
- Simplified reporting of property income derived from lease and rent of (im)movable property. If contracts are signed before a public notary, it would be mandatory to report these to the tax authorities
- 100% increase in “criminal” tax when the tax authorities determine that the property sources of a natural person have not been proved.

Value added tax

- increase of the threshold for the application of the taxation procedure according to the collected fees from HRK 7.5 million to HRK 15 million (application as from 1 January 2021)
- extension of the possibility of applying the VAT calculation category to import for all taxpayers entered in the register of VAT payers who exercise the right to deduct input tax in full (application as from 1 January 2021)
- defining deliveries that are considered distance selling of goods and determining the place of delivery for distance selling of goods (application as from 1 July 2021)

- cancellation of the existing and introduction of a new delivery threshold in the Republic of Croatia for the sale of goods and electronically performed services to persons who are not taxpayers from other EU Member States (application as from 1 July 2021)
- extension of the existing special taxation procedure for telecommunications services, radio and television broadcasting services and electronically performed services and application of new special taxation procedures for taxpayers who provide services to non-taxpayers or sell goods at a distance or perform certain deliveries on the domestic market (application as from 1 July 2021)

Fiscalisation in cash transactions

As from 1 January 2021, introduction of the obligation to carry out the procedure of fiscalisation of sales via self-service devices.

QR codes will need to be displayed on each issued and fiscalised invoice.

The Minister of Finance will prescribe in an ordinance the provisions with respect to the amount of the cash maximum according to certain categories of taxpayers.

BACK

PKF Comment

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

Denmark

Mandatory submission of transfer pricing documentation in Denmark - adoption of new rules

Amendments to the transfer pricing regulations have been adopted. The parliament enacted the bill (L 28) on 3 December 2020.

Following this, mandatory submission of Master file and Local file to the Danish tax authorities has been introduced. The deadline is within 60 days after the deadline for submission of the corporate income tax return.

However, transfer pricing documentation must be finalised by the deadline for the filing of the corporate tax return, which is 6 months after year-end, i.e. 30th June for entities with calendar year financial statements.

The amendments will become effective for income years starting as from 1 January 2021.

The requirements for transfer pricing documentation remain unchanged compared to the previous rules.

A company must prepare transfer pricing documentation if it:

- employs 250 or more people, or
- has both revenue exceeding DKK 250 million and a balance sheet total of more than DKK 125 million.

The parameters are measured at Group level.

Penalties for late submission, non-timely preparation or non-compliant transfer pricing documentation apply of up to DKK 250,000 per company per year plus 10% of a given income adjustment.

Furthermore, the burden of proof is reversed in tax disputes regarding transfer pricing.

BACK

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Denmark taxation, please contact Kasper Vindelev at **k.vindelev@pkf.dk** or call **+45 43 96 06 56**.

Ecuador

Various recent tax updates

Change in personal income tax brackets

The personal income tax brackets have been adjusted as follows with effect from 1 January 2021 (Administrative Resolution NAC-DGERCGC20-00000077, gazetted on 29 December 2020).

Taxable income	Tax due on lower limit (USD)	Marginal rate on the excess (%)
0 - 11,212	0	0%
11,212 - 14,285	0	5%
14,285 - 17,854	154	10%
17,854 - 21,442	511	12%
21,442 - 42,874	941	15%
42,874 - 64,297	4.156	20%
64,297 - 85,729	8.440	25%
85,729 - 114,288	13.798	30%
114,288 and above	22.366	35%

Minimum monthly salary

The Ministry of Labour has set the minimum monthly salary for 2021 at USD 400 (Decree MDT-2020-249; entry into force 1 January 2021.), i.e. the same amount as the salary in force for fiscal year 2020.

The minimum monthly salary is the basis for social security contributions and constitutes the parameter for various matters, such as the imposition of tax and general fines.

Amendments to restrictions on automatic application of tax treaty benefits

In light of the COVID-19 Pandemic, the tax authority has amended the restrictions on the automatic application of tax treaty benefits provided by Resolution NAC-DGERCGC18-0000433.

On an exceptional basis and for an 18-month period as from 11 March 2020, withholding agents not having a valid tax resident certificate of the beneficiary of the payment may automatically apply benefits granted under the double tax treaties concluded by Ecuador, subject to at least one of the following conditions:

- the payment relates to a dividend distribution;
- the payment relates to expenses that will be treated as non-deductible for income tax purposes at the level of the Ecuadorian resident;
- an automatic qualification of tax treaty benefits had previously been obtained in accordance with the terms and conditions provided by Resolution NAC-DGERCGC18-0000433, or
- the sum of all payments made by a single payer in Ecuador to a single recipient resident in the relevant double tax treaty jurisdiction does not exceed USD 565,750 in a tax year.

However, withholding agents must obtain a valid tax residence certificate of the beneficiaries of payments within a 24-month period as from 11 March 2020. If not, the withholding agent would need to submit an amended tax return and pay the outstanding balance and interest due.

The aforementioned rules were enacted through Administrative Resolution NAC-DGERCGC20-0000067 of 12 November 2020.

BACK

PKF Comment

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

France

Annual tax of 3% on real estate: hard impact in case of a repeat offence

A 3% tax is due by French or foreign legal entities which, on 1st January of the tax year, hold, directly or indirectly, real rights over real estate assets located in France. Said tax is based on the market value of the underlying assets (articles 990 D and following of the French Tax Code).

However, this is subject to many exemptions, notably in case of filing an annual declaration No. 2746 aimed at providing the tax authorities with information related to the situation, consistency and value of the buildings, as well as the identity of the direct and indirect shareholders of these French real estate assets.

This declaration must be filed no later than 15th May of each year. In case of late filing, the tax authorities accept that these entities may regularise their situation and thus be exempted from the payment of the tax. However, this tolerance measure may only apply for the first instance of regularisation.

By its decision LUPA dated 4 November 2020 No. 1811771, the French Supreme Court (Cour de Cassation) sheds more clarity on the consequences of a late filing of declaration No. 2746 with regard to the 3% annual tax on real estate in case of a "repeated offence" (i.e., when the company has previously benefited from the possibility to regularise its situation regarding past years) and confirms that the tax is due along with a 10% penalty and late interest payments.

BACK

PKF Comment

Given the financial consequences, deadlines for filing declaration No. 2746 must be scrupulously adhered to in order to ensure that the 3% tax exemption is granted. In addition, in case of direct or indirect acquisition of real estate entities in France, this risk should be closely scrutinised with respect to guarantees to be provided by the seller. Moreover, in the event of a second late filing, one should wonder whether a spontaneous regularisation would now be recommended.

For further information or advice concerning French taxation, please contact Vanessa Raindre at **vanessa.raindre@pkf-mdlegal.fr** or call **+33 1 78 09 75 25.**

Refund opportunities for French withholding tax on capital gains derived by foreign entities on the sale of French shares (article 244 bis B of the French Tax Code)

Subject to the provisions of international tax treaties, capital gains arising from the disposal of an equity stake in French non-real estate companies are subject to a levy at the standard French corporate income tax rate, when the seller does not reside in France for tax purposes and has held directly or indirectly, along with his or her spouse, ascendants and descendants, at any time in the previous five years preceding the sale, an equity stake of over 25% in the French company.

