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PKF worldwide tax update

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LOCAL KNOWLEDGE, GLOBAL EXPERTISE

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Contents

Croatia
Reduced VAT rates for energy, gas and foodstuffs

Ecuador
Temporary reduction of the VAT rate from 12% to 8% to promote tourism sector

France
Recent case law and new tax treaties

Germany
Reorganisation Tax Act also applicable to third-country companies

Capital repayments to German shareholders by corporations from non-EU countries

Recent decisions on international taxation by the Federal Tax Court (Bundesfinanzhof)

Ghana
New tax legislation introduced

Recent case law

Italy
No work permit needed for remote workers to enter Italy

Good news for British impatriates

Netherlands
Countering mismatches in the application of the arm's-length principle

Tightening of the Dutch earnings stripping rule

Portugal
Recently enacted amendments to the transfer pricing regime

South Africa
South African Revenue Service (SARS) provides additional guidance on issues surrounding intra-group loans

South Korea
Introduction of tax support for SMEs

Spain
Procedure for the transposition of EU Directive 2021/514 (DAC 7) into domestic legislation has been initiated

Switzerland
The citizens of Switzerland reject planned abolition of stamp duty on companies

Taiwan
CFC rules to take effect from tax year 2023

United Arab Emirates
UAE tax updates

United Kingdom
COVID-related tax relief from April 2022

Employment allowance for National Insurance increase

Off-payroll working rules (IR35)

United States
US state and local tax – protections of Public Law 86-272 no longer apply to certain fact patterns in California

Welcome

In this second quarterly issue for 2022, the PKF Worldwide Tax Update newsletter again brings together notable tax changes and amendments from around the world, with each followed by a PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with 480 offices, operating in over 150 countries across our five regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

In this issue featured articles include discussions on:

- (EU) VAT updates in Croatia and Ecuador
- Tax case law in France, Germany and Ghana
- Internationally Mobile Employees in Italy
- Recent comprehensive tax changes in the United Arab Emirates
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in the Netherlands, Portugal, South Africa and Taiwan.

We trust you find the PKF Worldwide Tax Update for the second quarter of 2022 both informative and interesting and please do contact the PKF tax expert directly (mentioned at the foot of the respective PKF commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at www.pkf.com/pkf-firms.

Croatia

Reduced VAT rates for energy, gas and foodstuffs

The provisions of the Law on Amendments to the Law on Value Added Tax (NN 39/22) came into force on 1 April 2022.

Croatia applies a general VAT rate of 25% and two reduced rates of 13% and 5%. However, with the global trend of price movements and rising inflation in 2022, Croatia has adopted a package of measures to mitigate price growth. Within this package, the VAT rate was reduced from 25% to 13% and 5% for certain product groups.

The following provides an overview of the rate changes:

A reduced rate of 5% applies to the following products:	A reduced rate of 13% applies to the following products:
• All kinds of bread • All kinds of milk • Books for professional, scientific, artistic and cultural education • Medicines approved by the competent authority • Medical equipment, aids and other devices related to the treatment of disabilities • Daily newspapers • Fresh fruit and nuts • Fresh poultry eggs • Baby food • Edible oils and fats • Butter and margarine • Fresh or chilled meat and edible products from slaughterhouse products • Fresh or chilled sausages and similar meat products • Live fish • Fresh or chilled crabs • Fresh or chilled vegetables, roots and tubers • Seedlings and seeds • Fertilisers and pesticides • Animal feed • Tickets for concerts, sports and cultural events	• Natural gas and heat from thermal power plants • Firewood • Pellets • Briquettes and wood chips • Menstrual needs products • Accommodation service in commercial catering establishments • Newspapers and magazines • Children's car seats and baby nappies • Water supply (public water supply and sewerage only) • Electricity supply • Public refuse collection • Urns and coffins • Services and related copyrights of writers, composers, performers and phonographs • Preparation and serving of meals and desserts inside and outside restaurants

Natural gas will exceptionally be taxed at a reduced VAT rate of 5% in the period from 1 April 2022 to 31 March 2023.

In line with global market changes and rising energy prices, tax breaks seek to protect households, businesses and farmers facing higher prices.

As taxpayers themselves decide on how to steer the difference created by the reduction in the VAT rate, a reduction in the tax burden does not necessarily mean a reduction in prices.

BACK

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Croatian taxation, please contact Diana Antičić at **diana.anticic@porezni-savjetnik.com** or call **+385 91 4000 333**.

Ecuador

Temporary reduction of the VAT rate from 12% to 8% to promote tourism sector

The president has approved the reduction of the general VAT rate from 12% to 8% on tourist activities defined in article 5 of the Tourism Law, for up to a maximum of 12 days a year during holidays or weekends, whether consecutive or not, either at a national or regional level.

The reduced rate applies from 26 February until 1 March 2022 and from 15 April until 17 April 2022.

Executive Degree No. 339 was gazetted on 31 January 2022.

BACK

PKF Comment

With this measure the government seeks to boost the local economy, and contribute to its development, which was affected by the aftermath of the COVID-19 pandemic, in particular domestic tourism. This encourages the consumption of domestic goods and services by local and foreign tourists visiting different places within the national territory.

If you believe the above may impact your business or require any advice with respect to Ecuadorian taxation, please contact Manuel García at **mgarcia@pkfecuador.com** or call **+593 4 236 7833**.

France

Recent case law and new tax treaties

Refund of foreign tax credit on dividends

In a judgment of 27 January 2022 (No. 20LY00698), the Administrative Court of Appeal of Lyon ruled that parent companies may claim to have their tax credit derived from tax paid abroad in respect of dividends paid against their French tax, within the limits of tax treaties. To date, dividends received from a foreign subsidiary are subject to taxation in France up to a 'share of expenses' of 1% or 5% of their gross amount, without deduction of any tax credit corresponding to foreign withholding tax. This case law would need to be confirmed but claims may be filed for 2019 (before 31 December 2022) and subsequent financial years in order to obtain a refund of corporation tax paid.

PE – digital

In a decision dated 11 December 2020 (Valueclick case), the French Supreme Court set the framework – in the context of the digital economy – for the interpretation of the concept of a permanent establishment (PE) based on the dependent agent test for the purpose of the France–Ireland double tax treaty.

