2019 December

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this 2019 fourth quarterly issue, the PKF Worldwide Tax Update newsletter brings together notable tax changes and amendments from around the world, followed by a PKF commentary. This provides further insight and information on the matters discussed.

PKF is a global network with 400 offices, operating in over 150 countries across 5 regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

Featured articles in this issue include :

- Higher and Supreme Court case law in Austria and Germany
- Transfer pricing developments in Botswana, Bulgaria, Mexico, Portugal and the UAE
- Digital tax in the Czech Republic and the USA
- VAT developments in Hungary, South Africa and the UAE
- Double tax treaty updates in Italy, Spain and the USA
- Recent comprehensive tax changes in Jamaica, Kenya, Qatar and Switzerland.

We trust you find the PKF Worldwide Tax Update for the fourth quarter of 2019 both informative and interesting. Please 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.

International Tax Meeting – Dubai, UAE: 10-13 November 2019
The 2019 PKF International Tax Meeting in Dubai, UAE is taking place in parallel with the International Assurance and Accounting Meeting to take full advantage of cross-service networking opportunities. The meeting will begin in the morning of Monday 11 November with joint sessions for assurance and tax delegates, focusing on IPSC and tax committee updates. After lunch, delegates will be separated into their own sessions and finish with a joint closing session on Wednesday.

International Tax Meeting highlights for the meeting include:

- A number of sessions by our guest speaker from the IBFD on the MLI (Multilateral Instrument), TP developments in the Middle East, taxation of the digital economy and the indirect transfer of assets;
- An overview of investment opportunities in Jersey and Switzerland, and
- A VAT update

We also encourage members to invite their managers and the "next level" leadership to the meeting. The vision is to create a platform for learning and collaboration for all levels of leadership within our members' practices.

Contents

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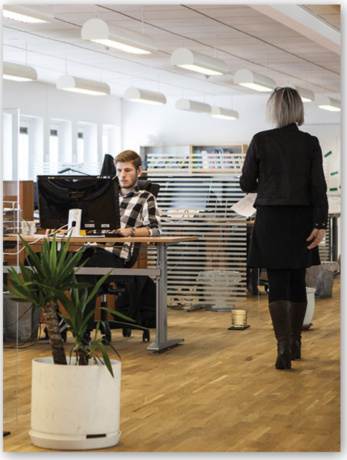
Austria

Administrative High Court recognises interposition of a Luxembourg holding company

Case

A Luxembourg-based limited company ("LU") holds a stake in an Austrian stock company operating an airport. LU does not employ any personnel and does not develop any activities. The parent company of LU ("LUP", 100%) is likewise resident in Luxembourg and has various holdings in the infrastructure sector through intermediate holdings. LUP has business premises in Luxembourg and employs three people. All of the shares in LUP are held by a company in the British Cayman Islands in trust for a non-resident Cayman Islands-based fund. In May 2015, the Austrian stock corporation distributed a dividend to LU. At that point in time, LU was not yet involved in the Austrian corporation "for an uninterrupted period of at least one year" (i.e. the minimum holding period), which is why withholding tax was withheld and deducted. LU's request for refunding withholding tax was rejected by the tax office because the dividend was distributed to recipients in a third country and the tax authorities regarded the structure as abusive, consequently denying the relief. The complaint lodged against it by LU was dismissed by the BFG (court of appeal) as unfounded, because the tax office - for lack of non-tax reasons - rightly assumed that the structure set up met the purpose of directive shopping and it was abusive within the meaning of Austrian tax rules by interposing EU companies which distribute the dividends to third countries. The Luxembourg LU lodged an appeal for review with the Austrian Administrative High Court (VwGH).



High Court Ruling

In its judgment of 27 March 2019 (Ro 2018/13/0004) the VwGH overruled the Federal Fiscal Court of Austria decision because of the illegality of its content. The first two levels of jurisdiction had assumed that there was no economic justification for engaging the two companies located in the EU. However, this view was rejected because the Luxembourg LUP has actually developed activities. An economic reason for the set-up of a company structure- for example, the professional management of long-term investments in the EU by a management holding with several employees (the LUP as the Luxembourg parent company of the appellant) - exists even if the desired economic goal would have been achieved otherwise (i.e. with a holding company located outside the EU). In any case, an economic reason for a set-up exists if the economic objective, as put forward in this case, was better and safer to achieve. Thus, one should not assume that the structure in question was abusive.

PKF Comment

The quite long-running and controversial discussion in Austria (and likewise in numerous other EU member states) on legal requirements for relief from withholding taxes on dividends to passive/potentially abusive holding structures is one facet richer. At least for taxpayers it is positive to note that the High Court took a more liberal and comprehensive view on how to justify certain tax set-ups. For further information or advice on Austrian taxation, please contact Thomas Ausserlechner at thomas.ausserlechner@pkf.at or call ***+43 1 512 87 80****.*

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Belgium

New Belgium company law rules impact cross-border seat of management

In the course of 2019, a significant change in Belgium company law rules took place with gradual entry into force as of 1 May 2019. One of the most fundamental new rules is the introduction of the concept of "registered office". This means that going forward a legal person will be governed by the company and association law of the country of the seat it chooses in its Articles of Association. As a result, Belgium now follows in the footsteps of other countries such as the Netherlands and the UK, as well as the case law of the European Court of Justice. This change definitely facilitates the mobility of companies and will increase the possibilities to do "forum shopping". In line with the increased mobility, a procedure for the international transfer of registered seats is put in place to make it easier for foreign companies to relocate their registered seat to Belgium. This switch to a statutory seat regime will automatically apply as of 1 May 2019 to all new and existing legal entities.

PKF Comment

*It took several months before the new Belgium company law rules were finally enacted. However, as their main objective is to simplify the rules and reduce the number of company legal forms in Belgium, they are very much welcomed by the Belgium business community. In addition, the Belgium legislator has done a maximum effort to align the new rules with international standards and case law. If you would have further questions on the new Belgium company law rules, do not hesitate to contact Kurt De Haen at kurt.dehaen@pkf-vmb.be or Stephanie Cappaert at stephanie.cappaert@pkf-vmb.be or call **+32 2 460 0960**.*

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Impact of new statutory seat rule for Belgium tax purposes

As of May 2019, new Belgium company law rules have entered into force, be it with a transition period until ultimately 31 December 2023. One of the more fundamental new Belgium company law rules is the introduction of the "statutory seat rule" which replaces the existing "real seat rule". In summary, according to the "real seat rule", a company is governed by the company law rules of the country where it has its "main seat of management", regardless of its country of incorporation. Conversely, according to the "statutory seat rule" a company is governed by the company law rules of its country of incorporation, which is generally mentioned in the company's Articles of Association, regardless of the country where the company is effectively managed and controlled. Hence, the question arises what the impact is of the new statutory seat rule for Belgium tax purposes?

On this point, it should first be emphasized that the Belgium legislator has confirmed that the introduction of the new Belgium company law legislation should be tax-neutral.

For Belgium tax purposes, a company only qualifies as a Belgium tax resident if it is managed and controlled in Belgium, regardless of its country of incorporation. To make it clear that this will not change, Belgium tax law no longer refers to the "statutory seat" (siège social/ maatschappelijke zetel) of a company to explicitly step away from the statutory seat rule. As a result, the following situations may arise: (i) a company might be incorporated in Belgium, but not be subject to Belgium corporate income tax if it appears that the company is managed and controlled abroad and (ii) a company might be incorporated abroad, but be subject to Belgium corporate income tax if it appears that the company is managed and controlled in Belgium. A new rebuttable presumption has been added to Belgium tax law: any company incorporated in Belgium is deemed to be subject to Belgium corporate income tax, unless it is demonstrated that the company is managed and controlled abroad and that it is also subject to corporate tax abroad pursuant to both local domestic tax law and applicable tax treaties.

The area for consideration flagged above begs the question which accounting legislation needs to be complied with by a company incorporated abroad, but managed and controlled in Belgium? Very likely, the accounting rules of the country of incorporation will apply. On the other hand, a company subject to Belgium corporate income tax is subject to tax on its worldwide net income with the BE GAAP result as a starting point. Belgium tax law has therefore been amended stating that a company subject to Belgium corporate income tax (and regardless of its statutory seat) and a Belgium permanent establishment (PE) of a foreign company need to have an accounting system, inventory list and to prepare annual accounts comparable to what is required by a "Belgium body" that is very similar to that company or PE.

In order for a reorganisation (e.g. merger, contribution, spin-off) not to subject to corporate income tax, there is no longer a requirement that the transaction is implemented in accordance with applicable company law rules. Also, some special rules addressing "transparent entities" have been added to Belgium tax law because going forward being considered transparent or not for Belgium tax purposes will also be heavily impacted by foreign company law rules.

PKF Comment

*Companies active in Belgium should be aware of the fact that there is now a fundamental intrinsic difference between the applicable company law rules ("real seat theory") and Belgium corporate income tax rules ("effective management & control test"). In particular, they should make sure that they are compliant with both applicable company law and tax rules taking into account such hybrid approach. If you would have further questions in this respect, please contact Kurt De Haen at kurt.dehaen@pkf-vmb.be or call **+32 2 460 0960**.*

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Botswana

New Transfer Pricing Bill came into effect from 1 July 2019

New Transfer Pricing regulations are effective from 1 July 2019 and are based on the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing guidelines for multinational entities and tax administrators

Impact of the regulations

New regulations stipulate that relevant taxpayers now have an obligation to prepare and provide transfer pricing policies and procedures for documentation. The documentation should allow the tax administration to assess the arm's-length nature of intra-group transactions.

Relevant taxpayers

The regulations indicate that new obligations are applicable for all direct or indirect transactions with "connected persons". The term connected persons is defined to refer to the following:

- at least two companies where either of the companies has control directly or indirectly, of the other, or if both companies are controlled, directly or indirectly, by the same person or persons; and
- any person that, singly or together with other connected persons, has control of the company.

The transfer pricing regulations exclude transactions between Botswana residents from the scope of transfer pricing adjustments except when one or both parties are subject to the IFSC tax regime.

Documentation requirements

Documentation content requirements are in line with the elements recommended by the OECD and should include the following at a minimum:

- specific information about transactions that a taxpayer carries out with connected persons
- information on all connected persons' activities including relevant supporting agreements
- overall transfer pricing policies of the group.

The transfer pricing regulations authorise the Commissioner General to obtain additional information as deemed necessary including requesting group information, in writing, when in a tax year the taxpayer's transactions with a related party within a multinational entity (MNE) group exceed BWP 5 million (approximately USD 453,000)

Transfer Pricing methods

The regulations specifically outline five acceptable Transfer Pricing methods of analysis and comparability analysis:

- Traditional methods: comparable uncontrolled price method (CUP), resale price method and cost plus method
- Transactional methods: transactional net margin method (TNMM) and profit split method.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Botswana taxation, please contact Tim Roddy at tim@pkfbotswana.co.bw or call ***+267 3111 362****.*

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Bulgaria

New rules for transfer pricing documentation

Starting from tax year 2020, mandatory transfer pricing documentation comprising of a Master file and a Local file will be required.

Under the new transfer pricing rules, Bulgarian taxpayers which as at the end of the previous year do not exceed the following thresholds will not be required to prepare a Local File:

- Net book value of assets below BGN 38 million (EUR 19 million) and net sales revenue below BGN 76 million (EUR 39 million); or
- Average number of staff for the tax year not exceeding 250 employees.

The Local file will also be required to be prepared each year by entities with related-party transactions above the following annual thresholds:

- BGN 400,000 for sales of goods;

- BGN 200,000 for other transactions;
- BGN 1 million loan principal; or
- BGN 50,000 interest and other amounts related to loan revenue or expenses.

