

Worldwide tax update



PKF Worldwide Tax Update



Welcome

In this third quarterly issue for 2017, the PKF Worldwide Tax Update newsletter again brings together notable tax changes and amendments from around the world, with each followed by a PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with 400 offices, operating in over 150 countries across our 5 regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

In this issue featured articles include discussions on:

- New regulations on innovation tax deduction in Belgium and tax credit for investments in R&D in Italy;
- Transfer pricing developments in China and Mexico;
- VAT developments in the Czech Republic, Serbia, Spain, Switzerland and the United Arab Emirates;
- Withholding tax developments in Malaysia and Switzerland;
- Double tax treaty developments in India and South Africa;
- Exchange of information developments in Hong Kong and Switzerland.

We trust you find the PKF Worldwide Tax Update for the third quarter of 2017 both informative and interesting and please do contact the PKF tax expert directly (mentioned at the foot of the respective PKF Commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at www.pkf.com/pkf-firms.

2017/18 Worldwide Tax Guide

The latest PKF worldwide tax guide featured 130 countries and over 1,450 copies were ordered in EMEA, APAC and Africa. Its resounding success is a result of the energy, time and support of individuals and firms of the PKF family and to all we owe a big thank you. We are extremely grateful to all those that provided country submissions, and of course, to each person who purchased a guide and supported this very marketable and impressive publication. The shipment and delivery of the 2017/18 Worldwide Tax Guide is underway and we thank you for your continuing support.



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Australia

GST alert – inbound intangible supplies and concessions for B2B transactions



From 1 July 2017, the Australian GST legislation will impose GST on inbound intangible supplies to Australian consumers made from offshore by non-residents.

These changes to the Australian GST legislation have been made in consultation with other VAT/

GST jurisdictions seeking to address similar issues where intangibles are being supplied from offshore into the country but no GST is being remitted by non-resident suppliers.

There remains a question as to how these Australian provisions are ultimately enforced on non-resident suppliers. However, to a large extent the Australian Taxation Office will be relying on corporations concerns around 'reputational risk' of not complying with the local tax laws and the current focus of Revenue Authorities and Governments to ensure the integrity of VAT/GST collections across international jurisdictions. Initial estimates made by the Australian Government estimate the changes could impact around 100 non-resident suppliers but given the scope of the changes there may be many more offshore suppliers impacted by the changes.

Australian GST on inbound intangible consumer supplies made by non-residents

From 1 July 2017, the Australian GST legislation seeks to extend GST to inbound supplies of digital products, services and other intangibles into Australia where these are supplied from offshore by non-resident entities. Currently, these supplies are not generally subject to Australian GST.

The broad aim of the legislation is to tax so-called 'private consumption' of inbound intangible consumer services supplied by non-residents (Business to Consumer transactions or B2C) and recognise that if GST was imposed on such supplies made to a GST registered business (Business to Business transactions

or B2B) then in all likelihood the business would claim a GST credit. Important points to note are:

- Non-resident entities will now need to consider whether there is a GST liability on the inbound supply of intangible services to Australian customers where the Australian turnover associated with such services is greater than AUD 75,000 per annum.
- The scope of supplies of the so-called *inbound intangible consumer supplies* on which GST will be imposed, is determined by whether it is 'a supply of anything other than goods or real property'. Goods and real property are subject to other taxing provisions, so the words *supply of anything* are extremely wide. For example, the changes would apply to non-resident supplies of digital products, movie streaming, music downloads, professional services, rights, insurance and gaming.
- B2C transactions are subject to GST where the supply is made to an *Australian consumer* as defined. Broadly, an *Australian consumer* is an Australian resident that either is not registered for GST or if they are registered acquires the services for private use. As a result, if a non-resident does not charge GST on supplies to Australian customers they will either need to show that the customer is not an Australian resident or show that the customer is registered for GST. There are special rules applying if the services are supplied through the operator of an electronic distribution platform rather than direct by the non-resident.
- B2B transactions with Australian GST registered businesses are not subject to GST. However, non-resident suppliers will need to take *reasonable steps* to obtain information as justifying why it is a non-taxable B2B transaction and not a transaction with an *Australian consumer*. As well as taking the *reasonable steps*, the non-resident suppliers will need to identify the business customer ABN and obtain a declaration from the business customer that they are registered for GST.



- Non-resident suppliers impacted by the changes will need to register for Australian GST and comply with provisions around remitting GST and lodging returns.

Concessions for B2B transactions to take some non-resident suppliers out of the system – generally from 1 October 2016

Under previous provisions, B2B transactions with non-resident suppliers may have been subject to GST if the supply was made in Australia. This had the impact of requiring the non-resident to register and charge GST but with the purchaser having a corresponding credit entitlement. To reduce compliance costs on these revenue neutral transactions there have been concessions implemented generally from 1 October 2016, as broadly detailed below:

- Amending the provisions to determine whether a non-resident is acting through an *enterprise* in Australia for purposes of determining whether supplies are made in Australia.
- Where a non-resident is not making a supply through an enterprise in Australia, the following supplies made in Australia may not be subject to GST:
 - Supplies of intangibles in B2B transactions with GST registered recipients.
 - Supplies of intangibles to other non-residents in the course of this other entities enterprise carried on outside of Australia.
 - Supplies of leased goods to other non-residents (including transfer of ownership).
 - Certain charges associated with the supply and installation of goods in Australia.
- There has been a widening of the GST free concession for Australian businesses contractually making supplies to non-residents but where the actual supply is to a third party Australian GST registered recipient. It could be worthwhile reviewing agreements between Australian suppliers and non-residents under which the actual supply is made to such third parties in Australia. For example, these concessions may now cover certain warranty repairs supplied in Australia under warranty arrangements offered by a non-resident supplier.

Non-resident entities making taxable B2B supplies in Australia or being charged GST on Australian agreements under which actual supplies are made to third parties in Australia may wish to review arrangements to see if they qualify for these concessions.

PKF Comment

These measures have been implemented in consultation with other VAT/GST jurisdictions and as part of the guidelines for business-to-consumer supplies of digital products and services developed by the OECD. The amendments in Australian law are broadly modelled on similar rules currently in operation in the European Union and Norway.



The stated objectives of the amendments are to preserve the integrity of Australian GST collections on the private consumption of digital products and services by Australian consumers and also

to correct a perceived competitive disadvantage for Australian domestic suppliers relative to international competitors.

The initial estimates are these amendments should impact around 100 offshore businesses supplying digital products and services to Australian consumers. However, given the wide scope of the amendments to include the supply of anything other than goods and real property it may be that there are many unforeseen supplies which will be impacted.

As at May 2017, there are also proposed related amendments, to remove the GST concession on low value goods being imported into Australia. If passed, these amendments will potentially impact offshore suppliers of goods into Australia, particularly on imports for less than AUD 1,000 to Australian consumers.

If you would like advice or further information regarding how these GST rules may affect your business, please contact Ian Matthews at imatthews@pkf.com.au or call +61 2 8346 6000.

Austria

Inbound secondment to Austria, mandatory registration required

A German employee is sent to Austria as field staff. The employee has no Austrian residence, is not staying in Austria for longer than 183 days per year, but only travelling to Austria for acquiring new customers through meetings with potential customers without any power of attorney. The employee does not render any services to the potential customers but will only forward customer orders to the employer. The German company is neither having a subsidiary nor a registered branch nor a place of operation in Austria.



The question is if there is a secondment according to the social security law, the income tax law and/or according to the law against wage and salary dumping.

With reference to the social security law the employee remains liable for his social security contributions in Germany (see European directive 883/2004 for the coordination of European systems of social security). The employee only needs a form A1 issued by the social security for being able to work in two European countries. According to article 15 of the double tax treaty with Germany the employee remains taxable in Germany as he is not staying in Austria for longer than 183 days per year and as his salary is paid by a German company in Germany without having any taxable place of operation in Austria. The only necessary act is to have time sheets showing less than 183 days of stay in Austria. With respect to the law against wage and salary dumping the solution of this case is different. Following the information of the social ministry, the secondment of employees as field staff on a frequent basis and not only for a short period, is subject to this ruling and therefore calls for mandatory registration. As the registration has to be done electronically before starting the secondment, clients need to be aware of this regime and arrange proper compliance well in advance of a secondment to Austria.