With its decision of 8 December 2021, the Court has now ruled that Valueclick France is to be characterised as a French PE of Valueclick International for corporate income tax purposes and a French fixed establishment (FE) for VAT purposes, but that Valueclick International did not perform a hidden activity and is consequently not subject to the application of the extended statute of limitations and the resulting 80% penalty.

New tax treaties

France–Colombia

Signed on 25 June 2015, the treaty generally follows the OECD Model (2014). There was no treaty in place between France and Colombia before so domestic withholding tax rates applied.

The maximum rates of withholding tax under the treaty are:

- 15% on dividends, reduced to 5% if the beneficial owner is a company (other than a partnership) holding directly at least 20% of the capital of the dividend-paying company;
- 10% on interest and royalties.

Provisions of the treaty for income tax, income tax withholdings and other taxes that arise after the entry into force have effect from tax year 2023.

France–Belgium

The new tax treaty between France and Belgium enters into force in 2023. The concept of tax residence, the rules for the elimination of double taxation and the treatment of real estate income are updated.

In addition, the new treaty incorporates new elements such as the tax on real estate wealth and the general anti-abuse clause.

Management package – recent case law

Specific legal regimes of incentives are in place in France (free shares/stock options) for employees and directors that are attractive with regard to personal income tax and social security contributions. Special attention should be paid to other incentives that may be implemented outside of these legal frameworks in view of recent case law (13 July 2021 and 28 January 2022).

Until 13 July 2021, case law essentially held that, in order to preserve the taxation of capital gains, management packages had to be subscribed to or acquired at market value so that the manager in question made a real investment subject to a genuine risk of loss.

Ruling on gains derived from the allocation of warrants ('BSA' or 'option on shares'), the French Supreme Court considered that these gains should be taxed as wages and salaries, and not as capital gains from the sale of shares, where such earnings are essentially derived from the performance by the person concerned further to his or her duties as a manager.

BACK

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to French taxation, please contact Isabelle Vendeville at **iv@vendevilleavocats.com** or call **+33 (0)1 80 49 34 34.**

Reorganisation Tax Act also applicable to third-country companies

Until the end of 2021, only EU/EEA corporations could carry out tax-neutral conversions (without disclosing hidden reserves) under the Reorganisation Tax Act. This restriction has now been lifted, allowing tax-neutral conversions of non-EU corporations.

1. Globalisation of the Transformation Tax Act

The main changes at a glance:

- Cancellation of the requirement that the merger must take place between entities of the same third country
- Cancellation of liquidation taxation in the case of departures of corporations to third countries
- Extension of the personal scope of application of the Reorganisation Tax Act, in particular to mergers, demergers (without spin-off) and changes of legal form of corporations with the participation of entities from third countries.

Not covered by the amendments are the transformation of partnerships or contribution cases including spin-offs from corporations. These will continue to be limited to EU/EEA cases.

2. Requirements

The conversion transactions with third country reference can only be tax neutral if the conversion has the structural characteristics of a German conversion. German taxation rights may also not be limited or excluded by the conversion. The conversion must be permitted under the respective national corporate law of the countries involved.

3. Practical cases

1) The third-country company A-Co has a German permanent establishment (PE). A-Co would like to spin off the German PE to B-Co, which is also domiciled in the third country.

   Previously, the tax-neutral spin-off was not possible because the companies involved, being third-country companies, do not fall within the personal scope of application of the Transformation Tax Act. From now on, this is possible in principle if the requirements are met.

2) A-GmbH, which is subject to unlimited tax liability in Germany, owns 100% of the shares in B-Co, which is domiciled in third country B, and in C-Co, which is domiciled in third country C. B-Co is to be transferred to C-Co on a cross-border basis. B-Co is to be merged with C-Co on a cross-border basis.

   Previously, this was only possible in a tax-neutral manner if the merger took place between companies of the same state. A cross-border third-country merger is now also possible.

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PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to German taxation, please contact Daniel Scheffbuch at **d.scheffbuch@pkf-wulf.de** or call **+49 711 69 767 238**.

Capital repayments to German shareholders by corporations from non-EU countries

If a corporation not domiciled in the EU ('third-country corporation') repays nominal capital or contributions not made to the nominal capital to a German shareholder, according to the former view of the German tax authorities it was not possible to make return contributions in a way that was basically neutral in terms of income tax at the level of the recipient. Rather, the payment was considered taxable at the level of the shareholder. The German Federal Tax Court ('Bundesfinanzhof' – BFH) had repeatedly contradicted this. Now with a letter dated 21 April 2022, the Federal Ministry of Finance ('Bundesfinanzministerium' – BMF) instructs the German tax authorities to apply this case law to all open cases. The return of contributions is to be decided upon in the tax assessment of the German shareholder, and a payment in foreign currency is to be valued at the mean buying rate on the day of the outflow. So far, so good; however, the devil is in the detail.

1. Third-country corporation

In principle, the recognition of the case law only applies to corporations that are not domiciled in an EEA state but have unlimited tax liability in another state.

However, the ministry also intends to apply the view to those corporations from Iceland, Norway and Liechtenstein that have not applied to be treated as EU corporations with regard to the repayments mentioned. As a consequence now, apparently shareholders of corporations from Iceland, Norway and Liechtenstein can choose either to file the mentioned application or apply the rules of the new letter.

2. Repayment of nominal capital

In principle, repayments of nominal capital reduce the acquisition costs of the shareholding for the shareholder and are therefore only taxable to the extent that they exceed these acquisition costs. However, if a nominal capital reduction takes place within five years after a nominal capital increase from company funds, the ministry is of the opinion that taxable distributions should be made. However, the decree leaves open how nominal capital created in the course of a conversion is to be treated.

As evidence of a tax-neutral repayment of nominal capital, the shareholder must submit, among other data, the resolution on the reduction/repayment of nominal capital. In addition, other documents, such as resolutions on increases in nominal capital will frequently also have to be submitted.

