2015 September

PKF

PKF Worldwide Tax Update

Welcome

In this third quarter issue of PKF's Worldwide Tax Update, noteworthy tax changes and amendments are provided from around the world, and each is followed by a PKF commentary which provides further insight and information on the issues. 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 September issue we see countries such as Australia and Spain aligning their transfer pricing practices with Part 13 (transfer pricing) of the OECD's Base Erosion and Profit Shifting (BEPS) Plan, which will direct certain taxpayers to provide a master file, local file and country-by-country reporting. Other areas of the OECD BEPS Plan are also being picked up by countries, for example, Australia proposes to introduce a tax integrity multinational anti-avoidance law to curb cross border tax abuse, France is amending its tax administration to remove the benefit of the parent-subsidiary regime from hybrid instruments and the UK introduced its Diverted Profits Tax which became effective from 1 April 2015.

Other notable inclusions in this month's issue include:

- A discussion on Germany's Trade Tax and its application to CFC income;
- The abolition of non-domiciled tax status in the UK;
- Additional requirements in China in order to claim the special income tax treatment for corporate restructuring;
- UK capital gains tax on taxable gains arising from the disposal of UK residential property by non-residents; and,
- Reduced administrative penalties in Italy enabling taxpayers to bring their tax affairs up to date.

We hope that you will find this September 2015 PKF Worldwide Tax Update interesting and informative and please do contact us if you require further information or advice on any tax matter featured.

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Chartered Accountants
& Business Advisers

Australia

Transfer Pricing and Country-by-Country Reporting

On 6th August 2015, the Australian Government released an exposure draft bill to implement into Australian law transfer pricing measures that follow the OECD's transfer pricing action plan (13) on Basis Erosion and Profit Shifting (BEPS). This proposes three tiers of documentation; the Country-by-Country Report (CbCR), a global master file and a local file.

The explanatory materials to the exposure draft bill indicate that, unlike Australia's existing transfer pricing documentation standards, the CbCR, global master file and local file together will provide a clear overview of key financial and operational metrics relevant to a global group, as well as their Australian operations. This information will provide the Australian Taxation Office, and other tax authorities, with useful information to assess transfer pricing risks and, where necessary, to commence and target audit enquiries.

Australian entities or foreign entities with an Australian permanent establishment with global revenue of more than AUD 1 Billion will be required to provide a statement to the Commissioner of Taxation before the end of the year of income succeeding the tax year.

The statement must be provided in the 'approved form'. The statement will, at a the very least, require one global master file to be provided for a group which will provide economic, financial, legal and tax context to the group's transfer pricing practices and include the group's organisational structure, identification of intangibles, intercompany financial activities, financial and tax positions and detailed descriptions of the group's businesses.

A local file will be required for each legal entity or permanent establishment operating in Australia and it should identify the related party transactions, the amounts involved and provide a taxpayers analysis of the transfer pricing determinations that they have made.

The CbCR will also be required by the Commissioner of Taxation,

but, more often than not, this will be automatically exchanged with Australia under the information sharing arrangements with the tax authority of the country of the taxpayer's parent operations.

PKF Comment

Australian taxpayers with small local operations, often distribution operations of large overseas multinational companies, will face significant additional reporting requirements and associated compliance costs. This is consistent with the Australian Government's intention to have better visibility of global groups who may be generating significant profits from their Australian businesses, whilst having a low effective Australian tax rate.

For further information or advice concerning Australian transfer pricing, and the new proposals, please contact Robert Lynch at **rlynch@pkf.com.au** or Steve Williams at **swilliams@pkf.com.au**

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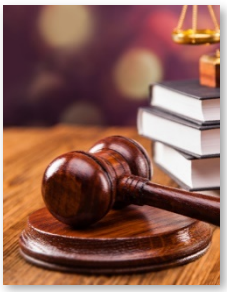
Tax integrity: Multinational anti-avoidance law



On 12th May 2015, the Australian Government released an exposure draft bill which will amend the anti-avoidance rules in Part IVA of the Income Tax Assessment Act 1936, and introduce a "tax integrity multinational anti-avoidance law" targeting artificial or contrived arrangements to avoid a taxable presence in Australia. The measure is intended to target situations in which:

(1) A foreign multinational supplies goods or services to Australian customers and books that revenue offshore;
(2) The activities of an Australian entity are integral to the Australian customer's decision to purchase the goods or services;
(3) The profits from the Australian sales are subject to low or no global tax; and,
(4) One of the principal purposes of the arrangements is to obtain a tax benefit.

It is proposed that where the measure applies, the Commissioner may cancel the Australian tax benefits obtained in connection with the scheme with the consequence that this may result in taxing certain profits twice without relief under Australia's network of Double Tax Agreements (DTA's). The proposed measures will, however, only apply if a non-resident's annual global revenue is greater than AUD 1 billion.

The proposed legislation will tax a non-resident multinational company as if it has a permanent establishment in Australia, despite the fact that, under the relevant DTA article, it would not be subject to tax in Australia.

PKF Comment

The Commissioner of Taxation will need to determine the profit or loss of the fictional permanent establishment and it is questionable whether under the various DTA's a credit for Australian tax on a fictional PE would be available where the other country respects the actual circumstances.

The Australian Government may not proceed with this unilateral initiative because the OECD's Basis Erosion and Profit Shifting (BEPS) initiative should provide the opportunity to solve the tax integrity issues identified in the digital economy.

