PKF Worldwide Tax Update

Welcome

PKF's Worldwide Tax Update seeks to capture notable tax changes and updates from around the world, which are contributed by our worldwide network of member firms, and provides a commentary with further insights at the foot of each article.

In our last issue you may recall that we discussed the intellectual property 'boxes' introduced by Ireland and the Netherlands. In this issue we look at Cyprus and Italy, two countries that have also created a special tax treatment for intellectual property (IP) with the aim of attracting direct investment from overseas research and development organisations as well as protecting their own IP base.

The influence of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS) continues to be seen in many changes including China's Notice 16, Luxembourg's adoption of the automatic exchange of information directive and Poland's expanded definition of a related party which now captures partnerships.

Other notable inclusions in this month's issue include:

- Belgium's notional interest deduction and Germany's reinvestment of hidden reserves tax treatment, both inconsistent with the EU's freedom of establishment principle;
- Two changes proposed by India's Budget 2015;
- Withholding tax changes in Peru and Romania;
- New tax rules introduced by Greece;
- Belgium's 'fairness tax' and whether it contravenes the EU's Parent-Subsidiary Directive;
- UK employment obligations for temporary personnel and the new electronic quarterly reporting requirements; and,
- New York's adoption of an "economic nexus" standard.

We hope that you will find the June 2015 PKF Worldwide Tax Update interesting, and if you would like further information or advice on any tax matter featured, please refer to the contact information provided at the end of each PKF commentary, or alternatively, you can find any PKF firm, by country, at www.pkf.com/pkf-firms

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Belgium

Is the new 'fairness tax' compliant with EU laws?

From 2014, "large companies" in Belgium will be subject to a "fairness tax". The new corporate tax is levied at a flat rate of 5.15% and first applies to financial years ending between 31 December 2013 and 30 December 2014. A notable feature of the fairness tax is that it applies to large companies on their distributed dividends and it is their tax liability i.e. it is not a withholding tax of the recipient company.

The 5.15% fairness tax only applies if a large company distributes dividends during the taxable period and all (or part) of its taxable profit has been reduced by brought forward tax losses or current year notional interest deductions. Consequently, even though a large company may have distributed dividends during the taxable period, the 5.15% fairness tax will not apply where its taxable profits for that period have not been reduced by brought forward tax losses or current year notional interest deductions.

Since the fairness tax is only due when a dividend is distributed, the question arises whether it is in line with the provisions of the EU Parent-Subsidiary Directive ("PSD"). Indeed, pursuant to the PSD no source-country dividend withholding tax can be due if an EU tax resident company distributes a dividend to a parent company residing in another EU Member State (if the parent company has owned at least 10% of the subsidiary for at least one year and if both have a qualifying legal form).

Although the European Commission recently issued an opinion stating that it believed the fairness tax did not conflict with the PSD, the question still remains as to whether the tax conforms with the European principle of freedom of establishment and currently the matter is before the Court of Justice of the European Union (CJEU).

The CJEU will analyse the fairness tax against the PSD and provide their overview and decision in due course. Following this, the Belgium Constitutional Court will arrive at a final verdict.

PKF Comment

From an EU compliant position there is uncertainty concerning the fairness tax and this in turn brings uncertainty to companies, in particular US and other multi-national companies with subsidiaries in Belgium. Belgium subsidiaries should carefully consider whether, against the background of uncertainty, they should consider filing a claim against assessment notices comprising Belgium fairness tax to protect their position until clarity is brought by the CJEU's decision and the Belgium Constitutional Court.

For further information or advice concerning the Belgium fairness tax, please contact Kurt De Haen at kurt.dehaen@vmb.be

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Notional Interest Deduction ("NID") not in accordance with EU principles; tax refunds possible

Belgium entities are able to claim a notional interest deduction ("NID") in their tax returns, which is an amount calculated by applying a rate (published in the Belgian Official Gazette) to the value of their adjusted equity.

One adjustments to arrive at the adjusted equity amount was to remove the net book value of any asset allocated to a permanent establishment (PE) located in a country with which Belgium had a double tax agreement (tax treaty). The reason why these assets were excluded was based on the position that Belgium didn't tax the profits from such foreign PE's. Consequently, for some Belgium companies, removing these assets from the base, which the NID rate was then applied to, meant that the amount of their tax deduction was less.

The above adjustment was disputed by Argenta Spaarbank NV (a Belgian financial institution with a permanent establishment in the Netherlands) and litigation ensued. Case in point, on 4 July 2013 the Court of Justice of the European Union (CJEU) ruled on the Argenta Spaarbank case (C-350/11) and determined that the NID adjustment excluding the assets of a PE did not conform to the European principle of the freedom of establishment.

