2019 June

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this second quarterly issue for 2019, 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 5 regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

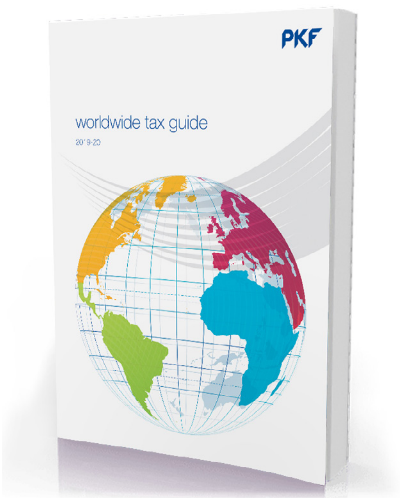
In this issue featured articles include discussions on:

- Key tax changes for 2019 in Kenya, Oman, Qatar, Romania and Turkey
- Double tax treaty updates in Cyprus, Jersey, Russia, Ukraine and the United Arab Emirates
- Transfer pricing developments in Hong Kong and Ukraine
- VAT and sales tax developments in China, Nepal, Russia and the United States of America
- Interesting international and ECJ case law in Belgium and Germany
- Developments in (international) corporate income tax in Australia, Chile, Italy, the United Kingdom and the United States of America

We trust you find the PKF Worldwide Tax Update for the second quarter of 2019 both informative and interesting. Please contact the PKF tax expert directly (mentioned at the foot of the respective PKF commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at www.pkf.com/pkf-firms.

2019/20 Worldwide Tax Guide

Last year's PKF Worldwide Tax Guide featured 134 countries and was a resounding success with almost 1,500 distributed globally. We are extremely grateful to all those that provided country submissions, and of course, to each person who ordered a guide and supported this very marketable and impressive publication.



The production of the 2019/20 Worldwide Tax Guide is underway and we look forward to your continued support. An **Order Form** is provided at the end of this PKF newsletter. Thank you for your continuing support.

Contents

Contents continued…

PKF

Chartered Accountants
& Business Advisers

Australia

ATO releases Practical Compliance Guideline "PCG" 2018/9 on tax residency of foreign companies

The Australian Taxation Office (ATO) has released on 20 December 2018 its final guidance on determining the tax residency of foreign companies controlled by Australian groups.

The identification of tax residency is important as it can give rise to significant tax implications including exposure to Australian income tax and capital gains tax, application of Australian's participation exemptions and Controlled Foreign Company ("CFC") rules etc.

By way of background, a company that is not incorporated in Australia will be a tax resident of Australia if either of the following is met:

- The company carries on a business in Australia and has its central management and control ("CMAC") in Australia; or
- The company carries on a business in Australia and its voting power is controlled by shareholders who are residents of Australia

Since the recent Taxation Ruling 2018/5 on the meaning of CMAC, the criteria of carrying on a business in Australia will be met if the CMAC is in Australia even though the trading or investment activities of the business generating the profits are not in Australia.

The PCG provides guidance for taxpayers on establishing where a CMAC is located and includes 15 examples. Below are some key factors:

- Board minutes recording who made the decisions and where they were made: the Commissioner will accept them as prima facie establishing where the CMAC is located. Where there are no board minutes, other evidence may include papers circulated to board members in advance of meeting, contemporaneous correspondence or emails showing the board's deliberations and role played by each director, as well as oral evidence

- Decision making in more than one place (when directors physically meet in multiple locations or when board meetings are conducted electronically): the Commissioner does not accept that a decision is necessarily made in the place it is formalised or where the last signature is placed on a resolution or vote on it is cast, but rather where the key decisions are made as a matter of substance. Where meetings are conducted electronically, the focus is on where the participants contributing to high level decisions are located rather than where electronic facilities are based
- Person that is merely influential versus real decision maker: in relation to high level decisions, consideration will be given to persons that are the real decisions makers as opposed to persons that are merely influential, even if that influence is strong
- Relevance of company's activities when identifying high level decision making: the smaller the scale of business activities, the more likely high level decisions will overlap with those who execute them and vice-versa
- Decision making in a corporate group: directors of a foreign company will not cease to exercise their CMAC merely because their decisions conclude that it is in the best interest of the company to facilitate the plans/policies of its parent, comply with proposals advanced by its parent, make decisions only after receiving approval from the parent etc

The PCG also outlines a transitional and an ongoing compliance approach. Subject to certain conditions being met, the transitional period (from 15 March 2017 to 30 June 2019) enables taxpayers to make the necessary changes (including appointment/removal of directors, conduct of meetings etc.) so that the CMAC is exercised outside of Australia.

In addition there is a safe harbour for subsidiaries of public companies only whereby the residency risk will be considered low provided various strict conditions are met, including:

- The foreign company is either:
  - A subsidiary of a public group listed in Australia and is treated as a non-resident and as a CFC in Australia; or
  - A foreign company (or wholly owned subsidiary) listed on an approved stock exchange and is treated as a resident of a listed country (i.e. France, United Kingdom, Germany, Canada, Japan, New Zealand and United States) for the purpose of the CFC rules
- A substantial majority of the CMAC is exercised overseas (that is not a tax haven) and the foreign company is treated as a resident in that overseas jurisdiction through board meetings that are held outside of Australia or where the majority of directors are not present in Australia, and
- The foreign company has not undertaken or entered in any artificial or contrived arrangements affecting the location of its CMAC, or in a tax avoidance scheme whose outcome depends on the location of company's residence, or in arrangements to conceal ultimate beneficial or economic ownership, or arrangements involving abuse of board processes (including backdating documents or board not truly executing its functions)

PKF Comment

*Foreign incorporated companies that are controlled by Australian groups should assess their Australian residency status to identify any risks and remedial action that may be required, especially where there are potential decision making influencers in Australia. This may include some improvements of the documentation of decision making overseas, revisiting the governance, systems and processes. This review should be conducted prior to 30 June 2019 where possible as per transitional approach. For further information or advice in relation to the above or with respect to Australian taxation, please contact Iain Spittal at ispittal@pkf.com.au or Emma Roulet at eroulet@pkf.com.au or call **+61 2 8346 6000**.*

»BACK

Belgium

Belgium tax authorities announce Co-Operative Tax Compliance Test Case

At the end of December 2018, the Belgium tax authorities have announced a Co-Operative Tax Compliance Test Case. In a first phase, this project will apply to "very big companies" only. These are companies that meet the following conditions:

(i) a turnover of at least EUR 750 million

(ii) a balance sheet total of at least EUR 1.5 billion, and

(iii) a headcount of at least 1,000 persons

Small and medium-sized companies can become part of this project as of 2019-2020 at the earliest. In essence, the purpose is to shift from a concept of post-factum tax audits to a proactive, real-time and constructive dialogue between the taxpayer and the Belgium tax authorities. As a result, the tax authorities want to lower the "uncertainty level" of Belgium taxpayers, enhance compliance with Belgium tax rules and improve the working relationship between taxpayers and the tax authorities. The Co-Operative Tax Compliance Test Case would run for at least 2 years. With this project, the tax authorities aim at aligning their local tax (audit) practice with what other countries (incl. US, UK, Japan, Australia and The Netherlands) are already doing on the international tax scene.

PKF Comment

This Co-Operative Tax Compliance Test Case is very much welcomed by the Belgium business community as it should improve the relationship between the taxpayer and the Belgium tax authorities. As Belgium's standard corporate tax rate will be reduced to 25% (20% if certain conditions are met) as of 2020, there should be less "reasons" for aggressive tax optimisation, and a more efficient dialogue with the local tax inspector will allow the taxpayer to focus on what really matters, i.e. daily business. Furthermore, this project will further sustain the attractiveness of Belgium on the international tax scene. If you believe the above measures may impact your business or require any advice with respect to Belgium taxation, please contact Kurt De Haen at kurt.dehaen@pkf-vmb.be or call ***+32 2 460 0960*** *for any further questions.*

»BACK

Dutch-source AOW pension is taxable in Belgium

Over the last 10 years, there have been numerous debates with the Belgium tax authorities and in Belgium case law as to whether a Dutch-source AOW (*Algemene Ouderdom Wet*) pension received by a Belgium tax resident individual should be taxable in Belgium or The Netherlands. Pursuant to a recent change in Belgium tax law, an AOW pension is taxable in Belgium as of calendar year 2017.

A so-called AOW pension is a Dutch-source state pension. In summary and based on the Belgian-Dutch tax treaty, state pensions are in principle taxable in the country of residency of the beneficiary, i.e. Belgium in the case at hand. However, the tax treaty allows The Netherlands to tax the AOW pension after all if the following conditions are all met

- When building-up the AOW pension, the beneficiary enjoyed Dutch personal tax relief
- The AOW pension is not taxed in Belgium at the standard personal tax rates or less than 90% of its gross amount is comprised in the taxable basis in Belgium, and
- The annual gross AOW pension amount exceeds EUR 25,000

For many years, the Dutch tax authorities generally did not claim any taxation rights with respect to AOW pensions. However, as of December 2017 this appeared to have changed because of the way Belgium generally effectively taxed this pension income. Hence, the risk of double taxation of AOW pensions, i.e. both in Belgium and The Netherlands, increased significantly. Furthermore, there has been some recent controversy in Belgium tax case law. To illustrate this, on 27 November 2017 the Antwerp Court of Appeal ruled that an AOW pension could not be taxable in Belgium since this Dutch-source pension had been built-up without there being any professional activity. Moreover, Belgium case law (including the Supreme Court) often applied a so-called "*in concreto*" approach entailing that every case needs to be assessed based on its own specific features and merits. As a result, many judges concluded that an AOW pension can only be taxable in Belgium "on a prorate basis which is in function of the number of years during which the taxpayer has had a professional activity".

To safeguard its right to tax all AOW pensions in Belgium and based on negotiations with the Dutch tax authorities, Belgium tax law has been amended stating that "all pensions governed by legal social protection" are taxable in Belgium, even if they have been built-up without any underlying professional activity.