*For further information or advice concerning this measure or any matter concerning Australian tax, please contact Robert Lynch at **rlynch@pkf.com.au** or Steve Williams at **swilliams@pkf.com.au***

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Austria

New tax incentives for scientists and researchers moving to Austria

The Austrian Parliament recently passed a very comprehensive and complex tax reform covering a large number of areas and taxes. Amongst numerous other regulations, a new tax incentive has been introduced for people that relocate to Austria who have science and research interests and therefore are advantageous to public interest. Privileged academics and researchers relocating to Austria will be granted an all-inclusive 30% tax allowance. This will reduce

their taxable income from research or academic activities for a maximum period of 5 years. In turn, no other expenses, or extraordinary items, with respect to the relocation e.g. moving costs, double housing costs, etc. may be set off against their taxable income. The new law will come into effect on 1 January 2016 and will be granted to qualified tax payers who have not had a tax residence in Austria during the past 10 years.

PKF Comment

This new incentive for the scientific community could ease the relocation of qualified staff. However, as international companies operate very different schemes when relocating staff temporarily to other countries the package offered should be analysed (e.g. the relocation costs, housing allowances, tuition fees for children, etc.) in order to decide on the most tax efficient remuneration package for both the employee and the employer in each case. The new tax allowance might represent an interesting tax relief, but, it may not be advantageous in all cases.

For further information or advice on Austrian employment taxes, or on any matter concerning Austrian tax, please contact Thomas Ausserlechner at **thomas.ausserlechner@pkf.at**

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Belgium

The essence of the Belgium tax shift measures

Over the past couple of months, the Belgium Government has been heavily debating whether to lower the overall tax burden on income derived from professional activities and reciprocally increase the tax on income derived from assets, environmental unfriendly activities and unhealthy activities.

In July 2015, it introduced certain measures which are summarised as follows:

(1) The competitiveness of Belgium employers in the international labour market will be enhanced by reducing their social security contributions from 33% to 25% as of 2016;
(2) For 2015, the net-in-hand income of Belgium based individuals who are still professionally active will be increased by EUR 100 per month by such measures as increasing both the tax-free minimum amount and the lump-sum tax-deductible amount of business expenses;
(3) From September 2015, VAT due on the supply of electricity will be increased from 6% to 21%;
(4) Higher excise duties will be gradually introduced, and by 2018 at the latest, apply to diesel, alcoholic drinks and tobacco;
(5) A so-called “fat tax” will be introduced and will apply to unhealthy food and soft drinks;
(6) As of 2017, the standard Belgium withholding tax rate applying to, mainly, dividend, interest and royalty income will be increased from 25% to 27%, be it that all current reductions and exemptions will not be modified;
(7) As of 2016, a so-called “speculative capital gains tax” will be due by individuals who realise a capital gain on quoted shares within a 6 month time-frame only. The tax rate will be 27% and capital losses will be deductible from taxable capital gains;
(8) As of 2016 a so-called “Cayman tax” will be introduced. In essence, if Belgium based individuals have parked assets abroad utilising lowly taxed foreign legal structures (lacking any relevant business substance), the structure will be considered transparent for Belgium personal tax purposes and the Belgium based individual will be directly taxed on the income earned by the foreign legal structure; and,
(9) As of 2017, a “permanent tax amnesty” regime will be introduced.

In 2017 and 2018, the Belgium tax authorities will increase their focus on combatting tax fraud. In the coming months, new tax legislation will be drafted to put the above into practice.

PKF Comment

The political tax shift decisions are highly welcomed by the Belgium business community since, in particular, the significant reduction of a Belgium employer’s social security contributions will strengthen the

position of Belgium companies on the international labour market.

Further, the increase of the standard Belgium dividend withholding tax rate will presumably not be heavily criticised since the numerous withholding tax reductions and exemptions remain unaffected whilst a Belgium entrepreneur still has the possibility to receive a liquidation bonus from his own company at a 10% Belgium corporate tax cost only (by annually and optionally recording a so-called "liquidation reserve").

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

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Avoidance of double taxation: Income from Belgium-France real estate investments

The Société Civile Immobilière ("SCI") is a very popular and traditional type of company to own French based real estate. Consequently, many Belgium tax resident individuals invest in real estate situated in France by incorporating a SCI which in turn holds the real estate. As a general rule, an SCI has a legal personality for French company law purposes, however, for French direct tax purposes it is mostly transparent. The French tax authorities however attribute the French taxes of the real estate income to the SCI itself (even though the SCI, in essence, is tax-transparent implying all underlying real estate income is deemed to be earned by the SCI shareholders directly).

Broadly, a foreign partnership is treated as either a "corporation" or a "look-through" (i.e. tax-transparent entity) for Belgium domestic direct tax purposes depending on whether or not this entity is embedded with a legal personality for foreign company law purposes; irrespective of the foreign tax treatment. This is called the lex societatis rule.

The particularity of this Belgium domestic tax law rule is that the focus is on the foreign "company law" treatment (whereas the OECD strongly advises to focus on the foreign "tax" treatment). Applied to the case of a SCI, since the latter has legal personality following French company law, a SCI should be treated as a "corporation" for Belgium tax purposes. In essence, this means that a Belgium individual is deemed to receive "dividend" income from the SCI which is currently subject to 25% Belgium personal tax. However, since the Belgium individual has already been taxed in France, (i.e. in his capacity of shareholder of a transparent SCI) double taxation arises as a result of the hybrid nature of the SCI, i.e. transparent for French tax purposes and not transparent for Belgium tax purposes.

This inconsistency taxes the same income twice and in order to resolve the position, in December 2004 the Belgium Supreme Court ruled that Belgium should align its Belgium direct tax treatment of the SCI with the SCI classification of the partnership for French "tax" purposes, i.e. a look-through in most of the cases. If this position were adopted the Belgium – France tax treaty position would provide that only France has taxing rights over the income derived from the real estate since the latter is located in France. In other words, Belgium would not subject the "dividend income" to tax and double taxation would be avoided.

