PKF

PKF Worldwide Tax Update

Welcome

This issue of PKF's Worldwide Tax Update quarterly newsletter captures tax changes and updates from around the world that are contributed by our worldwide family of member firms. At the foot of each article is a PKF comment which lends further insight into the matters discussed together with the contact details of the local PKF expert so that you may follow up with directly should you require any additional information of advice.

The articles featured in this quarter's publication include discussions on:

- The view of the Belgium Tax Ruling Commission toward the restructuring and optimisation of salaries;
- The increased transfer pricing documentation requirements in Brazil under the Fiscal Bookkeeping (ECF) requirements;
- The intensive controls implemented in Greece which consider unexplained movements in a bank account as 'taxable income';
- India's continued efforts to attract investors by increasing the level of foreign direct investment (FDI) permitted in various sectors;
- Encouragement by the Polish Ministry of Finance for tax-payers to make voluntary transfer pricing corrections in their tax returns;
- The continuing 'nexus approach' adoption by US State's to impose income tax on companies without a physical presence in the State.

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

PKF's 2016/17 Worldwide Tax Guide
PKF produces the Worldwide Tax Guide each year and the latest 2016/17 edition is an impressive publication that covers 118 countries and is a great marketing tool to demonstrate the strength of PKF in tax worldwide. Copies of the 2016/17 edition (min. 10 copies to be ordered at USD 30 each) may be obtained by contacting Philip Bond at philip.bond@pkf.com.

Contents

Contents continued...

Chartered Accountants
& Business Advisers

Argentina

Net Wealth Tax – Rules published on asset values for annual tax returns

Guidance on the mandatory values of certain assets has been provided for Net Wealth Tax to assist taxpayers in the preparation of their annual tax return. The guidance was provided in General Resolution 3835 and became effective on 11 March 2016, which was also the date it was published in the Official Gazette. The mandatory values provided relate to:

a) Automobiles and other means of transport (specific values for each type of vehicle);

b) Foreign assets: foreign currency exchange rates; and,

c) Listed companies, mutual funds and other financial assets: quotations.

In addition, real estate registry information for properties located in Argentina are provided as well as the tax identification numbers of financial entities (required to complete tax forms).

PKF Comment

For assistance with the completion of Argentina tax returns or any advice or information concerning Argentina tax, please contact either Sergio Villagarcia at ***sergio.villagarcia@pkf.com*** *(or call* ***+54 911 6817 1636****) or Silvina Castro Guiguez at* ***silvina.guiguez@pkf.com*** *(or call* ***+54 911 3278 6767****)*

Belgium

Tax optimization of a salary package is not "tax abuse"

On 16 June 2015 the Belgium Tax Ruling Commission confirmed that optimizing a salary package should not be considered as "tax abuse". Optimization would, for instance, include 'converting' an "existing salary" into other components of the overall salary package which is eligible for a more attractive Belgium personal tax and/or social security treatment.

Considering the high progressive Belgium personal tax rates, and social security contributions, this is excellent news for both employees and employers. It is however important to note that the optimisation of a salary package may be regarded as 'tax abuse' if the only reason a salary was optimized is to save tax.

The ruling commission sighted that staff retention and the promotion of new recruits are two examples of acceptable reasons for a salary package optimization. Such optimisation of a salary package includes replacing gross salary by other components such as (non-exhaustive list): a company car with a fuel card, a company bike, an electric car, a public transport subscription, a higher mileage allowance, a mobility premium paid in cash, or a combination of the above components.