3. Repayment of contributions not made to the nominal capital

When classifying contributions not made into the nominal capital, the letter requires the observance of the so-called 'sequence of use' for corporate tax purposes, as provided for German corporations. According to this, amounts are first deemed to have been used that lead to taxable distributions at the level of the shareholders (so-called distributable profit), whereby the amount of this distributable profit is to be determined according to foreign commercial and company law and using the foreign commercial financial statements of the third-country corporation for the financial year preceding the distribution. Only to the extent that the payments exceed the distributable profit is there a return of contributions. Therefore, and in simplified terms, a tax-neutral repayment of capital reserves is excluded as long as the profits are retained.

As evidence, the letter requires, among other things, proof of the shareholder's participation, the distribution/repayment resolution and the financial statements of the distributing third-country corporation.

BACK

PKF Comment

The new letter leads to increased certainty on the application of an advantageous part of German tax law. However, the evidence requirements are substantial. Furthermore, the use of foreign commercial financial statements to determine the profits deemed to be distributable in the above-mentioned sense can lead to confusing results, e.g. the recognition of unrealised profits in foreign financial statements would affect that distributable profit even if such a distribution were prohibited under foreign law, although the repayment of capital contribution other than into the nominal capital might not be hindered.

If you believe the above may impact your business or require any advice with respect to German taxation, please contact Lars Heymann at **lars.heymann@pkf-fasselt.de** or call **+49 40 3598006 80** or Dr. Dietrich Jacobs at **dietrich.jacobs@pkf-fasselt.de** or call **+49 40 180401 210**.

Recent decisions on international taxation by the Federal Tax Court (Bundesfinanzhof)

Allocation of assets to permanent establishments without own personnel/ people's functions

Since 2013, Germany generally follows the Authorised OECD Approach (AOA) concerning the allocation of profits as well as assets and liabilities to permanent establishments (PEs). As according to the understanding of the German authorities such allocation must predominantly be based on people functions, they are generally reluctant to attribute profits/assets/liabilities to such PEs to which people functions cannot be attributed (cf. letter by the Federal Ministry of Finance of 22 December 2016, *Federal Tax Gazette* part I 2017, p. 182, item 451).

Against this background, the Federal Tax Court had to rule on the following case: a Danish partnership (apparently with Danish partners) operated a wind turbine in Germany without German personnel of its own but with third-party service personnel instead. The tax authorities argued that due to the first-time adoption of the AOA in Germany on 1 January 2013, the turbine should be re-allocated to the Danish place of management of the enterprise instead of its former allocation to the German PE, thereby entitling Germany to exit-tax the hidden reserves of the wind turbine (passive disjunction – 'passive Entstrickung').

In a recent decision regarding preliminary protection (dated 24 November 2021 – I B 44/21 (AdV)), the Federal Tax Court held that there were severe doubts concerning the above-mentioned position of the German authorities at least for PEs without allocatable people functions. Instead, in such cases at least the assets which give rise to the existence of the PE and which contribute to the activity carried out in such a PE by way of their use therein should be allocated to that PE.

BACK

PKF Comment

In comparable cases, one should consider filing an appeal against a tax notice in order to profit from a potentially favourable decision in the principal proceedings of this case deviating from the above-mentioned position of the German tax authorities.

German wage tax in case of (economic) postings to Germany

According to a recent decision by the Federal Tax Court (dated 4 November 2021 – VI R 22/19), in cases of international intra-group postings of employees to Germany, the receiving German enterprise is the economic employer and is thus potentially liable for German wage tax if

- it bears the economic burden of the employee's salary;
- the activity of the employee is in its interest; and
- the employee is integrated into the work process of the receiving enterprise and is subject to its instructions.

The German enterprise would potentially be liable even if there is no employment contract between the employee and the receiving enterprise, but the employee is regarded as an employee of the economic employer according to general principles.

In the underlying case, the shareholder, CEO and 'Verwaltungsrat' (Board of Directors) of a Swiss corporation (AG) acted as Managing Director (MD) of a German limited liability company (GmbH) as a 100% subsidiary of the AG. The AG had concluded a service contract with the GmbH and received a monthly comprehensive lump sum *inter alia* for its posting of a MD to the GmbH.

The Federal Tax Court did not decide on the case itself but referred it back to the lower court with guidelines for its decision, as it held that the lower court had not collected all relevant facts yet.

- In its guidelines, the Federal Tax Court made it especially clear that under the given circumstances, detailled findings are required in order to determine whether the GmbH had actually borne the employee's salary, as the service contract did not contain an agreement to the effect that the GmbH had to reimburse the AG for the salary paid to the MD.
- Furthermore, the Court stated that under the service contract, the GmbH bore the responsibility and risk of actions by the MD so that it is generally plausible that his acting was primarily in the interest of the GmbH.
- Finally, concerning the integration of the MD into the work process of the GmbH and his being subject to its instructions, the Court also requires detailed factual findings in order to correctly assess the fulfilment of this element.

BACK

PKF Comment

The decision shows the risk for a German enterprise to become liable for German wage tax under special circumstances even if there is no employment contract between it and a (foreign) employee. As a consequence, such cases require both specific attention and advice.

If you believe any of the above may impact your business or require any advice with respect to German taxation, please contact Dr. Dietrich Jacobs at **dietrich.jacobs@pkf-fasselt.de** or call **+49 40 180401 210**.

New tax legislation introduced

Electronic Transfer Levy Act, 2021 (ACT 1075)

The Act imposes a levy of 1.5% on electronic transfers as listed under the Second Schedule as follows:

- Mobile money transfers done between accounts on the same electronic money issuer
- Mobile money transfers from an account on one electronic money issuer to a recipient on another electronic money issuer
- Transfers from bank accounts to mobile money accounts

- Transfers from mobile money accounts to bank accounts
- Bank transfers on an instant pay digital platform or application originating from a bank account belonging to an individual subject to a threshold to be determined by the minister responsible for finance.

Exemptions:

- A cumulative transfer of Ghanaian cedis (GHS) 100 a day made by the same person
- A transfer between accounts owned by the same person
- A transfer for the payment of taxes, fees and charges on the Ghana.Gov system or other government of Ghana designated payment system
- Specified merchant payments
- Transfer between principal, agent and master-agent accounts
- Electronic clearing of cheques.

Recent case law

Two cases are reviewed here:

Perseus Mining (Ghana) Limited vs the Commissioner-General of the Ghana Revenue Authority, in suit number CM/Tax/0515/2021 dated 8 February 2022 in the matter of an objection against an assessment delivered by the Defendant in a letter dated 15 March 2021

This is a ruling by the High Court (Commercial Division) in an application for an objection against a tax assessment in a letter dated 15 March 2021.