Unfortunately, the Belgium tax authorities did not agree with this 2004 Supreme Court case law. However, on the 29 April 2014 and 6 October 2014, both the Ghent Court of Appeal and the Mons Court of Appeal respectively re-confirmed the 2004 view of the Belgium Supreme Court. In other words, the Belgium tax authorities now finally seem to have lost their case.

PKF Comment

The Belgium case law was highly appreciated by the Belgium tax practice, not in the least since this case lawfully adheres with the guiding principles laid down in the 1999 OECD Partnership Report. For completeness, please note that the Belgium ruling commission has already adopted the same OECD

Partnership Report principles on numerous occasions, be it in a different tax treaty context. Hence, Belgium investors are encouraged to carefully consider the current position of their respective tax inspector to ascertain whether or not it is in line with the conclusions of (what has now become) constant case law.

If you would like to know more about the Belgium tax treatment of partnerships, please contact Kurt De Haen at ***kurt.dehaen@vmb.be***

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Bulgaria

Expenses disallowed for Greek tax purposes if paid to an individual or entity resident in Bulgaria, Ireland and Cyprus

On 21 March 2015, the State Gazette of the Hellenic Republic promulgated amendments to the Greek Income Tax Code which introduced new rules for deducting expenses for tax purposes. Pursuant to the new rules, all expenses paid by Greek legal entities to individuals and/or legal entities who are tax residents of countries with preferential tax regimes as at the date of issue of the invoice, or as at the date of the transaction, will be disallowed for tax purposes. The list of countries includes three Member States of the European Union, namely Bulgaria, Ireland and Cyprus.

In saying the above, expenses will be tax deductible for the Greek payer if they have been subject to "withholding tax" at a rate of 26%. The tax may be reimbursed within a period of three months after the execution of the transaction, provided the Greek payer of the income presents proof before the Greek tax authorities that the transaction is an ordinary one and was executed at arm's length.

On 30 March 2015, the Bulgarian Minister of Finance referred the matter to Pierre Moscovici, the European Commissioner for Economic and Financial Affairs, Taxation and Customs. The position of Bulgaria, expressed in a letter from the Bulgarian Minister, is that the tax regulations adopted by Greece are inconsistent with the European Union law and violate the fundamental principles embedded in the Treaty on the Functioning of the European Union. It is also stated that the introduction of a 26% withholding tax with regard to all transactions with Bulgaria, as well as with Ireland and Cyprus, represents a discriminatory measure that imposes restrictions to the trade, economic and financial relations between Bulgarian entities and their Greek counterparties. Bulgaria has welcomed the commitment from Greece to revoke its withholding tax on Greek business transactions in Bulgaria.

Following Bulgaria's request that the European Commission challenge Greece's decision to introduce a 26% withholding tax on transactions in Bulgaria, Cyprus, and Ireland, which had been introduced due to their low corporate tax rates, Greece was sent a reasoned opinion. This requested Greece to amend its law to bring it into line with EU law.

The Commission had concluded that the levy contravened EU law principles on the free movement of goods and free provision of services. Greek lawmakers agreed to repeal this levy as part of the country's third bailout, which was recently agreed by Greece's Parliament and EU finance ministers.

PKF Comment

The Tax team of PKF Bulgaria, on the basis of its specific knowledge and expertise, is in the position to provide assistance at each stage of planning and carrying out business with Greek counterparties. We have successfully consulted with Greek and Bulgarian clients on how to structure tax efficient invoicing and remain compliant with the rapid changes in the tax legislation.

We will remain adequately prepared to assist any PKF client with any transaction, compliance matter or transfer pricing issue in the ever changing investment climate of the region. For further details and updated information, please contact Venzi Vassilev on ***venzi.vassilev@pkf.bg***

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China

Encouraging foreign investment: Foreign Investment Guidance Catalogue updated

The new Chinese Foreign Investment Guidance Catalogue (revised in 2015) ("the Catalogue") became effective from 10 April 2015 and superseded the one released in 2011. Remarkable changes have been made to further encourage and attract foreign investment in providing a wider scope of business in China.

Firstly, the number and types of restricted industries have been greatly reduced. Different business categories such as online sales, railway freight transportation, cross-border automobile transportation, trust, second-hand real estate property trading, real estate agent etc. have been removed from the restricted category.

Secondly, the restrictions on foreign equity investment ratios in companies engaging in heavy manufacturing industries and service industries including steel, oil refinery, automobile electronic integrated system, aircraft, cruise ship and yacht design have been relaxed. Furthermore, around 30 items were removed while more than 20 new items (e.g. construction of infrastructure, construction and operation of railways, cultural and creative industry, etc.) have been added in the "Encouraged Category".

To cope with the implementation of the Catalogue, the Chinese Customs released Circular No. 29 on 18 June 2015 stating that, subject to certain restrictions and applications lodged, taxpayers importing self-used machinery and relevant components and parts (for use in businesses newly included within the "Encouraged Category") after 10 April 2015 are exempt from Customs Duty. Nevertheless, VAT is still payable.

Lastly, the following new items have been included in the "Prohibited Category": production of nuclear fuel, wholesale and retail of cigarettes, provision of consulting services relating to Chinese legal affairs (excluding provision of information related to Chinese legal environment impact) and online publishing services.

PKF Comment

The Catalogue evidences the enthusiastic attitude of the Chinese government in opening up its market to attract foreign investment in a broad range of industries. Foreign investors usually enjoy preferential treatment for projects classified within the "Encouraged Category". The changes present attractive opportunities for foreign investors and it is strongly suggested that in light of these they review their investment plans in China. For further information or advice on setting up businesses or companies in China, please contact David Cho or K Kwan at ***davidcho@pkf-hk.com*** *or* ***kkwan@pkf-hk.com*** *respectively.*

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Corporate restructuring: Additional requirements and changes with respect to the special income tax treatment

A new Public Notice [2015] No.48 ('Notice 48') was released by the Chinese State Administration of Taxation (SAT) on 24 June 2015. Notice 48 sets out additional detailed implementation requirements for the special income tax treatment relating to corporate restructuring.