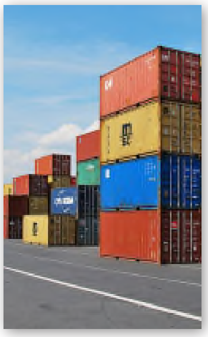
PKF Comment

The decision of the Belgium Tax Ruling Commission is highly welcomed by the Belgium business community and its employees. Although a Belgium tax ruling, strictly speaking, does not have precedent value, it is a useful reference for other Belgium companies that are considering to recompose the overall salary package of their staff. On this point, we strongly emphasize again that the employer should carefully document the predominant non-tax drivers to support the optimisation. For further information or advice concerning the Belgian tax optimization of a salary package, please contact Kurt De Haen at ***kurt.dehaen@pkf-vmb.be*** *or call* ***+32 2 460 09 60****.*

Brazil

New requirements for transfer pricing transactions

There is a complex corporate taxation system in Brazil in which the federal government levies excise tax on cross-border royalties and services (CIDE), social contribution tax on profit (CSLL), corporate income tax (IRPJ), Federal value-added or excise tax on manufactured goods (IPI), and social security financing tax on revenue (COFINS) amongst others.



There are also strict information and documentation requirements now imposed for transactions that are subject to transfer pricing prescribed under records X291 to X330's of the Fiscal Bookkeeping (ECF) requirements. The new requirements replace sections 29 - 33 of DIPJ and are compulsory for all taxpayers who have import and/or export operations with related parties, or interposed parties, or have transactions in 'favourable taxation' locations, and have transfer pricing transactions.

Transfer pricing information will be scrutinised and challenged by the tax authorities where they believe there are inconsistencies or there is a lack of supporting information. It is therefore critical that a taxpayer presents accurate information, calculates transfer prices accurately, determines the most appropriate pricing method, the specific rate of conversion to be used, and the price setting parameters, etc. Please note, the tax authority maintains a database for comparison purposes which includes information submitted by taxpayers.

PKF Comment

The ECF fiscal bookkeeping rules are a complex ancillary obligation which provide more visibility and may lead to greater adjustments than under the DIPJ rules. Non-compliance with the requirements for transfer pricing transactions is likely to trigger an audit from the tax authority so it is critical the new requirements are strictly followed.

For further advice or information concerning Brazilian transfer pricing rules, or any advice on Brazilian tax matters, please contact Mario J. Milhardo at ***mario.milhardo@pkfbr.com*** *or call* ***+55 11 4890 1234***

2016 June

France

Invoicing administrative costs - an abnormal management act?

On 20 May 2015, the French Council of State delivered a judgement by which it asserted that a company invoicing its clients' 'administrative costs at a floating rate' is a common management act, which can only be challenged if the French tax administration provides evidence of its abnormality. The French Tax Administration has strongly suggested that companies have reduced tax revenues by granting various price discounts on the administrative fees of services rendered. Consequently, the French tax authorities have considered the practice as "abnormal" and have reintroduced the amounts back into, and increased, the taxable profit of respective companies.

The French Council of State, implicitly referring to the principle of non-interference by the French Tax Administration with a company's management, stated that the invoicing of administrative costs at variable rates can be regarded as contrary to the company's best interests only if the Tax Administration can provide evidence of this.

PKF Comment

Attention should be paid when granting various price discounts in respect of administrative fees for services rendered. Indeed, invoicing administrative costs at variable rates can be regarded as contrary to the company's best interests and therefore considered as taxable.

Should you require any further information or advice about the abnormality of actions, or advice on any French tax matter, please contact Hervé Bidaud at ***herve.bidaux@artemtax.fr*** *or call* ***+33 1 77 68 19 60****.*

Greece

Unexplained bank movement deemed taxable income

Intensive controls are now implemented by the Greek tax authorities in monitoring the bank accounts of individuals. Such controls extend to consider bank transactions of the last 15 years. The authorities consider all unexplained bank movements as "taxable income" and not the increase of the bank balance at the end of the year. There is a broad dispute as to whether this practice is legal and it has created uncertainty amongst tax payers.

PKF Comment

Should you require any further information or advice concerning any tax matter in Greece, please contact Alexandros Sfranas at ***sfranas@hol.gr*** *or call* ***+30 210 64 27 623****.*

Hungary

5% VAT rate for newly built properties

In 2016, the VAT rate for new properties with housing purposes (up to 150 square meters per apartment if the building contains more apartments, or up to 300 square meters if it contains only one) is reduced to 5%. The reduced rate may be used first in connection with the sale of a new property, where the date of supply follows 1 January 2016. This is also applicable to advance payments.