Belgium has amended its NID legislation in line with the CJEU Judgment so that the calculation no longer removes the net book value of PE assets and on 13 February 2015 the Antwerp Court ruled that Belgium companies with EU based PE's (or EU based real estate) do not have to restrict the NID calculation because of this.

PKF Comment

Where NID has been restricted it may be possible to claim a refund of Belgium corporate tax previously paid for Belgium companies with permanent establishments and real estate based in the European Economic Area.

For further information or advice concerning a claim for notional interest deductions that were unduly restricted in prior periods and guidance through the Belgium claim procedures, please contact Kurt De Haen at ***kurt.dehaen@vmb.be***

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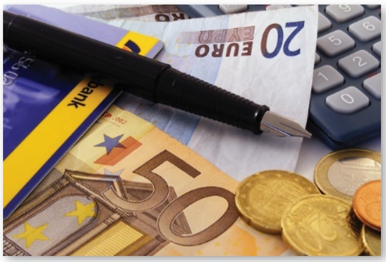
Bulgaria

Interest income from bank deposits and traded bonds



From 1 January 2015, interest income derived from all types of bank accounts will be taxed at a rate of 8%. For foreign tax residents

however a tax exemption has also been introduced for any interest derived from issued state and/or municipal bonds traded on the regulated Bulgarian, EU or EEA markets. Interest received by a non-resident from corporate bonds continues to be subject to a one-off tax unless an exemption applies i.e. the recipient is an EU tax resident.

PKF Comment

Investments in Bulgarian bank deposits and government bonds still remain lucrative as the Bulgarian currency (BG Leva) is pegged to the Euro at a fixed rate (1 EUR = BGN 1.95583), which for an investor operating in Euro's means there is no currency risk. Broadly, EU registered funds and companies can benefit from competitive interest rates in Bulgaria and returns from bond and share yields, combined with the low tax rates for individuals and companies in Bulgaria (10% flat rate both for personal income tax and for corporation tax).

*For further information or advice concerning Bulgarian tax planning, please contact Venzi Vassilev at **venzi.vassilev@pkf.bg***

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China

New anti-avoidance rule in light of the OECD's Base Erosion and Profit Shifting (BEPS) Plan.

On 18 March 2015, China's State Administration of Taxation ("SAT") released Public Notice [2015] No.16 ("Notice 16") which sets out rigorous rules regarding outbound payments to overseas related parties and reiterates that the arm's length principle must be complied with fully for all such transactions.

Notice 16 lists the types of service payments to overseas related parties which are not tax deductible and classifies these into six areas. In order to support the nature (and authenticity) of

each overseas payment to a related party it is strongly advised that enterprises retain (or obtain) supporting documentation, including any agreements or contracts, in addition to documentation supporting the arm's length nature of such payments. These will almost certainly be required by the tax authority should it launch an investigation or audit.

Under Notice 16, the tax authorities are empowered to make special tax adjustments within 10 years of the tax year in which an outbound payment (not in compliance with the third party arm's length principal) took place.

PKF Comment

China's Notice 16 is one of the most important enforcement measures in response to the OECD action plan on base erosion and profit shifting (BEPS). Taxpayers should always ensure that relevant documents are in place to justify the substance (and authenticity) of each payment made to an overseas related party, as well as the necessary documentation to support the third party arm's length nature of the transaction. Meanwhile, taxpayers who remain subject to a low profit rate due to intercompany charges should be cautious about a potential transfer pricing investigation.

*For any further information or advice concerning PRC tax, please contact Jason Li at **jason@pkfchina.com** or Josephine Yang at **josephine@pkfchina.com***

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China tax authorities will focus on tax investigations in 2015

In April 2015, China's State Administration of Taxation ("SAT") released a circular outlining the industries and transactions which could be subject to a tax investigation in 2015. The Circular states that the SAT has already recovered RMB 181 billion (approximately USD 29 billion) through tax investigations carried out in 2014. In 2015, SAT is focussing on the following areas:

- Export refunds and exemption of tax;
- Trading of gold;
- Capital transactions;
- Real estate and building installations;

- High income Individual taxpayers; and,
- Profit-making educational institutions.

PKF Comment

Tax audits and investigations are important tools for the Chinese tax authorities in recovering taxes. Apart from recovering tax undercharged, the tax authorities will impose interest and penalties on the enterprises audited. The financial impact of a tax audit discovering non-compliant items could, therefore, be both burdensome and costly.

Against this background we strongly recommend wholly foreign owned enterprises (WFOE) and joint ventures (JVs) carry out a 'tax health check' exercise to ensure that they are in compliance with the prevailing tax laws and circulars. We also recommend entities keep their internal documentation and records up to date and notably, ensure that documents supporting any commercial rewards and business fee arrangements, etc. are available to be produced in case of an inquiry or challenge from the tax authorities.