Bulgarian entities that are part of a multinational group of companies and are required to prepare a Local file must also have a Master file prepared by the ultimate parent company or by another company within the group.

The due date for preparation of the Local file matches the deadline for filing the annual Corporation Tax Return. The Master File should be presented within 12 months after this date.

PKF Comment

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

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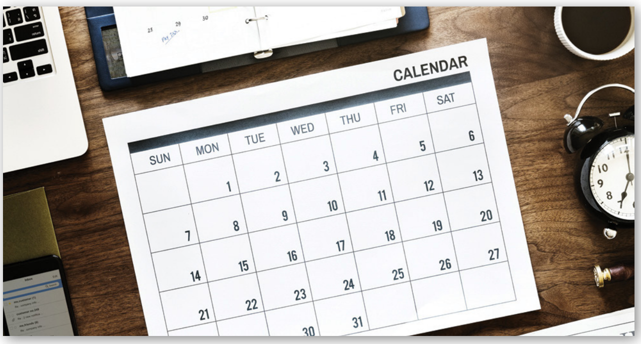
Chile

IRS rules on tax effects for breach of Law on timely payment

Law 21.131, also known as the "30-Day Payment Law" became effective on 16 May 2019.

The Law establishes a maximum payment term of 60 calendar days from the date of the invoice received by the debtor. This term will be reduced to 30 calendar days as from 16 February 2021.



If payment is not made within the abovementioned term, the debtor will be considered at default, for all legal purposes. This means that the creditor can rightfully sue for damages and specific rules for interests and their charging apply. Interest applies from the first day of default up to the date of effective payment, and specific interests are set. Also, a fixed commission is established, consisting of 1% of the owed amount for outstanding balance.

The IRS has recently indicated that said interest is not subject to VAT, as it stems from a law, i.e. it is not caused by an agreement between parties as a result of a taxable operation. Likewise, the commission is not subject to VAT either, since it does not correspond to a fee for services rendered.

On the other hand, although the IRS has not specifically ruled in this regard, it is likely that both the interest and the commission paid are considered to be disallowed expenses for income tax purposes, again as they arise from a breach of law. In such a case, these payments would be subject to the Sole Tax of article 21 of the Income Tax Law at a rate of 40%, which must be declared annually by the debtor. The same would apply to the compensation for damages paid in the event the debtor has been sued.

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**.*

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Czech Republic

Update on introduction of digital tax

The Czech Republic is moving forward with plans to introduce one of the most ambitious digital taxes in Europe.

The Ministry of Finance ("MOF") has sent a proposal to the government to introduce a 7% tax, first put forward in April, by mid-2020 that would apply to major Internet companies such as Google, Apple, Facebook or Amazon, among others. However, the exact timing will depend on the legislative process.

The tax would apply to revenues from online advertising, sale of user data and intermediation services, and will only concern large companies with a global annual turnover of more than EUR 750 million and sales of at least CZK 50 million (around EUR 2 million) for taxable services in the Czech Republic.

Digital platforms with more than 200,000 users, the likes of Uber and Airbnb, could also be subject to the proposed tax, which could generate up to CZK 5 billion CZK (around €2 billion) to the state budget every year, according to the MoF's proposal.

The tax would not apply to domestic Czech firms, according to reports.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Czech taxation, please contact Jaroslava Hanková at hankova@apogeo.cz or call **+420 267 997 721**.*

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Germany

Tax treatment of impairment expenses arising from the waiver of loans granted to foreign subsidiaries

The German Federal Fiscal Court (BFH) affirms in two new judgments (I R 51/17 and I R 81/17, both issued on 27 February 2019) its new opinion about the tax treatment of impairment expenses arising from the waiver of loans granted to foreign subsidiaries. Not surprisingly, the BFH affirmed that Art. 9 (1) of the OECD Model Agreement (OECD-MA) would not prevent any income adjustment for tax purposes on the one hand and that sec. 1 AStG (Außensteuergesetz - German External Tax Relations Act) would be generally applicable on the other hand. Furthermore, in the opinion of the BFH the principles derived from the EJC-judgment in the Hornbach case (issued on 31 May 2019 / C-382/16) apply only under narrowly defined circumstances.

As we had reported in the previous PKF Worldwide Tax Update (Q3 – 2019), the BFH had affirmed that the effects of Art. 9 (1) OECD-MA were not limited to mere price adjustments. Instead it would also encompass receivables under a loan agreement that were either written off or written down to their market value and the adding back of such impairment expenses for tax purposes. Therefore, the OECD-MA-Article would not prevent the application of sec. 1 AStG.

The BFH further emphasised that the so-called group support would simply mean that it is usual practice among group companies to grant loans without demanding a security. However, the support a group can provide would not be comparable to a security or have the same function nor would it mean that amounts receivable under an intercompany loan may not be worthless.

Surprisingly, however, the BFH would now consider the circumstances of the individual case in deciding whether a non-existent or insufficient security for the loan would meet the arm's length principle. Surprisingly because when making the decision that was published first (I R 73/16) the BFH was convinced – without any limitations or qualifications – that such conditions would not meet the arm's length principle. Now it appears that the BFH no longer considers such summary evaluation to be adequate. In its two recently published judgments, the BFH pointed out that the arm's length issue (whether a third party would have granted the loan without demanding a security) had not been examined in these cases.

Furthermore, it should be noted that in its two latest judgments the BFH limits the application of the principles derived from the ECJ's Hornbach-judgment (ECJ judgment dated 31 May 2018 C-382/16). The intercompany loans and guarantees given in the above-mentioned case would not be comparable to the guarantees and letters of comfort provided in the Hornbach case. The BFH further stated that in case non-EU states are involved, only the principle of free movement of capital might prevent the application of sec. 1 AStG. However in view of the so-called "standstill clause" the restriction of the free movement of capital imposed by the German AStG would be acceptable. Under this "standstill clause" national measures may continue to restrict the free movement of capital if such measures (such as the AStG) were already in existence on 31 December 1993. As the BFH referred the matter back to the local fiscal courts, we have to wait and see whether the local fiscal courts will share the opinion of the BFH.

PKF Comment

In the BFH-judgments discussed above the BFH affirmed its new opinion that Art. 9 (1) OECD-MA would not prevent the application of sec. 1 AStG. As the BFH referred the matter back to the local fiscal courts, we have to wait and see how the local fiscal courts will decide on this matter. The respective local fiscal courts would now have to analyse and examine the individual circumstances of each case in order to ascertain whether third parties would have provided such loans and guarantees under the same conditions. To achieve this, the local fiscal courts will have to define criteria for determining under which circumstances intercompany loans meet the arm's length principle.

The details for the practical application and the restrictions of the ECJ-decisions in the Hornbach case remain unclear. However, it has become apparent that the BFH will apply the principles derived from this case only under narrowly defined circumstances.

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Hungary

Extension of the deadline of preferential VAT rate on sale of newly built residential property

The application of a preferential VAT rate on sales of certain newly built residential property has been extended until 31 December 2023 provided that the related final construction permit was issued no later than 1 November 2018 by the building and construction authority or in case the construction is subject to a simplified notification procedure that the procedure was initiated by 1 November 2018 at the latest.

PKF Comment

*Bearing in mind that the standard Hungarian VAT rate is 27%, the 5% reduced VAT rate may result in a significant market benefit for those projects that comply with the abovementioned criteria. The reduced VAT rate remains applicable only to apartments with a useful floor area not exceeding 300 square meters or 150 square meters in case of a condominium. For further information or advice with respect to Hungarian taxation, please contact Krisztián Vadkerti at vadkerti.krisztian@pkf.hu or call **+36 1 391 4220**.*

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Further decrease of payroll tax

Generally, Hungarian employers are obliged to pay 21% payroll tax (19.5% social contribution tax and 1.5% vocational contribution) on top of the gross salary. The social contribution tax will be cut by 2% from 19.5% to 17.5% as of 1 July 2019 and an additional 2 percentage points decrease may take place at the end of 2020 if the increase of real income reaches a pre-determined rate.

PKF Comment

*The payroll tax rate has decreased by almost 10% over the last three years, based on a social convention concluded at the end of 2016 between the Government, the National Association of Entrepreneurs and Employers and the National Federation of Workers' Councils. Provided that all expectations are met, payroll tax will be cut in half by 2022 (compared to 2017). For further information or advice with respect to Hungarian taxation, please contact Krisztián Vadkerti at vadkerti.krisztian@pkf.hu or call **+36 1 391 4220**.*

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India

Budget 2019 and MLI update

India Budget 2019 and Taxation Laws (Amendment) Ordinance

The Indian Government passed the Finance (No. 2) Bill 2019 on 1 August 2019 and Taxation Laws (Amendment) Ordinance on 20 September 2019. Some of the key amendments affecting foreign investors and multinational enterprises having group entities in India are as follows:

Additional surcharge on super rich individuals (excluding Foreign Portfolio Investors)
The rate of surcharge for individuals having income exceeding INR 2 crores (approximately USD 285,000)

has been increased from 15% to 25% and for income exceeding INR 5 crores (USD 714,000 approx.) has been increased from 15% to 37%. However, the higher surcharge is not applicable for Foreign Portfolio Investors (FPIs).

PKF Comment

The FPIs registered with Securities and Exchange Board of India (SEBI) are not levied with excess surcharge. The rate of surcharge remains at 15% even for income exceeding INR 2 crores (approximately USD 285,000) for FPIs. Thus, the FPIs are not adversely affected by the aforesaid amendments.

Reduced Rate of Taxation for Domestic Companies

Existing companies not claiming tax deduction and incentives - Reduced rate at 22%

Domestic Companies which fulfill the following conditions are subject to tax at a reduced rate of 22% (plus surcharge and cess) from tax year 2019-20 onwards:

- The company does not claim certain deductions [viz Special Economic Zone Unit deduction, tax incentives etc.]
- no set-off is claimed in respect of loss brought forward from earlier years pertaining to aforesaid deductions
- additional depreciation is not claimed by the companies engaged in business of manufacturing.

PKF Comment

Government of India intends to encourage foreign investment in India amidst the slowdown in the economy. It is expected that the move shall boost foreign investment in India and lead to job creation.

New manufacturing companies - Reduced rate at 15%

Domestic companies which fulfill the following conditions are subject to tax at a lower rate of 15% (plus surcharge and cess) from tax year 2019-20 onwards:

- The company is set up and registered on or after 1 October 2019;
- The company commences manufacturing on or before 31 March 2023
- The company is not formed by splitting up or reconstruction of a business already in existence
- The company does not use any plant and machinery previously used for any purpose
- The company is not engaged in any business other than business of manufacturing or production of any article or thing.

Tax officer will check the arm's length nature of transaction if the same is between group companies. If the Company makes outstanding amount of profit by transacting between group companies, then the extra profit will be taxed at the higher rate.

PKF Comment

It is expected that the reduced rate of taxation will attract foreign investment in India in the manufacturing sector and shall boost the 'Make in India' Program of Government of India leading to GDP growth and job creation.

Small & Medium Enterprises - Reduced rate at 25%

The rate of taxation for domestic companies not taking benefit of lower tax rate of 15%/22% and having turnover or gross receipts up to INR 400 crores (approximately USD 57 million) in tax year 2017-18 are taxable at 25% (plus surcharge and cess) from tax year 2019-20 onwards.

PKF Comment

Relaxation given to domestic companies of paying tax at reduced rate of 25% as against 30% in case the turnover or gross receipts is up to the thresholds discussed above and are not entitled to lower tax rate of 15%/22%. The same shall give a boost to small and medium enterprises.

No tax on book profits for companies taxed at concessional rate of 15%/22%

Companies paying tax at concessional tax rate of 15%/22% shall not be liable to pay tax on book profits.