Regarding EU Member States

Under French law, capital gains derived by resident companies on the sale of subsidiaries are 88% exempted when the shareholdings were held for more than two years and subject to certain other conditions.

In order to make French domestic legislation compatible with EU law, French administrative regulations (BOI-IS-RICI-30-20 dated 1 August 2018) allow parent companies that are residents in another EU Member State and qualify for the French participation exemption to claim for a partial refund of the capital gains tax withheld. Such refund is equal to the difference between the tax due by the non-resident companies and the amount of the French corporate income tax that would have applied under the participation exemption regime had the seller been a French resident entity — leaving a final tax burden in France (i.e., 12% taxable portion multiplied by the applicable French CIT rate).

By its decision Société AVM International Holding dated 14 October 2020 No. 421524, the French Supreme Administrative Court (“Conseil d’Etat”) held that, considering the fact that the provisions of article 244 bis B of the French Tax Code were incompatible with EU law, the French tax authorities cannot limit the amount that shall be refunded. Accordingly, these provisions shall not apply and full reimbursement could be claimed.

PKF Comment

As long as French law itself does not limit the withholding tax to the amount of French tax that would have applied under the participation exemption regime had the seller been established in France, French withholding tax on capital gains provided for by article 244 bis B of the French Tax Code shall no longer apply to parent companies that are resident in other EU Member States and qualify for the participation exemption regime.

If French withholding tax has already been paid, claims for a full refund could be lodged (provided the refund claim is filed before 31 December 2020 for withholding tax paid since 2018). This applies to parent companies’ resident in EU countries that have concluded a tax treaty with France that provides a right to impose tax on capital gains realised on substantial shareholdings (e.g. Austria, Bulgaria, Cyprus, Hungary, Italy, Malta, Spain, Sweden) or that does not have a tax treaty in place with France (such as Denmark).

Regarding third countries

By its decision Sté Runa Capital Fund I LP, dated 20 October 2020, the French administrative court of appeals of Versailles held that a legal entity resident in a non-EU country is entitled to a refund of French withholding tax paid on capital gains derived from the sale of a substantial shareholding held in a French company (article 244 bis B of the French Tax Code) on the grounds that such tax was incompatible with the free movement of capital and the grandfathering clause of Article 64 of the EU Treaty was not applicable.

We remind that the grandfathering clause of Article 64 only applies to restrictions that were applicable on 31 December 1993. In the present case, the Court indicated that article 244 bis B of the French Tax Code became applicable to entities not subject to French income tax only as from the amendment of article 244 bis B of the French Tax Code - made in the French Finance Act for 1993. The latter was published on 31 December 1993 and entered into force on 2 January 1994. As the restriction was not applicable on 31 December 1993, it could not benefit from the grandfathering clause.

BACK

PKF Comment

The French tax authorities might appeal this decision, but in the meantime foreign entities located outside of the EU need to file a claim to obtain a refund of French withholding tax paid on capital gains realised on a French substantial shareholding (e.g. Argentina, New Zealand, Norway, Russia).

For further information or advice concerning French taxation, please contact Vanessa Raindre at **vanessa.raindre@pkf-mdlegal.fr** or call **+33 1 78 09 75 25**.

Germany

Increased duty to cooperate in foreign matters

Taxpayers are generally obliged to cooperate with regard to the determination of taxable facts. These duties to cooperate were specified by the tax authorities on 3 December 2020 in the context of the publication of the Administrative Principles 2020. In the field of foreign matters, taxpayers must now comply with stricter requirements in order to avoid an estimate of the taxable amount and the assessment of surcharges.

1. Obligation to cooperate in foreign cases

The taxpayer's duty to cooperate exists independently of the tax authority's duty to investigate and without being requested to do so. In a letter dated 3 December 2020, the tax authorities have again significantly increased the obligations of taxpayers in foreign cases and in particular in transfer pricing cases.

In general, taxpayers are obliged to clarify the facts, to obtain evidence and to provide for evidence in foreign cases. This means that it is not sufficient to name the evidence located abroad. Rather, the taxpayer must also obtain the evidence independently within the scope of his possibilities.

In concrete terms, this means that if the cost-plus method is used, the costs must be submitted, and if the resale price method is used, the sales prices must be submitted. Evidence includes, for example, expert opinions on transfer prices, but also messages via e-mail, messages from messenger services, etc., insofar as these have a tax connection to the business transaction under investigation. Documents and data of related parties as well as books, records and business papers are also subject to the duty to provide evidence.

Note: The duty to provide evidence ensures that a taxpayer cannot plead that it is unable to clarify the relevant facts or obtain evidence. This means that the taxpayer must ensure that the possibility of obtaining evidence is already agreed upon when the contract is concluded.

2. Requirements for transfer pricing documentation

Regarding transfer pricing documentation, the taxpayer is required to keep its records in such a way that the tax administration can make an expert risk assessment and conduct a transfer pricing audit. The facts that were relevant at the time of the conclusion of the business relationship (obligating transaction) must be presented. This includes arm's length data related to this point in time for a reasonableness documentation (so-called hypothetical arm's length comparison).

Note: This documentation should be comprehensive enough to allow the tax authorities to verify the data used ex-post against current data.

In principle, the taxpayer only has to prepare records for the method used by him. However, if the tax authorities consider another method to be more appropriate, the taxpayer is obliged to cooperate and provide the relevant data.

Note: In applying the above hypothetical arm's length comparison, the OECD guidelines have been implemented. The taxpayer shall provide a sensitivity analysis in case of changed assumptions and parameters.

3. Estimate in case of violations of the duty to cooperate

A taxpayer violates its duty to cooperate if it fails to disclose facts of which it is or should be aware to the tax authority. In such cases, the tax authority is authorised to estimate the tax. This is not a penalty estimate. The estimate should be as close as possible to the true facts by being plausible, economical and reasonable.

BACK

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**.

Ghana

Establishment of Tax Appeals Board and transfer pricing changes

Establishment of an Independent Tax Appeals Board

Ghana has established a Tax Appeals Board (TAB), which is independent from the Ghana Revenue Authority (GRA). Henceforth it is mandatory to appeal objection decisions from the Commissioner-General of the GRA to the TAB before proceeding to other Courts.

If a taxpayer is unhappy with the TAB's decision, he can then appeal to the Courts to overturn the decision.

The TAB was established by the Revenue Administration (Amendment) Act, 2020, Act 1029 and came into force on 6 October 2020.

Changes in transfer pricing legislation

The Transfer Pricing Regulations, 2020, Act 1029 was gazetted by the Minister of Finance on 10 August 2020 to provide among others the following:

- categories of related party transactions which are not consistent with the arm's length principle based on the benefit test
- additional requirements in assessing arm's length nature of charges and fees for the use of intangible assets
- a requirement for the Commissioner-General of the Ghana Revenue Authority to consider certain factors in determining the arm's length price for Cost Contribution Arrangements
- instances where the Commissioner-General of Ghana Revenue Authority may adjust interest on inter-company loans or loan fees to reflect the amount an independent person, in a comparable situation, would have charged for providing the loan or credit facility.

