2015 December

PKF Worldwide Tax Update

Welcome

In this issue of PKF's Worldwide Tax Update we see the impact of the OECD's BEPS initiatives continuing with Australia proposing to expand its GST rules to capture overseas online transactions (digital products and services), Belgium's proposed introduction of a "Cayman tax" which focusses on individuals who have parked assets abroad using lowly taxed foreign legal structures, and China's discussion draft on 'Implementation Measures of Special Tax Adjustments' which seeks to escalate China's transfer pricing practice and anti-tax avoidance regulations. In addition, Mexico, the Netherlands and Spain all introduce transfer pricing requirements in line with the OECD BEPS Action Point 13.

Other notable inclusions in this month's issue include:

- Proposals for a 'non-final' Australian withholding tax to be introduced on property disposals by foreigners;
- China's pre-tax super deductions of 150% on qualifying research and development (R&D) expenditure;
- The notional interest deduction (NID) regime on corporate equity introduced by Cyprus;
- Germany's 'corporate group clause' which preserves tax losses when a change in ownership occurs; and,
- The proposed changes to the Luxembourg Tax Law affecting the intellectual property regime, distributions from entities qualifying for the EU Parent Subsidiary Directive and the Minimum Corporate Income Tax and more.

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

Contents

Contents continued...

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Australia

Non-resident withholding tax on Australian property transactions

Draft legislation to impose a 'non-final' withholding tax on transactions involving the disposal of 'taxable Australian property' ('TAP') by foreign residents has been released for consultation. If this legislation is enacted it will mean that, for contracts of sale concluded on or after 1 July 2016, a purchaser of TAP may be required to remit 90% of the proceeds to the foreign resident vendor and 10% to the Australian tax authority (Commissioner of Taxation). The 10% withholding is to be made on account of the foreign resident's possible Australian tax liability arising from the property disposal (which may in fact be nil).

The foreign resident vendor, will however, be able to access a credit for the 10% withholding tax when an Australian tax returned is lodged. Please note, foreign residents are subject to income tax on capital gains derived from the disposal of TAP. Broadly, TAP is:

- A direct interest in Australian real property;
- An indirect interest in Australian real property (a non-portfolio interest in entities where more than 50% of the underlying value is derived from taxable Australian real property); or,
- An option or right to acquire taxable Australian real property or an indirect Australian real property interest.

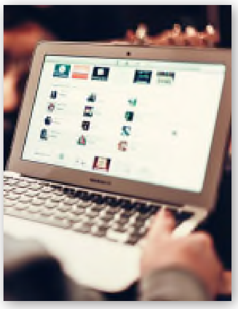
PKF Comment

Historically the collection of tax on gains from real property relied heavily on the voluntary compliance of a non-resident through the lodgement of returns and the issue of assessments by the Commissioner of Taxation. This has been particularly difficult for the Commissioner to enforce where the transaction occurs between non-residents.

If the proposed law is enacted, a vendor will need to carry out the appropriate tax due diligence to determine if the provisions *apply and how a potential withholding liability will factor into the settlement mechanics of a transaction. It can be expected that this will add to the vendors cost of compliance. Furthermore, non-cash transactions, capital gains tax rollovers, vendor financing, and distressed asset sales are factors that add complexity to a transaction. Such factors will also cause additional complexity to the application of the proposed withholding provisions, and will require appropriate provisions to be included in the drafting of transaction documentation.*

For further information or advice concerning Australian withholding tax, or any other Australian tax query, please contact Steve Williams of Sydney Australia at ***swilliams@pkf.com.au***

Goods and Services Tax on overseas online transactions



As part of the May 2015 Federal Budget measures the Australian government released an exposure draft Bill, the Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015, which proposes to extend the scope of the Australian Goods and Services Tax (GST) to include offshore services and intangibles supplied to Australian consumers (from 1 July 2017).

The changes proposed to the GST Act will encompass all supplies to Australian consumers of things connected with the indirect tax zone other than goods or real property. This will result in supplies of digital products, such as streaming or downloading of movies, music, apps, games, ebooks, as well as other services such as consultancy and professional services, receiving a consistent GST treatment whether they are supplied locally from within Australia or from foreign vendors outside Australia.

Some two months after the introduction of the Bill, the Prime Minister of Australia released a communiqué following the Australian Leaders' Retreat held in Sydney on 22 July 2015. The Retreat was attended by the Prime Minister, First Ministers from each State and Territory, and the President of the Australian Local Government Association. In the communiqué, the Australian Prime Minister said that they had all agreed to keep the Commonwealth and State tax changes under discussion, including the GST and the Medicare levy. As a first step, there was agreement in principle to broaden the GST to cover overseas online transactions for goods under AUD 1,000. This matter will be referred to the upcoming meeting of the Treasurers for its detailed progression.

PKF Comment

The digital products and services measures are consistent with the Government's desire to address the base erosion and profit shifting (BEPS) agenda and are in line with OECD guidelines, and changes in several other jurisdictions. However, there are still differences in laws between jurisdictions, particularly the lack of clear and consistent rules across jurisdictions for determining the place of consumption. This may create unintended instances of double tax or no tax in relation to supplies of digital content across borders.

The Australian Treasurer needs to work with other jurisdictions to agree on a set of consistent legislative principles to harmonise the application of the GST/VAT rules for cross-border supplies. This, and a number of other compliance and practical issues, will need to be addressed as the measures move forward. Whether the potential additional revenue to be gained from the measures relating to goods will be sufficient to cover the costs of administration is a matter that the government will need to address before the measures are finalised.

For further information or advice concerning these measures, please contact Andrew Porvaznik of Sydney Australia at ***aporvaznik@pkf.com.au***

Austria

New tax reforms for 2016

The Austrian National Assembly has recently adopted the Tax Reform Act 2015/2016, which is principally based on a reform of the income tax rates, and will become effective in 2016. Some notable changes are as follows:

- Austrian income tax rates for individuals will be reduced. The three tax rate thresholds are expanded to six, dependent on an individual's annual earnings and the minimum tax rate is to be lowered to 25%;

- Capital gains tax for individuals will increase from 25% to 27.5%;

- The tax applying to the disposal of land by individuals will increase from 25% to 30%;

- Withholding tax on dividends will increase from 25% to 27.5%. Please note that the current rate of 25% should continue to apply to general bank and savings accounts;

- A new VAT rate of 13% will be introduced in addition to the existing rates of 10% and 20%. The new rate will apply, for example, to overnight accommodation and admission to cultural events;

An increase in the transaction tax for gratuitous land transfers is also expected as well as an increase in the record-keeping requirements for contractors. Other changes include:

- The granting of additional powers to the tax authorities in the future to enable them to access a tax payers' bank accounts to more accurately assess income tax, corporate income tax and VAT. This right was previous only granted in financial criminal cases and so will be a major reversal of the bank secrecy principle.

- The reporting by credit institutions of capital outflows of EUR 50,000 or more from the accounts of individuals, regardless of where or to whom the funds were transferred, even if the sum is transferred in several transactions.