The facts of the case are that the Ghana Revenue Authority (GRA) audited the Applicant, Perseus Mining (Ghana) Limited, and assessed it to a tax liability, although the Applicant made an accounting loss. The Defendant arrived at its assessment by re-characterising a hedging transaction between the Applicant and its parent company. The Defendant considered the transaction as not being at arm's length.

The Court declined to grant the Applicant's objection on the following grounds:

1. The Respondent was right to treat the forward sales contract or hedging arrangements as a tax avoidance mechanism and to invoke section 34 of Act 896.
2. There is no abuse of use of discretionary power by the Respondent.
3. The Applicant used two different standards in the payment of royalties to third parties and that meant for the Respondent.
4. The Applicant is unable to discharge the onus placed on it as per section 92(1) of Act 915, as amended.

Seadrill Ghana Operations Limited vs the Commissioner-General of the Ghana Revenue Authority, in suit number CM/TAX/0101/2022 dated 5 April 2022 in the matter of an appeal against an assessment delivered by the Defendant in a letter dated 8 October 2021

This is a ruling by the High Court (Commercial Division) in a Notice of Appeal against a tax assessment filed by Seadrill Ghana Operations Limited against the Commissioner-General of the Ghana Revenue Authority (GRA).

The preliminary legal objection raised by the Commissioner-General of the GRA is upheld and the appeal by Seadrill Ghana Operations Limited struck out as incompetent. Reference was made to the Supreme Court case of *Multi-Choice (Ghana) Limited vs the Commissioner, Internal Revenue Service* (2011)2 SCGLR 789.

Facts:

The facts of the case are that the GRA assessed the Applicant, Seadrill Ghana Operations Limited, to a tax liability. Seadrill Ghana Operations Limited objected to the assessment on 8 October 2021. The Commissioner-General of the GRA also filed on 23 November 2021 an application on notice seeking the Court to strike out and dismiss the tax appeal by Seadrill Ghana Operations Limited pursuant to the inherent jurisdiction of the Court on the basis that this appeal was filed out of time and in contravention of section 44 of the Revenue Administration Act, 2016 (Act 915) and Order 54 Rule 2(1) and (2) of the High Court (Civil Procedure) Rule, 2004 (C.I 47)

Details of correspondence:

Details of correspondence between the Commissioner-General of the GRA and Seadrill Ghana Operations Limited are as follows:

- The Commissioner-General conducted a tax audit on Seadrill Ghana Operations Limited for the period 2012 to 2018 and assessed the latter USD 22,722,849.35 through a report letter dated 8 November 2019.
- Seadrill Ghana Operations Limited, dissatisfied with the report, objected to the assessment in a letter dated 11 December 2019 and paid the objection deposit of 30% of the tax in dispute.
- The Commissioner-General responded in a letter dated 8 July 2020 revising the tax liability.
- Seadrill Ghana Operations Limited, through a letter dated 28 July 2020, sought reconsideration from the Commissioner-General.
- The Commissioner-General further adjusted the tax liability through a letter dated 1 December 2020 to USD 17,948,152.66 titling it as 'Final Tax Audit on Seadrill Ghana Operations Ltd for the 2012 to 2018 Years of Assessment'.

Basis for ruling:

- There was no other objection to the Commissioner-General's tax assessment aside from the letter dated 11 December 2019 for which an objection deposit was made.
- The Appellant's letter dated 8 August 2020 does not constitute an objection to an assessment and no objection deposit was made.
- Any administrative redress ended after the Commissioner-General issued his final report on 1 December 2020.

Seadrill Ghana Operations Limited had 30 days from 1 December 2020 within which to file an appeal to the High Court concerning the final assessment or seek leave to file out of time. However, Seadrill Ghana Operations Limited failed to do that.

PKF Comment

BACK

If you believe the above measures may impact your business or require any advice with respect to Ghanaian taxation, please contact Frederick Bruce-Tagoe at **fbrucetagoe@pkfghana.com** or call **+233 302 221 266**.

No work permit needed for remote workers to enter Italy

Italy, like other European countries, cuts bureaucratic obstacles and allows easier entry of third-country nationals who decide to work remotely in Italy within a fixed time frame.

Highly qualified non-EU workers who are able to work remotely in Italy for a company, even if the latter is not resident in Italy, will only need an entry visa for the specific category, for a duration not exceeding one year.

Once the visa application has been submitted, these non-EU workers, whether employed or self-employed, will be entitled to a residence permit for up to one year and will have to apply for mandatory health insurance in compliance with Italian tax and social security provisions.

The bureaucratic process will be easier due to the fact that it will no longer be necessary to apply for a work permit.

The new measures will enable Italy to attract a higher level of foreign talent and professionals.

BACK

PKF Comment

The new measure will ease the entry of qualified non-EU workers who will no longer need to apply for a work permit.

PKF TCL Group is available to provide assistance to workers and foreign companies to comply with the mandatory requirements related to the Italian social security system.

If you believe any of your clients may be interested in moving to Italy or should you need further information on the above subject, please contact PKF TCL Group Tax Consulting Legal at **b.pollicina@pkf-tclsquare.it** or call **+39 010 81 83 253** (Genoa office).

Good news for British impatriates

The response to the Italian Tax Agency's Interpretation No. 172 of 6 April 2022 allows the extension of the impatriate scheme by a British citizen who had taken advantage of this regime for the five-year period 2016–2020 and had paid the extension access tax.

According to the Italian Tax Agency, the condition for being a British citizen, on 1 January 2021, implies that the principle of non-discrimination under Article 12 of the Brexit Agreement applies.

In addition, Article 24 of the Agreement needs to be taken into consideration which, making reference to EU Regulation No. 492/2011 (on the free movement of workers within the Union), ensures that UK citizens enjoy the same social and tax benefits as national workers.

The Agency has therefore recognised the extension of the benefit for the further five-year period 2021–2025.

In this way, the restriction of some favourable regulations only reserved for EU residents seems to have been overcome, by means of an extensive interpretation which, in relation to the movement of workers, is based on a specific rule of the trade agreement.