BACK

PKF Comment

For further information on this matter or any advice on Ghana taxation, please contact Frederick Bruce-Tagoe at **fbrucetagoe@pkfghana.com** or call **+233 302 221 266**.

Hong Kong

Abolition of doubled ad valorem stamp duty on non-residential property transactions

On 25 November 2020, the Chief Executive of the Hong Kong Special Administrative Region ("HKSAR") announced the introduction of the Stamp Duty (Amendment) Bill 2020 ("the Bill") which will abolish the Doubled Ad Valorem Stamp Duty ("DSD") on non-residential property transactions. The Bill proposes that, subject to the enactment of the Bill by the Hong Kong Legislative Council, any instruments executed on or after 26 November 2020 in respect of the sale and purchase or transfer of non-residential properties would be subject to a lower scale of DSD rates.

In Hong Kong, stamp duty rates charged on instruments of non-residential properties are based on the higher of the consideration or market value of such non-residential property. Under DSD, instruments of non-residential property were subject to stamp duty rates ranging from 1.5% (i.e., for consideration/ market value, whichever higher, up to HK$2,000,000) to 8.5% (i.e. for consideration/ market value, whichever higher, of HK$21,739,121 and above). With the abolition of DSD, the range of stamp duty rates have been reduced to HK$100 to 4.25% respectively.

DSD was originally a tax measure introduced in 2013 to reduce the demand for non-residential properties with a view to maintaining stability in the property market. That was a time where hiked prices and hectic trading activities defined the demand for non-residential properties.

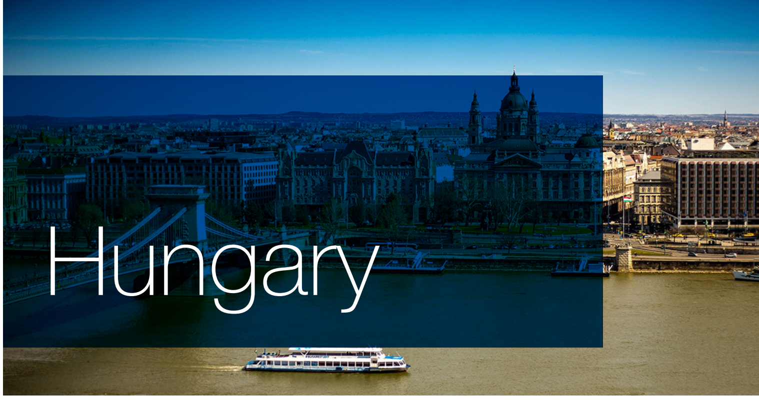
Since 2019, Hong Kong has been stricken with economic decline and uncertainty in the wake of the COVID-19 pandemic. With the continuous downward trend in the prices and transaction volume of non-residential properties, the HKSAR Government considered it is now the appropriate time to abolish DSD as a demand-side management measure. It is believed that the abolition of DSD could facilitate commercial sale of local non-residential properties by businesses that are encountering financial or liquidity problems as a result of the economic downturn, mitigating the impact of the pandemic on Hong Kong's economy.

BACK

PKF Comment

Under the former DSD rules, enterprises which had financial difficulties or liquidity needs may have been reluctant to sell their commercial properties because of the high transaction cost, particularly the DSD payable on such transfers. The abolition of DSD is a welcomed government measure that has reduced the transaction cost and opened up the option for enterprises to sell their commercial properties for cash to fund their daily operations. This may also help to increase the transaction volume and facilitate those investors with a positive long-term outlook to enter into the commercial property market.

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



Hungary

Exercising due care when claiming VAT deduction right

Hungary has a long tradition when it comes to clarifying the conditions for the right to deduct VAT.

Although several ECJ-cases had already provided some clarity with respect to the the circumstances (for example Mahagében (C-142/11), Dávid (C-80/11, Tóth (C-324/11), Glencore (C-189/18), the Hungarian Tax Authority (HTA) – supported by the ECJ – required extreme due care, as the ECJ referred the need for detailed rules back to the national courts. The criterion that 'the taxpayer should know or should have known' resulted in a practice of extreme prudence, i.e. the taxpayer deducting input VAT was to be informed about the whole series of transactions. The HTA could challenge a reasonable explanation of transactions further up the supply chain, the capacity of subcontractors (whether they had enough sources for completion) in each phase of the chain, and further formal and material regulations.

In a recent ECJ case (Vikingo, C-610/19, 3 September 2020) the taxpayer acquired machineries for his production activity. He paid the full price (including input VAT), had incoming invoices, and accessories were delivered to his site.

The HTA had revealed some contradictions during the audit and decided that the content of the invoices was untrustworthy and implausible and they were subsequently rejected.

After a number of local rulings, the question was passed on to the ECJ as to whether the tax authorities in case of fraud can 'reconstruct' the supply chain if it is not economically appropriate or when a transaction is not justified or properly established.

Can the VAT deduction in such a case be disallowed regardless of the fact whether or not the VAT payer was aware or should have been aware of the fraud.

The ECJ ruled that the fact that the goods concerned were neither manufactured nor supplied by the issuer of the invoices or its subcontractor, inter alia because they did not have the human and material resources necessary, is not sufficient to conclude that the supplies of goods at issue did not exist and to exclude the right to deduct relied on by Vikingo.

Additionally, transactions in the main proceedings constitute supplies of goods even though machineries were neither manufactured nor supplied by the person from whom those accessories were actually purchased. So, although Member States need to prevent tax evasion, avoidance, and abuse, it can happen only in the light of objective factors and active participation of the taxpayer, or in those cases, where a taxpayer knew or should have known that those transactions were connected with fraud committed by the issuer of the invoices or any other actor acting upstream in the supply chain based on requisite legal standards. The tax authorities may not oblige a taxpayer to undertake complex and far-reaching checks, which is for the referring court to ascertain.

With its ruling the ECJ fine-tuned its guidance about due care. The burden of proof is on the tax authority, which must provide solid, clear evidence of the exact conduct with which the taxpayer contributes to tax evasion. It must also itemize the behaviours that justify the active participation of the taxpayer in tax evasion.

BACK

PKF Comment

The ECJ Vikingo ruling is quite significant in that it establishes that the professional customer of goods or services can deduct input VAT, even when fraud is committed further up the supply chain by for example the supplier of your supplier (or even further up the supply chain). VAT deduction can only be disallowed by the tax authority if it is properly demonstrated that the buyer participated or was aware or should have been aware.

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

Italy

Impact of COVID-19 on tax residence in Italy

On 3 December 2020, the MEF (Italian ministry of economy and finance) responded to a parliamentary question as to which initiatives the Government intends to adopt with respect to those workers temporarily residing in Italy and having to remain there due to the COVID-19 emergency.

According to Article 2 of the TUIR (Italian direct tax law), individuals are considered Italian tax residents if, for the greater part of a given tax period:

- they are enrolled in the Italian register of the resident population
- they have their residence or domicile in Italy pursuant to article 43 of the Italian Civil Code.

