PKF Worldwide Tax Update

Welcome

In this issue of PKF's Worldwide Tax Update newsletter, noteworthy tax changes and amendments are provided from around the world, and each article is followed by a PKF commentary which provides further insight and information on the matters discussed. PKF members are happy to assist you with any tax or tax related matter and respective contact details can be found at the end of each article's commentary.

In this issue, featured articles include discussions on:

- A limitation of the tax exempt status of dividends received by Bulgarian entities;
- The end of the sixty six year bifurcated Business Tax system in China with the introduction of VAT as from 1 May 2016;
- The Kenyan Government's measures to increase its revenue collection by ensuring high compliance levels and increasing its tax base;
- Portugal's beneficial tax regime to attract professionals engaged in high added-value intellectual activities and beneficiaries of foreign pension schemes; and,
- The introduction of Value Added Tax in the Middle East, notably in the United Arab Emirates from 1 January 2018.

We hope that you will find this September 2016 PKF Worldwide Tax Update both informative and interesting and please do contact the PKF expert directly should you wish any further advice or information, or find any PKF firm (by country) at www.pkf.com/pkf-firms

PKF OECD BEPS Action Plan Status Update Report - March 2016
PKF has compiled a report looking at the status of certain countries in implementing the measures set out in the OECD's Base Erosion and Profit Shifting (BEPS) 15 point action plan. For a copy, please follow this link: http://www.pkf.com/publications/oecd-beps-action-plan-status-update-report-march-2016

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Chartered Accountants
& Business Advisers

Austria

Compulsory use of cash registers

Austria has introduced a general obligation whereby a cash register (or registers) must be used to record each cash transaction for companies with an annual turnover of EUR 15,000 and cash transactions of more than EUR 7,500 in one calendar year. The latter obligation has entered into force as of 1 May 2016. Cash transactions include cash payments as well as payments by credit or debit card or by cheque. There are a number of exemptions to this obligation, such as for online traders and field trade. Alleviations have also been realised for certain groups of companies. Failure to observe the new regulations could invoke penalties of up to EUR 25,000.

As of 1 March 2016, credit institutions are also required to report all capital outflows of EUR 50,000 or higher from the accounts of natural persons. If sums of EUR 50,000 or more are transferred in several transactions, these must be collated if associated with each other. Moreover, the credit institutions must retrospectively report capital inflows of at least EUR 50,000 from Liechtenstein (from 1 January 2012 to 31 December 2013) and Switzerland (from 1 July 2011 to 31 December 2012) into the Austrian account of natural persons or foundations. This measure aims to record all funds that were transferred to Austria before entry into force of the respective tax agreement but which have not been taxed to date.

PKF Comment

*The requirement to record all single cash transactions using cash registers still has many practical 'open' questions which will hopefully be answered in the coming months. For further information concerning the above, or any matter concerning Austrian tax, please contact Astrid Pirkovitsch at **astrid.pirkovitsch@pkf-graz.at** or call **+43 316 826 0820**.*

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Bulgaria

Measures against double non-taxation of dividends

Dividends received by Bulgarian entities will not be exempt from corporate tax when the distributed amounts are tax deductible expenses and/or decrease the taxable result of the distributing entity.

This is the case regardless of their accounting treatment at the level of the distributing entity. The rules on the treatment of dividends when the related investment is accounted for under the equity method are similarly amended. The change reflects the measures taken by the EU for limiting the use of so called hybrid instruments (e.g., where the distributing party views the amount as a tax deductible interest payment and the recipient as a tax exempt dividend, leading to double non-taxation).

PKF Comment

Investing in Bulgarian companies remains lucrative as Bulgarian entities do not apply withholding taxes when distributing dividends to EU entities.

Many EU registered funds and companies benefit from short or longer term investment in Bulgaria as the dividend tax for 2016 remains at 5% (when distributed to local individuals who are residents for tax purposes), combined with the low personal income tax rates and corporate tax for companies operating in Bulgaria (10% flat rate tax 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*** *or call* ***+359 2 439 4242****.*

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Chile

New tax rules on Controlled Foreign Companies (CFC)

This year Chile introduced new CFC tax rules which require taxpayers domiciled, resident or formed in Chile to include, as part of the taxable income, not only the income received from a CFC but also income accrued proportionally to the participation.

Broadly, a CFC is a company where 50% or more of the equity, right to profits and/or the right to vote are owned directly or indirectly. The law assumes that a company is controlled, unless there is evidence to the contrary, when a foreign entity is formed, domiciled or resident in a low tax country or a country without any taxation (tax haven). Likewise, it is considered that such a company produces only "passive income", with a legal minimum amount. Accordingly, the regulations apply when the CFC has "passive income" (dividends, interest, royalties, capital gains, etc.) exceeding 10% of the income in a year.