PKF Comment

This change in Belgium tax law should bring clarity to a long debate in both Belgium tax practice and case law. However, it appears that pending litigations should still be resolved based on the rules and practices that applied prior to the date of entry into force of this new Belgium tax legislation. It should also be noted that the Belgium and Dutch tax authorities have agreed to exchange more information about AOW (and likely also other types of) *pensions. If you have further questions in this respect, please contact Kurt De Haen at kurt.dehaen@pkf-vmb.be or call **+32 2 460 0960**.*

»BACK

Bulgaria

New Bulgarian Anti-Money Laundering Act requires all Bulgarian entities to disclose their ultimate beneficial owners

The Ordinance for Implementation of the Bulgarian Anti-Money Laundering (AML) Act has been published on 8 January 2019. This is effectively transposing the provisions of the 4th EU AML Directive into Bulgarian domestic legislation.

One of the main requirements in the new AML Act for all Bulgarian entities is that they should disclose their ultimate beneficial owner(s) (UBOs). Those will be declared either at the Bulgarian Company Registrar (for companies and branches of foreign companies), or at the other relevant registers where records for their formation are kept (such as the NPOs and the BULSTAT registries). The deadline for submitting the relevant declarations is 31 May 2019.

Generally, the BG companies and local branches are required to disclose the following:

- The beneficial owners of legal entities that hold at least 25% of their capital or voting rights
- Individuals that exercise indirect control via other legal entities, e.g. when at least 25% of the capital of a company is held by another entity which in its turn is controlled/managed by those individuals
- Provided that the Bulgarian entity has no registered directors who reside permanently in Bulgaria, then it should appoint a local contact person for AML purposes

PKF Comment

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

»BACK

Chile

Proof of domicile for foreign investors in DTT countries

Foreign investors domiciled in countries that have signed a double tax treaty with Chile must prove their domicile in order to avoid the restitution of part of the income tax credit.

Under the Chilean tax regime, companies distributing profits to investors domiciled abroad, under the partially integrated system (Income Tax Law, Article 14 B), must withhold the Additional Tax at a rate of 35% and can use the income tax paid on those profits by the companies as a credit. However, 35% of said credit must be refunded to the Treasury. A different treatment applies for investors with residence in countries that have a double tax treaty in force with Chile, or that has been signed before 1 January 2019, even if not effective (until 31 December 2021). In such cases, investors are not required to refund the 35% credit. For this exemption to be applicable, the treaties must contain a clause stating the application of the Additional Tax provided that the First Category tax on the companies is deductible from said tax, or any other clause producing the same effect.

In this regard, the Chilean IRS (SII in Spanish) has stipulated that companies withholding the tax must have a certificate issued by the competent authorities of the corresponding country proving resident status at the time of remittance, withdrawal or distribution of the amounts subject to withholding.

However, particularly in business models subject to highly frequent flows, the withholding agent may choose to request from the investor a first certificate issued in the month of the investment in Chile and, in the following years, a new certificate in April, June or December. The withholding agent must include the certificates in the electronic file available at the IRS. With this the foreign investor will be presumed to have residence in the corresponding country for a period of one year, until the date of the next annual certificate. The certificates need to be validated. Validation is not necessary when certificates can be verified online or by technological means available at the foreign tax administration.

PKF Comment

Investors resident in countries that have signed a double tax treaty with Chile are allowed to deduct as a credit from the Additional Tax withheld on distributed profits, the income tax paid by the company on such profits. In order to ensure that a portion of said credit will not be subject to refunds, investors will have to provide the certificates of residence in the respective countries in a timely manner. Otherwise, the IRS may require the withholding agent to pay the corresponding tax difference.

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

»BACK

China

Various VAT amendments

The Ministry of Finance (MOF), State Administration of Taxation (SAT) and General Administration of Custom (GAC) jointly issued Announcement No. 39 on 20 March 2019, which contains many new VAT policies. The new policies will be effective from 1 April 2019. Highlights of the new VAT policies are as follows:

New VAT rate

When a VAT taxpayer conducts VAT taxable sales or imports goods, the original 16% tax rate will be adjusted to 13% and the original 10% tax rate will be adjusted to 9%.

When taxpayers purchase agricultural products, the credit rate will be adjusted to 9%. Taxpayers who purchase agricultural products for the production of goods will be subject to input tax at a 10% credit rate.

The original 16% export VAT refund rate will be adjusted to 13%. The original 10% export refund rate will be adjusted to 9%.

Input VAT credit of real estate

Taxpayers will no longer need to credit the input VAT of real estate or real estate under construction within two years. As from April 2019, the full amount of input VAT from real estate or real estate under construction can be credited immediately after purchasing. The uncredited amount of input tax can be credited directly as from April 2019.

Input VAT credit of passenger transport

When taxpayers purchase domestic passenger transport services, the input tax can be credited against output VAT. The credit needs to be substantiated by tickets for calculation purposes, including tickets with passenger identity information such as air tickets, train tickets, highway tickets, waterway tickets, etc.

Extra input VAT credit

From 1 April 2019 to 31 December 2021, taxpayers of production and living services are allowed an extra 10% of the current creditable input tax, including taxpayers providing postal services, telecommunications services, modern services and living services.

Tax refund of input VAT

Taxpayers can apply for part of an input VAT refund, if they are qualified and the input VAT should be increased as compared to the end of March 2019.

China launched its VAT reform in 2012 and finally transitioned all services from the scope of business tax (which was previously imposed on most service activities) to VAT in May 2016. Since then, there have been two rounds of major adjustments to the VAT rates: the 13% VAT rate was abolished and consolidated into the 11% rate in July 2017 and the 17%/11% rates were reduced to 16%/10% in May 2018. These new policies are the most significant innovation as a result of VAT and Business Tax reform.

PKF Comment

This is a big change in terms of current VAT policies. Some incentives are firstly adopted, such as the extra Input VAT credit. This marks an important step forward for

*VAT reform. These new policies will significantly reduce the tax burden for taxpayers. However, as VAT is closely connected with purchases and sales by every company, all taxpayers should pay close attention to the new policies in order to enjoy the tax benefit and avoid unnecessary costs as a result of non-compliance. If you believe the above measures may impact your business or require any advice with respect to China taxation, please contact Jason Li at jason@pkfchina.com or call **+86 21 6253 1800**.*

»BACK

Cyprus

Circular on non-return capital contributions

The Commissioner of Taxation has issued Circular 25, in which clarifications are given on the tax treatment for non-return capital contributions without the issue of shares to non-Cyprus tax resident legal entities.

Non-application of article 33 of Income tax legislation
Article 33 (on Related Party Transactions) of the Income Tax legislation refers to transactions between related parties being at arm's length.

Regarding non-return capital contributions without the issue of shares, the application of article 33 may lead to imposition of notional interest on debit balances from related companies.

The Circular clearly states that a33 does not apply to non-return capital contributions when all the following conditions are met:

- The contributing party does not have a legal right to claim repayment of the contribution at any given time
- Any repayment of the capital contribution is only effected as a result of reduction of capital or dissolution/liquidation of the recipient company. Where applicable legislation in the country of the recipient does not make the reduction of capital to repay the contribution mandatory, such a requirement is waived, subject to the production of supporting documentation
- Any repayment of the capital contribution cannot be effected within a period of two years after the year end in the year in which it was contributed
- The contributing party has a direct shareholding in the recipient's capital
- The recipient company does not benefit from notional tax deductions as a result of the non-return capital contribution

Application of articles 9 and 11 of Income tax legislation
If all the above conditions are met, then the non-return capital contributions are considered as non-business assets for the purposes of the above articles. They will however be considered as investments.

Hence, the cost of the non-return capital contribution will be considered for the restriction of administration and financial expenses and interest expenses.

Any direct expenses related to the non-return capital contribution are not tax deductible.

Effective date
The Circular applies to all non-return capital contributions to non-Cyprus tax resident legal entities in existence as per 1 January 2017 and onwards.

Any previous tax rulings on this subject with conditions other than the ones described by the Circular become void as from 1 January 2017.

PKF Comment

*The circular clarifies a number of uncertainties related to the tax treatment of contributions to investments without the issue of shares and is well received. In essence, where investments are made without the issue of shares, this has to be clearly documented and justified; otherwise it will be considered of a financing nature and interest should be notionally imposed in the tax computation. For further information or advice on any Cyprus tax matter, please contact Nicholas Stavrinides at nicholas.s@pkf.com.cy or call **+357 258 68000**.*

»BACK

Double tax treaty signed between Cyprus and Saudi Arabia

The new treaty was signed by the two states on 3 January 2018 and will enter into force on 1 March 2019.

The new treaty is generally based on the OECD Model Tax Convention. The treaty applies to taxes on income as well as on gains from alienation of movable or immovable property.

The key provisions of the treaty are the following:
Dividends, interest and royalties
Withholding tax (WHT) rates:

- Dividend: 5% (in Cyprus domestic tax legislation does not impose WHT on dividends to non-tax residents or domiciles)
- Interest: 0%
- Royalty payments 5% - 8% (in Cyprus domestic tax legislation does not impose WHT on royalty payments to non-tax residents, where the use of the assets is outside of Cyprus)

Capital Gains
Capital gains arising from the disposal of the property are taxed in the country where the property is located.

Disposal of shares of a company which has immovable property will be taxable only in the country of residency of the seller, unless more than 25% of the value of such shares is directly or indirectly derived from immovable property situated in the other country. In such case, the source country will have the right to tax the gain, unless the shares being disposed are substantially and regularly traded on a stock exchange.

PKF Comment

*Yet another treaty with an important trading partner at quite favourable terms. For further clarification on the above or advice on any Cyprus tax matter, please contact Nicholas Stavrinides at nicholas.s@pkf.com.cy or call **+357 258 68000**.*

»BACK

Germany

BMF statement on ECJ Hornbach judgement: Non-application of sec. 1 AStG only in case of reorganisation measures within the EU

In its statement issued on 6 December 2018 on the ECJ “Hornbach” judgement (C-382/16), the German Federal Ministry of Finance (Bundesfinanzministerium – BMF) limits the scope of application of the principles of said judgement.

Whenever an agreement with a non-German related party is not made under the arm’s length principle, any related income that is taxable in Germany is required to be adjusted under sec. 1 of the German Foreign Tax Act (AStG) (unless there is a hidden profit distribution or a hidden contribution) to account for this shift in income.