- From 2016, cash payments to subcontractors are disallowed as tax deductions as a means to combat undeclared cash payments in the construction industry.

- The Austrian legislator aims to significantly tighten the country's exit taxation rules by replacing the existing tax deferral concept applying to the taxation of 'hidden reserves' with a seven year equal instalments regime. In addition, the wording of the ten year statute of limitation rule may be amended to avoid tax-payers avoiding the charge where applicable assets are disposed after this time. Please note that Austrian taxation on hidden reserves is payable only when the assets are actually sold.

PKF Comment

Employed individuals generally should pay less income tax under the changes brought about by the Tax Reform Act 2015/2016. Certain capital transactions will however be subject to a higher tax rate and therefore tax planning is advised to minimise the exposure to this. The increase in the dividend withholding tax rate will notably increase the tax burden on dividend income and impact investors. With respect to the right to inspect the accounts of contractors, it remains to be seen in what situations and how often tax authorities will actually make use of this right.

*For further information or advice concerning the tax changes arising from the Tax Reform Act 2015/2016, or any other matter concerning Austrian tax, please contact Astrid Pirkovitsch at **astrid.pirkovitsch@pkf-graz.at** or alternatively, Andreas Unteregger at **andreas.unteregger@pkf-graz.at***

Belgium

'Cayman Tax' and tainted foreign legal structures

You may recall from our last newsletter (September 2015) that we mentioned a "Cayman tax" that will be introduced in 2016. In essence, if a Belgium based individual has 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. This also applies to lowly taxed income received by a Belgium based non-for-profit organisation which is the owner, holder or beneficiary of the foreign legal structure. Further notable points are mentioned below:

- Under specific circumstances, an heir who earns income from the foreign legal structure can also be subject to the Cayman Tax, in which case, a full tax transparency rule applies (interest, dividends, capital gains, rent, etc., retain their identity and are taxed accordingly in the hands of the Belgium natural person or Belgium non-for-profit organisation).

- The purpose of the Cayman Tax is to discover and challenge lowly taxed foreign legal structures that are set up for asset management purposes and it is not directed toward genuine business structures (embedded with sufficient substance in terms of headcount, office, and equipment) that are established in a country with which Belgium has concluded either a tax treaty, a Tax Information Exchange Agreement ("TIEA") or a similar bilateral or multilateral instrument.

Specifically, two types of foreign legal structures are considered tainted:

a) Foreign legal structures without a legal personality, e.g. foreign trusts and similar legal structures;

b) Foreign legal structures with a legal personality that are included within two specific lists under Belgium law:

    - The first list is both exhaustive and irrefutable and lists foreign legal structures based in countries which are part of the European Economic Area ('EEA'). Only 3 legal forms are mentioned on this list: both the Liechtenstein Stiftung (foundation) and Anstalt (establishment), and the Luxembourg SPF.

    - The second list is both non-exhaustive and refutable and contains various legal forms of foreign legal structures which are based outside the EEA. However, if it is demonstrated that a foreign legal structure is subject to an effective minimum corporate tax rate of 15%, computed on a taxable basis determined according to Belgium tax rules, the Cayman Tax will not apply.

PKF Comment

All Belgium based natural persons and non-for-profit organisations that are the owner, holder, heir or beneficiary of a "foreign legal structure" should carefully analyse to what extent they are potentially liable under the Cayman Tax. Key criteria to be observed in this respect includes the purpose for the foreign legal structure, the residence state of the foreign legal structure, the foreign substance level and its effective tax rate.

*For further information or advice concerning the Belgium 'Cayman Tax' or any other Belgium tax matter, please contact Kurt De Haen at **kurt.dehaen@pkf-vmb.be***

Personal tax benefit: Equity investment in Belgium start-up business

The New measures to support small and medium-sized enterprises ('SMEs') were introduced into Belgium tax law in 2015. In particular, to support Belgium start-up businesses that may face a cash flow or funding gap, a tax incentive (tax shelter) was created whereby a Belgium or foreign tax resident (natural person) who provides additional funds by way of an equity investment in the Belgium start-up business will be entitled to a Belgium tax credit. The tax shelter rules apply to an equity investment made from 1 July 2015 either directly into the start-up business or indirectly through a recognised start-up fund established in the EEA.

If an equity investment is made in a qualifying 'micro-company' the tax credit is 45% of the invested amount, otherwise, if made in a 'SME' it is 30%. It should be noted however that the personal tax credit relief will only apply if the following conditions are satisfied:

(1) The start-up business must be a Belgian or EEA tax resident company or must have a permanent establishment in Belgium or the EEA;

(2) A director of the start-up business cannot personally make the tax shelter investment (note this does not apply to the spouse, children or close family members of a director);

(3) If the tax shelter investment exceeds 30% of the start-up business' statutory capital, the excess investment is not eligible for Belgium personal tax relief;

(4) The equity investment attracting the tax shelter credit relief is limited to EUR 250,000 (maximum) of the start-up business's statutory capital;

(5) Each investor can make an annual tax shelter investment of EUR 100,000 (maximum);

(6) The tax shelter investment should be fully paid-up in cash;

(7) From the time of the equity investment and for the next 48 months, the start-up business:

    i) Cannot be a management company, real estate company, patrimonial company, investment company, treasury company or finance company;

    ii) Cannot be used to fund a dividend distribution, to grant a loan or to buy shares;

    iii) Cannot face insolvency issues;

(8) In a prior financial year the start-up company must not have distributed a dividend or made a capital reduction; and,

(9) The start-up company cannot be quoted on a stock exchange.

The shares of the start-up business (equity investment) should be retained by the investor for at least four years, except in case of death, otherwise, a recapture rule applies on a monthly basis.

Please note, due to recent changes in Belgium tax law, crowdfunding loans granted by natural persons to start-up businesses are encouraged.

PKF Comment

In summary, the new Belgium tax rules encourage equity investments in start-up businesses and are highly welcomed. It should be noted however that there are various conditions which must to be complied with and, therefore, before making any investment decision to benefit from the tax shelter personal tax benefits, each individual should carefully reflect as to whether the conditions are manageable or not.

For further information or advice concerning the personal tax benefit arising from an equity investment in a Belgium start-up business, or any other matter concerning Belgium tax, please contact Kurt De Haen at ***kurt.dehaen@pkf-vmb.be***

Belize

General Sales Tax – new GST agent list published

On 30 November 2015 the Department of General Sales Tax ('Belize Tax Authority') published a list of over 3,000 GST agents detailing their name and address. In addition, GST return forms can now be submitted online and the Department of General Sales Tax and Belize Bank now offer a GST online payment service.

The General Sales Tax (GST) rate is 12.5% and it has been in operation in Belize since 1 July 2006. GST is in essence a value added tax, with tax becoming payable at each stage in the supply chain and with tax incurred on inputs being recoverable by offset against output GST (the tax charged by a business to customers on taxable supplies).