PKF Comment

For secondments to Austria, social security and salary tax still might be payable in the home country but according to the Austrian law against wage and salary dumping the foreign employer has to register each and every single secondment before starting work in Austria. In practice, the registration process takes some time and requires at least a few days in advance to ensure full compliance. For further information or advice concerning the electronic registration for secondments, please, contact Thomas Ausserlechner at thomas.ausserlechner@pkf.at or call +43 15128 780

Belgium

Patent income deduction is replaced by innovation tax deduction

As per 1 July 2016, the patent income deduction (PID) has been abolished, be it with a phase-out transition regime until 30 June 2021. Further to the Law of 9 February 2017, the innovation tax deduction (ID) has been introduced with entry into force as of 1 July 2016. The purpose of the abolishment of PID is to accommodate certain concerns at international tax level whereas the purpose of the ID is to increase the competitiveness of Belgium in the international tax landscape. That is why the scope of ID is much broader than what was the case for PID. This also explains why ID has certain attractive tax features that PID did not have.

PID transition regime

Again, taxpayers can still benefit from the PID transition regime for 'patents' that were either acquired or requested prior to 1 July 2016. However, as an anti-abuse of law rule it should be noted that the transition regime cannot be applied if the Belgium company or permanent establishment, directly or indirectly, acquired the patent between 1 January 2016 and 30 June 2016 from a related company that could not benefit itself from either PID in Belgium or from a similar foreign tax relief. In addition, if the taxpayer wants to make use of the transition regime, he will have to make an irreversible choice between either PID or ID during the entire phase-out period. This choice will have to be made per individual patent.

What is the innovation tax deduction?

In essence, the purpose of the ID is to give maximum Belgium corporate tax relief to taxpayers that carry on own R&D activities (and thus incur own R&D expenses) and/or that outsource R&D activities to third party contract R&D service providers. This is reflected in the rationale of the below nexus fraction.



First of all, it should be noted that the scope of the ID is much broader than what is the case for the PID. Indeed, the PID only applied to 'royalty' income derived from 'patents'. Conversely, the ID applies to 'royalty' income derived from patents, software which is protected by author's rights, market and data

exclusivity granted by the Government and certain 'agricultural' rights.

Specifically, the ID is computed as follows : **net royalty income * 85% * nexus fraction**

As far as this formula is concerned, the following should be noted :

- As is also the case for PID, the notion 'royalty' comprises both 'explicit royalties' (i.e. derived from granting a license on the IP) and 'implicit royalties' (i.e. comprised in the overall sales price of a good or service if the taxpayer uses the IP for its own exploitation purposes);
- As is also the case for PID, only open-market royalty income is eligible for ID tax relief ;
- Unlike the PID that generally applies to 'gross' royalty income, ID applies to 'net' royalty income. In summary, net royalty income equals gross royalty income reduced by expenses relating to the IP. These include IP amortization costs, R&D staff payroll costs, etc. As a matter of principle, these costs equal the parameter 'B' of the below nexus fraction;
- While the PID tax deduction rate equals 80%, the ID tax deduction rate equals 85%;

- Finally, the following so-called nexus fraction should be considered : $A * 1,3 / B$ whereby:
 - 'A' covers all own R&D expenses of the taxpayer, as well as R&D service fees that the taxpayer, directly or indirectly, incurred from third party contract R&D service providers;
 - 'B' covers all IP related expenses incurred by the taxpayer. Obviously, 'B' includes all expenses comprised in 'A', but also covers R&D service fees incurred from affiliates as well as costs incurred with respect to the IP acquisition. However, 'B' does not comprise e.g. indirect expenses with respect to the real estate where R&D activities take place or with respect to the financing of the IP. Expenses incurred by the taxpayer with respect to cost contribution arrangements that give rise to IP co-ownership are also excluded from 'B';
 - 'A' can be increased by 30%, but is in any event capped at 'B'.

Key comparison between patent income deduction and innovation tax deduction

Some other very relevant differences between PID and ID can be summarized as follows:

- Unlike PID, the amount of ID exceeding the taxable basis of a given financial year can be carried forward to a subsequent financial year;
- Unlike PID, ID also applies to capital gains realized on the eligible IP right;
- While PID may have a relatively limited geographical scope, ID applies to all royalty income which is comprised in the taxable basis in Belgium, regardless of the country of origin of that income;
- While PID could only be claimed as from the financial year in which the patent was formally granted, ID can be claimed as from the financial year in which the IP right protection has been requested. However, if such request is refused after all, the prior-year ID will be recaptured.

PKF Comment

As can be derived from the above considerations, taxpayers that are eligible for the transition regime will have to make an irreversible choice between either one of them and this per type of patent. As the 'mechanics' of both PID and ID substantially differ on certain fundamental aspects, it is strongly advised to run a simulation and duly compare the cash-flow

impact of both options. Needless to say that the amount of 'own R&D expenses' of the taxpayer and the extent to which intercompany R&D subcontractors are involved will significantly impact the ultimate business decision. If you have any more questions, feel free to reach out to Kurt De Haen at kurt.dehaen@pkf-vmv.be or call +32 2 460 0960 for further guidance on this subject matter.

Bulgaria



New amendments to the possibility of filing a corrective annual corporate income tax return

As per the 2017 amendments to the Bulgarian Corporate



also apply for the corporate income tax return due for 2016.

Income Tax Act (CITA), entities will be able to file a one-off corrective corporate income tax return in case of mistakes identified after 31 March of the following year, which is the deadline for submitting the regular corporate income tax return. The corrective return may be filed by 30 September of the following year. This will

also apply for the corporate income tax return due for 2016. The correction procedures existing until 31 December 2016, which include the notification of the National Revenue Agency (the NRA), will continue to apply in all other cases. The scope of events that may trigger a correction is increased. It will now include adjusting events within the meaning of the applicable Accounting Standards.

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 how to be compliant with the rapid changes of the tax legislation in the ever changing business environment. For advice concerning Bulgarian tax planning or tax compliance, please contact Venzi Vassilev on venzi.vassilev@pkf.bg or call +359 2439 4242.



Chile

Tax credit derived from profits generated until 31 December 2016

Taxpayers who had to determine their income according to the results of financial statements prepared on the basis of full accounting records, were since 1984 subject to a regime whereby profits of the companies were affected by income tax on an annual basis. The personal income tax corresponding to the investors (stockholders, partners and individual entrepreneurs) was paid when such profits had been distributed or withdrawn. The tax paid by the companies (First Category Tax) acted as a tax credit against the personal income tax (Global Complementary Tax or Additional Tax), at the rate that would have affected the profit according to the chronological order when the profit was generated.



This regime has now come to an end. The tax reform established in the law issued in 2014 has become effective as of 1 January 2017. Two income tax regimes have been established, which will also apply to the taxpayers mentioned above. Under both regimes the corporate income tax is a credit deductible from the income tax of the stockholders, partners and individual entrepreneurs on said profits, according to the system that affects the company:

- Attributed income system: the annual tax at a rate of 25% on companies' profits is fully deductible as a tax credit;
- Partially integrated system: the annual tax (at a rate of 25.5% in 2017 and 27% from 2018 onwards) affecting companies' profits can also be used as

a tax credit by the stockholders, partners or individual entrepreneurs who have received such profits. However, 35% of such credit must be reimbursed by the beneficiaries. It must be pointed out that investors domiciled in countries that have signed a double tax treaty with Chile - in accordance with the respective treaty - will not be subject to the said reimbursement.