At the same time, it also clarifies several issues in practice, such as corporate restructuring involving natural persons, the post-filing administration of an application for the special income tax treatment and it stipulates a new reporting approach to replace the previous record-filing approach (which requests that transaction parties to a merger or acquisition should submit a 'Reporting Form' for the special income tax treatment as well as the relevant supporting documents at the time of the annual enterprise income tax filing). Compared with the record-filing approach, there are no substantial changes in administration, but the level of disclosure for the transaction parties is more detailed than before.

PKF Comment

Notice 48 sets out a more detailed information disclosure requirement and a more stringent post-filing administration. When enterprises are undergoing or planning to undergo restructuring, they will face more challenges in terms of filing, documentation and post-filing internal control. For 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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Cyprus

Introduction of the Cypriote non-domicile individual concept

The term "domicile" (for individuals) in the Cypriote Defence Tax legislation means that only Cypriot tax resident and domiciled individuals will be taxed under the Defence Tax legislation. However, the explanation of the term in the Cypriote Defence legislation is at odds with the definition of the term 'tax resident' attributed to it under the Income Tax legislation.

An individual is considered domiciled in Cyprus if he/she has a domicile of origin in Cyprus based on the provisions of the Will and Succession legislation.

Examples of domicile may include domicile of the parents at the time of birth or permanently living and intending to live in a country. An individual is not considered of a Cyprus domicile if he/she has acquired a domicile of choice outside of Cyprus provided that he/she has not been a Cyprus tax resident in the last 20 years prior to the relevant tax year (irrespective whether he/she is of a Cyprus origin) or although of a Cyprus origin, has not been a Cyprus tax resident for the last 20 years.

Notwithstanding the above, an individual who although not of a Cyprus origin, has been a Cyprus tax resident for 17 out of the last 20 years prior to the relevant tax year, is considered as a Cyprus domicile.

PKF Comment

This amendment is a welcome development with respect to non-Cyprus domiciles living in Cyprus, as exemptions are granted within the Defence Tax from popular sources of income like dividend income, currently at 17%, interest income currently at 30% and 75% of the rental income at 3%.

For further information or advice concerning the Cyprus non-domicile individual concept please contact Nicholas Stavrinides at ***nicholas.s@pkf.com.cy***

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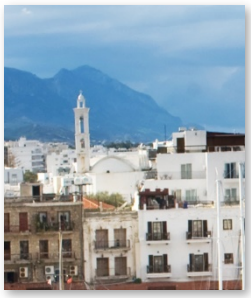
Introduction of an immovable property capital gains tax exemption



Cyprus has introduced a new exemption from capital gains tax on profits arising from the disposal of immovable property (and applies to land or land with a building). However, in order to claim the capital gains tax exemption the property must be acquired between the effective date of the amendment and 31 December 2016. The exemption has no time limit.

PKF Comment

This is a clear incentive to activate the immovable property market by attracting investors with this lifelong capital gains tax exemption. For further information or advice concerning Cyprus tax issues, please contact Nicholas Stavrinides at ***nicholas.s@pkf.com.cy***

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Ecuador

Increase in the reporting limits for the Related Parties Full Report

On 27 May 2015, the Ecuadorian IRS changed the transactions limit required for the presentation of the Related Parties Full Report, increasing the reporting limit from USD 6 million to USD 15 million.

Transactions excluded from the Report include mainly the following; equity contributions paid in cash, offset or reclassified assets, liabilities or equity accounts without having an effect on results, dividends paid in cash, income from banana production and growth

activities, transactions with government entities. Specific criteria may apply for transactions performed with local parties.

On 8 July 2015, the IRS issued the standards applicable to the tax treatment of dividend distributions. Different withholding tax requirements may apply according to the beneficiary's tax residence status.

PKF Comment

The increase in the reporting limits will benefit mostly medium-sized companies that have significant transactions with related parties. On the other hand, withholding tax rates, and consequently tax credits, will both increase for individuals.

For further information or advice on the above or on any aspect of Ecuadorian taxation, please contact Manuel García at ***enaranjo@pkfecuador.com***

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El Salvador

Introduction of a new minimum corporate income tax

El Salvador has recently implemented a new minimum corporate income tax which will now be the only corporate income tax that certain companies will pay. To calculate the minimum tax liability a comparison has to be made between the total net assets and the taxable revenue of the company. A 1% tax rate is applied to the lowest one and the resulting amount is compared with 30% income tax on the profit. The highest amount is required to be paid by the company.

If the 1% on total net assets is higher than the 30% income on profit, the difference will be paid as part of future tax payments, for the next 3 years. This means that income tax will be payable even if the company has a subsequent loss. However, the Supreme Court of Justice ruled that the nature of the minimum income tax on net assets violated the principles of tax fairness and ability-to-pay by not allowing taxpayers to deduct costs and expenses necessary to generate the taxable income or to protect its source. Moreover, this decision is final and cannot be appealed.

PKF Comment

The 1% minimum corporate income tax over net assets was declared unconstitutional in April 2015. Payments made in connection with the minimum income tax on net assets before the Supreme Court of Justice decision are considered final and will not be refunded. Should you require any further information or advice about the minimum income tax, please contact Horacio A. Castellanos at ***ha.castellanos@pkfelsalvador.com***

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France

Withholding tax applied to qualifying income of non-residents should be refundable

According to a judgement dated 17 February 2015, the French Council of State asserted that the withholding tax stated under article 182 B of the French General Tax Code, regardless of whether it was 33.33% or 15%, is a deposit on the payment of the personal income tax and not an autonomous levy. Hence, this deposit is refundable when it is levied:

- On revenues due to a natural person; and,
- On revenues of a legal person subject to the corporate income tax, when the legal person does not have a professional permanent establishment in France and is taxable in France on its revenues from French sources, according to article 197 A of the French General Tax Code.

