2016 March

PKF Worldwide Tax Update

Welcome

PKF's Worldwide Tax Update is a quarterly publication that captures notable tax changes and updates from around the world that are contributed by our worldwide family of member firms. Following each article is a PKF Commentary which provides further insight and local contact information should you wish to obtain further advice or information.

In this issue we see changes being brought into the domestic tax legislation of the Russian Federation, Switzerland and the United Kingdom to incorporate elements of the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan. Other notable articles in this quarter's issue include:

- Belgium's exchange of information (tax ruling decisions) with other tax authorities;
- The approval of Ecuador's incentive law with favourable investment incentives;
- The decision that subsequent Germany federal statutes can override tax treaty articles, notably, with respect to the taxation of employment income earned in another state, with which Germany has concluded a double taxation agreement;
- The possibility of another tax reform in Greece with respect to personal income tax;
- Foreign Direct Investment (FDI) changes in India;
- The increase in Uganda's Environmental Levy to reduce the number of used vehicle imports; and,
- A look at the new IRS proposed regulations in the United States which will treat transfers of foreign goodwill or the going concern value of an active foreign business to a non-U.S. corporation as taxable.

We hope that you will find the March 2016 PKF Worldwide Tax Update both informative and interesting. If you would like further information or advice on any item featured please either refer to the contact information provided in the PKF commentary or find any firm by country at www.pkf.com/pkf-firms

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Austria

New EC-VAT Regulation regarding photo books

On 25 December 2015, EC-Regulation (2015/2254) entered into force which clarified the VAT treatment of photo books. Prior to the regulation, member states of the European Union treated photo books differently for VAT purposes. In some countries photo books were classified as books and as a consequence a lower VAT rate applied, whereas in other countries the standard VAT rate was applied.

A 'photo book' is as a hard-covered bound article made of paper measuring approximately 21 cm x 31 cm, with full-colour printed personalised photographs with a respective short text referring to the activities, events, persons, etc. It is designed for presenting personalised photographs for private viewing.

Items, for VAT purposes, are classified under the Combined Nomenclature annexed to Regulation (EEC) No 2658/87 to enable the correct application of VAT. It was concluded however that because a 'photo book' is not intended to be read, it could not be classified under heading 4901 as a book but should more appropriately be classified under CN code 4911 91 00 as photographs.

EC-Regulation (2015/2254) overrules local law. Binding tariff information which does not conform to this EC-Regulation may continue to be invoked for a period of three months from the date of entry into force.

PKF Comment

PKF Comment: The Austrian Ministry of Finance reacted and changed the classification for all types of photo books from a book to a photo and the VAT tax rate from 10% up to 20%. On 1 April 2016 the changes will enter into force.

In case the lower tax rate is applied in other EC countries it is recommended that the applicable rate is checked with the national tax authority to avoid competitive disadvantages and a tax risk. For further information concerning the above or any matter concerning Austrian tax, please contact Stephan Rößlhuber at ***stephan.roesslhuber@roesslhuber.at*** *or call* ***+43 662 84 22 90****.*

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Belgium

Belgium will exchange tax ruling decisions with other countries

In November 2015, the EU, the OECD and the G20 countries reached an agreement to follow exchange tax ruling decisions amongst one another. It is expected that the European Council will formally approve the corresponding EU Directive in the course of 2016.

In essence, there are two conditions that should be satisfied, namely, that the tax ruling decision should be "upfront" and it should have a "cross-border impact". Specifically, at the EU level, the exchange of information will be carried-on in two phases:

(i) In the first instance, an EU Member State will share basic data, for example, the identification of the taxpayer, the amounts involved, the criteria and methodologies used in the tax ruling decision, a summary of the key findings of the tax ruling decision, etc.

(ii) In the second instance, the EU Member State that may be impacted by the tax ruling decision may subsequently ask for more specific information. Please note that this will not include confidential professional or industrial secrecy matters or to infringe rules of public order.

Notably, Belgium appears to be the first country that has announced the spontaneously exchange of (Belgium) tax ruling decisions with a cross-border impact (signed-off as of 1 January 2015).

PKF Comment

Belgium taxpayers should be aware that Belgium will share its tax ruling decisions (having a cross-border impact) with other jurisdictions. This could, in particular, relate to tax ruling decisions addressing the Belgium tax treatment of hybrid loans, permanent establishment matters, withholding tax matters, transfer pricing, holding company matters, etc. and impact of future tax planning and strategy.

For further information or advice concerning Belgium tax ruling decisions or any advice with respect to Belgium taxation, please contact Kurt De Haen at ***kurt.dehaen@pkf-vmb.be*** *or call* ***+32 2 460 0960****.*

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Brazil

Tax rate differences regarding Brazilian interstate operations

EC no. 87/2015 is a major constitutional amendment which came into force in January 2016 and seeks to harmonise the application of indirect tax with the growth of e-commerce. It changed the rules with respect to the levy of state tax (VAT) on the distribution of goods, inter-municipal and interstate transportation, and communication services (Imposto sobre Circulação de Mercadorias e Serviços de Tranporte Intermunicipal, Interestadual e de Comunicação), referred to as ICMS.

The ICMS taxation system is complex, as it involves legislative competence of each of the 27 Federation Units, each one with its own set of rules. The new rules consider the distribution of tax revenues relating to goods among the Federation Producing Units (states of origin) and the Federation Consuming Units (states of destination).