By virtue of this rule, taxpayers who have spent more than 184 days in Italy could be forced, with respect to the 2020 tax year, to subject all their worldwde income to tax in Italy.

The OECD, in its recommendations published on 3 April 2020, has expressed its opinion on this issue, pointing out that periods of forced residence, as a result of restrictions and/or proven health, work, personal or family needs, should not be considered as normal behaviour attributable to the taxpayer's will, nor should they represent, even in an extraordinary way, significant elements for the purposes of identifying the tax residence of a taxpayer.

Italy has so far not adopted any specific indication on said matter.

In its response, the MEF merely states that the period of stay in Italy due to the pandemic should not result in a change of residence for conventional purposes, since, applying the (conventional) criterion of 'habitual residence', the establishment of tax residence in Italy should be excluded. This would pre-suppose the existence of dual residence, which is not straightforward.

BACK

PKF Comment

This article covers an important issue related to tax residency in Italy and an aspect that can also be quite relevant for those who intend to transfer their tax residency into Italy in order to benefit from the current tax advantageous regimes for foreigners wishing to move to Italy (e.g. the flat tax regime for high net worth individuals or the tax regime for the attraction of human capital in Italy). PKF Studio TCL is available for any clarification and support in this regard with offices in Genoa, Milan and Rome. You can contact Barbara Pollicina at **b.pollicina@pkf-tclsquare.it** or Matteo Macciò at **m.maccio@pkf-tclsquare.it** or call **+39 010 8183250**.

IRS renews agreement to avoid double taxation with respect to maquiladora regime

On 16 November 2020, the US Internal Revenue Service (IRS) announced its renewal of the Qualified Maquiladora Approach Agreement (QMA) with Mexico, which is welcome news for US-owned multinational entities (MNEs) using manufacturing and assembly operations in Mexico (maquiladoras) to export their products back to the United States.

In general terms, the Agreement allows US taxpayers carrying out maquila operations in Mexico to avoid double taxation if they enter into a unilateral Advance Pricing Agreement (APA) with the Large Taxpayer Division of Mexico's tax authority (SAT) under terms discussed in advance between the US and Mexican competent authorities.

Over 700 US maquiladora taxpayers are expected to qualify for the application of this agreement, thus strengthening ties between the IRS and SAT and providing certainty to hundreds of MNEs.

The SAT will directly notify Mexican taxpayers who qualify for this agreement, including details on the steps they must follow with respect to their pending unilateral APA applications.

Reporting of tax planning schemes – The Mexican DAC6

In line with the recommendations of BEPS Action 12, Mexico introduced mandatory disclosure rules (MDR) to its domestic tax legislation as part of its 2020 tax reform, similar to the EU's DAC6 regulation.

Under the new rules, transactions where a taxpayer, irrespective of its tax residence, directly or indirectly obtains a Mexican tax benefit need to be discloses, to the extent the benefit meets any one of the specific 14 characteristics listed in the law or consists of a transaction involving a mechanism to avoid reporting such transactions. A transaction is defined to include any planned project, proposal, advice, instruction or recommendation expressly or tacitly provided to materialise a series of legal acts.

The MDR will enter into force as from 1 January 2021, with a requirement to report historic data, as transactions performed in previous years should be reported by taxpayers if the tax effects are carried forward in 2020 or subsequent years.

The Mexican tax authority (SAT) has issued a detailed list of documents and information to be provided by tax advisors and taxpayers to comply with the obligation to report aggressive tax planning schemes.

Such information includes, among others, a diagram containing all the legal acts carried out as part of the reportable scheme and the applicable legislation. In addition, tax advisors and taxpayers must state if the implementation of the scheme requires the participation of non-resident legal entities or individuals and indicate the sequence in which the legal acts composing the reportable scheme are carried out.

The SAT has also issued the official procedures to be followed by tax advisors and taxpayers for complying with the obligation to report said schemes. Additionally, the SAT has made available a website containing these procedures and relevant information with respect to this obligation for tax advisors and taxpayers.

Also, on 26 January 2021, the SAT released the electronic form on its website for tax advisors and taxpayers to upload the informative tax return that is required for disclosing reportable arrangements.

New withholding tax rates on income derived by individuals through digital platforms

As we already reported in our Q3 2020 edition of this quarterly newsletter, as from 1 June 2020, digital services provided by non-residents to recipients located in Mexico are subject to VAT. For such purposes, non-residents are required to register with the Federal Taxpayers' Registry (RFC).

New withholding tax rates were now established on income derived by individuals through digital platforms. As from 1 January 2021, withholding tax rates will be as follows:

- for the provision of passenger land-transport and delivery of goods: 2.1%;
- for the transfer of goods and the provision of services: 1%, and
- for the provision of accommodation/hosting services: 4%.

BACK

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to Mexican taxation, please contact Antonio Garcia at **antonio.garcia@pkfmexico.com** or call **+52 (81) 8363 8311** and Jimy Cruz at **jimy.cruz@pkf.com.mx** or call **+52 (33) 3122 2081**.

A tax strategy - A new obligation for taxpayers as from 1 January 2021

As from 1 January 2021, certain corporate income taxpayers will be burdened with yet another obligation, i.e. drawing up and publishing the tax strategy adopted in their entity.

Who is affected by the new obligation?

The following entities will be obliged to prepare and publish information on the implemented tax strategy for the tax year:

- tax capital groups - regardless of the amount of revenue (the tax strategy would apply to both the group and each of its companies),
- corporate income taxpayers whose revenue in the tax year exceeded EUR 50 million.

Importantly, said group of corporate income taxpayers has been joined by limited partnerships and some general partnerships since 1 January 2021, which is why they are also obliged to prepare and publish a tax strategy in the event of having revenue in excess of EUR 50 million.

Scope of disclosure of information about the strategy

The tax strategy should contain, in particular:

- information on the processes and procedures used by the taxpayer for managing the performance of obligations under tax law ensuring their proper performance and voluntary forms of cooperation with the authorities of the National Revenue Administration
- information on the fulfillment of tax obligations by the taxpayer in the territory of Poland, along with information on the volume of information provided to the Head of the National Revenue Administration on tax schemes taking into account the taxes they relate to

- information on restructuring activities planned or undertaken by the taxpayer that may affect the amount of tax liabilities or related entities. In this regard, as is clear from the justification of the draft, the taxpayer should indicate information about the merger of companies, transformation of the company into another company, contribution to the company in the form of the company's enterprise or its organised part (including the division of the company) and exchange of shares
- information on applications submitted by the taxpayer for a general tax interpretation, interpretation of tax law, binding rate information and binding excise information
- information on making tax settlements at the level of the taxpayer in countries applying harmful tax competition.

The information provided, which is to constitute the tax strategy, should not contain information covered by a trade, industrial, professional or production process secret.

Strategy publication deadline

Information on the implemented tax strategy should be prepared in Polish (translation is allowed) and posted on the taxpayer's website by the end of the 12th month following the end of the tax year. According to the information from the Ministry of Finance, taxpayers subject to this obligation will be required to prepare, publish and inform the tax office about the tax strategy for 2020 by 31 December 2021.