PKF Comment

The relief will help in attracting foreign investment in India.

International taxation

Multilateral Instrument (MLI) – Tax treaties amended

India has deposited the ratified copy of the MLI on 25 June 2019 with the Organization of Economic Co-operation and Development (OECD). Also, the list of tax treaties to be modified through the MLI and India's position on various articles of MLI is also deposited with the OECD.

Tax treaties entered into by India mainly the following countries inter-alia stand modified pursuant to the MLI:

- United Kingdom
- Singapore
- Netherlands
- France
- Japan
- United Arab Emirates.

PKF Comment

The MLI shall be effective with respect to tax treaties entered into with aforesaid countries from financial year 2020-21 onwards.

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

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Italy

Tax advantages for investments in Alternative Investment Funds (AIF)

Investments in Alternative Investment Funds (AIFs) are becoming increasingly interesting in Italy, in particular thanks to the tax advantages which they may entail.

AIFs are funds that allow diversification of the investment portfolio and they are linked to the high level of risk / return.

The individuals who can make an investment in an alternative investment fund must be "professional" or "well-informed" individuals, who are looking for alternative forms of investment. This category includes institutional investors, professional investors, or other types of investors as long as they make investments of at least EUR 500,000 and have understood the risks associated with the AIF investment.

With regard to the tax advantages connected with the investment in a real estate AIF, it should be noted that the taxation of income produced by the fund is at the level of the investors, rather than the fund itself.

In detail, subject to certain conditions that determine the qualification of the fund as OICR or the participation by institutional investors, the real estate AIF is exempted from the payment of taxes on the income generated, i.e. the income generated by the investment fund will be taxed at the level of the investors based on their type and residence.

Therefore, if the investor is an Italian tax resident institutional investor, or in case of a non-institutional investor but nonetheless resident in Italy who holds a share of less than 5%, he will be subject to a 26% withholding tax on income generated by the Fund, while if the non-institutional resident investor holds a share of more than 5% he will be subject to a 'transparent' tax treatment (i.e. the proceeds are allocated to these investors proportionally to the units held at the end of the management period).

A different tax regime is applied to investors who are not resident in Italy. In this case, the income generated by the Fund is subject to withholding tax, the percentage of which is defined with reference to the relevant double tax treaty, and they are subject to withholding tax regardless of the percentage of the share held by the investor (except for special cases of exemption from taxation).

Finally we would like to point out that a favourable indirect tax regime is available in case of a contribution of property to a real estate investment fund. The transfer will indeed only be subject to a lump-sum registration tax if the person who makes the contribution is not subject to VAT, or in case he is subject to VAT he has implemented taxable or exempt transactions.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to Italian taxation, please contact Stefano Quaglia at s.quaglia@pkf-tclsquare.it or Irene Angeletti at i.angeletti@pkf-tclsquare.it or call **+39 0108 183 250**.*

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New double tax treaty signed with China

On 23 March 2019, China and Italy signed a new double tax treaty in Rome, which was approved on 19 June 2019 by the Council of Ministers. Once in force and effective, the new treaty will replace the existing treaty which was signed in 1986 and came into force in 1990;

Under the existing treaty the withholding tax rate for dividends, interest and royalties is 10%. Under the new treaty the withholding tax rates will be as follows:

- 5% (if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company throughout a 365 day period) or 10% (in all other cases) for dividends;
- 0% (interest paid to the Government, local authorities, the Central Bank etc.) or 8% (if the interest is paid to a financial institution on a loan with a term of at least 3 years for the financing of investment projects) or 10% (in all other cases) for interest; and
- 5% or 10% for royalties.

The new treaty also modifies the allocation of taxing rights with regard to capital gains. Any capital gains not covered by Article 13 of the new treaty will be taxed only in the alienator's country of residence. However, the right to tax in the source state is confirmed (among others) when capital gains are derived from:

- The alienation of movable property that is part of the business property of a permanent establishment;
- The alienation of shares deriving more than 50% of their value directly or indirectly from immovable property;
- The alienation of shares of a company if the alienator at any time during the 12 month period preceding such alienation had a participation, directly or indirectly, of at least 25 per cent in the capital of that company.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Italian taxation, please contact Stefano Quaglia at s.quaglia@pkf-tclsquare.it or Irene Angeletti at i.angeletti@pkf-tclsquare.it or call ***+39 0108 183 250****.*

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Jamaica

Revenue measures 2019/20

In March 2019, a range of revenue measures were introduced for 2019/2020, and included the following:

- Increase in the General Consumption Tax (GCT) threshold from JMD 3 million to JMD 10 million
- Abolishment of Assets Tax for Non-Financial Institutions
- Abolishment of Minimum Business Tax
- Reform of Stamp Duty
- Reduction of transfer tax payable on the transfer of real property and financial instruments
- Increase in the transfer tax (Estate Tax) threshold applicable to the estate of deceased persons.

Increase in the General Consumption Tax (GCT) threshold

Effective 1 April 2019, the GCT threshold was increased from JMD 3 million to JMD 10 million per annum. This means taxpayers earning less than JMD 10 million of gross income per annum would not be required to charge GCT on sales/income. This increase in threshold will not be applicable to the following registered taxpayers:

- Taxpayers involved in the manufacturing of prescribed goods which are those listed in the Second Schedule of the GCT Act and are subject to Special Consumption Tax (SCT). Prescribed goods include alcoholic beverages, tobacco products and petroleum products.

- Taxpayers engaged in the growing of agricultural produce who either export that produce directly or through an organisation established for the purpose of exporting that produce or sell that produce to a registered taxpayer for use in the production of finished goods.
- Taxpayers provisionally registered under Section 26 of the GCT Act, i.e. persons who are engaged in a taxable activity and are required to be registered under the GCT Act.

PKF Comment

Taxpayers who were deregistered for GCT purposes will now be required to include the irrecoverable GCT input tax in their purchases and expenses. As a result, their selling prices would need to be increased in order to recover these irrecoverable input tax charges.

Abolishment of Assets Tax for Non Financial Institutions

For year of assessment 2019, non-financial institutions are no longer required to file an Assets Tax declaration or pay assets tax.

Specified regulated entities which include financial institutions and insurance companies are still required to file an Assets Tax declaration and settle the assets tax payable.

PKF Comment

The assets tax was levied on the total value of assets, was payable whether or not the company was trading and bore no relation to the income earned by companies. Therefore its abolition for non-financial institutions is welcomed. Specified regulated entities still continue to bear this tax which is calculated at a rate of 0.025% of 'taxable assets' and is not a deductible expense. It is hoped that this asset tax will be abolished in the future.

Abolishment of Minimum Business Tax

Effective 1 April 2019, Minimum Business Tax (MBT), which was payable at an annual amount of JMD 60,000 was abolished. However, persons who are in arrears for MBT for years prior to 2019 are still liable for the tax and any penalties assessed. Persons who may have paid MBT for 2019 will be refunded.

PKF Comment

The minimum business tax was payable by registered companies including dormant and loss making companies, and self-employed individuals earning income above the GCT threshold. Its abolition is welcomed and it is hoped that the Revenue Authorities will employ other measures to ensure taxpayers comply and pay their taxes based on taxable income earned.

Reform of Stamp Duty

Effective 1 April 2019, the Ad Valorem Stamp Duty payable on any instrument pursuant to the Stamp Duty Act will be replaced with a flat Stamp Duty of JMD 100 per document for transactions valued below JMD 500,000 and JMD 5,000 per document for transactions valued over JMD 500,000.

PKF Comment

Stamp duty was being imposed at ad valorem rates on legal instruments whether or not any value had been created. Often, it was a deterrent when conducting various types of business such as sourcing finance, refinancing existing debt, issuing share capital, undertaking business restructuring, regularising property ownership. This reduction will not only stimulate but result in growth in the economy.

Reduction of transfer tax payable on the transfer of real property and financial instruments

Effective 1 April 2019, Transfer Tax payable on the transfer of property was reduced from 5% to 2%. Transfer Tax is computed on the market value of certain property at the rate of Transfer Tax in effect at the date of the document.

Documents dated 1 April 2019 and later will be taxed at 2%, those dated from 1 April 2013 to 31 March 2019 will be taxed at 5% and those dated before 1 April 2013 will be taxed at the rate of tax which was in effect at the date of the document.

PKF Comment

This significant reduction will not only stimulate the business community and real estate investors but result in growth in the economy.

Increase in the transfer tax (Estate Tax) threshold applicable to the estate of deceased persons

Where at the date of their death, persons are domiciled in Jamaica , their assets are deemed to be transferred at the market value of such assets at the date of their death to the persons to whom such property passed on their death.

Effective 1 April 2019, the value of estates which will be exempt from the payment of transfer/estate tax will be increased from JMD 100,000 to JMD 10 million. This means no transfer/estate tax will be charged on up to JMD 10 million of the market value of the deceased person's estate at the time of his/her death.

Transfer/estate tax will be charged at a rate of 1.5% on the remaining values over JMD 10 million.

PKF Comment

The inability of next of kin or beneficiaries to cover the costs of transfer of property was a deterrent to the timely transfers of property of deceased persons. This will definitely result in not only the timely transfer of estates to beneficiaries, but also the registration of land titles in the names of the beneficial owners of properties. Both unregistered land as well as registered land with deficient titles have been impediments to economic growth. Previously, persons living on such land could not clearly demonstrate their ownership or provide the land as collateral for a loan to develop the property or to fund small and medium-sized businesses. This should also result in increased payment of property taxes since the registered owners are also more likely to pay the annual property tax to maintain a good title and can also use the land as collateral.

*If you believe any of the above measures may impact your business or require any advice with respect to Jamaica taxation, please contact Charmaine Madden at charmaine.madden@afmpkf.com or call **+1 876 922 1074**.*

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Kenya

Recent tax changes and developments

There have been several changes in tax legislations and how Kenya Revenue Authority (KRA) is handling certain tax matters over the past couple of months. This tax alert gives an overview of these tax changes and developments.

Value Added Tax refund apportionment formula

Legal Notice No. 86 of 2019 has amended Regulation 8 of the Value Added Tax ("VAT") Regulations of 2017 by revising the VAT refund formula for VAT registered persons who make taxable supplies at both the general rate and zero rate. The revised formula allows for full refund of input VAT resulting from zero rated supplies. The VAT refund formula introduced by the VAT Regulations in 2017 allowed for refund of only a portion of the input tax related to zero rated supplies. Below is a comparison of the formula before and after the revision:

Initial Formula (2017)	Revised formula (2019)	Implication
R=Z/T*e	**R**=Z/T*i	Full refund of input tax related to zero rated supplies.

Where:
R - Value of input tax relating to zero rated supplies.
Z - Total value of zero rated supplies.
T - Total value of taxable supplies.
e - Excess of input tax for the month of supply.
i - Deductible input tax for the month of supply.

This is a reprieve for taxpayers as they can now recover the full input tax that relates to zero rated supplies as opposed to the previous treatment where the input tax had to be adjusted by output tax from general rated supplies.

Clarification on services exported from Kenya

Legal Notice No. 86 of 2019 has further amended Regulation 13 of the VAT Regulations 2017 to clarify that exported services are only those provided to a recipient outside Kenya for use, consumption or enjoyment outside Kenya and not simply because the payment is being made by a non-resident person.

Statute Law (Miscellaneous Amendments) Act 2019

The Statute Law (Miscellaneous Amendments) Act 2019 was published on 9 July 2019 and became effective from 23 July 2019. It made changes to the Public Finance Management Act and VAT Act, 2013.