However, the First Category Tax on accumulated profits as of 31 December 2016 is still a tax credit that benefits the stockholder, individual partner or entrepreneur, when such profits are withdrawn or distributed. That credit can be fully used. However, the time at which the credit should be used and the way to determine the amount that can be used at each occasion have changed. In fact, for each of the new regimes, the tax reform requires companies to determine the taxable and non-taxable amounts to which withdrawals and distributions of profits are charged, the income tax credits that accrued up to 31 December 2016 and those that originated from 1 January 2017 onwards. All of this must be kept in special mandatory registers.

The First Category tax credit originated as of 31 December 2016 is no longer granted per annum, according to the rate that affected the company's profit in each year. On the contrary, a total amount is determined by calculating an average rate on the accumulated profits at that date. The accumulated credit as of 31 December 2016 is granted following that corresponding to income originated from 1 January 2017. The amount of this existing credit in the company derived from the old tax regime may be increased as a result of mergers with companies that also have balances of these credits.

PKF Comment

New regulations preserve the right to a tax credit in favor of partners, stockholders and individual entrepreneurs, consisting of the income tax that affected the profits retained in the enterprises up to 31 December 2016. Consequently, such taxpayers are subject to a careful control of taxable and non-taxable amounts that can be distributed or withdrawn, the sequence of which has to be followed for every distribution or withdrawal and the tax credit linked to such profits, taking into account whether they were produced up to 31 December 2016 or in subsequent

years. If you would like further information or advice on how the new rules may affect your business, please contact Antonio Melys at amelys@pkfchile.cl or call +56 22650 4332.



China releases new rule on Tax Investigation Adjustments and Mutual Agreement Procedures

By the end of March 2017, the State Administration of Taxation (SAT) issued an Announcement [2017] No. 6 (Announcement 6), titled 'Supervisory Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures'. Announcement 6 will be effective on 1 May 2017. Announcement 6 gives the guidance on risk management of special tax adjustments, the procedures and relevant rules on tax audits, investigations and adjustments, and mutual agreements and other matters.

The trinity of Announcement 6, 42 (new requirements on transfer pricing documentation and disclosure) and 64 (updated APA scheme) completes a New China TP Platform to replace the long-time used Chinese TP Bible - Circular 2 (Guoshuifa [2009] No. 2). This new Announcement expands the scope of investigation, updates various aspects of procedure and methodology for investigations and adjustments, all with a clear objective to better align China with the BEPS project and its standard that 'profits are taxed where economic activities generating the profits are performed and where value is created'. The new China TP Platform means the SAT has moved Chinese transfer pricing rules and proposed rules into closer alignment with the new international standards developed for the BEPS project and continue to implement them for the post-BEPS era.

Announcement 6 contains 62 articles, which are cataloged into five sections and we identify some major changes:

Article 2-14, Article 23-29, Article 37-46	Special tax investigation adjustments Key notable area: potential TP audit targets. The tax authorities need to pay special attention to taxpayers subject to nine types of risk characteristics. The tax authorities will use 3 measures to flag companies for potential TP audits: review of related-party transaction forms filed with the annual tax returns, transfer pricing documentation and a company's profit level. Self-adjustment, but even if an enterprise adjusts and makes up taxes at its discretion, the tax authorities may still carry out a special tax adjustment and investigation.
Article 15-22	The factors of comparable analysis and transfer pricing methods Key notable area: apart from the CUP method, resale price method, cost plus method, TNMM and profit split method, the Announcement also allows for the use of "other methods" where appropriate such as the cost method, the market method and the income method which are frequently used for asset valuation.
Article 30-33	Intangibles It contains a number of provisions specifically addressing intangible property transactions, which are very aligned with BEPS projects on intangibles but the SAT puts specific emphasis on promotion of the brand on the Chinese market when determining the allocation of profits from the use of intangible property, and special location advantages.
Article 34-36	Intercompany services It incorporates a provision from 2015's Announcement 16 regarding outbound payment administration, which empowers the tax authorities to disallow a taxable deduction for service fees paid to an overseas related party that does not have significant substance, or fails to meet the criteria set out in a "benefit test".
Article 47-61	Mutual agreement procedures (MAP) One major change made by Announcement 6 is that taxpayers should apply directly to the SAT if they wish to bring a transfer pricing case to MAP, rather than applying to the local authorities first. Taxpayers with ongoing special tax investigations or that have not paid taxes assessed in an investigation may be denied access to MAP.

Intangibles:

Announcement 6 contains a number of provisions specifically addressing intangible property transactions. Announcement 6 does not contain a definition of 'intangible property', however it basically follows the DEMPE (development, enhancement, maintenance, protection and exploitation) concept on intangible assets proposed in the BEPS action plans. Notably, Announcement 6 adds a sixth function: promotion (i.e., DEMPEP functions), which goes beyond the OECD. The identification of promotion as a separate function demonstrates the importance China places on value created through marketing activities undertaken by Chinese companies.

Announcement 6 also provides for guidance on how the Chinese tax authorities should review intercompany royalties. For example, it states that the tax authorities should pay particular attention to whether the value of the licensed intangibles has declined since the royalty was initially established and whether price adjustment clauses are commonly found in third party contracts in the industry. This is consistent with our experience during negotiations with the tax authorities. During a formal investigation case the tax authorities would like to challenge whether the rate of the royalty paid should be depreciated instead of applying a fixed rate.

Furthermore, it also states that if a Chinese licensee has performed DEMPEP functions but it has not been reasonably compensated, then the special adjustment would be carried out. For those Chinese companies who perform promotion, further development and maintenance functions may need to consider if they need to charge the relevant royalties.

Inter-company services:

For related party services, Announcement 6 has reiterated the 'benefit test' once introduced in Announcement 16 (which is currently abolished and superseded by Announcement 6). Specifically, Announcement 6 has emphasized that a beneficial service should be able to generate economic benefit directly or indirectly, while an independent company would also have willingly purchased such service or carried out such activity on its own in an arm's length context.

Besides, if a service is provided by the overseas related party, which is deemed as a 'shareholder activity', such related outbound payment cannot be deducted for income tax purposes. Announcement 6 is now clearly defining 'shareholder activities' by providing examples to further interpret the principles of a beneficial nature.

Services which did not pass the requirements set out in the 'benefit test' may trigger an investigation from the tax authorities, and even a partial or full denial for income tax purposes of the deduction of such expenses in China.

PKF Comment

Announcement 6 increases the alignment between Chinese rules and international norms reflected in the OECD Guidelines. It also has some China-specific innovation to emphasize that Chinese businesses shall obtain their fair share of the global profit chain.

We would like to advise Chinese subsidiaries of multinational companies that they fully communicate with their group management not only on the commonality of China legislation and the global standard, but also on the differences between them. And for outbound transactions, Chinese companies shall also pay attention to this trend that the Chinese tax authorities will generally scrutinize transfer pricing arrangements.

For any further information or advice on PRC tax and transfer pricing, please contact Allan Jiang at allan.jiang@pkfchina.com or +86 21 6076 0876, Jason Li at jason@pkfchina.com or Josephine Yang at josephine@pkfchina.com.



Czech Republic

Application of VAT to advanced payments for undefined goods



On 21 February 2006, the European Court of Justice ruled in the case of Bupa Hospitals Ltd (C-223/03). Further to the latest amendment to the Czech Value Added Tax Act, which will enter

into force in July 2017, the conclusions from that case will be taken into account.

Commencing July 2017, VAT on advanced payments for undefined goods shall not be applied. In the case of prepaid goods, if the VAT has already been paid but the advanced payment has been used for buying the other goods, the supplier shall correct the tax base according to the previous legislation.

PKF Comment

This change in Czech legislation will have a significant impact on prepaid phone cards and network operators who have already been preparing for this change. If you would like advice or further information regarding how these rules may affect your business, please contact Jaroslava Hanková at hankova@apogeo.cz or call +420 267 997 721.



Germany

Third country rules of German CFC legislation compatible with EU law?

Is it compatible with EU law that passive income that is similar in nature to investment income is taxable in

the hands of a German resident taxpayer under German Controlled Foreign Company (CFC) legislation (sec. 7 et seq. AStG (Aussensteuergesetz) – German Foreign Tax Law) if he receives the income from a company that is located outside the EU? The German Federal Fiscal Court (Bundesfinanzhof – BFH) referred this issue to the European Court of Justice (ECJ) (decision of 12 October 2016 (I R 80/14)).