Penalties

The legislator introduced the possibility of imposing a fine of up to PLN 250,000 on the taxpayer for failure to comply with the obligations related to the preparation and publication of information on the tax strategy.

BACK

PKF Comment

Summarized, this is yet another reporting obligation imposed on companies in Poland, which requires a huge amount of work to prepare, implement and publish. Controversy is sparked by the fact that the tax strategy is to be posted on the website of these companies, and as a consequence, there will be universal access to strategic and protected data. The enacted legislative changes should therefore be assessed in a negative manner.

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**.

South Africa

Tax relief for expatriates "trapped" in South Africa during Lockdown

South African tax residents working abroad ("expatriates") ordinarily rely on the so-called "expatriate exemption" in determining their annual South African income tax liability.

Briefly stated, a South African tax resident will be exempt from South African income tax (up to an amount of ZAR 1.25 million per year of assessment – with effect from 1 March 2020) in respect of foreign salary income if, inter alia, such individual is outside South Africa:

- for a period of 183 full days in aggregate during any period of 12 months, and
- for a continuous period of at least 60 full days during that period of 12 months.

National Lockdown and the ensuing travel bans had a profound impact on the ability of many expatriates to adhere to the above-mentioned requirements. In order to ensure that such expatriates do not have a significant South African income tax liability solely on the basis that they were not in a position to physically work abroad, National Treasury has proposed for the expatriate exemption to be amended for years of assessment ending during the period 29 February 2020 to 28 February 2021 so as to reduce the 183-day requirement with the 66-days during which South Africa operated under Levels 5 and 4 of National Lockdown.

Accordingly, for the 2021 year of assessment (which ends on 28 February 2021), the expatriate exemption may be relied upon should the individual be outside South Africa:

- for a period of 117 full days during any period of 12 months, and
- for a continuous period of at least 60 full days during that period of 12 months.

Although the above is a welcome proposal, expatriates should note that the 60-day consecutive period remains unaltered and that this requirement should be adhered to for the exemption to be applicable.

It should also be noted that the above-mentioned proposal addresses the position of South African tax residents working abroad. There are no similar proposals which address tax concerns which may arise for non-South African tax resident individuals (including individuals who recently lost their South African tax residency) who were physically present in South Africa during the 2021 year of assessment for a prolonged period due to National Lockdown. In certain circumstances, physical presence in South Africa may give rise to a non-tax resident becoming a South African tax resident – and accordingly subject to South African income tax on his/her worldwide income.

BACK

PKF Comment

It is advisable for South African expatriates and non-tax residents to consult with their tax advisors so as to ensure that they understand the implications of National Lockdown on their annual tax obligations. In addition, by virtue of the proposed effective date for the amendment to the expatriate exemption, expatriates who failed to adhere to the 183- day period for the 2020 year of assessment (which ended on 29 February 2020), may possibly be entitled to reopen their 2020 assessment with a view to now claiming such exemption. It should be considered on a case-by-case basis whether this may be possible.

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

The “exit” of exchange control emigration and the impact this has on withdrawing from retirement funds

In terms of current law, should a member of a pension preservation fund, provident preservation fund or retirement annuity fund emigrate from South Africa and such emigration is recognised by the South African Reserve Bank, that member is entitled to the payment of a lump sum benefit from such fund regardless the age of the member.

Due to the proposed modernisation of the exchange control system, it was recently announced that there will be a phasing out of the concept of “emigration” for exchange control purposes.

On the basis of the above, the Income Tax Act is proposed to be amended to remove reference to the payment of lump sum benefits when a member emigrates for exchange control purposes, and to alternatively insert a new test to provide for the payment of lump sum benefits when a member ceases to be a tax resident of South Africa and such member remains non-tax resident for three years or longer.

It is apparent from the report-back by the Standing Committee on Finance in Parliament during October that this proposal received significant push-back as various arguments were raised against the enactment thereof.

Arguments made against the enactment of this proposal include:

- The 3-year waiting period gives rise to a cash-flow burden for the individual as the funds withdrawn are ordinarily used to cover the costs associated with moving to the new country
- There would be a delay in cash in-flow for SARS until the expiration of the proposed 3-year period as taxes payable on the on lump sums that would have otherwise been withdrawn on the individual emigrating would now be delayed by 3 years
- The proposal may be burdensome and administratively intensive for fund members and fund administrators.

Despite the above-mentioned arguments in favour of the withdrawal being made available immediately upon an individual ceasing to be a South African tax resident, National Treasury remained unconvinced. Accordingly, the current exchange control emigration process and link thereof to the withdrawal of lump sum benefits from the above-mentioned funds will fall away as from 28 February 2021.

BACK

PKF Comment

Draft commentary from National Treasury indicates that it remains possible for individuals to submit applications for exchange control emigration up until 28 February 2021. Accordingly, although the exchange control emigration process can be a lengthy and cumbersome one, it is advisable for individuals to consider whether it would be worth their while to attend to exchange control emigration having regard to the above – while this remains possible.

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

SARB lifts the ban on "loop structures" for individuals and corporates

The Minister of Finance announced in his Budget Speech on 26 February 2020 that the South African Reserve Bank (SARB) would relax some of its current restrictions in order to simplify cross-border trade and financial flows.

This was confirmed in Exchange Control Circular No. 1/2021 issued on 4 January 2021 where it was noted that the restriction of loop structures in relation to resident individuals, companies and private equity funds has been lifted "to encourage inward investments into South Africa" and "to support South Africa's growth as an investment and finance hub for Africa". The effective date of this change is 1 January 2021.

The relevant amendments have been made to the Currency and Exchange Manuals for Authorised Dealers.

A "loop structure" is a structure where a South African resident directly or indirectly through a non-resident entity holds assets in South Africa or in the common monetary area (CMA). The CMA consists of South Africa, Namibia, Lesotho and Eswatini (previously known as Swaziland).

It is noted that under the previous regulations South African residents were permitted to invest in these structures provided that an individual or company held a maximum of 40% of the equity and/or voting rights in that non-resident company. The change in the regulations now removes this 40% restriction. However, approval must still be sought from Fin-Surv (i.e. the Financial Surveillance Department of the SARB responsible for the administration of exchange control on behalf of the Minister of Finance or an officer of Treasury who, by virtue of the division of work in Treasury, deals with the matter on the authority of the Minister of Finance) through the resident's authorised dealer. In addition, the investment into South Africa must be through the use of authorised foreign assets.

Existing unauthorised "loop structures" which were set up with authorised foreign assets, but the 40% threshold was exceeded are not automatically regularised but may also be regularised upon the resident requesting approval from Fin-Surv through his/her authorised dealer.

In order to obtain approval of a loop structure the South African resident will be required to provide details of the structure such as:

- the name(s) of the South African affiliated foreign investor(s)
- a description of the assets to be acquired (including inward foreign loans)
- the name of the South African target investment company (if applicable)
- the date of acquisition, and
- the actual foreign currency amount introduced including the transaction reference number.

The applicant will also be required to furnish an independent auditor's written confirmation or suitable documentary evidence to verify that the transaction was concluded on an arm's length basis.