Please note that new properties, based on the Hungarian VAT Act, are those properties where the occupancy permit is not yet in force or it came into force less than two years ago. The reduced rate will be in force until 31 December 2019.

PKF Comment

According to the VAT Directive, the reduced rate VAT is only applicable to the provision, construction, renovation and alteration of housing, if it is part of a social policy.

However, the new regulation in its current form does not expressly state this social political goal since the financial status of the recipient(s) is not taken into consideration.

*For further information or advice concerning the new Hungarian VAT rate for new buildings, or for any advice concerning Hungarian tax, please contact Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu** or call **+36 1 391 4220**.*

India

Changes in sectoral caps

There has been an increase in the level of foreign direct investment (FDI) permitted in sectors such as defence, broadcasting and telecasting, civil aviation (regional transport), non-scheduled air transport, etc.

Selling through e-commerce is permitted for manufacturers subject to certain conditions like domestic sourcing. Sub-limits for investments in private sector banking have been provided full fungibility. Changes are announced in regard to projects in the real estate sector. In regard to plantations, FDI in coffee, rubber, cardamom, palm oil tree and olive oil tree plantations have also been liberalised.

PKF Comment

*The initiative is a step in FDI liberalisation with a focus on the "made in India" concept, a pet theme of Prime Minister, Mr Narendra Modi. For further information or advice on FDI, or any advice concerning taxation in India, please contact Hariharan S at **hari@pkfindia.in** or call **+91 44 28 11 29 85**.*

Ease of doing business in India - company formation

The World Bank's 'ease of doing business' rankings estimated last year that, on an average, it took two to seven days to reserve the name for a company in India and another five days to complete the incorporation formalities. Consequently, the Government of India is taking positive measures to facilitate the carrying on of business in India easing the several-step process to establish a company. Notably, the Ministry of Corporate Affairs (MCA) has successfully launched a pilot scheme in Delhi with a group company secretaries (who render services relating to incorporation of companies), a couple of officials and some executives from Infosys (a technology company) to evolve measures to ensure that companies can be registered within a day.

The Government is proposing to move into centralised processing for the incorporation of companies with proposals for a new centre in Delhi to be established instead of the various offices spread across various locations which currently handle the incorporations on behalf of the Registrar of Companies.

Since the end of January 2016, the Ministry has achieved a reduction in the name selection process to one working day through re-engineering the process and moving to an automated system, now the process has reduced to 26 steps from 39. Following this, focus will now be on reducing the name selection process and the incorporation process into a one-day exercise. By the end of the June quarter, the MCA will release a new form, which will reduce the entire process into one.

PKF Comment

This move is significant for investors intending to invest in India as it will eliminate pre-incorporation difficulties especially where such investments are contemplated through of wholly owned subsidiary. The initiative is also directional and signals the continued efforts of the Government to seriously minimise bureaucratic bottlenecks

PKF

For further information or advice on incorporating a business entity in India, or advice concerning taxation in India, please contact Hariharan S at ***hari@pkfindia.in*** *or call* ***+91 44 28 11 29 85****.*

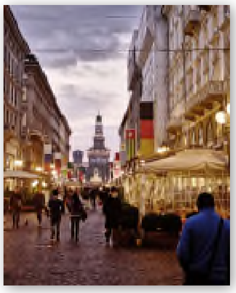
Italy

New Italian tax ruling procedure

A legislative decree, which entered in force on 7 October 2015, introduces a new ruling procedure and provides certainty to investors on the tax consequences of sizeable investments that they plan to make in Italy. The main features of the new procedure are as follows:

- Both resident and non-resident taxpayers are entitled to the ruling if their investment in Italy will be at least EUR 30,000,000 and the investment is expected to have a long-lasting impact on employment;
- The ruling spreads over various taxes, not only corporate tax and clarity may be sought concerning the tax treatment for an investment plan and for any future extraordinary transactions. Further, it is possible to request information about the existence of a business, about tax avoidance and to have access to some special regimes (for example the tax unit).