The taxable income of a CFC is determined under the Chilean income tax regulations which means that the income produced by the CFC and the expenses have the same tax treatment as if they had been made by a Chilean taxpayer. If, under the Chilean tax rules, a taxable profit is determined for the CFC, this will be added to the taxable income of the Chilean taxpayer and form part of his total taxable income for that year.

Please note however that the CFC rules do not apply when a foreign company has obtained passive income which does not exceed circa. USD 93,000. Taxpayers can utilize the taxes due or paid overseas on "passive income" as a tax credit, provided that a tax treaty with the country that applied those taxes is in force, or a convention which allows the interchange of information for tax purposes.

PKF Comment

Chilean taxpayers which control a CFC will have to obtain its financial statements and supporting accounting books, records and documents in order to calculate the CFC's taxable income under Chilean tax rules.

The financial records in support of the calculation should be made available for inspection (and verification) by the Chilean IRS, if requested. For further information or advice concerning the new Chilean tax rules, please contact By Antonio Melys at ***amelys@pkfchile.cl*** *or call* ***+56 2 2650 4300****.*

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China

Completion of PRC Indirect Tax Reform

Another milestone has been passed in China's taxation history with the end of the sixty six year bifurcated indirect tax system, Business Tax (BT). In its place,

Value Added Tax (VAT) has been introduced and this became effective from 1 May 2016 with the issue of tax circular Cai Shui [2016] No. 36 (the Circular) by the PRC Ministry of Finance and the State Administration of Taxation. The issue of the Circular also signalled the accomplishment of the four year VAT reform.

The abolished Business Tax (BT) was previously charged on various services (including financial services) and real estate sectors, and, at the time, Value Added Tax (VAT) mainly applied to tangible goods that were traded. Under the new VAT credit system, which has been extended to apply to the entire business supply chain, Chinese businesses are expected to have lower liabilities. This has been very welcomed as the previous BT system was inefficient and often created double taxation issues.

The abolition of BT and a stronger, more robust VAT system going forward is expected to significantly increase business profitability and reduce tax administration. Although a considerable amount of the transitional rules and the detail relating to the tax treatment of certain items is still to be provided and clarified by PRC tax authorities, we set out below a broad overview of the more salient features (to date) of the new VAT system:

- The Standard VAT rates are:

  a) 6% and 11% for services;

  b) 17% for trading and leasing of tangible goods;

- A 3% VAT collection rate is applicable to a Small Scale VAT Payer;

- A VAT exemption, or a refund, can be claimed for the qualified exportation of goods and services;

- Under the VAT credit system, it is important to obtain Special VAT Invoices from suppliers (distinguished from commercial invoices) as such invoices are required when lodging an input VAT claim by the purchaser. Due to stringent government controls, the Special VAT Invoices will first be purchased by suppliers via the official system prescribed by their respective tax authority. The system requires local software installation and is separate from the internal ERP system of a company.

- Amongst the countries and jurisdictions which adopt indirect tax systems, the new VAT system in China may be considered as one of the most extensive in its coverage, notably, as it applies to all industries, including those sophisticated sectors requiring extra technical consideration such as financial services, real estate, and lifestyle services.

PKF Comment

Under domestic transactions, VAT liabilities are adjusted through the VAT credit set off obtained upon the purchase of services which were previously chargeable to BT. The more efficient VAT credit system largely resolves the double taxation which was encountered under the previous BT system, however, whether it will eventually realize business savings will still depend on the specific nature of each company.

For service companies which were subject to BT, how to cope with the transition under the new VAT system and comply with more stringent VAT regulations will require a company's management to perform a comprehensive tax review. In addition, the preparation work required under the VAT transition process may have a pervasive impact throughout the operation of the business (not limited to daily tax compliance), for instance, business contracting, internal controls and price renegotiation with suppliers / customers, etc.

Foreign customers should be mindful of any VAT implications arising from the provision of services from PRC suppliers. In saying that, VAT exemption is generally applicable to export services which are solely consumed out of the PRC, and certain services (e.g. R&D) may qualify for a VAT refund in the hands of PRC service providers.

If you wish to discuss further about the PRC VAT reform or any tax issues in relation to a specific industry, please contact either Dave Deng at ***davedeng@pkf-sz.com*** *or David Cho at* ***davidcho@pkf-hk.com*** *(or call* ***+852 2969 4014****).*

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France

Personal tax exemption of expatriation premiums

The French Council of State has delivered a judgement concerning the taxation of supplementary income received by French tax-resident employees who are sent abroad to work by European employers. Article 81 A II of the French General Tax Code grants such employees a tax exemption on any supplementary pay when they are not entirely exempt from personal income tax on their wage (salary) received from their activities abroad. This exemption is however capped at 40% of their salary, supplements excluded.