On 31 May 2018 the ECJ held that this provision is compatible with the freedom of establishment granted under European law if the German taxpayer is able to demonstrate that the taxpayer as a shareholder of the related party had commercially justifiable reasons for not applying the arm’s length principle. The judgement was based on the ”Hornbach“case where a German Hornbach group company assisted its Dutch (indirect) subsidiary by providing a comfort letter without charging a fee. Without such a comfort letter the Dutch company would not have been able to obtain loans from banks for financing current business operations and its future development. At present, it is not possible to foresee the practical impact of every aspect of the ”Hornbach“ judgement. It is, for example, being discussed whether and to what extent these principles are applicable in cases other than those in which assistance is provided by the shareholder to a related party or whether it may be applicable in cases where third countries are involved.

In its statement issued on 6 December 2018 the BMF set out how the principles of the “Hornbach” judgement are to be applied in practice:

- Any (reorganisation-related) measures taken by the German taxpayer must aim to avoid that the related party’s liabilities exceed its assets or that it becomes insolvent and to ensure that the company or group of companies will be able to continue as a going concern. The taxpayer will have to demonstrate that such measures are necessary and that the related party or the group is capable of achieving such a reorganisation
- The BMF stated that the principles of the judgement are not applicable in cases where countries outside the EU are involved

PKF Comment

On the one hand the BMF statement provides certainty about how to apply the principles in practice. Taxpayers intending to base their case on the BMF statement should be able to demonstrate that their measures were taken for the purpose of bringing about a reorganisation of their related party. On the other hand, it appears that the BMF does not wish, in principle, to leave too much scope for its application. If these requirements are not met, the taxpayer may need to bring the case before a court in order to obtain clarification. The case pending with the Finanzgericht Rheinland-Pfalz (Rhineland-Palatinate fiscal court) is likely to have been made obsolete by the BMF statement (the EJC had the case referred back to this fiscal court) because in this case the letter of comfort should meet the BMF requirement of a reorganisation-related measure. Therefore presumably, in this case neither the fiscal court nor the German federal fiscal court will be called upon to decide whether or not sec. 1 AStG is compatible with European law. However, the overall legal situation is complex, so we recommend that you analyse your personal situation in any case as early as possible.

Please contact Dr. Dietrich Jacobs at dietrich.jacobs@pkf-fasselt.de or ***+49 40 35552 131*** *and Thomas Rauert at thomas.rauert@pkf-fasselt.de or* ***+49 40 35552 137*** *for any further information or assistance you may need with regard to transfer pricing regulations in Germany.*

»BACK

Hong Kong

Implementation of Country-by-Country Reporting

Following the passage of the legislative framework for Hong Kong to implement the CbC reporting on 13 July 2018 regarding the CbC notification and reporting obligations with the Hong Kong Inland Revenue Department ("IRD"), the first CbC notification due date is 15 May 2019 for a Hong Kong entity with a financial year-end date of 31 December 2018.

A multi-national enterprise group (MNE Group) whose annual consolidated group revenue reaches the specified threshold amount of HKD 6.8 billion and has a Hong Kong Entity should carefully observe the statutory reporting requirements.

The IRD has been actively seeking to conclude as many bilateral arrangements with international tax partners as possible for the automatic exchange of CbC Reports which might relieve the reporting obligation of a Hong Kong entity whose ultimate parent company has already filed a CbC Report elsewhere.

»BACK

Introduction of supplementary forms for annual tax filing

Starting from the year of assessment 2018/19, there are 10 supplementary forms introduced as part of the annual profits tax return. This indicates the IRD has undoubtedly elevated the requirements for more information disclosure from taxpayers as a continual commitment to implementing the Base Erosion and Profit Shifting (BEPS) package in Hong Kong.

It is foreseeable that the additional information collected will enable the IRD to objectively review and scrutinise taxpayers' existing tax position, particularly in the area of transfer pricing and offshore profits tax regime.

Taxpayers should be aware of the additional administrative burden in their annual Hong Kong tax filings. It is also reminded that taxpayers should keep sufficient documentary evidence in case of any challenges by the IRD.

PKF Comment

Given the additional statutory obligations in Hong Kong and the new disclosure requirements, enterprises in Hong Kong would be impacted from an administrative perspective. Attention should be paid by taxpayers when arranging their tax affairs in Hong Kong.

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

»BACK

Italy

Foreign companies vs withholding tax regulations related to real estate services

The Revenue Agency provided law interpretation No. 8 of 12 February 2019 confirming that a foreign company (including one without a permanent establishment) has the status of a withholding agent, pursuant to art. 23 of Presidential Decree No. 600/73, if it is the owner of real estate property in Italy. The foreign company will need to comply with submitting form 770 (i.e. a withholding tax return) and a statement that certifies the cumulative income paid by the withholding agent to workers and professionals as well as the related withholding taxes to be applied and to be paid to the State (i.e. 'Certificazione Unica').

The subject of the aforementioned law interpretation is a foreign company that appointed experts to perform technical services, which are related to the restructuring of buildings located in Italy. The foreign company must apply the 20% withholding tax on the remuneration paid, providing the Italian Treasury with the payments due.

According to the interpretation of the Revenue Agency, foreign companies and non-resident legal entities in Italy are identified as a withholding agent provided that:

- They have a permanent establishment in Italy (thus considered as a result of the ownership of real estate property)
- They don't have a permanent establishment but are required to submit the tax return in Italy for income other than corporate income (land, capital etc.)

The status of withholding agent implies the withholding tax payments and the obligations as specified below:

- Release to the recipients of the 'Certificazione Unica'
- Electronic filing of the 'Certificazione Unica' to the Revenue Agency
- Submitting the tax return as withholding agents (form 770).

PKF Comment

*For further information on this matter or any advice on Italian taxation, please contact Stefano Quaglia at s.quaglia@pkf-tclsquare.it or call **+39 010 818 3250**.*

»BACK

IRPEF and IRES tax credit for the purchase and installation of electric vehicle recharge stations

Law No. 145/2018 in its article 1 states that a 50% gross tax deduction on documented expenses incurred between 1 March 2019 and 31 March 2021 shall be related to the purchase and installation of recharge stations for vehicles powered by electricity (hereinafter "wall box"). The tax credit includes the initial costs related to the additional power required up to a maximum of 7 kW.

A tax credit is granted if the taxpayer incurs the aforementioned expenses on condominium common areas. The tax credit applies to wall boxes purchased and installed on mutual parts of the condominium areas pursuant to articles 1117 and 1117-bis of the Civil Code.

The Revenue Agency Fiscal Administration Practice, dated 28 February 2019, No. 32 identifies taxpayers that can benefit from the tax credit:

- Those who are charged the aforementioned costs
- Those who own or possess the building related to the aforementioned improvement

The tax credit has the following features:

- Up to 50% of costs incurred
- Calculated on a total amount not exceeding EUR 3,000
- Split in 10 equal annual installments
- Up to the gross tax amount due

The implementing provisions of the new tax relief will be defined by a specific Ministerial Decree.

PKF Comment

*For further information on this matter or any advice on Italian taxation, please contact Barbara Pollicina at b.pollicina@pkf-tclsquare.it or call **+39 010 818 3250**.*

»BACK

Jersey

New double tax treaty with United Kingdom came into force on 1 January 2019

A new double tax treaty has been signed with the UK to eliminate double taxation with respect to taxes on income and on capital gains and for the prevention of tax evasion and avoidance.

The agreement has a new provision to deal with dual residence based on “centre of vital interests” or mutual agreement of the competent authorities.

The agreement is more comprehensive than the previous 1952 one and sets out to eliminate double taxation. In relation to dividends from companies this agreement is more favourable.

PKF Comment

The agreement certainly helps with dual residence and seems to achieve its aim of elimination of double taxation. This does not come into force in the UK until 6 April 2019, because Jersey and the UK have different tax years and it comes into force at the start of the tax year. This does create a strange position of the treaty applying for one country and not the other for a period of three months. Just as a reminder Jersey’s economic substance requirement for Jersey resident companies legislation came into force on 1 January 2019.

*For further information or advice concerning the new double tax treaty or any advice with respect to Jersey taxation, please contact Rob Behan at robb@pkfbba.com or call **+44 1534 858 490**.*

»BACK

Kenya

Finance Act, No. 10 of 2018 - Amendments effective 1 January 2019

The Finance Act, No. 10 of 2018 (The Act) which was assented on 21 September 2018 amended various tax laws as highlighted in our 2018 Budget Book and Tax Alert Issue No. 5 2018. Whereas most of the amendments became effective on 1 July 2018, there are a number of amendments which became effective on 1 January 2019.

This alert highlights amendments which became effective on 1 January 2019 and the recent developments wlith respect to Value Added Tax Auto Assessment (“VAA”) among other important developments.

Presumptive Tax

This tax replaces the turnover tax regime and the tax paid will be considered as final tax. The tax is equivalent to 15% of the single business permit fees levied by County Governments. The tax is for resident persons whose business turnover does not exceed KShs 5 million during a year of income and provided that those persons are issued with a single business permit by the County Governments or are liable to be issued with a business permit.

Presumptive tax is not applicable to incomes derived from: management and professional services; rental business; and incorporated companies.

The regime is geared towards expanding the tax base and collecting information in relation to the informal sector.

Manufacturers to enjoy additional deduction on electricity costs

Manufacturers can now claim an additional deductible expenditure equivalent to 30% of their electricity costs. This is in addition to the normal deductible electricity expense. This incentive will be applicable from the 2019 year of income.

This plays into the Big Four Agenda and is aimed at making the manufacturing sector attractive for investors. However, there is a proviso to this incentive that requires the manufacturer to meet certain conditions set by the Ministry of Energy before enjoying it. Unfortunately, the conditions have not been gazetted.

Special tax rates for special projects

Companies engaging with the Government under special operating framework arrangements shall enjoy special corporation tax rates agreed under such arrangements. This is a wide and ambiguous provision granting customised tax rates for companies opting for this route.

Whereas the provision is viewed as an attempt to promote partnerships between the government and private companies, it might be ambiguous in the absence of proper guidelines governing it. It is therefore imperative for the government to issue guidelines in order to avoid confusion on this incentive.

Dividend Distribution Tax

Companies will no longer be required to maintain a Dividend Tax Account ("DTA") for compensating tax purposes as was the case previously. Compensating tax was payable on distribution of untaxed gains in the form of dividends and was monitored through the Dividend Tax Account.