Section 17(5) of the VAT Act, 2013 has been amended to allow for VAT refunds arising from VAT withheld by appointed VAT withholding agents. The application for refund of excess VAT arising from VAT withholding should be lodged within 24 months from the date the tax becomes due and payable. However, any taxpayers who had excess VAT arising from VAT withholding prior to this amendment are allowed to apply for refund going back 36 months but the application should be made within 12 months from the effective date of this amendment (23 July 2019).

This is a reprieve to taxpayers since many were facing huge VAT credits and refunds for the same were not being processed by KRA due to lack of the necessary provisions in the VAT Act.

It is also important to note that the Finance Bill, 2019 has proposed to reduce the VAT withholding tax rate from 6% to 2% with effect from 1 October 2019 in order to address the issue of accumulation of VAT credits in future.

With regards to publication of Finance Bills in future, a new provision under Section 39A of the Public Finance Management Act has been introduced that will require the Cabinet Secretary in charge of the National Treasury to submit the Finance bill to the National Assembly on or before 30 April setting out the revenue raising measures by the National Government and it should be assented to by 30 June of each year.

The aim is to ensure that the budget cycle is matched to the proposed revenue raising measures to be adopted by the government. It addresses the timing gap between the effective date of the Finance Act and the Budget.

Recent developments at KRA

Tax Invoice Management System vs VAT Auto Assessment

KRA is working on introducing a Tax Invoice Management System (TIMS) which aims to enhance the current Electronic Tax Register (ETR) regime and close the VAT revenue loopholes that have always existed. TIMS will integrate taxpayers' accounting systems with iTax and ensure that there is real-time or near real-time transmission of sales invoices to KRA. Taxpayers will be required to ensure that their ETR machines or Electronic Signature Devices (ESD) are configured to allow for TIMS integration. Some taxpayers might be required to procure new ETRs or ESDs in case their current ones do not have capacity to be integrated with TIMS. KRA is in the process of registering ETR and ESD manufacturers and suppliers and this list will be communicated in due course via a Public Notice. The pilot roll out by KRA is expected to be in January 2020 on a voluntary basis but the intention is to have TIMS fully integrated later in the year.

Successful TIMS implementation will address VAT fraud, inconsistencies, invoice mismatches, PIN correction and amendment issues going forward.

This seems to be a solution to the VAT Auto Assessment (VAA) issues currently being faced by taxpayers. VAA does not have a legal basis and the inconsistencies will persist primarily because the responsibility to account for output VAT is entirely on the supplier and, provided the purchaser is claiming input VAT within the stipulated period of 6 months and against valid tax invoices, they should not be faced with VAA inconsistency issues.

Enhancement of Issuance of Tax Compliance Certificates

The process for issuance of Tax Compliance Certificates (TCC) has been enhanced. The system first verifies the tax compliance status from existing iTax data and a taxpayer will only proceed with the application if all tax returns have been filed and all taxes have been paid. Any non-compliance issues will be highlighted for the taxpayer to resolve before completion of the application process.

Going forward, TCC approvals will be determined by whether tax compliance details are wholly accessible on iTax or otherwise. TCC approvals will be applied in the following ways:

- TCCs will be issued automatically by the system if the taxpayer is found to be compliant in tax returns filing and payments, if applicable.
- All PINs that existed prior to iTax will have to be subjected to an approval level to validate the taxpayer's compliance status from the legacy system.
- Where a taxpayer is undergoing investigation in any of the KRA offices, a caveat may also be procedurally placed prohibiting approval of the TCC by an officer though notification will be displayed to clearly communicate the same.

These enhancements have resulted in delays being experienced by taxpayers getting TCC approvals. From the above, it is imperative for all taxpayers to ensure tax compliance at all levels i.e. at company and director level.

Electricity Rebate for manufacturers

The Cabinet Secretary for Energy through Legal Notice No.132 of 2019 gazetted the conditions for allowing an additional 30% deduction on electricity costs incurred by manufacturers. This provision was introduced by the Finance Act, 2018 with a view to promote the manufacturing sector, which is one of the big four agendas. However, the conditions for allowing the deduction had not been provided.

The electricity rebate program shall not be applicable to manufacturers involved in generation, transmission and distribution of electrical energy.

In summary, in order for a manufacturer to qualify for this electricity rebate, the 10% annual growth targets of electricity consumption, capital investment and sales revenue must be met, a parameter being referred to as the Actual Overall Performance (AOP). The detailed formula for determining if the AOP has been met is contained in Legal Notice No. 132 of 2019. Our view is that the formula is scientific and subject to projections on growth in demand, capital investment and sales revenue which in most cases are difficult to accurately assess. This makes it complicated for taxpayers to establish if they qualify for the electricity rebate or not hence will work against the noble intention of the Government of growing the manufacturing sector. In addition to the complicated formula, a taxpayer must have a valid Tax Compliance Certificate.

Customs & Excise Duty changes

The East African Community Customs Management Act, 2004 (EACCMA) governs all customs duties provisions in the EAC. All the customs duties changes in 2019 were effective from 1 July 2019 and are contained in the EAC Gazette Notice No. 10 of 30 June 2019 which is available from the EAC website.

There have been Excise Duty inflation adjustments in Kenya as provided for under Section 10 of the Excise Duty Act, 2015. Below is a summary of the new Excise Duty rates which are effective 1 July 2019 for the various excisable goods:

Item	Previous Duty Rate (KShs)	New Duty Rate (KShs)
Condensates per 1000 litres@ 20 deg. C	6,225	6,545.59
Motor spirit (gasoline) regular per 1000 litres @ 20 deg. C	19,505	20,509.51
Motor spirit (gasoline) premium per 1000 litres @ 20 deg. C	19,895	20,919.59
Aviation spirit per 1000 litres @ 20 deg. C	19,895	20,919.59
Spirit type jet fuel per 100 litres @ 20 deg. C	19,895	20,919.59
Special boiling point spirit and white spirit per 1000 litres @ 20 deg. C	8,500	8,937.75
Other light oils and preparations per 1000 litres @ 20 deg. C	8,500	8,937.75
Partly refined (including topped crude) per 1000 litres@ 20 deg. C	1,450	1,524.68
Kerosene type jet fuel per 1000 litres @ 20 deg. C	5,755	6,051.38
Illuminating kerosene	10,305	10,835.70
Other medium oils and preparations per 1000 litres @ 20 deg. C	5,300	5,572.95
Gas oil (automotive, light, amber for high speed engines) per 1000 litres @ 20 deg. C	10,305	10,835.71
Diesel oil (industrial heavy, black, for low speed marine and stationery engines) per 1000 litres @ 20 deg. C	3,700	3,890.55
Other gas oils per 1000 litres @ 20 deg. C	6,300	6,624.45
Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistokes per 1000 litres @ 20 deg. C	300	315.45
Residual fuel oils (marine, furnace and similar fuel oils) of a		
kinematic viscosity of 180 centistokes per 1000 litres @ 20 deg. C	600	630.9
Residual fuel oils (marine, furnace and similar fuel oils) of a		
kinematic viscosity of 280 centistokes per 1000 litres @ 20 deg. C	600	630.9
Other residual fuels oils per 1000 litres @ 20 deg. C	600	630.9
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Shs. 10.50 per litre	Shs. 11.04 per litre
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Shs. 5.20 per litre	Shs. 5.47 per litre
Beer, cider, Perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	Shs. 105.20 per litre	Shs. 110.62 per litre
Powdered beer	Shs. 105.20 per Kg	Shs. 110.62 per Kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 157.80 per litre	Shs. 165.93 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 210.40 per litre	Shs. 221.24 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 10,520 per Kg	Shs. 11,061.78 per Kg
Electronic cigarettes	Shs. 3,156 per unit	Shs. 3,318.53 per unit
Cartridge for use in electronic cigarettes	Shs. 2,104 per unit	Shs. 2,212.36 per unit
Cigarette with filters (hinge lid and soft cap)	Shs. 2,630 per mille	Shs. 2,765.45 per mille
Cigarettes without filters (plain cigarettes)	Shs. 1,893 per mille	Shs. 1,990.49 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 7,364 per Kg	Shs. 7,743.25 per Kg
Motor cycles of tariff no. 87.11 other than motor cycle ambulances and locally assembled motor cycles	Shs. 10,520 per unit	Shs. 11,061.78 per unit
Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00,1806.90.00	Shs. 20 per Kg	Shs. 21.03 per Kg

PKF Comment

For further information or advice on Kenyan taxation, please contact Michael Mburugu at mmburugu@ke.pkfea.com or call ***+254 20 42 70000****.*

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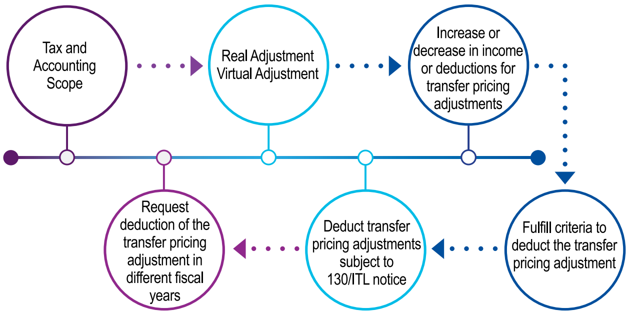
Mexico

New rules related to transfer pricing adjustments

On 11 July 2018 the Mexican Tax Authority (“SAT”) presented the Second Resolution of Modifications to the Miscellaneous Fiscal Resolution for 2018, including five rules related to Transfer Pricing Adjustments.

ADJUSTMENT IN TRANSFER PRICING

On July 11th, 2018 the Mexican Tax Authority (“SAT”) presented the Second Resolution of Modifications to the Miscellaneous Fiscal Resolution for 2018, including five rules related to Transfer Pricing Adjustments



First rule (3.9.1.1)
Establishes that when transfer pricing adjustments have effects within the tax and accounting scope, they will be considered real adjustments, and when those adjustments have effects only within the fiscal scope, they will be considered virtual adjustments. The types of adjustments included in the rule are the following:

- Voluntary or compensatory. Done before the annual declaration.
- Primary. Derived from the faculty of verification of the authority.
- National correlation. The derivative of a primary adjustment applied to a national related party.
- Foreign correlation. The derivative of a primary adjustment applied to a foreign related party.
- Secondary. This adjustment results from the application of a contribution, in accordance with the applicable tax legislation, after determining an adjustment of transfer pricing for an operation, which is generally characterised as a presumed dividend.

Second rule
Refers to the criteria for the increase or decrease of income or deductions derived from transfer pricing adjustments. These increases or decreases must be made in the same proportion as the adjustment.

Third rule
Lists the criteria for deducting transfer pricing adjustments in the fiscal year in which the income or deductions, derived from the operations with the related parties that originated the adjustments, were recognised.

In accordance with this rule, in order to be able to deduct increases in deductions derived from voluntary or compensatory adjustments, one must:

- Have presented the statements in the correct form.
- Obtain and retain the documentation that identifies the non-application of the arm’s length principle.
- Obtain and retain a statement signed by the person who prepared the study indicating the non-correspondence of the application of the arm’s length principle.
- Obtain and retain a statement signed by the person who prepared the study, the consistency or inconsistency of the application of transfer pricing methods.
- Obtain and retain the documentation (transfer pricing study) that shows that prices were considered between independent parties.
- Have the Digital Tax Receipt Online (“CFDI”) of the original adjusted operation.
- Have documentation that covers the payment of Value-Added Tax (VAT) and Special Tax on Production and Services (IEPS) for any imports.
- Issue CFDI that supports the adjustment, in the case of real adjustments.
- Register the voluntary or compensatory adjustments in the accounting and recognise the virtual adjustments (with fiscal effect only) in the reconciliation for Income Tax Law (ITL) purposes.
- Prove that the related party accumulated the income for the adjustment or decreased the accumulation.
- Comply with the obligation to retain and receive ITL from third parties.

