PKF FRANCISCLARK

Chartered accountants & business advisers

December 2017

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this final quarter 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:

- Key tax changes from the 2017 Finance Law in Algeria and Kenya;
- Highlights of the corporate income tax reform in Belgium;
- VAT developments in China and the United Arab Emirates;
- The introduction of the Multilateral Instrument (MLI) in the United Kingdom;
- Double tax treaty developments in Serbia;
- Regulations on closely held companies and interest deduction limitations in Sweden.

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

International Tax Meeting – Edinburgh, Scotland: 14-17 November 2017
The 2017 PKF International Tax Meeting in Edinburgh, Scotland 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 Wednesday 15 November with joint sessions for assurance and tax delegates, focusing on risk management and compliance as well as tax committee updates. We will take a closer look at a number of PKF initiatives, after which the groups will separate. On Wednesday afternoon the International Tax Meeting group will host a client meeting with panel discussions (dedicated to the UK, US, China and the UAE) and one-on-ones afterwards. Johnston Carmichael will invite both local and international clients from a variety of industry sectors to support business development and build firm client engagements. Thursday 16 November will kick off with a session on the OECD MLI's (Multilateral Instrument) considerable impact on the worldwide network of double tax treaties, followed by an overview of recent tax developments in key jurisdictions like Mexico, Russia, China and the US. We will also have sessions dedicated to VAT developments and the ATAD (Anti-tax avoidance directive). Friday 17 November will begin with a session on blockchain, followed by recent tax developments in Hong Kong and a presentation by PKF India on Robotic Process Automation (RPA).

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Algeria

Key changes from the 2017 Finance Law

Tax incentives regime for assembly activities
Article 88 of the 2017 Finance Law provides that manufacturers engaged in assembly activities benefit from the preferential tax regime, depending on the product concerned, in favor of collections intended for the assembly industries and those referred to as CKD kit (knock-down kit).

The benefit of this tax regime is subject to three (3) conditions: (i) the realization of an investment (ii) job creation and (iii) compliance with an integration rate for the final product set by a joint decree between the ministers in charge of industry and finance. The preferential tax regime also includes parts, accessories and components imported separately and which form an integral part of the collections intended for the assembly industries.

PKF Comment

After more than 15 years of implementing this scheme, results are below expectations as regards to the number of companies created, employment, reduction in imports, exports and technological acquisition and integration of domestic production. The way forward requires a reform of the CKD device starting with a new approach which considers the assembly as a mere stage of an industrial process leading to the rise of the production line.

Taxation of capital gains derived from the transfer for consideration of developed or undeveloped properties

Article 77 of the 2017 Finance Law provides that as from 1 January 2017 capital gains realized on the sale of all or part of real estate - whether developed or not - realized by persons who sell, other than in the course of their professional activity, will be subject to a 5% IRG (personal income tax).

PKF Comment

The purpose of this measure is to subject to IRG (personal income tax) the income arising from the sale by individuals of real estate, whether developed or not. In our opinion this taxation essentially targets cases of speculation, including the very large number of real estate transactions which characterizes part of the Algerian real estate market.

Increase of the VAT rate

Article 26 of the 2017 Finance Law provides for an increase of the standard VAT rate from 17% to 19% while the reduced VAT rate increases from 7% to 9%.

PKF Comment

This measure can be seen as a decision taken by the Algerian government in order to improve the financial position of the State budgets and particularly under the current situation, the VAT rates were increased by two (2) points.

Increase of domestic consumption tax (DCT)

The 2017 Finance Law established a new tax and increased others as from 1 January 2017 in its article 28:

- tax on alcohol increases by 10%;
- the domestic consumption tax on beer and tobacco products, as well as SUVs and other leisure vehicles, is also raised;
- the tax on petroleum products goes up for gas and gasoil;
- the tax on prepaid telephone cards increases from 5% to 7%.

PKF Comment

We believe that for reasons of public health and the very high cost at the level of the national Treasury for illnesses caused by smoking, a revision of the applicable taxes for this type of product was required. Regarding the increase in tax for the other products, in our opinion, these measures are merely meant to increase the state budget with tax revenues. For further information or advice on any Algerian tax matters, please contact Aniss Benmeradi at aniss.benmeradi@cabinetmeguellati.com or call +213 2370 2331.

Austria

Relocation incentive for scientists, artists and athletes

Tax benefits for particular foreign persons moving to Austria have long been established in Austrian law. As of 1 January 2016, the rules regarding this preferential treatment have been amended. They were adopted into law by the Austrian Ministry of Finance on 20 September 2016 together with the detailed eligibility requirements. Summarized, the conditions are as follows:

Preconditions for eligibility

- An application for the tax deduction must be submitted within six months of entering Austria. For arrivals before 15 August 2015, transitional rules apply;
- The applicant must have had his usual place of residence outside Austria during the previous ten years;
- The tax deductions apply for scientists and researchers whose research and experimental development work is of significant public benefit to Austria and whose high scientific qualification is verifiable. This is usually assumed to be the case for university lecturers. Fulfilment of the requirements must be verified on a case-by-case basis;
- Artists are also eligible if their work is to Austria's public benefit, as is the case, for example, with acclaimed singers and actors. Here, too, the eligibility must be verified in each case;
- Also eligible are top athletes that represent Austria in international competitions subject to the Austrian Sports Promotion Act of 2013.

Scope of the tax deduction

- Retention of the applicant's tax level abroad if this was at least 15%, with an annual increase of 2% per year after ten years;
- The income gained outside Austria that would not be subject to the limited tax liability according to Para. 98 of the Income Tax Act (EStG) is not taxed (e.g. foreign prize monies won at sports competitions abroad);
- In addition, a tax deduction of 30 % applies for the first five years as of the date of moving to Austria. However, this then precludes any claims for expenses in connection with the relocation to Austria.

PKF Comment

For further information or advice concerning this measure or any matter concerning Austrian tax, please contact Michaela Moosbrugger at mm@pkf-graz.at or Andreas Unteregger at andreas.unteregger@pkf-graz.at or call +43 316 826082-15.