PKF Comment



The ruling aims to provide taxpayers with official advice (consultation) from the Italian Tax Office. Moreover, it is possible to ask for information about the existence of an ongoing concern, about an abuse of rights, about tax avoidance, about the requirements to disregard anti-avoidance rules, and to gain access to particular regimes (e.g. tax consolidation), which are allowed under the law. For further information or advice about the new Italian tax ruling procedure, please contact Walter Bonzi at ***wbonzi@mgpstudio.it*** *or call* ***+390 2 4398 1751****.*

Netherlands

Automatic exchange of information (tax rulings) with other countries

On 6 October 2015, the European Council for Financial and Economic affairs (ECOFIN) adopted the Directive proposal on the automatic exchange of information with respect to tax rulings. Following this, on 1 April 2016, the State Secretary for Finance issued a letter (reference AFP 16/319M) which responded to the questions from the Lower House of Parliament with respect to the automatic exchange of rulings, and which, in particular addressed the following:

a) The legislation which would implement the automatic exchange of information relating to domestic law rulings will be submitted to Parliament later in 2016;

b) With the exception of the annexes and the ruling itself (which will likely be in Dutch), the information exchanged will be in the English language;

c) There will be no notification to taxpayers concerning the exchange of ruling information; and,

d) The exchange of information relating to specific past rulings, for example, rulings issued, amended or renewed after 1 January 2012 which relate to taxpayers with at least EUR 40 million worldwide revenue (certain exemptions apply) will take place before 1 January 2018.

PKF Comment

It was stressed that the exchange of rulings will not include confidential information relating to a tax payer's business. Nevertheless, tax payers may feel in general less inclined to pursue a tax ruling in order to avoid the risk of any information 'leakage'. For further information or advice with respect to any Netherland tax matter, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl*** *or call* ***+31 15 261 3121****.*

Norway

Overview of social security system published

The Ministry of Labour and Social Affairs published a document entitled "The Norwegian Social Insurance Scheme" on 8 March 2016, providing an overview of benefits under the various social security schemes and additional benefit information, including:

- Healthcare benefits;
- Old-age pension;
- Benefits to a surviving spouse and minor children;
- Disability benefits;
- Family allowances;
- Unemployment benefits.

The document outlines the tax treatment of the various benefits, and further includes a list of the social security agreements currently in force between Norway and other countries that may extend or limit the provisions otherwise in force.

PKF Comment

It has previously been difficult to obtain an overview of the benefits that a person is entitled to. 'The Norwegian Social Insurance Scheme' publication will provide much welcomed guidance to the benefits available, as well as tax guidance and clarity in many areas.

For more information or advice on this or any Norwegian tax matter, please contact Rolf Arentz-Hansen at ***rah@pkfblr.no*** *(and please copy in* ***pkf@blrevisjon.no****), or call* ***+47 465 00 764****.*

Poland

Voluntary transfer pricing corrections are encouraged

On 18 December 2015 an official announcement was published by the Minister of Finance stating that a priority for 2016 was the verification of transfer pricing schemes applied for by affiliated entities.

Technically, in accordance with the Minister of Finance, each transaction should reflect natural market conditions, however, in practice, affiliated entities often inflate the market value of goods or services (e.g. due to the use of an advisory service). The Ministry of Finance claims that the use of non-market prices, often referred to as transfer prices, are usually used for tax optimization purposes by decreasing the tax base applicable in a given country in relation to international corporations and companies which follow such practices breach the provisions of the Act on Corporate Income Tax.

Due to the increasing number of such 'below market value' transactions, the Ministry of Finance has stated that this will be brought under control in 2016 by the introduction of certain measures and controls, involving structural changes and the allocation of special resources, and will be a priority task of the fiscal administration in 2016.

The Ministry of Finance has said that taxpayers are welcome to make a voluntary submission of corrected tax return forms in relation to a correction to transfer pricing and such a submission will allow a company to claim a 50% discount on the interest on outstanding tax. The voluntarily submitted (corrected) tax return does not have to state the reason for the submission. The Ministry of Finance has encouraged those tax payers who applied non-market transfer pricing in tax returns, submitted between 2011 and 2015, to submit corrected forms referring to the relevant year(s) by the end of Q1 2016.

