2018 December

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this fourth quarterly issue for 2018, 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 for 2018 (and beyond) in Ecuador, Ghana, Nepal and Russia;
- Interesting ECJ case law in Bulgaria and Germany;
- Developments in (international) corporate income tax in Hong Kong (BEPS), Poland (exit tax) and the United Kingdom (overseas entities and not reporting overseas income);
- Transfer pricing developments in Hong Kong and Mozambique;
- VAT developments in Italy and Switzerland.

We trust you find the PKF Worldwide Tax Update for the fourth quarter of 2018 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 – Paris, France: 11-14 November 2018

The 2018 PKF International Tax Meeting in Paris, France is taking place in parallel with the International Assurance and Accounting Meeting to take full advantage of cross-service networking opportunities. The meeting will begin in the morning of Monday 12 November with joint sessions for assurance and tax delegates, focusing on IPSC and tax committee updates. After lunch, delegates will be separated into their own sessions and finish with a joint closing session on Wednesday.

International Tax Meeting highlights for this edition include:

- The Swiss tax reform and tax challenges for the digital economy, followed by an overview of current UK and upcoming EU law on the disclosure of tax avoidance schemes. We will also have afternoon sessions dedicated to the UAE as a regional tax hub, New Zealand and US tax developments, as well as sessions dedicated to tax technology (tax compliance management and (direct) tax automation);
- An overview of changes to investing in UK property by non-residents; and
- A VAT update

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

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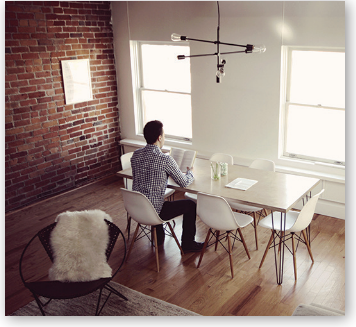
Chartered Accountants
& Business Advisers

Austria

Small business regulation for foreign landlords



Small-scale entrepreneurs are entrepreneurs who run their business in Austria and whose total net turnover does not exceed 30,000 EUR in any one year. They are exempt from VAT unless they voluntarily opt for VAT liability. Consequently, they do not have to pay Austrian VAT, but neither can they claim input tax deductions for expenses arising from their letting activity.

With the amendment of the Austrian VAT Act as of 1 January 2017, the small-scale entrepreneur regulation is no longer based on whether entrepreneurs have a place of residence in Austria but on whether they operate their business within Austria. And according to Austrian law, the place of business is where the administrative activity mainly takes place, i.e. where rental decisions are made, documents are prepared and kept, and banking transactions are carried out.

For a person living abroad, this is usually the private residence abroad. Consequently, the small business regulation no longer applies to foreign entrepreneurs letting and leasing in Austria. Their income is therefore subject to VAT and the entrepreneur is obliged to be VAT-registered in Austria.

PKF Comment

If you let a property in Austria and do not have a place of residence or registered office there, you must pay VAT in Austria. For further questions please contact Gernot Gassmann at ***gernot.gassmann@pkf-graz.at*** *or call* ***+43 316 82608222****.*

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Beneficial Owner Register Act (WiEReG)

This law implements the central register for companies, other legal entities and trusts detailed in the EU’s 4th Anti-Money Laundering Directive. The EU-wide mandatory register of beneficial owners is designed to prevent money laundering and tax evasion.

The WiEReG (Wirtschaftliche Eigentümer Registergesetz) came into force on 15 January 2018, and from this date onwards reports can be made by legal entities concerned. The legal entities are themselves responsible for determining their beneficial owner and electronically transmitting the required data (first and last name, place of residence, date and place of birth and nationality). The report can also be made by parties such as tax consultants or solicitors.

Any changes must be notified within four weeks. To ensure a high reporting rate, financial penalties are provided for failure to report and intentional breaches of the obligation to report. Unauthorised access is also considered a financial offence and is subject to fines.

PKF Comment

Due to the very high penalties for non-registration or misreporting of beneficial owners, we strongly recommend that you take the reporting obligation seriously. If you have further questions, please contact Gernot Gassmann at ***gernot.gassmann@pkf-graz.at*** *or* ***+43-316-82608222****.*

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Belgium

Belgium extends scope of Belgium payroll withholding tax relief for R&D staff

In addition to other Belgium tax incentives to promote R&D/IP activities (including e.g. the 85% innovation tax deduction), Belgium companies and permanent establishments employing R&D staff are entitled to claim Belgium payroll withholding tax ("WHT") relief with respect to the salaries paid to qualifying R&D staff. In essence, this means that the Belgium employer can keep 80% of the Belgium payroll WHT due on salaries while only the balance of 20% is paid to the Belgium tax authorities. Specifically, the rationale is that the employer can use this 80% as working capital to finance other R&D activities. Obviously, the R&D staff involved can credit 100% of this payroll WHT for Belgium personal income tax purposes and is thus not adversely affected by this rule. Following a recent change in Belgium tax law and as of 2018, the scope of this Belgium payroll WHT relief is now extended from qualifying Master Degrees to qualifying Bachelor Degrees. However, the payroll WHT relief will initially amount to 40% regarding Bachelor salaries paid in 2018-2019 and will increase to 80% as of 2020.

PKF Comment

Since all R&D projects require significant cash-flow investments, the above-mentioned payroll WHT relief rule has always been very much appreciated by the R&D business industry in Belgium. The extension of qualifying staff from Master Degrees to Bachelor Degrees is obviously also highly welcomed. From a practical point of view, it should be stressed that this Belgium payroll WHT relief cannot be claimed retrospectively. Hence, Belgium R&D employers should duly and timely file the (minor) on-line application (called "Belspo") allowing the Belgium employer to benefit from this Belgium payroll WHT relief for future months to a maximum extent. If you have more questions about Belgium R&D/IP tax relief, please contact Kurt De Haen at ***kurt.dehaen@pkf-vmb.be*** *or call* ***+32 2 460 0960*** *for any further questions.*

»BACK

Bulgaria

European Court of Justice rules that irrecoverable penalty interest for failure to comply with Bulgarian withholding tax requirements violates EU law

On 25 July 2018, the European Court of Justice (ECJ) ruled that Bulgarian irrecoverable penalty interest calculated over a period that runs until it becomes clear that a double tax treaty does not apply violates EU law (case C-553/16, TTL). The Bulgarian company TTL EOOD leases rail tankers from Polish, Austrian and Dutch companies. Further to a tax audit the Bulgarian tax authorities claim that TTL should have retained withholding tax on lease payments to the Austrian company. They issue an assessment notice of 1,140 EUR and charge 36,500 EUR irrecoverable deferral penalty interest for the company's failure to comply with its obligation to charge withholding tax on cross-border payments of income to unrelated companies established in a member state other than Bulgaria. Such an irrecoverable default penalty interest, which may not be due ultimately because a double tax treaty comes into play is only applicable in the event of cross-border transactions. Although it was later established that when no withholding tax was due, the interest was not reimbursed.

According to the ECJ, there is a difference in treatment between resident and non-resident companies paying income as consideration for the provision of services (in this case the leasing of rail tankers). A cross-border situation in which a resident company exercises the freedom to provide services is therefore treated less favourably than a domestic situation, effectively discouraging resident Bulgarian companies from using services of companies established in other member states. The full wording of Case C-553/16 can be consulted by clicking on this link.

PKF Comment

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

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China

Amendment to individual income tax law

The Standing Committee of China's National People's Congress (NPC) passed the amendment to Individual Income Tax Law (new IIT law) on 31 August 2018. The new IIT law will be effective from 1 January 2019. The new increased minimum deduction threshold for individual income tax from 3,500 to 5,000 yuan per month (or 60,000 yuan per year) will come into effect on 1 October 2018. Highlights of the new IIT law are as follows:

New tax residence rules

The new IIT law explicitly labels the two types of taxpayers under the current Law as resident individuals and non-resident individuals and lowers the threshold for tax residency from one year to 183 days, in line with other major tax jurisdictions. In other words, an individual would be deemed a resident for IIT purposes if he or she resides in mainland China for 183 days or more within one tax year (the same as a calendar year).

Comprehensive income and adjusted tax brackets

The old IIT Law provides for different tax rates on eleven categories of income, including salaries and wages income, individual household production or business operation income, author's remuneration, labour service payment, royalties, interest, dividends etc. Salaries and wages are subject to seven progressive rates (from 3% to 45%), individual household production or business operation income are subject to five progressive rates (from 5% to 35%) while the others are subject to a proportional rate of 20% (plus a few category-specific rules).

The new IIT law will combine the four income categories of salaries and wages income, labour service payment, author's remuneration and royalties, collectively termed comprehensive income, and will subject it to the seven progressive rates, still from 3% to 45%, but with adjusted income ranges in several brackets.

In addition, for resident individuals, IIT on comprehensive income would be calculated annually (as opposed to monthly under the old Law) based on the total comprehensive income earned during a tax year, minus any applicable deductions. Resident individuals with a withholding agent would still have their IIT on comprehensive income withheld and prepaid on a monthly basis. They would have the opportunity to settle tax payments with the tax authorities after a tax year ends, paying any additional tax owed and claiming any available tax refund. For non-resident individuals, IIT on comprehensive income would be paid on a monthly or per payment basis and would be separately calculated for each category of comprehensive income.

Higher minimum threshold

Under the old IIT Law, individuals are allowed a standard 3,500 yuan deduction on their monthly income from salaries and wages only (commonly known as the minimum threshold for IIT). The new IIT law raises the threshold to 5,000 yuan per month (or 60,000 yuan per year) and applies it to all comprehensive income of a single tax year.

Special expense deductions

In addition to special deductions for social insurance contributions that are now available, the new IIT law would for the first time allow resident individuals to claim special

expense deductions for expenses including children's education, continuing education, treatment for serious diseases, housing loan interest, housing rent and support for the elderly.

Anti-tax avoidance rules

The new IIT law includes a set of new anti-tax avoidance rules that are modelled after some of the anti-avoidance rules in the Enterprise Income Tax Law. It would authorise the tax authorities to make tax adjustments through a reasonable method in any one of the following circumstances:

- Where an individual's business dealings with his related parties are not conducted at arm's length and are without justification;
- Where an enterprise that is set up in a country (region) where the actual tax burden is obviously low and that is controlled by a resident individual or jointly controlled by a resident individual and a resident enterprise, fails to distribute or decreases the distribution of profits attributable to the resident individual, in the absence of any reasonable business needs;
- Where an individual makes other arrangements in the absence of any reasonable commercial purposes to obtain improper tax benefits.