Whilst individuals, companies and private equity funds are now able to invest in loop structures, trusts are still prohibited from such investments.

This circular also indicates that foreign assets inherited from a resident estate must be declared and can be retained abroad provided the original South African owner had properly regularised that asset and the asset will not be placed at the disposal of other residents. Where the asset inherited was not properly regularised, which would include "loop structures" in excess of the abovementioned 40% restriction that was in place prior to 1 January 2021, such assets may be regularised and retained abroad provided it will not be placed at the disposal of other residents.

BACK

PKF Comment

The relaxation on loop structures is welcomed as it will likely assist in enhancing cross border trade which will hopefully boost our struggling economy.

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to South Africa taxation, please contact Kubashni Moodley (Durban) at **kubashni.moodley@pkf.co.za** or call **+27 31 573 5143**.

Spain

Main tax measures contained in the budget bill for 2021

Spain has enacted the Budget Law 2021 after it was passed by the senate without any amendments.

Law 11/2020 of 30 December 2020 entered into force on 1 January 2021.

The salient features can be summarised as follows:

Corporate income tax (CIT)

- The exemption regime for dividends and capital gains derived from shares in resident and non-resident entities in Spain will be reduced to 95% (full 100% exemption before) leading to 5% non-deductible expenses. This will result in an effective tax rate on dividends of 1.25% (5% @ 25% corporate income tax rate).

  This exemption will only be available for companies holding a direct or indirect participation in the subsidiary of at least 5% of capital for an uninterrupted period of at least 1 year. The before-applied alternative for a full exemption to dividends and capital gains by owning a participation with an acquisition value higher than EUR 20 million is removed. However, a transitional regime applies for participations acquired before the year 2021 for which the full exemption applies until 31 December 2025.
- In line with the above, the Budget Law also modifies the credit method for the avoidance of double taxation. The maximum deduction of foreign-source tax will be limited to 95% of the tax that would be due on income had it been obtained in Spain only.
- Higher limit for deduction of financial expenses. Earnings from dividends concerning investments with an acquisition value exceeding EUR 20 million will not be added to the operating profit when calculating the limit for deductible financial expenses.

Non-resident income tax (NIT)

- Exemption for interest and capital gains obtained by EU residents will now also cover EEA (European Economic Area) residents. With respect to dividends, the exemption will be limited to shareholders with at least a 5% participation in capital.

Personal income tax (PIT)

- Increase in the PIT rates applicable to high earners with individual residence in Spain:
  - For "labour income" exceeding EUR 300,000, tax rate increase of two points. Different effect depending on the Autonomous Community of residence, for example, in Madrid this rate will reach 45.5% and in Catalonia 50%.
  - For "savings income" (dividends, certain capital gains, interest) exceeding EUR 200,000, tax rate increase of 3 points, from 23% to 26%.
- Reduction of the general limit applicable to contributions to social security systems ("pension plans"). Taxpayers will reduce their taxable base up to EUR 2,000 with respect to their individual contributions (before, EUR 8,000). This limit will stand at EUR 8,000 in case of company contributions, provided that these do not exceed 30% of income arising from employment and economic activities in the fiscal year.
- Inpatriate workers to Spain. Labour income exceeding EUR 600,000 will be taxed at 47% (24% up to this amount). On the other hand, taxation rate for savings income (dividends, certain capital gains, interest) exceeding EUR 200,000 will be subject to a 3% increase (from 23% to 26%).

Other tax amendments

- Wealth Tax. Rate increase of 1% (from 2.5% to 3.5%) applied to net wealth in excess of EUR 10,695,996.06. The autonomous regions can apply their own regulations so the aforementioned rate will only apply to regions not having approved their own wealth tax schedules.
- Value Added Tax (VAT). Increase in the rate of value added tax (VAT) for sugar-sweetened drinks.
- Tax on Insurance Premiums. Tax rate increase from 6% to 8% on insurance premiums.
- Arrear interest and statutory interest will be set at 3.75% and 3%, respectively.

BACK

PKF Comment

Given the entry into force as from 1 January 2021, it is highly recommended for taxpayers, foreign and domestic alike, to analyse the potential impact of these measures.

In particular, multinational businesses with Spanish holding companies but also individuals or companies investing and operating in Spain should review their current and future investments and corporate structures in order to identify possible implications and to mitigate the possible costs resulting from these amendments

If you believe the above measures may impact your business or require any advice with respect to Spanish taxation, please contact Santiago González at **sgonzalez@pkf-attest.es** or call **+34 915 561 199**.

Effective date for CFC rules postponed to 1 January 2022

The implementation of CFC rules is one of the steps of the BEPS Action Plan, and mandatory also for Ukraine.

Ukraine has already approved national CFC rules in 2020. Initially, the effective date for CFC rules was set at 1 January 2021.

However, the difficult situation created by the COVID-19 pandemic, along with the introduction of quarantine measures, present significant challenges for business, related mostly to taxes.

Considering the various measures taken to limit the spread of COVID-19 globally, taxpayers need more time to collect data and information required to identify new taxable matter.

Therefore, the Ukrainian Parliament adopted a tax reform bill on 17 December 2020 containing important changes to the BEPS tax legislation enacted in May 2020 to delay the implementation of new CFC rules by one year to 2022. The first tax period (year) for CFC reporting will therefore be 2022 and Ukrainian taxpayers will have to notify the tax authorities about the acquisition or surrender of holding shares in CFCs as from 1 January 2022.

Fines and penalties for violating the rules of the Ukraine Tax Code regarding the determination and calculation of CFC profits shall not be applied during a grace period covering the years 2022 to 2023. This time frame will be used to develop new reporting forms and a transparent CFC reporting mechanism.

BACK

PKF Comment

This is welcome news for Ukrainian tax residents. And also, owners of foreign companies have one more year to analyse their international businesses and identify risks and, as a result, to reduce the negative effects of new CFC rules.

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

United Arab Emirates

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

A. Economic Substance Regulations - Updates

In continuation to earlier updates summarising the key amendments introduced under UAE ESR, given below are the key updates post issue of such amendments:

- **Economic Substance Filing Portal:**
  - The UAE Ministry of Finance ('MOF') launched the Economic Substance Filing Portal in accordance with UAE Cabinet Resolution No (57) of 2020 to allow UAE businesses to submit their Economic Substance Notification ('MOF portal'), report and supporting documents electronically
  - In order to assist Licensee/s with compliance under UAE ESR on Economic Substance Filing Portal, the MOF has also published a quick guide which can be referred to in order to understand the steps to access and use said MOF portal.
  - Every Licensee intending to undertake the required compliance will have to create an account on the MOF portal. The MOF portal can be accessed on the following link: https://eservices.mof.gov.ae/Shared/
- **Compliance:**

  Compliance under UAE ESR is two-fold:

  - Notification Filing:
    - Licensees/Exempt Licensees who undertake relevant activity are required to submit the notification on the MOF portal made available;

- Time frame for compliance with the requirement of Notification Filing is on or before expiry of six months from the end of relevant financial year;
- MOF has published the template of 'Information Notification' and related guidance on its website.