Belgium

Significant reduction of Belgium corporate tax rate as of 2018

In July 2017, the Belgium Government has approved the significant Belgium tax reform. The most eye-catching new rules are the following: (i) structural decrease of the Belgium corporate tax rate from 33,99% (2017) to 29,58% (2018-2019) and 25% (2020), (ii) introduction of a flat 20% Belgium corporate tax rate applicable to the first fraction of EUR 100,000 of the taxable basis of a small and medium -sized company and (iii) for Belgium corporate tax purposes, realized net capital gains on shares will be taxable at 25%. A full exemption only applies if the conditions in view of the dividend participation exemption are satisfied, i.e. the company should have been holding a minimum 10% or EUR 2,500,000 shareholding for at least one year. According to the current tax rule, when a small and medium-sized company realises a net capital gain on shares, there is a full corporate tax exemption if the company had been holding the alienated shares in full legal ownership for at least one year, regardless of the shareholding percentage.

PKF Comment

The structural reduction of the Belgium corporate tax rate is highly welcomed by the Belgium business community. The main purpose of the reduction is to promote both employment in Belgium and attract foreign investors. If you would have further questions or comments about the Belgium tax reform, feel free to reach out to Kurt De Haen at kurt.dehaen@pkf-vmb.be or call +32 2 460 0960.

Brazil

Supreme Court rules in favour of taxpayers

On 15 March 2017, the Federal Supreme Court (STF) ruled that the inclusion of ICMS (VAT) collected by a taxpayer in the calculation base of PIS and COFINS (Tax on Gross Revenue) is unconstitutional. This reversal in the rationale of such taxes represents a significant reduction of the tax burden for Brazilian companies.

PKF Comment

This leading Supreme Court case may trigger claims by taxpayers based on the same reasoning in the field of e.g. CIT (IRPJ and CSLL) calculated under presumed profit and Service Tax (ISS), but this thesis is still under review from Judicial Courts.

New timeframe for joining the tax amnesty regime for regularization of Brazilian capital held abroad

On 3 April 2017 Normative Ruling No. 1704 was published, which regulates the Brazilian Tax Amnesty Program (RERCT) introduced by Law No. 13,254/16, as amended by Law No. 13.428/17 granting a new timeframe for joining the tax amnesty regime. Based

on this new provision, taxpayers have until 31 July 2017 to join this "reopening" of the program. The Income Tax rate on the repatriated capital is 15% levied on the asset position as per 30 June 2016, plus a penalty of 135% of the tax due. The exchange rate for the taxable base is 3.2092 (BRL to USD).

Like the previous RERCT, the new law cancels applicable criminal penalties related to non-declared assets abroad.

PKF Comment

The Amnesty Program is part of the ongoing procedures of implementing BEPS and FATCA into the Brazilian legal system. For further information or advice on any Brazil tax matters, please contact Paulo Crepaldi at paulo.crepaldi@pkfbr.com or call +55 11 4890 1270.

Bulgaria

Further Corporate Taxation legislation changes for 2017 in Bulgaria

Mandatory electronic submission of corporate income tax returns as of 1 January 2018
As of 1 January 2018, taxpayers will be obliged to submit all returns under the Corporate Income Tax Act (CITA) electronically. The discount currently granted for electronic submission will be discontinued after 1 January 2018.

Other changes

- No annual activity report will have to be submitted by companies in case no business activity has been performed throughout the year.
- Newly incorporated companies will express their choice for the method of taxation of personal use of company assets along with the submission of their first annual Corporate Income Tax return.

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.

China

VAT on the asset management sector

The Ministry of Finance (MOF) and State Administration of Taxation (SAT) issued Caishui [2017] No.56 on 30 June 2017, which clarifies certain VAT issues related to the asset management sector, and for the first time lists out in a tax circular the scope of asset management product managers and asset management products which are temporarily eligible for the simplified VAT calculation method at the rate of 3%.

According to Caishui [2017] No.56, VAT taxable activities that occurred during the operation of asset management products shall be temporarily subject to the simplified VAT calculation method at the rate of 3% and separated from other operational activities of the asset managers. Meanwhile, asset managers can choose to separate or combine the sales and VAT payable amount incurred during the operation of their asset management products in filing their VAT returns.

Caishui [2017] No.56 has postponed the effective date from 1 July 2017 to 1 January 2018 and VAT taxable activities occurred during the operation of the asset management product and before 1 January

2018 will not be subject to VAT. This is the second time the MOF and SAT postponed the effective date of VAT related to the asset management sector.

PKF Comment

The release of Caishui [2017] No.56 has clarified certain long outstanding controversial VAT issues in the asset management sector. It will be helpful to the asset management sector in complying with their tax filing obligations and to both assets managers and investors in calculating the income distribution from the investment. However, the detailed practical issues are still not covered so further attention should be paid to the actual policy implementation and any follow-up tax circulars. For any further information or advice concerning PRC tax, please contact Jason Li at jason@pkfchina.com or Allan Jiang at allan.jiang@pkfchina.com or +86 21 6076 0876.

Ecuador

New Government – Some changes to be expected

On 25 May 2017, Lenín Moreno assumed the Presidency of Ecuador for a four-year term. He takes over from Rafael Correa, whose ten-year term (he was in the middle of his first term when elections were moved forward to follow the newly approved Constitution) was plagued with millionaire cases of corruption, principally in public infrastructure and strategic sectors. Mr. Moreno was proclaimed Ecuador's new president after his tight victory over the banker Guillermo Lasso, with 51% of the vote in the run-off poll.

Beginning on 1 June 2017, Value Added Tax goes back to 12%, after one year where it was increased two points to obtain financial resources aimed to help the reconstruction of areas affected by the earth-quake of 16 April, principally in the provinces of Esmeraldas and Manabí, both located in the Pacific Coast. According to official figures presented by the local tax authority, this policy helped the Government to raise approximately USD 681 million.

Also beginning on 1 June 2017, safeguards implemented to regulate importations and to help equilibrate the balance of trade were eliminated.

Finally, new disclosure requirements came into force for the declaration of personal equity, applicable to the total assets for sole individuals and marriages, exceeding USD 200,000 and USD 400,000, respectively

PKF Comment

The newly elected president belongs to the same party that has been ruling Ecuador for ten years. One of his main challenges is facing the high-scale cases of corruption that various government officials have been linked to, including the current vice-president and comptroller General. Although profound changes should be expected, according to Mr. Moreno's last statements people still wait for tangible actions that support his promises. For further information or advice concerning Ecuador tax, please contact Edgar Naranjo at enaranjo@pkfecuador.com or call +593 4 236 7833.

Hungary

Reported participation tax exempt regardless of its size

A participation exemption scheme will exempt the disposal of 'reported participations' from corporate income tax in Hungary provided that such participation was reported to the tax authority within 75 days of acquisition.