For GST purposes, "business" has a very wide meaning and can include activities on which no profit is made. "Taxable supply" is a supply of goods and/or services made in the course or furtherance of any business. Therefore, where a supply is not specifically exempted, it will be considered a taxable supply. Exempt supplies of goods and services include:

- Some financial services and gambling supply;
- Some supplies of goods and services by an educational institution within the meaning of the Education Act;
- Medical, dental, hospital, optical and paramedical services, other than veterinary services and cosmetic surgery;
- Supply of residential accommodation or accommodation in a hotel or similar establishment;
- Public postal services, domestic public transport of passengers, lease of aircraft and maintenance services in connection with the supply of public air transport;
- International transport of passengers or goods;
- Some supplies of services provided to diplomatic missions, international and regional organizations; and,
- Goods and services provided to the Government of Belize.

Providers of exempt goods and services are not allowed to charge GST to customers and cannot recover any GST paid on inputs.

Taxable supplies may be zero-rated, chargeable at 0% tax, or standard-rated chargeable to tax at a rate of 12.5%. Zero-rated items include:

- Exported goods and services;
- Some food items for human consumption, water supply (other than bottled water) and some medicines and medical supplies for human use;
- Some items and supplies for use in education;
- Some supplies connected with agriculture, livestock, birds and fish, crustaceans and molluscs.

Items not specifically exempted or zero-rated are considered to be standard-rated.

PKF Comment

The administration of GST has become increasingly more efficient with online GST return submissions and online payments now possible.

*If you would like further information on Belize GST, or advice on any Belize tax matter, please contact Jose A Bautista at **jbautista@pkfbelize.com***

China

Updated foreign investment guidance catalogue

The On 17 September 2015, China's State Administration of Taxation ("SAT") released a discussion draft 'Implementation Measures of Special Tax Adjustments' (the 'Discussion Draft'), which will escalate its transfer pricing ('TP') practice and anti-tax avoidance regulations to a new era. The public consultation on the Discussion Draft ended on 16 October 2015 and the official version is expected to be published in the near future. The Discussion Draft was issued just before the public release of the '2015 Deliverables' under the G20/OECD Base Erosion and Profit Shifting ("BEPS") initiative.

To catch up with the best international practice and protect tax revenue in China, SAT has been actively participating in BEPS discussions with other member countries, and the recommendations contained under the 15 Action Plans of the 2015 Deliverables are largely followed by, and localised in, this 50-page Discussion Draft, which will serve as the most comprehensive guide for transfer pricing and anti-avoidance practice to date by including salient international tax subjects, such as Controlled Foreign Corporation ("CFC") legislation, Thin Capitalisation, and General Anti Avoidance Rules ("GAAR").

We can summarise the major highlights of the Discussion Draft as follows:

- Transfer Pricing disclosure is extended to global operations: Chinese subsidiaries of multinational corporations ("MNCs"), when preparing their annual contemporaneous TP Documentation ('TPD') in the future, could be required to disclose the group's foreign operations and the tax position in each operating jurisdiction. Under the new three-tier disclosure hierarchy and the Country-by-Country reporting requirement, the emphasis and coverage of reporting, based on value creation analysis, will be extended from a domestic level to the whole group level. Such additional disclosure requirements will impose more onerous work involving the preparation of related party transaction forms as part of the annual corporate income tax filing obligation.

- Further transfer pricing guidelines on intangible assets: The Discussion Draft recommends the Profit Split Method for intangible assets. When assessing the cost allocation basis of an intangible, the China tax authorities will look at the contribution portion of each beneficial group entity to the respective values created during different lifecycles of the intangible assets, spanning the phases of development, enhancement, maintenance, protection and exploitation. Moreover, when a foreign entity is incorporated in a tax haven and merely holds the legal title to an intangible without any other economic contribution, the royalty fee charged to its Chinese related parties will be subject to stringent review by the China tax authorities and the related domestic deduction claim may be potentially disallowed.

- Other international tax concepts: The Discussion Draft further elaborates on CFC rules by introducing the concept of 'attributable income' and a detailed calculation method, which will be used to calculate the deemed profit distribution from an overseas subsidiary to a Chinese parent company upon which 25% corporate income tax will be imposed and set off by a qualified foreign tax credit. Furthermore, under the 'Thin Capitalization' section, the calculation of deductible intercompany loan interest will be revised, and the group cash pooling arrangement will be considered as a related party transaction.

PKF Comment

China is determined to follow and adopt the newest international standards for its domestic anti-tax avoidance regime and tax transparency. MNCs with operations in China should take actions to review and mitigate the potential tax impacts and risks under the Discussion Draft, especially for those Chinese subsidiaries which exceed the transfer pricing document reporting threshold of related party transactions, i.e., RMB 200 million (approx. USD 31.5 million) for buy-sell income and RM B40 million (approx. USD 6.3 million) for other non-trading income.

If you would like further advice or information on the Discussion Draft and its specific impact, please contact David Cho of PKF Hong Kong at ***davidcho@pkf-hk.com*** *or Dave Deng of PKF Shenzhen at* ***davedeng@pkf-sz.com***

Refinement of super deductions policy: R&D expenditure

Under the Corporate Income Tax Law, China provides pre-tax super deductions of 150% on qualifying research and development (R&D) expenditure actually incurred during the year. Caishui [2015] No.119 (Circular 119) was jointly promulgated by the Ministry of Finance (MOF), the State Administration of Taxation (SAT) and the Ministry of Science and Technology (MST) on 2 November 2015 which refined this super-deduction policy.

Circular 119 provides more details regarding the expanded scope of qualifying industries, allows back-claim applications and simplifies the administrative approval procedures. The Circular formulates a "Negative List" to determine the detailed eligible scope of R&D activities and expands the qualifying R&D expenditure by adding certain types of expenditure such as service fees for external R&D personnel, expert consultation fees, travel and meeting expenses, and insurance premiums for R&D of high and new technology, etc.

PKF Comment

Circular 119 provides more benefits to those enterprises who are engaged in R&D activities and it also resolves a large number of practical issues experienced over the past years. We encourage qualified enterprises to enjoy the new policy.

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

Cyprus

New share capital tax incentive

Effective from 1 January 2015, a Notional Interest Deduction (NID) regime on corporate equity has been introduced whereby a notional amount of interest is allowed as a tax deduction based on the level of a company's new share capital. The NID is a means of encouraging the introduction of equity capital into corporate structures and aims to remove any distortions between equity and debt financing and produce a level playing field since both funding options will be entitled to receive a tax deduction.

The NID is deducted in the annual tax computation of the calendar year in which the equity is introduced. Broadly, the NID is considered as an interest expense and subject to the same limitation rules as interest.

The NID rate is based on a prescribed 'reference interest rate' which is based on the rate of the 10-Year Government Bond coupon yield plus a margin of 3%. New share capital refers to share capital (and share premium) issued after 1 January 2015. Please note, both specific and general anti-abuse provisions apply to avoid abuse of NID claims.