With effect from 1 January 2019, distribution of dividends from untaxed gains/profits will attract 30% distribution tax with an exception of registered Collective Investment Schemes. Whereas the intention is to increase tax collections, the amendment conflicts with the other Income Tax Act provisions e.g.

- will distributions realised from gains on sale of property subject to Capital Gains Tax ("CGT") at 5%, which is a final tax, be further subjected to the distribution tax?

PKF Comment

CGT paid constitutes Income Tax paid in accordance with Section 3 of the Income Tax Act ("ITA"). CGT is final tax and any dividend distributions made upon transfer of property subjected to CGT should not be subject to 30% distribution tax since these dividend distributions would be made out of taxed profits.

- is there further distribution tax on dividends distributed to shareholders despite the fact that withholding tax applicable on qualifying dividends is final tax and certain categories of dividends are tax exempt?

PKF Comment

Any dividend distributions further up to holding company's shareholders that have already been subjected to withholding tax, which is final tax on qualifying dividends, should not be subjected to the 30% distributions tax since the withholding tax paid would mean that the profits in the shareholding company are already tax paid. In the case of resident companies holding more than 12.5% of other resident companies, dividend distributions to the shareholding company would be tax exempt. PKF's interpretation in this case is that, since the dividends paid by the subsidiary Kenyan company would either be paid out of taxed profits or would have suffered distribution tax anyway there should be no further distribution tax on onward distribution of the dividends by the shareholding company to its shareholders as these would be taxed profits in the shareholding company anyway.

- and what are the modalities of remitting the distribution tax?

PKF Comment

iTax has to be configured to allow for remittance of the 30% distribution tax.

National Housing Development Levy

The Cabinet Secretary ("CS") for Transport, Infrastructure, Housing, Urban Development and Public Works issued the much-awaited Housing Fund Regulations, 2018 vide Legal Notice No. 238 ("Regulations") on 18 December 2018.

Effective 1 January 2019, employers and employees are expected to contribute 1.5% (each) on monthly basic salary to the National Housing Development Fund ("Fund"). The total contributions, i.e. the 1.5% by the employee and the matching 1.5% by the employer, should not exceed KES 5,000 per month.

The amendment required issuance of the Regulations by the CS responsible for housing to be effective. This provision was however challenged in the Employment and Labour Relations Court ("court") by the Central Organisation of Trade Unions ("COTU"). The court issued stay orders on 21 December 2018 against implementation of the contributions until the matter is heard and determined. The hearing was set for 21 January 2019.

Early in January 2019, the Federation of Kenya Employers ("FKE") challenged appointment of the Fund's advisory board at the Employment and Labour Relations Court and was successful in obtaining an injunction order restraining the CS from proceeding with the appointments of the advisory board members. The matter was expected to be heard on 24 January 2019.

The court orders are a reprieve to both employees and employers pending hearing and determination of the cases filed by COTU and FKE to the court. It is advisable to adhere to the orders and await the court's outcome before making the contributions.

Value Added Tax Auto Assessment

Automated Verification of VAT Returns

The Kenya Revenue Authority (KRA) issued a public notice on 7 January 2019 affirming its plans to continue with verification of VAT Returns using its automated returns verification module on iTax platform for the period January 2018 to date. The public notice emphasised importance of ensuring entries captured by the VAT returns reflect true and correct VAT position.

The move is part of KRA's ongoing efforts to stem out input VAT claims from missing trader and fictitious invoices in the wake of taxpayers claiming dubious input VAT. KRA has been disallowing inconsistent invoices and granting taxpayers time to resolve the inconsistencies before raising assessments.

In summary, KRA's public notice of 7 January 2019 advises taxpayers to adhere to the following:

- Purchase invoices used for input claims should be valid and the amount thereon be correctly claimed as provided under section 17 of VAT Act 2013
- Sales made to taxpayers registered for VAT are declared in the detailed format prescribed in the online VAT return
- Only sales to taxpayers not registered for VAT should be lumped in the last row of the 'Sales' section of the VAT return in the iTax system
- The invoice details are correctly captured including the Invoice Number, Date of Invoice, PIN of Purchaser or seller, and the amount of Invoice

Status of Tax Appeals Tribunal

It is worth noting that the Tax Appeals Tribunal ("TAT") has not been in operation since April 2018 due to expiry of TAT members' terms. Since then there has been no appointment of TAT members by the Cabinet Secretary of the National Treasury as is required despite a recommendation for appointment almost being done immediately after expiry of the TAT members' terms. This has in turn increased the backlog of pending cases denying taxpayers access to justice.

We hope that the necessary appointments to TAT will be done in order to expedite resolution of tax disputes in the course of 2019.

Extension of foreign income tax amnesty

The Finance Act, 2018 extended the foreign income tax amnesty filing deadline from 30 June 2018 to 30 June 2019. The income to be declared is for up to the year ending 31 December 2017. The foreign tax amnesty will not apply to persons who have been assessed in relation to the tax or are under audit, investigation or is a party to ongoing litigation in respect of the undisclosed income or any matter relating to the undisclosed income.

High Court Ruling on VAT treatment on Exported Services

The question of what constitutes an exported service is a highly litigated matter between KRA and taxpayers. The main issue is the fact that the taxpayer is expected to demonstrate that the services are used, enjoyed or consumed by a nonresident person in order for them to be categorised as exported services and hence zero rated for VAT purposes. The current provisions of VAT Act, 2013 do not define what use, enjoyment or consumption by a non-resident person involves and this lacuna is what crystallises into disputes with KRA.

The High Court delivered a judgment on 21 December 2018 dismissing an appeal filed by the Commissioner of Domestic Taxes ("CDT") on VAT treatment on exported services. The High Court held that the suitable test for qualification as an exported service is not where services are provided or performed but rather where the services are to be finally used or consumed.

The CDT was appealing a ruling by the TAT, which held that no VAT was chargeable on the supply of cooling, palletising and scanning services for horticultural products for export to Netherlands. CDT's argument was that these services were performed and consumed in Kenya by the farmers whose horticultural products were exported. However, the taxpayer argued that despite these services being provided in Kenya, the ultimate buyer of the horticultural products was the consumer of the services. These services are integral in ensuring the exported horticultural products reached foreign markets in a good and ready for sale state. This is entirely to the benefit of the non-resident person hence they constitute exported services and should be zero rated for VAT purposes.

Despite CDT appealing this decision, it gives taxpayers and practitioners clarity and also affirms that it is important for KRA to embrace international best practice on the destination principle that the High Court also relied on.

PKF Comment

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

»BACK

Dividend distribution tax on untaxed gains or profits

With effect from 1 January 2019, The Finance Act, 2018 repealed Section 7A of the Income Tax Act, CAP 470 (ITA) on compensating tax and replaced it with a tax on dividends distributed out of untaxed gains or profits.

Thus, companies are no longer required to maintain a Dividend Tax Account ("DTA") for compensating tax purposes as was the case previously. Compensating tax was payable on distribution of untaxed gains in the form of dividends and was monitored through a Dividend Tax Account.

The distribution of dividends from untaxed gains/profits will attract a 30% distribution tax with an exception of registered Collective Investment Schemes (as defined under the Capital Markets Act).

The Kenya Revenue Authority ("KRA") has issued certain clarifications on the operation of the new changes which we highlight below. There however remain areas where more clarity is necessary which we continue to engage the KRA on.

It would be essential for the legal provisions around the operation of the new dividend distribution tax to be included within the next round of amendments to the Kenyan Income Tax Act to avoid future disputes, challenges and ambiguity.

Dividends

Dividends issued by resident companies

KRA has clarified that where dividends are issued out of taxed profits, no additional taxes will be levied under Section 7A of the ITA. Thus, dividends issued out of taxed gains or profits will only attract withholding taxes as follows:

- 0% (when dividends are paid to a resident corporate shareholder who holds more than 12.5% voting rights), or
- 5% (when dividends are paid to a resident individual or corporate shareholder), or
- 10% (when dividends are paid to a non-resident individual or corporate shareholder). Dividends paid out of untaxed gains will attract a 30% distribution tax in addition to withholding taxes discussed above

Dividends issued by resident holding companies

KRA has clarified that onward distribution of dividends received by resident holding companies from investments in **subsidiaries**, whether resident or not, will be considered to have been derived from taxed profits and thus will not attract a 30% distribution tax. KRA has also clarified that where final tax has been deducted (read as withholding tax on dividends paid in Kenya), such dividends will be considered to be derived from taxed profits.

Whilst it appears from the above clarification that dividends from **non-subsidiaries** where no withholding tax is deductible (qualifying dividends on shareholding of above 12.5% and less than 50%) will be considered to be derived from untaxed profits (and thus will attract a 30% distribution tax), we believe that this is not the intent of the clarification and that KRA needs to make this more explicit in a further clarification.

Capital Gains Tax (CGT)

KRA has also clarified that distribution of dividends arising from gains where CGT was paid is considered to be a distribution from taxed profits. Thus such distributions will not attract a 30% distribution tax.

The following matters relating to the tax effects arising from distributions however require further clarification:

- *Distribution of profits where companies are allowed to claim various capital allowances:*
  Various tax incentives are provided to tax payers as part of the macro-economic objectives of the country. Certain sectors receive significant capital allowances ranging from 100%-150% of capital expenditure. Such allowances cause a timing variation between accounting profits and taxable profits, meaning that tax payments are deferred. We are seeking clarity from KRA in relation to distribution of dividends arising from accounting profits where such tax allowances have been obtained such that the resulting effective rate of corporate income tax is less than 30% or even 0% (i.e. a tax loss position)
- *Transitional guidelines:*
  Transitional guidelines in relation to distribution of dividends from profits prior to 31 December 2018 need to be provided as these would fall under the previous tax legislation. Such provisions would specify whether the existing DTA balances would be carried forward where prior profits have not been fully distributed
- *Tax payment modalities:*
  Guidance and modifications, including new tax returns, are necessary to facilitate the payment of the

dividend distribution tax including the deadlines for such returns and payments

PKF Comment

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

»BACK

Nepal

Mandatory requirement of e-billing

The Inland Revenue Department (IRD) has mandated all taxpayers having transactions in excess of NPR 350 million to issue electronic invoices and to link their billing systems with the Central Billing Monetary System (CBMS) of the IRD.

Taxpayers who have already taken authorisation for electronic billing prior to the implementation of Electronic Invoicing Standard Procedures (Procedures) shall also fulfill all the criteria specified therein by 13 April 2019 and obtain a separate authorisation along with updating of the software under CBMS.