PKF Comment

Taking into account the actions of the Ministry of Finance, we recommend that detailed mandatory documentation on transfer pricing is prepared and reviewed to ensure it is reflective of natural market conditions or, existing documentation is verified to be reflective of these *conditions. This should eliminate, or at least significantly decrease, the risk of the tax authority estimating a higher income on the company and assessing income tax without taking into account the conditions which result from affiliations (pursuant to Art. 11 par. 1 of the CIT Act).*

*Should you need additional information regarding the Polish transfer pricing rules and corrections, or require advice on any Polish tax matter, please contact Anna Urbańska-Albero at **anna.urbanska@pkfpolska.pl** or call **+48 22 560 76 50**.*

Spain

Partial amendment of the Spanish General Tax Law

The Spanish Official State Gazette (BOE) dated 22 September 2015 published Law 34/2015 which partially amended the Spanish General Tax Law (Law 58/2003 of 17 December). The new legal framework adopted by this Law has been in force since 12

October 2015, except for the obligation to keep specific electronic ledgers which will apply as from 1 January 2017. In particular, several amendments and new measures have been introduced including:

1. Enabling the tax authorities to review transactions implemented in statute-barred periods (up to 10 years) which have effect in non-statute barred periods;

2. Extending the current general 12-month limit, established for the duration of tax audits, to 18 months (27 months if special circumstances exist);

3. Introducing new information obligations with respect to implementing Directive 2014/107/EU relating to the automatic exchange of relevant tax information;

4. The introduction of new infringement rules in connection with taxable events qualified as a "conflict in the application of the tax law". This relates to when a taxable event is avoided through the implementation of artificial instruments leading to a similar result but giving rise to fiscal savings;

5. The publication of a list of taxpayers who owe taxes or penalties in excess of EUR 1 million;

6. Applying penalties for the unreasonable interruption of tax audit procedures (which are attributable to a taxpayer);

7. Establishing a 10-year statute of limitation period to request the payment of a tax debt resulting from Decisions on the refund of tax State Aids.

PKF Comment

The amendment of the General Tax Law is the culmination of a two year tax reform which has introduced a new fiscal framework in Spain that will strengthen legal certainty, prevent tax evasion, increase the effectiveness of the Administration (and the Tax Authorities), and reduce litigation.

*For further information or advice on any Spanish tax matter, please contact Santiago González at **sgonzalez@pkf-attest.es** or Isidro Brevers at **ibrevers@pkf-attest.es** (or call **+34 915 561 199**).*

Turkey

Turkey - Mexico Double Tax Treaty and supplementary Protocol in force

Under the Council of Ministers Decision no. 2016/8362 promulgated in the Official Gazette dated 14 January 2016, the effective date of the "Agreement between the Republic of Turkey and the United Mexican States for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income" and the supplementary Protocol is 23 July 2015.

Accordingly, pursuant to Article 28 of the Treaty titled "Entry into Force", the Turkey-Mexico double tax treaty and the supplementary Protocol are now in force.

PKF Comment

Tax-payers are encouraged to consider any cross border transactions between Turkey and Mexico in light of the tax treaty now in force between these two countries. Should you require further information or *advice concerning double tax treaties in force with Turkey, or advice on any Turkey tax matter, please contact Selman Uysal at* ***selmanuysal@pkfizmir.com*** *or call* ***+90 232 466 0122****..*

United States

US Financial Crimes Enforcement Network and real estate secrecy in Manhattan and Miami

On 13 January 2016, the Financial Crimes Enforcement Network ("FinCEN") announced that it had issued a Geographic Targeting Order ("GTO") which will temporarily require certain title insurance companies to report the identity of natural persons who make "all-cash" purchases of high-value residential real estate through shell companies in New York County (Manhattan) and Miami-Dade.