For further information or advice on preparing for a tax audit, or if you would like to arrange a PKF Tax Health Check, please contact Newton Shum or K Kwan at ***newtonshum@pkf-hk.com*** *or* ***kkwan@pkf-hk.com*** *respectively.*

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Cyprus

The intellectual property tax regime of Cyprus

A number of tax benefits have been introduced from 2012 for Cyprus companies owning intellectual property which include the following:

- Intellectual property acquisition or development costs are able to be amortised equally over five years, providing a 20% tax allowance each year;
- 80% of the net profit derived from royalty income (including compensation for improper use) or income from the sale of intellectual property is able to be claimed as a tax expense, effectively leaving 20% of the net profit to be subject to tax (an effective tax rate is 2.50%, since Cyprus has a low corporate tax rate of 12.5%). The 'net profit' is arrived at after the deduction of any relevant expenses in deriving such income, for example, interest paid to finance the acquisition or development of the IP. Income includes royalty payments and damages for wrongful use of the intellectual property.

Qualifying intellectual property rights include patents, copyrights, trademarks, service marks, software, trade secrets, know-how, client lists, and research and development.

PKF Comment

Numerous organisations are recognising the benefits of having a Cyprus company own and manage their intellectual property, not only because of the favourable and efficient intellectual property tax regime in Cyprus but also because of the country's good tax treaty network and membership of the European Union. Should you require any further information or advice on the Cypriot IP tax regime, please contact Nicholas Stavrinides at ***Nicholas.s@pkf.com.cy***

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France

Patrimonial income taxation

A recent French High Court case (20 October 2014) ruled that individuals, even if residing in a country outside the European Economic Area (EEA), could benefit from the reduced 19% tax rate applying to capital gains derived from the sale of real estate owned in France. Following this ruling, the 2015 Finance Act introduced the reduced tax rate into French tax law relating to patrimonial income (real estate income, capital gains on real estate, financial income, etc. from assets owned in France).

Please note, social contributions of 15.5% also apply to all capital gains and this rate will remain in force although there is a case pending before the European Court of Justice. The General Advocate expressed the opinion that social contributions as such do not qualify as 'a tax', but are nevertheless linked with French legislation governing social security matters laid down in Article 4 of Regulation No. 1408/71 and therefore fall within the scope of that Regulation.

PKF Comment

Anyone that has paid the full tax rate on patrimonial income in France (real estate income, capital gains on real estate transactions, financial income, etc.), may claim a refund of the overpaid tax as a result of the higher rate. Should you require any further information or advice about French patrimonial income tax, please contact Hervé Bidaud at ***herve.bidaux@artemtax.fr***

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French High Court scrutinizes management package

Recently, the French High Court, for the first time, has qualified certain sums payable under a management package (for managers) and considered them as 'wages' in view of the characteristics of the package. Notably, this applies with respect to the grant of stock options where the manager paid a low lump-sum purchase price for the option and the right to purchase the option was linked to the fulfilment of an internal rate of return.

Even though the court case has a limited scope, it provides guidance on what should be qualified as an "equity investment" (and what is not). The Court decision offers very useful guidance for tax payers who are in this type of situation and considers whether or not the call option was priced at arm's length?' If the option was not granted at an arm's length price, the gain may be requalified as a deemed distribution or wages depending on whether or not the manager has a managerial role.

PKF Comment

In view of the French High Court decision, it may be advantageous to review all existing and future management packages to ascertain whether or not certain elements could be regarded differently.

Should you require any further information or advice on the taxation of the management packages, please contact Hervé Bidaud at ***herve.bidaux@artemtax.fr***

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Germany

Deferring taxable gains: Reinvestment of hidden reserves contravenes EU freedom of establishment principle

The European Court of Justice ruled that the German legislation regarding the reinvestment of hidden reserves is incompatible with EU law because it contravenes the freedom of establishment principle. Section 6B of the German Income Tax Act (EStG) provides for the taxation of capital gains arising from the disposal of hidden reserves (which are essentially land and buildings) to be deferred if the proceeds are reinvested in certain assets (newly acquired or manufactured assets) of a German permanent establishment. If however the reinvestment is in similar assets of an overseas permanent establishment, say a permanent establishment in another EU member country, the gain is not deferred and is taxable.

Consequently, the deferment of taxation arising from the reinvestment of proceeds from the disposal of hidden reserves clearly favours the German market and discourages cross-border investments and therefore goes against the EU freedom of establishment principle.