BACK

PKF Comment

PKF TCL Group is available to provide assistance to British citizens who wish to move to Italy. If you believe any of your clients may be interested or should you need further information on the above subject, please contact PKF TCL Group Tax Consulting Legal at **b.pollicina@pkf-tclsquare.it** or call **+39 010 81 83 253** (Genoa office).

Countering mismatches in the application of the arm's-length principle

Along with the adoption of the Dutch Tax Plan 2022, the bill 'Combating mismatches in the application of the arm's-length principle' has been adopted recently and implemented as of 1 January 2022.

Based on the arm's-length principle, affiliated companies are to act towards each other as if they were non-affiliated and independent entities, ensuring taxable profits are at arm's length. Due to the difference in application of the arm's-length principle between countries, a situation of double taxation or double non-taxation can occur. The recently implemented bill adds five provisions to the Dutch Corporate Income Tax Act that strive to counter this double non-taxation. In general, these provisions aim to neutralise differences in transfer pricing between the Netherlands and the other country involved.

More specific, these new provisions limit downward adjustments of the Dutch taxable profit based on the arm's-length principle in case the Dutch taxpayer cannot make a plausible case that there is a corresponding upward adjustment in the other country involved in the transaction.

The bill aims to address all kinds of mismatched transfer prices, such as interest, rental and intercompany transfers of assets. For example, if a foreign affiliated company transfers an asset to a Dutch company for a lower transfer price and the Dutch company capitalised it and depreciates it based on a higher value, the new legislation adjusts the depreciation to an amount based on the lower transfer price.

Whereas in previous situations lower and higher transfer prices could give rise to informal capital contributions, these situations now result in taxable profit and non-exempt profit. Moreover, the new regulation also applies to existing informal capital structures originating from transfers of assets between 1 July 2019 and 1 January 2022.

BACK

PKF Comment

In light of this newly adopted legislation it is recommended to perform an assessment for transfer pricing purposes on intercompany transactions from two perspectives in order to limit the negative effect of the countering mismatches regulations. For further information or advice regarding combating mismatches in light of the application of the arm's-length principle bill, please contact Eelco van der Vijver at **eelco.van.der.vijver@pkfwallast.nl** or call **+31 20 653 18 12**.

Tightening of the Dutch earnings stripping rule

Tax avoidance is more and more globally frowned upon, considering the recent measures against tax avoidance from the OECD as well as the European Commission. Within the EU, the OECD measures against tax avoidance are generally included in the different anti-tax avoidance directives of the European Commission. As part of the transposition of the first anti-tax avoidance directive (ATAD I), the Dutch legislator introduced the earnings stripping rule in the Dutch Corporate Income Tax Act as of 1 January 2019.

In summary, the earnings stripping rule limits interest deduction to the higher of 30% of the fiscal EBITDA or EUR 1 million for fiscal years up to 2022. The non-deductible amount of the net financing cost may be carried forward indefinitely and may, subject to certain conditions, be utilised in future years. For companies that are facing non-deductible interest under the earnings stripping rule, the non-deductible financing cost can be regarded as a tax attribute and recognition of a deferred tax asset could be considered.

As part of the Dutch Tax Plans for 2022, it was proposed to further tighten the earnings stripping rule for fiscal years beginning on or after 1 January 2022. With the entry into force of the Dutch Tax Plan 2022, the threshold of interest deduction based on the fiscal EBITDA has been lowered from 30% to 20% as of 1 January 2022. With this tightening, the Dutch government strives to realise a more equal fiscal treatment of equity and debt.

On 18 May 2021, the European Commission published a proposal for the multilateral introduction of a capital deduction, or the further restriction of interest deduction. With the tightening of the earnings stripping rule, the Dutch government seems to be ahead of this proposal.

BACK

PKF Comment

The tightening of the earnings stripping rule may potentially lead to a larger amount of net financing costs that will not be deductible in a given year. Taking into account this negative effect of the tightening of the earnings stripping rule, it can be recommended to revisit the structuring of (group) financing. For further information or advice regarding the Dutch earnings stripping rule, please contact Ruud van der Linde at **ruud.van.der.linde@pkfwallast.nl** or call **+31 10 266 08 34**.

Portugal

Recently enacted amendments to the transfer pricing regime

Background

On 29 November 2021, vide publication of Ministerial Orders No. 267/2021 and No. 268/2021, certain changes were made to the Portuguese transfer pricing regulations, in particular to the regime of advance pricing agreements (APA) and to the regulations of the transfer pricing regime set out in article 63 of the IRC Code. The amendments introduced are effective for tax periods beginning on or after 1 January 2021.

Summary of the main changes: Ministerial Order No. 268/2021

- Adoption of the reporting structure for transfer pricing documentation in accordance with action 13 of the BEPS Plan, i.e. the express provision of a double structure consisting of a master file and a specific dossier (local file);
- Simplification of the documentation requirements through the implementation of a simplified dossier, applicable to taxpayers considered small and medium-sized enterprises (under Decree-Law No. 372/2007 of 6 November 2007), and which are not covered under the Tax Authorities Large Taxpayers Unit;
- Taxpayers are exempt from submitting transfer pricing documentation when, during the period to which the obligation relates, they have generated a total annual income amount of less than EUR 10,000,000, or when the connected transactions during the period have not exceeded EUR 100,000 per counterparty and EUR 500,000 in aggregate;
- Introduction of specific articles for the treatment of transactions in intangibles and restructuring operations;
- Alignment of article 63 of the CIRC with the OECD guidelines with regard to the determination of the most appropriate method to apply, i.e. no longer establishing a hierarchy of methods, as well as the adoption of other methods for asset valuation; and
- Within the scope of correlative adjustments, changes are introduced as a result of the adoption of international best practices in case of profit adjustments between associated companies, as well as the fact that Law No. 120/2019 of 19 September 2019 has introduced new mechanisms for resolving tax disputes between European Union Member States.

Summary of the main changes: Ministerial Order No. 267/2021

- Clarification of the various stages of development of the process of entering into an advanced pricing agreement (APA), namely the preliminary phase and the proposal phase;
- The agreement may cover previous tax periods for which the Model 22 tax return has already been filed, provided that no more than two years have elapsed since the deadline for filing the return and the relevant facts and circumstances in those periods are identical or similar;
- A 25% reduction of the APA filing fee, in cases where taxpayers meet the requirements for classification as a micro, small or medium-sized company; and
- Introduction of a rule on the maximum term of the APA (which cannot exceed four years).