Nullifying the French Tax Administration's position, the French Council of State ruled that the cap applies to the global salary during the tax period, and not only to the salary received as a result of the 'stays' abroad. No prorated calculation applies. Therefore it is not necessary to add up the number of days spent abroad. According to the conditions set by the legislator, the supplements below 40% of the annual pay, supplements excluded, and calculated prior to the stays abroad, are exempt from personal income tax.

PKF Comment

If you have received premiums for which the exemption was calculated according to a prorated capping, we encourage you to ask for a refund before the legal deadline, i.e. before 31 December of the second year following that of the levy.

Should you require any further information or advice about the exemption of expatriation premiums, please contact Hervé Bidaud at ***herve.bidaux@artemtax.fr*** *or call* ***+33 1 77 68 19 60****.*

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Germany

Update on the taxation of cross-border severance payments

In the Q4 2015 issue we reported on a decision of the Federal Tax Court which ruled that the agreement between Germany and Switzerland on the taxation of severance payments was not binding for German tax courts. As a consequence, the taxation right of the severance payment has to be determined only based on Article 15 of the Double Taxation Treaty, and not based on any 'additional' agreement.

Recently, the German tax authorities have declared that they will apply this judgement in all comparable cases where Germany has concluded similar agreements on the taxation of severance payments with other states (Switzerland, Belgium, UK, Luxemburg, Netherlands and Austria).

PKF Comment

For the taxation of cross-border severance payments, only the regulations in the Double Taxation Treaty are relevant.

Consequently, the taxation right for severance payments should normally be allocated to the state where the individual is resident at the point in time when the severance payment is actually paid to him. However, each case should be reviewed carefully in advance if severance payments are considered in a cross-border situation.

For further information or advice concerning such cases, please contact Thorsten Haake at ***Thorsten.haake@pkf-fasselt.de*** *or call* ***+49 203 300 1342****.*

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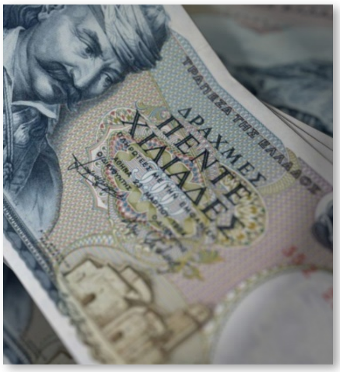
Greece

Changes in taxation and social security

After extensive negotiations with the EU, and the International Monetary Fund (IMF), the Greek government has proposed two new (tax) laws in the Greek parliament. The first law (still in draft) imposes higher taxes for individuals and increases the upper income bracket (income above Euro 40,000) to be taxed at 45% plus an additional tax of 7.5% to 10% (Solidarity Tax). This will result in a total income tax of over 50%. In addition, the first law also provides that Dividend Tax is to increase from 10% to 15%.



The second law (Social Security Law) provides that the social security contribution of freelancers and other individual practices will be levied at a fixed percentage of their net income (about 27%) with an upper limit of approximately EUR 70,000 x 27% = EUR 18,900. Until now, the above persons paid a fixed amount of social security contributions, independently of their income.

PKF Comment

*Incomes above EUR 40,000 are further pressed with independent professionals and small businessmen mostly affected. Should you require any further information or advice concerning Greek taxation or the social security changes, please contact Alexandros Sfarnas at **sfarnas@hol.gr** or call **+30 210 64 27 623**.*

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Hungary

Allocation of corporate taxes

From 1 January 2015, a new corporate tax allowance regime was introduced in Hungary to provide financial assistance for sports, cultural and film support activities and provides an alternative to the already existing allowance system in Hungary for companies. The so called “allocation of corporate taxes” regime encourages companies to subsidise performing arts, film production, and spectator sports through rewarding such investment with tax savings.

One of the tax incentives allows a company to ‘allocate’ some of its payable corporate income tax to support sports and culture. If a company decides to support an organisation through the allocation of its corporate taxes, the subsidy is not directly transferred from the ‘supporter’ company to the supported organisation; the tax authority transfers the subsidy from the company’s tax advance, top-up and tax payment which provides it with an eligible tax credit (from 2.15% up to 7.5% depending on the type of organisation supported and the time of the allocation). The annual limit of this allocation (from the tax advance, top-up and annual tax payment) is 80% of the ‘supporter’ company’s annual corporate income tax liability.