— Reporting:

- Licensees carrying out a Relevant Activity and earning relevant income are required to submit a report containing requisite information and prescribed documentation;
- Report is required to be submitted within 12 months from the end of financial year of the Licensee;
- MOF has published the template of 'Substance Report' and related guidance on its website.

- **Consequences of non-compliance:**

Type of Offence	Administrative Penalty
Failure to submit the Notification (or any relevant information or documentation)	AED 20,000
Failure to submit the Economic Substance Report and any relevant information or documentation required to be submitted **OR** Failure to meet the Economic Substance Test for each year	AED 50,000 (AED 4,00,000 for repeat offence in FY immediately following the FY in which first offence was committed)
Furnishing of willful inaccurate information	AED 50,000

The notification template, reporting template and related guidance can be accessed via the following link: https://www.mof.gov.ae/en/StrategicPartnerships/Pages/ESR.aspx

B. Country-by-Country reporting

- **UAE Automatic Exchange of Information (AEOI) Portal:**
  - The MOF has created an AEOI portal which is an online application that will allow the UAE headquartered multinational enterprise ("MNE") group to submit their CbC filings to the MOF
  - To access the UAE AEOI Portal, the entity will be required to create an account using its email address and setting the desired password as per the prescribed specifications.
- **Reporting Entity & Primary User Enrolment**
  - o In accordance with the OECD's Multilateral Competent Authority Agreement, entered into by the government and participating partner jurisdictions for the purpose of exchanging tax information on an annual basis, all Reporting Entities (i.e. UAE headquartered multinational enterprise ("MNE") group whose consolidated revenues exceed AED 3,150,000,000 in the fiscal year ("FY") immediately preceding the reporting fiscal year) are required to enrol with the MOF using the form available on the following link: https://cbcrportal.mof.gov.ae/PublicForm/PublicForm.aspx?form_set_guid=50a83b47-b34c-4a7d-8116-618cfee1d884&entity_id=
- **Guidance on preparation and submission of CbC filings**

  The MOF has published guidance on preparation and submission of CbC filings and the same can be accessed via the following link: https://www.mof.gov.ae/en/StrategicPartnerships/Documents/MoF%2BCbCR%2B-%2Bguidance%2Bfor%2Bcompliance%2Bwith%2BCbCR%2Bregulations.pdf
- **Consequences of non-compliance:**

  Non-compliance with UAE CbCR may result in levy of administrative penalties which are quite significant.

C. Issuance of Tax Residency Certificate ('TRC') and Commercial Activities Certificate ('CAC')

- While TRC is a certificate issued by the Federal Tax Authority ('FTA') upon request to enable applicants to benefit from double tax treaties (DTTs) signed by the UAE, CAC is a certificate issued by the FTA to enable applicants to refund VAT paid outside the UAE, whether or not DTTs are applicable.
- Both TRC and CAC can now be obtained by a Person (legal and/or natural) from Federal Tax Authority (earlier these were issued by Ministry of Finance), in case the same are required to be submitted with Tax Authorities of any country outside UAE.

D. Double tax treaty between UAE and KSA

The double tax treaty between UAE and KSA which entered into force on 1 April 2019 and became effective as from 1 January 2020 is now updated and listed in the list of 'Double Taxation Agreements' appearing on the MOF website.

This is the first bilateral tax treaty signed between two GCC member states and incorporates minimum standard provisions of the Multilateral Instrument to prevent Base Erosion and Profit Shifting.

Businesses may evaluate and review their operating structures in light of the provisions of this newly implemented tax treaty and analyse groups' cross border transactions in order to identify any benefit that can be availed under the tax treaty.

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

E. VAT and excise tax update

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

Date	Tax	Type of Update	Particulars of Update
October 2020	VAT	Public Clarification	VAT Free Special Offers
October 2020	VAT	Public Clarification	Sole Establishment
October 2020	VAT	User Guide – Updated Version	Payment User Guide
November 2020	VAT	Compliance format change	Introduction of VAT Refund revised format
November 2020	Tax	Certificate Issuance	Issuance of TRC and CAC
November 2020	VAT	Public Clarification	Dubai Owner's Associations and Man-agement Entities
December 2020	Excise	User Guide	Excise Stock Movement Guide for Warehouse Keepers who are Regis-tered for Excise Tax
December 2020	Excise	User Guide	Excise Stock Movement Guide for Warehouse Keepers who are not Reg-istered for Excise Tax

Some of these key updates are discussed hereunder:

- **VAT Public Clarification on "VAT – free" special offers (VATP020)**
  - FTA has published VAT Public Clarification on promotional goods/services that are often marketed as 'VAT-free' special offers
  - Many retailers advertise their products with an offer such as "VAT-free". As per such clarification, such "VAT-free" special offers are misleading and contrary to the VAT legislation, since the goods or services are not actually supplied free of VAT.
  - This Public Clarification clarifies the VAT treatment of promotions where the seller absorbs VAT on promotional goods.
- **VAT Public Clarification on VAT registration of 'Sole Establishments'(VATP021)**
  - The Public Clarification provides VAT registration obligations of a natural person in respect of its sole establishments.
- **Introduction of VAT Refund revised format**
  - FTA has recently updated the VAT Refund Template to include certain additional fields;

- It appears that a refund claim for multiple tax periods can now be applied for by VAT registrants through submitting single VAT refund template.

- **Payment User Guide**
  - The guide explains that e-Dirham payments must be made via the e-Dirham Instant App, which is accessible on the Apple App Store and Google Play for mobile devices.

- **VAT Public Clarification on Dubai Owners' Associations and Management Entities (VATP022)**
  - The public clarification provides guidance on VAT implications of Law No. 6 of 2019 Concerning Ownership of Jointly Owned Real Property in the Emirate of Dubai
  - As a result of Law No. 6 of 2019, Dubai Owners' Associations (OAs) no longer make taxable supplies and are, therefore, required to de-register for VAT
  - It is clarified that on 3 November 2019, all rights and obligations of Dubai OAs were transferred to Management Entities, and OAs were required to apply for deregistration within 20 business days (by 4 December 2019), with penalties applicable for late de-registration.
  - It further clarifies that management Entities are regarded as making supplies to the owners of Jointly Owned Real Property and required to fulfill VAT obligations in this regard, including the issuing of valid tax invoices and VAT reporting

- **Excise Tax - User Guide – Excise Stock Movement Guide for Warehouse Keepers who are Registered for Excise Tax**
  - FTA has released this User Guide for Warehouse Keepers who are registered, to help them navigate the FTA's e-Services portal in order to submit the relevant declarations for registered Excise Taxpayers to declare the Excise Goods they hold in the Designated Zones that they manage from 1 January 2021.

- **Excise Tax - User Guide – Excise Stock Movement Guide for Warehouse Keepers who are not Registered for Excise Tax**
  - FTA has released this User Guide for Warehouse Keepers who are not registered, to help them navigate the FTA's e-Services portal to submit the relevant declarations for registered and non-registered Excise Taxpayers in order to declare the Excise Goods they hold in the Designated Zones that they manage from 1 January 2021.