PKF Comment

This is a significant amendment to the current IIT law, which marks an important step towards tax reform in China. The reform coupled with the strengthened tax collection and administration system in China, will undoubtedly elevate the importance of individual income tax compliance. Both corporates and individual taxpayers should pay close attention to the IIT reform in order to review their own specific circumstances and avoid unnecessary costs as a result of non-compliance. For further information on this matter or any advice on PRC taxation, please contact Jason Li at ***jason@pkfchina.com*** *or call* ***+86 137 643 03151****.*

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Cyprus

Alternative Investment Funds – New legislation approved

On 10 July 2018, the parliament approved new legislation on Alternative Investment Funds (AIFs), allowing Registered Alternative Investment Funds (RAIFs) to be

established in Cyprus. The new legislation repeals and replaces Law 131(I)/2014 previously regulating AIFs. The new legislation stipulates, among other things, the following relating to RAIFs:

- There is a requirement to appoint a local depository;
- There are no minimum capital requirements;
- They are not regulated by the Cyprus Securities and Exchange Commission (CySEC);
- They can operate as open- or closed-ended funds;
- They can be structured as a common fund, investment company (variable or fixed capital) or limited partnership; and
- They are addressed only to professional and/or well-informed investors.

The new legislation also introduces amendments to the tax rules applicable to IFs:

- A special tax rate of 8% is introduced on the renumeration of certain employees and executives of investment fund management companies for a period of 10 years, with a minimum tax liability of EUR 10,000 per year;
- Persons that are both Cyprus tax residents and Cyprus domiciled are subject to a special defence contribution at a rate of 17% on profits received from Cyprus investment funds;
- No permanent establishment will be deemed to arise in Cyprus in the case of an investment into Cyprus tax-transparent investment funds by non-resident investors and/or in the case of management from Cyprus of non-Cyprus investment funds; and
- Each compartment of an RAIF is treated as a separate taxpayer.

PKF Comment

This is a very positive development as it will significantly reduce the time and cost for establishing an AIF in Cyprus. If you believe any of the above measures may impact your business or require any advice with respect to Cyprus taxation, please contact Nicholas Stavrinides at ***nicholas.s@pkf.com.cy*** *or call* ***+357 258 68000****.*

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Ecuador

Changes to strengthen the economy

On 7 August 2018, the General Assembly approved the Law for Productive Development (published in the Official Gazette on 21 August 2018) that includes a tax amnesty for taxes due before 2 April 2018, new tax incentives and modifications to the corporate income tax. Salient features are as follows:

- Income tax exemption of 8 years for new investments in the urban areas of Guayaquil and Quito and of 12 years outside Guayaquil and Quito; 15 years exemption available for "prioritised industries," agro-industry and agro-associative sectors within the border cantons;
- Income tax exemption for new productive investments in the industry sector for 10 years and in basic sectors for 15 years (could be increased by an additional 5 years in case the investment takes place in border cities),
- Income tax exemption for 5 years for new investments in the provinces of Manabi or Esmeraldas; investments in tourism can benefit from an additional exemption of 5 more years;
- Progressive tax rates that range from 2% to 10% on capital gains generated from the sale of shares exceeding USD 22,540;
- Income tax rate of 28% when any of the shareholders is domiciled in a tax haven and the effective beneficiary is an Ecuadorian tax resident,
- VAT paid on the local acquisition of goods and services related to the development of housing projects with an average price of USD 40,000 per unit can be claimed from the tax authorities as a refund;
- Tax on the remittance of funds abroad can be refunded to exporters when imported raw materials, inputs or capital goods are incorporated into the productive process within maximum 90 days;
- Exemption from tax on the remittance of funds abroad for new productive investments and for reinvested profits; and
- 100% waiver of interest, penalties and other charges derived from the outstanding balance of tax obligations before 2 April 2018 (except for 2017 income tax), subject to conditions.

PKF Comment

The Law for Productive Development is based on three main pillars: waiving interest, penalties and other charges outstanding with different government bodies (tax authority, social security, municipalities, etc.), attracting new investments and increasing legal certainty in Ecuador for foreign investors. The amnesty is expected to raise approximately USD 770 million and its beneficiaries would not be allowed to obtain any other waiver for at least 10 years. For further information or advice concerning tax amnesty or any advice with respect to Ecuador taxation, please contact Edgar Naranjo at ***enaranjo@pkfecuador.com*** *or call* ***+593 4 236 7833****.*

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Germany

Reassessment of cost contribution agreements in Germany

On 5 July 2018, the German Federal Ministry of Finance (Bundesministerium der Finanzen, BMF) published a statement on its reassessment of cost contribution agreements (CCAs) concluded between members of international groups. The new assessment has been aligned with Chapter VIII of the 2017 OECD Transfer Pricing Guidelines. The 1999 BMF-statement on CCAs will be abolished as per 31 December 2018. CCAs existing at the time the new BMF-statement is published in the Bundessteuerblatt (German federal gazette) will still be assessed under the former principles as set out in the 1999 BMF-statement for a transitional period covering business years ending before or on 31 December 2019.

A CCA is a contractual arrangement between business enterprises concluded for the purpose of sharing contributions and risks related to:

- the joint development, production or the obtaining of intangibles, tangible assets ("development CCAs"); or
- services ("services CCAs"),

with the understanding that such intangibles, tangible assets and services are expected to create benefits for the business of each of the participants.

As before, an enterprise is eligible to participate in a CCA

if it is expected to benefit from the transactions covered by the CCA. As a result of the alignment with the OECD Guidelines each participant must now also be in a position to exercise control over the risks involved in the CCA.

Also the valuation of the contributions under CCAs has changed as a result of the alignment with the OECD Guidelines: So far costs (without a mark-up) were shared in proportion to the benefit expected for each participant. For future purposes the value of a contribution is to be based on market prices. This new treatment is particularly relevant to development CCAs while for most services CCAs it is likely that cost-based valuations will also be accepted in the future, at least for transactions with low value creation.

PKF Comment

In cases where a German enterprise is participating in a CCA, it should be reviewed and adjusted to meet the new German requirements, where necessary. In order to determine whether an enterprise is eligible to participate in a CCA, apart from its function it will now also be necessary to analyse its control over the risks assumed. Furthermore, development CCAs in particular need to be examined as to whether and to what extent the participants' contributions are based on market prices or whether any of the exceptions to this principle granted by the OECD may apply. Finally, you should take the opportunity to check whether your CCA documentation complies with the provisions of the OECD Guidelines. Please contact Dr. Dietrich Jacobs at ***dietrich.jacobs@pkf-fasselt.de*** *or call* ***+49 40 35552 131*** *and Thomas Rauert at* ***thomas.rauert@pkf-fasselt.de*** *or call* ***+49 40 35552 137*** *for any further information or assistance you may need with regard to transfer pricing regulations in Germany.*

»BACK

ECJ extends tax deductibility of "definitive losses" to non-resident permanent establishments

Although it was generally assumed that the question of tax deductibility of "definitive losses" had finally been dealt with by the ECJ (C-388/14, 17 December 2015, Timac Agro), the ECJ was once more called upon to decide on the issue (C-650/16, 12 June 2018). This meant that the ECJ would also need to take a stand on whether the Marks & Spencer doctrine (C 446/03, 13 December 2005 on "definitive losses") is still applicable and whether it applies to permanent establishments (PEs) as well.

Background

Bevola A/S, a company tax resident in Denmark, had a loss-making PE in Finland, which was fully closed down in 2009 so that loss relief could no longer be claimed in Finland. Therefore, Bevola A/S applied for a deduction of the losses from its taxable profits in Denmark. This was denied by the Danish tax authorities because Bevola A/S did not opt for taxation under the Danish international joint taxation scheme, under which a deduction would have been allowed.

ECJ Ruling

1. The ECJ held that the denial of the deduction did not infringe the freedom of establishment. Bevola A/S could have opted for taxation under the Danish international joint taxation scheme, under which resident and non-resident PEs are not treated differently.
2. However, denying a deduction is not justified on the grounds that there is a risk of double deduction of losses. As the Finnish PE was fully closed down, the risk of double deduction of losses no longer existed and therefore the denial of loss deduction in Denmark was disproportionate. With respect to the Marks & Spencer doctrine the ECJ held that losses that can definitively no longer be deducted in one member state may be deducted in another member state by the parent company.

PKF Comment

With this most recent decision the ECJ confirmed the Marks & Spencer doctrine and extends it to losses incurred by non-resident PEs. Therefore, taxpayers having incurred such loss are advised to seek deduction in the resident's member state. It is then for the national court to decide whether the losses are "definitive losses" and whether they meet the conditions of the Marks & Spencer doctrine.

For further information or advice concerning the handling of definitive losses or any advice with respect to German taxation, please contact Isabee Falkenburg at ***isabee.falkenburg@pkf-fasselt.de*** *and/or Thomas Rauert at* ***thomas.rauert@pkf-fasselt.de*** *or call* ***+49 35552 0.***

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Recent ECJ decision on German CFC-regulations – Are they compatible with EU law?

Recently the European Court of Justice (ECJ) once again ruled on German CFC-regulations (C-382, 31 May 2018) as follows:

Background

Hornbach AG, a company tax resident in Germany, held an indirect shareholding in two Dutch group companies. In order to ensure the continued operations and further investments of these subsidiaries, whose equity was negative at the time, Hornbach AG provided them with comfort letters gratuitously. The German tax office was of the opinion that the comfort letters had not been granted on arm's-length terms and increased the tax base to the amount a third party would have claimed.

ECJ ruling

In principle, German CFC-regulations are in line with the freedom of establishment. The fact that resident and non-resident group companies are treated differently under the German CFC-regulations is deemed to be justified because eventually they aim at the balanced allocation of the power to tax between the member states. However, in order to be also compatible with the principle of proportionality, the German CFC-regulations have to meet the following conditions:

1. The taxpayer is given the opportunity, without being subject to undue administrative constraints, to provide evidence that the relevant transaction was made for economic reasons. The ECJ held that such a commercial justification may also be the fact that Hornbach AG was an indirect shareholder of the foreign group company.
2. The tax related adjustments are made insofar as the arm's length principle is not met. This was not at issue in the present case.

PKF Comment

The present ruling left the taxpayer with a lot of uncertainty and open questions:

- *The ECJ does not provide a concrete definition of "economic reasons" that would justify a deviation from the arm's length principle.*
- *Furthermore, it did not become clear whether the above-mentioned rule applies to permanent establishments and subsidiaries alike.*
- *Last but not least it is up to the national court to decide whether the taxpayer is given the opportunity to provide evidence that the terms of the transactions were agreed upon for economic reasons.*

Against this background German taxpayers with international group relations are advised to be alert when their tax base is/could be increased to reflect remunerations that would have been charged under the arm's length principle without being given the chance to demonstrate the reasons. They should be in a position to provide convincing reasons why such conditions were agreed.