Under the current regulations, a reported participation is one of at least 10% in the capital of the relevant company, except for controlled foreign

companies. The exemption will only apply to participations held for at least one year.

As a result of the amendment, the participation exemption rules can be applied regardless of the size of acquired ownership interest as from 2018.

PKF Comment

The tax advantages provided for by a reported participation can still be fully exploited if it was acquired with a view to its disposal. If the acquisition of the participation was reported to the State Tax Authority within 75 days, then the profit realized on the sale of a participation will be tax exempt after the expiry of the one-year retention period. However, the loss realized on the sale of a reported participation remains to be added to the corporate income taxable base. For further information or advice concerning Hungarian reported participation rules or any advice with respect to Hungarian taxation, please contact Krisztián Vadkerti at vadkerti.krisztian@pkf.hu or call +36 1 391 4220.

Italy

Transfer pricing policy with reference to the introduction of Country-by-Country Reporting

Transfer pricing policy involves, for companies belonging to a group, the obligation of demonstrating to the Financial Administration (through the submission of suitable documentation) which standards have been adopted to establish the transfer price in intra-group cross-border transactions. The correct evaluation of transfer prices between intra-group companies falls within the cooperative compliance project implemented by the Revenue Agency with the aim of avoiding elusive instances of tax deduction on Italian taxes and subsequent allocation in States offering a particularly favorable tax rate.

Corrective Measure 2017 (DL 50/2017) amended article 110 of the TUIR (the Italian Income Tax Code) by replacing paragraph 7 with the following: *"Items of income derived from transactions with non-resident companies that either (i) directly or indirectly control the enterprise, or (ii) are controlled by the same company that controls the enterprise, are defined by reference to the conditions and prices that would be agreed upon between independent parties operating in conditions of free competition and in comparable circumstances, if a corresponding upward adjustment in taxable income*

is hereby derived. This provision also applies if the result is a downward adjustment in taxable income, in accordance with the terms and conditions of art. 31-quater of the decree of the President of the Republic of 29 September 1973, no. 600".

On the basis of this new wording, in order to define the transfer price, multinational corporations no longer refer to the parameter of normal value, but to the principle of free competition. Therefore the concept of normal value (valid for assets sold, services provided and goods and services received), that was originally provided by the TUIR, has been abandoned. On the other hand, the principle of free competition was introduced with the purpose of enhancing the transaction and taking into account not only the prices but also market conditions.

In order to avoid penalties, Measure No. 2010/137654 of the Revenue Agency lists the required documentation for multinational corporations:

- *Master file:* drafted by the parent company, which contains information about the whole group (general description of the group, group structure, strategies adopted, intercompany transactions, asset description and risks assumed by the companies involved in the operations, description of intangible assets held by each company involved in transactions, transfer pricing policy adopted by group, relations with tax administrations of EU Member States);
- *Country file:* which lists the details of the individual company belonging to the group (general description of the company and the sector in which it operates, operating structure, strategies adopted, description of intra-group transactions).

Along with the *Master File* and *Country File*, OECD Action 13 - under the BEPS project (Base Erosion and Profit Shifting) - introduced a new annual reporting, *Country-by-Country Reporting*, which provides an information set related to the international activities, specifying:

- the amount of revenue and gross gains (or losses)
- taxes paid and accrued;
- declared capital;
- unallocated profits;
- the number of employees;
- identification of companies belonging to the group;
- the elements that identify the economic activity carried out.

The entities obliged to submit such documentation are parent companies that are resident in Italy and that are required to submit consolidated financial statements, but that are not, in turn, controlled by other companies or resident companies (top holding resident in Italy), provided that they have achieved consolidated group turnover during the previous tax period of at least 750 million EUR. This obligation also applies to the subsidiary, but only in these cases:

- when the parent company is not obliged to submit *Country-by-Country Reporting* in the country in which it is a resident;
- when the parent company is defaulting with regards to the obligation of the exchange of information;
- when there is no specific agreement between the competent authorities providing for the exchange of information at the deadline for submission.

CbCR must be submitted to the Revenue Agency Offices within twelve months from the last day of the group's tax reporting period (so by 31 December 2017 for financial year 2016). In case of an omitted report or in case of incomplete or untrue data, the penalty amount varies from a minimum of 10,000 EUR up to a maximum of 50,000 EUR.

PKF Comment

PKF Studio TCL – Tax Consulting Legal of Genoa and PKF MGP Studio Tributario e Societario of Milan are happy to support both foreign and domestic companies to apply the new rules. For further information on this matter or any advice on Italian taxation, please contact Fabrizio Moscatelli at fabrizio.moscatelli@tclsquare.com or call +39 010 8183250.

Settlement of pending tax court proceedings

Art. 11 of the Decree-law No. 50/2017 has introduced an extraordinary procedure allowing to close tax litigations pending before the tax courts. The wording "pending tax litigation" means all tax disputes having the Tax Agency as a counterpart, against which the taxpayer appealed before the Tax Court. More in particular, taxpayers opting for this procedure are required to only pay:

- higher taxes due, as per the tax claim notified to the Tax Agency prior to 24 April 2017;
- arrear interest up to the 60th day following the notification of the tax assessment.

Penalties and further arrear interest are therefore discarded. It is possible to settle pending tax disputes involving the Tax Agency at any time or degree of the proceeding, including Supreme Court cases, when the following conditions are met:

- the tax claim had to be notified to a first grade tax Court by 24 April 2017; and
- there has not been a final judgment on the case.

The relevant payment can be done in one shot or spread over a maximum of three instalments. The one shot payment shall be performed by utilising the F24 model and the specific codes - that are still to be determined - by September 30, 2017.

In case of instalments, the payments are due as follows:

- 40 % by 30 September 2017;
- 40 % by 30 November 2017;
- 20 % by 30 June 2018.

Election of the procedure is upon specific application to be filed by 30 September 2017. The cases falling under the tax disputes settlement are not stayed

unless the taxpayer files a motion to stay the proceeding so as to avail himself of the aforementioned settlement procedure. In such a case, the proceedings will be stayed until 10 October 2017. If by that date the taxpayer lodges a copy of the request to settle the dispute and of the fulfilled payments (or of the fulfilled payment of the first instalment), the proceedings will be stayed until 31 December 2018.

For litigations falling within the scope of the rule, the time limits for appealing judgments are suspended for six months if they expire between the date of entry into force of the law decree (24 April 2017) and 30 September 2017.