The French Council of State's solution however is not applicable when the withholding tax is levied on the revenue due to a legal person (not subject to the corporate income tax in France).

In its judgement, the French Council of State also confirmed a tax principal that a taxpayer is entitled to a refund of the excess tax owed.

PKF Comment

If you are concerned about the French non-resident

tax, you must claim the refund before the legal deadline. Should you require any further information or advice about withholding tax applicable to non-residents, please contact Hervé Bidaud at ***herve.bidaux@artemtax.fr***

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Application of the Parent-Subsidiary Directive to hybrid securities

The French tax administration has updated its Official Bulletin of Public Finance database to include the new legislative provision according to which, the benefit of the parent-subsidiary regime does not apply to hybrid instruments. According to the law, financial products can be taxed if they are both regarded as equity earnings in France and give the subsidiary, being the debtor of the payment, the right to a tax deduction from its taxable profit. This avoids double deductions and applies to distributed products recorded by the parent company during the tax years commencing 1 January 2015.

This tax rule applies taking into consideration the tax rules which the foreign State applies to the payment. In the event of a mixed distribution, only the amount of distributed monies deducted from the taxable result is excluded from this preferential regime. The French Tax Administration can ask companies wishing to exonerate the distribution to justify the non-deduction of products by the distributing company. Evidence of this can be provided by any means of proof. The French tax administration also details the instruments within the tax rule's scope, namely:

- Securities which fulfill the criteria of equity in France but are considered as a loan in the foreign State, and therefore constitute a tax burden; and,

- Securities which have the characteristics of equity for both the parent company and the subsidiary, when the law which applies to the distributing company gives right to a tax deduction of dividends related to it.

PKF Comment

Attention should be paid to the treatment of the sums distributed within the subsidiary, and written proof should always be requested relating to the non-deduction of the relevant sums. Should you require any further information or advice about the parent company-subsidiary regime or products from hybrid securities, please contact Hervé Bidaud at ***herve.bidaux@artemtax.fr***

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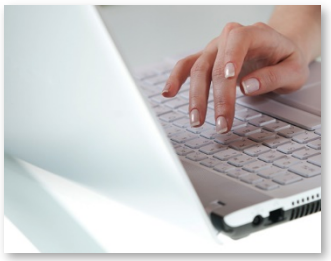
Germany

Application of Trade Tax to CFC income



Until recently, there was controversy about whether or not the amount added to the taxpayer's taxable income under the German Controlled Foreign Company (CFC) rules (sec. 10 (1) sentence 1 of the German law to prevent fiscal evasion - AStG) was subject to Trade Tax.

This issue is of considerable practical importance because no tax credit for foreign taxes is available for Trade Tax purposes and therefore it can materially affect a shareholder's tax burden.

Whilst the German tax authorities naturally consider the includible amount to be subject to Trade Tax, most German experts and commentators do not. In its judgement made on 11 March 2015 (I R 10/14) the German Federal Fiscal Court (BFH) decided against the tax authorities' view.

The BFH held that under sec. 9 no. 3 of the German Trade Tax law (GewStG) the includible amount is to be deducted from the Trade Tax income that forms the basis for calculating Trade Tax. In the opinion of the BFH it is irrelevant in this respect whether the permanent establishment is a permanent establishment of the German company itself or its CFC from which the German company receives the (deemed) passive income.

The test to be met for deducting the includible amount for Trade Tax purposes is, therefore, whether there exists "any" permanent establishment in the foreign country regardless of whether it is a direct permanent

establishment of the Germany company or not.

PKF Comment

Taxpayers and consultants very much welcome the BFH decision because it removes the often extreme tax burdens of the CFC legislation which are systematically not justified. Furthermore it strengthens the position of the taxpayers and their consultants in current and future tax field audits. We, therefore, recommend appealing against Trade Tax assessment notices where necessary. If the appeal is rejected by the tax office, the taxpayer should consider appealing to the court. In view of the recent BFH decision, the taxpayer has a very good chance of success. We have to wait and see whether, and how, tax authorities and legislation will respond to the BFH decision.

Past experience has shown that non-application laws with retroactive clarifying effect are a tried and tested means of establishing or restoring the tax authorities' opinion. For further information or advice concerning German CFC rules, please contact Dietrich Jacobs at ***dietrich.jacobs@pkf-fasselt.de*** *or Thomas Rauert at* ***thomas.rauert@pkf-fasselt.de***

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Essential modifications to the VAT position of cross-border chain transactions

In spring 2015 the German Federal Fiscal Court (BFH) published two new judgments referring to cross-border chain transactions.

In a typical chain transaction three or more parties conclude supply agreements about the same goods, but only one delivery is considered to be the "moving" supply. In case of cross-border chain transactions this qualification is important to benefit from VAT exemptions (intra-community supply or export supply). For the German Ministry of Finances, the key point for the attribution of the 'moving' supply depends on which party arranges the supply.

- If the first supplier (A) arranged the transport to the first customer (B), this supply was the "moving" one and benefited from the VAT exemption.
- But if a second customer (C) was responsible for the supply, the movement from the customer (B) to its customer (C) would be tax free.
- In the third case, where the middle party arranged the transport of the goods, both as customer for A as well as supplier for C, the German VAT law will consider the first movement from A to B as the "moving" supply, while the second will be considered as 'not moving'. However, with the necessary documentary evidence, the second supply could be regarded as the "moving" supply instead.