PKF Comment

*The tax incentive is aimed at encouraging equity investment in companies by providing a tax deductible component similar to that of debt financing interest. For further information or advice concerning Cyprus tax issues, please contact Nicholas Stavrinides at **nicholas.s@pkf.com.cy***

European Union

Holding companies – CJEU Decision on capital spend VAT recovery

The Court of Justice of the European Union (CJEU) has released its much anticipated decision in the joined cases of Beteiligungsgesellschaft Larentia + Minerva GmbH & Co. KG and Marenave Schiffahrts AG. The cases addressed two areas, namely, the input VAT recovery of holding companies involved in the management of their subsidiaries and the VAT grouping rules and the restrictions imposed by national law.

The CJEU's decision confirmed that input VAT incurred by a holding company in acquiring shares in subsidiary companies, where the holding company involves itself in the management of all subsidiary companies or trades in its own right, is fully recoverable, subject to the normal rules. In this situation, the input VAT does not need to be apportioned between the economic and non-economic activities of the holding company.

However, the CJEU also ruled that if a holding company is only involved in the management of some subsidiaries, it can only recover a portion of the input VAT and a method of apportionment will need to be applied.

In considering whether limited partnerships could be included in VAT groups, the CJEU found that the VAT grouping conditions implemented in Germany (limiting a VAT group to only corporate entities) were too restrictive but pointed out that the provision of the EU VAT Directive on VAT grouping cannot have direct effect allowing taxable persons to then claim a benefit.

PKF Comment

Following this ruling, tax authorities across the EU are likely to update their current practices accordingly, clarifying their stance on the issues. Businesses with EU holding companies will need to carefully review the changes adopted in the relevant EU member states. For further details please contact Luigi Lungarella on ***llungarella@pkf-littlejohn.com***

France

Modification of the special tax regime granted to expatriates

Under Article 155B of the French Tax Code, expatriates can benefit from a special tax regime whereby employees and executives recruited from abroad to work in a corporation established in France can obtain a partial tax exemption on their remuneration. The partial tax exemption applies during the 5 years following the year they commenced work in France and can also include certain income generated on personal overseas assets.

To benefit from this exemption, the individual cannot be a French tax resident at the time he starts to work in France and during the 5 years before the beginning of the work in France. Please note, the French Tax Administration has always refused the benefit of this special tax regime if the employee is recruited during the 5 year period by another French employer or by another French company, even if they belong to the same group i.e. the special tax regime should only apply to a non-resident's new job in France. In addition, an individual will not be able to benefit from the exemption if they are a French tax resident when they obtain the job.

The "Macron Law" (bearing the name of the French Minister of Finance) modifies partially the interpretation of the French Tax Administration, allowing the exemption to apply for employees changing their position within the same company or in a company belonging to the same group during the 5 year period.

PKF Comment

As the French rule has been relaxed, there is now more flexibility for employees and executives from overseas to obtain a special personal tax benefit when coming to France to work. Should you require any further information or advice about the French expatriate tax regime, please contact Hervé Bidaud at ***hervé.bidaux@artemtax.fr***

Non-resident Social Security Tax

By a judgement dating back to 27 July 2015, the French High Administrative Supreme Court aligned its position with the European Court of Justice's view concerning social security tax. Consequently, the High Court established a principle whereby an individual will not be subject to social security tax on income derived from personal assets if the individual is not affiliated to French social security.

This social security tax exemption can be applied to all types of revenue (whether derived from an activity or not) when the individual person is affiliated to a foreign social security scheme, in the absence of affiliation in France. However, please note that this judgment concerns only European Economic Area non-residents.

PKF Comment

All individuals who have paid French social security tax in 2013 and 2014, but should have been exempt under the above rules, can request a refund from the French Tax Administration.

For further information or advice on the French non-resident social security tax or possible reimbursement claims, please contact Hervé Bidaud at ***hervé.bidaux@artemtax.fr***

Germany

Tax Amendment Law 2015: The new corporate group clause

Under German law, a substantial change in shareholders can cause a reduction or complete loss of the tax losses that are available to carry forward and set off against future taxable profits. Where there is a change from 25% up to 50% in shares, the tax losses available to carry forward are proportionately reduced in line with the changes in the shareholding. If however, there is a change of more than 50% of the shares, the tax losses are lost completely.

There is however an exception to this rule where the change in ownership is 'within' a group. The exception is provided by a 'corporate group clause' which prevents tax losses being forfeited in the event of a detrimental change in ownership and preserves them under intercompany restructuring transactions on the condition that the same person holds directly or indirectly 100% of the shares of the transferring and receiving legal entity.

Under the corporate group clause, where the shareholding of a single person or company is 100%, the tax losses are not restricted in any way and available to carry forward in full. The corporate group clause is particularly useful to preserve tax losses where, for example, the shares of a subsidiary are transferred from the parent to another subsidiary or vice-versa.

Please note, the new version of the corporate group clause explicitly includes "commercial partnerships" as a buyer, seller or as a direct or indirect party of the transferring or receiving legal entity. In addition to domestic commercial partnerships, comparable foreign commercial partnerships are also eligible to hold the position as the head of a group. This rule does not apply however if new shareholders or non-group shareholders are involved.

PKF Comment

Pure intra-group restructuring, such as economically or organisationally required transactions, does not cause a demise in the tax losses available to carry forward (the economic and organisational measures should stand in the foreground), notably where 100% ownership is maintained. It should however be noted, that old cases regarding the corporate group clause are on trial (legal proceedings are pending at the German Federal Fiscal Court). If the regulation is to apply to old cases following the ruling of the German Federal Fiscal Court, one needs to check if a retroactive tax refund claim can be made towards the tax authorities.

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

Recently published: Agreement between Germany and Switzerland not binding for taxation of severance payments

In 2010, the tax authorities of Germany and Switzerland concluded an agreement on the taxation of severance payments. The agreement was based on Article 26 par. 3 of the Double Taxation Treaty between the Germany and Switzerland, and had the intention to complement the rules in Article 15 of the Double Taxation Treaty.

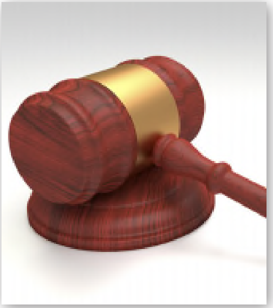
With respect to severance payments which are paid as a compensation for the loss of employment, the agreement provides that the taxation right is allocated to the state where the work has actually been carried out. In contrast to that, according to the wording of Article 15 of the Double Taxation Treaty, the taxation right would be allocated to the state where the individual is resident at the point in time when the severance payment is actually paid to him.

In the underlying court case, the individual had changed his residence from Germany to Switzerland before the payment. Based on the agreement, Germany claimed the right to tax the severance payment as the state in which the work has actually been carried out. The Federal Tax Court decided in June 2015 however (although the decision has been published recently) that the agreement between

Germany and Switzerland has not been properly enacted and was not therefore binding for German tax courts. Consequently, the taxation right of the severance payment has to be determined only based on Article 15 of the Double Taxation Treaty, and not based on the (additional) agreement.