PKF Comment

The IRD has introduced this system to directly monitor the transactions of large taxpayers with the objective of reducing possible tax evasion through under/over invoicing and with a positive impact on the revenue collections.

»BACK

VAT exemption on health services

The IRD has issued a circular incorporating all types of health services in Group 5 of Schedule 1 of the VAT Act, 1996. Schedule 1 lists all goods and services which are VAT exempt and with this circular, all services rendered through health service providers and doctors, either through registered health institutions or in an individual capacity, shall be exempt from VAT.

PKF Comment

The Government of Nepal has brought about this reform to make health services in Nepal more economical and accessible. This has also reduced the extra burden to customers seeking health services.

»BACK

Introduction of Online Deposit Slips

The IRD has introduced a system of filing online deposit slips replacing the requirement to complete them physically by hand. The online deposit slips can be printed by the taxpayer and presented in the bank along with the tax amount.

PKF Comment

The IRD has introduced this system to facilitate making the payment of taxes more effective and efficient resulting in higher tax collections. However, the requirement to visit the bank to make the payment still makes the process cumbersome. The use of online payment platforms should facilitate the timely and effective payment and collection of taxes.

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 shashi.satyal@pkf.com.np or call ***+977 01 4410927****.*

»BACK

Oman

Amendments to the Executive Regulation to Oman Income Tax law vide Ministerial Decision No. 14/2019

Amendments to the Income Tax Executive Regulation was published in the Official Gazette on 10 February 2019 vide Ministerial Decision no. 14/2019. The amendments provided clarity on various matters ranging from withholding tax, allowability of member's remunerations as deduction from income, tax cards, etc.

Most of the provisions of the Amendments to Executive Regulation of Income Tax Law will be effective from the date following the date of the publication of the said Ministerial Decision (i.e. to be effective from 11 February 2019) while some provisions will be applicable retrospectively to the taxpayers from the tax year beginning from 1 January 2018.

We list down some of the amendments to the Income tax Executive Regulations:

Withholding taxes

- Withholding taxes on payment of dividends will be made applicable only when the dividend is paid by joint stock companies or by investment funds. No withholding tax will be applicable on dividends paid by Limited Liability Companies
- Definition of interest has been provided for the application of withholding tax provisions
- Following categories of payments or credit, will not be considered as Fees for Provision of Services that fall within the scope of withholding tax;
  - Participation in organisations, seminars, exhibitions and conferences
  - Training
  - Transportation and insurance of goods
  - Air tickets, accommodation expenses incurred abroad
  - Board meetings
  - Reinsurance payments
  - Any services related to an activity or any property located outside Oman

Member's remunerations

Member's remuneration shall now be allowed as deductible expense subject to existing conditions as follows (effective from the tax year beginning on or after 1 January 2018.):

(i) For Establishments or Companies not engaged in professional activities

- Actual remuneration paid, or
- OMR 1,500 per month per member, or
- 25% of taxable income before claiming such remuneration and adjusting the brought forward losses

(Whichever is lower will be allowed as a deductible expense)

(ii) For Establishments or Companies engaged in professional activities

- Actual remuneration paid, or
- OMR 3,500 per month per member, or
- 35% of taxable income before claiming such remuneration and adjusting the brought forward losses

(Whichever is lower will be allowed as a deductible expense)

Tax card

- All taxpayers need to make a separate application vide, a specified form, to the Secretariat General for Taxation (SGT) to obtain the tax card
- Tax card will be issued by the SGT within one week from the date of submitting the application and shall cover various details of taxpayer
- The card will be valid for a period of 2 years from the date of the issuance which needs to be reapplied for in the event of expiry
- Quoting of the tax card number while dealing with various organisations/ministries will be necessary

Other matters

- Submission of forms or documents through electronic modes
- Introduction of new forms and revision in the existing forms
- Tax exemptions
- Donations
- Penalty on auditors
- Tax on small and medium enterprises
- Rights and powers of SGT
- Onsite tax inspections, search and seizures

PKF Comment

*Oman is continuously striving to improve the efficiency and effectiveness of the present tax system. A number of significant changes have been introduced into Oman Income Tax Law. If you believe the above measures may impact your business or require any advice with respect to Oman taxation, please contact Percy Bhaya at muscat@pkfoman.com or call **+968 2456 3196**.*

»BACK

Qatar

Law 24 of 2018 – The new Qatar tax law

His Highness the Amir Sheikh Tamim bin Hamad Al Thani approved the issuance of the new Qatar Tax Law - Law 24 of 2018, superseding Law 21 of 2009. The new tax law will be published in the Official Gazette.

Here is a summary of the key amendments made to the Law:

- Corporate Income tax rate remains at 10%. The 35% tax rate applicable to petroleum activities has been expanded to cover the petrochemical industries
- Withholding tax rate of 5% has been expanded to cover payments of interest, commissions, brokerage fee, and any other services performed wholly or partly in Qatar, effectively replacing the 7% tax rate used previously
- New tax exemption for capital gains from the revaluation of assets used as in-kind contribution to the capital of another public company resident in Qatar provided these shares are at nominal value and are not sold for five years
- Penalties for the following offences are increased:
  - Delay in submission of tax returns — QAR 500 per day, maximum of QAR 180,000
  - Late payment of tax — 2% of tax liability, the maximum cap of 100% remains the same
  - Delay in tax registration — QAR 20,000
  - Failure to submit audited financial statements and maintain books and records — QAR 30,000
  - Non-disclosure of contracts, agreements and deals — QAR 10,000
  - Non-compliance with MOF resolutions on international agreements on exchange of information and tax avoidance — maximum of QAR 500,000
- Creation of the General Tax Authority (under the supervision of the Ministry of Finance) which will be in charge of the implementation of all tax laws

PKF Comment

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

»BACK

Romania

Various tax updates for 2019

Introduction of a tax on financial assets

A new tax provision introduces a tax on financial assets for banking institutions (credit institutions, Romanian legal persons or branches in Romania of credit institutions, foreign legal entities). The tax becomes due if the quarterly ROBOR average exceeds 2% and its payment is considered a deductible expenditure for tax purposes. The tax rate on financial assets varies from 0.1% to 0.5% of the adjusted (if applicable) financial assets stated in accounting records, with the variation depending on the amount by which the three- and six-month ROBOR (as determined by the National Commission for Strategy and Prognosis) exceeds 2%. This tax is due quarterly and calculated by applying the above-mentioned rates to the taxpayer's financial assets at the end of the quarter. The first quarter for calculation purposes is the first quarter of 2019, with the first deadline for declaring and paying the financial assets tax being 25 April 2019.

Gambling

Starting from 1 January 2019, online gambling organisers are required to pay a monthly tax of 2% of the total monthly participation fees collected. The fee must be declared and paid by the 25th of the month following that in which the participation fees were collected.

New incentives for the construction sector

The minimum salary for employees that work in the construction sector will be RON 3,000, starting from 1 January 2019.

For the period 1 January 2019 - 31 December 2028, individuals earning salary income or income treated as such from construction sector (according to the NACE list) employers with turnover from such activities generating at least 80% of their total turnover, are:

- exempt from income salary tax
- the social security contribution paid by employees has been reduced from 25% to 21.25%
- exempt from the payment of the contribution to the private pension fund, regulated by Law no.411/2004
- exempt from the payment of social health insurance contribution, but they are being insured during this period under the social health insurance system without paying the contribution

Deductibility of financing costs starting 1 January 2019

The deductibility limit for the excess borrowing costs has been raised from EUR 200,000 plus 10% of the calculation base to EUR 1 million plus 30% of the calculation base.

Taxation of virtual currency transfers
Income from virtual currency transfers is included in the "income from other sources" category and is taxable.

Individuals' income from virtual currency transfers is subject to a 10% self-assessed tax on the gains, based on their single statement. The gains are determined as the positive difference between the sale price and the purchase price, including the direct costs of the transaction. Gains below RON 200 per transaction are not taxable, if the total gains in a tax year do not exceed RON 600.

VAT
The deadline for applying the optional reverse charge mechanism for certain transactions provided for by VAT legislation, such as the supply of cereals, the transfer of green certificates or the supply of mobile phone, has been extended to 30 June 2022.

PKF Comment

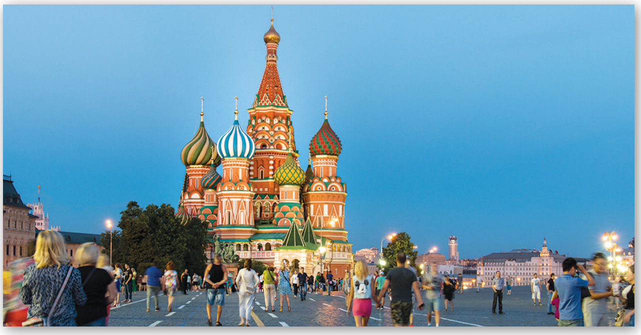
The numerous economic and fiscal measures introduced by the new tax provisions include new taxes on bank assets and on online gambling organisers' income. Further clarification is required regarding the planned implementation methods for some of the amendments as well as an in-depth analysis of their compliance with relevant EU regulations and/or ECJ jurisprudence principles.

*If you believe the above measures may impact your business or require any advice with respect to Romanian taxation, please contact Narcisa Chirila at narcisa.chirila@pkffinconta.ro or call **+40 21 317 31 96**.*

»BACK

Russian Federation

Russia-Japan double tax treaty



A new double tax treaty with Japan was signed on 7 September 2017 and came into force as from 2019.

The salient features are as follows:

- Dividends:
  - 5% if the recipient is a company (being beneficial owner of the dividends) directly holding not less than 15% of voting shares during a minimum of 365 calendar days before the date when the right to dividends is determined
  - 10% in all other cases
- Interest (provided that the recipient is the beneficial owner):
  - In general interest is exempt from withholding tax
  - Interest that is calculated based on sales, profits, revenue and other cash flows of a debtor or its related party and other specially mentioned interest is taxed at 10%
- Royalties are exempt from withholding tax (provided that the recipient is the beneficial owner)
- Capital gains: if assets of a company consist of immovable property for not less than 50% (at any moment during the 365 calendar days before alienation), alienation of the shares in such a company is taxed where the immovable property is located

PKF Comment

These changes both have a positive (exemptions and lower tax rates) and negative impact (capital gains). We therefore recommend you analyse their impact on your business.