For further information or advice concerning the handling of the German CFC-rules or any advice with respect to German taxation, please contact Isabee Falkenburg at ***isabee.falkenburg@pkf-fasselt.de*** *and/or Thomas Rauert at* ***thomas.rauert@pkf-fasselt.de*** *or call* ***+49 35552 0****.*

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Ghana

Various changes in tax legislation

There have been several changes in the tax laws which may affect business operations in Ghana.

VAT Withholding Tax (Value Added Tax (Amendment) (No. 2) Act, 2017 (Act 954)

In May 2018 the Ghana Revenue Authority (GRA) authorised a number of companies to serve as VAT withholding agents, to withhold 7% of output VAT charged on payments to registered standard rate VAT suppliers and pay the same to the GRA by the 15th of the following month.

Fiscal Electronic Device Act, 2018 (ACT 966)

The Act was passed in May 2018 (to take effect in October 2018) with the object of requiring all VAT-registered businesses to install approved Fiscal Electronic Devices on their premises and to monitor sales and purchases for VAT purposes.

Luxury Vehicle Levy Act, 2018 (ACT 969)

This Act imposes a levy (applied at different rates) on vehicles with engine capacities specified in the Schedule to the Act. It is an annual levy and it is to collected by the Driver and Vehicle Licensing Authority. The effective date

is 1 August 2018.

The Act exempts tractors, ambulances, commercial vehicles that have the capacity to transport more than 10 persons, commercial vehicles for the transport of goods; and other motor vehicles that the Minister responsible for Finance may exempt by legislative instrument.

Schedule of Luxury Vehicle Levy

	Engine Capacity	Levy (GHS)
1.	2950cc – 3549cc	1,000
2.	3550cc – 4049cc	1,500
3.	4045cc and above	2,000

Income Tax (Amendment) Act, 2018 (ACT 973)
The tax rates for individuals have been adjusted. This is to take effect from 1 August 2018.

Non-resident individuals
The withholding tax rate for non-resident individuals has increased from 20% to 25%. Among other definitions provided in Section 101 of the Income Tax Act, 2015 (Act 896 as variously amended), a resident individual is an individual who is present in the country during that year for an aggregate period of 183 days or more in any twelve-month period that commences or ends during that year.

Resident individuals
The Act amends the personal income tax rates by introducing an additional band of 35% for persons with a chargeable monthly income above GHS 10,000 or a chargeable annual income exceeding GHS 120,000.

Annual rates

	Income	Rate	Tax	Cumulative Income	Cumulative Tax
First	3,132.00	0%	0.00	3,132.00	0.00
Next	840.00	5%	42.00	3,972.00	42.00
Next	1,200.00	10%	120.00	5,172.00	162.00
Next	33,720.00	17.5%	5,901.00	38,892.00	6,063.00
Next	81,108.00	25%	20,277.00	120,000.00	26,340.00
Exceeding	**120,000.00**	**35%**			

Value Added Tax [2](Amendment) Act, 2018 (ACT 970)
This Act amends Section 3 of Act 870 by reducing the VAT rate from 15% to 12.5% which is calculated on the value of taxable supplies of goods or services or the value of imports.

A taxable supply as defined by Section 43 (1) of Act 870 is made up of consideration plus all duties and taxes, excluding VAT.

Value Added Tax (Amendment) Act, 2018 (ACT 972)
Ghana Education Trust Fund (GETFund) Levy of 2.5% is converted into a straight levy. This means that business entities on the standard rate of VAT are not allowed to claim GETFund of 2.5% as an input tax deduction.

National Health Insurance (Amendment) Act, 2018 (ACT 971)
This Act amends Section 47 and 51 of Act 852 where National Health Insurance Levy (NHIL) of 2.5% is converted into a straight levy. This means that business entities on the standard rate of VAT are not allowed to claim NHIL of 2.5% as an input tax deduction.

PKF Comment

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

Hong Kong

Hong Kong has passed BEPS and transfer pricing legislation

The Inland Revenue (Amendment) No. 6 Ordinance 2018 ("the Ordinance") of Hong Kong, gazetted on 13 July 2018, aims to codify transfer pricing ("TP") principles, introduce mandatory TP documentation requirements and implement the minimum standard of the BEPS package promulgated by the OECD. Some salient points of the Ordinance are discussed below.

1. TP regulatory regime
The Ordinance codifies the arm's length principle into the Inland Revenue Ordinance and introduces fundamental TP rules. Under the TP regime, the Inland Revenue Department ("IRD") in Hong Kong is empowered to adjust the profits or losses of an enterprise where the actual provision made or imposed between associated persons (associated in terms of management, control and capital) departs from the arm's length provision and has created a Hong Kong tax advantage ("Rule 1").

The new TP regime also requires the use of a separate enterprise principle for attribution of profits to a permanent

establishment of a non-Hong Kong resident person and adopts the Authorised OECD Approach for such profit attribution to a PE (“Rule 2”).

Rule 1 and Rule 2 shall apply starting from the years of assessment 2018/19 and 2019/20 respectively.

2. TP documentation

The Ordinance introduces a mandatory TP documentation requirement in Hong Kong based on the three-tiered documentation framework recommended by the OECD, which consists of the Master File, the Local File and the Country-by-Country (“CbC”) report.

Master File and Local File

All enterprises carrying on a trade or business in Hong Kong which engage in transactions with associated enterprises are required to prepare the Master File and Local File, except enterprises which are specifically exempt due to the size of their business or the volume of their related party transactions.

Master Files and Local Files are required for accounting periods beginning on or after 1 April 2018.

CbC reporting

The Hong Kong ultimate parent entity of a multinational enterprise group with annual consolidated revenue of HKD 6.8 billion or above (approximately EUR 750 million) which is a reportable group or any Hong Kong entity that is nominated as surrogate filing entity, is required to file a CbC report in Hong Kong for accounting periods beginning on or after 1 January 2018.

Each Hong Kong entity of a reportable group (even if the group’s ultimate parent entity is not a Hong Kong tax resident) must file a notification with the IRD within three months after the end of the corporation’s accounting period for the IRD to determine the obligation for filing a CbC report unless another Hong Kong entity has already made the notification.

Penalty actions will be taken against those taxpayers who, without any reasonable excuse, are unable to comply with the arm’s length principle or fail to prepare or file TP documentation under the new TP regime.

3. Deeming provision on intellectual property (“IP”)

The Ordinance also introduces the OECD’S development, enhancement, maintenance, protection and exploitation (“DEMPE”) framework to evaluate the economic ownership of IP. This new provision is introduced to deem certain income to be attributable to and taxable for an enterprise if it carries out DEMPE functions in Hong Kong and has made a contribution to IP held by an overseas associated entity.

The new deeming provision for DEMPE activities will come into effect from the years of assessment beginning on or after 1 April 2019.

PKF Comment

The Ordinance represents a significant development in Hong Kong’s implementation of the minimum standards under the BEPS package, especially in the TP area. As there are many uncertainties on interpretation and practical application of the regulations, further guidance will be issued by the IRD in the coming months. Enterprises in Hong Kong should pay attention to the development to cope with the new challenges and seek advice where appropriate. For further information or advice concerning the new TP regime 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****.*

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Italy

VAT group implementing regulations

Stability Law 2017 (Law No. 232 of 11 December 2016, art. 1 paragraphs 24 to 31) introduced the new “VAT Group”.

Quite different from and not to be mistaken with the old and still existing group VAT concept, the “VAT Group” consists in creating a single VAT taxable entity operating individually, although each company - still legally independent - would lose VAT independence.

All companies joining a VAT group must be closely bound by economic, organisational and financial links. Within a VAT group, all supplies of goods or services made by any member of the group are treated as having been made by the group as a whole. Furthermore, supplies of goods or services among members of the VAT group will not be subject to VAT.

The VAT group regime is illustrated by D.P.R. (Presidential Decree) 633/1972, V bis section (paragraphs 70-bis to 70-duodecies), providing particularly interesting information on the afore mentioned restrictions contained in paragraph 70-ter. According to this paragraph, the companies joining the group must perform the same core business and economic activities or the activities must be complementary, ancillary and auxiliary with respect to one or more group members.

An organisational bound implies a 'de jure or de facto' coordination among decision-making bodies, while a financial bound implies that member companies must be subject to common control, through a direct or indirect participation.

On 18 April 2018, a Decree was gazetted providing implementing regulations for the VAT group legislation. The Decree is the last piece of regulation necessary to start applying the VAT group legislation introduced by the 2017 Stability Law. Italy has hereby exercised the option granted to the EU member states by article 11 of EU VAT Directive No. 2006/112/CE.

The pros and cons of VAT group registrations.
The VAT group is an optional regime, binding for three years and automatically renewable. The application can be submitted online. VAT taxable entities meeting the requirements for a VAT group can now opt in and the VAT group will be effective as from 1 January 2019. As a transitory rule for the first year, election for a VAT group may be submitted until 15 November 2018 in order to have the VAT group starting effectively in 2019. The election must be filed by 30 September after the first year while belated elections will only become effective from the second subsequent year.

In essence, a new VAT registration number will be issued for the group as a whole and the group will be entitled to submit one VAT declaration on behalf of all member companies.

The regime is particularly suited for exclusively or partially VAT exempt businesses, such as insurance companies, banks, healthcare, gambling and betting sectors, real estate and mixed holding companies.

A primary benefit would consist in being entitled to qualify transactions carried out within the VAT group as "not relevant for VAT purposes". This would prevent all actions related to pro-rata non-deductible VAT rights on all these transactions, which are in fact no longer qualified as VAT transactions, thereby potentially cutting down tax revenue and minimising the risk of a VAT audit on transfer prices among companies joining the same VAT group.

A further advantage would be that administration costs, invoicing and fulfilments would be conveyed on the company controlling the group, essentially providing substantial savings.

For the time being, the main disadvantage would be the upgrade of the related information systems and administrative procedures.

For a VAT group a single VAT return and declaration is required. Therefore, besides envisaging specific sections within VAT registers of each member company, IT infrastructures shall be standardised to provide a single VAT accounting scheme.

Quite a number of companies are currently evaluating whether creating a VAT group pursuant to the new rules.

PKF Comment

For further information on this matter or any advice on Italian taxation, please contact Matteo Macciò at ***matteo.maccio@tclsquare.com*** *or call* ***+39 010 818 3250****.* »BACK

Supreme Court weighs in on requirements to determine tax residency of physical persons

The fiscal residency requirement is an essential element in order to verify tax obligations in Italy, which adheres to the principle of worldwide taxation. Anyone being a tax resident in Italy is taxed on his worldwide income whereas non-tax resident physical persons are taxed on their Italy-source income only.

In order to determine the fiscal residency of physical persons in Italy, article 2 of the D.P.R. (Presidential Decree) No. 917/1986 ("TUIR") is quite paramount and stipulates that natural persons are those who, for most of the tax period (i) are registered in the population registers of the resident population (ii) are resident in Italy, or (iii) are domiciled in the territory of the State pursuant to the Civil Code.