PKF Comment

BACK

For further information or advice concerning Portuguese transfer pricing and tax matters, please contact José Parada Ramos at **paradaramos@pkf.pt** or call **+351 213 182 720**.

South Africa

South African Revenue Service (SARS) provides additional guidance on issues surrounding intra-group loans

SARS has published a draft interpretation note titled 'The Determination of the Taxable Income of Certain Persons from International Transactions: Intra-Group Loans'. While similar notes were published by SARS in 2013 and 2017, this note aims to align itself and provide guidance in accordance with the recent changes to domestic legislation and international guidelines by the OECD.

Background

Tax planning strategies, such as Base Erosion and Profit Shifting (BEPS), are being used by multinational enterprises (MNEs) through the exploitation of any gaps or mismatches under tax rules and regulations. More specifically to South Africa, debt capital creates opportunities for BEPS in South Africa due to its higher-than-average corporate income tax (CIT) rates. Consequently, South Africa has had to determine ways of curtailing BEPS while still having regard to the importance of debt capital as a source of financing for investment.

The 2022 draft note on intra-group loans

The African Tax Administration Forum describes money as fluid and fungible which makes it easy to alter the mix of debt and equity in a controlled entity. The flexibility of interest expenses and rates is useful for tax planners as the terms of an intra-group loan can be amended to justify a high or low interest rate.

The draft note therefore states that taxpayers must determine the acceptable amount of debt for intra-group loans on an arm's-length basis. This note deals with the transfer pricing provisions of section 31 of the Income Tax Act 58 of 1962 (the Act) for years of assessment commencing on or after 1 April 2012.

SARS' application of the arm's-length principle described under section 31 of the Act follows the guidelines set by the OECD. As provided for in the OECD guidelines, the application of the arm's-length principle is based on a comparison of the conditions in a controlled transaction with the conditions that would have been made had the parties been independent and undertaking a comparable transaction under comparable circumstances.

The note goes on to provide various approaches to determine whether the interest rate on an intra-group loan is at arm's length. However, the selection of an approach must be consistent with the actual transaction. It is noteworthy that SARS does not consider written opinions from banks as evidence of an arm's-length interest rate on an intra-group loan as it is not based on a comparison of actual transactions.

It is required that the analysis of the debt must be undertaken at the time of obtaining the debt but of particular interest is the requirement that the debt's appropriateness and cost must be reassessed from 'time to time'. There is no standard frequency of time but it rather depends on the nature of the particular taxpayer's business and the amount of change and variability.

SARS will consider a taxpayer's debt to be non-arm's length if, amongst other factors, some or all of the following circumstances exist:

- The taxpayer is carrying a greater quantity of debt than it could sustain on its own.
- The duration of the lending is greater than would be the case at arm's length.
- The repayment, interest rate or other terms are not what would have been entered into or agreed to at arm's length.

Should an intra-group loan not be at arm's length, any interest, finance charges, deductions or inclusions in relation to the arm's-length amount of debt must be disallowed when determining the taxpayer's taxable income. Further secondary adjustments may arise which will subject the taxpayer to dividends tax or donations tax on the amount of the disallowed deduction.

Other notable takeaways from the draft note

- When considering a permanent establishment (PE), SARS will apply arm's-length principles when attributing profits to the PE. The PE will be viewed as a separate enterprise subject to the application of the arm's-length principle but notional charges will not be permitted as a deduction.
- SARS has relaxed transfer pricing provisions insofar as they relate to transactions involving financial assistance and headquarter companies.
- Advance pricing agreements are conducted to determine the amount of debt which will and will not be considered arm's length. This process is currently not available in South Africa but SARS is considering introducing this in the future.
- Sections 23M and 23N of the Act limit the amount of interest that may be deducted. Section 31 of the Act, however, is applied prior to the consideration of the aforementioned sections. In other words, the amount of interest allowed as a deduction under sections 23M and 23N of the Act will only be considered once section 31 of the Act has been applied.
- The withholding tax on interest will not be affected by the transfer pricing adjustments provided for under section 31(2) of the Act.

BACK

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to South African taxation, please contact Kubashni Moodley at **kubashni.moodley@pkf.co.za** or call **+27 31 573 5000**.

South Korea

Introduction of tax support for SMEs

Amendments to the Restriction of Special Taxation Act (RSTA) have been introduced and became effective from 1 January 2022 in order to reinforce tax support for small and medium-sized enterprises (SMEs) in difficulties as a result of COVID-19, such as a temporary extension of loss carry-back.

Expansion of applicable start-up SMEs for tax reductions and exemptions along with extension of application period (RSTA article 6)

The due date for tax reduction and exemption application for start-up SMEs is extended by three years until 31 December 2024. In addition, the number of start-ups eligible for tax reduction and exemption is expanded from businesses with annual income of less than KRW 48 million to those with annual income of less than KRW 80 million.

Expansion of tax credits on payments settled through mutually beneficial payment system (RSTA article 7-4(1) & (2))

The tax credit requirements for mutually beneficial payments between SMEs have been simplified to 'when the rate of payment by promissory notes has not increased from the previous year'. Additionally, the deduction rate for the mutually beneficial payment settlement has been increased from between 0.1% and 0.2% to 0.15% and 0.5%.

Expansion of refunds based on SME loss carry-back (RSTA article 8-4)

In order to support SMEs suffering from a lack of liquidity, the application for refund is provided not only for the previous tax year but also for the tax year immediately preceding the previous tax year for the loss incurred in the tax year including 31 December 2021.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to South Korean taxation, please contact Jooil Park at **jooil.park@shcgr.kr** or call **+82 2 3011 1173**.

Procedure for the transposition of EU Directive 2021/514 (DAC 7) into domestic legislation has been initiated

On 24 February 2022, the Spanish Ministry of Finance published the Preliminary Draft Law amending domestic legislation (the General Taxation Law) with the aim of transposing EU Directive 2021/514 (hereafter DAC 7) relating to cooperation in the field of taxation. This transposition will improve administrative cooperation with the EU as the mandate contained in DAC 7 is to facilitate exchange of tax information on digital platform operators with other EU Member States.