PKF Comment

There is uncertainty in how the German legislator will respond to the EU ruling. The German legislation could be amended to extend the 'hidden reserves' capital gains tax relief to all EU jurisdictions or the relief could be withdrawn entirely. For further information or advice on the above or on any aspect of German taxation, please contact Alexander Lummel at ***alexander.lummel@m.pkf.de***

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Greece

New tax rules introduced

Greece is undergoing a process of tax reform with several tax changes already having taken place whilst others are planned to be implemented during the coming months. One notable change affects Greek companies which purchase goods or services from certain countries (countries are rated based on their income tax factors). For these countries, a Greek company will either have to document and demonstrate that transactions with entities of that country were conducted at arm's length or pay advance income tax for its respective overseas purchases.

Other key tax changes include a special (provisional) tax on income in addition to Greece's normal income tax and a new tax on hotel revenues which will vary depending on how a hotel is categorised.

PKF Comment

*In the past, Greece has introduced several "provisional" taxes, such as the 'solidarity tax', in times of economic uncertainty. These have been additional to the existing taxes on income and normally based on a progressive scale. As the economic crisis continues, the 'provisional' taxes tend to become permanent. Should you require any further information or advice on the Greek tax changes, please contact Alexandros Sfarnas at **sfarnas@hol.gr***

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India

Tax Reform 2015: General anti-avoidance rules deferred

In the Union Budget 2015 it was announced that the introduction of the General Anti-Avoidance Rules (GAAR) will be deferred by two years.

The rules, once drafted, will also encompass investments on or after 1 April 2017.

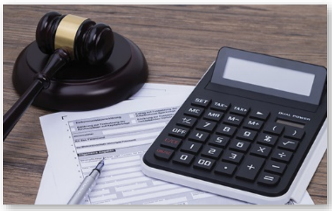
PKF Comment

The Finance Minister in his budget speech said that as there are certain contentious issues relating to GAAR which need to be resolved it has been decided to defer the applicability of GAAR by two years.

*Should you require any further information on any aspect of taxation in India, please contact Sankara Narayanan at **taxation@pkfindia.in***

Tax Reform 2015: Planned reduction to corporate tax rate

There was no change to India's basic corporate tax rate (30%) in the Union Budget 2015. The Finance



Minister did announce however that he proposes to reduce the rate of corporation tax from 30% to 25% over the next four years, starting from 2016-17, and that various exemptions currently provided to companies will be withdrawn.

PKF Comment

A reduction in the effective corporate tax rate is a welcomed move by the Finance Ministry as it will make India more attractive to investors and more competitive with companies in the Asia-Pacific region.

*Should you require any further information or advice on the proposed Budgetary changes or on any aspect of taxation in India, please contact Sankara Narayanan at **taxation@pkfindia.in***

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Ireland

Income tax relief for inbound secondees

Finance Act 2014 extended the Special Assignee Relief Programme ('SARP') which provides a reduction in Irish taxation for employees of an overseas employer who work in Ireland. This is a tax incentive to encourage the relocation of key employees to Ireland. Qualifying conditions still apply but the more restrictive conditions were relaxed in Finance Act 2014 making the relief more accessible for employees arriving in Ireland to work in 2015, 2016 and 2017.

An overseas employee coming to work in Ireland must be employed by a company which is tax resident (and incorporated) in a county that has a Double Taxation Agreement (or an Exchange of Information Agreement) with Ireland (the 'relevant employer'), or employed by an associated company of the relevant employer. It is also important that the employee has been employed by the relevant company for six months prior to arriving in Ireland (previously it was 12 months).

The relief operates by providing a reduction from an employee's taxable salary, which is broadly calculated as: (Total remuneration of the employee minus €75,000) x 30%. The total remuneration of the employee relates to duties performed in Ireland and can include bonuses, commissions, share based remuneration and benefits-in-kind. In addition, please note that the employee is required to have a minimum salary of €75,000 for the relief to apply and there are also some Irish residency conditions to be satisfied.

SARP applies to income tax only and is not available in respect of other Irish employment income taxes, for example, Pay Related Social Insurance ("PRSI") at 4% or the Universal Social Charge ("USC) at 8%.

PKF Comment

Previously, the availability of this relief was restricted by an earnings cap and stringent residency conditions. With the changes made under Finance Act 2014, which relaxed some of these conditions, the relief has become far more accessible and we expect to see an increase in the use of this relief in the coming years for overseas employees arriving to work in Ireland. This is another positive measure for Ireland to be considered as an attractive employment destination.

For further information or advice concerning SARP or any Irish taxation matter, please contact Catherine McGovern at ***c.mcgovern@pkf.ie***

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Italy

Italy's new patent box tax regime

In order for Italy to retain (and attract) intellectual property (IP) it has introduced a special tax regime. The Italian patent box regime, based on the OECD's 'nexus approach', exempts 30% of the relevant IP income from corporate and regional tax in the first year (2015), 40% in the second year (2016) and 50% in each of the following three years.

