2015 March

PKF Worldwide Tax Update

Welcome

PKF's Worldwide Tax Update considers notable tax changes and amendments around the world as well as providing further insight in the PKF commentary. As ever, PKF members are happy to assist you with any further information or advice that you may require, and contact information is provided at the end of each commentary.

In this March issue we look at the intellectual property 'boxes' of Ireland and the Netherlands, which follow existing patent box regimes, and provide preferential tax rates. These are often regarded as advantageous in attracting direct investment into a country from overseas research and development organisations although the OECD outlines that the income should reflect the actual level of research and development undertaken.

Permanent establishment's (PE's) also feature in this issue with PE changes in France, guidance with calculating a PE's income and expenses in Germany and the creation of a service PE in Belgium.

A topical subject currently is transfer pricing, especially with the additional information requirements proposed by the OECD in its Action Plan on Base Erosion and Profit Shifting (BEPS). Notably, transfer pricing features in this month's tax update with articles on the introduction of transfer pricing regulations in Luxembourg and the extended disclosure requirements in France.
Other notable inclusions in this month's issue include:

- The proposed introduction of inheritance tax in Thailand;
- Withholding tax changes in Bulgaria and South Africa;
- Changes in the thin capitalization rules in Australia and Poland; and,
- Commentary on the United States Tax Increase Prevention Act (2014).

We hope that you will find the March 2015 PKF worldwide tax update interesting and please do contact us if you would like further information or advice on any tax matter featured.

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Australia

Guidance on the equity override rules for a chain of inward investments using a debt instrument in Australia

The Australian Taxation Office recently provided guidance on the application of the equity over-ride rule in the “debt/equity” provisions of the Income Tax Law in Australia.

There has been considerable uncertainty around this issue where the Australian “leg” of an offshore investment in Australia is a debt instrument. This rule can operate to reclassify a debt interest issued by a company to a “connected entity” as an equity interest. Where a debt interest is reclassified as an equity interest under this rule, distributions on that instrument will be treated as dividends (that is, not tax-deductible, but frankable).

In the guidance issued (draft Tax Determination TD 2014/D18), the Commissioner of Taxation has indicated that the fact that a non-resident entity has decided to invest indirectly in an Australian resident company through one or more interposed entities, and the final leg in the chain is a debt interest, will not of itself be sufficient to attract the operation of the rule. Full consideration of all material facts would need to be considered in determining whether the rule applies.

PKF Comment:

An Australian company could face an increased tax bill where the deduction of interest on a non-resident debt is disallowed and treated as a distribution under the equity over-ride rules. It is therefore imperative that Australian companies servicing non-resident debts are fully aware of these rules and their implications.

For further information or advice concerning the equity over-ride rules please contact Steve Williams at ***swilliams@pkflawler.com.au***

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Australia

Changes to the thin capitalization rules

From 2015 the thin capitalization regime which limits the deductions available for interest (and other defined debt deductions) for certain inbound and outbound "general entity" (i.e. non-financial institution) investors has been amended to:

(1) Increase the threshold necessary to attract the rules (from associate inclusive aggregate debt deductions of AUD 250,000 to AUD 2,000,000 per annum);
(2) Reduce the safe harbour debt ratio (from a debt ratio of 75% to 60% of Australian assets);
(3) Reduce the alternative "worldwide gearing ratio test" for outward investors (from 120% to 100% of worldwide gearing levels); and,
(4) To allow inward investors to access the alternate worldwide gearing test.

The rules have also been changed to reduce the allowed gearing ratios for "financial entities" (from 95.24% to 93.75%) and to increase the minimum capital amount of Approved Deposit Taking Institutions (from 4% to 6%).

PKF Comment

Australian companies servicing non-resident debts, notably debts with US Multi-National Companies (MNC's), should review their Australian thin capitalization position. In particular, they should consider whether a lowered thin capitalization threshold will result in non-deductible interest and whether they should be applying the alternative thin capitalization tests.

For further information or advice concerning the changes to Australia's thin capitalization rules please contact Steve Williams at ***swilliams@pkflawler.com.au***

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Belgium

Preparation of strategic meetings in Belgium impact on the tax residence status of a company

On 6 June 2014, a Brussels Court ruled that companies cannot claim tax resident status in Belgium if they merely do the preparatory work for Board and Shareholders' meetings in Belgium.

This ruling is very relevant since Belgium uses a management and control test to define the "tax residence" status (in Belgium or abroad) of a given company. Notably, the Court emphasized that this ruling is only valid if a foreign (Luxembourg in that specific case) Board or Shareholders' Meeting has the authority to (and actually does) overrule the work prepared in Belgium. In other words, strategic meetings held abroad cannot be mere rubber-stamping meetings.

PKF Comment

Under Belgium income tax law, the residency of a company is broadly determined by where its principal place of management and control rests. The ruling on 6 June 2014 by a Brussels Court could affect companies which are considered resident in Belgium by virtue of their Board and Shareholders' meetings taking place there, even though the 'rubber stamping' and final decision making is undertaken outside Belgium. It is important to realise that where Board and Shareholders' meetings are held in Belgium this will not in itself determine the Belgium resident status of the company and that there could be significant tax consequences to a Belgium company becoming non-resident notably, it will no longer be able to access Belgium's tax treaty network.