Given this article, it should appear simple to identify the "limits" of tax residency, i.e. someone who resides in Italy for 183 days out of 365 is considered a tax resident and someone who moves abroad before 183 days have elapsed (indicatively before 3rd of July) should not be considered an Italian resident. Unfortunately, as so often, it's a bit more complicated in Italy where a certain leaning of Supreme Court case law, which seems formalistic at least, is becoming apparent.

A recent ruling of 25 June 2018 (case number 16634) is along the same lines as Supreme Court case numbers 21970/2015 and 1215/98. The Supreme Court, ruling on the case of a person who transferred to the United Kingdom, where he worked and paid taxes, and did not register with AIRE (national register of foreign Italian residents), decided to consider the criterion of registration in the Italian registry as an element of formal nature which precludes any further verification. Basically, if the de-registration from the registry and the simultaneous registration with the AIRE (register of foreign residents) do es not take place, the tax authority has the right to consider the subject a tax-resident in Italy, irrespective of any actual proof of foreign residency.

This position appears to be contradicting the basic principle of the ability to contribute. For this principle, there must be an effective link between the person and the territory, otherwise there are no obligations to contribute to public spending (Italian Constitution - Article 53). It serves as the basis for any tax levy.

OECD criteria establish the tax residence in the country where there is the "main residence" of the person (more substance than form). If this criterion is not applicable, it must be verified where the person's "centre of life interests" is situated.

The tax residence is essentially where the person keeps the centre of his affections, typically where the family resides. Finally, if the previous criteria are not applicable, it is considered to be the place where the subject "habitually resides". It seems clear that the criterion adopted by the Supreme Court regarding the formalism of registration with the registry office is in contrast with OECD directives.

Finally, in order to determine tax residency, it is interesting to note that, since 2007, Italian citizens de-registered from the resident population register and transferred to non-white listed countries (countries that previously belonged to black listed countries) are considered residents in Italy, unless proved differently. This is a provision of law (paragraph 2 bis art 2 TUIR) with a substantial anti-tax avoidance aim. The burden of proof of actual residence in the specific country with privileged taxation is shifted to the taxpayer.

On this matter, the Supreme Court adopts a line that can only be defined in contrast with what is described above, i.e. that substance prevails over form. It means that if the taxpayer submits a series of evidence in order to support his foreign residency (lease, payment receipts, air tickets, proof of activity carried out, etc.), they can be considered invalid only in case their unreliability is proved.

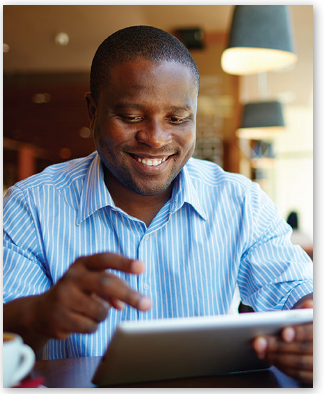
Therefore, awaiting a Supreme Court ruling with joint sections ruling, in case of a transfer to and from abroad for long periods, it is recommended to fulfil all the necessary formalisms, such as the AIRE registration. It is also recommended to maintain clarity and verifiability on where the centre of life interests is situated and where the habitual residence is located.

PKF Comment

For further information on this matter or any advice on Italian taxation, please contact Stefano Quaglia at ***stefano.quaglia@tclsquare.com*** *or call* ***+39 010 81 83250****.* »BACK

Mozambique

New transfer pricing regulations in force



Mozambique's Council of Ministers enacted the Decree 70/2017, dated 6 December 2017, which approves the Transfer Pricing Regulations ("TP Regulations").

This new legislation entered into force on 1 January 2018 and defines the procedures to assess transactions carried out between related parties, imposes new documentation requirements and allows corrections to taxable profits by the tax authorities.

Scope

The TP Regulations are applicable to both residents in Mozambique, as well as to permanent establishments of non-resident companies carrying out transactions with related parties.

The obligation to prepare transfer pricing documentation is applicable to taxpayers whose annual net turnover and other income, in the preceding fiscal year, is equal to or exceeds MZN 2.5 million (approximately USD 40,000).

Concept of related parties

Two entities are considered related parties if managed or controlled by: (i) the same person/entity, (ii) a person that is a key member of the management of the other entity or its parent company, or (iii) has the capacity to exercise a significant influence on management decisions. This may be deemed to occur inter alia:

- Between an entity and its shareholders, their spouses, ascendants or descendants, which directly or indirectly hold at least 10% of the share capital or voting rights;
- Entities in which the same shareholders, their spouses, ascendants and descendants, directly or indirectly hold at least 10% of the share capital or voting rights;
- An entity and the members of its governing bodies, or any bodies from its administration, direction, management or audit, as well as their spouses, ascendants and descendants;
- Entities in which the majority of the members of their governing bodies, or any bodies from its administration, direction, management or audit are the same persons or, being different, are related through marriage, non-marital partnership or affinity in direct line;
- Entities linked by a subordination contract, group parity contract or another contract with equivalent effect;
- Entities in a controlling relationship, as determined in the legislation which states the obligation of presenting consolidated financial statements
- Entities which, due to their direct or indirect commercial, financial, professional or legal relations, depend on each other for carrying out their business activity (e.g. know how contracts, transfer of technology, etc.)

Transfer pricing methods

The TP Regulations enacted adopt the methods set forth in the OECG Guidelines for Multinational Entities. The methods accepted are:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method;
- Transaction net margin method;
- Other methods.

Transfer pricing documentation

The new documentation requirements foresee the following information to be disclosed:

- Description of the related party transactions with respect to characterisation of the entities through their functions, assets and risks;
- Description of the business of the tested party in terms of operations as well as strategy;
- Directives relating to the application of the TP policy;
- Contracts and other legal agreements pertaining to the related party transactions;
- Selection and application of the selected TP methods by transaction;
- Comparability analysis as well as detailed information on the comparable information used.

Other compliance obligations

The tax return to be submitted by taxpayers shall include the following information, related to transactions with related parties:

- Identification of the parties;
- Transaction value per product or service;
- Transfer pricing adjustments;
- Transfer pricing method selected per transaction.

PKF Comment

For further information on this matter or any advice on Mozambique taxation, please contact José Parada Ramos at ***paradaramos@pkf.pt*** *or André Freitas at* ***andre.freitas@pkf.pt*** *or call* ***+351 968 776 393*** *or* ***+351 969 319 392*** *respectively.*

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Nepal

FY 2018/19 Budget highlights

Changes in tax rates through the Budget of FY 2018/19

On 29 May 2018, the government of Nepal (GoN) presented the full budget for the FY 2018/19. The major changes introduced in the direct and indirect tax laws are as follows:

Direct Taxes

i) Changes regarding personal income tax as tax brackets of 15% and 25% were removed and new brackets of 10%, 20% and 30% introduced. Additional tax of 20% introduced on taxable income exceeding NPR 2 million.

ii) Reduction of threshold applicable for levy of capital gain tax from existing NPR 3 million to NPR 1 million.

iii) Concession of 50% on applicable income tax rate to tea, garment and dairy industries on its core business income.

iv) Concession of 10% on normal applicable tax for three years in case of conversion of private company to public company with paid up capital of NPR 500 million.

v) Introduction of concession on income tax to industries providing direct employment to more than 100 Nepali citizens.

Indirect Taxes

i) Mandatory VAT registration for entities engaged in the business of liquor, cigarettes, sanitary, electronics and construction materials in metropolitan and sub-metropolitan area.

ii) Withdrawal of education service fee and health service tax.

iii) Increment of excise duty in liquors, cigarette and tobacco products.

iv) Increment in excise duty on two wheelers and four wheelers exceeding the capacity of 150 cc and 1000 cc, respectively.

v) Withdrawal of existing system of self-refund of VAT collected from consumers.

PKF Comment

The GoN through the budget speech and Finance Bill has changed direct and indirect tax rates which will increase the tax liabilities of certain income groups of salaried persons and entities in Nepal. The taxpayers in Nepal should be aware about the new tax rules effective for the FY 2018-19. For further information or advice on Nepal tax laws or if you have any specific query about your particular tax situation, please contact Shashi Satyal at ***ssatyal@trunco.com.np*** *or call* ***+977 01 4410927****.*

Mandatory issuance of electronic invoices

The GoN through the budget speech has announced that it will introduce the mandatory issuance of electronic invoices by sellers to ensure transparency in transactions and such invoices shall be linked with the central invoice monitoring system of the Inland Revenue Department.

PKF Comment

The majority of businesses are currently issuing manual invoices resulting in a risk of sales and income not being reported and leading to a leakage of government revenue. With the introduction of this system monitoring of actual transactions will be effective and the risk of not reporting sales will be reduced. For further information or advice on Nepal tax laws or if you have any specific query about your particular tax situation, please contact Shashi Satyal at ***ssatyal@trunco.com.np*** *or call* ***+977 01 4410927****.*

Tax collection on the disposal of shares of Nepalese resident entities

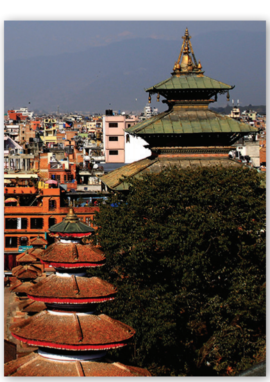
An advance tax on the disposal of shares will be as per the following rates on the amount of the net gain to the taxpayer. The amount of the tax shall be withheld by the entity whose shares are being disposed of.

In case of listed companies
Gain obtained by resident natural person: 7.5% of the net gain;
Gain obtained by resident entity: 10% of the net gain;
Other: 25% of the net gain.

In case of unlisted companies
Gain obtained by resident natural person: 10% of the net gain;
Gain obtained by resident entity: 15% of the net gain;
Other: 25% of the net gain.

PKF Comment

The rate of the advance tax has been revised for the FY 2018/19. In case of the disposal of shares of a resident entity by any foreign entity the advance tax shall be withheld at the rate of 25%, which is equivalent to the corporate tax rate for non-residents. The rate of advance tax was previously 15%, which has now increased to 25% on the net gain amount which reduces the ambiguity of tax payments by non-resident sellers of the shares. For further information or advice on Nepal tax laws or if you have any specific query about your particular tax situation, please contact Shashi Satyal at ***ssatyal@trunco.com.np*** *or call* ***+977 01 4410927****.*



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Netherlands

The dividend withholding tax: “Should it stay or should it go?”

In our tax update earlier this year (Q1 2018) we mentioned that the newly formed government, in its coalition agreement, announced to abolish the dividend withholding tax. In conjunction with this abolition they also announced a new anti-abuse withholding tax for dividends paid to low tax jurisdictions or in case the shareholding is considered “abusive”. A similar conditional withholding tax will likely be introduced with regard to interest and royalties.