The German CFC regime aims to prevent profits from being shifted to low tax countries (with tax rates of less than 25%). Under the German CFC regime so-called 'passive' income generated by a foreign company that is controlled by German residents is attributed for tax purposes directly to its German shareholders regardless of whether such income has actually been distributed to them or not. If no distribution is made to the shareholders, the income is subject to tax even though the shareholders did not actually receive any cash funds (dry income). Even stricter rules apply to passive income that is similar in nature to investment income. Section 7 (6a) AStG defines such income as income from holding, managing, maintaining or increasing the value of cash and cash equivalents, receivables, securities, participations or similar assets. These stricter rules also apply in cases where the foreign company is not controlled by German residents, i.e. even German minority shareholders are exposed to taxation under this regime.

With regard to the Treaty on the Functioning of the European Union (TFEU) and the freedom of establishment (Art. 43) and free movement of capital (Art. 63) laid down in this treaty, the German resident taxpayer may demonstrate that the foreign company carries on genuine economic activities and therefore does not qualify as a controlled foreign company. If the foreign company meets this so-called 'motive test' (sec. 8 (2) AStG), CFC taxation will be suspended. The ECJ has in its decisions already developed criteria for determining 'genuine economic activities'. However, German law expressly provides that the motive test is available only in cases where the foreign company is a resident within the EU.



Art. 63 (1) of the TFEU protects the free movement of capital – unlike the freedom of establishment – not only between member states but also between members states and third countries. Therefore the question arises whether it is compatible with current EU law if a motive test is denied in cases where the foreign company is resident in a third country.

If the ECJ holds that the principle of free movement of capital does apply, the Court also needs to consider the questions placed before it by the BFH if, and if so, under which conditions it is compatible with the free movement of capital to tax passive income that is similar in nature to investment income and that is received from a company located in a third country.

However, the so-called standstill clause (Art. 64 (1) TFEU) may restrict the free movement of capital because it provides for an exception to any restrictions that were already in place on 31 December 1993 with regard to third countries. Furthermore, the question arises in this case whether such a restriction is actually still in place because the restriction that existed on 31 December 1993 was temporarily amended, although the amended version was never applied in practice.

PKF Comment

If your company or your group of companies qualifies for taxation under the German cfc regime in cases where the foreign company is located outside the EU, you should appeal against assessment notices issued on the basis of sec. 18 (3) AStG and apply for a suspension of execution. The German tax authorities are obliged to grant such application if the reason provided is the incompatibility with EU law. If you would like further information or advice on how the new rules may affect your business, please contact Thomas Rauert at thomas.rauert@pkf-fasselt.de or call +49 40 35552 137.

Ghana

Various tax policies taken in 2017

The following fiscal policies have been taken by the Government of Ghana in the first quarter of 2017.

Income tax amendment bill, 2017

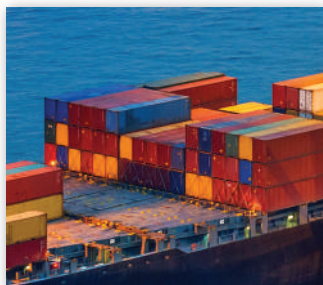
This bill has been passed by the Parliament of Ghana to amend Section 7(1) of the Income Tax Act, 2015, Act 896 to exempt gains on realization of securities of companies listed on the Ghana Stock Exchange from income tax for the period 2017 to 2021. The aim is to encourage investors and companies to list their shares and also trade on the Ghana Stock Exchange.

Customs and excise petroleum tax and related levies bill (repeal), 2017



This bill has been passed by the Parliament of Ghana to repeal the Customs & Excise (Petroleum Taxes & Petroleum Related Levies) Act 2015, Act 685. The effect is to reduce the retail price of petroleum products in the country.

Special import levy (Amendment) bill, 2017



This bill has been passed by the Parliament of Ghana to amend the Special Import Levy Act 2013, Act 861 to remove the 1% Special Levy payable to Specific Imported goods. The effect is to reduce the

cost of importation of essential products into the country.

Ghana-Mauritius double tax treaty

Ghana and Mauritius have signed a double tax treaty (DTT) on 11 March 2017 at Port Louis, Mauritius to avoid or eliminate double taxation of the same income in the two countries. The DTT is subject to ratification by Ghana Parliament.

PKF Comment

If you would like further information on how these rules may affect your Ghana business, please contact Frederick Bruce-Tagoe at fbrucetagoe@pkfghana.com or call +233 302 221 266.

Hong Kong

Hong Kong's commitment to carry out the first Automatic Exchange of Information (AEOI) by the end of 2018

In September 2014, the Hong Kong Government indicated its support for implementing AEOI as promulgated by the Organisation for Economic Co-operation and Development (OECD) with appropriate participating countries with a view to commencing the first exchange of financial account information by the end of 2018.

The Inland Revenue (Amendment) (No. 3) Ordinance 2016, which came into effect on 30 June 2016, provides a legal framework for Hong Kong to implement AEOI. Under the new laws, Hong Kong will carry out AEOI on a reciprocal basis with partners with which Hong Kong has signed a Comprehensive Avoidance of Double Taxation Agreement (CDTA) or Tax Information Exchange Agreement (TIEA). These bilateral CDTAs or TIEAs provide the legal basis for Hong Kong to implement AEOI. In addition, Hong Kong and the relevant CDTA/TIEA partners will need to enter into a Competent Authority Agreement (CAA), which sets out the modalities of exchange of information collected pursuant to the AEOI standard.

Under the AEOI standard, a reporting financial institution (FI) in Hong Kong is required to identify the financial accounts held by the tax residents of reportable jurisdictions (i.e. tax residents who are liable to tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI arrangement). On an annual basis, the reporting FIs will need to collect the reportable information of these financial accounts and submit such information to the Hong Kong Inland Revenue Department (IRD). The IRD will then transfer the information collected from the reporting FIs to the tax authorities of the relevant AEOI partners.

Up till 30 April 2017, Hong Kong has entered into CAAs with 11 countries. It is expected that the number of Hong Kong's CAA partners will increase sharply in the second half of 2017.

PKF Comment

Any non-Hong Kong entities or individuals holding financial accounts in Hong Kong should be aware that the reporting FIs in Hong Kong have already commenced their due diligence review procedures for AEOI purposes since 1 January 2017. Reportable account holders should understand whether they will be regarded as Hong Kong tax residents under relevant local tax laws, and what information will have to be reported and exchanged. For further information or advice concerning the implementation of AEOI in Hong Kong or any advice with respect to Hong Kong taxation, please contact David Cho at davidcho@pkf-hk.com or Henry Fung at henryfung@pkf-hk.com or call +852 2806 3822.

Hungary

Online invoicing connection to the tax authorities likely to be postponed

In Hungary, every cash register is directly connected to the State Tax Authority (NAV), so the tax authorities receive information about transactions registered into cash registers immediately and continuously.

According to the current regulations a statement about domestic transactions must also be attached to the VAT return if the VAT content of the transaction exceeds HUF 1 million (around EUR 3,300).



The online connection to NAV should have been extended to invoicing issued by computers and the threshold for domestic recapitulative statements should have been reduced to HUF 100,000 HUF (around EUR 333) as of 1 July 2017.

However, according to the Draft Act amending certain tax laws submitted at the beginning of May 2017 the Government intends to postpone these provisions until 1 July 2018.

PKF Comment

Even if taxpayers will be granted a 12-month extension for online invoicing, the question arises when the detailed rulebook will be ready, which would help taxpayers to adopt the requested changes in their invoicing systems. If you would like further information or advice on how the new rules may affect your business, please contact Krisztián Vadkerti at vadkerti.krisztian@pkf.hu or call +36 1 391 4220.