Previously, before the new rules, where an interstate sale of goods took place to an end-consumer who was not an ICMS taxpayer (e.g. an individual), the amount of tax collected would be fully intended for the state of origin of goods. For example, if goods were sold for BRL 1,000 by an establishment located in São Paulo, to an end-consumer located in the state of Bahia, who did not pay ICMS, at the tax rate of 18% on internal operations, the tax charged of BRL 180 would be fully collected by the state of São Paulo.

With the constitutional amendment referred to above, any sale to end-consumers, whether ICMS taxpayers or not, will be distributed under the new distribution rules. So, considering the same previous example and assuming the destination State´s tax rate is also 18% and the interstate tax rate in Bahia is 7%, the new collection rule would apply as follows. 7% or

BRL 70 according to our example, will belong to the State of Origin and the difference between an internal tax rate and an interstate tax rate, 11% (18% - 7%) i.e., BRL 110 will now be distributed among the Federation Units. Initially, in 2016, 60% will be assigned to the State of Origin and 40% to the State of Destination, and these percentages will increase gradually from 2017 until 100% of the tax rate difference will belong to the State of destination of the goods exchanged.

Previously, in practice, companies which did business with other Federation Units needed to be aware of their own state´s legislation. Currently, if those companies intend to sell goods to other Federation Units, they also need to comply with the legislation prevailing in the State of destination. Therefore, taxpayers (who send goods) must pay special attention to amendments introduced by the "Emenda Constitucional" (the Constitutional Amendment).

A further aggravating factor is that the tax in some Federation Units rose by up to 2% of their internal ICMS rate. This percent increase is destined for the "Fundo de Combate à Pobreza (FCP)" (Poverty Fight Fund). Accordingly, taxpayers must know which states follow this rule.

PKF Comment

This is a very important change in the taxation system; one that monitors and regulates ICMS collection and taxpayers need to prepare themselves for this new directive to avoid a possible challenge on the part of the competent taxing authorities. Depending on the size of a business, there are ways of minimizing these effects, among which is, for example, setting up a branch in the state of destination.

*We would strongly advice that a case-by-case analysis is undertaken, given the high costs involved with investments of this kind. For further advice or information regarding the ICMS, or advice concerning any Brazilian tax matter, please contact Camilo Gribl at **camilo.gribl@pkfbr.com** or call **+55 11 3101 1372**.*

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Bulgaria

Two important changes in the Bulgarian tax legislation.

The definition of "disposal of financial instruments" has been amended under the Corporate Income Tax Act to include "government bonds". As a consequence, the income derived from the disposal of such bonds on the regulated market is now exempt from withholding tax. The income from dividends, or other distributed amounts, shall however be considered taxable if these amounts have been treated as tax-deductible expenses in the source company.

In addition, the tax base definition of supplies made by a VAT registered entity to its shareholders and/or employees which were unrelated to the business activity of the company have been amended. Such "free" supplies are now considered taxable for VAT purposes. The tax base (equal to the cost of the goods or services) shall be determined proportionally based on the use of these supplies for the purpose of the business activity and for the private use of the shareholders/employees. The tax base for the supply of such goods will also be adjusted with a coefficient reflecting the depreciation of the assets (five year basis for movable assets and 20 years for immovable assets).

PKF Comment

Investing in Bulgarian Government bonds still remains lucrative as the Bulgarian currency (BG Leva) is pegged to the EUR at a fixed rate (1 EUR = BGN 1.95583), i.e. there is no currency risk if the investor is operating in EUR.

EU registered funds and companies can benefit from this type of investment in the short or longer term, combined with the low tax rates for individuals and companies in Bulgaria (10% flat rate tax both for personal income tax and for corporation tax).

Regarding the VAT Law changes - further details about the rules for determination of the VAT tax base on assets used for business and non-business purposes will be described in a Special Ordinance issued in due course by the Ministry of Finance.

For further information or advice concerning the changes in Bulgarian tax legislation, please contact Venzi Vassilev at ***venzi.vassilev@pkf.bg*** *or call* ***+359 2 439 42 42****.*

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China

Additional guidance on R&D super deductions

Following Circular 119 (Caishui 2015 No.119), on 29 December 2015 China's State Administration of Taxation (SAT) issued SAT Announcement [2015] No. 97 (Announcement 97) which provided additional guidance on the super deduction available for research and development (R&D) expenses.

Whilst Circular 119 provides a list of industries ineligible for the super deduction, Announcement 97 clarifies the type of R&D personnel for which expenses can be claimed for the super deduction, for example, research, technical, and support personnel. Staff who perform logistical functions will not qualify as support personnel. Announcement 97 also clarifies whether expenses, or intangible assets, which are incurred or created by R&D activities funded by a fiscal subsidy, qualify for a super deduction if they are reciprocally treated as non-taxable income.

Circular 119 provides that 'other expenses' cannot exceed 10% of the total R&D expenses and Announcement 97 stipulates the upper limit as follows: Upper limit of other relevant expenses = qualifying R&D expenses excluding other relevant expenses x 10% / (1-10%).

Announcement 97 requires an enterprise to establish subsidiary ledgers for the recording of qualifying R&D expenses on a project-by-project basis and accompanied with sample forms (which should be retained for the tax authorities' future verification).