The settlement becomes effective when the one shot payment or the first instalment has been executed. Finally, it is important to outline that any rejection of the settlement shall be notified by 31 July 2018. A rejection may be challenged within 60 days before the Court where the action is pending.

PKF Comment

This is a great opportunity to settle litigations with the Tax Agency paying basically only the higher taxes claimed. It removes the risk of losing the case and being obliged to also pay penalties. For further information on this matter or any advice on Italian taxation, please contact Walter Bonzi at wbonzi@mgpstudio.it or call +39 02 4398 1751.

Kenya

Key tax changes

Income tax changes

Tax incentives for Special Economic Zones (SEZs)

The Finance Act 2017 has granted an investment deduction allowance of 100% on capital expenditure incurred on construction of a building or purchase and installation of machinery by an SEZ enterprise for its licensed business activity. In addition, dividends paid to non-resident persons by SEZ enterprises are now tax exempt.

The Finance Act 2017 also clarified that the preferential corporate tax rate of 10% will be applicable for the first 10 years and 15% for the subsequent 10 years. The amendment is applicable to SEZs selling their products locally and exporting outside Kenya.

The applicable withholding tax rates ("WHT") on payments made from SEZs were reduced as shown in the table below:

Payment made to non-resident	Current rate	Revised rate
Management, professional or training fee	20%	5%
Royalties	20%	5%
Interest	15%	5%

The above amendment is effective as from 1 January 2018.

PKF Comment

The move is aimed at attracting Foreign Direct Investments in SEZ enterprises which is an addition to various tax incentives available to SEZ enterprises.

Reduced corporate income tax rate for motor vehicle assembly companies

Local motor vehicles assemblers will now enjoy a lower corporation tax rate of 15 % for the first five years of operations as per the Finance Act 2017.0 The amendment is effective as from 3 April 2017.

PKF Comment

This is aimed at positioning Kenya as a motor vehicle assembly hub in the region and will also reduce unemployment in the country.

Transfer pricing for Kenyan related entities

The Finance Bill 2017 introduced an amendment requiring transactions between resident entities and related resident entities operating in preferential tax regimes e.g. EPZ and SEZ to be at arm's length or open market value. This amendment is effective as from 3 April 2017.

PKF Comment

This amendment was provoked by instances where resident entities repatriate profits outside Kenya through related resident entities operating in preferential tax regimes without paying taxes.

Betting, lotteries and gaming tax

The Finance Bill 2017 proposed to increase taxes levied under the Betting, Lotteries and Gaming Act to a flat rate of 50%. However, the Finance Act 2017 reduced the rates from the proposed 50% to 35% with effect as from 1 January 2018. The effect of this is as follows:

Tax	New Rate per Finance Act	Old Rate	Due Rate
Betting tax	35% of the gaming revenue*	7.5% of the gaming revenue	20th day following collection month
Lottery tax	35% of lottery turn-over	5% of lottery turn-over	20th day following collection month
Gaming tax	35% of gaming revenue*	12% of gaming revenue	20th day following collection month
Prize competition tax	35% of total gross turnover	15% of total gross turnover	20th day following collection month

* Gaming revenue is defined as gross turnover less the amount paid out to customers as winnings.

The Tax is payable to the newly created National Sports, Culture and Arts Fund, for purposes of promoting sporting activities in Kenya. This amendment is effective as from 1 January 2018.

PKF Comment

The measure is aimed at regulating the industry which has in the recent past impacted the society negatively.

Extension of tax amnesty on undeclared foreign income

The Finance Act 2016 introduced a tax amnesty for taxpayers who have undeclared taxable foreign income under the condition that they declared their income and submitted their 2016 return between 1 January 2017 and 31 December 2017.

The deadline for the amnesty was extended by six more months from 31 December 2017 to 30 June 2018 to provide more time for the application of the tax amnesty and also for the KRA to implement the initiative. The Finance Bill 2017 also requires voluntary declared funds to have been transferred back to Kenya.

PKF Comment

Further guidance on the guidelines and the amnesty provisions will still need to be provided because there are significant ambiguities in the way the law is currently drafted.

Pay As You Earn (PAYE) changes

The Finance Bill 2017 broadened the PAYE tax brackets and personal relief by 10%. This move is targeted at providing reprieve for individual taxpayers resulting in increased disposable income. The revised tax bands will be as follows:

Tax Bands	Current Per Month KShs	Revised Per Month KShs	Rate
On the first	11,180	12,298	10%
On the next	10,534	11,587	15%
On the next	10,534	11,587	20%
On the next	10,534	11,587	25%
Excess of	42,781	47,059	30%

The resident personal relief has also been increased from **KShs 1,280** per month to **KShs 1,408** per month i.e. from **KShs 15,360** to **KShs 16,896** per annum. Therefore, individuals who earn a yearly salary of up to **KShs 13,486** will not be liable to PAYE.

These rates will apply to individuals, wife's employment income and withdrawals of pensions after the tax free amounts and become effective as from 1 January 2018.

PKF Comment

The amendment is intended to cushion low income earning employees from the ever rising cost of living. For further information or advice on Kenyan taxation, please contact Michael Mburugu at mmburugu@ke.pkfea.com or call +254 20 42 70000.

Value Added Tax (VAT)

Incentives for the fishing industry

In an effort to promote economic activity in the maritime sector, the Government has exempted from VAT packaging materials and other inputs aimed at supporting primary, secondary and ancillary marine fisheries and fish processing. The amendment became effective as from 3 April 2017.

PKF Comment

The amendment was passed to encourage investment in this industry and promoting growth as well as supporting communities living around the water bodies.

VAT incentive for infrastructure financing

The Government has proposed to exempt transactions related to the transfer of assets into Real Estate Investment Trusts (REITs) and Asset Backed Securities (ABS) from VAT. The amendment became effective as from 3 April 2017.

PKF Comment

This is to encourage the uptake of alternative sources of funding for infrastructure developments.

Locally assembled tourist vehicles exempt from VAT

In an effort to revamp the tourism sector in Kenya, the Finance Bill 2017 moves to grant a VAT exemption on specially designed, locally assembled motor vehicles for transporting tourists. The exemption will be applicable only to vehicles purchased by tour operators prior to customs clearance upon recommendation of CS responsible for tourism. However, the bill outlines certain restrictions to tour operators on vehicles that qualify for VAT exemption. These include:

- Only vehicles registered and operated by a company licensed under the Tourism Vehicle Regime;
- Vehicles shall be used exclusively for transport tourists;
- Vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments, and communication fittings; and
- Any other condition that may be imposed by the Commissioner.