PKF Comment

The decision of the Federal Tax Court does not only affect the additional agreement with Switzerland but extends to similar agreements concluded with other countries on the taxation of severance payments (Belgium, UK, Luxemburg, The Netherlands and Austria).



The German tax authorities however are not likely to apply the judgment of the Federal Tax Court generally i.e. to all "open" cases and cases coming into existence in the future. Instead, it is expected that they will apply the judgment in isolation and only to the particular case in question.

*This consequence of this means that it will unfortunately be necessary to bring comparable cases before a tax court in order to challenge the position being adopted by the German tax authorities in giving precedence to the additional agreement concluded with the tax authorities of another state which overrules, and is in conflict with, the respective Double Taxation Treaty. For further information or advice concerning this, or any other German tax matter, please contact Thorsten Haake at **thorsten.haake@pkf-fasselt.de***

Guyana

National insurance contribution is tax-deductible

From the Year of Assessment 2016, a Guyana taxpayer will no longer have tax levied on his or her national insurance contributions but may exclude these from his or her taxable income. The amount of each taxpayer's annual national insurance contribution will depend on their respective level of earnings, although a wage/salary ceiling applies.

PKF Comment

*Previously, a taxpayer could only claim a standard deduction of GYD 600. This new rule is therefore more beneficial and should result in a net increase in the disposable income of all workers. Should you require any advice or further information on the above or any assistance with any Guyana tax, or tax related matter, please contact Harry Narine at **guyana@pkf.com***

Hungary

Introduction of a new taxpayer qualification system

From of 1 January 2016 a new taxpayer qualification system is introduced by the Hungarian Tax Authority which automatically classifies a taxpayer as either risky or reliable based on information which is available on the last day of the current quarter.

To be considered 'reliable' a taxpayer must meet all ten conditions listed in the Hungarian Act on the Rules of Taxation. If a taxpayer fulfils all the conditions - which basically means they are obeying the law - they will receive several benefits. These include lower penalties (50% of the general rate) relating to incomplete or missed filings and tax underpayments, receiving VAT refunds within 45 days as from 1 January 2017 and within 30 days from 1 of January 2018 and providing an automatic, interest-free instalment option for tax liabilities under HUF 500,000 (approximately EUR 1,600).

Alternatively, if a taxpayer is categorised as 'risky' they will appear on either the list of:

- Delinquent taxpayers;
- Taxpayers with a substantial amount of tax debt;

- Taxpayers who employed an undeclared work-force; or,

- Taxpayers which have been the subject of repeated business closures by the Tax Authority.

'Risky' taxpayers suffer several disadvantages, such as:

1) Having to wait longer for VAT refunds - 75 days as of 1 January 2016;

2) Having a minimal rate for default and tax penalties of at least 50% of the general rate;

3) Having the maximum amount of the default penalty being 150% of the maximum tax penalty rate of the general taxpayer;

4) Having late payment interest calculated at 5 times the central bank base rate (which is only 2 times this rate in case of the general taxpayers); and,

5) Having tax inspections and/or audits by the Tax Authority extended by 60 more days.

PKF Comment

The aim of the new regulation is to enhance the tax compliance (with the regulations and law) of taxpayers by providing benefits where a taxpayer is deemed compliant i.e. 'reliable' and various disadvantages where a taxpayer is deemed 'risky' and therefore has poor tax compliance.

This is likely to prompt taxpayer's to revise their tax risk management strategies and ensure greater compliance with the tax document filing and payment obligations.

*For further information or advice concerning the new Hungarian taxpayer qualification system, or advice on any Hungarian tax matter, please contact Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu***

Personal income tax rate reduction

The personal income tax rate in Hungary will decrease from 16% to 15% as of 1 January 2016. This will affect the taxation of various benefits and the calculation of personal income tax and contribution allowances.

PKF Comment

Besides the lower tax rate applying to taxable income, the reduction will have a positive impact on the taxation of fringe and other benefits.

*For further information or advice concerning the personal income tax rate reduction, or any other Hungarian tax matter, please contact Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu***

Luxembourg

Proposed changes to the Tax Law of Luxembourg

Various draft bills intended to amend the Luxembourg Tax Law were recently submitted by the Minister of Finance to the Luxembourg Parliament for approval.

The draft bills are expected to be voted on before the end of the calendar year 2015 and aim to introduce the following amendments into Luxembourg Tax Law:

- The Council Directives 2014/86/EU and 2015/121/EU should be transposed into Luxembourg Tax Law. As a consequence, Luxembourg will no longer exempt dividend distributions from entities qualifying for the EU Parent Subsidiary Directive if such profit distributions are deductible within the hands of the paying entities or if the dividend is derived from a structure which is considered to be abusive within the meaning of the Council Directive 2015/121/EU.

- The existing Luxembourg intellectual property (IP) regime is planned to be repealed from 1 July 2016 with a grandfathering period ending on 30 June 2021. Qualifying IP acquired before 1 July 2016 may still benefit from the current IP regime if the IP is acquired from an unrelated party. Qualifying IP acquired from a related party after 31 December

2015 may not benefit anymore from the current IP regime unless it benefitted from the current Luxembourg IP regime or from a similar foreign IP regime prior to its acquisition.

During the grandfathering period, the Luxembourg Tax Authorities will spontaneously inform relevant foreign tax authorities of the identity of any taxpayer benefiting from the current IP regime in connection with IP rights acquired or created after 6 February 2015. The spontaneous information should be limited to countries with which Luxembourg has concluded a double tax treaty. An amended IP regime that should be compliant with the requirements of the BEPS Action Point 5 is expected to be presented in the coming months.

- The existing tax consolidation regime is planned to be extended to the so-called "horizontal" tax consolidation. Under current Luxembourg tax legislation, a tax consolidation is only possible between a Luxembourg company or permanent establishment and the Luxembourg subsidiaries directly or indirectly owned by that Luxembourg company or permanent establishment. The change proposed by the Bill aims at also allowing the tax consolidation between Luxembourg subsidiaries and permanent establishments of a non-resident company. The tax consolidation continues to be subject to a certain number of conditions.

- Minimum Corporate Income Tax ('MCIT') should be replaced by a Minimum Net Wealth Tax ('MNWT'). The MNWT will be determined based on rules similar to the rules applicable for the determination of the MCIT.

- The net wealth tax rate is planned to be reduced to 0.05% for that portion of taxable net wealth exceeding EUR 500 million. For the portion of taxable net wealth not exceeding 500 million, the Net Wealth Tax will remain due at a rate of 0.5%.

- If a non-resident individual becomes a tax resident in Luxembourg, the acquisition price of substantial shareholdings (i.e. shareholdings exceeding 10% of a company's share capital) owned by that individual at the date of the transfer of his residence to Luxembourg will be stepped up to the fair market value of these substantial shareholdings as at the date of the transfer. The same step up is applied to convertible loans owned by an individual in companies in which he/she owns a substantial shareholding.