The GTO requirements, which will be in effect between March 1, 2016, and August 27, 2016, will apply to situations in which a legal-entity purchaser pays cash in excess of three million dollars in Manhattan and one million dollars in Miami-Dade County. They represent FinCEN's latest effort to identify individuals attempting to conceal the proceeds of criminal activity through the anonymous purchase of high-end residential real estate, as well as the real estate agents, lawyers, bankers, and formation agents who assist them.

The new GTO requires each title insurance company to file a FinCEN Form 8300, commonly known as a Currency Transaction Report (CTR), within 30 days of an all-cash purchase of real estate worth over USD 3 million in Manhattan, or over USD 1 million in Miami-Dade County. More precisely, the CTR filing requirement applies to purchases:

(i) In Manhattan and Miami;

(ii) By a partnership, corporation, LLC or other legal entity;

(iii) Where payment is made "using currency or a cashier's check, a certified check, a traveller's check, or money order in any form";

(iv) For a purchase price over the respective threshold amounts; and,

(v) Made without external financing.

These CTRs are due 30 days after closing. The CTRs must identify not only the purchasing entity, but also any individual who beneficially owns 25 percent or more of the purchasing entity. This includes a requirement that insurers verify the identity and address of the beneficial owner in a manner that satisfies the CTR filing requirement, typically by reference to a driver's license or passport. A copy of the identifying document must be kept on file.

The GTO also imposes recordkeeping requirements. Title insurers must retain all records relating to compliance with the GTO for five years after it expires. While that is currently 27 August 2016, FinCEN may extend the GTO by further order.

All-cash purchases were previously not subject to CTR or the Suspicious Activity Report (SAR) requirements – making the high-end real estate market an attractive vehicle for foreign oligarchs to expatriate their wealth through shell companies.

PKF Comment

On a practical level, title insurers operating in Miami and Manhattan should ensure that their employees and compliance officers are notified of the GTO and CTR filing requirements and trained on what it requires. And they, along with other participants in the real estate market, should be on the lookout for further extensions of the order by FinCEN.

The GTO represents an experimental effort to prevent the U.S. high-end real estate market from being used for money laundering. FinCEN will almost certainly investigate if all-cash purchases fall off as a result of its order (or tick upward sharply before the order takes effect), and how much.

Depending on the quality of information gleaned from the CTRs and market data, FinCEN could make the CTR requirement permanent through rule making, expand it to other metro areas, modify the amount that triggers a filing requirement, or a combination of these.

*For further information or advice on any aspect of the U.S. FinCEN, please contact Peter D. Baum at **pbaum@pkfod.com**.*

Income tax imposed on companies without a physical presence in a State

Non-U.S. based companies are often surprised to learn that their income from activity in the U.S. has not only federal income tax consequences, but results in a state level tax as well. In fact, state income tax exposure may be greater than federal, particularly because states are not limited to taxing just those foreign corporations with a permanent establishment and are not bound by federal treaty restrictions.

More surprising is that companies deriving income from sources in a state can be subject to tax in some states even without physical presence in these states. This is primarily due to a number of states' recent expansion of their "nexus" standards.

The term "nexus" for state tax purposes means some minimum connection between a state and a person or business before the state can tax that person or business. Nexus for state income tax purposes is usually established by "doing business" in a state, such as an out-of-state company owning or leasing property in the state, or employing personnel in a state that do more than simply solicit business in a state.

Under a "factor presence" nexus standard, a company's income is subject to tax in a state if one of the company's apportionment factors (factors that are used to "apportion" overall federal income to a state for taxation, such as payroll, property or sales) exceeds the state's statutory thresholds.

Prior to this year, 9 states adopted factor presence nexus statutes and you may recall that last year in our Q2 2015 edition of the newsletter we discussed briefly New York's adoption of the 'economic nexus' standard. The other eight states were Alabama, California, Colorado, Connecticut, Michigan, Ohio, Virginia and Washington. In 2016, Tennessee joined the list. Although the standards vary somewhat amongst the states, generally, the factor presence statutes call for nexus to be established if any of the following thresholds are met during a tax year:

- USD 50,000 of property in a state;
- USD 50,000 of payroll in a state;
- USD 500,000 of sales in a state; or,
- 25% of total property, payroll or sales in a state.