CbCR is approaching

Regulations for submitting CbCR (Country by Country Reporting) were published in May 2017. GUOs (Global Ultimate Organizations) or designated mother company Hungarian entities must submit CbCRs for the first time pertaining to FY 2016, within 12 months after the last day of the reporting FY 2016.

India

Double Tax Treaty – Third protocol amending the India-Singapore DTT comes into force

The Third Protocol amending the India-Singapore Double Tax Treaty (DTT), which was signed on 30 December 2016, has entered into force on 27 February 2017. The same has been notified in the Official Gazette today on 23 March 2017.

The India-Singapore DTT provided for residence based taxation of capital gains of shares in a company. The Third Protocol amends the DTT with effect from 1 April 2017 to provide for source based taxation of capital gains arising on a sale of shares in a company. This will curb revenue loss, prevent double non-taxation and streamline the flow of investments. In order to provide certainty to investors, investments in shares made before 1 April 2017 have been grandfathered subject to fulfilment of conditions in the Limitation of Benefits clause as per the 2005 Protocol. Furthermore, a two-year transition period from 1 April 2017 to 31 March 2019 has been provided during which capital gains on shares will be taxed in the source country at half the normal tax rate, subject to the fulfilment of certain conditions in the Limitation of Benefits clause.

The Third Protocol also inserts Article 9(2) in the DTT which facilitates the relief of economic double taxation in transfer pricing cases. This is a taxpayer friendly measure and is in line with India's commitments under the Base Erosion and Profit Shifting (BEPS) Action Plan to meet the minimum standard of providing Mutual Agreement Procedure (MAP) access in transfer pricing cases. The Third Protocol also enables the application of domestic law and measures concerning the prevention of tax avoidance or tax evasion.

PKF Comment

This is a sequel to the amendments carried out in the Indo-Mauritius DTT. The amendment was signed in December 2016 and is currently being notified. For further information or advice on international taxation, or any advice concerning taxation in India, please contact Hariharan S at hari@pkfindia.in or call +91 44 28 11 29 85.

Residential status – Guiding principles for determination of place of effective management (POEM) of a company

The concept of POEM for deciding the residential status of a company was introduced by the 2015 Finance Act. It is effective from 1 April 2016 and accordingly shall apply from assessment year 2017/18 onwards. The guidelines for determining the POEM have been uploaded on the website of the Income Tax Department (www.incometaxindia.gov.in). These guidelines of POEM have been finalised after placing draft guidelines in the public domain for seeking comments from stakeholders and the general public, and with extensive consultations thereafter.



The final guidelines on the POEM contain some unique features. An Active Business Outside India (ABOI) test has been provided, so as not to cover companies outside India which are engaged

in active business. The intent is not to target Indian multinationals which are engaged in a business activity outside India but to target shell companies and

companies which are created for retaining income outside India although real control and management of affairs is located in India. It is emphasized that these guidelines are not intended to cover foreign companies or to tax their global income, merely on the ground of the presence of a permanent establishment or business connection in India.

Adequate administrative safeguards have been incorporated in the guidelines by mandating that the Assessing officer (AO), before initiating an inquiry for POEM in a case of a taxpayer, will seek approval from the Principal Commissioner of Income Tax/ Commissioner of Income Tax. The AO shall also obtain approval from the Collegium of Principal Commissioners of Income Tax before holding that the POEM of a non-resident company is in India.

It has been further decided that the POEM guidelines shall not apply to companies having turnover or gross receipts of INR 500 million (Fifty crore) or less in a financial year.

PKF Comment

Indian business groups carrying on business through SPVs outside India were to be hit by the introduction of the POEM as a test for residence. This makes the overseas entities residents in India and makes them liable to tax in India on their worldwide income. Of course relief would be available under the DTTs for taxes paid in the country of incorporation. Relief to small entities incorporated overseas has been extended by stipulating that the guidelines would apply only to companies having gross turnover or receipts over INR 500 million.

Italy

Tax credit for investments in R&D

The tax rules governing the tax credit applicable to investments in the field of research and development have been amended by the Budget Law for 2017.

According to the previous rules, businesses investing in research and development were entitled to a tax credit up to the annual maximum amount of EUR 5 million for each beneficiary, calculated on a percentage

of 25% or 50% depending on the type of expenses borne and on their average in the three tax periods prior to 31 December 2015.

After the amendments introduced by Law no. 232/2016 (Budget Law for 2017), the new rules governing the tax credit applicable to investments in research and development (R&D) provide that:

- claimants may benefit from the above credit in relation to investments made as of 2015 to 2020;
- the R&D tax credit applicable for tax years 2017, 2018, 2019 and 2020 amounts to 50% of all the costs listed as permitted expenses. Expenses made in tax years 2015 and 2016 remain subject to the preceding percentage (25% or 50% pursuant to the type of expense borne);
- the yearly top limit of the tax credit available to each beneficiary has been increased from EUR 5 million to EUR 20 million: thus, in 2015 and 2016 the annual maximum limit amounts to EUR 5 million, while in the remaining four periods (2017, 2018, 2019 and 2020) the credit is subject to the new maximum limit.

The tax credit may be also claimed by resident companies or permanent establishments in Italy owned by non-resident taxpayers that have entered into a contract with resident firms or firms located in other EU Member States in order to carry out R&D projects.

This bonus is available to all firms, regardless of their business size, legal form, industrial sector and their adopted accounting system.

Granting of this tax credit is automatic: it only requires the taxpayers to include it in their tax return.

PKF Comment

This benefit is an additional argument to attract foreign investors into Italy where the corporate tax rate has lately been reduced to 24%. This specific tax credit can be used in relation to contracts concluded with Italian universities or research institutions. Our firm has long standing relationships with local institutions in Genoa and can serve as a liaison reference. For further information or advice concerning Italian tax credits or any advice with respect to Italian taxation, please contact Stefano Quaglia at stefano.quaglia@tclsquare.com or call +39 010 8183250.

Malaysia

The new withholding tax landscape in Malaysia

The Finance Act 2017 in respect of Budget 2017 has been published in the Official Gazette on 16 January, 2017, thus those amendments and changes announced in Budget 2017 will take effect as from that date.

One of the notable changes in Budget 2017 that will affect many taxpayers is the widening of the scope of withholding tax in Malaysia in respect of any of the following payments made to non-residents:

- Income falling under Section 4A (i) and (ii) of the Income Tax Act, 1967 (ITA) mainly in respect of technical/management advice, assistance or services rendered or installation services, irrespective of whether the services are performed in Malaysia or outside Malaysia. The Malaysia Inland Revenue Board (MIRB) has verbally clarified that in respect of existing contracts for services with non-residents during the transitional period, the withholding tax provision under the above amendment will be based on when the services are rendered and the date of payment for the services will be disregarded.
- In accordance with the clarification provided by the MIRB, the new definition of 'royalty' is the definition prescribed by the MIRB in respect of the definition of royalty in the double tax treaties. The inclusion of 'software' in the new definition of 'royalty' may indicate that the purchase of software from a non-resident may fall within the ambit of withholding tax in Malaysia including any licensing fee paid for the right to use software; and
- The widening of the definition of 'public entertainer' may result in potential overlapping of the provisions of withholding tax under Section 109B of the ITA (special classes of income under Section 4A(ii) of the ITA as highlighted above) and Section 109A of the ITA (with the new definition of public entertainer).



PKF Comment

With the above changes of the withholding tax landscape in Malaysia, the existing contracts for services with non-residents must be reviewed in order to identify the scope of the services and to address whether the new withholding tax provisions would be applicable. In respect of intra-group services within a group of companies, the scope of the shared services must be supported by a contract/agreement with proper explanation of the nature and the scope of the services in order to mitigate the withholding tax risk in Malaysia. Thus, the existing contract/agreement concluded with non-residents must be reviewed in light of the latest development in the withholding tax landscape in Malaysia.

For further information or advice concerning Malaysia taxation, please contact Ai Chen, Lim at aichen@pkfmalaysia.com or call +603 6203 1888.