»BACK

VAT on digital services

Russia has adopted rules for the VAT treatment of B2C digital supplies of services by foreign suppliers in accordance with the OECD International VAT/GST Guidelines as from 2017: foreign suppliers providing digital services to Russian customers should be tax-registered in Russia and pay VAT themselves.

As from 2019 a similar VAT treatment will apply to B2B supplies of digital services.

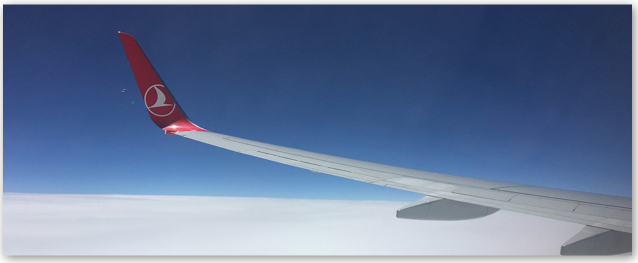
PKF Comment

*This change triggers new tax obligations for foreign companies providing digital services to Russian business customers. If you believe the above measures may impact your business or require any advice with respect to Russian taxation, please contact Yulia Ponomarenko at y.ponomarenko@mef-consult.ru or call **+7 495 988 15 15**.*

»BACK

Turkey

Various recent tax amendments



- 70% of real net salary of pilots and flight stewardesses working in Turkish Aviation Association and other private airlines shall be exempt from income tax as from 1 February 2019
- With regards to the construction of renewable and other power facilities of organised industrial areas and small industrial areas, any delivery of foods and execution of services to them or commercial enterprises formed by them shall be exempt from VAT
- Delivery of books and periodical publications carried out by publishers certified by the Ministry of Culture and Tourism shall be exempt from VAT as from 1 February 2019
- It is now legally regulated that currency translation differences are assessed for VAT calculation purposes. Therefore, currency translation differences that arise from partial or full late collection of payments both as a result of importation and domestic trade in foreign currency is subject to VAT
- Refund of VAT accrued due to construction expenses applied in 2017 and 2018 shall also be applied in 2019
- It is ensured that VAT on purchases as of 1 January 2019 may be subject to deduction until the end of the year following the purchase
- Income taxes withheld and collected on compensations paid as a result of mutual termination or rescission, job loss, severance pay, employment security and other payments made under various titles and supports before 27 March 2018 shall be denied and refunded. The service providers who have been subject to income tax withholding on the compensations paid shall submit an application to the tax office entitled to levy the tax within the given period. Apart from that, refunds shall be made provided that no lawsuit shall be filed or filed lawsuits shall be revoked
- Regarding the 2019 UEFA Super Cup Final and 2020 UEFA Champion's League Final matches; football clubs and low-income taxpayer companies assigned to organisations are granted a VAT exemption (full exemption) for the products and services they provided in relation with these matches
- Web advertisement services purchased from non-residents and from domestic real persons shall be subject to a 15 % withholding tax
- The obligation of bringing the amounts of exportations carried out by persons residing in Turkey back to the country within 180 days at the latest after the actual exportation date or selling 80 % of it to a bank is prolonged until 31 December 2019
- Second-hand motorised land vehicle traders shall be subject to the tax rate stated in (a) sub-article of 1st Article of 2007/13033 numbered Decision (i.e. 18%) during the delivery of purchased cars, which is the same VAT rate applied during the purchase of the cars

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 Cebecioğlu at e.cebecioglu@pkfistanbul.com or call ***+90 212 426 00 93.***

»BACK

Ukraine

2019 transfer pricing update

As from 1 January 2019, apart from changes to 'regular' domestic tax rules coming into force, also amendments to transfer pricing regulations were enacted as follows:

- Internal transactions between a non-resident and its permanent representative office in Ukraine are recognised as controlled transactions (if the scope of transactions exceeds UAH 10 million (approximately USD 375,000 or EUR 330,000) per reported tax year)
- The 'substance over form' principle for transfer pricing purposes is formally established. According to this principle, the characteristics of the controlled operation are to be determined in accordance with the actual actions of the parties and the actual circumstances of their conduct. Should the documented form be in conflict with the actual substance, the latter will prevail. Even if a controlled transaction was done, but it was not documented, that transaction should be analysed in accordance with the actual actions of the parties
- Inaccuracies and technical mistakes in applying certain transfer pricing rules are cancelled

PKF Comment

In 2019, Ukrainian TP regulations are not changed considerably. Significant changes will be made after the Law on implementation of the BEPS action plan will come into force. If you believe the above measures may impact your business or require any advice with respect to Ukraine taxation, please contact Sviatoslav Biloblovskiy at s.biloblovskiy@pkf.kiev.ua or Dmytro Khutornyy at d.khutornyy@pkf.kiev.ua or call ***+380 44 501 25 31****.*

»BACK

Double tax treaty update on Switzerland and Qatar

Protocol with Switzerland

On 24 January 2019, a Protocol on the amendments to the Convention between the Government of Ukraine and the Swiss Federal Council on the avoidance of double taxation with respect to income taxes and capital taxes, and its Protocol (concluded in Kyiv on 30 October 2000) was signed in Davos.

The provisions of the Protocol are in line with the requirements of the OECD Model Convention and BEPS Action Plan. The Protocol provides among others:

- Increase of the tax rate for interest and royalties rates from 0% to 5%
- A new article has been added to the protocol to improve the mutual settlement procedure (settlement of tax disputes) through arbitrage
- New version of the article on information exchange that significantly extends the capabilities of the two countries on tax information exchange without conditions regarding requirements of national tax interest or bank secrecy
- Regulations on the application of the right to tax advantages, which shall not be granted for any type of income or property, if one of the main goals of any arrangement or agreement between business entities was to receive this advantage in any direct or indirect way

After the signing of the protocol Ukraine and Switzerland shall complete their domestic procedures required for its ratification.

Double tax treaty with Qatar

On 28 February 2019, the Supreme Council of Ukraine (parliament) passed a Law on the ratification of the Agreement between the Government of Ukraine and the government of Qatar for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The treaty was signed in Doha on 20 March 2018.

The treaty provides, among others:

- The tax rate for dividends shall not exceed 5%, if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends, or 10% (in other cases)
- The tax rate for interest shall not exceed 5%, if the interest is paid (i) in connection with the sale on credit of any industrial, commercial or scientific equipment, or (ii) on any loan of whatever kind granted by a bank, or 10% (in other cases)
- The tax rate for royalties shall not exceed 5%, in case of payment of royalties in respect of any copyright of scientific work, any patent, trade mark, secret formula, process or information concerning industrial, commercial or scientific experience, or 10% (in other cases)

The treaty will come into force for Ukraine, after signing the Law on ratification by the President of Ukraine.

PKF Comment

The agreed rates and regulations in the Protocol with Switzerland and in the treaty with Qatar are in line with general practices in Ukraine for signing such international agreements on the avoidance of double taxation and protocols with other countries. If you believe the above measures may impact your business or require any advice with respect to Ukraine taxation, please contact Sviatoslav Biloblovskiy at s.biloblovskiy@pkf.kiev.ua or Dmytro Khutornyy at d.khutornyy@pkf.kiev.ua or call ***+380 44 501 25 31****.*

»BACK

New system of currency regulations

On 7 February 2019 the new Law on currency and currency operations came into force. The new Law establishes the freedom of currency transactions as the main principle of FX regulations. It further provides key principals of regulations in the area of licensing in the financial services market, monitoring of currency transactions and liability for offences. In addition, the National Bank of Ukraine has approved a few documents to implement the requirements of the new Law.

In particular, the new currency regulations:

i. **allow:**

- Currency forwards for the purpose of hedging export/import and debt operations
- Online purchases of foreign currency by individuals (up to the equivalent of UAH 150,000 per day (approximately USD 5,500 or EUR 5,000)
- Banks to sell FX-denominated government securities to their clients for foreign currency
- Currency swaps between banks, on the one hand, and residents and non-residents, on the other hand
- Legal entities to bring investment metals in/out of Ukraine if permitted by their charters
- Residents to make FX payments for life insurance purposes
- The use of hryvnia loro accounts in non-resident banks for investments and lending to residents
- Non-resident banks to buy foreign currency using full amounts of hryvnia loro account balances
- Purchasing and accumulating foreign currency on accounts intended for making payments on external debt
- Investing in Ukraine in currencies that are not only in the first group of the currency classifier but also in the second group

ii. **cancel:**

- FX supervision of export/import operations generating less than UAH 150,000 (approximately USD 5,500 or EUR 5,000)
- Individual licences to conduct FX operations; the licences will be replaced with a system of e-limits (EUR 2 million a year for legal entities and EUR 50,000 a year for individuals)
- Sanctions in the form of termination of international economic activity for breach of settlement deadlines
- The procedure for registration of external borrowings
- Double oversight of export and import operations for goods: FX supervision will only be conducted by the bank that received information about the relevant customs declaration

iii. **raise:**

- Double the settlement period for export/import transactions to 365 days
- The limits on remittances of foreign currency from Ukraine by individuals without opening a bank account, to UAH 150,000 (approximately USD 5,500 or EUR 5,000) from UAH 15,000 (approximately USD 550 or EUR 500) a year
- The limit on purchases of investment metals by individuals and legal entities from 3.21 troy ounces (100 grams) a week to an equivalent of UAH 150,000 (approximately USD 5,500 or EUR 5,000) a day

PKF Comment

*The adoption of the above Law is an important phase in Ukraine FX market liberalisation. Because of this, the National Bank of Ukraine is transitioning from a system of sweeping control over each currency operation to FX supervision that operates based on the principle 'more risk, more scrutiny, less risk, less scrutiny'. In turn, it aims to deregulate investment and ease the conduct of cross-border transactions with currency valuables in Ukraine. If you believe the above measures may impact your business or require any advice with respect to Ukraine taxation, please contact Sviatoslav Biloblovskiy at s.biloblovskiy@pkf.kiev.ua or Dmytro Khutornyy at d.khutornyy@pkf.kiev.ua or call **+380 44 501 25 31**.*

»BACK

United Arab Emirates

Tax update on Multilateral Instrument, Automatic Exchange of Information, Double Tax Treaties and VAT

IUAE signs Multilateral Convention to implement tax treaty related measures

After joining the OECD's Inclusive Framework ('IF') on Base Erosion and Profit Shifting ('BEPS') in May 2018, the United Arab Emirates ('UAE') signed the Multilateral Convention ('MLI') on 27 June 2018 to implement tax treaty related measures to prevent BEPS, bringing the total number of participating jurisdictions to 81.