For further information or advice concerning Belgium company residency rules please contact Kurt De Haen at ***kurt.dehaen@vmb.be***

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Introduction of the “service permanent establishment”

Belgian tax law has recently introduced the concept of a service permanent establishment (“service PE”) at the same time a number of new tax treaties were ratified and OECD guidelines adopted.

A foreign company will be subject to tax in Belgium if it has a permanent establishment (PE) in Belgium, and notably, now, the determination of a PE will also consider if the company is providing services in Belgium and for how long. Therefore, a foreign company carrying-on business activities in Belgium can now become subject to 33.99% Belgium-non-resident corporate income tax if that foreign company has:

- A “material PE” (e.g. an office) in Belgium;
- A “personal PE” (e.g. a dependent agent) in Belgium; or,
- A “service PE” in Belgium.

Specifically, if (with respect to the same or related projects) a foreign company “renders services” in Belgium by means of one or more Belgium-based service providers during a period exceeding 30 days within a 12 month period, that foreign company may have a “service PE” in Belgium. Further, when similar services are rendered by related companies, the duration of those services is required to be considered on an aggregate basis against the 30 days test, unless the foreign company demonstrates that there are relevant and valid business reasons to render services via various affiliates.

If there is a service PE, the foreign company is required to file a Belgium non-resident corporate tax return to report its net results that are attributable to the service PE. The foreign company may also have to register as an employer in Belgium, and may have to satisfy Belgian payroll compliance formalities.

An important point to note is that the above “service PE” definition needs to be benchmarked against the wording of the applicable tax treaty rule, which in any event supersedes Belgium’s domestic tax law definition.

PKF Comment

Foreign-service providers (e.g. IT consultants, business consultants, etc.) are strongly advised to consider this new PE definition before commencing services in Belgium. The same consideration applies for Belgian service providers that render services abroad; since other countries have also concluded tax treaties with Belgium, which may include an existing definition of “service PE”.

*For further information or advice concerning the possible exposure of a Belgium service PE being deemed by the Belgium tax authorities, and the resulting tax implications, please contact Kurt De Haen at **kurt.dehaen@vmb.be***

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Bulgaria

Royalty withholding tax: 0% from 1 January 2015

Royalties paid to a non-resident are subject to 10% Bulgarian withholding tax, unless the rate is reduced under a tax treaty. The rate for royalties paid to an EU related party is 5% in certain cases.

As from 1 January 2015, Bulgaria must fully implement the EU Interest and Royalties Directive and exempt royalties paid to an associated company of another member state or to a permanent establishment (PE) of an associated company situated in another member state. Bulgaria levies withholding tax on the gross amount of the payment, however, EU resident entities can claim a refund of a portion of the withholding tax paid on the gross income for the calendar year.

PKF Comment

Non-resident companies in EU member states should ensure that the royalties received under the operation of the EU Interest and Royalties Directive from Bulgarian companies are exempt from Bulgarian withholding tax and this has not been deducted in error and that they satisfy all the conditions for the exemption to apply.

Please contact Venzi Vassilev at ***venzi.vassilev@pkf.bg*** *for further information or advice concerning the exemption of Bulgarian withholding tax under the EU Interest and Royalties Directive.*

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Reduced withholding tax on technical service fees

Technical service fees paid to a non-resident (i.e. fees for the assembly of fixed assets, services of a consultancy nature and marketing research) are subject to a 10% Bulgarian withholding tax, unless the rate is reduced under a tax treaty.

Bulgaria levies withholding tax on the gross amount paid, however, EU resident entities can claim a refund of a portion of the withholding tax paid on the gross income for the calendar year.

PKF Comment

Since it is not "evident" to claim tax treaty protection to minimize withholding taxes, non-resident service providers should bear this rule in mind to reduce Bulgarian withholding taxes.

For further information or advice with respect to Bulgarian withholding tax please contact Venzi Vassilev at ***venzi.vassilev@pkf.bg***

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Canada

Back-to-back loan arrangements and anti-treaty shopping

In the 2014 Budget, the Federal Government introduced new anti-avoidance legislation for back-to-back loan arrangements targeted at financing transactions.

The aim is to introduce anti avoidance legislation to ensure that the Canadian income tax withholding

rates on interest are not circumvented by interposing a third enterprise that is resident in a country with a more favourable income tax treaty with Canada which provides for lower Canadian withholding income tax rates on interest. The bill (Bill C-43) had its first reading in Parliament on October 23rd, 2014. This usually means that it will become law in the immediate future.

PKF Comment

Cross-border financing structures and arrangements that have back-to-back loans in place should be carefully considered to ensure that any tax implications arising from this Canadian anti-abuse rule are minimised.