PKF Comment

The previous double deduction system for this support still applies in Hungary for the support of the same type of organisations, however, the allocation of corporate taxes is more beneficial for companies with IFRS or US GAAP reporting as this allocation does not decrease the company’s profitability.

*For further information or advice concerning the Hungarian allocation of corporate taxes, or any advice concerning Hungarian taxation, please contact either Krisztina Kupa at **kupa.krisztina@pkf.hu** or Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu** (or call **+36 1 391 4220**).*

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Kenya

Simplified tax administration rules

The Tax Procedures Act, 2015 (TPA) was enacted on 15 December 2015 and became effective from 19 January 2016. The objective of the TPA is to simplify, harmonise and consolidate tax administration procedures governing Value Added Tax (VAT), Excise Duty and Income Tax. These taxes will still be governed by their respective Acts but taxpayers are expected to comply, and be assessed under, the TPA.

By way of background information, the Tax Appeals Tribunal Act, 2013 (TATA) was enacted on 2 December 2013 and came into force in April 2015. It's main purpose was to consolidate the three defunct tribunals i.e. VAT Tribunal for VAT appeals, Local Committee for income tax appeals and the Customs Tribunal for customs appeals.

PKF Comment

Enactment of TPA and TATA will boost revenue collection by the Kenya Revenue Authority and improve the compliance of taxpayers. In addition, the tax dispute resolution process has now been simplified through the application of similar dispute resolution mechanisms for all taxes.

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

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A widening tax base - introduction of new tax regimes

The Finance Act 2014 re-introduced Capital Gains Tax (CGT) which had been suspended in 1985. Capital gains realised on the transfer of property are now subject to 5% CGT. CGT however does not apply to gains arising from the transfer of securities traded on any securities exchange licensed by the Capital Markets Authority.

Finance Act 2015 introduced a simplified tax regime for the taxation of residential rental income. The tax known as the 'residential rental income tax' is

chargeable at a rate of 10% on gross residential rental income where the gross rental income does not exceed KShs 10 million per annum. It is payable by any resident person from income which has accrued in, or is derived from, the use or occupation of residential property in Kenya.

In an effort to increase revenue, the Kenyan Government enacted a new Excise Duty Act that became effective in December 2015. The most notable changes are that Excise Duty:

a) Will now be levied on specific units of measurement; and,

b) The classification of products has now been changed from a tariff-code based classification system to a description based classification system - thereby increasing the goods and services which fall within the scope of the Excise Duty Act.

PKF Comment

*The Government is seeking to increase its revenue collection by ensuring high compliance levels and increasing its tax base. Taxpayers should be aware of the new tax regimes being introduced into the Kenyan taxation system and evaluate whether their income, or transactions, fall within the tax scope to ensure compliance with the ever changing tax laws. For further information or advice with respect to Kenyan taxation, please contact Michael Mburugu at **mmburugu@ke.pkfea.com** or call **+254 20 42 70000**.*

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Mexico

Obligation to file new informative returns

At the end of 2015, Mexico implemented the obligation to file new returns which provide additional information with respect to related party transactions. This was in line with the guidelines provided by the

Organisation for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) 15 point plan, notably point 13 dealing with transfer pricing documentation. The "fight against tax evasion" measures introduced by the Mexican tax laws create transfer pricing documentation obligations for:

- Companies with an annual revenue greater than MXN 644,599,005 (approximately USD 37.5 million dollars);
- Companies which are traded on the Stock Exchange; and,
- Foreign companies with a permanent establishment in Mexico.

In 2016, taxpayers meeting the criteria with business transactions with related parties must file the following informative tax returns:

- Declaración informativa maestra (Master Informative Tax Return) - It provides information on multinational business groups regarding business structure, a description of activities, intangible assets, related party financial activities, and the financial and tax position of the Group.
- Declaración informativa local (Local Informative Tax Return) - It provides information on the structure, strategic activities, and financial position of the Mexican company. Additionally, it contains information on transactions with related parties.
- Declaración informativa país por país (Country-by-Country Informative Tax Return) - It provides information on the multinational business group regarding the worldwide distribution of income, taxes paid, transactions with related and independent parties, profits, losses, employees, fixed assets, merchandise, etc.