The relevant IP income is determined on a case by case basis by applying the ratio of qualifying expenditure over total expenditure incurred to develop the assets. Under the "nexus approach" it is important that the qualifying expenditure is connected to a substantial activity of the taxpayer in the country were the IP is registered.

Intellectual property refers to patents or intangible assets that are functionally similar to patents such as know-how, trademarks, designs or models, plans, secret formulas or processes where they are able to be legally protected (and require on-going research and development expenditure for their development and maintenance).

PKF Comment

The preferential tax treatment for income generated from intellectual property should encourage local ownership and increase Italy's competitiveness in this area.

Should you require any further information or advice on the Italian patent box regime, please contact Walter Bonzi at ***wbonzi@mgpstudio.it***

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Luxembourg

Taxation of income realised by certain limited partnerships

Broadly, the partners of Limited Partnerships and Special Limited Partnerships in Luxembourg are taxable but not the partnerships themselves.

Société en Commandite Simple limited partnerships ('SCS') and Société en Commandite Spéciale ('SCSp') limited partnerships are effectively transparent for Luxembourg corporate income and net worth taxes, with the SCS and SCSp partners instead being subject to income tax on their share of the profits. In saying that, non-resident SCS and SCSp partners are only subject to tax in Luxembourg on their share of the profits if the activity of the respective partnership qualifies as a "commercial activity" within the meaning of the Luxembourg income tax law. Please note, Luxembourg Trade Tax will apply to the SCS or SCSp if its activity qualifies as a 'commercial activity'.

On 9 January 2015, the Luxembourg Tax Administration confirmed that the activity carried out by investment funds incorporated under the legal form of a Luxembourg SCSs or SCSp will not qualify as a "commercial activity" within the meaning of the Luxembourg income tax law, unless at least one of the limited partners is a corporate entity that owns an interest of at least 5% in the SCS or SCSp.

PKF Comment

There are tax planning opportunities in operating through an SCS or SCSp in Luxembourg, especially for investment funds.

For further information or advice about the taxation of income realised by certain limited partnerships in Luxembourg or on any aspect of Luxembourg taxation, please contact Paul Leyder at ***pleyder@hrtfidalux.lu*** *or Léa Zanda at* ***LZanda@hrtfidalux.lu***

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Automatic exchange of information on interest payments

Luxembourg announced in 2013 that it would end its policy of applying withholding tax on interest payments and unilaterally move to an automatic exchange of information in accordance with the EU Savings Directive from 1 January 2015.

On 25 November 2014, Luxembourg adopted the 'automatic exchange of information' with respect to interest payments made by a Luxembourg paying agent to individuals and residual entities (within the meaning of the EU Savings Directive) that are resident in another EU member state (or associated territory). The automatic exchange of information will cover interest payments made on or after 1 January 2015. The first exchange of information will take place before 30 June 2016.

PKF Comment

The automatic exchange of information regime adopted by Luxembourg concerning interest payments under the EU Saving Directive demonstrates its continued commitment to more transparency.

Should you require any further information or advice with respect to the automatic exchange of information in Luxembourg or on any Luxembourg tax matter, please contact Paul Leyder at ***pleyder@hrtfidalux.lu*** *or Léa Zanda at* ***LZanda@hrtfidalux.lu***

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Netherlands

New guidance on the tax treaty treatment of termination payments (Article 15) and artists and sportsmen (Article 17)

The OECD published its updated commentary to the OECD Model Convention on 15 July 2014. The updated commentary contained new approaches to the tax treaty allocation of termination payments under

Article 15 and to certain income of artists and sportsmen under Article 17.

The Dutch Ministry of Finance published its view on these approaches in its Decree of 23 April 2015. Based on this Decree, which is in line with the revised OECD commentary, the Netherlands (for termination payments which are received after 15 July 2014) only takes into account the 12 month period prior to the dismissal. The allocation of taxing rights with regard to the termination payment will follow the allocation of labour remuneration for the employment in that 12 month period. Any recharging of the termination payment costs (or part) shall no longer affect the allocation of taxing rights in the country of residence and the country of employment.

PKF Comment

The guidance from the Dutch Ministry of Finance states that the Dutch Revenue will apply a 'dynamic' interpretation of the updated OECD Commentary as regards the tax treaty treatment of termination payments and income of artists and sportsmen.

As the Dutch Supreme Court has not ruled on whether a dynamic interpretation method should be applied to Dutch tax treaties it is unclear whether the approach of the Dutch Revenue will be followed. Taxpayers will therefore have the possibility to argue a 'static' interpretation of the particular tax treaty if such would benefit their case. Please be aware that the guidance does not apply to the Dutch – German tax treaty, as a specific approach was agreed on by the two countries.