If you require any information or advice concerning the tax efficient structuring of transactions from a Canadian perspective please do not hesitate to contact Jerry Dykopf at ***jdykopf@pkfkb.ca***

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Chile

Two income tax systems in force as of 2017

On September 29, 2014 Chilean income tax law was significantly changed. One of the main changes gave rise to the emergence of two co-existing tax systems, which will apply to profits realized by enter- prises from January 1st, 2017 onwards

Specifically, taxpayers will have the opportunity to choose which tax system they will be subject to depending on whether the taxpayer selects to be under an attributed regime or a distributed regime. Owners, stockholders, partners, and individual entrepreneurs subject to personal income tax on such profits will all be affected (subject to Global Complementary Tax or Additional Tax, as the case may be).

The operation of each tax system for owners can be summarised as follows:

(i) Owners can fully use corporate tax paid on annual profits as a credit against their personal income tax. The owners must include such profits in their own income tax return, regardless of whether they were distributed by the company (attributed income system).

(ii) Owners can partially use the corporate tax paid on annual profits (65%) as a credit against their personal income tax. If so, they must include in their own income tax return only the profits distributed by the companies and the corres-pondent credit (partially integrated system).

PKF Comment

Chilean taxpayers should carefully reflect and make the best choice to optimise their Chilean tax position. For further information or advice concerning Chilean tax please contact Antonio Melys at ***amelys@pkfchile.cl***

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Cyprus

Impact of new Russian law on Cyprus and on other international financial centers

The Russian government adopted measures to promote transparency and to combat tax avoidance by Russian taxpayers using foreign company structures. Persons who meet the criteria of a Controlled Foreign Company (CFC), certain trusts and certain funds might not be affected by the new Russian legislation which is also referred to as the Russian de-offshorisation law.

PKF Comment

Since, traditionally, Cyprus is a preferred location for Russian tax planning, all cross-border structures involving both Russia and Cyprus should be carefully reconsidered.

For further information or tax planning advice please contact Christos Antoniou at ***chirstos@pkf.com.cy***

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Ecuador

Law for promoting production and to prevent tax fraud

On December 29, 2014, The National Assembly approved a law to promote production and prevent tax fraud which became effective on January 1, 2015. The most important amendments introduced include:

- A five to ten year exemption applies if a company's investment in "basic industries" is considered new and productive (determined by the Production Code). This term could be extended for two additional years if the investment is carried out in border areas;

- There will be no deduction for tax (CIT) purposes for depreciation of revaluated assets, advertising and promotion costs, and expenses for hyper-processed food (to be defined by the corres-ponding regulations);

- Royalty fees and payments for technical, administrative and consultancy services paid to related parties will be deductible for tax (CIT) purposes up to a limit to be determined in subsequent regulations;

- Intangible assets will be amortization over the contract duration or over 20 years;

- The taxable profits of an Ecuadorian company owned by Ecuadorian residents, or residents of a non-tax-haven country, will be subject to 22% corporate income tax. If however, collectively, more than 50% of the Ecuadorian company is owned by tax haven residents then the taxable profits of the Ecuadorian company will be subject to 25% corporate income tax. Where the ownership does not exceed 50%, the 25% corporate income tax rate will only apply to the respective portion of the income attributable to the tax-haven residents; and,

- Tax benefits for mining investments are also available if the criteria are met.

PKF Comment

There are considerable changes to the corporation tax rules and other taxes in Ecuador and therefore we would strongly advise international companies with subsidiaries, branches or permanent establishments in Ecuador to obtain advice on how these changes may affect the tax position of their operations. For further information or advice on Ecuadorian taxation and the tax reform law in Ecuador please contact Christos Antoniou at ***chirstos@pkf.com.cy***

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France

New tax treaty with Luxembourg impacts real estate structures

On 5 September 2014, the tax treaty concluded between Luxembourg and France was amended. Specifically, where a capital gain arises from the sale shares by a person in a real estate company, the State (i.e. either Luxembourg or France) where the real estate is based has the right to tax the capital gain.

Broadly, a "real estate company" is a company with a Balance Sheet directly or indirectly consisting of more than 50% of real estate investments. Real estate which is used for a company's own business purposes is excluded from this calculation.

Unlike the old tax treaty with Luxembourg, France can now tax capital gains realized by shareholders resident in Luxembourg on the disposal of their shares in real estate companies owning French based real estate. In addition, 5% French registration tax is also payable going forward.

The changes to the tax treaty will enter into force after ratification by the French Parliament.

PKF Comment

It is important for Luxembourg and French shareholders of real estate companies to understand where the real estate of each company is based. If, respectively, it is based in the other country then there will be tax implications to a capital gain arising from the disposal of real estate company's shares. We would strongly recommend that all existing French-Luxembourg real estate structures are carefully analysed in view of the proposed tax treaty changes. For further information or advice please contact Hervé Bidaud at ***hervé.bidaux@artemtax.fr***

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Extended transfer pricing disclosure requirements

Following the 2014 Finance Act, the mandatory transfer pricing documentation disclosure obligations have been extended; going forward, companies based in France also have to report whether the Group benefits from tax rulings abroad.

In addition, the "key elements" of the French company's transfer pricing policy is required to be communicated to the French tax authorities, either as an enclosure with the French corporate tax return or provided within six months of the French company's Balance Sheet date. If these reporting obligations are not duly satisfied, penalties will be applied.