The following is a review of both major amendments contained in the Preliminary Draft Law:

Exchange of information by 'platform operators'

The Preliminary Draft sets forth the obligations of platform operators (as defined in DAC 7) regarding the information which they are obliged to report to the Tax Administration. The Draft emphasises communicating data related to the economic activities in which the operators engage through the digital platforms they manage, connecting the sellers of goods or service providers to the users of these platforms.

Certain data must be provided, such as the identification of the operators, activities carried out, consideration paid to the seller, identification of the accounts used to collect it, taxes, commissions, fees and other amounts withheld by the operator, among other information. The obligation to provide information establishes that, once this information is obtained, it will be exchanged with the Member State of residence of the seller and, in the case of leasing or temporary transfer of use of real estate, with the Member State in which the real estate is located.

Certain digital platform operators are excluded from the reporting obligation, i.e. those who can demonstrate that the information has been communicated by other operators or are registered in non-European jurisdictions where international treaties or conventions apply.

Joint inspections

Another main feature contained in the Draft is the regulation at a European level of so-called 'joint inspections'. This procedure provides that the competent authorities of EU Member States may initiate a joint inspection in which officials of two or more Member States can participate. The tax inspections will be governed by the regulations of the EU Member State where the inspection is being carried out and the conclusions will be included in a final report. Spanish officials, when acting in another EU Member State, will in no case have more prerogatives than those conferred upon them under Spanish law.

Ultimately, the lack of receipt within the deadline established by the Spanish Tax Administration of the information that a subject residing on Spanish territory should have communicated in accordance with the Council Directive, constitutes a very serious tax offence which will entail a specific sanctioning regime.

Entry into force

The transposition is expected to enter into force on the day following its publication in the *State Official Gazette.* However, it is stipulated that the amendments concerning the reporting obligation for digital platform operators will be applied from

1 January 2023, while the regime concerning inspections will be applied from 1 January 2024.

BACK

PKF Comment

The main isssue being addressed by DAC 7 is that the Tax Administrations of the Member States have limited information to properly assess and control the income earned from activities carried out through intermediation via online platforms established in other jurisdictions. Therefore, the efforts being made to deal with this problem lead to a highly useful control mechanism.

Everything that happens outside our borders influences domestic legislation and its interpretation, hence it is important for companies with an international presence to monitor legislative developments on the taxation of the digital economy.

If you believe the above measures may impact your business or personal situation or require any advice with respect to Spanish taxation, please contact Esther Martin Garcia at **esther.martin@pkf-attest.es** or call **+34 945 137 426**.

Switzerland

The citizens of Switzerland reject planned abolition of stamp duty on companies

In Switzerland, 1% issuance stamp duty is levied on capital contributions from shareholders to Swiss companies, comprising the initial creation and subsequent increases of share capital as well as contributions without any issuance of shares. In a referendum on 13 February 2022 the citizens of Switzerland voted (62.7%) on the rejection of the reform, which sought to abolish the issuance tax.

BACK

PKF Comment

The abolition of the Swiss issuance stamp duty would have clearly been a welcome measure to strengthen the decision-making neutrality of the tax system and favoured the creation of new equity capital when doing business and investing in Switzerland. Nevertheless, corporate groups and financially distressed companies still have various means and ways of lowering or avoiding this 1% issuance stamp duty on equity capital through careful structuring.

For further information or advice concerning Swiss stamp duty e.g. in light of the envisaged restructuring or recapitalisation or any advice with respect to Swiss unilateral and international taxation, please contact Rilana Wolf-Bayard at **rilana.wolf@pkf.ch** or Margarita Baeriswyl at **margarita.baeriswyl@pkf.ch** or call **+41 44 285 75 00**.

Taiwan

CFC rules to take effect from tax year 2023

On 27 July 2016, the Legislative Yuan passed the amendment to article 43-3 of the ITA on controlled foreign companies (CFC). The Ministry of Finance (MOF) has announced that the CFC measures will be effective from tax year 2023, and this has been officially confirmed by the Executive Yuan on 14 January 2022.

According to the CFC implementation rules published by the MOF on 20 September 2017, if a foreign subsidiary meets the following two conditions, its non-distributed profits will be attributed to the domestic parent company:

- More than 50% of the shares or capital in the foreign subsidiary are owned (directly or indirectly) or significantly controlled by domestic profit-seeking enterprises and/or their related parties; and
- The foreign subsidiary is established in a low-tax jurisdiction, i.e. a jurisdiction (i) where the corporate income tax rate is lower than 70% of the domestic corporate income tax rate of 20% (i.e. lower than 14%); or (ii) where taxes are levied only on domestic-source income.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Taiwanese taxation, please contact Ronnie Chang at **rc@pkf.com.tw** or call **+886 2 8792 2628**.

United Arab Emirates

UAE tax updates

Proposed corporate tax regime announced

The UAE Ministry of Finance (MOF) made an announcement in January 2022 that the UAE will introduce federal corporate tax ('UAE CT') to be effective for financial years starting on or after 1 June 2023.

This announcement also included the requirement for compliance with the transfer pricing rules and documentation requirements, as set out in the OECD Transfer Pricing Guidelines (TPG).

Some of the salient features of the announcement made by the MOF in this regard are as follows:

- Applicable to all UAE businesses and commercial activities alike (except those undertaking extraction of natural resources which remains subject to Emirate level corporate taxation) and to all individuals having a business licence or permit (or are required to obtain one) to carry out commercial/industrial and/or professional activity in the UAE.
- UAE CT will be applicable to foreign entities and individuals on their trade or business only if conducted in the UAE in an ongoing or regular manner.
- A progressive UAE CT regime is proposed with tax rates of 0% for taxable income up to AED 375,000 and 9% for taxable income above AED 375,000.
- Different tax rate to apply for large multinationals covered under OECD Base Erosion and Profit Shifting (BEPS) Pillar Two initiative.
- Dividends and capital gains earned by a UAE business from its qualifying shareholdings as well as qualifying intra-group transactions and reorganisations to be exempt (conditional).