PKF Comment

Announcement 97 clarifies many details of Circular 119 and provides more guidance for enterprises that will be able to benefit from the R&D super deduction incentive. The enterprises however must meet certain documentation requirements, as it is expected that at least 20% of companies claiming the super deduction will be audited each year.

For further information or advice concerning PRC tax, please contact Jason Li at ***jason@pkfchina.com*** *or Josephine Yang at* ***josephine@pkfchina.com*** *or call* ***+86 21 6253 1800*** *to speak with either Jason or Josephine.*

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Ecuador

Foreign investment attracted by approval of incentives law

On 18 December 2015 the National Assembly approved the 'Law of Incentives for the Public-Private Partnerships and Foreign Investments'. This law defines 'public-private partnerships' as those private parties for which the Central Government or municipalities grant the execution of a specific public project, with full or partial project financing, for the provision of goods, civil work or services (such as infrastructure, urban development, housing (construction and marketing of real estate projects, social interest housing and urban development projects) and those related with roadways and seaport and airport infrastructure), in exchange for an economic compensation. The private party is selected by public tender following the approval of the public project by the Interinstitutional Committee of Public-Private Partnerships; the Law of the National System for Public Procurement will not be applicable.

The incentives which could attract private parties to complete public projects include:

- A 10 year exemption of the income tax payment (which also applies for dividends and income paid to partners or beneficiaries of the partnership);
- Payments (capital and interests) for external financing to foreign financial institutions, or specialised non-financial institutions approved by regulatory bodies in Ecuador, to be exempt from the tax on overseas payments; these financing operations should be destined to housing,

microcredit or productive investments and registered in the Central Bank of Ecuador;

- Money transfers will to be exempt from the tax on overseas payments,
- Payments made by public-private partnerships for the import of goods and the acquisition of services for the execution of a public project, as well as the capital, interest and commissions paid to the financiers of a public project, dividends and income paid to beneficiaries and the acquisition of shares, rights or participations of the society created for the execution of a public project, will all be exempt from the tax on payments made overseas.

PKF Comment

The current economic crisis, which arose mainly from the decline in oil prices (Ecuador's main export), has forced the Government to attract foreign investment in the areas of infrastructure and housing. An investment of at least USD 3,144 million is expected by Government officials in issuing this law. Although public-private partnerships are already popular in Ecuador, this law aims to strengthen this practice through additional incentives and to complement it with initiatives to increase competition and reduce costs for participants.

*For further information or advice concerning the incentives which are available under the new incentives law for Government projects, or advice on any Ecuador tax matter, please contact Edgar Naranjo at **enaranjo@pkfecuador.com** or call **+593 4 236 7833 Ext. 104.***

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France

New France-German tax treaty addendum

On 31 March 2015 an addendum to the France-German tax treaty was signed and, subject to its ratification, will enter into force in 2016. To simplify the taxation of retired cross-border workers, the addendum contains modifications with respect to the taxation of capital gains and provides for pensions received from German retirement insurance (by persons not residing in Germany) to only be taxed in France. By contrast, taxpayers receiving a French pension in Germany will only be taxed in Germany.

The addendum modifies the tax rules in relation to German residents' real estate investments in France and provides for the taxation in France of capital gains realised by German investors on the sale of shares in predominantly real estate companies. The addendum provides France the right to tax capital gains realised by a German tax resident on the sale of company shares whose value mainly results from real estate located in France (directly or indirectly). The sale of shares in companies whose property is used for the 'company's own business activity' are excluded from France's right to taxation. Capital gains are also taxable in the seller's country of residence and the tax paid in the country in which the property is located will provide a tax credit.

In addition, a change in terms of withholding tax paid on dividends by real estate companies to German residents has been made. From now on, the withholding tax will be 30% when the effective beneficiary owns, directly or indirectly, 10% or more of the real estate company's capital.

Finally, an exit tax provision has been included which allows one of the contracting countries to retain the right to tax a capital gains relating to an investment in a company residing in this country when the seller sells the investment once he becomes resident in the other country. The implementation rules of this clause must however be specified for them to be coherent with domestic legislation.

PKF Comment

The addendum has provided more clarity to some of the provisions of the France-German double tax treaty, however, both the treaty and the addendum should be considered carefully to ensure the correct tax position is considered when operating in an international business context in both countries.

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

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Germany

Confirmation of treaty override regarding the taxation of employees

Under Section 50d par. 8 of the German Income Tax Act, the exemption from tax of employment income earned in another state, with which Germany has concluded a double taxation agreement (DTA), will only be granted if the employee shows that either the other state (being entitled under the DTA to exercise the right of taxation) has waived its right or that the taxes assessed by this state on the basis of the income in question have actually been paid.

This rule is explicitly applicable, irrespective of the DTA in place with the respective state. In a case relating to the tax year 2004, where the current rule has already been in effect, the Federal Court of Finance has raised doubts whether this rule is in line with the German constitution since it overrules an existing agreement with another state concluded under international law. Consequently, this question was brought before the Federal Constitutional Court by Order of 10 January 2012 and it was decided that the rule in question is in accordance with the German constitution since under the system of the constitutional law, a DTA has the same priority as statutory federal law. Therefore, they can be superseded by later federal statutes that contradict them.