Mexico

Upcoming FinTech Law



Since 2015 Mexico actively started working on a Financial Technology Regulation and at the beginning of 2017 the initiative was presented to Congress. The main

objective of this new regulation is to regulate the technology financial institutions in Mexico (FinTechs) that offer crowdfunding, electronic payment funds and virtual asset management (bitcoin), as well as the technology innovators. Some of the salient features are:

- The FinTechs must be authorized by the National Banking and Securities Commission (CNBV) to operate in Mexico and they must comply with the rules related to financial, operational and technological risks. The FinTechs' activities will be supervised by the CNBV, which may suspend or revoke the authorisation;
- The Bank of Mexico points out the conditions to determine what will be considered to be a Virtual Asset, as well as the restrictions for its

use. The FinTechs will be responsible to inform their clients of the characteristics and the risks of these assets;

- The technology innovators must request temporary and limited authorization to perform the activities related to test innovate products, services, business models and delivery mechanisms in a live environment, with a limited number of clients. If they prove to have the operative capacity they will get a permanent authorisation.

Finally, it is important to emphasize that if this initiative is approved, Mexico will be one of the first countries to regulate the FinTechs and would make a major breakthrough on the financial inclusion topic.

PKF Comment

This new regulation will offer safety and protection to all investors as well as ensuring the efficient performance of financial transactions through technology in a regulated environment. For further information related to Financial Technology Law, please contact Mario Camposllera at mcamposllera@pkfmexico.com or call +52 33 3634-7162.

Final draft on transfer pricing regulations

As a background, this obligation is established in Article 76-A of the Mexican Income Tax Law for Mexican taxpayers to submit three new transfer pricing informative returns (Master File, Local File and CbC report).

On 3 April 2017, the PRODECON (Procuraduría de la Defensa del Contribuyente) released the final draft of transfer pricing regulations, which will eventually be formally issued by the Mexican Tax Authorities (SAT), providing guidance on the Master File, Local File and CbC report, after these regulations were discussed between PRODECON, SAT and the taxpayers.

The final regulations include the following changes:

- The Master File can be prepared by a foreign related party and the Mexican taxpayers will be able to file it in English (or Spanish) as long as it is consistent with BEPS Action 13;

- For the Local File, there are new requirements and definitions that the Mexican taxpayer will have to take in consideration when filing such informative return;
- The Local File must be filed in Spanish, except for the business description of comparable companies and agreements that can be provided in English (or Spanish);
- Taxpayers with an APA or subject to the maquila rules have the option to omit filing the Local File informative return.

PKF Comment

The improvement and clarification related to the Master File, Local File and CbC report, will be very useful for the taxpayers as this guidance will help to understand the requirements and the information that need to be provided to the tax authorities in order to be compliant with the new transfer pricing regulations.

For further information related to transfer pricing regulations, please contact Ricardo Martinez at rmartinez@pkf-mexico.com or call +52 55 5097-3235

Maquiladora operations

For the validation of compliance with the minimum required percentage of machinery and equipment owned by the foreigner used in the maquila operation, in addition to the one owned by the company that performs the maquila activity, one should focus on the following aspects:

- Validation of the original investment amounts against the values declared in customs in the import orders of each and every one of the assets owned by the resident abroad, used in the maquila activity;
- Validation of the calculations of the amounts pending depreciation of each of the assets owned by the resident abroad in accordance with the maximum authorized amounts;
- Validation of the amounts of machinery and equipment owned by the company that performs the maquila, comparing selectively against the documents that protect its property;

- Validation of the calculations of the amounts pending depreciation of each of the assets owned by the company that performs the maquila activity, according to the maximum authorized percentage;
- Validation of the calculation of the minimum percentage of machinery and equipment owned by the resident abroad that is used in the maquila activity.

PKF Comment

This rule clarifies how the validation related to the minimum necessary percentage of machinery and equipment owned by the foreign company, used in the maquila operation, must be calculated. For further information related to Maquiladora operations, please contact Ricardo Martinez at rmartinez@pkf-mexico.com or call +52 55 5097-3235.



Poland

Ministry of Finance scrutinizes investment structure used by closed-end investment fund

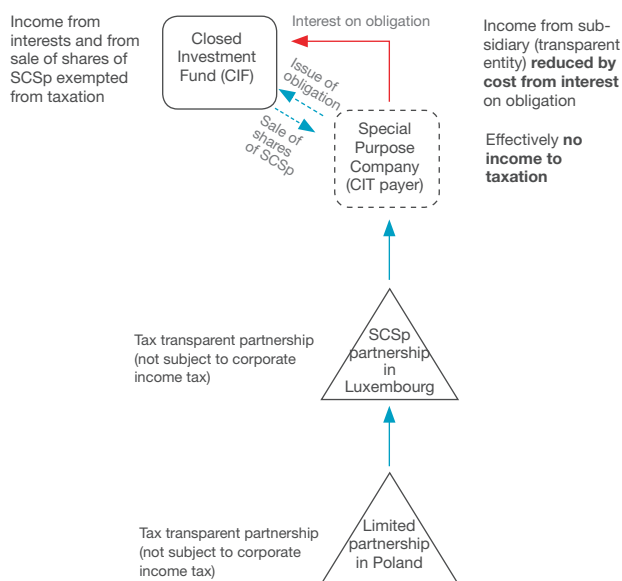
The Ministry of Finance (MoF) in Poland has begun to publish a series of statements cautioning about the possibility of applying a tax evasion clause for selected types of transactions implemented without economic justification.

This is the implementation of the recommendations of the 2015 OECD Final Report on Base Erosion and Profit Shifting (BEPS), Action No. 12 (Disclosure of aggressive tax planning).

The first announcement was issued on 8 May 2017 and concerned a structure based on a closed-end investment fund (CIF) and the use of bond-issued transactions as a way to exit from CIF structures. The warning concerned a situation where, within a group of companies not subject to income tax (so-called transparent companies (partnerships) for which the dominant entity is a CIF), there was a change in ownership structure financed by the issue of bonds in such a way that business income was reduced by

the interest on bonds. According to the MoF, these transactions seem to be driven by a recent amendment to corporate income tax law (as from 1 January 2017) further to which investment funds are no longer tax exempt on income generated through transparent companies (partnerships) but can still be exempt on interest income.

The Ministry of Finance warns that the above-described transactions are evaluated from the point of view of a clause against tax avoidance. The circumstances of these operations indicate that they could be made primarily in order to achieve a tax benefit contrary to the object and purpose of the Tax Act (reduction of the tax base by creating a tax expense in the form of interest on bonds, such interest being exempt at the level of an investment fund), and the mode of operation of the participating entities was artificial.



PKF Comment

Should you need additional information regarding Polish transfer pricing rules and corrections, or require advice on any Polish tax matter, please contact Anna Urbanska-Albero at anna.urbanska@pkfpolska.pl or call +48 22 560 76 50.

Romania

New rules applicable to micro-enterprises

The fiscal legislation applicable to micro-enterprises has been amended several times since the beginning of this year. Starting this year, all taxpayers with a registered income of up to EUR 500,000 in 2016 should change their taxation regime, becoming microenterprises. This threshold of EUR 500,000 increased from EUR 100,000 applicable in previous years. Please note that taxpayers having a share capital of more than RON 45,000 (approx. EUR 10,000) are not obliged to apply this taxation regime, even if their income does not exceed the EUR 500,000 threshold.

Also, the tax rate for income obtained by a micro-enterprise (having at least one employee) has changed from 2% to 1%. However, micro-enterprises without employees would have to apply a 3% rate when computing the tax on their income.

PKF Comment

The increase of the threshold for the application of the microenterprise tax regime seems to be a beneficial measure for most companies. However, for those enterprises with a lower profitability the possibility of making use of the standard corporate income tax regime should be taken into consideration.

For further information or advice concerning the tax regime for micro-enterprises or any advice with respect to Romanian taxation, please contact Alina David at alina.david@pkffinconta.ro or call +40 21 317 31 96



Serbia

Amendments to VAT law regarding the place of supply of services rules

As from 1 April 2017 new rules for determining the place of supply of services in accordance with the VAT law have come into effect. According to the general rules:

- If the services are provided to a taxable person, the place of supply of services is considered to be the place where the recipient has a seat or permanent establishment,
- If the services are provided to a non-taxable person, the place of supply of services will be the place where the service provider has its head office or a permanent establishment.