Fourth rule
Determines that the adjustment made after the term established in the third rule may be deducted in the fiscal year in which the income or deductions subject to notice were recognised, fulfilling the requirements of the 130 / ITL card (prior notice of transfer pricing adjustment).

Fifth rule

Establishes that taxpayers may request that the deduction of the transfer pricing adjustment that results from applying article 34-A of the Federal Tax Code (FTC), and, if applicable, the foreign correlation adjustment, be applied to fiscal years other than what is established in the third rule, taking into consideration that there will be related parties with foreign residency whose fiscal year end is different from the one established by the Mexican Income Tax Law ("MITL") in Mexico.

As you can see, the procedure for accreditation of a deductibility derived from a transfer pricing adjustment entails a high degree of complexity.

PKF Comment

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

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Peru

Application of the General Anti-avoidance rule (GAAR)

The Peruvian General Anti-avoidance rule (GAAR) was enacted on 19 July 2012, but was suspended until regulations were issued.

With the issuance of Supreme Decree 145-2019-EF, the suspension has been lifted. The Decree enforces the application of the anti-avoidance rules contained in Standard XVI of the Tax Code, which seeks to discourage the use of tax avoidance mechanisms. The Decree went into effect on 7 May 2019 and encompasses an open list of examples of situations in which the anti- avoidance rule could be applied, such as:

- situations of low profitability or that are not at fair market value
- Business restructurings or reorganisations without economic substance
- Acts or operations with countries and jurisdictions that are considered tax havens or non-cooperative jurisdictions
- Use of legal, business figures, contracts or unusual schemes that contribute to the deferral of income, or the anticipation of expenses, costs or losses, among others.

It also establishes a series of aspects, taken from international experience, that the Tax Administration (Sunat) and taxpayers should take into consideration for their evaluation and analysis of behaviours that would potentially be classified as elusive.

Sunat is also expected to adopt management measures to ensure that the application of the GAAR respects the procedural safeguards established in current regulations, including those provided in the Supreme Decree. This includes considering in their inspection procedures the taxes and periods that can be inspected according to the fiscal importance and the opportunity of the detected tax default.

In addition, it is pointed out that the acts, situations or economic relations to be carried out within the framework of the fiscal planning are those that with said quality expressly indicated are proposed by the general manager or financial manager or who is responsible, for the purpose of approval of the board of directors.

The director who has participated in the agreement and who expressed his disagreement through a notarised letter is not jointly liable, under number 13 of article 16 of the Tax Code.

For the application of the GAAR, the Sunat's audit area that carries out the definitive audit procedure must previously have the opinion of the Review Committee on the existence or not of sufficient elements to apply the anti-avoidance rule. In that sense, the Supreme Decree establishes that the Review Committee is competent, among others, to express an opinion on the existence of elements that justify the application of the GAAR and notify the taxpayer to state their reasons for the observations made.

PKF Comment

The application of the anti-avoidance rule in Peru will give the Tax Authority greater discretionary power from a sanctioning perspective, in addition to the joint and several liability of the senior managers. 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****.*

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Poland

Whitelist of Taxpayers – new obligations to verify counterparties as of 1 September 2019

The regulations of the Act of 12 April 2019 on amendments to the Act on goods and services (VAT) and certain other acts, relating to the Whitelist of Taxpayers, i.e. an online list of active VAT payers kept by the Head of the National Tax Administration and payers' settlement accounts (hereinafter: "Whitelist"), became effective on 1 September 2019. The aim of the introduction of the Whitelist is to allow business entities to obtain data that are necessary to perform a preliminary assessment of counterparties and act with due diligence to verify the same. However, it also entails certain sanctions.

As of 1 January 2020, taxpayers who make a transaction over PLN 15,000 to a bank account that is not whitelisted will generally not be able to recognise such expense as tax deductible and will be jointly and severally liable with the supplier of goods or services for unsettled VAT (under the given transaction).

However, where the taxpayer transfers the amount over PLN 15,000 to a non-whitelisted account of a counterparty but reports the same within 3 days to the tax office competent for such counterparty, the taxpayer will be able to recognise such expense as tax deductible.

The Head of the National Tax Administration will keep the Whitelist of entities:

- that are registered as VAT taxpayers (active and exempt), including those whose registration as VAT taxpayers has been restored;
- that have been removed from the VAT register or have not been registered by the head of the tax office.

The Whitelist will be made available on the website of the Ministry of Finance and in the Central Registration and Information on Business (CEIDG) in order to allow to check whether the entity is listed on the selected day falling no more than 5 years before the year of checking.

The entity's data will be made available as per the selected day, except for the data referred to in Article 96b(3)(1-3) of the VAT act, which are made available as per the date of checking and are updated on each business day.

The Whitelist of taxpayers will contain numbers of settlement accounts referred to in Article 49(1)(1) of the Banking Law Act of 29 August 1997 or settlement accounts kept with credit unions, registered by taxpayers with the tax office or the Central Registration and Information on Business.

The Ministry of Finance will provide two methods allowing to check whether a counterparty is whitelisted or not:

- application programming interface (API) that was made available by the Ministry of Finance on 9 August 2019;
- text file that is generally a manual verification.

API provides two methods of checking:

- search method – operates as a regular web browser, i.e. by entering only a single information about a counterparty (e.g. NIP, REGON, name), we should receive complete data on such counterparty, i.e. the name, confirmation of the VAT registration, bank account number. Apart from that, the inquiry date and ID will be received, which will confirm that the counterparty has been checked in the list;
- check method – will require three pieces of information to be entered: NIP or REGON, account number and the date as per which the counterparty is to be checked.

It should be underlined that API will allow 10 enquiries regarding a maximum 30 entities, i.e. it will automatically be possible to verify a maximum of 300 entities per day.

In order to verify a counterparty using a text file, it will be necessary to enter the counterparty's NIP and bank account number. However, the file will allow only to verify whether NIP is associated with the counterparty's account number and not whether the counterparty is registered as an active VAT taxpayer or which account number is correct, even if the counterparty is an active VAT taxpayer.

The text file will be published daily on the website of the Ministry of Finance and thus, the file will have to be downloaded every day.

PKF Comment

We recommend to check in the Whitelist of VAT Taxpayers whether your account numbers registered with the tax office (for companies registered with the National Court Register (KRS)) or via CEIDG (for sole traders) are correct and make the necessary adjustments, if any.

Should you have any doubts, we suggest verifying whether you hold complete forms relating to bank accounts registered and removed for your Company and whether the whitelisted accounts are in accordance with the facts.

To put your company's registration files in order and avoid tax implications arising from a lack of evidence, when it might be necessary to prove the registrations made, we recommend to request for certified copies of such documents. A certified copy is an official document.

All accounts opened for the purpose of business activity, confirmed using STIR, should be listed on the NIP-8 or CEIDG registration form. It is accepted that a taxpayer's registration or data update form will not present the VAT account number created automatically by the bank for the purpose of split payments.

Should you need more detailed information regarding the Whitelist provisions or require advice on any Polish tax matter, please contact Agnieszka Chamera at agnieszka.chamera@pkfpolska.pl or call ***+48 609 331 330****.*

»BACK

Mandatory split payment for transactions over PLN 15,000 as of 1 November 2019 instead of 1 September 2019

On 19 July 2019, the Sejm (the lower house of the Polish Parliament) adopted an amendment to the Act on VAT and the Tax Ordinance, which introduces a mandatory split payment of VAT and a new VAT rate matrix. It assumes that the mandatory split payment will become effective as of 1 November 2019 instead of 1 September 2019. The amended act will be sent to the Senate (the upper house of the Polish Parliament) and then to the President for signing.

The main assumption of the drafted amendments is to replace the current specific mechanisms for VAT settlement, i.e. a reverse charge as well as joint and several liability, with a mandatory split payment.

The split payment mechanism will be mandatory in B2B transactions over PLN 15,000 or its equivalent, involving the supply of goods and services that are currently subject to the reverse charge mechanism as well as joint and several liability, i.e. among others, to fuels, steel and steel products, scrap and waste, precious metals (e.g. gold, silver, platinum) and non-precious metals (e.g. copper, lead). Apart from this, this obligation will cover goods such as tablets, processors, computers, hard drives, smartphones, game consoles, TV sets, radio receivers, cameras, digital cameras and construction services. Additionally, it will apply to payments for batteries, parts and accessories for motor vehicles and motorcycles, coal and coal products, electrical machinery and equipment, parts and accessories thereof, as well as wastes and secondary raw materials. The full list is specified in Annex 15 to the Act on VAT and it contains 150 items.

An invoice issuer will be obliged to include a 'split payment mechanism' clause in the invoice. Important to note is that the tax authority will be able to impose a 30% penalty of the VAT value on an entrepreneur for non-compliance with that obligation, except where the counterparty has nonetheless made a payment using the split payment mechanism. There will also be implications for a buyer who, despite the obligation, does not make a split payment. Such buyer will be liable to a penalty of 30% of the VAT value.

The mandatory split payment mechanism will be applicable to both Polish taxpayers and entities domiciled outside of Poland but obliged to settle VAT on goods subject to the said mechanism. This means that those entities will have to hold a settlement account and a VAT account maintained based on the Polish Banking Law regulations.

For joint and several liability, that has primarily a preventive function, as the amendment assumes the departure from the establishment of a guarantee deposit and thus from the obligation of the Ministry of Finance to keep a register of entities that made such a deposit.

It is important to note that the amendment introduces a possibility to pay income tax, excise duty, customs duty, VAT on imports and contributions to the Social Insurance Institution (ZUS) from a VAT account.

It should also be noted that new VAT rates for certain goods and services (e-books, e-press) will apply as from 1 November 2019. From then onwards, taxpayers will be able to request a binding rate ruling while the major charges regarding the new rate matrix will become effective on 1 April 2020.

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**.*

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Portugal

New provisions on Transfer Pricing

The recent approval of Law 180/2019 will change the Portuguese legal framework on transfer pricing. This Law, approved on 19 July 2019, aims to modify some rules related to transfer pricing that are foreseen in the Portuguese Corporate Income Tax Code and in the tax penalties legislation

The main changes introduced by this Law are as follows:

- Taxpayers whose tax status is monitored by the Large Taxpayer Unit must deliver to the Portuguese Tax Authorities the Transfer Pricing documentation by the 15th day of the seventh month following the end of the tax year;
- The new Simplified Business Information ("IES") forms that shall be used from 2019 onwards, in particular Annex H, increase the information required from taxpayers in relation to Transfer Pricing matters;
- The current penalties for lack of Transfer Pricing documentation and the country-by-country ("CBC") report, fixed between EUR 1,000 and EUR 20,000 (and which may increase by 5% for each day of delay) will be applied as well to the Model 54 related to the CBC report.

These changes will enter into force in October 2019. Until then, it is expected that additional regulations will be released in order to clarify the implementation of these new rules.

PKF Comment

*For further information or advice concerning Portuguese transfer pricing matters, please contact José Parada Ramos at paradaramos@pkf.pt or call **+351 213 182 720**.*

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Qatar

New tax laws and the establishment of the General Tax Authority

Qatar's tax regulations continued to show significant developments in 2019 driven by the issuance of the new Tax Law (Law 24 of 2018) in late 2018.

Among these developments is the establishment of the General Tax Authority (GTA) which is mandated with the implementation of the new Tax Law. The new Tax Law highlights the following revisions:

- expansion of the 35% corporate income tax for petroleum activities to cover the petrochemical industries
- reduction of withholding tax from 7% to 5% while expanding its coverage to include payments of interest, commissions, brokerage fee, and any other services performed wholly or partly in Qatar
- introduction of new tax exemption which includes capital gains from the revaluation of assets used as in-kind contribution to the capital of another public company that is resident in the State, provided these shares are at nominal value and are not sold for five years, and
- adjustment and introduction of penalties for non-compliance with the tax law.