For further information or advice on any aspect of taxation in the Netherland's, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl***

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Peru

The progressive reduction of Peru's corporate tax rate

As the result of a tax reform law being passed on 31 December 2014 Peru will decrease its corporate income tax rate over the next four years to 26% (from 30%).

Consequently, on 1 January 2015 the rate was reduced to 28% (from 30%). The rate is expected to be reduced further to 27% for 2017 and 2018 and to 26% for 2019.

The progressive decrease of the corporate income tax rate is intended to provide a short term boost to the liquidity of national companies, encourage investment and improve the utilisation of the country's productive capacity. Internationally, the goal is to increase the competitiveness of the Peruvian economy and to attract foreign investment by improving the country's tax position when compared to OECD countries.

To some degree, the reduction in the corporate income tax rate is balanced by the gradual increase in the withholding tax rate applicable to dividends, which increased from 4.1% to 6.8% on 1 January 2015. This rate is expected to increase to 8% for 2017 and 2018, and to 9.3% for 2019. The increases in the dividend withholding tax rate will encourage the reinvestment of profits back into companies with the result of boosting productivity and stimulating the economy.

The main objective of the tax reform measures is to encourage domestic and foreign investment. Notably, from 1 January 2015 an important change was also made with respect to how loans provided to shareholders or partners in a company are regarded. All loans will now be treated as dividends for tax purposes and a rate of 6.8% will apply on the gross income instead of 6.25% applying on the net income (this rate applies to interest on loans made by individuals). This change is intended to prevent tax avoidance because in its absence it would be more beneficial for shareholders to withdraw their profits in the form of loans rather than as dividends.

PKF Comment

The tax reforms of Peru are numerous and are aimed at stimulating and developing the economy as well as plugging some anti-avoidance areas. It is critical that investors and companies keep abreast of the changes to ensure that they maximise tax planning opportunities. For further information or advice on the taxation changes in Peru, and the tax planning opportunities they present, please contact Julio Cesar Riva Gonzales at ***Jriva@pkfperu.com.pe.***

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Poland

Transfer pricing and the new obligations for partnerships

From 1 January 2015, Poland based partnerships must apply the arm's length principle to every transaction and comply with an obligation to prepare transfer pricing documentation due to a change in the definition of a 'related party' (which now includes entities which do not have a legal personality) in the Polish Corporate Income Tax Act and Personal Income Tax Act.

Transfer pricing documentation must be prepared where a taxpayer enters into a partnership agreement, joint venture agreement and/or contract of a similar nature if the agreement stipulates that the total value of contributions made by the partners exceed EUR 50,000. With respect to a joint venture (JV), or other similar entity, the EUR 50,000 limit refers to the value of the JV as defined in the JV agreement.

Under the new regulations, a Polish partnership must prepare transfer pricing documentation (under certain circumstances) for transactions with parties that are domiciled, resident or managed on Poland territory and in respect of transactions with entities in countries engaged in harmful tax competition.

PKF Comment

It is critical that partnerships (and joint ventures) in Poland react to the new changes and are able to support the at arm's length nature of their related party transactions with documentary evidence.

Should you require any further information or advice on Poland's transfer pricing changes and the obligations of partnerships, please contact Agnieszka Chamera at ***agnieszka.chamera@pkfpolska.pl***

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Romania

Fiscal regulation of 'tips' and amendments to the Fiscal Code

On 8 May 2015, a new Romanian fiscal regulation entered into force which provides guidance on the tax treatment of 'tips' and introduces new obligations for economic operators i.e. procedures, supporting documentation, etc.

In addition, amendments to the Fiscal Code came into force on 1 June 2015 which reduced the VAT rate on food and restaurant and catering services (excluding alcoholic drinks) to 9% and also introduced two new Articles within the legislation relating to withholding tax and income derived by a non-resident (EU/EEA resident).

More specifically, the first Article established the tax base for interest income derived in Romania by a (legal) person who is an EU/EEA resident. The second Article established the tax base for income derived in Romania from the independent activities of a (natural) person who is an EU/EEA resident. Where a (natural/legal) person presents a valid tax residence certificate they can decide whether to be taxed on a gross income basis or on a net profit/net income basis.

PKF Comment

To avoid any adverse tax consequences of these new rules, taxpayers should in particular make sure that they fully understand the changes and any new obligations.

Should you require any further information or advice on the newly implemented Romanian taxation changes, please contact Florentina Susnea at ***florentina.susnea@pkffinconta.ro***

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Serbia

A change in the turnover limit for entitlement to accelerated VAT refund claims

The Serbian Government has relaxed the conditions necessary for a company to qualify as a 'predominant exporter' and be entitled to an accelerated refund of its input VAT. In the past, to be a 'predominant exporter' a legal entity in Serbia had to have at least 70% of its turnover generated through exports. Under the new conditions, the requirement is now 50%.