PKF Comment

On the one hand, the decision of the Federal Constitutional Court could lead to an increase of effective double taxation cases if the employees fail in providing the respective proof regarding the tax treatment in the other country. On the other hand, the decision may also have an impact on treaty override clauses in German national law in general.

There are however further cases currently pending before the Federal Constitutional Court, e.g. regarding the taxation of partnerships in cross-border cases.

It is not unlikely that the treaty overrides will also be permitted, with the possible outcome of double taxation. In all these cases, it has to be checked whether such double taxation can be reduced or possibly eliminated by a mutual agreement procedure.

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

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Greece

New Government - another tax reform

In 2015, three major tax law changes took place in Greece, namely:

a) The corporate tax rate was increased from 26% to 29% (dividend tax remained unchanged at 10%);

b) The VAT rate for restaurants was increased from 13% to 23%, and the VAT rate for hotel accommodation was increased from 6.5% to 13%. These changes were particularly important, because the tourist sector is the leading sector of the economy; and,

c) The prepayment of income tax for the next year (for legal entities) was increased from 80% to 100%.

Following the above, the September 2015 elected Government are expected to continue the tax law reform and introduce income tax changes which will affect the income of individuals.

PKF Comment

Following the elections, there is a new situation in Greece. People earning more than EUR 30,000 per year are considered as privileged people and will pay higher taxes. The uncertainty of the tax rules concerning the legal possession of wealth continues and there is no current indication that this uncertainty will be removed.

Should you require any further information or advice about the intensive tax audits of Greek individuals, or *any advice concerning Greek taxation, please contact Alexandros Sfarnas at* ***sfarnas@hol.gr*** *or call* ***+30 210 64 27 623****.*

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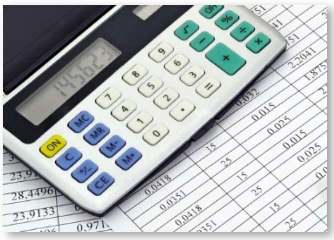
Hungary

Limitation on the right to deduct VAT

As of 1 January 2016, taxpayers registered in Hungary may only deduct VAT in the same year or in the following year the VAT deductible was generated. The only exceptions to this rule are self-assessed import VAT, VAT assessed through the reverse charge mechanism in case of inter-company acquisitions of goods and services, and, the domestic reverse charge transactions (where VAT payable may only be reduced by VAT deductible in the same tax period that the VAT deductible was generated).



This means that in many cases, especially in the case of late invoices, taxpayers may only comply with these rules via self-revisions and a VAT deduction cannot be used anytime within the statute of limitation. Furthermore, this also means that for any deductible VAT which has not yet been claimed, and relates to a tax period which has been closed by a tax authority audit, the deduction right may only be exercised by re-opening that period for a repeated audit.

PKF Comment

There is an interesting contradiction in relation to inter- company acquisitions. The Hungarian VAT Act states that the objective condition of the deduction right for inter-company acquisitions is having the invoice itself, however, since a taxpayer can only exercise the deduction right in the same tax period as the VAT payable arose, what will happen if the invoice is late three months – and thus the objective condition for the deductibility will not be fulfilled in the period when the VAT payable is reported?

Currently the common understanding is that in these cases the VAT deductible should be reported in the period the invoice is available, separately from the VAT payable.

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

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India

Changes in the Foreign Direct Investment (FDI) regime in India

Although Foreign Direct Investment (FDI) into India is under a liberalised regime, it is not completely free. There are policy guidelines governing sectors prohibited for FDI, sectors where FDI is permitted with government approval and sectors which have restrictions as to investments in equity.

Notifications are issued from time to time announcing liberalisations. In November 2015 the Government issued a circular announcing liberalisation in the FDI regime, and notably, investments in limited liability partnerships (LLPs) are now freely permitted in sectors where a 100% investment is permitted.

PKF Comment

LLPs have fewer compliance requirements; their profit distributions are liable to dividend distribution tax and are largely outside the Minimum Alternate Tax provisions. They now offer a very good investment structure for investment in India. Even downstream investments are permitted by LLPs.

If you require any advice concerning taxation in India, please contact Hariharan S at ***hari@pkfindia.in*** *or call* ***+91 44 28 11 29 85****.*

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Investments by non-resident nationals in India

Investments by non-resident Indians, and entities controlled by them, are to be considered as domestic investments which will increase the availability of Foreign Direct Investment (FDI).

Further, no government approval will now be required in cases of FDI through a swap of shares in sectors open to 100% investments.

PKF Comment

This increases the space for FDI from non-resident investors. Changes relating to the swap of shares would facilitate cross-border reorganisation and investments. For further information or advice concerning taxation in India, please contact Hariharan S at ***hari@pkfindia.in*** *or call* ***+91 44 28 11 29 85****.*

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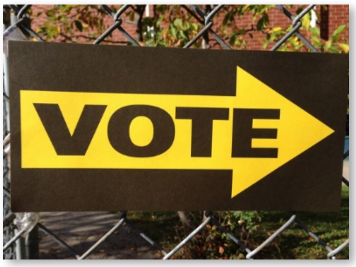
Italy

Patent box regime guidelines



In December 2015, the Italian Revenue Office released guidelines for the first patent box regime (see PKF Worldwide Tax Update June 2015). The regime provides for fiscal relief on income arising from the intangible assets and provides for a certain portion of the income from qualifying intangible assets (intellectual property or IP) to be excluded from the corporate taxable basis. The election for the regime lasts five fiscal periods and cannot be revoked. The guidance explains how to make an election, its effects, the treatment of patent box losses, consequences to business reorganisations, and, the procedure for obtaining a mandatory ruling.