PKF Comment

To avoid penalties it is critical to observe the new transfer pricing requirements and ensure the required documentation is submitted to the French tax authorities on time. Should you require any further *information or advice on the new French transfer pricing compliance obligations, please contact Hervé Bidaud at* ***hervé.bidaux@artemtax.fr***

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Permanent establishment deemed from an internet business

On 22 May 2014, the French Administrative Court concluded that a taxable permanent establishment (PE) arises in France if a foreign company sells overnight stay facilities in France through a website that is written in English and on which one can find contact details, (including the address and the phone number of the website administrator and the website owner).

The PE risk in particular crystallizes if all bookings, invoicing and payments are carried-on in France and if all underlying documentation is stored at the French premises of the website administrator or owner.

Please note that it is possible to obtain an upfront French tax ruling as to whether or not there is such taxable PE. If no such tax ruling is asked for and if it appears afterwards that there is a PE after all, the French tax authorities may impose higher penalties.

PKF Comment

We suggest that any company selling overnight stay facilities in France through a website, and meeting the above criteria, should take advice to confirm whether or not it has created a French PE and should be meeting French tax compliance obligations. For further advice and information concerning whether or not a French PE exists please contact Hervé Bidaud at ***hervé.bidaux@artemtax.fr***

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Germany

Computation of profits attributable to a permanent establishment

Where a company has a foreign permanent establishment (PE), the income attributable to the foreign PE is required to be allocated to it. The methodology for the allocation of income to a PE was revised internationally within the scope of the 2010 OECD report on PE's and was incorporated into German law in 2013.

The principles of allocation have been regulated in more detail in the German Decree on the 'Allocation of Profits to Permanent Establishments', which was recently adopted. The new German regulations apply to financial years commencing after 31 December 2014.

PKF Comment

Permanent establishments are normally taxed in the respective foreign jurisdiction on the profits and gains derived by them. It is therefore important that the allocation of income to the PE is correctly made together with the appropriate expenses. There are also transfer pricing considerations.

For further advice and information concerning the allocation of income and expenses to a foreign PE, and head office (home country) tax considerations, please contact Wolfgang van Kerkom at ***wolfgang.van.kerkom@pkf-fasselt.de***

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New restrictions for partnerships concerning shareholder loans

Capital losses realized from the sale or disposal of shares held as business assets in a partnership can be relived against corresponding gains qualifying under the partial-income system (limited to 60%). The deduction of expenses relating to such shares is also limited to 60%. In a change of tax law in 2015,

this now also applies for both current value depreciation and losses as regards shareholder loans whereas both were eligible for a 100% tax deduction before 2015. Prior to 2015, the German Federal Tax Code regarded shares and shareholder loans as two completely different assets.

PKF Comment

*For further advice and information concerning relief for capital losses, and the deduction of respective expenses, under the partial-income system for a German partnership, please contact Julia Hoerning at **Julia.Hoerning@pkf-issing.de***

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Greece

Greek tax requirements for foreign companies

Foreign companies which do not have a permanent establishment in Greece may still be required to register with the Greek tax authorities, for example, for VAT purposes or withholding tax purposes, etc.

For such registrations, both the registration process and the bookkeeping requirements have recently been simplified as follows:

(i) The registration of a foreign company in Greece for VAT purposes can now be completed electronically. Until recently, foreign companies were required to appoint a tax representative in Greece.

(ii) According to new bookkeeping legislation, foreign companies which do not earn revenues in Greece are not required to keep accounting records if they maintain an office in Greece. This applies to a non-Greek company that employs a person in Greece without making any sales in Greece. Until recently, such companies were required to keep accounting records.

PKF Comment

*For further information and advice concerning registration with the tax authorities in Greece, or whether you should be registered, please contact Alexandros Sfarnas at **sfarnas@hol.gr***

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Ireland

New Knowledge Development Box

The Minister of Finance announced an enhanced IP tax regime for companies which includes the introduction of the “Knowledge Development Box” (KDB).

The KDB will be based in part on similar patent box measures which have existed in other countries. The Irish media has reported that a 5% rate was under discussion. The Minster announced that a consultation process will take place and he will legislate for it in the 2015 Finance Bill. The consultation process will run until 8th April 2015.

PKF Comment

Income generated from intellectual property where certain risks or functions are located in the host country have, under existing patent box regimes, been subject to preferential tax rates. This preferential tax treatment has attracted direct research and development investment into the countries having such patent boxes.

The OECD is focussing on such knowledge development box regimes in terms of considering whether a regime reflects the level and amount of real research and development actually being carried out in the host country. We understand that the proposed Irish KDB is being framed within these considerations.

*For further information and advice about the proposed Irish Knowledge Development Box or how to structure your intellectual property in a tax efficient manner, please contact Catherine McGovern at **c.mcgovern@pkf.ie***

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Italy

Tax benefits for the hotel industry

The Law Decree No. 83/2014 (named "*Decreto Cultura*"; the Heritage, Culture and Tourism Decree) entered into force on 1st June 2014. It contains a series of measures to promote the protection of Italian cultural heritage and the tourism industry and provides tax incentives in favour of hotel enterprises that invest in building renovation and digitalization.