However, the tax shall become payable upon change of use or disposal of the vehicle for any other use. This provision became effective as from 3 April 2017.

Expanded VAT exemption for specialized hospitals

The Government has introduced a VAT exemption on medical equipment and apparatuses used in specialized hospitals with a minimum capacity of 50 beds. This provision became effective as from 3 April 2017.

PKF Comment

This is an additional incentive towards the promotion of affordable health care taking into consideration that taxable goods and services directly or exclusively used in the construction of those specialised hospitals are already VAT exempt.

Expansion of zero rated supplies

- Milk and cream of tariff numbers 0401.10.00 and 0401.20.00 which is neither concentrated and does not contain added sugar or other sweetening matter is now zero rated with effect from 3 April 2017. These Items were previously VAT exempt;
- The Finance Act 2017 has reverted to zero rate the supply of LPG gas. Previously, The Finance Bill 2017 had proposed to exempt the supply of LPG which led to a price increase of LPG;
- The supply of agricultural pest control products is now zero rated. Additionally, all inputs and raw materials purchased locally or imported by manufacturers of agricultural pest control products

will be zero rated. Previously, agricultural pest control products were taxable and this resulted in an increased production cost for farmers.

These amendments became effective as from 3 April 2017.

PKF Comment

The two commodities were previously exempt from VAT which meant manufacturers would pass the input VAT incurred in their production to the final consumer. We expect that the amendment will lead to a price reduction of the above commodities.

Expansion of exempt supplies

- Transportation of cargo to destinations outside Kenya is now exempt from VAT. Previously this was deemed to be an export of service hence zero rated. The exemption will make transportation of goods to destinations outside Kenya more expensive because transporters will no longer claim input VAT attributable to the exempt supplies.
- Materials for the construction of grain storage, upon recommendation by the Cabinet Secretary responsible for agriculture, will be exempt from VAT. The exemption is aimed at making construction materials affordable to farmers or investors and to enable them have modern grain storage facilities.

These amendments became effective as from 3 April 2017.

Registration of tax representatives for non-resident persons

The Finance Act 2016 introduced a requirement for registration of tax representatives with effect from 1 July 2016 for non-resident persons who have no fixed place of business in Kenya. The Finance Act 2017 has provided clarity on this provision as follows:

- The registration of the tax representative will be in the name of the non-resident person being represented;
- A person can be a tax representative for more than one non-resident person. In such a case the tax representative will have separate registrations for each non-resident person; and
- The tax representative is required to have a Personal Identification Number issued by the Commissioner.

This amendment will become effective as from 1 January 2018.

PKF Comment

The amendment's intention is to clarify the registration of tax representatives and to facilitate the collection of taxes from non-residents deriving and accruing income from Kenya. For further information or advice on Kenyan taxation, please contact Michael Mburugu at mmburugu@ke.pkfea.com or call +254 20 42 70000.

Mexico

New strategy: a more open Mexico tax authority

The Secretary of Finance, José Antonio Meade Kuribreña, today presented the strategy "A more open Tax Authority" (the Spanish acronym is SAT), the purpose of which is to make available to citizens, the private sector, the academic community and other federal agencies, the information of 1.4 billion taxpayer records for economic and statistical analysis.

He stated that with this strategy the Government is committed to be transparent and provide information in order to generate better public policies for the benefit of citizens and the economy as a whole, and he emphasized that the identity of taxpayers would be fully protected.

PKF Comment

It's a huge step for Mexico to allow a public administration to open up itself this way. This will enable and enhance specialist opinions related to taxpayer behavior in interaction with the legal frame-work and the economic environment. For any further information or advice on Mexico tax matters, please

contact Mario Camposllera at mcamposllera@pkfmexico.com or call +52 33 3634-7162.

New catalogue for digital tax invoicing

The Mexico tax authority (Spanish acronym: SAT) has released the new catalogue for Digital Tax Invoicing (Spanish acronym: CFDI) on its website (see http://www.sat.gob.mx/informacion_fiscal/factura_electronica/Paginas/Anexo_20_version3.3.aspx), which is valid as from 1 July 2017.

PKF Comment

This catalogue has been mandated for companies doing business in Mexico since 2011. The goal of CFDI is added visibility into companies' tax liabilities, so that the government can ensure it is receiving accurate payments. For any further information or advice on Mexico tax matters, please contact Mario Camposllera at mcamposllera@pkfmexico.com or call +52 33 3634-7162.

Serbia

Four new double tax treaties entered into force

The network of double tax treaties to which Serbia is a signatory has expanded in 2017. Four new double tax treaties entered into force, with Armenia, Kazakhstan, the Republic of Korea as well as the long-awaited treaty with Luxembourg.

The recent expansion also includes the initialling of draft agreements with Israel and Oman.

The new double tax treaties limit the taxation of certain types of income in the source country as follows:

	Divideds	Interest	Royalties
Luxembourg	5%* / 10%	10%	5%* / 10%
Kazakhstan	10%* / 15%	10%	10%
Republic of Korea	5%* / 10%	10%	5%* / 10%
Armenia	8%	8%	8%

* The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.

PKF Comment

For further information or advice on any Serbia tax matters, please contact Mićun Žugic at mićun.zugic@pkf.rs or call +381 11 30 18 445.

Sweden

Final proposal for changed 3:12 regulations regarding closely held corporations

During the autumn of 2016, after an investigation period of more than two years, the so-called 3:12 Committee presented its report. In June 2017, the Government presented its consultation report to the Council of Legislation regarding the proposal for new 3:12 rules. This report is the same as the draft report presented in March 2017 and which was subsequently sent out for consultation. In other words, the Government has not taken into consideration the criticism presented in the replies to the consultation process. The changes are proposed to come into effect on 1 January 2018.

PKF Comment

It can be concluded that the Government has not accepted the extensive criticism regarding the proposal in the two consultation procedures. This criticism has stated that the less advantageous rules negatively impact Swedish entrepreneurs and Swedish business operations and that a legal framework which is currently already very complicated will become even more difficult to understand. The criticism refers, primarily, to the increased tax rate, deteriorated possibilities for calculating a low taxed amount based on salaries and the increased threshold amount for

taxation as employment income. In addition, many are critical of the fact that the exemption for ownership changes within a family cannot be applied to ownership changes executed prior to 1 January 2018. For further information or advice on Swedish taxation, please contact Karin Rosén at karin.rosen@revidentia.se or Asa Ifvarsson at asa.ifvarsson@revidentia.se or call +46 81 213 4102.