When a service is provided by a person who is a VAT payer in accordance with the VAT law, a taxpayer to whom the service is provided is deemed to be:

- Any person who carries out the business as a permanent activity regardless of the purpose of carrying out such business;
- A legal person, state authority, territorial autonomy and local government body seated in the Republic;
- A foreign legal entity, state authority, territorial autonomy and local government body registered to pay taxes on consumption in the country where they have their seat.

When the service is provided by a foreign entity which did not register for VAT payment in accordance with the VAT law, a taxpayer to whom the service is provided is deemed to be:

- Any person who carries out business as a permanent activity regardless of the purpose of performing such business;
- A legal person, state authority, territorial autonomy and local government body.

There are exceptions to the general rule: five in case of services provided to the taxpayer and another twenty one in case of services provided to an entity which is not a taxpayer.

PKF Comment

If you would like further information or advice on how these new VAT rules may affect your business, please contact Micun Žugic at micun.zugic@pkf.rs or call +381 11 30 18 445.



South Africa

Highlights of the double tax treaty between South Africa and the United Arab Emirates

South Africa (SA) and the United Arab Emirates (UAE) have entered into a Double Tax Treaty (DTT) on 23 November 2016. The provisions of the DTT are applicable as from 1 January 2017.

Generally, there are no taxes levied by the federal government in the UAE on the income or wealth of individuals and companies, except for oil and gas exploration companies, production companies and branches of foreign banks. In this regard, the tax rate in respect of oil and gas exploration companies varies between 55% and 85%.



The DTT between SA and the UAE has the following withholding tax implications:

- Dividends: 5% of the gross amount of the dividends if the beneficial owner holds at least 10% of the capital of the company paying the dividends. In other cases, the tax shall not exceed 10% dividends tax on the gross amount of the dividends.
- Interest: the tax shall not exceed 10% of the gross amount of the interest.
- Royalties: the tax shall not exceed 10% of the gross amount of the royalties.

Permanent establishment

The term "permanent establishment" refers to a fixed place of business through which the business of an enterprise is wholly or partly carried on. Interestingly,

unlike other DTTs, the term ‘permanent establishment’ also includes the performance of professional services or other activities of an independent character by an individual. However, these services or activities need to be performed for a period or periods exceeding the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned.

Teachers and professors exempt from tax

In terms of article 14, teachers and professors will be exempt from tax in the country that they are teaching or carrying out research. However, this exemption will only be applicable if their remuneration is received from a country other than the country they are employed in.

Furthermore, those individuals who receive income from research will be exempt from tax if their research is conducted for the public interest and not for the benefit of private persons.



PKF Comment

The DTT has been signed between SA and the UAE to prevent double taxation and double non-taxation. Over the years, the UAE has been increasingly attractive to SA entrepreneurs and qualified professionals, more specifically those in the teaching industry. It is important for SA residents to bear in mind that although the UAE does not levy tax on income received in the UAE, they will be taxed (unless such amount is subject to an exemption) in SA on the income received as SA residents are taxed on worldwide income. For further information or advice concerning South African taxation please contact Kubashni Moodley at kubashni.moodley@pkf.co.za or call +27 31 573 5000.



Spain

New VAT management system based on Immediate Supply of Information

A new VAT management system based on Immediate Supply of Information (SII) shall enter into force on 1 July 2017.

- Taxpayers subject to the SII (and those choosing to adopt it voluntarily) must send details of their billing records within four days via online filing to the Tax Agency website. However, during the first six-monthly period in which the system is in place, taxpayers may avail of an extraordinary eight-day extension in the immediate supply of information period;
- They can file and pay their periodical VAT self-assessments ten days later than usual;
- They will no longer be required to file some informative forms: Form 347 (third-party transactions), Form 340 (record books) and Form 390 (annual VAT summary).
- Taxpayers can compare the information in their Record Books with the information supplied by their clients and suppliers, provided these are included in the system.

The ‘Immediate Supply of Information’ (SII) represents a substantial improvement in communications between the Tax Agency and the taxpayer, since it will enable them to have an instantaneous, two-way, automated relationship. Furthermore, it is a new and innovative tool, both to assist the taxpayer and to improve the efficiency of tax checks.

The SII basically consists of electronically transmitting billing records from VAT Books. To do this, the taxpayer must send the Tax Agency billing details electronically and by using this information the different Record Books will be configured, practically in real time. But taxpayers are not required to send the actual bills.

The target group that will be subject to compulsory use of the SII is made up of taxpayers who are subject to self-assessment of VAT on a monthly basis:

- Large Businesses (turnover of over EUR 6 million);
- VAT Groups;
- Registered with REDEME (Monthly VAT Return Registry).

In addition, any other taxpayer wishing to voluntarily apply for SII may do so.

The new system will affect approximately 63,000 taxpayers, which represents approximately 80% of the country's total business turnover.

Advantages of the system

- Quality information shall be made available in a sufficiently short time frame so as to improve the VAT management system;
- "Fiscal Information" shall be obtained, since the taxpayer shall avail of a 'filed' and a 'compared' Record Book on the Tax Agency online system, with all the information from third parties within the group or the Tax Agency database. Taxpayers will be able to compare this information before the end of the monthly VAT return term. The taxpayer will be able to correct any error committed in filed returns without needing to be required to do so by the Tax Agency.
- Decrease in information requirements by the Tax Agency, since many of the current requirements are aimed at requesting Records, invoices or data contained therein in order to check certain transactions;
- It modernises and standardises the method of keeping traditional VAT Record Books;
- Reduction of formal obligations, removing the obligation to file some informative forms;
- Reduction in terms of filing VAT returns, since the Tax Agency has the information on transactions almost in real-time and in greater detail.

PKF Comment

For further advice concerning Spanish tax payment changes or any advice with respect to Spanish taxation, please contact Blanca Pérez or Alberto Rodríguez Arredondo at arodriguez@pkf-attest.es or call +34 94 513 7426.

Switzerland

Switzerland will exchange the information on advance tax rulings having a cross-border impact as of 1 January 2018

The Federal Council adopted the total revision of the Tax Administrative Assistance Ordinance and brought it into force on 1 January 2017. The new ordinance defines the framework and the procedures required for the spontaneous exchange of information including those that apply to the exchange of information on advance tax rulings. The first spontaneous exchanges of information with Switzerland will take place as from 1 January 2018 onwards and will apply to tax periods starting from then.

For the specific case of advance tax rulings, the ordinance defines which categories are subject to spontaneous exchanges and which countries have to be informed. Regarding the relevant timeframe:

- All new rulings (falling in one of the defined categories) will be subject to the spontaneous exchange of information as of 1 January 2018;
- Tax rulings (falling in one of the defined categories) issued after 1 January 2010 and still effective on 1 January 2018 (or 2017 in case of specific agreements) would be subject to the spontaneous exchange of information.

The countries receiving the information in the templates (not yet available) will be entitled to request further and more detailed information (e.g. a copy of the ruling) based on the applicable double tax treaty provision.

PKF Comment

Swiss taxpayers should be aware that Switzerland will share its tax ruling decisions (having a cross-border impact) with other jurisdictions. We recommend that taxpayers analyze all their Swiss tax rulings in place and assess which ones would be covered by the spontaneous exchange. The taxpayer can decide to request the tax authority to cancel certain tax rulings before the end of 2017 or can file amended rulings. Furthermore, the taxpayer has the possibility to appeal against the exchange of the ruling information.