The abolition of the dividend withholding tax is planned to take place as per 1 January 2020, together with the introduction of the conditional withholding tax for dividends paid to low tax jurisdictions or in case the shareholding is considered “abusive”. As per 1 January 2021, the conditional withholding tax for interest and royalties should be in place as well.

However, recently new developments have occurred, which have had a negative impact on the political level of support for the announced abolition. For instance, the abolition of the dividend withholding tax is accompanied by a budget of EUR 2 billion, which is EUR 600 million more than expected. The government now faces the challenge to find additional tax proceeds to cover this gap.

Although the Dutch Government’s proposal has met serious criticism from the opposition, the government is still convinced to pursue the abolition of the dividend withholding tax to ensure a sound business climate.

The government, however, will need to bridge the financial gap of EUR 600 million. In all likelihood, the gap will be (partially) filled with the smaller reduction of the previously announced Dutch corporate income tax rate, more specifically with regard to the second tax bracket on profits exceeding EUR 200,000. This would imply that instead of a reduction (over a three year time period) to 21% (from 25%), the corporate income tax on the second tax bracket would be reduced to 22%.

PKF Comment

The abolition of the dividend withholding tax is one of the measures taken by the government to further improve the Dutch business and investment climate for international companies. However, in order to counter tax avoidance structures, it proposes the introduction of a withholding tax on dividends, interest and royalties paid to low tax jurisdictions. This anti-abuse legislation will likely affect many flow-through entities. The legislative proposal has become a “hot” political topic and therefore a certain level of uncertainty will remain to exist until the proposal has been adopted by both houses of parliament by year-end. For further information or advice regarding the abolition of the dividend withholding tax, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl*** *or call* ***+31 15 260 6110*** *or contact dr. J. van Strien at* ***jeroen.van.strien@pkfwallast.nl*** *or call* ***+31 15 260 61 50****.*

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Poland

Implementation of exit taxation

Poland’s government has expedited its efforts to introduce the new exit tax, intended to prevent businesses from evading taxation in Poland by moving their assets abroad. Exit taxation has the function of ensuring that where a taxpayer moves assets (including an enterprise or an organised part of an enterprise) or its tax residence out of the tax jurisdiction of Poland, the tax authorities have the right to tax the economic value of any capital gain created in the territory of Poland even though that gain has not yet been realised at the time of the exit. Consequently, the aim of the amendment is taxation in Poland on unrealised, potential gains resulting from the transfer of business or tax residence from Poland to another country.

The Polish regulations regarding exit taxation are a result of the Council Directive (EU) 2016/1164 (known as “Anti-Tax Avoidance Directive” - ATAD). According to the draft bill announced on 24 August 2018, the regulations will apply to both legal and natural persons. The tax rate shall amount to 19% or 3%. The lower tax rate (3%) is meant for natural persons who do not conduct business activities, transferring their tax residence to another country after having lived in Poland for at least 5 years. The subject of the taxation in such cases shall be securities, shares in companies, units in investment funds and financial derivatives not exceeding PLN 2 million in value.

According to the new regulations, a taxpayer shall be subject to tax at an amount equal to the market value of

the transferred assets, at the time of exit of the assets, less their value for tax purposes, under any of the following circumstances:

- A taxpayer transfers assets connected with the business activity conducted in Poland to its permanent establishment in another country;
- A taxpayer transfers assets from its permanent establishment in Poland to the country of his tax residence or to its permanent establishment in another country;
- A taxpayer transfers the business (or part of the business) conducted by its permanent establishment in Poland to another country.

According to the new regulations, the transfer would be taxed in so far as Poland will no longer have the right to tax the transferred assets as a result of the transfer (which also applies to donated assets). Thus, the exit taxation would not apply to assets that remain a part of the permanent establishment located in Poland.

The tax base will be the sum of unrealised, potential gains attributed to a particular asset. In case of a transfer of an enterprise or part of an enterprise, the taxation would apply to the whole enterprise (or part thereof).

The draft bill also lists other circumstances under which exit tax should not be charged, in particular when the transfer of assets is of a temporary nature and the assets are set to revert to Poland within 12 months, whereby the transfer made should be connected with the liquidity management policy of the company while the transfer of securities (or other assets) should result from the security transfer agreement.

It should be noted that a taxpayer will be given the right to defer the payment of the exit tax by paying it in instalments over five years, if the transfer takes place to another Member State, another country that is a party to the Agreement on the European Economic Area (EEA Agreement) or to a third country being a party to the Convention on Mutual Administrative Assistance in Tax Matters concluded with Poland or the EU. In connection with this, the taxpayer has to prove that the risk of tax avoidance does not exist. Another possibility is to secure the performance of the obligation, whereby the objective of the risk assessment is to determine whether the taxpayer properly declared and settled all liabilities or the taxpayer is a shareholder in a controlled foreign company (CFC) or the balance sheet value of his liabilities in the last 3 years did not exceed 50% of the value of the assets. The permission for payment in instalments must be granted by decision of the tax authority.

PKF Comment

In light of the above, it is recommended to take into account the planned changes in the area of the taxation at the time of planning or restructuring cross-border transactions. According to the draft bill the regulations would come into effect as from 1 January 2019. Should you need additional information regarding Polish transfer pricing regulations or require advice on any Polish tax matter, please contact Agnieszka Chamera at ***agnieszka.chamera@pkfpolska.pl*** *or call* ***+48 609 331 330****.*

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Russian Federation

Upcoming changes to the Tax Code

Some important changes to the Tax Code have recently been approved and will come into effect as from 2019, including:

- The standard VAT rate will be increased to 20% (now 18%);
- Movable property will be excluded from corporate property tax (only immovable property will be taxable);
- Thin capitalisation: exemptions for some investment projects have been introduced (provided some conditions are met thin capitalisation rules will not apply);
- Removal of the consolidated taxpayer group regime (until 2023).

PKF Comment

These changes are both positive (exemptions for movable property and thin capitalisation) and negative (VAT increase and restrictions to create a consolidated group). We therefore recommend analyzing their impact on your business. For further information on this matter

or any advice on Russian taxation, please contact Yulia Ponomarenko at y.ponomarenko@mef-consult.ru or call ***+7 495 988 15 15****.*

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Establishment of Special Administrative Areas

In August 2018 Special Administrative Areas (SAA) were established in Primorskiy Kray and Kaliningradskaya oblast. Foreign companies may redomicile to these SAAs provided some conditions are met, including:

- Being a commercial corporate legal entity;
- Carrying on business activity in several jurisdictions including Russia (through direct or indirect controlled entities, through branches, representative offices etc.);
- Being registered in a FATF (Financial Task Force on Money Laundering) or Moneyval (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) member jurisdiction;
- Being registered in a jurisdiction allowing to be redomiciled;
- Applying to conclude an agreement to be a participant of a SAA;
- Taking on an obligation to provide capital investments in Russia (not less than RUB 50 million within 6 months).

Such redomiciled company is referred to as an “international company”.

Provided that a redomiciled company (international company) meets certain conditions, it can enjoy some tax incentives (as from 2019), including:

- 0% tax rate for dividends received (if participation is at least 15% during not less than 365 calendar days);
- 5% tax rate for dividends paid by such companies (until 2029);
- 0% tax rate for capital gains (if at least 15% participation is sold, there are some other restrictions); and
- Certain other incentives.

All afore mentioned incentives are granted to an international company (redomiciled foreign company) provided special conditions are met including:

- Foreign company had been established before 2018;
- Foreign company submitted specified documents to the tax authority within 15 days as from registration as an international company;
- Controlling parties of such international company have obtained such control before 2017 (subject to certain exceptions).

PKF Comment

This change allows foreign companies to redomicile to SAAs in Russia and grants the benefit of Russian tax residence status and some additional tax benefits. For further information on this matter or any advice on Russian taxation, please contact Yulia Ponomarenko at y.ponomarenko@mef-consult.ru or call ***+7 495 988 15 15****.*

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Rwanda

Key changes from the new Law on Income Tax

The new income tax law officially known as the Law No. 016/2018 of 13 April 2018 Establishing Taxes on Income was published in the official gazette on 16 April 2018 and came into force on the same day. This new law repeals the previous Law on Direct Taxes on Income which had been in force since 2005.

A first review of salient features of the new Law on Income Tax was given in the Q3 2018 Worldwide Tax Update. In this current edition we will go into greater detail regarding a number of tax questions.

Permanent Establishment test for foreign entities carrying out services in Rwanda
In the repealed law, the key indicators of having a PE in Rwanda were if a foreign company had any of the following: a place of effective management, a branch, a factory/workshop, a mine/quarry or a construction site. These indicators failed to effectively cover foreign entities carrying out services in Rwanda. The new law has therefore introduced an additional PE threshold test

which provides that a foreign person (entity) providing services in Rwanda with the support of employees or other personnel for more than 90 days in a 12 month period either continuously or intermittently shall be considered to have a PE in Rwanda.

PKF Comment

Foreign individuals or entities performing various types of service contracts in Rwanda will need to take this into consideration to avert inadvertent creation of a PE.

Liberal professions excluded from opting for turnover tax regime

The new law has defined a liberal profession as "a profession exercised on the basis of special skills, in an independent manner, in offering services to clients".

Moreover, liberal professions have been restricted from opting to pay tax under a flat tax rate of 3% on turnover (lumpsum tax). The lumpsum regime applies to taxpayers whose annual turnover does not exceed RWF 20 million. Consequently, liberal professions will now be required to declare income tax under the real tax regime (30% of taxable profit) regardless of their turnover.

PKF Comment

It is our view that the definition of a liberal professional is too broad and therefore could lead to inconsistent application of this provision. In addition, professionals with low income may not have the necessary resources to keep proper books of accounts.

Retirement contributions by employers on behalf of employees to a private qualified pension fund now taxable at the level of the employee.

In the repealed law, retirement contributions made by the employer on behalf of the employee and/or contributions made by the employee to a qualified pension fund up to a certain threshold were exempt from employment income tax. Under the new law, this clause has been deleted which now means that – in our view – the employer's contribution to a private qualified pension fund will now be included in the taxable income of the employee resulting in an increase in the applicable tax.

However, upon retirement, the new law provides that pension payments from both the state pension fund and private qualified pension funds will be exempt from employment income tax. This is a departure from the repealed law where only pension payments from the state pension fund were exempt.

PKF Comment

We are of the view that the intended outcome of the above changes is to collect the tax on retirement contributions during employment and allow pensioners to receive their pension payments free of tax.

Clarification on the taxable value of benefits in kind

The new law has offered some much needed clarity on the value of taxable benefit in kind in cases where a rented house or a leased vehicle obtained for the benefit of the employee is paid directly by the employer. It provides that in these cases, the actual cost of rental or lease shall be considered as the taxable benefit in kind (similar to any other employment allowance).