PKF Comment

The new obligations require the provision of group and company information and this will provide greater transparency to the Mexican tax authorities about a group's operations and structure. For further information or advice concerning BEPS measures in Mexico or transfer pricing matters or any advice with respect to Mexican taxation, please contact Carolina Ramirez at ***cramirez@pkfmexico.com*** *or Sergio Zamora at* ***szamora@pkfmexico.com*** *or call* ***+52 33 3634 7159****.*

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Philippines

Tax payments via credit, debit, and prepaid cards

Revenue Regulations (RR No. 3-2016) have now been approved by Finance Secretary Cesar V. Purisima which provide policies and guidelines on the use of credit, debit, and prepaid cards as additional modes of payment to settle tax liabilities. These payment options are to become available when credit card companies have been accredited.

The payment of taxes by a credit/debit/prepaid card is voluntary or optional on the part of the taxpayer. As such, the taxpayer shall bear the convenience fee and other fees being charged by banks and/or credit card companies for the use of this payment facility; and such fees, including the "Merchant Discount Rate" (MDR), should not be deducted from any amount of tax due to the Tax Authority (Bureau of Internal Revenue / BIR).

The 'authority' to accept tax payments, through credit/debit/prepaid cards, and act as 'acquirers' will be limited to Authorized Agent Banks (AAB) only. Until notified otherwise, taxpayers should continue to file the corresponding tax returns with the BIR electronically.

PKF Comment

Philippine taxpayers should aware that alternative modes of payment of internal revenue taxes, including interest, penalties, surcharges and other applicable fees are being made available. This is a welcomed measure as it will make payments far quicker and more convenient.

For further information or advice concerning payment of taxes or advice on any Philippines' tax matter, please contact Robert James B. Miranda at ***robert.miranda@bdplaw.com.ph***

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Taxability of Transport Network Companies such as Uber

Transport Network Companies (TNCs) are legally defined as technology companies and not transportation companies. Uber and Grab simply facilitate the transaction between the passenger and the driver through an application. Traditional transport companies complain of the unfair playing field – the main issue being that TNCs are not being regulated as closely as their competitors, and the tax authorities may not be fully monitoring them.

The Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 70-2015 dated 29 October 2015 to clarify the tax treatment for TNCs like Uber and Grab. TNCs and their partners may be considered a common carrier if they are granted a Certificate of Public Convenience (CPC), subjecting them to the 3% common carriers tax. If not a common carrier, they are classified as a land transportation service contractor which is subject to value-added tax (VAT) of 12%, or if it elects to do so, the 3% percentage tax if gross annual sales or receipts do not exceed a certain limit.

PKF Comment

The Bureau of Internal Revenue has clarified the position relating to TNCs such as Uber and Grab and confirmed the tax position by reference to a Certificate of Public Convenience. For further information or advice about the taxability of transport network companies or any advice concerning taxation in the Philippines, please contact Robert James B. Miranda at ***robert.miranda@bdplaw.com.ph***

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Portugal

Personal income tax regime for non-habitual residents

To attract professionals engaged in high added-value intellectual activities, as well as beneficiaries of foreign pension schemes, a specific personal income tax regime has been introduced in Portugal for non-habitual residents.

By way of explanation, a “non-habitual resident” is a Portuguese national or a foreign individual with the right to live in Portugal who becomes a tax resident and has not been taxed in Portugal during the previous 5 years. Moreover, and in order to be deemed resident for tax purposes, these individuals must:

- Either spend more than 183 days per year in Portugal; or,
- Have stayed for less than 183 days but have a place of abode in any day of this period, "*in a way that may lead to the supposition of an intention to keep and occupy it as a habitual home*". This may be real estate the taxpayer has invested in or just rented accommodation.

Recognition of non-habitual resident status is not automatic and is granted for a period of 10 consecutive years upon a successful application to the Portuguese tax authorities. The application must be submitted at the moment of registration as a resident in the Portuguese territory or by 31 March of the year following that in which Portuguese residence was taken up. This period of 10 years is not extendable and the right to be taxed according to the non-habitual resident tax regime in each of these years depends on the fulfilment of the above condition of being deemed resident in the Portuguese territory.

Whenever the individual has not benefited from the right to be taxed under the non-habitual resident’s regime in one or more years of this 10 year period, the taxpayer may still benefit from that same right in any of the remaining years of that period, provided the individual still has a resident status for income tax purposes.

Notably, the non-habitual resident tax regime provides individuals full exemption from personal income tax, during a period of 10 years, in respect of overseas income and a special flat rate for salaries and self-employment income obtained in Portugal.

Taxpayers covered by the regime are exempt from taxation on the following foreign sourced income during a 10 year period:

- Pension income: provided such pension income is either taxed in the source country under the terms of a Double Tax Treaty (DTT) or such income is not deemed to be obtained in Portugal;
- Salaries: provided such salaries are taxed in the source country;
- Interest, dividends, capital gains and self-employment income derived from a specified group of activities considered of high added value - provided such income is subject to taxation in the other source State, either under the terms of a DTT or under a similar tax model if the source country has not signed a DTT with Portugal and on the condition that the source country is not listed as a low tax jurisdiction.