A new law on excise tax (Law 25 of 2018) also came into force in 2019 which imposes tax on certain goods: 100%

tax on tobacco products, alcohol and energy drinks, 50% tax on carbonated drinks, and 100% tax on special purpose goods.

The GTA is also mandated to promote improvements in tax administration and compliance. Among the initiatives promoted by this authority are the following:

- introduction of a new automated tax management system known as "Dhareeba" which facilitates taxpayers to view upcoming and pending obligations, automation of tax declarations, payments, and off-setting or refund of overpayment of taxes. It is expected to be fully operational by 1 January 2020, and
- reinstatement of the Country-by-Country Reporting (CbCR) obligations pursuant to Qatar becoming a signatory to CbCR Multilateral Competent Authority Agreement (MCAA) on 20 December 2017. The regulation was suspended in December 2018 but re-introduced by mid-2019. The CbCR covers resident companies who are the ultimate parent entity of a multinational enterprise (MNE) group and have total consolidated revenue of at least QAR 3 billion in the financial year that immediately precedes the reportable year. These companies are required to report for financial years starting on or after 1 January 2018.

PKF Comment

Companies registered in Qatar should ensure completion of their registration in Dhareeba which will be mandatory by 2020.

Strict compliance is also imperative with the CbCR as the GTA imposes financial penalty of up to QAR 500,000 for failure and incomplete reporting. It is critical for reporting companies to present consistent and accurate data as the GTA will make the report available to other relevant tax jurisdictions to assess high-level transfer pricing and BEPS-related risks of multinational groups.

If you believe the above measures may impact your business or require any advice with respect to Qatar taxation, please contact Tareq Ayoub at tareq.ayoub@pkf.com.qa or call ***+974 44 93 51 96****.*

»BACK

Serbia

Explanation issued by the Ministry of Finance on the Mutual Agreement Procedure (MAP) under double tax treaties

The Mutual Agreement Procedure (MAP) is an alternative available to taxpayers for resolving disputes giving rise to double taxation whether juridical or economic in nature. The double tax treaty between the countries would give authorisation for assistance of Competent Authorities in the respective jurisdiction under the MAP. In the context of the OECD Model Convention for the Avoidance of Double Taxation, Article 25 provides for assistance of Competent Authorities under the MAP.

On 22 April 2019, the Serbian Ministry of Finance (MoF) issued Explanation No. 430-01-229/2019-04 on the MAP under the double tax treaties (hereinafter: Explanation). The MoF issued the Explanation in line with good practice in the area of international taxation, which states that the competent authorities should (when necessary) formulate and publish domestic rules, instructions and procedures with respect to the MAP.

The Explanation describes the MAP under the double tax treaties (DTTs) concluded by Serbia. Serbia currently has 59 DTTs active DTTs in place. Bearing that in mind, it is important to note that the National Assembly of Serbia previously adopted the Multilateral Convention, which was gazetted (International agreements, No. 3/18) on 23 April 2018. The preparation of the Multilateral Convention was done in line with Action Plan 15 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project, the enactment and adoption of which introduces new rules in the area of international taxation.

The implementation of the Multilateral Convention is related to the prevention of tax planning schemes that exploit loopholes and non-conformity of tax legislation for the purpose of reduction of the tax base or "artificial" shifting of profit into jurisdictions with low or non-existing tax, in which the economic activity is not carried out at all or it is carried out on a small scale.

In light of the adopted Multilateral Convention, which modifies and amends the provisions of the bilateral DTTs concluded by Serbia, the MAP represents the international procedure that ensures the uniform application of DTTs as a special instrument for the resolution of international tax disputes. The MAP is regulated by the provisions of the relevant DTT (this is usually Article 25 - MAP).

The Explanation provides valuable insight into the MAP in case the Serbian taxpayer or the taxpayer of the other contracting state deems that the actions of one or both contracting states lead to or will lead to its taxation, which is not in line with the provisions of the relevant DTT.

In particular, the Explanation covers the following sections regarding the implementation of the MAP:

- request for initiation of the MAP - who is entitled to file the request, where is the request filed, the deadline for filing the request, acceptability of the request, ways to file the request and content of the request
- procedure after the filing of the request - review of the request by the competent authority, the procedure of joint notification and consultation with the competent authority of the other contracting state, beginning of the procedure and relation between the MAP and application of Serbian domestic legislation
- application of the MAP
- implementation of the MAP.

PKF Comment

The Explanation should facilitate and clarify the use of the MAP in practice in specific cases in which taxpayers deem that they are taxed by the tax authorities of the relevant contracting states in a manner contrary to the provisions of the relevant DTT. In general, tax disputes that are subject to the MAP include transfer pricing issues, the existence of permanent establishments, the use of reduced withholding tax rates on certain income, etc.

*For further information or advice regarding the implications of the Multilateral Convention on the Serbian DTT network and the possibility to utilize the MAP or any advice with respect to Serbian tax, please contact Mićun Žugić at micun.zugic@pkf.rs or Mihailo Laković at mihailo.lakovic@pkf.rs or call **+381 11 30 18 445**.*

»BACK

South Africa

Individual income tax returns: 2019 tax year

In line with SARS's objectives to improve service delivery, it has recently been announced that an individual taxpayer who meets certain criteria will not need to render an income tax return if their total employment income for the 2019 year of assessment does not exceed ZAR 500,000 (previously ZAR 350,000).

This administrative concession will only be available if strict requirements are adhered to, including:

- the individual received and/or accrued only employment income and had no other form of income;
- the employment income was received/accrued from a single employer who deducted PAYE from such income; and
- the individual has no allowable tax deductions to claim (e.g. retirement annuity contributions or medical expenses).

It should be noted that the above does not give rise to an exemption from tax for individuals, but rather constitutes a relaxation of the tax compliance burden on individuals.

In contrast, the tax threshold (i.e. the threshold at which an obligation to pay tax arises) is ZAR 78,150 for the 2019 year of assessment (ZAR 79,000 for the 2020 year of assessment) in respect of persons under the age of 65. Accordingly, notwithstanding the above-mentioned administrative concession, a South African tax resident may have an obligation to pay South African income tax to the extent that he/she earns taxable income in excess of ZAR 78,150 during the 2019 year of assessment.

PKF Comment

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»BACK

Withdrawals from retirement annuity funds, preservation pension funds and preservation provident funds upon emigration

Prior to the change in tax legislation effective from 1 March 2020, South African tax residents who are employed outside of South Africa were (subject to certain criteria) exempt from South African tax on their foreign earnings. From 1 March 2019 the maximum exemption from tax has been limited to the first ZAR 1 million in taxable income. However, the potential impact of a double tax treaty between South Africa and the country where the person is employed needs to be taken into consideration. Persons considering Financial Emigration or actual emigration need to be aware of the implications these steps have on being able to withdraw lump sums from Retirement Annuity Funds, preservation pension funds and preservation provident funds.

When a member of a Retirement Annuity Fund ceases to be a tax resident, the person is entitled to receive the full value of the after-tax lump sum benefit from the Retirement Annuity Fund if the member emigrates from South Africa, and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control. Expatriates are also allowed to withdraw the full value of after-tax lump sums from their Retirement Annuity Funds when they leave South Africa at the expiry of the work visas that were granted in terms of the Immigration Act No. 13 of 2002.

As from 1 March 2019 the above concession has been extended to members of preservation pension and preservation provident funds if the members emigrate from South Africa and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control or upon repatriation on expiry of their work visas. Prior to 1 March 2019 only members of retirement annuity funds were able to access and withdraw the full value of their after-tax retirement benefits upon emigration or repatriation on expiry of the work visa, while members belonging to pension preservation funds or provident preservation funds were not permitted to do so.

Transfers of actuarial surplus between retirement funds

Contributions made by an employer-owned retirement fund into another employer-owned retirement fund for the benefit of the employees, previously created a taxable fringe benefit in the hands of employees.

Transfers of actuarial surpluses between, or within retirement funds of the same employer previously triggered fringe benefits in the hands of employees. The transfers were deemed to be a contribution by the fund for the benefit of employees, and regarded as a taxable benefit in the employees' hands. Amendments effective from1 March 2017 were made to the Income Tax Act to allow for transfers of amounts between, or within retirements funds of the same employer so as not to create a taxable fringe benefit.

PKF Comment

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»BACK

VAT implications of services provided to non-residents

The South African VAT system is destination-based. This means that VAT is levied on the consumption of goods and services within the borders of South Africa. It follows then that goods and services supplied by VAT vendors where consumption takes place outside of South Africa and where benefit is enjoyed outside South Africa, is subject to VAT at a rate of 0%.

A question that is often asked is whether the supply of services by VAT vendors to non-residents should be zero rated.

Section 11 (2) (l) of the VAT Act provides that services provided to non-residents should be zero-rated, except where the service relates to the following (in which case zero rating will not apply):

- Land or improvements to land situated in South Africa;
- Services supplied in connection with movable property which is situated inside South Africa at the time the services are rendered. Except for movable property which :
  - Is exported to the non-resident after the supply of such services
  - Forms part and parcel of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor;
- Services rendered to the non-resident if the non-resident is in South Africa at the time the services are rendered.

The services rendered to the non-resident should be tested against all of the above criteria.

It is however important to note that not all three tests indicated above need to be satisfied in order for zero rating not to apply. If any one of the above-mentioned tests is satisfied, then the service to the non-resident will be standard rated at 15%.

PKF Comment

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VAT on electronic services provided by a foreign group of companies

The VAT Act provides that VAT be levied is levied on imported services. Of late the focus has been on Electronic Services provided by non-residents to residents. Examples of these electronic services will be the provision of cloud computing as well as online services.

The obligation to declare and pay VAT rests on the supplier of the electronic service. Previously the VAT Act provided for this obligation to rest on the recipient of the service. However, this was amended upon publication of the Government regulations in relation to VAT on electronic services.

The non-resident supplier of electronic services will be required to register for VAT in the following instances:

- the electronic services are supplied from a place outside South Africa;
- the non-resident is deemed to be conducting an enterprise in South Africa;
- at least two of the below circumstances are present:
    - the recipient of the electronic services is a resident of South Africa;
    - payments made to the supplier are from a South African registered bank under the Banks Act 94 of 1990;
    - the services are rendered to a recipient who has a postal, business or residential address in South Africa.

It is common in a multinational group setting for companies to supply electronic services to each other. Where electronic services are supplied by a non-resident company to a resident company for the exclusive consumption by the resident company and the two companies form part of the same group of companies, the supplier of the services does not need to register for VAT as such services do not constitute an electronic service as defined.

It is important to note that a group of companies for IFRS purposes is different to a group of companies for tax purposes. A group of companies for tax purposes requires that there be a 70% shareholding. Where the shareholding between the two non-resident companies is less than 70%, the non-resident company will be required to register for VAT if the foreign supplier makes more than ZAR 1 million from the supply of electronic services in a 12-month period. SARS has introduced a process that is simplified with regards to the VAT registration of foreign entities providing electronic services. The SARS VAT Registration Guide for Foreign Suppliers of Electronic Services can be consulted in regards to this.

PKF Comment

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Spain

Protocol amending U.S. - Spain double tax treaty approved

On 16 July 2019 the U.S. Senate voted in favor of ratifying the new protocol amending the income tax treaty and existing protocol between the United States and Spain. The new protocol is accompanied by a memorandum of understanding between the two countries. It makes substantial changes to the existing treaty, which entered into force in 1990, and is intended to bring it into closer conformity with the current income tax treaty policies of the respective countries. The new protocol was originally signed in 2013 and was transmitted to the Senate for its approval in 2014. Final approval of the new protocol had been delayed in the Senate since that time.