PKF Comment

This provision has resolved a long contentious issue under the repealed law where both rented and employer-owned housing or a car were subject to a taxable value equivalent to 20% and 10% of the employee's gross salary respectively.

Deductibility of management, technical and/or royalty fees paid to non-residents capped at 2% of turnover.

The new law provides that management, technical and/or royalty fees paid to non-residents will only be allowable as a deduction on taxable income up to a maximum of 2% of the taxpayer's turnover.

PKF Comment

This clause is expected to have a significant impact on companies which rely on management or technical expertise from outside Rwanda to support their core functions. We also expect businesses that make use of certain intellectual property which can only be accessed from outside Rwanda to be adversely affected, e.g. international hotel franchises.

Director's sitting allowances are now taxable at the level of the individual directors

In the repealed law, cash bonuses, attendance fees and similar payments made to members of the Board

of Directors were a non-deductible expense. The new law has deleted this provision which means that these expenses are now tax deductible. However, these kinds of payments to directors will now attract withholding tax at a rate of 30%.

PKF Comment

The result of this change is that the tax burden has been effectively transferred from the company to the individual directors.

Deductibility of bad debts written off

In the repealed law, bad debts written off would only be tax deductible if a taxpayer could prove that all possible steps in pursuing the debt had failed and that the debtor had been declared insolvent by a court of law. This made it especially difficult (almost impossible) to claim deductions on bad debts written off. The new law has introduced an amendment which provides that if an individual owes a debt of less than RWF 3 million, there is no requirement to prove the debtor as insolvent through a court order. However, to claim a tax deduction, the taxpayer will have to provide proof that all reasonable steps to recover the debt over a period of 3 years have failed.

PKF Comment

This is expected to offer some marginal relief to taxpayers who were unable to claim deductions on bad debts because it was uneconomical to pursue small debts through the court process.

Tax losses may be carried forward for more than 5 years

The new law provides that a taxpayer may request to carry forward tax losses for a period exceeding 5 years subjectc to certain conditions which shall be issued by the minister of finance.

PKF Comment

We are of the view that this provision stands to benefit investors in capital intensive ventures that may not breakeven in the first five years of operation.

Transfer pricing documentation

The new law requires that related parties involved in controlled transactions must have documents justifying that their prices are consistent with the arm's length principle. This means that all companies transacting with related parties will now be required to develop and adopt a transfer pricing policy.

PKF Comment

It is expected that detailed transfer pricing guidelines will be issued by the Commissioner General before year-end to support the implementation of this article.

Non-profit organisations with surplus income to pay corporate tax

Under the new law, entities that carry out only activities of a religious, humanitarian, charitable, scientific or educational character are exempt from corporate income tax unless (a) their revenue exceeds the corresponding expenses or (b) those entities conduct a business. Another far reaching amendment is the requirement to have all corporate income tax exempted entities submit their annual financial statements to the Tax Authority.

PKF Comment

At a glance, it would appear that this new provision requires non-profit making organisations to pay corporate income tax on any surplus made during a tax period. The Commissioner General is due to shed more light on how the Tax Authority will proceed with implementing this article.

Expanded scope of dividend income

The scope of dividend income has been broadened to include income from shares in societies, similar payments from entities that are subject to corporate income tax and the adjusted profit after transfer pricing adjustments by the tax administration.

PKF Comment

We are of the view that this is aimed at widening the tax base by incorporating hitherto untaxed income.

Inter-company dividends now subject to withholding tax

Under the repealed law, dividends paid between two resident companies were exempt from both withholding tax and corporate income tax. Under the new law, inter-company dividends are now subject to withholding tax but

remain exempt from corporate income tax.

PKF Comment

We believe that this will harmonise the treatment of dividends for withholding tax purposes in an area where there were conflicting articles in the repealed law.

Taxation of capital gains

The new law has introduced more comprehensive provisions on taxation of capital gains on sale or transfer of shares which was a gray issue under the repealed law. The new law provides that the capital gain on sale or transfer of shares is the difference between the acquisition price and the selling or transfer price. The applicable tax rate is 5% of the computed gain.

The law further provides that the responsibility to withhold, declare and remit the capital gain tax has been placed on the company within which the sale or transfer of shares occurred.

PKF Comment

We are of the view that this article will prove to be controversial because transactions involving sale or transfer of shares are not captured in the company's books of accounts and neither is the payment made through the company's bank account. What this means is that companies have been tasked with the role of being withholding tax agents over payments that are outside their control.

This in itself is a fundamental flaw because in order to carry out the role of a withholding agent, an entity/person must have control over receipt, custody, disposal, or payment of the income that is subject to the withholding tax.

Scope of withholding tax expanded

Under the new law, withholding tax will now be levied not only on payments as was the case in the repealed law but also on other methods of extinguishing an obligation. These methods could include conversion of debt to equity, bonus issue in lieu of dividend etc.

Withholding tax is applicable if such payments or other methods of extinguishing an obligation are made to either (a) a person not registered with the tax administration or (b) person who does not have a recent income tax declaration.

It should however be noted that:

a) Dividends paid by a resident company are subject to withholding tax regardless of tax registration/ declaration status.

b) Persons/entities covered in category (b) above who are registered taxpayers may reduce their income tax payable by utilizing the deducted withholding tax.

The payments which are subject to withholding tax include dividends, interest, royalties, service fees, performance payments, gambling activities and goods sold in Rwanda.

PKF Comment

We are of the view that this provision has been introduced to curb leakage of tax revenue resulting from taxpayers who fail to submit their tax declaration either entirely or on time.

Withholding tax on deemed payments

Under the repealed law, withholding tax was only due for declaration and remittance to the Revenue Authority when payment was made. Under the new law, accrued expenses/liabilities which reduce the taxable income of the company in a particular tax period are deemed as paid if they remain unpaid for a period of six months following the end of that tax period.

For instance, a company has accrued expenses relating to services provided by a non-resident amounting to USD 10,000 as at 31 December 2018. If this liability remains unpaid on 30 June 2019 then this company will be liable to declare and remit withholding tax of USD 1,500 by 15 July 2019.

However, this clause does not cover dividends declared but not paid or payments that are not subject to withholding tax.

PKF Comment

We are of the view that is yet another measure aimed at curbing deferment of withholding tax liabilities. This is especially common with intra-group balances between related parties.

Withholding tax on payments made by non-residents on behalf of their PEs in Rwanda

The new law has introduced a provision which stipulates that withholding tax is also applicable where a non-

resident makes a payment on behalf of their local permanent establishment.

PKF Comment

It should be noted that Article 6 of this law provides that "the fact that a company controls or is controlled by another shall not of itself constitute either company a permanent establishment of the other".

In our view, therefore, this provision may not automatically apply where a non-resident company makes payment on behalf of its subsidiary or associate company which is resident in Rwanda. However, in the case of a non-resident having operations in Rwanda that give rise to a PE in the form of a branch or other forms highlighted under the article on permanent establishments (which do not have a separate legal identity from the non-resident), any offshore payments made by that non-resident company on behalf of its PE will be subject to withholding tax in Rwanda.

There are divergent views on the application of this provision and we hope that the Tax Administration will give more guidance on it.

For further information or advice concerning Rwanda tax ruling decisions or any advice with respect to Rwanda taxation, please contact Gurmit Santokh at ***gsantokh@rw.pkfea.com*** *or Timothy Gatonye at* ***tgatonye@rw.pkfea.com*** *or call* ***+250 788 454 746*** *or* ***+250 788 386 565****.* »BACK

Slovakia

Accounting and taxation of cryptocurrencies

The Slovak Republic parliament has amended laws governing accounting and taxation to incorporate the recent boom in cryptocurrencies. These amendments enter into effect on 1 October 2018, so cryptocurrency income is going to figure in 2018 tax returns filed next year in Slovakia. Transitional provisions in the amendment to the Income Tax Act No. 595/2003 set the date for the first-time measurement and taxation of virtual currencies for tax returns to be filed after 30 September 2018. So now is the time to start figuring on how to declare income received from cryptocurrencies.

The EU term "virtual currency" is used to define cryptocurrencies for the purposes of these amendments. Nevertheless, virtual currency basically means cryptocurrencies like Bitcoin and all the other "coins" in cryptocurrency markets. Fair value measurement is the

accounting treatment for virtual currencies, whether acquired for consideration, mined, exchanged for an established currency like the euro or for another virtual currency.

For tax purposes, the sale of a virtual currency is formally defined as the exchange of a virtual currency for an asset or service, for another virtual currency or transfer for consideration of a virtual currency. Income from the sale of a virtual currency is classified as "other income" for declaration of personal income tax. Under this definition, income from mined virtual currencies would not be considered taxable income in the tax period when they are mined, but are only included in taxable income in the tax period when the virtual currency is sold. This means the cryptocurrencies mined are not income themselves but become income only after they have been traded or used for payment.

The difference between the fair value and entry price of a purchased virtual currency is likewise not considered taxable income. The entry price is specifically defined as cost, so the cost in euro (or another established currency) to acquire the virtual currency would include costs related to the acquisition. Aggregate entry prices of virtual currencies are deductible in the tax period when they were sold up to the amount of the aggregate income from their sales. In other words, losses from cryptocurrency sales cannot be deducted from taxable income.

If the taxpayer purchases an asset or service with a virtual currency, that asset or service is measured at the fair value of the virtual currency on the date when the asset or service was acquired.

Under Slovak GAAP, virtual currencies would be converted into euro on the date of the accounting event. Rules for foreign currency accounting would apply to virtual currencies, so the dual measurement rule, namely euro in accounting and the foreign currency in management records would apply in accounting for cryptocurrency transactions. For a true and fair balance sheet presentation of virtual currencies, the rule governing unrealised currency exchange differences should be used at year end.

PKF Comment

On the face of it, the accounting aspect of this legislation falls in line with how international accounting standard

settings see cryptocurrencies and the treatment of them. But it should come as no shock to anyone in these times that governments are now looking at virtual currencies as a source of income to be taxed. For further information or advice concerning Slovak taxation, please contact Vladimir Pastierik at ***pastierik@pkf.sk*** *or call* ***+421 46 518 3811****.*

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Tax on non-life insurance introduced

The Slovak Republic parliament recently passed a tax levy on non-life insurance policies where the insurance risk is located specifically in Slovakia. Non-life insurance is defined in an annex of the law as including casualty insurance, civil liability insurance, credit insurance, warranty insurance and insurance covering financial loss. The full list of insurance that would be subject to the tax is shown in the annex. Neither life insurance policies nor reinsurance would be subject to the tax.

The tax rate would be 8% of the premium paid less the tax, otherwise a top-down calculation (premium x 8 / 100 + 8). The tax is then rounded to the nearest whole number. For example, in the case of a EUR 1,000 premium, the tax would be calculated so the numerator would be 1,000 x 8 = 8000 and the denominator would be 100 + 8 = 108). The tax would then be 8,000/108 = 74.06 rounded to EUR 74.