The regime is particularly generous for pensioners, as in most cases the source country does not levy tax on pensions paid to a person who is tax resident in another country. This allows a pensioner to receive in Portugal his overseas pension totally tax free during a 10 year period.

Domestic income: Taxpayers residing in Portugal and covered by the regime will also benefit from a special reduced flat rate of 20% (plus the existing surcharge of 3.5%) in respect of salaries paid by a Portuguese employer as well as on income earned as an independent professional in Portugal, whenever such salary or income derives from a specified group of activities considered to be of high added value. The list of activities considered to have high added value includes: architects, engineers, artists, auditors, doctors, teachers and a number of other technical professions. This special tax regime can be granted to any individual who meets the above conditions.

It is important that an applicant for this regime has not been resident for tax purposes in Portugal during the preceding five years (and depending on circumstances, supporting documentation may be requested by the tax authority). In order to provide additional comfort to applicants, it is possible to obtain a tax ruling from the tax authorities, confirming that the individual is eligible for this tax regime and is entitled to the non-habitual tax status. This procedure may be particularly advisable in respect of more complex investment structures.

PKF Comment

Foreign citizens moving to Portugal are eligible for a regime that can result in important tax savings, either on overseas or domestic income. This regime has been implemented by the Government to make Portugal more tax competitive for new residents, attracting foreign individuals to make Portugal their country of residence, resulting in advantages for the Portuguese economy. This new policy has been a success with a number of foreigners coming to live here – in particular French and UK pensioners. As a result, Portugal is being reported as the new Eldorado for pensioners in the international press.

PKF has been involved in a number of application processes, and in our experience, each case must be analysed in order to understand if an applicant meets all the requirements and can obtain the full scope of benefits. Should you require any further information or assistance with an application, or advice on any Portuguese tax matter, please contact Filipe Custódio at ***filipe.custodio@pkf.pt*** *or call* ***+351 213 182 720****.*

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Romania

Reverse charge - buildings and land

Commencing in 2016, the Romanian VAT legislation provides for the application of simplification measures for the supply of buildings, parts of buildings and land for which the taxation regime applies. More precisely, as a general rule, the supply of land and buildings is a VAT exempt operation without a deduction right. However, the supply of building land and new buildings are taxable and therefore, as taxable supplies the simplification measures can be applied.

Please note, that in order for the buyer to account for VAT under the reverse charge mechanism, both the supplier and the beneficiary of the supply should be registered for VAT purposes in Romania. In this case, the supplier will issue an invoice without VAT, mentioning "reverse charge" on the invoice.

PKF Comment

Given the high interest from foreign investors in Romania last year, the measure to simplify VAT in respect of the supply of vatable land and buildings is very welcomed.

*For further information or advice concerning Romanian VAT, or any advice concerning taxation in Romania, please contact Alina David at **alina.david@pkffinconta.ro** or call **+40 735 212 702**.*

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Serbia

Introduction of withholding tax on payments to non-residents

Withholding tax has been introduced in Serbia by the Law on Corporate Income Tax Law ('the Act') and will be liable on payments that will be made from 1 March 2016 (regardless of where the service is provided).

Withholding tax will be levied at a rate of 20% on the revenues (income) of non-resident legal entities derived from the services they provide or use in the territory of the Republic of Serbia where the payer of the income is a resident legal entity (the obligation also applies to entrepreneurs).

PKF Comment

Withholding tax will be paid under the above domestic law provisions, however, where a double tax treaty (DTT) is relevant, the right to tax revenue is generally allocated to the State whose resident is the one who earns the income (i.e. the State of the non-resident legal entity), except in cases where the income is realised through a permanent establishment. Under such circumstances where the non-resident legal entity is resident in a State with a DTT with Romania, and does not have a permanent establishment in Romania, there will be no withholding tax deduction as long as the non-resident legal entity has possession of a current residency certificate (normally only valid for one year).

If Serbia has no DTT with a particular State, or the payer has not provided a residence certificate at the time of payment for the recipient, the withholding tax will be payable in accordance with the Act (at a rate of 20%). In such cases, the agreement or contract (or annexes) between the two parties for the services should specify whether the agreed compensation is paid gross or net as a grossing up calculation may have to be performed.