The current regulatory text clarifies the nature of the extraordinary maintenance work that can be acknowledged for tax credits and the way they should be utilized. The restructuring and renovation of buildings and hotel enterprises existing since 1st January 2012 may qualify for a tax credit of up to 30% of the costs incurred (up to a maximum of EUR 200,000 per annum) whereas expenditure on the purchase of furniture and fittings qualify for an amount not exceeding 10% of the aforementioned prescribed limit.

The Decree introduces a tax credit for the digitalization of hotel businesses for the years 2015, 2016 and 2017 equal to 30% of the expenses incurred on, for example, Wi-Fi installations, programs for the sale of services and accommodation, etc., up to a maximum total of EUR 12,500. The tax credit is conceded in three equal annual instalments and is used to offset other taxes.

PKF Comment

*Hotel enterprises in Italy that invest in building renovation and digitalization should ensure that they claim and utilise the tax credits available. For further information and advice, please contact Marco Giuliani at **mgiuliani@mgpstudio.it***

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Luxembourg

Introduction of transfer pricing regulations

On 19 December 2014, the Luxembourg Parliament adopted a law which aligns Luxembourg's definition of the 'at-arm's-length' principle with Article 9 of the OECD Model Tax Convention and extends the application of the at-arm's-length principle to all intra-group transactions. The law also extends the general documentation and substantiation requirements in cases of a tax audit to intra-group transactions.

Going forward, Luxembourg resident companies must also be able to demonstrate the at-arm's-length character of intra-group transactions. This applies whether the transaction consists of intra-group financing or any other intra-group transaction, and applies equally to transactions between a Luxembourg resident company and a non-resident company or between two Luxembourg resident companies. The law does not, however, contain any specific transfer pricing documentation requirements. The amendments are effective as of 1st January 2015.

PKF Comment

It is critical that Luxembourg companies are able to support the at-arm's-length nature of their related party transaction with documentary evidence, which may also include reference to a transfer pricing OECD method.

*For help and assistance with preparing transfer pricing documentation, or advice on transfer pricing, please contact Paul Leyder at **pleyder@hrtfidalux.lu** or Léa Zanda at **LZanda@hrtfidalux.lu***

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Formalization of the tax ruling practice

With effect from 1st January 2015, the advance tax clearance or tax ruling practice is formalized through an amendment of the general tax law. The main amendments to the current advance tax clearance practice are as follows:

(i) The advance tax clearance request must contain certain minimum information in order to be valid;

(ii) An advance tax clearance may be obtained for both companies and individuals;

(iii) An advance tax clearance will be valid for a maximum period of 5 years;

(iv) Where the advance tax clearance is requested for a company, it will be reviewed and commented on by the Advance Tax Clearance Commission and be subject to a fee payable to the Luxembourg Tax Administration, which will range between EUR 3.000 and EUR 10.000 depending on the volume and the technical complexity of each request; and,

(v) An anonymous executive summary of the advance tax clearance will be published in the Annual Report of the Direct Tax Authorities.

PKF Comment

Since the Luxembourg ruling practice has always been a key feature of the Luxembourg tax practice, it is not uncommon for both Luxembourg and foreign taxpayers to seek an advance tax clearance and therefore it is important to be familiar with the current rules.

*Should you require any assistance or advice with respect to applying for an advance tax clearance, please contact Paul Leyder at **pleyder@hrtfidalux.lu** or Léa Zanda at **LZanda@hrtfidalux.lu***

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Netherlands

ECJ concludes that Dutch fiscal unity rules infringe EU freedom of establishment

On 12 June 2014, the European Court of Justice (ECJ) concluded that unjustified restrictions of the freedom of establishment occur in cases where the Dutch corporate income tax regulations preclude a consolidated tax treatment (i.e. a fiscal unity) because:

(i) The shares in resident sister companies are held by a common parent company with tax residence in another EU Member State (other than the Netherlands) and not having a permanent establishment in the Netherlands; or,

(ii) An indirect subsidiary is held via one or more foreign companies.

PKF Comment

In view of the ECJ Decision, it may be advantageous to review all existing and future Dutch fiscal unities to ascertain whether or not they are EU compliant.

*Should you require any assistance or advice, notably where it appears that Dutch corporate income tax regulations have precluded a consolidated tax treatment, please contact Jan Roeland at **Jan.Roeland@PKFWallast.nl***

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Clarification of the Dutch Innovation Box

The Innovation Box is a tax scheme for companies in the Netherlands subject to corporate income tax. The core of the innovation box is that the net proceeds from specific intangible assets are taxed at an effective rate of 5%.

It was introduced in 2007 to encourage companies to innovate and increase their research and development

("R&D"). In a regulation issued by the Dutch Ministry of Finance ('the Regulation"), the scope of the Innovation Box is clarified, in particular addressing the types of qualifying intangibles and the level of involvement of the company required for the application of the regime.

Over the years, the tax authorities have developed a policy (the Regulation) for the application of the regime. The Regulation is primarily a formal capture of the policy applied by the Dutch tax authorities providing guidance for applying the Innovation Box.