The tax rate for third-party motor vehicle liability insurance, compulsory for anyone owning a motor vehicle, is 0%. This is because mandatory insurance is already subject to a levy provided under insurance law.

Insurance carriers are liable for the tax and would pay it directly to the tax authorities. Tax is charged to the insurance company on the date of payment of the premium, when a receivable is accrued for the payment of premiums or when a maturity date has been set for a premium. The insurance carrier would itself decide which of these triggers to apply. Once the decision has been made, the carrier is required to apply the rule for at least eight consecutive calendar quarters.

Policyholders are also liable for the tax if their premiums have been paid to a foreign insurance carrier with no branch office in Slovakia. If the policyholder reclassifies premiums to a legal entity whose insurance risk in Slovakia is covered, the policyholder will only be liable for the tax for the cover not reclassified to the entity. In the case of policyholders, the tax would be charged on the date when the premium is paid. Insurance tax paid by a policyholder and insurance tax charged from reclassified costs are deductible when the insurance tax is paid, starting from the tax period beginning 1 January 2019.

Legal entities whose insurance costs applicable to the insurance risk in Slovakia have been reclassified to them are also liable for the tax. In this case, the tax would be charged on the 30th day after the end of the calendar month in which the costs of insurance are reclassified to the entity liable for tax.

The tax period for the insurance tax is the calendar quarter, where persons liable for the tax would be required to file a tax return electronically by the end of the calendar month subsequent to the end of the relevant tax period.

PKF Comment

This tax replaces a special levy at the same rate insurance carriers have been paying since the beginning of 2017 and has been controversial to say the least. It has been criticised as being ineffective and penalising people thoughtful enough to insure their properties and businesses, as well as placing additional administrative burdens on carriers. Although the tax is basically being levied on insurers, it is expected that the extra charge will be passed to policyholders in premiums. For further information or advice concerning Slovak taxation, please contact Vladimir Pastierik at ***pastierik@pkf.sk*** *or call* ***+421 46 518 3811****.*

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Switzerland

Swiss VAT law (in force since 1 January 2018) places new obligations on foreign companies as of 1 January 2019

According to current Swiss VAT law and the relevant regulations, when low-value goods are imported into Switzerland they are exempt from import tax if the cost incurred does not exceed CHF 5; in which case the involved foreign companies (i.e. not established in but providing supplies of low-value goods toward (i.e. generating turnover in) Switzerland) are currently exempt from the VAT registration obligation.

Starting from 1 January 2019, low-value deliveries (e.g. in mail order business ("Versandhandel", in German)) will still be exempt from tax upon import. However, under the new VAT legislation (the partial amendment to the Swiss VAT law, in force from 1 January 2018), (online) retailers that generate a turnover of over TCHF 100 per annum in Switzerland through the supply of goods will be liable to VAT (i.e. obliged to charge Swiss VAT on the goods supplied).

PKF Comment

*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. For further information on this matter or any advice on Swiss taxation, please contact Rilana Wolf-Bayard at **rilana.wolf@pkf.ch** or Margarita Baeriswyl at **margarita.baeriswyl@pkf.ch** or call **+41 44 285 75 00**.*

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Turkey

Communiqué on the protection of the value of the Turkish Lira

The Turkish Ministry of Finance and Treasury issued Communiqué No. 2018-32/48 regarding Decree No. 32 on the Protection of the value of the Turkish Currency (which was originally published in 1989 and was amended at various instances depending on the monetary policy of the respective government) dated 4 September 2018 to avoid further devaluation of the Turkish Lira, which brings into place strict rules in relation to the export proceeds of Turkish companies.

Salient features are as follows:

- All payments due for exports from Turkey must be paid into a Turkish bank account as nominated by the exporter, within a strict maximum of 180 days from the invoice date;
- If the payment is made in foreign currency, the exporter must immediately convert a minimum of 80% of the received payment into Turkish Lira;
- The nominated intermediary bank is responsible for monitoring all invoiced payments due to the exporter;
- Exporters must close the export accounts after the relevant payment has been timely brought into Turkey. In case an account is not closed the intermediary bank must notify the tax authorities within 5 days along with a statement describing the stage of the transaction.

The Communiqué will remain in force for six months as from 4 September 2018.

PKF Comment

*If you believe any of the above measures may impact your business or require any advice with respect to Turkish taxation, please contact Emrah Cebecioglu at **e.cebecioglu@pkfistanbul.com** or call **+90 212 426 00 93.***

United Kingdom

New corporate criminal offence

The corporate criminal offence legislation was introduced on 30 September 2017 and applies where corporates fail to prevent criminal facilitation of tax evasion. The new legislation applies to companies, partnerships and LLPs where:

- There has been criminal evasion under either UK law or foreign law;
- Which was committed by a business employee, agent or those performing services to the business;
- The business failed to prevent the person from enabling the crime.

This means that companies will be liable for the actions of employees or individual acting on behalf of the company. Examples of corporate criminal offence include:

- Hiding disallowable expenditure in a category that HMRC are unlikely to question;
- Intentionally manipulating documents, e.g. falsifying board minutes and dividend documents to alter the year in which tax would become due;
- Setting up offshore bank accounts or companies knowing that they will be used to hide income;
- Diverting salary payments to an offshore account so that they are kept off the books and not taxed in the UK.

There are two offences of failure to prevent criminal facilitation of tax evasion; a domestic offence and a foreign offence.

- The domestic offence applies if UK tax has been evaded regardless of whether the company is UK based or not and regardless of whether the person who facilitates the evasion is in the UK or overseas. The offence is deemed to be committed in the UK and will be prosecuted in the UK.
- The foreign (overseas) offence applies where a UK tax resident has evaded tax in another jurisdiction and that overseas authority does not have the authority to prosecute the UK tax resident.

PKF Comment

Those convicted of the corporate criminal offence could face unlimited financial penalties. As the conviction is a criminal offence it may require the body to make a disclosure to professional regulators which may prevent it being awarded public contracts. In addition, they may also face reputational damage and adverse publicity.

The best defence against the new corporate criminal offence is for the relevant corporate to ensure they have established and implemented policies and procedures, formally approved by top level management, which prevents the opportunity, motives and means of committing tax evasions. These policies should be checked regularly and staff should be educated and trained to ensure tax evasion is prevented. If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Suki Kaur at ***sukik@pkfcooperparry.com*** *or Sam Saxton at* ***samanthas@pkfcooperparry.com*** *or call* ***+44 1332 411163****.*

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Overseas Entities Bill

In July 2018 a draft Registration of Overseas Entities Bill was published. The bill, which is open for consultation until 17 September 2018, seeks to create a register of overseas entities that own UK property. The register will detail the ultimate beneficial owners of the overseas entities.

The bill comes as a response to concerns regarding the lack of visibility as to who ultimately owns land in the UK. The transparency that the Bill expects to create will enable the easy identification of the beneficial owners of overseas entities, which will assist in law enforcement investigations in areas such as money laundering and corruption.

This upcoming requirement for overseas entities to register the beneficial owners comes two years after the introduction of the People with Significant Control Register (PSC). The PSC requires most UK entities to provide information about their ultimate owners to Companies House and has been in force since June 2016.

It is worth noting that the proposed new requirements do not apply to property owned in Scotland or Northern Ireland.

We have outlined the actions that the consultation proposes will be required by overseas entities below:

- **Initial purchase of UK property**
  Once the register becomes fully operational (expected to be in 2021), an overseas entity will be required to register the beneficial ownership information for the relevant UK property with the Land Registries. This must be done before the entity obtains the legal title to the UK property.

- **Annual requirement**
  Any overseas entities that already own UK property when the register comes into force are required to update the beneficial ownership information held by the Land Registries. This requirement also applies on an annual basis to all overseas UK property owners. Although the registration is expected to be technically voluntary, this information is required to be up to date in order to undertake various transactions in relation to that property, including selling or leasing the land or obtaining a mortgage over the property.

PKF Comment

Whilst the above is in consultation stage, there is an opportunity to send any comments to HMRC. We will provide further updates on this over time. If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Suki Kaur at ***sukik@pkfcooperparry.com*** *or Sam Saxton at* ***samanthas@pkfcooperparry.com*** *or call* ***+44 1332 411163****.*

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UK capital gains

Draft legislation has been announced by the Government which sets to significantly alter the treatment of capital gains arising to individual non-UK resident investors in relation to UK property. The changes, which are scheduled to come into effect from April 2019, will also transition the taxation of non-resident corporate landlords from income tax to corporate tax by 6 April 2020.

Direct Disposals
For direct disposals of UK property, commercial property will fall within the scope of capital gains tax (CGT) for the first time, while the scope for CGT in the residential property investment sector will also expand.

When a property caught by the new regime is ultimately sold, only the increase in value since April 2019 will be subject to CGT. Appropriate valuations of all UK property should therefore be obtained at this date, although it is possible for an investor to elect to use the original purchase price instead of the rebased value, where they would suffer a greater gain by using the April 2019 market value.

Indirect disposals
Where an overseas entity is "property rich", the disposal of the entire entity will fall within the new regime. In order for the entity, or group of companies, to be classed as such, it should derive 75% of its value from UK land.

As with direct disposals, the April 2019 market value will also be used as the base cost to calculate the capital gain. The value obtained for the whole entity would be subject to CGT, rather than just the element relating to the UK property. This means non-UK property assets could also be subject to CGT under the new rules. It is worth noting that there are exemptions available that could exclude certain non-resident investors from the obligation to pay CGT.

Reporting and payment
Following the sale of UK property, the disposal should be reported within 30 days and, for individuals, a payment on account will also be due on this date.

Non-resident landlords
The transition to tax non-resident corporate landlords under corporation tax rather than income tax will occur from 6 April 2020. They will benefit from a lower corporation tax rate of 17% compared to the income tax rate of 20%. However, there could also be further potential impacts of this such as the amount of deductible interest could reduce and there will be restrictions in the offset of carried forward property losses.

PKF Comment

These rules indicate a fundamental shift in the taxing of UK property by non-resident investors by the UK Tax authorities. Overseas investors with UK property should ensure they obtain a valuation of their property at April 2019 to ensure they will be able to calculate any future gain or loss on a subsequent disposal. Investors should also be aware of the need to report gains. If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Suki Kaur at ***sukik@pkfcooperparry.com*** *or Sam Saxton at* ***samanthas@pkfcooperparry.com*** *or call* ***+44 1332 411163****.*

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Extra penalties for not reporting overseas income

HMRC will soon be dramatically increasing its penalties for failing to disclose overseas income or financial gains. This could be overseas property, shares, businesses, cash income or anything else providing you with a financial gain. Because of advancements in technology, it's now much easier for HMRC to find out about any overseas activity. They're increasingly interacting with tax authorities, banks and other government and financial institutions all over the world.