The new protocol includes a provision that is intended to provide relief to individuals who participate in a pension plan based in one country while working in the other country. Changes are also made to the treatment of cross-border investment income (interest, dividends, and capital gains), and there is a new exemption from source country tax on dividends paid to pension funds based in the other country.

The new Protocol also contains a comprehensive limitation on benefits (LOB) provision that is intended to ensure that only residents of the United States and Spain will enjoy the benefits of the Tax Treaty. A significant number of provisions of the Tax Treaty are conditioned to the fulfillment of this clause.

Effective Date: The United States and Spain must notify each other once the approval processes with respect to the new protocol have been completed in the respective countries. The new protocol will enter into force three months after the later of these two notifications.

However, the date on which it enters into force is not necessarily the date on which each of its provisions take effect. The provisions of the new protocol with respect to taxes withheld at source (such as dividends, interest and royalties) will take effect for amounts paid or credited on or after the date on which the new protocol enters into force. For other purposes, its provisions will take effect for tax years beginning on or after the date on which it enters into force. Thus, if the later of the two notifications referred to above occurs before the end of 2019, the new protocol will take effect for all purposes other than withholding for the 2020 tax year.

PKF Comment

This new Protocol establishes significative tax reductions in the taxation of dividends, interests, royalties and capital gains, in particular, a withholding tax rate of 0% on certain dividend payments, general exemption from withholding tax on cross-border interest, royalties and capital gains, new fiscally transparent entity rules, mandatory binding arbitration procedures and revised exchange of information provisions.

The new capital gains exemption upon the transfer of shares is of particular interest. This exemption favors corporate restructurings that, to date, are generally too costly taxwise. Changes to the dividend article in the Protocol will make distributions more tax efficient. Finally, the exemption from withholding tax on interest in the Protocol is now in line with those in several other U.S. treaties with European Union countries and will be welcomed by taxpayers.

*If you believe the above measures may impact your business or require any advice with respect to Spanish taxation, please contact Alberto Rodriguez Arredondo at arodriguez@pkf-attest.es or call **+34 945 137 426**.*

»BACK

Sweden

Introduction of the concept of “economic employer” for the taxation of non-resident employees”

The Swedish Government plans to introduce the concept of “economic employer” for the taxation of non-resident employees who are working temporarily in Sweden.

In a press release, the government announced that it would proceed with the proposal and intends to present a more detailed draft during 2020. The new rules are expected to come into force on 1 January 2021.

In June 2017, the Swedish Tax Agency presented a memorandum with a proposal to introduce the concept of “economic employer” into Swedish tax legislation. Under the proposal, more people employed by foreign companies would be liable to pay tax in Sweden. The memorandum was referred to the Council on Legislation for consultation in June 2018, but a bill was never drafted.

The 183-day rule is included in Swedish internal tax law as well as in the double tax treaties signed by Sweden. Under this rule, an employee may be tax exempt in Sweden, even when they have performed their services in Sweden, provided that the following three conditions have been met:

- the employee must not spend more than 183 days in Sweden over a 12-month period
- their remuneration must be paid by a non-Swedish employer, or on their behalf, and
- remuneration may not be paid from the permanent establishment of the employer in Sweden.

Since Sweden currently applies the concept of "formal employer", the 183-day rule does not apply unless the employee is employed and remunerated by a foreign company without a permanent establishment in Sweden, even when a Swedish company benefits from, and bears the costs of, the services rendered.

Many other countries already apply the "economic employer" concept. As a result, the 183-day rule cannot be applied when a company is domiciled in the country where the services are performed, and also benefits from, and bears the costs of, those services.

According to the proposal, the "economic employer" concept should also be introduced in Sweden in connection with the application of the 183-day rule. An employee who is employed by a foreign company without a permanent establishment in Sweden should therefore be taxed in Sweden when they have performed their services on behalf of a Swedish business, company or other type of organisation. The determining factor of whether the employee should be taxed is based on who they perform their services for – not who pays their salary. The press release does not present any details or explain how or whether the previous proposals will be changed or amended. In addition, exceptions should be made for some intra-group situations. The government intends to present a more detailed draft of the proposal during 2020. The government proposes that the provisions will come into force on 1 January 2021.

PKF Comment

It remains to be seen how the proposal is formulated in detail. But if an economic employer concept is introduced into Swedish law, it will have a major impact on Swedish and foreign companies that have foreign employees who temporarily work in Sweden. Even though exceptions are introduced for intra-group conditions, the rules impose higher demands on employers to have a process for identifying which employees are in Sweden and how much time is spent in Sweden.

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»BACK

Switzerland

Implementation of the Federal Tax Reform (TRAF) in the canton of Zurich

PKF Worldwide Tax Update (Q3-2019) provides further details regarding the TRAF

On 1 September 2019, the Zurich electorate voted with a 55.95% majority to accept the proposal adopted by the Zurich Cantonal Council for the implementation of TRAF in the canton of Zurich.

The TRAF (ZH) provides for the below key principles:

- Reduction of the ETR across the board (federal, cantonal and municipal) as of 1 January 2021 to 19.70% (capital city, previously 21.15% / resp. as of 1 January 2023 (planned) from 19.70% to 18.19%)
- Implementation of a patent box: net profits from patents and similar rights will be taxed at a maximum reduction of 90%
- Adoption of a 50% additional R&D cost deduction
- Introduction of a deduction on excess equity (Notional Interest Deduction; NID)
- For companies affected by abolition of a cantonal tax privilege as of 1 January 2020, the canton of Zurich offers the following possibilities as transitional measures: (a) a tax-neutral disclosure and tax-effective amortisation of hidden reserves over a period of up to ten years (b) the application of a special tax rate for the taxation of hidden reserves and self-created goodwill realised within the next five years or (c) a combination of the two aforementioned options (practice)
- Maximum limitation of tax relief may not exceed 70% of taxable net income
- Introduction of a capital tax relief of 90% as to participations, patents and intra-group loans

- Finally, at the level of individuals, the partial taxation of private dividend income will remain at 50% at cantonal level (and increased to 70% at federal tax).

PKF Comment

Part of the companies domiciled in the Canton of Zurich are recommended to take immediate action in light of the above tax reform:

- *Companies benefitting from a cantonal tax privilege (Holding, Domicile or Mixed Company) must analyse their future income and capital taxation. In particular, a tax neutral step-up to fair market value should be evaluated to optimise the income taxation for future years*
- *Companies with strong IP and R&D activities should analyse whether the new tax incentives under the patent box tax regime would entail substantial tax benefits*
- *Ordinary taxed companies might consider a relocation to other cantons within Switzerland or should generally reassess their international tax structure and review their set up in Switzerland*

Overall, the Swiss tax system remains very attractive and the tax competition between the cantons still persists to the taxpayer's benefit.

»BACK

The grandfathering rules for individuals that had a lump-sum taxation ruling approved before 1 January 2016 expire on 1 January 2021

As of 1 January 2016, newly obtained lump-sum taxation rulings contain new minimum income thresholds (for direct federal tax purposes - CHF 400,000). Most of the cantons introduced the same amount for cantonal and communal personal income tax purposes whereby only very few cantons introduced lower thresholds. In addition, all cantons are obliged as of 1 January 2021 to introduce a wealth tax on individuals subject to lump-sum taxation. For the so-called control calculation higher multipliers will be applicable too, i.e. seven times the deemed rental value or rent paid.

The grandfathering rules grant individuals that had a lump-sum taxation ruling approved before 1 January 2016 a preferential treatment until 1 January 2021. Falling under these grandfathering rules allows the individuals to keep the lower minimum thresholds for the deemed income tax basis and wealth tax basis and in certain cantons a non-taxation of their wealth.

PKF Comment

For individuals with a lump-sum taxation ruling granted before 1 January 2016, it is strongly recommended to assess whether their deemed income as agreed with the competent tax authorities is in line with the new rules and whether their control calculation is affected by the new higher multipliers. It should be further considered whether the lump-sum taxation ruling granted needs to be amended with the new minimum thresholds and whether all relevant facts and circumstances are disclosed with the competent tax authorities to avoid the ruling invalidity. We advise individuals to start the assessment of their situation as soon as possible to ensure that potential actions are completed before the expiry of the grandfathering rules.

»BACK

Switzerland deposits its instrument of ratification (entry into force on 1 December 2019) for the Multilateral Instrument (MLI)

On 29 August 2019, Switzerland deposited its instrument of ratification for the MLI. After receiving approval from the Swiss parliament in March 2019 and the lapsing of the applicable referendum period for the MLI on 11 July 2019, the Swiss government has now ratified the instrument meaning that the agreement will enter into force on 1 December 2019 for Switzerland. However, the entry into force for Swiss covered tax treaties will be postponed until Switzerland has renegotiated the relevant double tax treaty.

»BACK

Revision of the federal law and the ordinance on the International Automatic Exchange of Information in Tax Matters (AEOI)

The consultation on the revision of the federal law and ordinance on the AEOI ended on 12 June 2019. The aim of the revision is to implement the recommendations issued by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) in order to comply with the international standards for transparency and information exchange. The proposal will be discussed by the Parliament in the spring of 2020 and the revised federal law and corresponding ordinance on the AEOI is expected to enter into force on 1 January 2021.

PKF Comment

*For further information or advice concerning the Swiss Corporate Tax Reform (TRAF) including its implementation at cantonal levels, lump-sum taxation for individuals or any advice with respect to Swiss unilateral and international taxation, please contact Rilana Wolf-Bayard at rilana.wolf@pkf.ch or Margarita Baeriswyl at margarita.baeriswyl@pkf.ch or call **+41 44 285 75 00**.*

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United Arab Emirates

Introduction of new economic substance regulations

Following its commitment to remedy EU concerns and implement BEPS related measures, the UAE Ministry of Finance ('MoF') issued the Cabinet of Ministers Resolution No. 31 of 2019 (concerning economic substance regulations in the UAE, "the Regulations") on 30 April 2019, requiring all in-scope UAE entities that carry on certain activities ("Relevant Activities") to have demonstrable economic substance in the UAE with effect from 30 April 2019.

In order to provide further clarity and guidance on certain provisions of the Regulations (say, on how the Economic Substance Test can be said to have been met, meaning of certain expressions used in the Regulations for the purpose of economic substance test, etc.), the UAE Cabinet has recently issued Ministerial decision No. 215 for the year 2019 on the issuance of directives for the implementation of The Regulations (referred to as 'the Guidance'), published on the Ministry of Finance website on 15 September 2019.

The Guidance is issued pursuant to provisions of Article 6(6) of the Regulations and intends to serve as a guide to entities carrying out one or more relevant activities as defined in the Regulations. In case of failure to comply with the obligations set out in the Regulations, there could be levy of administrative penalties.

»BACK

Introduction of Country-by-Country reporting

The UAE MoF, by way of a Cabinet of Minister's Resolution No. 32 of 2019 ('the CbCr Resolution') issued a regulation in the month of July 2019 with respect to the submission of reports by multi-national companies, i.e. on Country-by-Country Reporting ('CbCr').

The UAE is the third GCC country to implement CbCr following the introduction of transfer pricing by-laws in Saudi Arabia and CbCr implementation in Qatar. The introduction of this regulation is in line with the UAE's commitment of implementing the BEPS minimum standard of Action 13 on Transfer pricing documentation and CbCr.

As per this Resolution, the reporting entity/constituent entity of an MNE Group in the UAE will be required to submit Notification and/or CbC report to the MoF within the prescribed timelines. In case of failure to comply with the obligations set out in the CbCr Resolution, there could be a levy of administrative penalties.