Changed rules for real estate owners

On 30 March 2017, the Government's so-called real estate packaging Committee presented its proposal for changes to the regulations regarding the taxation of real estate owners. These changes are proposed to come into effect on 1 July 2018 and the proposal would imply that a packaged real estate transaction can be compared to the situation in which real estate is sold directly, i.e. unpackaged - this refers both to capital gains tax and stamp duty.

In brief, this proposal can be summarized as follows:

- When real estate is sold in a packaged form (in the form of a company), the real estate company is considered as having disposed of the property and then acquired it at market value, thus being forced to pay taxes on a fictitious transaction (market value - tax residual value = taxable gain). This is not meant to be applied to intra-group transfers/reorganizations, only to external transactions. According to the proposal, the fictitious tax is triggered if the controlling influence over the real estate company ceases;
- The real estate company will also need to report a standardized amount of income to compensate for not having to pay stamp duties, as would have been the case if the property was directly disposed of;
- Stamp duty should no longer be levied on intra-group property transactions;
- The stamp duty tax rate for legal entities will be lowered from 4.25 percent to 2 percent.

The proposal has now been transmitted for consultation and it is then up to the Ministry of Finance to draw up the final bill (expected August 2017). Parliament is required to approve the bill before it can come into effect.

PKF Comment

The Committee states that transactions with packaged real estate are very common and the main - but not the only - purpose for undertaking this type of transaction
must be to reduce the tax. The Committee's analysis also reveals that real estate companies pay a low proportion of their earnings on corporate tax compared with companies in other industries. However, taking into consideration property-related taxes such as tax on real estate and stamp duty, real estate companies still cannot be considered to be tax favored in comparison with other industries.

The decision to propose these changes - in spite of the fact that the new regulations imply that the industry will be overtaxed compared with other industries - is difficult to understand. That lowering the stamp duty to 2 percent can adequately compensate for the increased tax burden appears very doubtful, indeed. The scope of the expected rules regarding interest expense deduction limitations is, as the Committee also points out, something that will affect the overall tax burden for the real estate industry.

The Government therefore has a major task ahead of it to evaluate the proposal along with the expected proposal on interest expense deduction limitations, and how these proposals support the Government's goals of housing and construction, as well as its desire to maintain an active real estate market.

For further information or advice on Swedish taxation, please contact Karin Rosén at karin.rosen@revidentia.se or Asa Ifvarsson at asa.ifvarsson@revidentia.se or call +46 81 213 4102.

A Government memorandum proposing corporate tax cuts and new interest deduction limitation rules

The proposals can be summarized as follows:

Interest deduction limitation rules
A general limitation of interest deductions in the corporate sector is primarily introduced as an EBIT rule (where the cap for deduction is calculated as 35 percent of earnings before interest and tax, EBIT) and, secondly, as an EBITDA rule (where the cap for deduction is calculated as 25 percent of earnings before interest, tax, depreciation and amortization, EBITDA).

Equalization of interest deduction capacity within a group is possible between companies which are able to exchange group contributions. Unutilized interest deduction capacity can be carried forward and utilized in the following year but is lost in the event of a change in ownership.

The existing interest deduction limitation rules for certain intra-group loans are proposed to remain in place but are amended. The definition of a 'group' is extended to include further ownership categories. Furthermore, the current 10 percent rule and the so-called business purpose test are removed and replaced by a rule providing that interest is not deductible where the debt relationship has been entered into 'exclusively or as good as exclusively' for the group to obtain a significant tax benefit. Regarding deduction, it is also required that the lender (i) is resident within the EEA, (ii) in countries with which Sweden has double tax treaties or (iii) is subject to tax at a rate of at least 10 percent.

An interest deduction prohibition is proposed in respect of certain cross-border situations (hybrid rules). The prohibition applies when a company in another state obtains a tax deduction for the same interest expense or when the corresponding interest income is not subject to tax due to the classification of the income for tax purposes.

Other changes
The corporate income tax rate is reduced from 22% to 20%.

A limitation on the use of carried-forward losses is introduced during a two, or alternatively three, year period. The limitation would essentially mean that only 50 percent of trading profits can be reduced by carried-forward losses, with the remainder of these losses being carried forward.

The proposals would enter into force on 1 July 2018. The memorandum will now be subject to consultation, with input required by 26 September 2017.

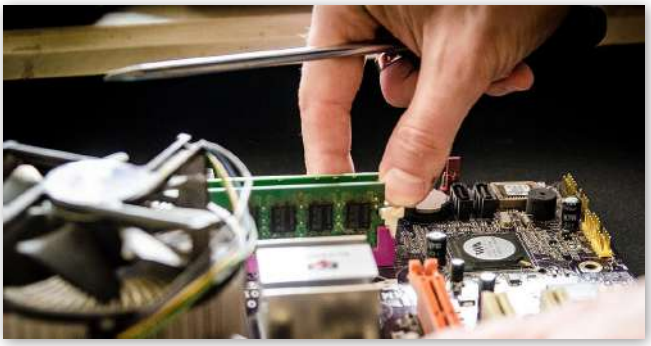
PKF Comment

The Swedish rules for interest deductions in the corporate sector have been the subject of discussions and various changes for many years. The Ministry of Finance has now presented its proposal on how Sweden will adapt its legislation regarding, inter alia, interest deductions in line with the EU Anti-Tax Avoidance Directive of 12 July 2016. It is noted that the Government primarily advocates an EBIT rule, despite the fact that EBITDA is generally internationally applied and also endorsed by the OECD and the EU. The Government also advocates that the current interest deduction limitation rules remain in place, albeit with a somewhat more limited scope, despite massive criticism, e.g. in respect of legal certainty and difficulties in application. It remains to be seen how this will be received in the consultation. Furthermore, the Ministry of Finance proposes restrictions on the use of carried-forward losses, which are also proposals that many will comment upon.

For further information or advice on Swedish taxation, please contact Karin Rosén at karin.rosen@revidentia.se or Asa Ifvarsson at asa.ifvarsson@revidentia.se or call +46 81 213 4102.

Taiwan

Tax rules regarding sales of foreign electronic services in Taiwan in effect



New tax rules regarding sales of foreign electronic services within the territory of the Taiwan officially came into effect on 1 May 2017.