PKF Comment

The Italian business community highly welcomes the administrative guidelines regarding the application of the patent box tax regime.

For further information or advice concerning the Italian patent box regime guidelines, or any advice concerning Italian tax, please contact Walter Bonzi at ***wbonzi@mgpstudio.it*** *or call* ***+390 2 4398 1751****.*

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Romania

Micro-enterprises: 1% to 3% corporate tax rates

From 1 January 2016 new rules apply to micro-enterprises under the new Fiscal Code. The threshold of income for a legal person to be considered a micro-enterprise is the equivalent in RON of EUR 100,000 or less.

Commencing 1 January 2016, the new tax rates applicable to micro-enterprises are as follows:

- 1% for micro-enterprises that have more than two employees;
- 2% for micro-enterprises that have one employee; and,
- 3% for micro-enterprises that have no employees.

If, during the fiscal year, the number of employees change, the tax rates will apply correspondingly, starting with the quarter when the change occurred. In addition, for newly established Romanian legal entities that have at least one employee and are constituted for a period longer than 48 months, and whose shareholders/associates did not hold participation titles in other legal entities, the tax rate is 1% for the first 24 months of the date of registration of the Romanian legal entity.

The tax rate applies until the end of the quarter that ends the period of 24 months. Please note, the law stipulates other conditions for the application of a reduce rate.

PKF Comment

The introduction of this differentiated system of tax rates for micro-enterprises between 1% and 3% based on the number of employees will have the effect of increasing the new working places and equitable settlement of the tax burden between micro-enterprises with or without employees. In addition, these new rules bring advantages compared to other types of enterprises. For more information on the above, or advice on any Romanian tax matter, please contact Alina David at ***alina.david@pkffinconta.ro*** *or call* ***+407 35 212 702****.*

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Russian Federation

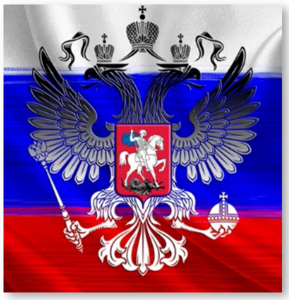
Implementation of the OECD's BEPS Action Plan

On 19 July 2013 the Organisation for Economic Co-operation and Development adopted a 15-point Action Plan on Base Erosion and Profit Shifting (BEPS) providing for the following actions:

1. Address tax challenges of the digital economy;
2. Neutralise the effects of hybrid mismatch arrangements;
3. Strengthen CFC rules;
4. Limit base erosion via interest deductions and other financial payments;
5. Counter harmful tax practices more effectively, taking into account transparency and substance;
6. Prevent treaty abuse;
7. Prevent the artificial avoidance of PE status;
8. Intangibles;
9. Risks and capital;
10. Other high-risk transactions;
11. Establish methodologies to collect and analyse data on BEPS and the actions to address it;
12. Require taxpayers to disclose their aggressive tax planning arrangements;
13. Re-examine transfer pricing documentation;
14. Make dispute resolution mechanisms more effective;
15. Develop a multilateral instrument.

In order to implement this Action Plan in the Russian Federation, measures were taken to combat unfair tax competition, as well as base erosion and profit shifting. It should be noted that new tax avoidance provisions have been introduced to the Tax Code of the Russian Federation.

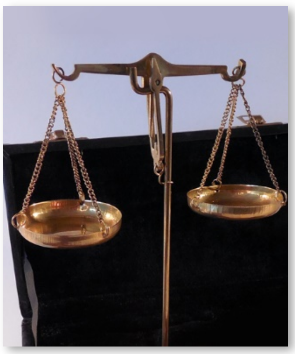
On 1 January 2015 such concepts were introduced as tax residence, beneficial owner and controlled foreign company rules.



A controlled foreign company (CFC) is a non-corporate organisation or structure which is not a tax resident of the Russian Federation but is controlled by Russian tax residents. The new CFC law obliges individuals and legal entities to notify Russian tax authorities where they control foreign companies, as well as to report and confirm CFC retained earnings which will be subject to taxation. On 20 January 2015 for the first time Russian tax residents had to notify tax authorities where they had interest in any foreign companies exceeding 1% (failure to notify the tax authorities led to a fine of RUB 50,000) and, on 20 March 2015, they had to notify the tax authorities where they had an interest in a CFC (failure to notify tax authorities led to a fine of RUB 100,000). On 31 December 2016 Russian tax residents will have to include CFC retained earnings in their tax base for the first time (earnings received by CFC before 1 January 2015 are not subject to taxation). The higher of 20% of unpaid tax or RUB 100,000 will be charged in case of failure to pay the tax in the full amount.

On 14 December 2014 the Ministry of Finance submitted a new draft CFC law for approval by the State Duma. This law eliminates double taxation of dividends paid from CFC profits. The tax free period for CFC liquidations will be extended to 1 January 2018.