Automatic Exchange of Information – Activated exchange relationships for CRS information

UAE implemented Common Reporting Standards ('CRS') with financial institutions filing its report on or before 30 June 2018. Further, as per Multilateral Competent Authority Agreement ('MCAA'), first intended financial account information exchange by the UAE was scheduled in September 2018.

Out of a total of around 60 countries, some selective examples of the status of exchange relationships from UAE to other CRS MCAA signatory jurisdictions are given below:

Jurisdiction	Activation status
Australia	CRS MCAA activated
Belgium	CRS MCAA activated
Canada	CRS MCAA activated
China	CRS MCAA activated - Effective for taxable periods starting on or after 01 January 2019
France	CRS MCAA activated
Germany	CRS MCAA activated
India	CRS MCAA activated
Japan	CRS MCAA activated
Malaysia	CRS MCAA activated
Mauritius	CRS MCAA activated
New Zealand	CRS MCAA activated
Pakistan	CRS MCAA activated
Poland	CRS MCAA activated
Russia	CRS MCAA activated - Effective for taxable periods starting on or after 01 January 2019
Saudi Arabia	CRS MCAA activated
Singapore	CRS MCAA activated
Switzerland	CRS MCAA activated - Effective for taxable periods starting on or after 01 January 2019
United Kingdom	CRS MCAA activated

Double tax treaty between UAE and KSA

The official list of tax treaties for the UAE is now 115. In the past couple of years, the UAE has added countries like South Korea, Croatia, Brazil, Turkmenistan, Liechtenstein, Croatia and Cameroon.

In addition to the above, the UAE also signed an agreement for the Avoidance of Double Taxation and Prevention of Tax Evasion ('tax treaty') with respect to taxes on income and capital with Saudi Arabia on 23 May 2018.

This tax treaty is the first bilateral tax treaty signed between two GCC member states and was recently published in the Saudi Arabian Official Gazette on 5 March 2019. The Arabic text of this Treaty was published in the Saudi Arabian Official Gazette. However, the official English translation is still awaited.

Specifics about the tax treaty:

- Follows the United Nations Model Tax Convention
- Incorporates the Minimum Standard provisions of the MLI to prevent BEPS
- Expected to be effective from 1 January 2020
- Key features:

Article Ref	Particulars	Provisions
4	Resident	• Dual residency of persons other than individuals - Place of Effective Management adopted as a tie-breaker rule; • Likely that Tax Treaty shall cover all UAE resident companies, including companies registered in free zones
5	Permanent Establishment ('PE')	• Follows structure and content of equivalent article in United Nations Model Tax Convention; • Adopts MLI provision which targets artificial avoidance of PE
10	Dividends	• Rate as per Tax Treaty – 5%;
11	Income from Debt Claims	• Rate as per Tax Treaty – 0%;
12	Royalties	• Rate as per Tax Treaty – 10%;
7	Management Fees	• No Article on technical services in the Tax Treaty and therefore, refer Article 7 on business profits and confirm presence of PE;
25	Mutual Agreement Procedure ('MAP')	• MAP includes MLI-enhanced dispute resolution provisions
29	Miscellaneous Provisions	• References to domestic tax anti-avoidance provisions which shall prevail over provisions of the Tax Treaty; • Tax Treaty adopts Minimum Standards under BEPS Action 6 – Principle Purpose Test

UAE VAT update

The UAE VAT Law (UAE Federal Decree-Law No. (8) of 2017 on Value Added Tax) turned one year old on 1 January 2019.

The UAE Federal Tax Authority ('FTA') has issued several important VAT guides, public clarifications and cabinet decisions since its implementation. Some of the key updates from the FTA are given below:

Date	Type of Update	Particulars of Update
4-Feb-19	Public Clarification	Bank Interests and Dividend
4-Feb-19	Public Clarification	Date of Supply for Independent Directors
7-Nov-18	Public Clarification	Public Transportation
7-Nov-18	Public Clarification	Farm houses/Farm land
11-Sep-18	Public Clarification	Tax Invoices
29-Jul-18	Public Clarification	Treatment of input tax on entertainment services
3-Jul-18	Public Clarification	VAT treatment of labor accommodation
26-Jun-18	Public Clarification	Compensation-type payments
26-Jun-18	Public Clarification	Goods eligible for the profit margin scheme
4-Feb-19	Guide	Financial Services
4-Feb-19	Guide	VAT refund for building new residences by UAE Nationals
31-Dec-18	Guide	Input Tax Apportionment
4-Oct-18	Guide	Insurance
29-Jul-18	Guide	VAT treatment of Designated Zones
18-Jul-18	Guide	Voluntary Disclosures
20-Mar-19	Cabinet decision	Refund of Vat Paid on Goods and Services connected with Expo 2020 Dubai
11-Sep-18	Cabinet decision	Tax Refunds for Tourist
29-May-18	Cabinet decision	Granting special VAT treatments to certain industries (Conference Exhibitions and Gold)

PKF Comment

The news of the UAE joining the OECD's Inclusive Framework is integral to proving its increased commitment to international tax cooperation. News on the updated tax treaties list only strengthens the UAE's international position as a torch bearer in regional and international tax reporting.

Issue of clarifications in key areas like financial services, designated zones, real estate and director services is a step in a positive direction as business across the board seek greater clarity on some of the finer nuances of the UAE VAT regime. Industry leaders are hopeful that they can have a more fruitful dialogue with the FTA through the clarifications channel.

*For further information or advice concerning VAT in the UAE or any advice with respect to UAE taxation, please contact Sarika Dhameja at sdhameja@pkfuae.com or Chaitanya Kirtikar at cgk@pkfuae.com or call **+971 438 88 900**.* »BACK

United Kingdom

Introduction of Profit Diversion Compliance voluntary disclosure facility

HMRC introduced on 10 January 2019 the Profit Diversion Compliance voluntary disclosure facility. This is aimed at multinational enterprises (MNEs) with structures and arrangements targeted by the Diverted Profit Tax (DPT) legislation. The DPT legislation seeks to address two situations:

1. UK companies that divert profits from the UK to lower taxed jurisdictions using entities or transactions that lack economic substance
2. Foreign companies carrying on activity in the UK in a way designed to ensure that no UK taxable presence (UK Permanent Establishment) is created

The UK's DPT is charged at 25% on profits considered to be artificially diverted from the UK, SMEs as defined under EU rules are exempted from this tax.

HMRC have indicated that they have identified a significant number of MNEs that may be diverting profits out of the UK and have invested in new teams in order to investigate these groups. The businesses identified by HMRC operate across a wide variety of sectors and interestingly, while the DPT compliance effort has to date focused largely on the UK's largest businesses, include a significant number dealt with by HMRC's Mid-Size businesses directorate.

The new facility gives those groups with arrangements within the scope of the DPT legislation and not already under investigation by HMRC in relation to profit diversion the opportunity to review their Transfer Pricing policies and change them where necessary. MNEs in scope are invited to prepare a report including proposals for settlement.

Any group with arrangements that fall within the scope of the DPT legislation should consider this disclosure facility carefully as it provides a number of potential advantages:

- DPT enquiries are heavily fact dependent and often involve extensive and intrusive information gathering including email reviews and interviews with senior staff. Producing a report under this facility allows MNEs to take control of the initial investigation and manage the impact on the business
- HMRC aims to respond to proposals within 3 months and expects to accept the majority of proposals whereas DPT investigations can take several years
- Acceptance of a proposal made under the facility will provide certainty for the past and a low risk indication going forwards
- If a disclosure is made before any HMRC enquiry is launched then any penalty will be considered on an unprompted disclosure basis potentially reducing any penalty applicable to Nil

PKF Comment

*It's important to note that any additional tax that is identified in a disclosure will need to be paid in full along with interest and, where applicable, penalties so it's important that specialist tax advice is taken before engaging with HMRC on Diverted Profits Tax or Transfer Pricing. If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Peter Courtney at peter.courtney@jcca.co.uk or call **+44 131 220 2203**.* »BACK

Avoidance involving profit fragmentation arrangements

Clause 16 and Schedule 4 Finance Bill 2019
Originally proposed in the 2017 Budget this new legislation

targets arrangements where value is moved from the UK to an overseas entity and as a result there is a significant reduction in the level of tax paid.

The rules apply to both individuals and companies and apply to profit fragmentation arrangements from 1 April 2019 or 6 April 2019 for individuals.

What is a profit fragmentation arrangement?
It will involve 3 parties a UK resident, an overseas resident and an individual who is the UK resident (or member of partnership or participator in company which is the UK resident party).

Profit fragmentation arrangements if:

- There is a provision between a UK resident and overseas resident
- As a result of that provision ***value is transferred from UK resident to the overseas party*** which derives directly or indirectly from the profits of a business chargeable to IT or CT
- The value transferred is greater than it would have been if it had resulted from a provision made between independent parties acting at arm's length. and
- Any of the ***enjoyment conditions*** are met in relation to a related individual

Arrangements are not profit fragmentation arrangements if:

- The material provision does not result in a ***tax mismatch*** for a tax period of the resident or
- It is not reasonable to conclude that the main or one of the main purposes of the arrangements was to obtain a tax advantage

What is a transfer of value deriving from a business?
Can include any property or right transferred or transmitted and/or the value of any property or right being enhanced or diminished.

Applies to a broad range of transactions including:

- Sales, contracts and other transactions made otherwise than at an arm's length rate
- Assignment of share capital or rights in partnership or a company, an interest in property
- Creation of options affecting disposition of property

Enjoyment conditions that need to be met:

- Broadly that it is reasonable to conclude that value transferred as a result of the material provision relates to something done by, or any property of, the individual and
- The value transferred will be available for the benefit of the individual in the future

Tax mismatch

- The provision results in an increase in expenses of resident party or a reduction in income of resident party, and
- It is reasonable to conclude that the arrangements result in less than 80% of the tax that the UK resident would have paid being paid by the overseas party

PKF Comment

This is complex and detailed anti-avoidance legislation that reemphasises the UK government's continuing commitment to protecting its tax base and countering profit shifting.