To illustrate; one item that is clarified in the Regulation is the possibility of substitution. In international groups, it regularly happens that a foreign group company applies for all the patents. This includes the patents for R&D work of Dutch (operating) companies. Since the patent is not granted to the Dutch (operating) company, this company cannot apply the Innovation Box. The foreign group company cannot apply the Innovation Box if it is not subject to Dutch tax. However, the Regulation stipulates the possibility of substitution. If the patent (or non-patented intangible), would be transferred to the Dutch (operating) company via a tax-free legal (de)merger, or business merger, then the Dutch (operating) company may apply the Innovation Box.

PKF Comment

The availability of 'substitution' provides a means for a foreign group to transfer its patents to a Dutch company by way of a tax-free legal (de)merger or business merger and thereby enjoy the benefits of the Dutch Innovation Box.

*Should you require any assistance or advice with respect to the application of a Dutch Innovation Box to achieve a preferential tax rate on the income from specific intangible assets, please contact Jan Roeland at **Jan.Roeland@PKFWallast.nl***

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Poland

New thin capitalization rules

From January 1st, 2015, Poland's thin capitalization rules shall apply not only to loans between directly related parties (i.e. parent company to subsidiary) but also to transactions between indirectly related parties, i.e. parties with an indirect shareholding link of a minimum of 25%.

As from 2015, a 1:1 debt to equity thin cap rule applies. Previously, until the end of 2014 the debt to equity thin cap rule was a 3:1. Furthermore, as from 2015, the total intercompany debt is compared to total equity (and thus no longer to "capital" only). Reference is made to equity as per the last day of the month prior to the interest payment. Note that the term "total intercompany debt" includes both "financial debt" and "commercial debt".

PKF Comment

It is important that Polish companies or Polish subsidiaries of foreign companies consider the impact of the widening net to further restrict interest deductions relating to indirectly related parties and a reduction in the debt to equity permitted ratio. Notably, existing arrangements should be revisited in light of the restricted interest deduction through the reduced 1:1 debt to equity thin cap rule applying in, and from 2015.

*Should you require any further information or advice with planning for the changes to Poland's thin capitalization rules and maximising related party interest deductions, please contact Agnieszka Chamera at **agnieszka.chamera@pkfpolska.pl***

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New CFC rules

As from 2015, Polish taxpayers are subject to 19% Polish income tax earned by their Controlled Foreign Companies (CFC) even if the income is not distributed by the non-Polish company.

Subsidiaries subject to CFC rules are those earning passive income (e.g. dividends, interests, royalties) and which are taxed at a rate lower than 14.25% and in which, the Polish parent company holds at least 25% of shares directly or indirectly. Subsidiaries based in tax havens are also treated as CFCs. However, the CFC provisions will not apply if the foreign corporation conducts real business activities.

PKF Comment

The CFC regime in Poland may result in some *arrangements no longer being tax efficient and we strongly advise that any relevant tax structures be revisited to consider any new tax implications.*

Should you require any assistance or advice with reviewing an existing structure or with tax planning in light of Poland's CFC rules, please contact Agnieszka Chamera at ***agnieszka.chamera@pkfpolska.pl***

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Portugal

Horizontal tax consolidation of Portuguese companies owned by EU companies

Following a European Court of Justice (ECJ) decision dated 12 June 2014, relating to the freedom of establishment restrictions applicable to sister resident companies held by EU companies, the Portuguese tax law has been amended in order to comply with such conclusions. Therefore, as from 1 January 2015, a tax consolidation regime may be applicable to Portuguese resident entities whose share capital is for at least 75% held by a Member State (EU) company for a period of more than one year. Additionally, the freedom of establishment restrictions in the Portuguese tax law up until the end of 2014 may be challenged.

PKF Comment

In view of the ECJ Decision, it may be advantageous to review all existing and future Portugal fiscal unities to ascertain whether or not they are EU compliant.

Should you require any assistance or advice, notably where it appears that Portuguese tax law has precluded a consolidated tax treatment, please contact José Parada Ramos at ***paradaramos@pkf.pt***

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Romania

Incentives to promote Romanian business activities

As of 1 October 2014, employers' social security contributions are reduced by 5%. In addition, between 1 July 2014 and 31 December 2016, profit which is reinvested in a company's own production and/or the acquisition of new qualifying technological equipment (machinery, work equipment) used to carry-on an economic activity, is not taxed. Examples of qualifying machinery and equipment are assets used for the extraction and preparation of coal and metal ores and non-metal ores, construction, agriculture, forestry, transport and telecommunications.

PKF Comment

If you would like to discuss Romanian business incentives or would like any further information or advice concerning Romanian tax, please contact Cristina Săulescu at ***cristina.saulescu@pkffinconta.ro***

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Serbia

Electronic filing of corporate tax returns

On 25 December 2014, new corporate tax rules were introduced, including the electronic filing of both corporate tax returns and withholding tax returns relating to 2014. In addition, expenditure with respect to humanitarian assistance is recognized for tax purposes up to 5% of total revenue.

PKF Comment

Should you require any further information or advice on Serbian tax or the new Serbian corporate tax rules, please contact Mićun Žugić at ***micun.zugic@pkf.rs***

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South Africa

Interest withholding tax due if foreign beneficiary

With effect from 1 March 2015, interest payments by a South African resident to any foreign person will be subject to withholding tax at a rate of 15% unless reduced in accordance with the provisions of a Double Taxation Agreement (DTA).