Thin-capitalisation rules and transfer pricing rules which limit interest deductions for related parties are applicable in Russia. Thin-capitalisation rules prevent such tax planning where the parties can shift profit by paying interest to the country with a lower tax burden from the funds borrowed to increase the share capital. According to the Court practice, and the position of tax authorities, thin-capitalisation rules are applicable for financing by foreign fellow subsidiaries (which are not openly expressed in the rules).



On 19 May 2015 the State Duma passed in the first reading a draft law No.724609-6 which provided for an extension of the thin-capitalisation

rules to financing by foreign fellow subsidiaries (second reading has been postponed). This draft law amends Art. 269 of the Tax Code of the Russian Federation concerning the exemption of loan interest from tax.

The draft law provides for the following:

- New list of loans to which thin-capitalisation rules are applicable. In particular, this list will include loans from foreign fellow subsidiaries.
- Thin-capitalisation rules are no longer applicable to loans received from independent banks and guaranteed by related parties if certain criteria are met.
- New method for calculation of non-deductible interest reclassified to dividends for tax purposes.

The draft law amends the list of loans/debts to which thin-capitalisation rules are applicable and will include debts from the following types of lenders:

1. Foreign subjects related to a Russian borrower in accordance with sub-cl.1, 2, 9 cl.2 art. 105.1 of the Tax Code of the Russian Federation provided that such foreign subject directly or indirectly owns a share in the borrower's capital;
2. A Russian or a foreign subject is considered a related party of a foreign subject mentioned in cl.1 based on the transfer pricing rules stipulated in art.105.1 of the Tax Code of the Russian Federation;
3. Any other subject provided that subjects mentioned in cl.1 2 act as guarantors or otherwise secure debt repayment (with certain exceptions for banks).

It should be noted that from the time of the previous revision of the thin-capitalisation rules, the share of related party lenders in companies has significantly increased. It is also stipulated in the law that thin-capitalisation rules will be applicable to loans issued by foreign fellow subsidiaries.

The current revision of the Tax Code does not provide for such loans but tax authorities and the Courts have used thin-capitalisation rules in respect of such loans.

Taking this into account, thin-capitalisation rules are going to be extended to foreign fellow subsidiaries. When the draft law is passed, amendments will come into effect starting from 1 January 2017.

PKF Comment

The Russian Federation is moving to implement the recommendations under the OECD's BEPS initiative and with this comes a tightening of the rules, more transparency and increased compliance obligations. For further information or advice on the above, or advice on any Russian Federation tax matter, please contact Sergey Nikiforov at ***nikifomv@acg-pkf.ru*** *or call* ***+7 843 555 6494*** *or Tatiana Gavrilova at* ***audlt@mcd.spb.ru*** *or call* ***+7 812 600 9103****.*

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Serbia

Withholding tax introduced on payments to foreign service providers

An important amendment has been made to the Corporate Income Tax Law which subjects withholding tax (at the rate of 20%) to income received by a non-resident legal person from services provided, or used, in the territory of the Republic of Serbia, where the payer of such income is a resident Serbian legal entity (the obligation also applies to entrepreneurs).

Withholding tax will be subject to applicable payments that are made on or after 1 March 2016 (regardless of where the service is provided).

PKF Comment

In many cases, there will not be a withholding tax liability due to the provisions of an applicable double taxation treaty ('DTT'), where the right to tax the income is attributed to the state whose resident earns it, except in cases where the income is realized through a permanent establishment in Serbia. Please note, for the recipient to claim under the provisions of an applicable DTT it is necessary for them to produce a certificate of residency to the Serbian tax authority.

Since obtaining a certificate of residency from an overseas tax authority can take some time, we advise that this is requested as soon as possible.

Where a certificate is already held it should be checked to ensure that it is still current as certificates of residency are normally issued and valid for one year only.

*Should you require any additional information or advice regarding the application of Serbian withholding tax, or any advice on Serbian taxation, please contact Mićun Žugić at **micun.zugic@pkf.rs** or call **+381 11 3018 445**.*

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Switzerland

New BEPS legislation at a Federal level in 2017

The OECD BEPS report will have a significant impact on the tax legislation of various countries. Specifically, the Swiss tax authorities have announced that they are currently in the process of a Swiss tax reform which, partially, will be the Swiss reaction to the BEPS report. Currently, it appears at a Swiss Federal level the implementation will take place as of 1 January 2017. However, on a Swiss Cantonal level it might take an additional two years.

PKF Comment

*Companies undertaking business in Switzerland should carefully monitor the ongoing legislative process as it may have a significant impact on their daily business operations. For more information or advice on Swiss BEPS matters, or any advice with respect to taxation in Switzerland, please contact Daniel Carotta at **daniel.carotta@pkf.ch** or call **+41 44 285 7500**.*

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Turkey

Turkey - Kosovo 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 Republic of Kosovo for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income" and the supplementary Protocol is 15 October 2015. Accordingly, pursuant to Article 27 of the Treaty titled "Entry into Force", the Turkey-Kosovo 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 Kosovo 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**.*

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Uganda

Increased Environmental Levy effect on used vehicle imports

An amendment of the Second Schedule to the 2009 Finance Act, which became effective 1 July 2015, increased the Environmental Levy on used motor vehicles from 20% to 35% for motor vehicles of five to ten years old, and, to 50% for those over 10 years old. This was in response to environmental concerns. The increase however excluded goods vehicles.