BACK

PKF Comment

International tax perspective
Businesses in the UAE are now required to undertake an ESR impact assessment analysis again in order to (re-)analyse the impact of Amended Regulations on their existing businesses. On the basis of such revised analysis, businesses are required to re-submit the annual notification and undertake the first reporting compliance on the UAE MOF portal which was made available in the first week of December 2020 (with the prescribed filing deadlines as published by the MOF).

Businesses also need to examine whether they will be covered under the provisions of Amended CbCR Resolution and identify whether they are required to undertake any compliance as per such revised regulations.

Issuance of tax residency certificates and/or commercial certificates by the FTA is intended to ensure that the entities already registered in the tax system can avail these certificates through direct and quick digital procedures.

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

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

United Kingdom

BREXIT – The impact on global mobility from 1st January 2021

After months of negotiations, the UK and European Union came to a withdrawal agreement on Christmas Eve, just before the end of the Brexit transition period on 31st December 2020. The provisional UK-EU Trade and Co-operation Agreement (the Agreement) has now been published in full (subject to approval by the European Commission – expected 1 February), containing new rules for how the UK and EU will live, work and trade together. It is critical that employers understand the new rules, the impact on their internationally mobile employees and any actions required to ensure compliance.

Social security

Existing posted workers, multi-state workers and frontier workers with a cross border link at the end of the transition period should remain under the old EU regulations through grandfathering provisions within the agreement, provided their start date falls before 1st January 2021 and the cross-border link continues uninterrupted but this should be considered on an individual basis to confirm the position.

Newly posted employees (i.e. those posted from 1st January 2021) will be subject to the social security provisions set out in the Agreement. These largely replicate the previous EU Social Security Coordination Regulations, ensuring employees are only subject to the social security legislation of one country at a time.

Separate rules will apply to Norway, Iceland, Lichtenstein or Switzerland.

Detached workers

The detached worker rules apply to employees temporarily posted by their employer to work in the UK or an EU territory for a period of up to 24 months and allows for the social security contributions to be paid under the employee's home social security scheme. However, unlike the EU regulations, there is no scope for an extension of coverage beyond 24 months.

Individual EU member states also can opt out of the detached worker provisions, for the rules to continue to apply they must sign up by 1st February 2021. To date only Hungary, Austria, Portugal and Sweden have signed up to apply the detached worker rules.

Common travel area

The Common Travel Area (CTA) is a historic pre-EU arrangement between the UK, the Crown dependencies (Jersey, Guernsey and the Isle of Man) and Ireland allowing citizens to travel freely between each jurisdiction. CTA citizens have associated rights and privileges (such as the right to work and education) as well as to access social welfare benefits and health services, regardless of which country they reside in. Despite the UK's departure from the EU, the agreement states that Ireland and the UK may "continue to make arrangements between themselves relating to the movement of persons between their territories". As such, CTA citizens are not required to take any action to protect their status and rights as a result of Brexit.

UK personal allowance implications for non-residents

Away from social security interaction, the agreement also has implications on the provision of UK personal allowances to EU residents working in the UK.

Previously EU citizens, regardless of their UK residency, will have been entitled to the UK personal allowance (GBP 12,500 for 2020/21). From 1 January 2021, this automatic right falls away and EU nationals should now seek advice as to whether a provision within an individual double tax treaty with the UK, provides for an entitlement to a UK personal allowance.

One notable EU member state whose double tax treaty does not include entitlement to a UK personal allowance is Germany, meaning employees posted from Germany to the UK are now likely to see an increase in their UK income tax.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to UK taxation, please contact Scott Campbell at **scott.campbell@pkf-francisclark.co.uk** or call **+44 (0)1752 301010**.

IRS updates guidance on tax deductibility of PPP expenses

The IRS issued a new ruling and procedural guidance on 18 November 2020 in the form of Revenue Ruling 2020-27 and Revenue Procedure 2020-51, announcing guidance on the tax deductibility of expenses related to Paycheck Protection Program (PPP) loans that have not yet been forgiven. The new releases provide significant clarity for many taxpayers whose businesses were affected by the COVID-19 pandemic, for whom the deductibility of PPP expenses will be an important issue for their 2020 tax returns. The IRS ruling indicates that taxpayers who paid otherwise deductible expenses with PPP funds may not deduct them on their 2020 tax return if they reasonably expect that their PPP loan will be forgiven.

Background

The PPP program, as part of the CARES Act and later the PPP Flexibility Act, provided businesses with loans, which were forgivable if they were used for specified business expenses (primarily payroll, along with rent or mortgage expenses and utilities). While, for financial statement purposes, the expenses paid for by PPP loans may reduce net income in 2020, with an offsetting income inclusion when the loan is forgiven, for tax purposes, the CARES Act specified that the forgiveness of the loan would not create taxable income.

In May, the IRS issued Notice 2020-32, which takes the position that a deduction is not allowed for expenses related to PPP loans if the loan is forgiven. However, that Notice applied only to amounts that had already been forgiven, leaving open the question of what to do with expenses from loans that had not yet been forgiven. When the PPP Flexibility Act, which became law after the IRS issued Notice 2020-32, extended the time to file for forgiveness until late 2021, it became very likely that many taxpayers will not have received a forgiveness determination by the time they file their 2020 tax return. The new IRS ruling, and related guidance provide answers.

Reasonable expectation of forgiveness

The Revenue Ruling considers two scenarios. In both, a calendar year taxpayer has received a PPP loan and used the proceeds for covered expenses during its covered period. As a result, the taxpayer "reasonably expects to receive forgiveness." In Scenario 1, the taxpayer has applied for forgiveness before the end of 2020, but did not receive a determination before the end of 2020. In Scenario 2, the taxpayer did not apply for forgiveness before the end of 2020 but waited until 2021.

The IRS, in both scenarios, indicates that the expenses related to the PPP loan should not be deducted on the taxpayer's 2020 tax return. The deciding factor in both scenarios is that the taxpayer reasonably expects to receive forgiveness. This eliminates the potential to protect the deductibility of these expenses in the calculation of 2020 taxable income simply by delaying the application for forgiveness until 2021.

Revenue Procedure 2020-51 provides a safe harbour for taxpayers to later deduct expenses related to a PPP loan if they reasonably expected forgiveness but later have their forgiveness application denied in whole or in part or decide not to seek forgiveness. The expenses can either be deducted on an amended 2020 return or on a return relating to the subsequent tax year when it becomes clear that the taxpayer will not receive forgiveness (likely either 2021 or 2022).

Next steps

If taxpayers are concerned about the effect of the non-deductible of these expenses in computing their 2020 taxable income, they should conduct an analysis now to determine whether they qualify for forgiveness. If they reasonably expect forgiveness, and the removal of those expenses will create additional taxable income in 2020 (or a significant increase in income), additional year-end planning should be considered, including deferral of income or acceleration of expenses.

BACK

PKF Comment

For assistance with PPP Loan Forgiveness or related tax planning, we invite you to contact your PKF O'Connor Davies advisor or either of the following: Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 646 699 2848** or Alan S. Kufeld at **akufeld@pkfod.com** or call **+1 646 449 6319**.

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