- The investment tax credit available for ships which are used in international traffic is also planned to become available for the lessees of such ships.

- The income tax credit for hiring unemployed workers should remain available for another year until 31 December 2016.

PKF Comment

The amendments proposed by the draft bills are expected to come into force in the 2016 tax year, with the exception of the step-up of the acquisition price of substantial shareholdings and convertible bonds owned by an individual upon the transfer of his residence to Luxembourg which should be applicable from the 2015 tax year. In addition, on 24 July 2015, the Luxembourg Parliament approved the agreement between the Government of the Grand-Duchy of Luxembourg and the Government of the United States of America, improving international tax compliance and US information regarding provisions commonly known as Foreign Account Tax Compliance Act ('FATCA').

For further information or advice on the Luxemburg proposed tax law changes, please contact Cédric Mougel at ***CMougel@pkf-hrt.lu***

Mexico

Measures against erosion of the tax base and profit shifting

The 2016 tax reform package was presented to the Mexican Congress on 8 September 2015 and proposed the introduction of new tax provisions, notably, a number of which were in line with the OECD's Base Erosion and Profit Shifting (BEPS) Action 13: 'Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting':

1) Formal requirements to apply the Treaty: When dealing with transactions amongst related parties, the tax authorities may require a taxpayer residing abroad to prove the existence of double (legal) taxation;

2) Non-deductible payments for related parties: Payments made by the taxpayer are not deductible when they may be deductible for a related party residing in Mexico or abroad;

3) Non-deductible payments for foreign companies : Payments to foreign entities that control or are controlled by a taxpayer in terms of interest, royalties or technical assistance, will not be tax deductible;

4) Non-deductible payments to foreign companies: Such payments made within the definition of 'income liabilities' that are applicable for preferential tax regime purposes will not be deductible.

The Mexican tax authority has also introduced three different types of informative tax return for transfer pricing purposes, namely:

1) A Master Informative Return: This provides information concerning the related party transactions of the multinational business group e.g. the group's roles, assets, and liabilities to which the company belongs, including data related to its tax financial position;

2) A Local Related Parties Informative Return: This provides information with respect to the company's roles, assets and risks, as well as inter-company transaction details;

3) A Country-by-Country Information Return for the Multinational Business Group: This provides information with respect to each jurisdiction where each one of the company's participants are located. This return will only apply to groups with consolidated income exceeding 12 billion pesos (roughly EUR 680 million).

PKF Comment

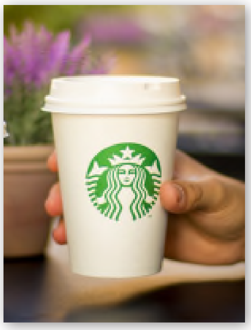
Mexico is actively pursuing non-compliance with these measures to ensure that multinationals, which have avoided such obligations in the past, are brought within the Mexican tax net. This move will provide greater clarity for the better taxation of multinationals in Mexico.

Should you require advice or additional information regarding the Mexican measures against erosion of the tax base and profit shifting, or on any aspect of taxation in Mexico, please contact Carolina Ramirez at ***cramirez@pkfmexico.com***

Netherlands

Dutch government appeals against Starbucks decision

The Dutch government is to appeal against the judgment of the European Commission that the Netherlands has given illegal state aid to the Americancoffee chain Starbucks in the form of improper and selective tax incentives.



By appealing to the European Court of Justice (ECJ), the Dutch government wants to clarify the application of the OECD transfer pricing rules in Advance Pricing Agreements, which provide certainty in advance to taxable companies in the Netherlands about the way their activities are taxed.
In October 2015, the European Commission ruled that the Netherlands wrongly agreed to hold certain activities of Starbucks outside the Dutch tax base, making the company enjoy an unfair tax advantage over other companies.

The Commission believes that in determining the transfer price, market prices should have been used, the Comparable Uncontrolled Price (CUP) method. Because the transactional net margin (TNMM) method was applied in the case of Starbucks, there is, according to the Commission, a selective advantage for Starbucks. The Dutch government, however, argues that the Commission uses an incorrect interpretation of the OECD Transfer Pricing Guidelines and states that the Commission 'unconvincing' shows that the Dutch application is contrary to EU state aid rules.

PKF Comment

For companies around the world this case is really interesting because, although officially the case concerns illegal state aid, in fact, the case is about the application of the OECD Transfer Pricing Guidelines to a limited risk production company. If the Commissioner's Decision is upheld by the European Court of Justice, there will be uncertainty for multinational enterprises because it shows that an advance pricing agreement (APA) can be challenged and cannot provide full certainty.

For further information or advice on any aspect of transfer pricing in the Netherlands, or any other tax matter in the Netherlands, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl***

Introduction of Dutch transfer pricing documentation standards

From 1 January 2016, Dutch taxpayers that are part of an internationally established group will have to comply with the OECD's transfer pricing documentation standards where the group's turnover exceeds Euro 50 million. If applicable, a group file ('Master File') will have to be prepared together with a country file (Local File) for each country where their operations are located. If the international group's turnover exceeds Euro 750 million a country-by-country (CbC) report will also have to be prepared disclosing the tax paid in each country in relation to the respective profit made and people employed. This applies to fiscal years beginning on or after January 2016.

The new obligations apply not only to the group's parent company but also to Dutch subsidiaries of foreign corporations. Dutch subsidiaries can apply a filing exemption only if the parent company adequately files the CbC report for the entire group. On non-compliance with this obligation, sanctions may apply such as imposing a penalty of up to Euro 20,250 or, in extreme cases, even criminal prosecution.

PKF Comment

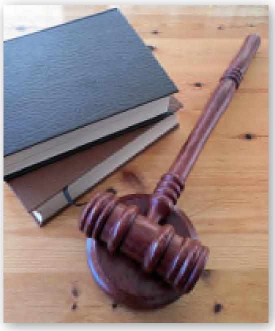
The Netherlands is one of many countries to bring the transfer pricing documentation standards of the OECD's BEPS action point 13 into domestic legislation. Following the new set of standards, companies should be encouraged to review whether their existing transfer pricing documentation meets the new requirements, as well as whether the transfer pricing methods applied to date comply with the group's strategic transfer pricing approach.

This is an area where, in our experience, tax savings can be achieved with good tax planning. For further information or advice on any aspect of transfer pricing in the Netherlands, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl***

Peru

Peruvian Supreme Court sets precedent for Corporate Income Tax

In accordance with the provisions of the Peruvian Income Tax Law, taxable companies must pay monthly tax instalments (advances) that are then offset against their final tax liability at the end of a fiscal year.



The current year monthly instalments are calculated based on the prior year's effective tax rate i.e. by dividing the income tax effectively calculated for the previous fiscal year by the total net income obtained in the same period (the coefficient). This rate, or coefficient, should not be less than 1.5%.