The aim of the tax increase was to reduce the importation of used cars into Uganda which in turn, would lead to a reduction in the dangerous fumes emitted by them, such as carbon monoxide. This is expected to improve the environment and encourage Ugandans to buy economically more viable new cars in the future rather than used ones.

The resultant effect of the changes mean that a used car imported in Uganda that is 10 years old (or more) from the date of manufacture will be subject to duty amounting to approximately 99% of the value given by the Ugandan Revenue Authority (URA). Please note, for the assessment of duty, the URA uses motor vehicle indicative values which are usually higher than the actual CIF value of the vehicle. The 99% is made up of 25% Import Duty, 18% VAT, 6% withholding tax and 50% Environmental Levy.

PKF Comment

The tax increment has not only affected the country's car importation business but has also made used cars considerably more expensive for Ugandans (which are currently driven by most of the driving population). However on a positive note, it's believed that the increased taxes will encourage investors to establish car assembly factories in Uganda rather than import used vehicles. For further information or advice on any Uganda tax matter, please contact Albert Beine at ***abeine@ug.pkfea.com*** *or call* ***+256 312 305 800****.*

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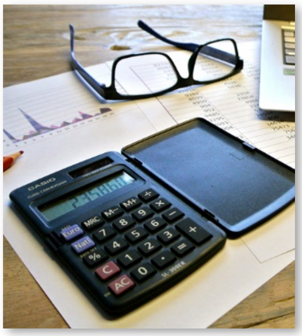
United Kingdom

Country-by-Country reporting regulations

In October 2015, HMRC published 'The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2015' ('the Regulations') for consultation. The Regulations supplement legislation introduced in the 2015 Finance Act and will require certain multi-national entities to comply with the OECD's Country-by-Country reporting ('CbCR') template for periods beginning on or after 1 January 2016.



CbCR is intended to create greater transparency between tax authorities and multi-nationals. Increased transparency is one of the three fundamental pillars of the OECD's Base Erosion and Profit Shifting action plan, the other two being the introduction of coherence in domestic rules affecting cross border trading activities and the alignment of taxation with activity and value creation. CbCR is intended to provide tax authorities with sufficient information to enable them to identify when multi-nationals have sought to erode the tax base and/or shift profits through transfer pricing policies or other steps which divert profits to low tax jurisdictions in an artificial manner.

The Regulations apply to multi-national enterprises with a UK parent entity and turnover of £586m or more in a 12 month accounting period. Such entities will be required to provide HMRC with an annual report disclosing the following information for each country in which it does business (whether through a subsidiary company or a permanent establishment):

- Revenue, profit before tax, tax paid and accrued; and,
- Total employment, capital, retained earnings and tangible assets.

CbCR reports must be submitted within 12 months of the end of the accounting period to which they relate. For example, an eligible company with a 31 December year end will come within the CbCR rules for the first time in respect of the period to 31 December 2016, with the report being due for submission on or before 31 December 2017.

The Regulations also include provisions for penalties to be raised where an entity submits an inaccurate return and the entity was either aware of the inaccuracy or discovers the inaccuracy and fails to take reasonable steps to advise HMRC of the discovery. Such penalties may be up to £3,000. Entities will also be subject to a penalty of £300 where they fail to submit a CbCR report within the requisite timeframe. A further penalty of up to £60 per day may be levied for each day that the return remains outstanding.

PKF Comment

The UK is the first country within the G20 to commit to the implementation of CbCR. Information reported by CbCR will be exchanged automatically with other tax authorities. This exchange of information may draw attention to entities' transfer pricing policies; however, it is understood that CbCR will not be used by itself as conclusive evidence in transfer pricing challenges. Entities should ensure that their transfer pricing policies are appropriate and that the principles are applied consistently, as well as implementing procedures to allow accurate CbCR information to be reported.

For further information or advice about the requirements of CbCR, or advice on any UK tax matter, please contact either Robin Clegg at ***robinc@PKFCooperParry.com*** *or Stephen Bryan* ***stephenb@PKFCooperParry.com*** *or call* ***+44 1332 411163****.*

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United States

New IRS proposed regulation treats transfers of foreign goodwill as taxable

In September 2015, the U.S. Internal Revenue Service issued 'proposed' regulations which significantly alter the treatment when a U.S. person transfers certain property to a foreign corporation. Specifically stated in these regulations is that the IRS will no longer treat transfers of foreign goodwill or going concern value of an active foreign business to a non-U.S. corporation as non-taxable. This treatment would apply retroactively to all transfers occurring after 14 September 2015 once the proposed regulations become final.

Contemporaneously with these regulations, the IRS issued temporary regulations to clarify the coordination of transfer pricing rules with outbound transfers involving non-U.S. corporations.

Under Internal Revenue Code Section 367(d), if a U.S. person transfers property to a non-U.S. corporation, the non-U.S. corporation will not treated as a corporation for various otherwise tax-free exchanges. Thus, for example, a transfer by a U.S. person of highly valuable intellectual property to a non-U.S. corporation is typically a taxable transaction. One possible reason is the IRS lack of taxing jurisdiction over one or more of the parties to an international transaction when compared with purely domestic reorganizations. However, there are a number of exceptions to this general rule.