Swiss VAT law places new obligations on foreign companies as of 1 January 2018

In accordance with current Swiss VAT law and relevant regulations, foreign companies are exempt from the registration obligation under the following circumstances:

- A foreign company which generates less than CHF 100,000 of turnover per year from taxable supplies in Switzerland is exempt from VAT;
- All supplies of services (not of goods, whereas the term 'supply of goods' is more broadly defined in Switzerland than in other (European) countries) carried out by a company where the place of supply is deemed to be in Switzerland for VAT purposes are subject to acquisition tax. VAT liability is thus transferred to the recipient of the supply. The foreign company has no obligation to register in Switzerland, irrespective of turnover;
- Low-value goods imported into Switzerland are exempt from import tax if the cost incurred does not exceed CHF 5.



The partial amendment to the Swiss VAT law coming into force on 1 January 2018 will impact companies not established in, but providing supplies toward (i.e. generating turnover in) Switzerland. Such foreign companies may be liable to pay Swiss VAT. In particular, the new VAT legislation will result in the following changes in VAT liability for foreign companies:

- Tax liability for foreign companies, which supply goods to Switzerland or provide end users with telecommunication and electronic services, will no longer be calculated based on the turnover generated in Switzerland, but rather on the turnover generated worldwide. Accordingly, if a company generates less than CHF 100,000 from services of this kind in Switzerland, but at least CHF 100,000 in turnover around the world, it will from 1 January 2018 still be liable for VAT in Switzerland from the first franc of turnover.
- Foreign companies that exclusively provide services (whereas the term 'supply of services' is more narrowly defined in Switzerland than in other (European) countries), which are subject to acquisition tax in Switzerland, do not have to register for VAT in Switzerland. This applies irrespective of the amount of turnover generated.
- Low-value deliveries will still be exempt from tax upon import. However, under the new VAT legislation, (online) retailers that generate over CHF 100,000 per annum in turnover in Switzerland through the supply of goods will be liable for VAT (i.e., obliged to charge Swiss VAT on the goods supplied).

PKF Comment

To protect your business reputation as well as to simplify your dealings with Swiss VAT, it is important to clear your VAT situation and plans in Switzerland well in advance and, if necessary, to timely register your business with the Swiss VAT authorities. We will be happy to explain the advantages, risks, costs and responsibilities that lie ahead as well as to assist with the VAT registration, if required.

Swiss withholding tax notification procedure: previously paid interest penalty charges can be claimed back

Preamble: Swiss companies are subject to a withholding tax of 35% if they distribute a dividend. Such dividend withholding tax needs to be declared and paid to the Swiss Federal Tax Administration (SFTA). If the conditions for the reimbursement of withholding tax are fulfilled, the recipient of the dividend is entitled to reclaim the withholding tax. However, for intercompany dividends the notification procedure might be applicable. In order to benefit from such notification procedure, the corresponding withholding tax declaration form as well as the notification form have to be filed with the SFTA and must be submitted within 30 days after the date the dividend became due.

In 2011, the Swiss Federal Court determined that the 30-day filing period is a forfeiture deadline and that a non-compliance with the 30-day declaration leads to the definitive forfeiture of the right to apply the notification procedure. Instead, the Swiss dividend payer was obliged to follow the reclaim procedure and thus pay the withholding tax as well as a late payment interest of 5% per year for the time between the payment due date and actual date of payment of the withholding tax. Based on this court decision the SFTA adopted a restrictive practice, with the result that in such cases the interest for late payment represented a final cost for dividend paying companies.

According to the new law adopted in favor of taxpayers and entered into force in the first quarter of 2017, the application of the dividend notification procedure is applicable even if the 30-day filing period has not been complied with as long as other requirements for the notification procedure are met. Thus, the 30-day filing period is no longer considered as a forfeiture deadline and a late payment interest penalty will no longer be issued. However, for the late filing of the declaration and notification forms an administrative fine of up to CHF 5,000 can be imposed.

The new rule will apply retroactively, meaning that all proceedings still pending as well as all those cases which had become legally binding after 2010 will

benefit from the change in legislation. Therefore, interest payments made since 2011 can be claimed back via application submitted to the SFTA no later than on 14 February 2018

PKF Comment

Please do not hesitate to contact us, should you have any questions on this topic, or if we may be of assistance to you in refunding of interest payments made in the past.

For further information or advice concerning the aforementioned changes in Swiss tax legislation or assistance with respect to any other Swiss taxation issues, please contact Rilana Wolf-Bayard at rilana.wolf@pkf.ch respectively Margarita Baeriswyl at margarita.baeriswyl@pkf.ch or call +41 44 285 75 00.

United Arab Emirates

UAE introduces VAT and Excise



The UAE Government has decided to introduce Value Added tax (VAT). VAT is expected to be introduced at a rate of 5% with some limited exceptions on basic food items, health-care and education. The

UAE is planning to implement VAT from 1 January 2018. Under the GCC [Gulf Cooperation Council] VAT Framework Agreement, other GCC countries may do so at the same time or by 1 January 2019.

As per the information sessions organized by the UAE Ministry of Finance (MOF), they will start registering companies that are above the yearly threshold for VAT in the second half of 2017. The MOF announced that businesses that provide taxable goods or services, with an annual revenue of more than AED 375,000 [USD 100,000] will be required to register. Businesses with taxable supplies below AED 375,000 but over AED 187,500 [USD 50,000] will have the option to register.

Business houses having more than one legal entity could be allowed to be registered under a group registration scheme within the UAE.

A Federal Tax Authority (FTA) has been set up to deal with and administer, collect and enforce this levy.

There is still no clarity on the product or service categories which may suffer differential tax rates or tax treatment. The issue could potentially become more complicated as some sectors are expected to be exempt, while others, such as exports and international transport, might be zero-rated.

Businesses will be required to file quarterly VAT returns and the payment of VAT will have to be made through the MOF's online portal within 20 days of the end of each quarter.

Recently, the UAE Federal National Council also approved a draft law that paves the way for excise duties on selected items, such as tobacco and fizzy and energy drinks by setting up a legal framework for taxation. It is intended that fizzy/carbonated drinks will be charged an excise duty of 50%, while energy drinks, tobacco and tobacco products will be charged 100% duty.

Voluntary registration for excise is expected to start during the third quarter. By the fourth quarter the registration will become mandatory. The excise returns will be required to be filed every month, with the duty payment by 15 days after the end of every month.

PKF Comment

The introduction of value added tax in the UAE next year, in tandem with the other GCC countries, will boost government revenue, which has been affected by the falling oil prices. There is no clarification so far on whether VAT would apply for goods and services for companies based in the various free zones in the UAE. Since a majority of businesses are located in these free zones, this could significantly impact their cost of doing business. The way businesses are structured presently may also get affected depending on how rules on group registration for VAT will be rolled out. Also, it is noted that VAT has not been simultaneously applied across the GCC. As a result, intra-GCC trades will have their own challenges till

VAT is uniformly implemented across the region. For further information or advice concerning VAT in the UAE or any advice with respect to UAE taxation, please contact Ms. Sarika Dhameja at sdhameja@pkfuae.com or call +971 4 38 88 900.

United Kingdom

Eligibility for the Double Taxation Treaty Passport (DTTP) Scheme extended from 6 April 2017

In the Spring Budget 2017, the Government announced that the DTTP scheme would be extended for loans entered into on or after 6 April 2017. The following are the key elements:



- The scheme will be made available to all UK borrowers that have an obligation to deduct withholding tax, including UK partnerships, individuals and charities.
- Transparent entities (including partnerships) will be admitted to the scheme as lenders where all of the constituent beneficial owners of the income are entitled to the same treaty benefits under the same treaty.
- Sovereign wealth funds and pension funds who are utilising withholding tax treaty rates will be admitted into the scheme as lenders.

PKF Comment

DTTP is an administrative simplification designed to assist certain foreign lenders in accessing reduced withholding tax rates on interest that are available within the UK's tax treaties with other territories. Previously the scheme was restricted to overseas corporate lenders and UK corporate borrowers only. Therefore the extension of the scheme is welcome as it will enable more borrowers and non-UK lenders to benefit from the DTTP scheme. For further information or advice regarding the DTTP scheme or any advice with respect to UK taxation, please contact Adam Kefford at adam.kefford@pkf-francisclark.co.uk or call +44 1392 66700.



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