With the new rulings the BFH decided that from now on the only criterion is the date of the transfer of the authority to dispose of the goods. For the determination of the transfer date all circumstances on an individual case-by-case basis should be considered. Contrary to previous practice, the final delivery should be assessed first, because it is crucial to know when the last customer will have the authority to dispose of the goods.

- If the supply is organised by a middle party and the authority to dispose will be transferred in the last country, the first supply (A to B) in the row will be tax free. The other deliveries are considered as "not moving" and therefore taxable in the last country.
- Even if the last customer, which is based in the last country, assigns and pays the transport, the delivery to him cannot be the "moving" supply. In that case it is considered a "not moving" supply in the first country.
- But if the authority to dispose of the goods will be transferred in the first country, the delivery to the last customer (B to C) benefits from the VAT exemption. The other deliveries are considered as "not moving" in the first country.

PKF Comment

The problem is determining the date of the transfer of the authority to dispose the goods. No clear criteria has been provided by the tax authorities or by case law. Cross-border chain transactions carry a significant risk for the first supplier when it is not aware of the agreement between the other parties. Until there is a

statutory rule for the determination of the date of the transfer of the authority to dispose of the goods, it is strongly recommend to add clear regulation in the existing contracts. The first supplier (A) is strongly recommend to make sure with its customer (B), that the authority to dispose will be transferred in the last country, to ensure that its (first) supply will benefit from the VAT exemption.

For further information or advice on the above or on any aspect of German VAT, please contact Marion Dechant at ***marion.dechant@m.pkf.de***

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Greece

Assessment of income based on intensive tax audits

The Greek government has started intensive tax audits with respect to individuals who have a high amount of activity in their bank accounts. The assumption of the audit is that any increase of an individual's assets which cannot be explained is income. Consequently, any deemed income, arising from an increase in an individual's assets that cannot be explained, is taxable.

Despite the fact that Greece will hold new elections very soon, it seems that any government, new or existing, will introduce the asset register in 2015. What we do not know yet is how analytical this register will be. It is further understood that the asset register will open without clearly stating whether the first declaration of the assets will be tax free or taxed as income, or what exempt conditions might be. The Greek courts have issued contradictory decisions on this matter.

PKF Comment

The Greek government has a strong need for new funds and so their measures can be understood. In saying this however, the tax law should be clear and positions understood. Appealing to the courts to dispute an assessment of taxable income from a bank deposit is very difficult especially when the full payment of taxes is a pre-condition for appealing to a court. Should you require any further information or advice about the intensive tax audits currently being conducted towards Greek individuals, please contact Alexandros Sfarnas at ***sfarnas@hol.gr***

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India

Minimum Alternate Tax (MAT) to be waived on the capital gains of Foreign Institutional Investors (FIIs)

The Union Finance Minister, Arun Jaitley, has recently announced that the Narendra Modi government will waive the controversial Minimum Alternate Tax (MAT) on capital gains made by Foreign Institutional Investors (FIIs) and Foreign Portfolio Investors (FPIs) prior to 1 April 2015. The decision, to be carried out through an amendment to the Income Tax Act, will be a big relief to FIIs/FPIs that pulled out more than USD 2.65 billion from India's capital markets during August.

In reaching its decision, the Government has accepted the recommendations of the Justice A.P. Shah Committee which stated that there was no legal basis for levying the 20% MAT on past capital gains. An amendment to the Income Tax Act will be carried out in the next session of Parliament which should clarify that the MAT provisions will not apply to FIIs/FPIs where no place of business or permanent establishment existed in India prior to 1 April 2015.

Earlier this year, the Income Tax Department issued tax demand notices to FIIs/FPIs seeking MAT on the past capital gains taxes (68 cases; seeking taxes to be paid of circa. Rs 602.83 crore (circa. USD 90 million)). The FIIs/FPIs challenged the demand and the case went to the High Court arguing that the MAT was only applicable to domestic companies that had their base in India, and, by not being established in India, the

FIIs/FPIs should be 'exempted. To date, FIIs/FPIs have not paid the MAT.

PKF Comment

The Indian government has not made public the report from the Justice A.P. Shah Committee as a case involving the Mauritius-based company, Castleton Investment, which is seeking clarity on certain tax consequences including the imposition of the MAT on foreign companies (without a permanent establishment in India), is pending before the Supreme Court. For advice on the MAT or any other matter involving taxation in India, please contact S.Hariharan at ***hari@pkfindia.in***

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Italy

Voluntary disclosure: Relaxed penalties enabling tax matters to be brought up to date

Italian tax payers can regularise their tax position until the end of September 2015 by paying all the taxes due with reduced administrative penalties on income not taxed in the fiscal years still open to the assessment; in this period they will be released from most of the criminal related tax penalties.

The open tax years are generally 2009-2013, but they may be doubled if the assets are held in a tax haven country or the thresholds for disclosing investments that entail criminal penalties have been breached. Recently Switzerland, Liechtenstein and Monaco have been withdrawn from blacklisted countries for voluntary disclosures purposes since they have signed agreements based on the OECD Model Tax Information Exchange Agreement (TIEA).

The tax rate applying to income arising from an undisclosed asset may vary upon the nature of the income. A flat tax rate of 27% may apply if the average asset value is less than EUR 2 million in each tax year; in these cases the taxable income will be calculated as 5% of the value of the financial assets at the end of each year. The voluntary disclosure might be useful not only for a standard Italian taxpayer by also to foreign individuals, for example, a foreign executive of a multinational Group who has been transferred to Italy, is likely to be qualified as an Italian resident over some years and subject to Italian tax. As a consequence, he should have declared all his assets on worldwide basis. Equally, if an "expatriate" realises that he/she had not been compliant with the Italian laws governing the monitoring of assets held abroad, he/she can now take advantage of the disclosure procedure to rectify matters.