PKF Comment

The change in the threshold to be considered a 'predominant exporter' is welcomed as it will help the cash flow of more Serbian exporters.

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

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South Africa

Tax exemption for foreign pension fund annuities and lump sum payments

In order to determine whether pension income received by a South African resident is exempt or taxable (subject to South Africa's income tax), it is necessary to consider where the services were rendered. For taxation purposes, the place where the pension fund is physically located is irrelevant.

If pension income is received from a South African pension fund in respect of services rendered overseas, it is considered as being received from a foreign pension fund (or a foreign social security system) and exempt from South African income tax. This is because the underlying services giving rise to the pension were performed outside South Africa.

Similarly, where a South African resident receives an annuity from a South African pension fund and he or she rendered services both in South Africa and overseas, the annuity is required to be proportioned based on the time spent in South Africa and that spent overseas. That part of the annuity relating to services rendered overseas will be exempt from tax whilst that part relating to services rendered in South Africa will be taxable. Please note that this apportionment rule is also applicable to lump sums (from 1 March 2015).

PKF Comment

The South African tax system provides opportunities for tax relief when receiving a pension amount from services rendered in foreign countries. For further information or advice concerning South Africa's exemption on foreign pension fund income (or income from a foreign social security system), please contact Kubashni Moodley at ***Kubashni.Moodley@pkf.co.za***

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United Kingdom

UK employment obligations and temporary personnel

From 6 April 2014, all temporary personnel operating through an employment intermediary will now be deemed to be employed for Pay As You Earn (PAYE) income tax and National Insurance Contribution (NIC) purposes. In this context, 'intermediary' includes a third party, known as the 'agency' in the UK tax legislation, but it could be any third party.

The only exception to this is where the intermediary can prove that the worker is not under any direction, supervision or control. Where there are multiple businesses in the labour supply chain between the end user and the agency (which the worker is under contract with) then it is the intermediary who holds the direct contractual relationship with that end client who will fall liable to operate PAYE as well as accounting for NICs.

These steps were aimed at stopping what was considered "false self-employment", often by the inclusion of simple substitution clauses in worker's arrangements. However, agencies will be able to continue to supply workers on a genuinely self-employed basis but it is vital that they retain and record the evidence that the worker will not be subject to direction, supervision or control i.e. there are no ties to the agency. It is worth remembering that it is 'the right to exercise' such control that is important and not simply whether or not they have been actually directed, supervised or controlled.

The new rules took effect from 5 April 2015. Consequently, electronic quarterly reports (the first of which are due in August 2015) have to be filed with the UK tax authority, HM Revenue and Customs, and contain all relevant information for workers that have not been subject to PAYE and NIC under the Real Time Information (RTI) employment tax filing regime. This will capture, for instance, any payments made to self-employed individuals and personal service company (PSC) workers.

The new rules that have been introduced for Oil and Gas workers apply where historically there was no identifiable relevant person responsible for operating PAYE. The rules now seek to identify any UK associated company of an offshore employer; or failing that, the party holding the license in respect of those particular North Sea operations (it will be this entity that now falls liable to apply PAYE and NIC's). Importantly the NIC's will be both employee and secondary (employer's) contributions.

PKF Comment

These are complicated rules and partly dependent upon one party making the correct RTI submissions on a timely basis. This can prove tricky when different businesses in the labour supply chain need to know the relationship between the end user and the worker. It will equally be a challenge for any UK intermediary contracted with the UK end user where no PAYE has been accounted for. Quarterly electronic returns will soon prove administratively burdensome without robust data gathering and handling processes. With reference to the Finance Act 2015, indications are that the new penalty regime to apply for incorrect or late returns will be very robust and non-compliance will be very costly for companies.

*Should you require any further information or advice on UK employment tax, and your obligations, please contact Caroline Muir at **caroline.muir@jcca.co.uk***

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New taxes under Scottish Government control

On 1 April 2015, Stamp Duty Land Tax (SDLT) ceased to apply with respect to transactions involving land in Scotland. It was replaced by the Land and Building Transaction Tax (LBTT) which is the first tax over which the Scottish Government has complete control of the tax base, collection and rates.

LBTT is a progressive tax and not a flat rate tax as the SDLT i.e. as a progressive tax, the tax rate of each band applies to that part of the amount falling within the respective band. Under the SDLT slab tax rate, the percentage rate of the final band applied to the total value. The change to a progressive tax is welcomed because the SDLT often created price bubbles where buyers refused to pay over a band as it would drastically increase the amount of Stamp Duty payable. No LBTT applies where the value is below £145,000. Values over this are subject to progressive tax rates up to a maximum of 12% for values exceeding £725,001.