Entities impacted by the provisions of the Resolution will be required to make arrangements to comply with the reporting requirements and review its impact on an MNE Group's reporting and notification requirements in other jurisdictions.

»BACK

VAT and excise tax update

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

Date	Type of Update	Particulars of Update
September 2019	Cabinet Decision	Excise Goods, Excise Tax Rates and the Methods of Calculating the Excise Price *
August 2019	Public Clarification	Transfer of a Business as a Going Concern
July 2019	Public Clarification	VAT Treatment of Options and Option Premiums
July 2019	Public Clarification	Importation of goods by agents on behalf of VAT registered persons
July 2019	Public Clarification	Disbursements & Reimbursements

UAE Cabinet expands list of excise taxable products starting 1 January 2020

The UAE MoF had introduced excise tax in 2017 which was levied on specific goods (carbonated drinks, tobacco products and energy drinks) that are harmful to human health or the environment.

The UAE Cabinet has adopted a decision to expand the list of excise taxable products to include sweetened beverages, sugary drinks and electronic smoking devices, starting 1 January 2020. It has issued Cabinet Decision No. 52 of 2019 on Excise Goods, Excise Tax Rates and the Methods of Calculating the Excise Price.

A 50% tax will be levied on any product with added sugar or other sweeteners, whether in form of a beverage, liquid, concentrate, powders, extracts or any product that may be converted into a drink. A tax of 100% will be levied on electronic smoking devices, whether or not they contain nicotine or tobacco, as well as the liquids used in electronic smoking devices.

The following table summarises the excise goods list and its tax rate:

Excise Goods	Tax Rate
Tobacco and tobacco products	100%
Liquids used in electronic smoking devices and tools	100%
Electronic smoking devices and tools	100%
Carbonated drinks	50%
Energy drinks	100%
Sweetened drinks	50%

PKF Comment

International tax perspective

The news of the UAE introducing Economic Substance Regulations and Country-by-Country Reporting underlines its strong commitment to prevent the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational enterprises.

The new set of laws will result in additional impact assessments / compliance requirements for the businesses in the UAE, with likely compliances scheduled to begin towards the end of the current and forthcoming year.

VAT and Excise tax perspective

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

The adoption of the decision to expand the list of excise taxable products to include sweetened beverages, sugary drinks and electronic smoking devices by the UAE MoF comes with an effort to reduce the negative effects of consumption patterns harmful to public health.

Such a levy is intended to support national efforts to curb unhealthy practices that cause chronic diseases. On the business front, businesses manufacturing or importing or having inventories of such newly added Excise Goods stockpiled in the UAE may be affected by this amendment.

This will result in additional compliance for such businesses and registration requirements where these businesses are not already registered.

Contact us

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»BACK

United States

Internal Revenue Service Compliance Campaigns

In July 2019, the Internal Revenue Service Large Business and International Division (IRS LB&I) announced the approval of additional Tax Compliance Campaigns, three of which affect individuals with international tax complexities. The initiation of a Compliance Campaign means the IRS has identified an area where they believe significant non-compliance exists.

The following campaigns are very important for internationally mobile U.S. persons or former U.S. persons:

1. **Post-Offshore Voluntary Disclosure Program (OVDP)**
   This IRS initiative will focus on taxpayers who have failed to comply with the reporting of worldwide income and disclosure of foreign assets including

non-U.S. securities and financial accounts. U.S. citizens and permanent residents are subject to worldwide taxation on their global income and must disclose certain foreign holdings. Severe penalties can be imposed for failure to meet these obligations. Over the last 10 years, the IRS has instituted OVDP designed to bring delinquent taxpayers into compliance with the promise of lesser penalties and avoidance of potential criminal charges. The IRS ceased such program in 2018 and will now address noncompliance through soft letters and examinations.

The recently announced program is the IRS' latest weapon in combatting U.S. taxpayers living abroad who are not yet in compliance. These individuals should seek assistance from professional tax advisors and consider their options. Putting one's head in the sand is not an option. Relief could still be available in the form of "streamlined procedures" designed to bring non-wilful non–compliant U.S. taxpayers into full compliance.

2. **Expatriation**
Another new IRS Compliance Campaign focuses on U.S. citizens and "long-term" residents (those lawful permanent residents with such status any portion of 8 out of the last 15 years) who expatriated on or after 17 June 2008 who may have not met their filing requirements or tax liability obligations. The IRS will address such noncompliance in a variety of manners, including outreach, soft letters and examinations.

Expatriation Tax Rules: A U.S. person will be considered expatriating for tax purposes if he or she formally relinquishes U.S. citizenship requiring a host of conditions to be met or ceases to be a permanent resident through an official revocation act or has been administratively judicially determined to have abandoned residency. When expatriation occurs, U.S. tax law imposes a mark to market regime, which means all property is treated as sold at fair market value as of the day before the expatriation date under certain circumstances.

Accordingly, a significant tax could be due in the year of expatriation. The IRS is aware that many individuals have expatriated without fulfilling their tax obligations. The new campaign has been instituted to seek out such individuals.

PKF Comment

Please refer to our later article on the IRS announcement of new procedures with respect to certain expatriates.

3. **High Income Non-Filers**
A third international IRS compliance campaign is aimed at high income U.S. citizens and residents who no longer file U.S. income tax returns. Many of these individuals believe, incorrectly, that there are no U.S. tax filings required and that they do not owe U.S. tax. This is clearly not always the case notwithstanding the availability of tax mitigation benefits such as the foreign earned income exclusion (FEI) and foreign tax credits (FTC), which can reduce the tax liability in some cases to zero. Tax returns must be filed to demonstrate that no tax is due.

Foreign Earned Income Exclusion: If certain conditions are met, U.S. citizens or resident aliens may qualify to exclude up to USD 105,900 in 2019 for FEI plus a foreign housing exclusion.

U.S. citizens and resident aliens may take advantage of foreign tax credits on income which has already been or will be subject to a foreign tax. The foreign tax must be an income tax to qualify. A mechanical formula is available to determine the portion of the foreign tax eligible for a current credit.

Taken together the FEI and FTC may completely offset one's U.S. tax liability; however, tax returns are required for U.S. and resident aliens in all cases.

4. **Revocation of U.S. Passports for Taxpayers with Seriously Delinquent Tax Debt**
If an individual is certified as having seriously delinquent tax debt, the IRS transmits a certification to the U.S. State Department for an action such as denial, revocation or limitation of the individual's U.S. passport. Accordingly, applicants whose names are included on a certification are ineligible for a passport.

A seriously delinquent debt means an unpaid legally enforceable federal tax liability that

1) has been assessed
2) exceeds USD 52,000 (in 2019) and
3) a notice of lien has been filed and the administrative rights have lapsed or been exhausted or a levy exists.

If a taxpayer has referred his or her case to an IRS Taxpayer Advocate, there is a possibility the IRS will not proceed with the certification process. Thus, if a case is being handled as a Taxpayer Advocate Service (TAS), it is possible for a taxpayer to maintain his or her passport.

The current acting IRS National Taxpayer Advocate (NTA) has advocated the IRS halt the certification process for taxpayers who are actively working with TAS to resolve their tax liabilities. The NTA also expressed concerns about two aspects of the IRS passport certification program:

1) IRS is recommending the revocation of existing passports in certain cases even though IRS standards are vague
2) Technology limitations prevent the IRS from sending certification, decertification and revocation notices to taxpayer representatives.

The NTA hopes to work with the IRS to improve current procedures.

PKF Comment

U.S. citizens or lawful permanent residents should consult with their tax advisors if they believe that they could be a target of one of these campaigns. The U.S. has already negotiated agreements with many jurisdictions to request information about U.S taxpayers and the number with agreements in effect is growing as you can learn from a later piece on the current status of U.S. international tax treaties.

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New procedures to enable certain expatriated individuals to become compliant with US tax filing obligations

In September 2019, the U.S. Internal Revenue Service announced new procedures that will enable certain individuals who relinquished their U.S. citizenship to come into compliance with their U.S. tax and filing obligations and receive relief for back taxes.

The Relief Procedures for Certain Former Citizens apply only to individuals who have not filed U.S. tax returns as U.S. citizens or residents, owe a limited amount of back taxes to the United States and have net assets of less than USD 2 million. Only taxpayers whose past compliance failures were non-wilful can take advantage of these new procedures. Many in this group may have lived outside the United States most of their lives and may have not been aware that they had U.S. tax obligations.

Eligible individuals wishing to use these relief procedures are required to file outstanding U.S. tax returns, including all required schedules and information returns, for the five years preceding and their year of expatriation. Provided that the taxpayer's tax liability does not exceed a total of USD 25,000 for the six years in question, the taxpayer is relieved from paying U.S. taxes. The purpose of these procedures is to provide relief for certain former citizens. Individuals who qualify for these procedures will not be assessed penalties and interest.

The IRS is offering these procedures without a specific termination date. The IRS will announce a closing date prior to ending the procedures. Individuals who relinquished their U.S. citizenship any time after 18 March 2010 are eligible as long as they satisfy the other criteria of the procedures.

These procedures are only available to individuals. Estates, trusts, corporations, partnerships and other entities may not use these procedures.

PKF Comment

Relinquishing U.S. citizenship and the tax consequences that follow are serious matters that involve irrevocable decisions. Taxpayers who relinquish citizenship without complying with their U.S. tax obligations are subject to the significant tax consequences of the U.S. expatriation tax regime.

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Current status of U.S. tax treaties and international tax agreements

In July 2019, the U.S. Senate approved updates to the following tax treaties:

- Japan – 2013 Protocol to amend 2003 Treaty (Japanese Protocol)
- Luxembourg – 2009 Protocol to amend 1996 Treaty (Luxembourg Protocol)
- Spain – 2013 Protocol to amend 1990 Treaty (Spanish Protocol)
- Switzerland – 2009 Protocol to amend 1996 Treaty (Swiss Protocol).

Besides other changes, all protocols introduce updates to exchange of information provisions. It has to be noted that competent authorities are now required to collect and exchange information that may be foreseeably relevant for carrying out the provisions of the treaties and respective domestic laws, for all taxes imposed by each country. It is irrelevant if the requested country may not need such information for its own tax purposes or that bank secrecy rules limit disclosure of such information. However, confidentiality provisions and provisions protecting a country from violating its own laws are included in the protocols. The protocol with Japan entered into force on 30 August 2019 and the protocol with Spain will enter into force on 27 November 2019. Entry-into-force dates for Luxembourg and Switzerland have not been announced yet.

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Classification of cloud transactions and transactions involving digital content

The Internal Revenue Service published proposed regulations regarding the classification of cloud transactions for purposes of the international provisions of the Internal Revenue Code and changes to the sourcing for sales of digital content through an electronic medium (copyrighted article transaction). The proposed regulations would create a flexible and coherent framework to resolve complex tax issues raised by cloud computing transactions and the digital economy.

Cloud transactions are defined as transactions through which a person obtains non-de minimis on-demand network access to computer hardware, digital content, or other similar resources.

In general, cloud transactions would have to be classified as the rendition of services or a lease of property. If a cloud-based arrangement comprises “multiple transactions,” it would be required to separately analyse each component of the arrangement.

The new approach for sourcing income from sales of digital content through an electronic medium requires to look where users download digital content. This is a departure from the existing rules for sourcing of inventory products (generally where right, title and interest transfer from sellers to buyers occur).

PKF Comment

The new sourcing rule can be burdensome and difficult to track so that taxpayers have to rely on the secondary rule and look at customer’s location based on sales data. In any case, the proposed change may raise effectively connected income (ECI) tensions for taxpayers selling inbound into the United States resulting in more U.S. source income.

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