*For further information or advice concerning Serbian withholding tax or any advice with respect to Serbian taxation, please contact Micun Zugic at **micun.zugic@pkf.rs** or call **+381 11 30 18 445**.*

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South Africa

Special voluntary disclosure program

Commencing 1 October 2016, a special voluntary disclosure program will apply for a period of 6 months in South Africa to allow South Africans to regularise any undisclosed foreign assets and, for this period, any disclosures will not be subject to understatement penalties and/or criminal prosecution.

Please note however that the legislation has not yet been finalised and it is currently undergoing the mandatory Parliamentary processes albeit expected to be issued in due course. Whilst this program is only applicable to South African individuals and companies, settlors, donors, deceased estates or beneficiaries of foreign discretionary trusts may participate if they elect to have the trust's offshore assets and income deemed to be held by them.

The salient features of the special voluntary disclosure program are as follows:

- Only 50% of the total amount used to fund an acquisition of offshore assets before 1 March 2015 will be included in taxable income;

- Investment returns received from 1 March 2010 and onwards will be included in taxable income in full. Investment returns prior to 1 March 2010 will be fully exempt;

- Interest on tax debts arising from the disclosure of these amounts will commence from 1 March 2010.

Applicants who are granted relief in respect of unauthorised foreign assets will however be subject to a levy based on the market value of the assets at 29 February 2016:

- The levy will be 5% if the assets or the proceeds are repatriated to South Africa and 10% if the assets are kept offshore.

- The levy must be paid from foreign-sourced funds. Where insufficient liquid foreign assets are available, the levy is increased by a further 2%, to the extent that local assets are utilised to settle the levy.

- Individuals will not be allowed to deduct their R10 million foreign capital allowance or any remaining portion thereof from any amount subject to the levy and the levy may not be reduced by any fees or commissions.

PKF Comment

South African taxpayers should take advantage of this program to regularise their foreign assets since agreements for the automatic exchange of information will come into effect in 2017 and will allow the South African Revenue Service to obtain full details of assets held by South Africans in various countries. As the legislation relating to the disclosure program is currently undergoing the parliamentary processes and is not yet final, we are liaising closely with the South African Revenue Service to ensure that this program will meet its objectives.

For further information or advice concerning South African taxation please contact Kubashni Moodley at ***kubashni.moodley@pkf.co.za*** *or call* ***+27 31 573 5000****.*

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Spain

Differing views on the tax treatment of late payment interest

Whether late payment interest (which arises from the late payment of corporate income tax) is deductible for tax purposes depends on the position of the Spanish Administrative Courts (Tribunal Económico-Administrativo) and the Spanish General Tax Directorate (Dirección General de Tributos). Recently, the Spanish tax authorities have issued a report clarifying the position albeit the opposing position of each agency is summarised as follows:

- Spanish General Tax Directorate: The agency concludes that interest arising from the late payment of a tax is categorized as a financial expense and hence deductible for corporate income tax purposes.

- Spanish Administrative Courts: The Courts however have recently changed their criteria stating that 'delay' interest may not be considered as a "necessary expense" as it is derived from the late payment of a tax and non-compliance with the terms established.

Therefore, delay interest may not be tax deductible for corporate income tax purposes.

The controversy above has led the tax authorities to issue a report distinguishing between two different scenarios:

- Delay interest arising from a data verification or a tax audit procedure is not deemed as tax deductible for corporate income tax purposes; and,

- Delay interest derived from the suspension of a tax debt is deemed as tax deductible for corporate income tax purposes.

PKF Comment

The different positions sustained by the Spanish Courts and the Spanish General Tax Directorate have led to a legal situation where the taxpayer does not have certainty about the tax deductibility of delay interest.

*The report issued by the Spanish tax authorities is therefore welcomed as it brings some clarity to the position. For further information or advice with respect to Spanish tax, please contact Santiago González at **sgonzalez@pkf-attest.es** (or call **+34 669 02 36 64**) or Isidro Brevers at **ibrevers@pkf-attest.es** (or call **+34 915 561 199**).*

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United Arab Emirates

Introduction of VAT from 1 January 2018

VAT is likely to be introduced in the United Arab Emirates (UAE) from 1 January 2018. The rate is expected to be low, say 5%, and, as a general consumption tax, will apply to the majority of goods and services transactions. A limited number of reliefs and exemptions are expected to be granted.

Businesses that are required to register for VAT purposes will have approximately 18 months from the time when VAT is announced to the time when it becomes effective to ensure that their systems, documents and staff are prepared to meet their VAT obligations

VAT in the UAE is aimed at providing the country with a new source of income that will contribute to the continued provision of high quality public services. It is also aimed at helping the government move towards its vision of reducing dependence on oil and other hydrocarbons as a source of revenue. The UAE is part of a group of countries which are closely connected through "The Economic Agreement between the GCC States" and "The GCC Customs Union". The GCC group of nations have historically worked together in designing and implementing new public policies as they recognise that such a collaborative approach is the most beneficial for the region. In effect, UAE will need to coordinate its VAT implementation with the other GCC countries.