There is, as yet, no guidance from HMRC on how the new rules will be applied but it appears that the legislation will in practice extend the reach of the arm's length principle in 2 ways:

- *The legislation uses similar language and terminology to the Diverted Profits Tax and Transfer Pricing rules but, with no de minimis or exemption for small entities, will apply to a much wider range of entities. SME businesses that could until now have relied on an exemption from the UK's TP rules will now be required to consider whether transactions with connected businesses in low tax jurisdictions are priced at arm's length*
- *The enjoyment conditions which dictate which entities and transactions the new rules apply to are wider than the related party condition in the transfer pricing rules*

We recommend that you examine transactions with overseas entities particularly those within low or no tax jurisdictions and consider the following:

- *Is there a UK resident individual who can benefit from any value accruing in the overseas entity?*
- *What is the commercial rationale for the transaction? Has this been documented?*

*If you believe the above measures may impact your business or require any advice with respect to UK taxation, please contact Peter Courtney at peter.courtney@jcca.co.uk or call **+44 131 220 2203**.*

»BACK

United States

International tax considerations in light of South Dakota v. Wayfair, Inc.

U.S. sales and use tax is governed on a state and local level. Compliance with rules and regulations has always been a challenge for multinational companies. A Supreme Court decision from last year has had a massive impact on internal processes and even business models of multinational companies operating in the U.S. The impact is the result of new rules and regulations introduced by state legislatures following the Supreme Court decision.

Overview
On 21 June 2018, the U.S. Supreme Court in the case of South Dakota v. Wayfair, Inc., 585 U.S. (2018) significantly expanded the taxing authority of states of the United States with regard to sales and use taxes. The Supreme Court in the Wayfair case created the concept of "Virtual Presence" to describe the connection of large retailers to a state, especially online retailers who engage in a significant amount of business with a state in which the retailer does not have a physical presence.

The question was never whether the sale of goods or the provision of services to the purchaser was subject to sales/use taxes in the purchaser's state, it was solely a question of which party to the transaction — the seller or the purchaser — was required to remit the tax on the transaction to the state. Prior to the Wayfair decision, if the seller was not obligated to collect and pay the sales tax because it had no physical presence in the state, the buyer was expected to remit the tax to the state.

International view
From an international perspective, the Wayfair decision, intended to stop revenue loss to states on interstate transactions, is another consequence of the "Cyber Age."

Even if a Double Tax Agreement (DTA) would apply to preclude a foreign seller from having a U.S. taxable presence for Federal and state corporate tax purposes — because inventory by itself, used only to fulfil orders, does not create a permanent establishment — this would not prevent a state from demanding the seller to collect sales tax on both instate sales and out-of-state sales.

The role of double tax treaties
For non-U.S. vendors selling to customers in the United States, the Wayfair decision is merely another example of the fact that DTAs between the United States and other countries do not cover or protect against many aspects of U.S. tax law, in particular the array of tax laws enacted and applied by the individual states and local jurisdictions within the states. Taxes levied by the states include corporate income taxes, corporate franchise taxes, personal property taxes, and sales and use taxes. A significant problem with the sales tax regimes is that they are creatures of the states, thus the large number of such regimes (45 states impose sales taxes) each with its own rules, definitions and rates.

In many if not most states, registering to collect sales tax will automatically bring a request from the state's Secretary of State or Tax and Revenue Department that the entity register or qualify to conduct business in the state. This will bring with it the obligation to file corporate tax returns and appoint a registered agent in the state for service of process. The source of this problem is the concept that if an entity is collecting sales tax in a state it must have a physical presence in the state.

How nexus for corporate taxation will be determined after the Wayfair decision is an open question. Although annual sales of USD 100,000 and/or 200 separate sales transactions may seem to be reasonable thresholds, even the Chief Justice of the Supreme Court thought these sales levels would create an undue burden on small business. Nevertheless, lacking any other guidelines, more than 30 states have adopted the USD 100,000/200 standard or one similar to it.

PKF Comment

Multinational companies selling tangible property or providing services into a state without having physical presence need to monitor very closely state activities in the wake of the Wayfair decision and will have to implement internal processes which track all kinds of sales into different states. If thresholds are exceeded, sellers will not only have to register to collect sales tax, they may also have to fulfil requests from state Secretaries of State and/or Tax and Revenue Departments to register or qualify to conduct business in the state. If you believe the above measures may impact your business, please contact Leonard D. Levin at llevin@pkfod.com or call ***+1 914.341.7072****.*

»BACK

IRS issues Final Transition tax regulations

The proposed transition tax regulations were finalised and made available on the IRS website on 15 January 2019. The finalised regulations are effective with the publication in the Federal Register on 5 February 2019.

The final regulations are generally consistent with the proposed regulations published on 9 August 2018, but there are some helpful changes made in several key areas, including but not limited to, the following:

- A consolidated group will be treated as a single U.S. shareholder of a specified foreign corporation (SFC) when determining the aggregate foreign cash position of a consolidated group
- Introduction of an exception to exclude certain assets from the calculation of the cash position. Exceptions include the fair market value of commodities (e.g., oil, lumber, coffee beans, lead) held by an SFC as stock in trade included in inventory or as property held in the ordinary course of its trade or business as well as certain privately negotiated contracts to buy or sell such assets. This rule does not apply to specified foreign corporations that are traders or dealers
- A U.S. shareholder has to include in gross income its pro rata share of a SFC transition tax amount at any point during the inclusion year, even if the SFC ceases to be such corporation during the transition year
- U.S. shareholders are allowed to elect to not disregard payments between specified foreign corporations that occurred between earnings and profits measurement dates

The final regulations are retroactive and, in some cases, the revisions may materially affect a taxpayer's transition tax net liability. Taxpayers have to determine the effects of the revisions made from the proposed to the final regulations.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to US taxation, please contact Ralf Ruedenburg at rruedenburg@pkfod.com or call **+1 646 965 7778**.*

»BACK

Is the arm's length standard in danger?

A few months ago, the European Commission released a statement which could signal the beginning of the end for the Organisation for Economic Co-operation and Development's (OECD) international tax rules, and the arm's length standard on which they are based.

The current rules, which date to decisions taken many decades ago, are based on the assumption that the "right" price for a transaction between different companies within the same multinational group is the price which would apply for the same transaction between unrelated parties. This "arm's length" price is, therefore, taken as the basis to evaluate all such intercompany transactions (i.e., transfer pricing).

There is a chance that countries working to achieve consensus on new rules to govern by which a country can tax multinational group profits will agree to a proposal such as formulary apportionment and abandon the arm's length standard.

Many are advocating the formulary apportionment which would split the entire profits of a multinational enterprise group (MNE) among all its subsidiaries, regardless of their location. Proponents of such alternatives not only have to show that their proposals are theoretically "better", but that they are capable of winning international agreement. Not easy, since the very act of building a formula makes it clear what the outcome is intended to be and who the winners and losers will be for a given set of factors. The tax authorities would naturally want the inputs to reflect their assessment of profit. Questions like how to apportion intellectual capital and R&D between jurisdictions would become very argumentative to say the least.

Rather, it is more likely that consensus will build around a proposal for a modest increase in market jurisdiction taxing rights coupled with a global minimum tax. The OECD policy note released 29 January 2019 by the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) — an OECD-led coalition of 127 countries — states that the international community is fundamentally reassessing how to allocate taxing rights over MNE profits between countries. It is expected that the U.S will soon release its own paper discussing the two items mentioned in the OECD policy note.

Such problems would make it very difficult to reach agreement on the inputs to the formula, particularly between parent companies in wealthy countries and subsidiaries in poorer ones. The arm's length standard avoids these pitfalls as it is based on real markets. It is tried and tested, offering MNEs and governments a single international standard for agreements that give different governments a fair share of the tax base of MNEs in their jurisdiction while avoiding double taxation problems. At this point in time, it's much better to update and modify the existing arm's length standard than start from scratch with something new.

PKF Comment

*If you believe the above measures may impact your business or require any advice with respect to US taxation, please contact David Slemmer at dslemmer@pkfod.com or call **+1 646 965 7781**.*

»BACK

Taxation of the digitalised economy in the future

The Organisation for Economic Co-operation and Development (OECD) identified the tax challenges of the digitalisation of the economy years ago. That lead to the Base Erosion and Profit Shifting (BEPS) Action 1 Report in 2015. That report observed that the digitalisation of the economy raised a number of broader direct tax challenges mainly relating to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among countries.

A Task Force on the Digital Economy (TFDE) was deployed, delivered an interim report in 2018 and is now working on proposals which could form the basis for consensus among over 115 countries and jurisdictions on how to address the tax challenges of the digitalised economy.

The potential solutions could update fundamental tax principles for a twenty-first century economy involving the following two pillars.

- The first pillar would focus on the allocation of taxing rights including nexus issues. Taxing rights could be allocated to market or user jurisdictions in situations where value is created by a business activity through participation in the user or market jurisdiction without having physical presence
- Under the second pillar, basis taxing rights would be explored that would strengthen the ability of jurisdictions to tax profits where the other jurisdiction with taxing rights applies a low effective rate of tax to those profits. These rules could resemble the U.S. global intangible low-taxed income (GILTI) enacted under the Tax Cuts and Jobs Act

Despite these efforts from the OECD, countries have already enacted new rules for taxing the digitalised economy or are planning to do so in the near future:

- Hungary, India, Israel and South Korea enacted various digital taxes in 2016 or earlier
- The Italian Budget Law 2019 introduced a new tax on digital services (DST), initially enacted in 2016. The DST will apply with respect to digital transactions performed, individually or at the group level. The tax applies to businesses (companies and groups) which, during the fiscal year, jointly realise:
  - Annual revenues, wherever arising, not lower than EUR 750 million
  - Annual revenues derived from digital services supplied in the Italian territory not lower than EUR 5.5 million
- The UK and Singapore are planning to introduce tax on digital services in 2020

It remains to be seen if a worldwide system can be introduced based on OECD proposals.

PKF Comment

*If you believe the above measures may impact your business, please contact Ralf Ruedenburg at ruedenburg@pkfod.com or call **+1 646 965 7778**.*

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