PKF Comment

This opportunity might be interesting, also to non-resident entities that have not properly declared taxable assets held in Italy. For example, for a UK Company with a developing Italian business that had not declared itself as an Italian permanent establishment to the Italian authorities, the voluntary disclosure might be the right way to solve a risky ongoing situation. Should you need additional information regarding the above, please contact Marco Giuliani at ***mgiuliani@mgpstudio.it***

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Poland

Extension of the VAT reverse charge mechanism

Commencing 1 July 2015, the range of goods subject to the reverse charge mechanism has been extended. Under the procedure (as opposed to general rules) the entity liable to settle VAT is the purchaser, not the seller.

To date, under the Polish VAT regime, such a procedure was only previously applied to the sale of goods from the category of steel, copper, waste, secondary raw materials and scrap. Commencing 1 July, the goods to which the reverse charge

mechanism may also apply are gold, mobile phones, portable computers, video game consoles. Which specific goods will not be known however until stated in the Polish Classification of Goods and Services – Annex 11 to the Act on VAT that lists the goods subject to this procedure as well as indicates the correct classification symbol assigned to the given item. The conditions for the application of the reverse charge procedure are:

- Supplier – a taxpayer who has not enjoyed an exemption from the tax in accordance with Articles 113(1) and 113(9) of the Act on VAT;
- Purchaser – a taxpayer registered as an active VAT payer; and,
- Supply - was not exempt from tax on the basis of Article 43(1)(2) or Article 122.

Not every sale of electronic products (except fulfilling the above-mentioned conditions) is subject to the reverse charge. The reverse charge in the event of the sale of mobile phones, tablets and video game consoles will apply only when the sales value within a single business transaction exceeds PLN 20,000 (excluding tax). It has to be remembered that such transactions may include more than one supply.

Together with broadening the scope of goods subject to the reverse charge procedure, the obligation to submit additional declarations has increased, i.e. a recapitulative statement in domestic trade VAT-27, has been introduced. This document is required to be submitted by those taxpayers who were purchasers and were delivered goods or provided with services. VAT-27 can be submitted in electronic or paper format. In this document the name and tax identification number of the purchaser (who is obliged to settle the tax) and transaction value must be disclosed.

PKF Comment

The legislator's intention for introducing these changes is to prevent abuse and fraud in the VAT area. Although this idea should be considered noble, its realisation imposes on taxpayer's additional reporting requirements such as submitting a recapitulative statement in domestic trade or verifying contracting parties in relation to VAT taxpayer status. Should you require any further information or advice about the mechanism of reverse charge, please contact Tomasz Skrzypczak at ***tomasz.skrzypczak@pkfpolska.pl***

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Spain

Additional transfer pricing documentation requirements introduced in line with Action Point 13 of BEPS (OECD)

The Official State Gazette (BOE) of 11 July 2015 published Royal Decree 634/2011 which enacted the new Corporate Income Tax Regulation, which, amongst other changes, introduced new transfer pricing documentation requirements for taxpayers that will come into force in 2016. The increased documentation requirements follow closely the approach of the OECD in its Base Erosion and Profit Shifting (BEPS) Plan (Action 13, Transfer Pricing).

Different levels of documentation (Master file, Local File, Country-by-Country reporting) will have to be provided by a taxpayer depending on the size of its group turnover. Broadly the categories, with increasing transfer pricing documentation requirements, are:

- Turnover of the group below Euros 10 million.
- Turnover of the group below Euros 45 million.
- Turnover of the group below Euros 750 million.
- Turnover of the group over Euros 750 million.

The documentation obligation will be exempted where the global amount of related party transactions is below Euros 250,000 (market value) or the transactions are carried out between related parties under the tax consolidation regime, and transactions carried out in the framework of takeover bids. In addition, other relevant changes introduced with respect to the Spanish transfer pricing regime are as follows:

- New information and documentation requirements will be required from both the group

and the taxpayer.

- Alternative valuation methods can be applied, such as the estimated discounted future cash flows method.

- Bilateral / secondary adjustment will be applied by the Tax Authorities.

- Documentation obligations have been hardened in relation with transactions carried out with tax havens.

- Relevant amendments have been introduced in connection with agreed procedures.

PKF Comment

Should you require any further information on the increasing transfer pricing obligations for Spanish companies, and groups, or any advice concerning Spanish taxation, please contact Álvaro Beñarán at ***abenaran@pkf-attest.es*** *or Isidro Brevers at* ***ibrevers@pkf-attest.es***

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United Kingdom

Diverted Profits Tax (DPT)

From 1 April 2015, the UK government introduced the Diverted Profits Tax ("DPT" – known informally as the "Google Tax") as a means to tackle the perceived diversion of profits by multinational businesses from the UK Corporation Tax base. The tax applies by applying a new tax charge (the Diverted Profits Tax) at a rate of 25%, significantly higher than the UK Corporation Tax rate of 20%, to two types of arrangement:

- Arrangements which seek to avoid a Permanent Establishment arising in the UK, where the activity is concerned with the supply of goods or services by a non UK resident company to UK based customers.

- Arrangements involving UK entities which lack economic substance that exploit tax differentials. For example, where payments are made to a group company in a low tax jurisdiction by a UK company, and the primary economic benefit derived by the group is the net tax saving.

The new rules stand alongside existing transfer pricing requirements and effectively provide an additional test in respect of transactions with overseas group entities. Small and Medium sized groups are exempt from the new tax.

PKF Comment

Although the rules are framed in the media as targeting very large groups operating in the UK, the legislation itself is quite widely drawn and complex, and groups operating in the UK will need to ensure that their arrangements do not fall foul of the new legislation.

In particular, sales and marketing offices in the UK that do not give rise to a Permanent Establishment and UK tax presence under traditional legislation may now give rise to a DPT exposure, although de minimis limits may give some comfort. These new rules are controversial in both the UK and overseas, not least because they operate as a unilateral action by the UK in advance of the conclusions of the BEPS project, which aims to tackle the same behaviours.