The South African resident paying the interest has the obligation to withhold the tax when the interest is paid to the foreign person. There are certain exemptions available such as interest paid by the government, the South African Reserve Bank and listed debt.

PKF Comment

Should you require any further information or advice on South African taxation or with respect to obtaining a possible reduction to the withholding tax rate applying to such interest through the application of a relevant DTA, please contact Kubashni Moodley at ***Kubashni.Moodley@pkf.co.za***

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Spain

Spanish gift and inheritance tax infringes EU treaties

On 3 September 2014, the European Court of Justice (ECJ) concluded that Spain had violated the EU Treaty by charging higher gift and inheritance taxes to foreigners (and on foreign property) than charged to Spanish residents.

Specifically, the EU ruled that Spanish inheritance tax applied to non-residents was discriminatory and therefore infringed the EU Treaty. The ECJ ruling means that any non-resident who has been subject to Spanish gift tax or inheritance tax in the past four years can apply for a reimbursement of the amount paid plus interest, be it that this it is not an automatic procedure.

PKF Comment

Should you require any further information or advice on Spanish taxation or you are a non-resident who has paid Spanish gift tax or inheritance tax within the past four years, please contact Ramón Madariaga at ***rmadariaga@pkf-attest.es***

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Thailand

Proposed Thai Inheritance Tax

In November 2014, the Council of Ministers of Thailand passed new inheritance tax rules which are in line with other recent inheritance tax enactments in countries such as Japan, France, South Korea and Taiwan.

These new inheritance tax is now under consideration by the National Legislative Assembly for approval. If approved, the Thai inheritance tax rules will come into effect 90 days after publication in the Royal Gazette. The proposed inheritance tax will affect heirs who are:

(1) Thai citizens;

(2) Non-Thai citizens who reside in Thailand or have headquarters in Thailand for three consecutive years; or,

(3) Recipients inheriting assets located in Thailand, in which the inherited assets received exceed an amount of THB 50 million.

The applicable tax rate of the proposed inheritance tax is 10% of the amount of taxable assets. Taxable assets include: residences, land, vehicles, bonds, equities and deposits at financial institutions. Non-registered assets (i.e., jewelry, amulets and luxury watches) are excluded.

PKF Comment

We strongly advise people falling into categories (1) to (3) that are expecting to receive an inheritance to prepare themselves properly to anticipate the tax *impact of this new Thai inheritance tax legislation. Should you require any further information or advice on Thai taxation or more specifically, on Thai inheritance tax planning, please contact John Casella at* ***john.casella@pkf.com***

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Revised Thai Board of Investment strategy

The Board of Investment of Thailand (BOI) has set new criteria for investment in Thailand which takes effect on 1 January 2015 and is called the "Seven-Year Investment Promotion Strategy (2015 -2021)".

In addition, the BOI industrialized zoning system no longer exists and has been replaced by a new strategy to promote the development of industries rather than geographic zones, which include: high-technology, creative industries and service industries that support the development of the digital economy, and any activities that develop and utilize local resources. Eligible promoted industries will be divided into two main groups:

(i) Corporate Income Tax (CIT) exemption; and,

(ii) Non-CIT incentives.

The promoted industries are specified as follows:

(1) Agriculture industry and agricultural products;

(2) Minerals, ceramics, base metals industry;

(3) Light industry;

(4) Machines, metal productions, and delivery equipment industry;

(5) Electrical and electronics industry;

(6) Chemical, plastic and paper industry; and,

(7) Services and public utilities industry;

PKF Comment

The revised Thai BOI strategy focusses on specific industries and this provides opportunities for tax relief and incentives to encourage investment from foreign companies. Should you require any further information or advice on Thai taxation or BOI investment opportunities, please contact John Casella at ***john.casella@pkf.com***

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Turkey

2015:Electronic accounting allowed

Turkey's Electronic Accounting legislation has been enacted and effective since the start of 2015. Specifically, all companies which used an electronic invoice in 2014, should use electronic accounting notebooks in 2015.

PKF Comment

Should you require any further information or advice on Turkish taxation or on the new electronic accounting requirements, please contact Ali Alıç at ***alialic@aa-ymm.com***

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Forms to complete for Swiss-source dividend and/or interest income

On 13 August 2014, the Turkish Revenue Administration announced which forms must be completed if requested by the Swiss Federal Revenue Administration for residents of Turkey deriving dividend and/or interest income from Switzerland. The forms must be completed in 5 (five) copies and submitted to the Revenue Administration. Turkish taxpayers can only benefit from Turkish-Swiss tax treaty protection in this case by submitting a certificate of residence issued by the Turkish Revenue Administration to the relevant authorities of Switzerland.