Also, we know it can be relatively easy to overlook overseas income, and particularly relatively small amounts. Some people also presume that because tax has been paid overseas, you don't have a UK tax liability or UK reporting requirement. Unfortunately, this isn't the case.

The penalties
From 1 October 2018, the minimum penalty will increase to 100% of the liability. And in the most serious cases, could potentially be up to 200% plus 10% of the value of the assets.

Late payment interest will also be charged by HMRC. So, as you can see, in some cases the tax, interest, and penalties could exceed the amount of income itself.

PKF Comment

*If this has got you thinking there's a process available called the Worldwide Disclosure Facility, which can be used to correct your tax position before the increased penalties come in. As well as avoiding the increased penalties, the very fact you're making a voluntary disclosure should help to reduce the current penalty rates too. If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Cally Bamford at callyb@pkfcooperparry.com or call **+44 1332 411163**.*

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United States

IRS proposes regulations to block State attempts to bypass the limit on the SALT deductions

On 23 August 2018, the IRS issued proposed regulations, effective after 27 August 2018, to block attempts by New York, New Jersey and Connecticut to allow taxpayers to try to circumvent the new USD 10,000 federal income tax cap on state and local tax (SALT) deductions.

In this newsletter, we will summarize the position of various states with respect to the SALT deductions and the responding IRS proposed regulations.

Positions some States are taking

The USD 10,000 SALT deduction limit is arguably the most controversial part of the Tax Cuts and Jobs Act (TCJA) which was enacted last December. In response to the TCJA, New York, New Jersey and Connecticut passed laws allowing a tax credit for state-run charitable donation programs, which would accept payments from taxpayers to fulfil their state and local tax liabilities, circumventing the SALT cap. The charitable contribution strategies in these high-tax states were created so taxpayers could write off the full donation amount from their federal taxes. Other states have been considering enacting such programs as well.

New Jersey gives taxpayers a 90% state tax credit for donations made to local municipalities, counties and school districts. New York provides an 85% state credit. Connecticut approved similar legislation.

New York, New Jersey, Connecticut and Maryland sued the federal government last month stating that the SALT deduction cap unfairly targets them. The states claim the tax law overturned more than 150 years of precedent. Many experts have said the suit has little chance of success. This lawsuit is still pending. The IRS newly-proposed regulations are also likely to be contested by those states.

The IRS response

The IRS proposed regulations are intended to block this type of workaround. Taxpayers will be able to receive a federal tax deduction only equal to the difference between the state tax credits they get and their charitable donations. As an example, if you write a check for USD 100,000 as a charitable donation in lieu of paying property taxes and receive a state tax credit worth USD 90,000, for federal income tax purposes you may only deduct USD 10,000 federally as a charitable deduction.

The proposed regulations also provide for a de minimis exception for a dollar-for-dollar state tax deduction and for a tax credit of 15% or less of the donation. A taxpayer who makes a USD 1,000 contribution to an eligible entity is not required to reduce the USD 1,000 deduction on the taxpayer's federal income tax return if the SALT tax credit received is no more than USD 150.

Comments requested

The IRS is requesting comments on all aspects of the proposed rules within 45 days after their publication in the Federal Register and is planning to hold a public hearing on 5 November 2018 in Washington, DC.

Likely outcome

Any contributions made before 28 August 2018 may not be permitted as a tax credit at the percentage allowable by the state — if at all. This is because the IRS proposal makes it clear that the agency considers its position to be settled law. Taxpayers who have made these contributions should consult their tax advisor. The IRS will likely challenge contributions made before the effective date although the proposed regulation is applicable to

payments made after 27 August 2018.

PKF Comment

*For questions concerning the IRS proposed regulations to block state attempts to bypass the limit on the SALT deduction, or if you have state tax questions generally, contact Sandy Weinberg at **sweinberg@pkfod.com** or Alan S. Kufeld at **akufeld@pkfod.com** or call **+1 203 705 4170** or **+1 646 449 6319** respectively.*

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Guidance released on bonus depreciation

Are you looking for valuable tax write-offs? Well, for 2018, you may be in luck. There are some significant benefits that kick in as a result of the tax reform legislation signed into law last December. The Tax Cuts and Jobs Act (TCJA) provides for two important incentives for business owners, both of which require tax planning and deep understanding as to how the law is being interpreted.

Recently, the IRS released important guidance in these two areas:

- Additional first year depreciation (bonus depreciation) equal to 100% of the cost of property acquired and placed in service after 27 September 2017;
- The Qualified Business Income (QBI) deduction which allows individuals and some estates and trusts a deduction of up to 20% of income from a domestic business operated as a pass-through entity such as an LLC, partnership, S Corporation or sole proprietorship.

In this article, we will discuss the additional first year "bonus" depreciation rules. In future newsletters, we will cover the Qualified Business Income deduction and other issues relative to the implementation of the tax incentives contained in the TCJA.

Background

After a long wait and much tax practitioner speculation and comments, the IRS and Treasury have released proposed regulations on additional first-year depreciation as part of the TCJA for qualified property acquired and placed in service after 27 September 2017. The proposed regulations cover a number of issues including the types of property that qualify, the application of the placed-in-service requirements, the time and manner for making certain elections, and the application to certain partnership-related transactions.

Amendments to First-Year Depreciation Allowance

The TCJA made several amendments to the allowance for first-year depreciation. The significant items include:

- Extended bonus depreciation availability through 2026.
- Increased bonus depreciation percentage from 50% to 100% with respect to qualified property acquired and placed in service after 27 September 2017 and before 1 January 2023.
- Bonus depreciation phases down to 80% for qualified property placed in service before 1 January 2024; 60% before 1 January 2025; 40% before 1 January 2026; and 20% before 1 January 2027.
- Removed qualified leasehold improvement property from the definition of qualified property (albeit unintentionally), but added qualified film or television production and qualified live theatrical production.
- Expanded the definition of qualified property to include both new and used property.
- Added a new election which allows taxpayers to elect to claim 50% bonus depreciation in lieu of 100% bonus depreciation for property acquired after 27 September 2017 and placed in service in the first tax year ending after 27 September 2017 and before 1 January 2023.

Four requirements

Generally, the proposed regulations provide guidance on the four requirements to claim bonus depreciation:

1. the depreciable property must be of a specified type;
2. the original use of the depreciable property must commence with the taxpayer or used depreciable property must meet certain acquisition requirements;
3. the depreciable property must be placed in service by the taxpayer within a specified time period; and
4. the depreciable property must be acquired by the taxpayer after 27 September 2017.

The proposed regulations provide welcome clarification of certain areas. We will cover two such items in this newsletter with more clarification to follow in later issues.

Qualified Improvement Property (QIP)

The proposed regulations do not correct the TCJA drafting

error that made certain property meeting the QIP definition ineligible for bonus depreciation. Thus, unfortunately, certain improvements to commercial real property acquired and placed in service after 31 December 2017 must be depreciated over a 39-year period rather than be eligible for bonus depreciation. However, the proposed regulations do confirm that QIP acquired after 27 September 2017, and placed in service before 1 January 2018, is eligible for 100% bonus depreciation. This is a welcome relief for individuals who have not filed their 2017 returns and were on extension waiting for this guidance.

PKF Comment

This is one of the most important clarifications since the real estate industry faced significant uncertainty. We are now clear on the treatment of acquisitions from 27 September 2017 to 31 December 2017 (eligible for 100% bonus) and those acquisitions after 31 December 2017 (ineligible). Unless a technical corrections bill is passed, QIP that is placed in service on or after 1 January 2018 will be subject to a 39-year recovery period and will not be eligible for bonus depreciation under Section 168(k), regardless of when it was acquired.

Congressional action to correct:

Members of the Senate Finance Committee have stated that they intend to introduce technical corrections legislation to "fix" this problem. They noted that congressional intent provided rules related to the depreciation of real property, and they want the law to reflect such intent. In their words:

"Specifically, in eliminating the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property and providing a new single definition of qualified improvement property, the language in the signed law failed to designate qualified improvement property as 15-year property under the modified accelerated cost recovery system …"

"In addition, there is a typographical error in a cross-reference identifying qualified improvement property as property which is recovered over 20 years under the alternative depreciation system. Congressional intent was to provide a 15-year MACRS recovery period and a 20-year ADS recovery period for qualified improvement property."

Taxpayers would certainly benefit if technical corrections legislation was passed especially if it becomes effective retroactive to 1 January 2018.

Used Property now eligible

TCJA expanded the prior law definition of qualified property to include both original used property and certain used property. The proposed regulations clarify that used property will qualify for bonus depreciation to the extent the acquisition of the used property satisfies the following requirements:

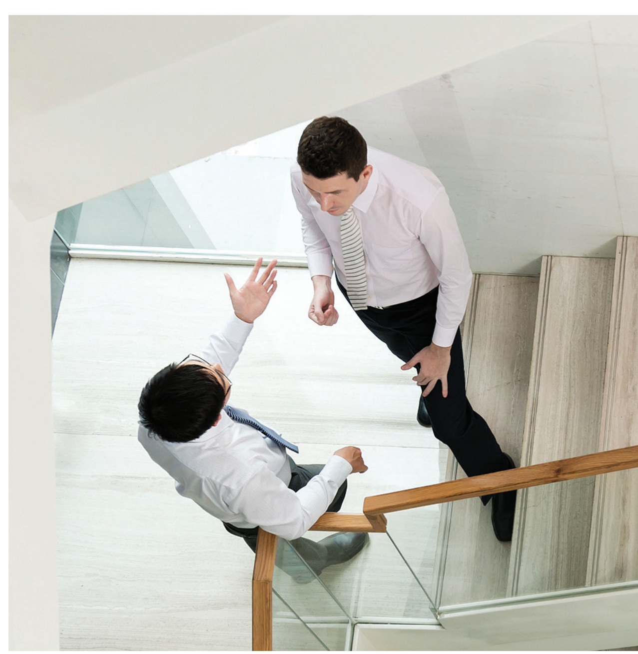
- Such property was not used by the taxpayer or a predecessor at any time prior to such acquisition;
- The property must not be acquired from a related party, another component member of a controlled group, or in a non-taxable transaction in which the basis of the property in the hands of the acquirer is determined in whole or in part by reference to the basis in the hands of the person from whom acquired.

Illustration

Taxpayer A, a lessee of real property, during its lease term with taxpayer B (lessor) places improvements in service. On 1 August 2018, A and B enter into an agreement whereas A will purchase from B the leased property. The proposed regulations provide that the additional depreciable interest (acquired property) is not treated as being previously used by A. The improvements, however, would be considered previously used by A and, therefore, not included in the depreciable basis of the acquired property.

PKF Comment

*If you have any questions about bonus depreciation or any other tax matter, please contact Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 646 699 2848**.* »BACK



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