For example, the transfer of property which comprises an active trade or business ("ATB Exception") can qualify as a tax free exchange. Nevertheless, even within the ATB exceptions are certain assets which are not afforded this beneficial (tax free) treatment such as inventory, accounts receivable and very importantly intangible property including patents, copyrights, trademarks and similar items with substantial value. If these intangibles are transferred, the U.S. transferor is treated as having sold the property in exchange for payments contingent upon the projected productivity on an annual basis over the shorter of the property's useful life, or 20 years. This is a commensurate with income standard which can result in a draconian tax liability even if such payments are not actually received, as is often the case with business start-ups.

However, foreign goodwill and the going concern value, (defined as the residual value of business conducted outside the U.S.) was not subject to the deemed disposition, commensurate with income treatment under previously issued regulations, perhaps recognizing that with a start-up there is relatively little goodwill and going concern value. The IRS became aware that many taxpayers were interpreting the meaning of foreign goodwill and going concern value too broadly, exposing the regulations in their current (pre-2015) form subject to abuse.

In this proposed regulation, the IRS eliminated the exception for foreign goodwill and going concern value, making such transfers fully taxable. In addition, the new proposed rules would eliminate the current 20 year limited period for deemed royalty payments. Instead, the commensurate with income period would extend over the entire period in which the exploitation of the intangible is reasonably expected to occur. Once the regulation becomes final, the revised regulations will apply to all transfers occurring after 14 September 2015. Thus, the law will apply retroactively once a Treasury Decision is issued to make the rules final.

U.S. Treasury and IRS conducted a public hearing on 8 February 2016 to discuss the proposed regulations under Section 367(d). In the meeting, many commentators questioned the government's authority to eliminate the foreign goodwill exception and expressed concern about the immediate effective date. They believe the proposed regulations are inconsistent with Congressional intent and Treasury has set the table for more controversy rather than certainty. Commentators suggested objective scenarios be established in which the foreign goodwill exceptions would still apply. If these comments are incorporated into final regulations certain transfers could still be completed tax-free.

PKF Comment

In our view, transferring a business that is wholly conducted outside the US to a non-U.S. corporation should not be considered an abusive situation. We are hopeful the final regulations reflect this view. We have many clients that are adversely affected and creating a limited exception would be very helpful for their future plans.

For further information or advice on any aspect of the U.S. Internal Revenue Service issued Proposed Regulations, or any aspect of US taxation, please contact Leo Parmegiani at ***LParmegiani@pkfod.com*** *or call* ***+1 212 867 8000 Ext. 426****.*

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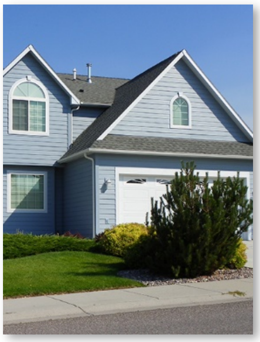
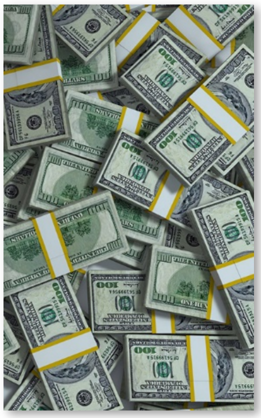
New PATH ACT changes the rules for foreign investment in US real estate and REITS



Beginning on 16 February 2016, the rate of tax withholding required by the Foreign Investment in Real Property Tax Act (FIRPTA) will increase from 10% to 15%. FIRPTA imposes federal tax on the sale of an interest in real property located in the United States by a foreign seller. To ensure that FIRPTA taxes owed are collected, buyers who are purchasing a real property interest from a foreign seller will now be required to withhold 15% of the purchase price. The increase in the withholding rate is the result of the recently enacted Protecting Americans from Tax Hikes (PATH) Act, which was signed into law in December 2015. When purchasing real property in the United States, it is imperative that a buyer establishes if the seller is a foreign person as defined by FIRPTA. A buyer who fails to withhold at the new 15% rate after 16 February may be held liable for the taxes owed to the IRS.

FIRPTA is the Foreign Investment in Real Property Tax Act of 1980. FIRPTA established a general requirement on the purchaser of real estate interests owned by a foreign seller to withhold 15% of the purchase price and remit it to the Internal Revenue Service at the time of closing unless certain exceptions are met. Usually, the settlement agent is the party that withholds and remits the funds to the IRS, but the buyer is legally responsible. In certain circumstances, the buyer's agent can also be held liable (see last question, below).



The PATH Act makes this change effective for dispositions after the date which is 60 days after the date of enactment. The legislation was signed into law by President Obama on December 18, 2015. The 60th day after this day is 16 February 2016. Thus, the new rate will apply to sales on or after 17 February 2016. The new law makes two changes to the FIRPTA law, both of which are expected to make U.S. commercial property more attractive to foreign investors without substantially eroding the original purpose of the Act.

First, the law doubles the maximum amount of stock ownership that a foreign investor may have in a U.S. publicly-traded real estate investment trust (REIT) from the previous limit of 5% to 10%. Second, the new law permits certain foreign pension funds to invest in real estate investment trusts (REITs) without having FIRPTA treatment apply.

PKF Comment

The PATH Act generally is good news for REITs and foreign investors as it takes significant steps toward facilitating foreign investments in U.S. real estate and U.S. infrastructure projects. The PATH Act, however, also significantly restricts REIT spinoff transactions, limits certain avenues to reduce tax liability, and imposes additional reporting requirements.

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

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