For any foreign entity without a fixed place of business within the territory of Taiwan which sells electronic services to individuals in Taiwan, if the amount of annual sales exceed NTD 480,000 (approximately USD 16,000), tax registration with the competent tax authority shall be completed beforehand and business tax shall be filed and paid.

The abovementioned tax registration, filing and payment of business tax may be conducted by the foreign entity on its own or by an appointed tax filing agent. The tax filing agent may be an individual residing within the territory of Taiwan or a legal entity with a fixed place of business within the territory of Taiwan.

PKF Comment

Under the new regulations, only matters related to sales tax (such as the completion of tax registration and filing/payment of sales tax) are specified while nothing around business income tax is clarified. However, according to the Taiwan Income Tax Act, for any profit-seeking enterprise with its head office outside Taiwan, its business income derived from sources within Taiwan shall be subject to business income tax in Taiwan. For any further information or advice on Taiwan tax, please contact Wisdom Lee at wl@pkf.com.tw or call +886 2 8792 2628.

Thailand

Changes to legislation concerning the Foreign Business License under the Foreign Business Act

On 9 June 2017 the government released new regulations loosening some restrictions for foreigners wishing to conduct business in certain categories, in Thailand. Businesses operating in the business areas outlined in the changed legislation would not need a Foreign Business License under the Foreign Business Act. Amendments are made to Article 1 and 2 as per the attachments (in English language and Thai). In particular Article 2 states "The following shall be added as (7), (8), (9), (10) and (11) of the Ministerial Regulations Prescribing Service Businesses Not Subjected to Application for Permission in Alien Business Operations B.E. 2556 (2013):

"(7) Asset management business under the law governing asset management company.

(8) Service business by acting as a representative office of a juristic person abroad in international trading business under the Regulations of the Office of the Prime Minister Governing Establishment of Visa and Work Permit Service Centre B.E. 2540 (1997).

(9) Service business by acting as a regional office of a juristic person abroad in international trading business under the Regulations of the Office of the Prime Minister Governing Establishment of Visa and Work Permit Service Centre B.E. 2540 (1997).

(10) Service business having a governing agency as a contracting party under the law governing budgetary procedures.

(11) Service business having a state enterprise as a contracting party under the law governing budgetary procedures."

Also the procedure the foreign company must follow before they can commence business operations in Thailand is as follows. The foreign company must submit:

- Notification form to notify the DBD of their presence in Thailand. The form will require them to fill in the address of the office, the name of accountant of record and the place where accounting documents are kept in Thailand.

- Power of Attorney (POA) appointing a responsible person for their business operations in Thailand. Such POA must be notarized and certified by the Thai Embassy in the country where the POA is made.
- Copy of the foreign company registration documents (Affidavit) notarized and certified by the Thai Embassy.
- Copy of the passport of the person who will sign documents, and the responsible person in Thailand

After submission of these documents, the DBD will issue a 13 digit registration number within 3-5 business days. After that, the foreign company can obtain a Certification Letter from the DBD which will contain the name of the entity (which will be the same name as the foreign company as they are the same legal entity), the address of the office in Thailand and the name of the responsible person.

The foreign company will be able to use such Certification Letter to further request tax ID, VAT registration, social security, open bank accounts and other necessary matters to start operating their business.

PKF Comment

In Thailand the Foreign Business Act is somewhat controversial. Its detractors often accuse the FBA of stifling competition and ensuring that many sectors with powerful benefactors in the Thai economy are not open to competition, ultimately meaning that citizens are not well served by an increase in competitive forces. Its proponents would argue that it ensures that Thai businesses of all sizes do not lose out unfairly to the deep pockets of foreign companies. In this regard, generally a loosening of any restrictions in the FBA are well regarded by foreign investors. However, there are likely to be other laws relating to those areas which have changed in the FBA and this may lessen the full potential of these changes. For further information or advice concerning this matter please contact Andrew McBean at andrew.mcbean@pkf.com or call +66 2 108 1591.

Uganda

New regulations regarding transfer pricing policy documentation

The Tax Procedures Code (Amendment) Act 2017 was assented by the President of Uganda on 13 June 2017. It provides that with effect from 1 July 2017, a person who fails to provide records in respect of transfer pricing within 30 days after the request by the Commissioner, is liable to a penal tax equivalent to UGX 50,000,000 (approx. USD 14,000).

The Ugandan Transfer Pricing Regulations require resident entities that transact with associated parties (residents whose transactions' value exceeds UGX 500 million in aggregate and non-residents) to develop and document transfer pricing policies.

In order to justify that the controlled transactions comply with the arm's length principle, all eligible taxpayers must document:

- Comprehensive details of the companies involved in the controlled transactions;
- Details of the controlled transactions;
- Functions, risk and assets analysis, industry analysis and financial analysis;
- Procedures for determining the arm's length price of the controlled transactions; and
- Benchmarking results justifying the controlled transactions to be at arm's length.

PKF Comment

PKF undertakes a review of past transactions and notifies any possible exposure to transfer pricing adjustments in the event of a possible transfer pricing audit by the Uganda Revenue Authority. For any further information or advice on Uganda tax matters, please contact Charles Oguttu at coguttu@ug.pkfea.com.tw or call +256 312 305800.

United Arab Emirates

UAE issues new Tax Procedures Law

The UAE issued its new Tax Procedures Law ('TPL') on 31 July 2017 (Federal Law No. 7 of 2017). The TPL is set to come into force 30 days from the date of its publication. The TPL sets out the basis for the soon-to-be-released tax regime in the UAE and sets out rules for administration and collection of taxes, regulating taxpayer rights and obligations and defines the role of the newly instituted UAE Federal Tax Authority (FTA).

The TPL defines a clear set of common procedures and rules to be applied to all tax laws in the UAE (VAT and excise tax laws in the present context and any other future tax laws in the UAE) and clearly states the respective rights and obligations of the FTA and the taxpayer. It also covers the tax procedures and requirements relating to audits, objections, refunds, collection, and compliance requirements. Tax registration, tax return preparation, submissions, payments and voluntary disclosure rules are also defined in addition to tax evasion and general provisions.

When the TPL goes into effect, all UAE-based businesses will be required to keep accurate records for a specified number of years. It also sets penalties for non-compliance, as well as clear processes for appeals which align with international best practices and establishes a fair and transparent environment for the FTA to carry out its mandate.

The TPL also establishes the register of tax agents who may interact with the FTA on behalf of taxpayers, specifies the basic requirements for appointing said tax agents, and sets the standards for maintaining confidentiality by the Authority as well as its officers.