A dispute arose based on the conclusions of a tax audit conducted by the Peruvian Tax Administration (SUNAT), which stated that the amount of annual income tax determined by the taxpayer for the prior fiscal year, and the coefficient calculated for the current fiscal year's instalment payments, were incorrect. The conclusion then drawn was that the instalment payments of the current year were inadequate and a further tax liability was levied together with a default interest penalty. The taxpayer disputed the conclusion and the matter proceeded to Court as Peruvian Supreme Court at case N° 4392-2013. The decision of the Court was as follows:

i) Default interest will be enforceable if prepayments duly calculated were paid only after the legal deadline.

   Hence, prepayments should be deemed correct if they were calculated based on the amounts and concepts included in the original income tax return;

ii) Eventual observations from SUNAT (tax authority) when auditing the results of any fiscal year cannot influence how the next year's prepayments should be calculated.

PKF Comment

This binding precedent is important not only within a framework in which judiciary decisions over administrative issues are considered as a source of law, but also because in the future, the historical methodology of a tax audit carried out by the tax authority (SUNAT) and the influence on future periods will change based on this Court case. This, in turn, will provide more clarity in the way tax audits are conducted and the impact of their conclusions.

For further information or advice on corporate income tax, tax planning and tax litigation in Peru, please contact Ernesto Cordova at ***ecordova@pkfperu.com***

Romania

A new Fiscal Code for 2016

On 1 January 2016 a new Fiscal Code will be adopted in Romania (which was written to be in line with EU Directives and jurisprudence). The main provisions are set out below:

- The tax applying to a dividend distributed to a Romanian private or legal person will be reduced from 16% to 5% commencing 1 January 2017;
- The definition of 'deductible expenses' (for the computation of the taxable income) is amended to be more extensive and comprehensive. From 2016, the deductible expenses will be considered those incurred for the purpose of an economic activity (currently the expenses are considered deductible if they are performed for the purpose of obtaining taxable income, a list of such expenses is included in the Fiscal Code);
- For research and development (R&D) activities, the Fiscal Code allows an additional deduction of 50% of the eligible R&D expenses in calculating net taxable income. Such deductions are not re-computed if the object of the R&D project is not fulfilled;
- Income tax applying to small enterprises will be reduced from 3% to 1% in the set-up year, subject to meeting certain conditions;
- The VAT rate will be reduced from 24% to 20% on 1 January 2016 and to 19% on 1 January 2017;
- The VAT rate will be reduced from 9% to 5% with respect to supplies of school books, newspapers, magazines, and in addition, for services regarding access to castles, museums, memorial houses, cultural events, zoo, botanical gardens, sport events, cinemas, etc.;
- Simplification measures (the reverse charge mechanism) will apply to supplies of buildings (or part of a building) and land, if taxable by law or by option. Temporary simplification measures (until 31 December 2018) will also apply to supplies of mobile phones, PC tablets, laptops, game consoles and devices with integrated circuits (e.g. microprocessors), under the condition that both the supplier and customer are registered for VAT purposes;
- The transfer of an asset, or part of an asset, will not qualify as a supply of goods for VAT purposes if the recipient of the asset is a taxable person established in Romania;
- Local tax rates are amended to reflect the difference between residential and non-residential buildings.

PKF

PKF Comment

Taxpayers should carefully analyse the new tax law to understand its impact on their business and be prepared for both opportunities and pitfalls. For further information or advice concerning the new Romanian fiscal code or any other matter concerning Romanian tax, please contact Alina Teodora David at ***alina.david@pkffinconta.ro***

Serbia

New amendments to the Law on Excise Duties adopted

On 24 June 2015, the Serbian Parliament adopted new amendments to the Law on Excise Duties. The most important amendment concerned the introduction of new products on which Excise Duty is calculated and included the following:

1) Electrical energy for final consumption;

2) Liquid for filling electronic cigarettes; and,

3) Tobacco products which are heated in use but not burned.

A 7.5% Excise Duty is introduced on electrical energy for final consumption and RSD 4 (approx. EUR 0.03) per millilitre on liquids for electronic cigarettes.

The Law became effective eight days after it was published in the Official Gazette, on 3 July 2015, except for the amendment concerning the electrical energy for final consumption, which became effective from 1 August 2015.

PKF Comment

Excise Duty together with VAT are one of the main sources of public revenue which contributes to the Budget of the Republic of Serbia.

In addition there are two important reasons for the adoption of these amendments, namely:

1) The amendments to the Excise Duties Act will support the arrangements between Serbia and the International Monetary Fund (IMF) in the field of fiscal consolidation; and,

2) They will harmonise the Serbian laws with the EU laws, notably, with Council Directive 2003/96/EC of 27 October 2003, concerning restructuring the community framework for the taxation of energy products and electricity.

This is a positive step for the economy of Serbia although it has to be appreciated that the new Excise Duty on electrical energy (for final consumption) will increase the costs of legal entities that are doing business in Serbia. Should you require any further information on the Serbian Excise Duty changes, or any advice concerning Serbia taxation, please contact Mićun Žugić at ***micun.zugic@pkf.rs***

Amendments to the Law on Value Added Tax (VAT)

The Law on VAT Amendments came into force on 3 October 2015 and will be applied from 15 October 2015. The amendments allow a foreign entity to register for VAT in Serbia by appointing a tax proxy. New rules for the supply of electricity, natural gas, heating and cooling energy have been introduced concerning the place of supply, the time when the VAT liability arises and VAT exempt importation. Other notable changes include:

- Assets transferred in full, or in part, are not subject to VAT under Article 6 of the VAT Law ('as a going concern'), however, if the requirements of Article 6 are not fulfilled within 3 years from the date of the property transfer, the acquirer will then have a liability to charge VAT. Where the general requirements for the deduction of input VAT are satisfied by the acquirer they have the right to deduct the VAT charged as input VAT. This rule does not apply to equipment and buildings used for performing a business activity and investments into buildings used for performing the business activity.

- A recipient of goods and services in the field of construction has the obligation to charge VAT even when it does not have the investor’s status i.e. when the supplier does not have the status of the contractor in accordance with the regulation on planning and construction.

- When services are provided electronically by a foreign entity, which does not have an obligation to register for VAT in Serbia, to an entity or individual which is not a VAT payer, the obligation of charging VAT lies with the entity which, in the name and for the account of the foreign entity, collects consideration for that supply.

PKF Comment

The amendments to the Law of VAT introduce significant changes into the Serbian VAT system and include new rules governing the VAT treatment of gas supplies, electricity supplies, and supplies for which the deduction of input tax is not allowed. In addition, a mandatory VAT registration for foreign entities has been introduced, existing VAT schemes expanded and new special VAT schemes introduced for certain types of supplies. The changes also clarify many existing VAT rules and have been welcomed.