PKF Comment

Details providing information on the manner of registration, documentation, the compulsory registration threshold, exempted sectors/items and other relevant rules are expected to be released in the summer of 2016 by way of updates on the Ministry of Finance website and a dedicated VAT website.

Since the majority of businesses in the UAE are traders, it can be safely surmised that a low, flat rate would apply to most businesses. Compulsory VAT registration thresholds have yet to be announced, but are expected to apply to businesses with an annual turnover of somewhere between USD 0.5 million to USD 1 million. Although this threshold may be significantly higher than the turnover expected by some SMEs, this is the right

time for companies to think about how VAT will impact their business. It is essential that businesses try to understand the implications of VAT once the legislation is finalised and make every effort to align their business model to government reporting and compliance requirements. The final responsibility and accountability to comply with the law is on the business community.*

*For more information or advice about the introduction of VAT in the UAE, please contact Chaitanya Kirtikar at **cgk@pkfuae.com** or call **+971 4 391 0025**.*

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United States

User guide on FATCA updated by the IRS

The 'FATCA International Data Exchange Services (IDES): User Guide' (Publication 5190; April 2016) has been issued by the US Internal Revenue Service (IRS) and provides guidance for financial institutions (FIs) and host country tax authorities (HCTAs) that use the International Data Exchange Services (IDES) for their FATCA reporting.

The IDES provides FIs and HCTAs with a secure, managed file transfer service so that FATCA data can be transmitted and exchanged with the United States. Publication 5190 provides:

a) A section on resources and information about assistive technology available in the IDES Gateway;

b) Detailed information on the data packaging process for changes to CBC (Cipher Block Chaining) cipher mode; and,

c) User tips that may be referenced during open testing periods.

Please note that data packets encrypted with the EBC (Electronic Code Book) cipher mode will no longer be accepted by the IDES from 9 July 2016 and users will be required to transmit data packets with the CBC cipher mode instead.

PKF Comment

*For further information or advice with respect to FATCA, or advice on any US tax matter, please contact Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 212 867 8000 Ext. 426**.*

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New proposed regulations: when related party debt is treated as equity

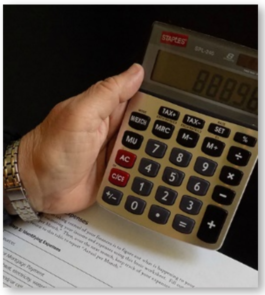
The Internal Revenue Service (IRS) has recently proposed regulations under Internal Revenue Code Section 385 whereby the IRS is authorised to:

a) Treat an investment in a related corporation as part indebtedness and part stock;

b) Establish formal documentation requirements for interest to be treated as indebtedness; and,

c) Treat as stock certain related party interest indebtedness.

Prior to these proposed regulations, there were no regulations under Section 385 and case law factors have been used as guidance. The rules are limited to purported indebtedness between members of an "expanded group" of companies; (related directly or indirectly through common stock or partnership ownership) including non-U.S. entities and tax exempt organisations.



The proposed regulations prescribe the documentation necessary to treat related party instruments as indebtedness and require that such support be timely prepared and maintained. If not available upon IRS request, the instrument will be treated as stock for all purposes of Federal tax law. Satisfaction of the documentation requirement will serve as a minimum threshold testing for the indebtedness treatment. Taxpayers must demonstrate through support:

- A binding obligation to repay the funds advanced;
- Creditors rights to enforce collection;
- Reasonable expectation that funds can be repaid; and,
- Actions evidencing a genuine debtor-creditor relationship.

PKF Comment

These rules will force companies to document the nature of all intercompany accounts with strong evidentiary support at the onset. Such documentation must be maintained for all years the instrument remains outstanding and then until the 'Statue of Limitations' for assessment expires. The IRS may now treat intercompany instruments as part debt and part stock particularly in cases where the IRS is convinced that the debt cannot be repaid in full.

*For example, if upon analysis a purported USD 10 million debt instrument is shown to be not serviceable beyond USD 6 million, then the remaining portion, USD4 million, will be treated as stock for Federal tax law. These proposed regulations have various effective dates. We recommend taxpayers take action now as if all the rules were currently in place. For further information or advice on the new proposed regulations, or advice on any US tax matter, please contact Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 212 867 8000 Ext. 426**.*

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