As the statutes generally require only one of the above thresholds to be met, it is possible that a business may have nexus without locating any property or employing any individuals in a state, simply by selling to customers in a state and meeting the sales threshold. This scenario has become more common in the age of electronic commerce. The list of states utilising a factor presence nexus standard is expected to grow within the next few years as states look to expand their taxing reach to result in increased tax revenue.

PKF Comment

Whether physical presence in a state is unnecessary before a state may impose an income tax is somewhat controversial. Factor presence statutes may one day be challenged in court based on U.S. Constitutional grounds. In the meantime, companies should review their state-by-state activities and in particular, their sales by state to determine whether they have a filing obligation even without entering into the state. In certain situations, it may make sense to come forward to the state and voluntarily disclose (on a no-name basis) that the company has exposure. Doing so may result in a limited lookback period without penalties being asserted.

*For further information or advice on any aspect of state tax nexus or state taxes generally, please contact Sandy Weinberg at **sweinberg@pkfod.com** or Jill Cantor at **jcantor@pkfod.com** or call **+1 203 705 4170**.*

U.S. International Tax Reform

The IRS has issued proposed and temporary regulations designed to curb the use of so-called "corporate inversion transactions" and to limit the ability of businesses to deduct interest on related party 'debt'.

In general, if three conditions are met, U.S. tax law prevents the use of certain tax attributes to reduce U.S. tax owed on the inversion gain recognized when foreign operations are removed from the U.S. taxing jurisdiction (in lesser abusive cases). In more abusive cases, U.S. law will treat the new foreign parent corporation as a U.S. corporation (thus nullifying the benefits of the inversion transaction). These conditions are:

1. The foreign corporation directly or indirectly acquires substantially all properties held directly or indirectly by a domestic corporation,

2. After the acquisition, at least 60 percent of the foreign corporation's stock is held by former shareholders of the domestic corporation, and

3. After the acquisition, the expanded affiliated group (EAG) of the domestic corporation does not have substantial business activities in the country in which the foreign acquiring corporation is organized or created.

In April 2016, the IRS issued temporary regulations that address transactions that are structured to avoid the anti-inversion legislation in Internal Revenue Code Section 7874. This code section is designed to limit the tax advantages that are derived when a U.S. domestic corporation transfers its assets to a foreign corporation. The new temporary regulations provide rules:

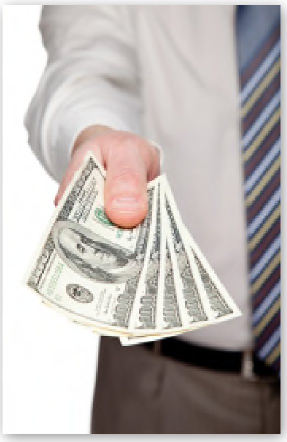
- For identifying who the acquiring foreign corporation is when the property acquisition involves multiple steps or pursuant to a plan,

- That disregard certain stock of the foreign corporation attributable to prior acquisition(s),

- That state that an EAG cannot be considered to have substantial business activity in a foreign corporation unless such corporation is subject to tax as a resident of the relevant country.

Any new rules are effective from the date of the temporary regulations (4 April 2016).

PKF Comment



Clearly, corporate inversions are at the forefront of congressional minds and Treasury is taking aim at eliminating "undesirable transactions" that shrink the U.S. tax base. These temporary regulations were specifically designed to attack certain large transactions that were pending since they take effect immediately thus shutting the door to the tax advantages. However, the temporary regulations have met with mixed reactions and some commentators have questioned whether the Treasury has exceeded its authority in issuing these rules.

*In our view, much of the incentive for effecting an inversion would disappear if the U.S. lowered its corporate income tax rate on taxable income and provided for a new low rate to repatriate foreign earnings back to the U.S. For further information or advice on any aspect of US taxation please contact Leo Parmegiani at **lparmegiani@odpkf.com** or call **+1 212 867 8000 Ext. 426**.*

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