For further information or advice concerning VAT in Serbia, or advice on any Serbia tax matter, please contact Mićun Žugić at ***micun.zugic@pkf.rs***

Spain

Transfer pricing focus on Spanish subsidiaries

The Spanish Tax Authorities have launched a special transfer pricing audit campaign at the request of the European Union which is aimed at enhancing the effectiveness and efficiency of Spanish transfer pricing tax audits.

Spanish subsidiaries of international groups are being requested to provide transfer pricing documentation in accordance with the new transfer pricing documentation requirements outlined in Spanish Tax Law which are based on the OECD’s base erosion and profit shifting (BEPS) initiative - Action Plan 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting.

PKF Comment

Against the background of the increased transfer pricing documentation requirements it is strongly recommended that international groups with subsidiaries in Spain evaluate their transfer pricing policies together with a review of the transfer pricing documentation requirements to be fulfilled based on the particular circumstances of each company.

For further information or advice concerning the Spanish transfer pricing regime, please contact Álvaro Beñarán at ***abenaran@pkf-attest.es*** *or Isidro Brevers at* ***ibrevers@pkf-attest.es***

Swaziland

Swaziland to adopt ‘ASYCUDA’ electronic Customs Declaration

A Customs Declaration is used to control the movement of goods in and out of the country and is the base document for the calculation, and consequently collection, of duties and taxes as well as the main source of national trade statistics.

Developed by the EU, and considered to be the ‘International Standard’ by the World Customs Organization (WCO), ‘ASYCUDA World’ is a new system for the fully paperless electronic submission of Customs declarations whereby documents for the import and export of goods are significantly reduced.

The system is planned to be rolled out in Swaziland in February 2016.

The benefits of the new ASYCUDA World system are that it will:

- Provide a state of the art information and communication technologies (ICT) system based on the latest version of ASYCUDA with the aim of increasing the operational capacity of the Swaziland Revenue Authority (SRA) and simplifying the trading environment based on international standards and best practice;

- Facilitate and promote the “Doing Business” rankings of Swaziland;

- Promote coordinated procedures amongst Government Agencies;
- Adopt international standards and best practices;
- Promote the involvement of stakeholders; and,
- Promote e-Customs and e-Government.

PKF Comment

With the implementation of the new ASYCUDA World system, the Customs processing time for the importation and exportation of goods in Swaziland will be significantly reduced. This will also help simplify, harmonise, standardise and modernise the trade procedures. The automated processes will incorporate simplified customs clearance and a coordinated border management system. This is a very welcomed improvement to assist import/export businesses in Swaziland and we are looking forward to the implementation of the ASYCUDA system in 2016.

For further information in relation to the new ASYCUDO World system, or any information or advice with respect to Swaziland taxation, please contact Thabsile Ntshalintshali at ***thabsile@pkf.co.sz***

United Kingdom

UK Tax Authority consultation on Patent Box reform

A United Kingdom Patent Box regime was introduced in April 2013 to reward UK companies that exploit patented products and processes, and effectively provide a 10% tax rate on such profits.

On 22 October 2015, the UK tax authority (HM Revenue & Customs or HMRC) published a consultation document, 'Patent Box: substantial activities'. The document is HMRC's response to the OECD's Base Erosion and Profit Shifting (BEPS) Action 5 report. The report stipulated that access to beneficial rates of taxation for the exploitation of intellectual property (IP) should only be available to those entities undertaking substantial activities in respect of the generation of the income. HMRC propose that the research and development (R&D) activity involved in creating the underlying IP should be used as a proxy for substantial activity ('the nexus approach').

The consultation document sets out detailed revised steps for claiming the Patent Box relief based on the new nexus approach. It is proposed that 'grandfathering' provisions will apply to permit companies to continue to apply the current Patent Box rules where they elect into the regime prior to 30 June 2016. These provisions will apply to profits generated in periods until 30 June 2021, but only in respect of intellectual property (IP) which exists as at 30 June 2016. Therefore, companies may be required to make separate claims under the current and new rules where IP is created after 30 June 2016.

PKF Comment

The new rules will require companies to be able to track income and expenditure, including R&D costs, at the level of specific IP. Clearly, this imposes a significant burden on companies, especially those which may not have detailed records of R&D expenditure by reference to specific projects.

The grandfathering provisions should lessen the impact of the new rules on companies and allow time for new record keeping procedures to be put in place. The provisions could, potentially, impose an additional burden on companies by requiring claims to be made both under the current and new rules. Where this requires profits from the sale of single items to be split between the constituent underlying IP, the calculations may involve significant complexity. The new rules may also restrict the value of the Patent Box relief. In particular, in group situations where the R&D may be carried out by a different company to that which exploits the resultant IP. If such companies have not elected into the Patent Box, they should consider doing so before 30 June 2016; firstly to ensure that they do not forego any historical entitlement to the relief, and secondly, to be able to secure the benefit of the grandfathering provisions.

For further information or advice in relation to the UK *patent box, or any other UK tax matter, please contact Robin Clegg at* ***robinc@PKFCooperParry.com*** *or Stephen Bryan at* ***StephenB@PKFCooperParry.com***

Zambia

Budget proposals for 2016

The Zambia Budget for 2016 was presented to the National Assembly on 9 October 2015 and a summary of the budget tax proposals are set out below.

It was proposed:

- To extend the ten year carry forward period of tax losses applicable to thermal electric and hydro power generation, to wind and solar electric power generation;
- To increase the capital allowances available on implements, machinery and plant (for use in the generation of electric power) from 25% to 50%;
- To reduce the property transfer tax rate from 10% to 5%;
- To introduce a non-final withholding tax on management and consultancy fees that are paid to residents of 15%;
- To only subject the coupon income portion of government bonds to 15% withholding tax (i.e. the discount income component of interest on government bonds will be exempt from withholding tax);
- To increase the period for claiming input VAT from two years to four years in the electricity generation sector;
- To remove VAT on non-life insurance and introduce a 3% levy on all insurance premiums;
- To reduce the Excise Duty rate on clear beer from 60% to 40%, increase it on plastic bags from 10% to 20% and increase the Specific Excise Duty rate on cigarettes from ZMW 90 per mille to ZMW 200 per mille.

Various proposals were made with respect to the rate of Customs Duty on several items, notably, it is proposed to increase the Customs Duty rate on motor vehicles (except on buses, trucks, hearses and ambulances) to 30%. No changes to personal taxation have been announced.

PKF Comment

In addition to the changes in tax rates mentioned above, a different due date for the filling of manual provisional income tax returns of 5 March has been proposed (with electronically filed returns being due on 31 March) and similarly, a different due date for the filling of manual annual income tax returns of 5 June has been proposed (with electronically filed returns being due on 30 June). Notably, this measure is intended to encourage the electronic filing of tax returns.

For further advice or information on the proposed tax changes in Zambia, or advice on any Zambian tax matter, please contact Mohammed Lunat at ***malunat@zm.pkfea.com*** *or Simon Njelemba at* ***snjelemba@zm.pkfea.com***

2015 December

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December 2015

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