A new tax has also been introduced relating to the disposal of waste to landfill sites. The Scottish Landfill Tax (SLfT) became effective on 1 April 2015 and has two rates. A standard rate of £82.60 per tonne will apply to active waste materials and a lower rate of £2.60 per tonne will apply to inert waste materials.

PKF Comment

This is the first time in over 300 years that Scotland has had tax raising powers and there are more to come. The new tax authority, Revenue Scotland, will have the ongoing power to set the rates and collect the taxes generated from them. Early estimates are that they *will yield £500 to £600 million for the Scottish Parliament and the grant received from the UK Government will decrease accordingly. Next year, powers will be introduced over income tax rates and bands in Scotland.*

Should you require any further information or advice on the new Scottish taxes, please contact Caroline Muir at ***caroline.muir@jcca.co.uk***

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United States

New York adopts an "economic nexus" standard

Stemming from tax legislation in 2014 and effective in 2015, New York State has become the latest US state to adopt an "economic nexus" standard in order to subject out-of-state corporations to state level corporate income and franchise tax. The 'economic nexus' concept considers economic activity as the basis for taxation irrespective of whether or not the out-of-state business has a physical presence in the relevant state.

Consequently, New York's bright-line nexus standard imposes tax even if no physical presence exists in the State as long as the corporation derives New York source receipts of USD 1 million or more in a tax year. In addition, a corporation is considered as doing business (and thus subject to tax) in New York if:

(1) It has issued credit cards to 1,000 or more customers with New York mailing addresses;

(2) It has merchant customer contracts with merchants, and the total number of locations covered by those contracts equals 1,000 or more locations in New York. The term "credit card" includes bank, credit, travel and entertainment cards.

Economic nexus is an extension of the prior New York business connection tests which required a physical presence in the State. Previously, New York only considered whether a corporation was doing business in New York i.e. employing capital, owning or leasing property or maintaining an office or employees in the State. These activities also included maintaining stockpiles of inventory or raw materials and owning equipment for construction, whether or not used in tax payer's business.

PKF Comment

Even if a non-US corporation is protected from Federal income tax because no permanent establishment exists under a double tax treaty, it will be subject to New York tax if the receipts threshold is met. Careful planning is required to eliminate the creation of an economic nexus (in cases where no physical presence in New York currently exists), for example, businesses should consider passing title to goods as well as risks associated with ownership outside New York (possibly in the country where the product is manufactured).

For further information or advice concerning the New York nexus standard, please contact Leo Parmegiani at ***lparmegiani@odpkf.com***

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An overview of the Tax Increase Prevention Act of 2014 (TIPA)

On 16 December 2014, the US Senate approved the House-passed tax extenders bill (H.R. 5771) to extend most of the tax provisions that expired in 2013 retroactively for one year, through 2014. This package of incentives, which applies only to 2014, will last two more weeks. The Senate's action sends the extenders bill to the President for his signature.

The Tax Increase Prevention Act of 2014 ('TIPA'), as approved by the House, is estimated by the Joint Committee on Taxation (JCT) to cost USD 41.6 billion over 10 years, and also includes multi-employer pension plan provisions and a tax technical corrections package. The bill extends some popular tax incentives, such as the research credit, bonus depreciation, the above-the-line deduction for qualifying higher education expenses and the ability to use required Individual Retirement Arrangements (IRA) distributions to make charitable contributions. The bill also includes the Achieving a Better Life Experience Act (ABLE) which provides a package of incentives and helps disabled individuals and families raising children with disabilities.

TIPA does not make permanent any of the extenders, nor extends any of them for the usual two-year period customary for most recent extenders legislation. Instead, the new law delays the ultimate fate of the extenders for the 2015 tax year and beyond to the 114th Congress.

As we go to press, we expect the President to sign H.R. 5771 as soon as it reaches his desk. Although there is only a short amount of time left before the year-end, there is still an opportunity to take advantage of extenders:

- Higher Education Deduction: If you are eligible, you can claim an above-the-line deduction for qualified tuition and fees paid in 2014.

- Charitable Distributions from IRAs: If you are 70½ or older, charitably inclined and have an IRA that you do not need the funds to live from, consider a distribution to a charitable organization.

- Bonus Depreciation Expense: Consider purchasing and placing in service new equipment before the end of the year to obtain an accelerated write-off.

PKF Comment

The US Tax Increase Prevention Act of 2014 extends some popular tax incentives, such as the research credit, bonus depreciation, the above-the-line deduction for qualifying higher education expenses and the ability to use required IRA distributions to make charitable contributions. In addition, a package of incentives has been implemented that helps disabled individuals and families raising children with disabilities.

*For further information or advice concerning the extended benefits of TIPA, please contact Leo Parmegiani at **lparmegiani@odpkf.com***

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