PKF Comment

Please note that it is only when the forms are submitted to the competent authorities of Switzerland, by being attached to the certificate of residence issued by the Turkish Revenue Administration, will Turkish taxpayers be able to benefit from the provisions of the Turkish-Swiss tax treaty. Should you require any further information or advice on Turkish taxation, completion of the above mentioned forms or obtaining a Turkish certificate of residence, please contact Selman Uysal at ***selmanuysal@pkfizmir.com***

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United Kingdom

High Court decision in the long running FII Group litigation case

On 18 December 2014 the UK High Court published its decision in the long running FII Group litigation case, first heard in the High Court in 2004, and, subsequently, the subject of referrals to the European Court of Justice (ECJ).

The key point at issue is the legality of the regime for taxing dividends received by UK companies from overseas subsidiaries and associates (whilst exempting dividends received from other UK companies), prior to the introduction of the dividend exemption in July 2009. The ECJ had previously ruled that the UK regime was in breach of EU law and the case had been referred back to the UK High Court for consideration of 29 separate issues of liability and quantification.

On the key question of the taxation of overseas dividends, the effect of the decision is that such dividends will remain subject to UK corporation tax, but with credit for the higher of the nominal rate of tax and the actual effective rate of tax suffered on the underlying overseas profits. It seems highly likely, in view of the amounts of tax at stake (estimated between £4 billion and £6 billion) that HMRC will appeal the decision, so we are not yet at the end of the road.

PKF Comment

The next step would appear to be the actual quantification of the test claims with the agreement of the parties and possibly further submissions. As well as the expected Appeal by HMRC, cross-appeals by the claimants may also arise, all of which will delay the final outcome of the case.

Should you require any further information or advice on UK taxation, please contact Stephen Bryan at ***stephenb@pkfcooperparry.com***

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United States

Foreign person's investment activities give rise to a US trade or business

On January 6, 2015, in a Chief Counsel Advice (CCA 201501013), the IRS concluded that the lending and underwriting activities of a foreign partnership (Fund), conducted on its behalf through its US agent (Fund Manager), rose to the level of a US trade or business. Therefore , the foreign "person" that is a partner of the Fund is treated as being engaged in a US trade or business, and therefore subject to US tax on such activity. The advice concluded that the activities did not qualify for the "trading in stocks and securities" exception provided for in the regulations known as the Trading Safe Harbours.

PKF Comment

This highlights the need to understand a foreign person's activities in the US to determine whether it rises to the level of a trade or business.

Should you require any further information or advice with respect to the US tax obligations of a foreign "person" that is a partner of the Fund, please contact Sarah Russell at ***srussell@claytonmckervey.com***

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Tax Increase Prevention Act of 2014

On December 19, 2014, President Obama signed into law the "Tax Increase Prevention Act of 2014" (TIPA) to extend most of the tax provisions that expired in 2013 retroactively for one year, through 2014.

These popular tax incentives include:

(i) Bonus Deprecation – Allows taxpayers to claim an additional first-year deprecation deduction for 50% of the qualifying property's cost. The property must be new and placed in service before January 1, 2015 to qualify for bonus depreciation.

(ii) Research Tax Credit – The research credit, which allows taxpayers a 20% credit for qualified research expenses incurred over a base amount or a 14% alternative simplified credit, has been extended through 2014. The extenders package contains no provision for making the credit permanent.

(iii) 100% Exclusion for Gain on Qualified Small Business Stock – The provision provides for a 100% exclusion allowed for a gain on the sale or exchange of qualified small business stock held for more than five years by non-corporate taxpayers for stock acquired before January 1, 2015.

(iv) Subpart F Exceptions for Active Financing – The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on such subsidiary's earnings if the subsidiary is predominantly engaged in such business and conducts substantial activity with respect to such business. The subsidiary must pass an entity level income test to demonstrate that the income is active income and not passive income.

(v) Look-through Rule for Related Controlled Foreign Corporations – Look-through treatment for payments of dividends, interest, rents, and royalties between related controlled foreign corporations under the foreign personal holding company rules has been extended through 2014. The bill allows tax deferral for such payments made between commonly controlled foreign corporations (CFC). This provision allows U.S. taxpayers to deploy capital from one CFC to another without triggering U.S. tax.

PKF Comment

US tax-payers should ensure that they take advantage of any relevant parts of the Tax Increase Prevention Act of 2014. Should you require any further information or advice on US taxation or specifically on the tax benefits mentioned above, please contact Leo Parmegiani at ***lparmegiani@odpkf.com***

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Sales into and out California (economic nexus rules)

For tax years beginning on or after January 1, 2011, California has adopted new economic nexus standards.

In general, the Franchise Tax Board will consider a corporation or an Limited Liability Corporation (LLC) to have California corporate income/franchise tax nexus if it has more than USD 500,000 in California sales, USD 50,000 in California property, or USD 50,000 in California payroll. Note that these amounts are indexed for inflation.

The traditional in state physical presence rule is repealed by this law and the level of nexus for income tax purposes in California is now effectively lower than that required for sales tax.

PKF Comment

This new standard will negatively affect every foreign or out of state entity which sells any type of product or service into California at a level above the USD 500,000 threshold. Further, it offers tax planning opportunities to any California domiciled entity which is selling any type of product into a foreign jurisdiction, or sales of other than tangible personal property into another state, with sales in each jurisdiction meeting the above threshold. For further information or advice, please contact Curt J at ***CWelker@pkfsandiego.com***

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