The new Law comes after the UAE, represented by the Ministry of Finance, ratified the Common VAT Agreement of the States of the Gulf Cooperation Council and the Common Excise Tax Agreement of the States of the Gulf Cooperation Council, following Federal Decrees No. 31 and 32 of 2017, issued by the President of the UAE.

The TPL also sets about defining key provisions relating to documentation and records (and the official language of such documents) that are required to be maintained, the attendant rules in that regard, registration requirements including the need for businesses to obtain a tax registration number, tax obligations in connection with preparation and filing of tax returns, tax audits, setting up of a Tax Disputes Resolution Committee and rules regarding collection of tax and administrative penalties.

Introduction of VAT laws and Executive Regulations

The UAE Ministry of Finance (MOF) has also published the law on excise taxes that is expected to lead to the introduction of tariffs in the fourth quarter of 2017. The Federal Decree-Law will come into effect from 1 October 2017. A Cabinet Decision will be issued to determine the tax rates that shall be imposed on the goods that are subject to excise and the method of calculating the excise price, with a proviso that the tax rate shall not exceed 200% of the excise price of the particular good. The UAE MOF has indicated in various forums and media interactions that it intends to introduce excise tariffs at a rate of 100% on tobacco and energy drinks and 50% on carbonated drinks.

The Director General of the FTA – Mr. Khalid Ali Al Bustani had recently mentioned that the Excise Tax and VAT laws were expected to be issued during the third quarter of 2017and the regulations concerning both laws in addition to federal tax procedures were expected to be issued during the fourth quarter of 2017. The recent excise law announcement, exhibits that the UAE MOF is on schedule for release of the various tax laws as per their time table.

The FTA is also expected to open online registration for tax purposes for businesses in mid-September 2017. The FTA website is expected to be launched in the second half of August 2017.

The UAE Ministry of Finance has also clarified many aspects of the upcoming VAT Law on its website,

which includes a useful section on VAT related FAQs. This includes a clarification on which sectors will be exempt and those that would be zero rated.

The following categories of supplies will be exempt from VAT:

- The supply of certain financial services (clarified in VAT legislation);
- Residential properties;
- Bare land; and
- Local passenger transport

VAT will be charged at 0% in respect of the following main categories of supplies:

- Exports of goods and services to outside the GCC;
- International transportation, and related supplies;
- Supplies of certain sea, air and land means of transportation (such as aircrafts and ships);
- Certain investment grade precious metals (e.g. gold, silver, of 99% purity);
- Newly constructed residential properties, that are supplied for the first time within 3 years of their construction;
- Supply of certain education services, and supply of relevant goods and services;
- Supply of certain healthcare services, and supply of relevant goods and services.

PKF Comment

The excise tax is set to be aimed at products that harm the environment - tobacco and negatively affect people's health – carbonated drinks. Its impact on the spending pattern of the high-income bracket could possibly be limited, although the revenues generated from the tax will assist in boosting the economy.

The implementation of VAT in the GCC from 1 January 2018 is a significant change for all businesses with operations in the region. The TPL clarifies taxpayers rights and imposes strict obligations on businesses who will have to register and account for VAT within a very short and tight timeframe. It will be crucial for businesses to accelerate their VAT implementation process to be prepared well in time and avoid any penalties for non-compliance or errors in filings, etc.

However, there is still 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 sizeable number of businesses are located in these free zones, this will significantly impact their cost of doing business, depending on which side the coin falls.

Since VAT is going to be implemented only in the UAE and Saudi Arabia in 2018 and only by the end of 2018/beginning of 2019 in the other GCC countries (if news reports are to be believed) intra-GCC trades are bound to be affected.

In light of the above, the way businesses are structured presently may also get effected depending on how rules on group registration for VAT will eventually be rolled out.

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 or Mr. Chaitanya Kirtikar at cgk@pkfuae.com or call +971 4 38 88 900.

United Kingdom

Introduction of the Multilateral Instrument

On 7 June 2017 the UK signed up to the OECD Multilateral Instrument ("MI") designed to implement a raft of changes to tax treaties in response to recommendations coming out of the BEPS project.

The purpose of the MI is to give immediate effect to changes arising from BEPS without the need for each country to bilaterally agree changes to each individual treaty. The aim is to implement BEPS related changes with reasonably quick effect and counter international cross border tax avoidance. Leaving it to bilateral agreements to implement all the changes would take years.

So on 7 June the UK, along with 67 other countries, signed the MI. But what does this mean in practice and why is the task of interpreting and applying a tax treaty made more complicated?

Upon signing, the UK were required to indicate which provisions of the MI they would adopt where options were permissible. The key changes are:

- Adoption of the Principal Purpose Test (PPT) - This looks to deny the benefit of a tax treaty where a structure/transaction is non-commercial and exists to secure the benefit of the treaty. Although several UK treaties already contain similar provisions, the PPT will apply to a wider range of the UK treaty network and means that existing structures/transactions may be at risk of losing treaty benefits;
- Adoption of the competent authority tie-breaker for corporate dual-residents - where a company is resident in two countries under the domestic rules of those two countries, a tie-breaker in the treaty looks to resolve the issue. In a lot of existing cases, the matter would be resolved by the company reviewing the treaty and essentially self-assessing. The change in position will result in the need in far more cases for the company to seek the tax authorities of the relevant countries to agree the country of residence. This could be a drawn out process and it is unclear how this will impact on dual residency cases where there was previously no competent authority agreement required.

In terms of reviewing tax treaties going forward, we will need to consider both the relevant treaty and the MI. Where applicable the relevant Article of the MI will replace the relevant Article/Provision in the existing treaty. However it will be necessary to determine whether both sides to the treaty agreed to the same change on signing of the MI. If they did not then the original Article/Provision remains in force.

PKF Comment

As a tax adviser, we will need to consider whether the UK's treaty partner was a signatory to the MI and what provisions of the MI the treaty partner adopted. Interpreting and applying a treaty is never easy but it is safe to say it has now become far more complicated.

Although the purpose of the MI is honourable and aims to clamp down on international tax avoidance, it is clear that, in my opinion, there is going to be increased instances of treaty disputes between treaty partners. Corporates in particular will need to consider their existing group structure and transaction flows to determine whether the implementation of the MI will alter their existing tax position. For further information or advice regarding the MI or any advice with respect to UK taxation, please contact Adam Kefford at adam.kefford@pkf-francisclark.co.uk or call +44 1392 667000.

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