It is however likely that as the BEPS action plan is agreed, that the scope of DPT may change in the future to accommodate this. Should you need additional information regarding the new Diverted Profits Tax regime, please contact Chris Riley at ***criley@pkf-littlejohn.com***

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The UK Budget and non-domiciles: What it means

In an unexpected move, on 8 July 2015 the Chancellor announced that he will abolish permanent non-domiciled tax status, requiring anyone resident in the UK for more than 15 of the past 20 years to pay UK taxes on their worldwide income and gains. Current non-domiciles, and those who were previously

considering non-domicile status, now have until April 2017 to review their tax affairs and, if necessary, make some potentially lifestyle changing decisions.

From 6 April 2017:

- Individuals who acquired a UK domicile of origin at birth will be prevented from accessing the remittance basis of taxation (under which foreign income and gains are not taxed provided they are not remitted to the UK) even if they have acquired a domicile in another country;

- Those resident in the UK for more than 15 out of the past 20 tax years will be deemed UK domiciled for tax purposes. They will be unable to use the remittance basis and will therefore be liable to tax on their worldwide income and gains, and subject to inheritance tax on their worldwide assets;

- While non-domiciles who create offshore trusts will be able to continue to choose not to be taxed on foreign income and gains retained in a trust, when they become deemed domiciled in the UK under the 15 year rule they will be taxed on any benefits, capital or income received from any trust on a worldwide basis;

- The Government will make all UK residential property held directly or indirectly by non-domiciles subject to inheritance tax, even if the property is owned by the taxpayer through an offshore company or partnership.

Non-domiciles who are resident in the UK for only a short time will not be greatly affected by the changes but if they want to claim the remittance basis they will need to ensure that their foreign income and gains is segregated in order to minimise their UK tax liability. Hardest hit will be non-domiciles who have been resident in the UK for more than 15 of the previous 20 years. These individuals:

- Will no longer be able to shelter their unremitted offshore income or capital gains generated after 5 April 2017;

- Will still be subject to the remittance basis on income or capital gains generated before 5 April 2017;

- Will be exposed to UK inheritance tax on their worldwide assets two years earlier than currently;

- Will lose most of the benefits that they would have enjoyed under the remittance basis, thus exposing their income and capital gains to UK taxes.

The recently introduced Remittance Basis Charge of £90,000 for those non-domiciles who have been resident in the UK for the last 17 tax years will become redundant. HM Revenue & Customs has already made non-domiciles a target by creating specially trained units to investigate their tax affairs. The Government's announcements are likely to increase HMRC enquiries into the tax returns of all non-domiciles.

Leaving the UK is one possible strategy but may not be easy to achieve. An individual who has been resident in the UK for a continuous period of 15 years will be regarded as a 'leaver' under the Statutory Residence Test. In many cases they may find it difficult to fulfil the conditions that would enable them to break their UK residence, meaning they will continue to be taxed in the UK on a worldwide basis. If the individual wants to return to the UK with a reset remittance basis clock, they will need to ensure that they remain non-UK resident for more than six complete tax years before resuming UK residence.

Non-domiciles who decide to stay in the UK, will need to put in place an investment strategy that helps them minimise exposure to UK tax on worldwide income and capital gains.

The change in the inheritance tax treatment of UK residential property owned through an offshore company or partnership will encourage non-domiciles to review the current structure to ensure minimum tax leakage.

Non-domiciles should not make any decision without a thorough review of their affairs both in the UK and overseas. Our expert team can help you understand the implications of the recent announcements and provide specialist advice on the options available.

PKF Comment

Non-domiciles should not make any decision without a thorough review of their affairs both in the UK and overseas. In order to understand the implications of the recent announcements please contact Joseph Brown at ***jbrown@pkf-littlejohn.com***

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Capital gains tax for non-residents

From April 2015, non-residents must pay capital gains tax on gains from UK residential property. The new charge affects individuals, corporates, trusts, estates and funds. The gains are calculated according to the nature of the relevant entity. Thus, corporates can claim relief for indexation, but non-corporates cannot. Corporates pay tax at 20%, whereas non-corporates may pay at 18% or 28%. The tax is not charged on institutional homes, hospitals, prisons, hotels, etc. but property let commercially is chargeable.

The rules are complex and sit alongside existing anti-avoidance legislation dealing with capital gains of non-resident companies and trusts and the recently introduced capital gains tax charge for companies, partnerships and collective investments schemes liable to the Annual Tax on Enveloped Dwellings. Only the gain arising since April 2015 is taxable, which is achieved either by rebasing or by time apportionment of the total gain. If there is a loss, an election can be made not to rebase or time apportion if this produces a better result. The use of losses against other gains is restricted. The vendor must make a return of the gain within 30 days of the completion of the sale.

As the time limit is short, a provisional calculation can be made and amended later. Penalties are chargeable for late returns and for "unreasonable" estimated computations. The government has also changed the terms of the relief for private residences by requiring a relevant individual to be resident in the same country as the dwelling and to occupy the property for at least 90 days in the year, for the property to be covered by the relief for that year.

PKF Comment

Many non-residents own residential property in the UK, either directly, or indirectly through a company or more complex structure. In recent years the UK Government has sought to curb the use of such structures for ownership of UK dwellings. This goes further and affects dwellings owned directly.

The computational rules are complicated and the interaction with the existing anti-avoidance legislation adds further complexity.

Non-residents are thus faced with determining which of these rules take precedence and how they fit together with the lower priority charges. For further information or advice in relation to investing in or holding UK residential property, please contact Barry Luscombe at ***bluscombe@pkf-littlejohn.com***

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