- Federal Tax Authority (FTA) will be responsible for the administration, collection and enforcement of UAE CT.
- An electronic annual UAE CT return filing per financial period is proposed. Neither provisional/ advance UAE CT filings required nor is there a requirement to pay advance UAE CT.
- Foreign tax credit (FTC) on UAE taxable income against UAE CT liability to be allowed (conditional).
- Carry forward and set off of losses to be allowed (conditional).
- Free zone businesses seem to be within the scope of UAE CT and will be required to register and file a UAE CT return. However, they will continue to benefit from incentives already promised.
- 'Fiscal unity' concept to be introduced for UAE CT purposes. Taxpayers to get an option to form a tax group, file a single CT return for entire group and set off losses within group companies (conditional).
- Based on current proposals, withholding tax on domestic as well as cross-border payments/ transactions may not be applicable.

Only an initial introduction to the proposed UAE CT law has been announced and the UAE CT legislation is still being finalised.

Economic Substance Regulations

Brief overview

The UAE government introduced the Economic Substance Regulations ('the Regulations') on 30 April 2019 vide Cabinet Resolution No. 31 of 2019. These Regulations were amended retrospectively vide Cabinet Resolution No. 57 of 2020.

The Regulations (as amended) *inter alia* prescribe two types of annual compliance, namely:

i) Submission of the 'Information Notification' within six months from the end of the accounting year; and

ii) Submission of the 'Substance Report' within twelve months from the end of the accounting year.

Accordingly, licensees with a financial year end of 31 December 2021 are required to file their Economic Substance Notification on or before 30 June 2022.

Documents Guidance on Notification and Guidance on Report have been amended

1. Key amendments to *The UAE Economic Substance Regulations Guidance on Notification*

Key amendments	Guidance on amendments
New question field added	'Have you filed previously or been issued a penalty for failure to file? 1. Licensees that have previously filed a Notification (e.g. for a prior Reportable Period) are required to select "yes". 2. Licensees that have received a penalty for the non-filing of a Notification are required to select "yes". 3. Licensees that have never filed a Notification (1) and did not receive a penalty for non-filing of a Notification (2) are required to select "no" and continue with the normal Notification.' Further, required details as per the previous submission or as per the commercial license must be submitted and the licensee is required to perform a validation of the data included therein and follow the on-screen instructions.

2. Key amendments to *The UAE Economic Substance Regulations Guidance on Report*

Key amendments	Guidance on amendments
Section E 'Financial information', point 3 'Total revenue of the Licensee for the Reportable Period'	It is clarified that total revenue means income received from an entity's ordinary activities as reported in the first line of the income statement and that transactions which do not arise from an entity's ordinary activities (e.g. dividend income or gains from the sale of an asset) are not to be included.
Section E 'Financial information', point 5 'Net book value of tangible assets held in the UAE at the end of the Reportable Period'	Tangible assets are defined as assets that have a finite monetary value and usually have a physical form. Further, the guidance indicates that these include inter alia property, plant and equipment, inventory, receivables and cash.

3. Key changes in *the ESR frequently asked questions (FAQs)*

The *ESR FAQs* provide clarification mainly with regard to the scope of the application, demonstrating economic substance, the relevant activities and administration and set out designated contacts for each regulatory authority.

Pursuant to the amendments, the new FAQs address the following key concerns/clarifications:

- In case there is a change in legal form of a licensee in respect of a historical reportable period, the licensee is required to report the legal form that was applicable at the end of that reportable period;
- Guidance on how a licensee can change the email address used to receive email correspondence relating to economic substance;
- Information to be provided by the licensee while requesting for a refund in case a licensee has paid a penalty but was subsequently granted a relief by the FTA for that penalty, etc.

International tax developments

UAE DTA network

The UAE has entered into and concluded double taxation agreements (DTA) with over 137 countries. The list of the countries/jurisdictions with whom the UAE has entered into and concluded DTAs can be found at:
https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxtionAgreements/Pages/DoubleTaxtion.aspx

Further, following our previous update, it is pertinent to note that the UAE has signed a new DTA with Côte d'Ivoire. Also, the DTA with Antigua and Barbuda entered into force on 24 February 2022.

Other developments

On 13 March 2022, representatives of the MOF and FTA met with the Director of the Centre for Tax Policy and Administration at the OECD and his accompanying delegation.

The MOF reaffirmed that the UAE is keen on coordinating with the OECD in all relevant areas, in line with its commitment to implement international tax standards and practices with the highest levels of transparency with regard to tax related matters and showed its readiness to implement the global consensus on Pillar 1 and 2 to address the tax challenges arising from the digitalisation of the economy.

UAE VAT and excise tax update

With respect to VAT and excise tax, the FTA has recently released certain amendments/updates, as set out below:

Date	Tax	Type of update	Particulars of update
December 2021	Tax procedures	Cabinet decision	Cabinet Decision No. 105 of 2021 on 'Controls and Procedures for Paying Administrative Penalties by Instalments, and Waiving and Refunding Administrative Penalties'
December 2021	Tax procedures	Cabinet decision	Cabinet Decision No. 108 of 2021 on 'Amending some Provisions of Cabinet Decision No. 40 of 2017 on the Administrative Penalties for Violation of Tax Laws in the UAE'
January 2022	Tax procedures	Public clarification	Redetermination of Administrative Penalties Levied Prior to the Effective Date of Cabinet Decision No. 49 of 2021 (TAXP004)
January 2022	VAT and excise tax	User guide	Payment User Guide (updated)
February 2022	VAT and excise tax	User guide	Voluntary Disclosure (VD) User Guide (updated)
April 2022	-	User guide	Raqeeb: Whistle Blower Program for Tax Violations and Evasion User Guide (USEGWB001)
April 2022	-	Awareness materials	Get to know your Tax Obligations

- **Cabinet Decision No. 105 of 2021 on 'Controls and Procedures for Paying Administrative Penalties by Instalments, and Waiving and Refunding Administrative Penalties'**

  The FTA has issued a new cabinet decision which covers controls and procedures relating to waivers and payment in instalments of administrative penalties and also refund of administrative penalties (cases and rules are yet to be specified). It is effective from 1 March 2022.

- **Cabinet Decision No. 108 of 2021 on 'Amending some Provisions of Cabinet Decision No. 40 of 2017 on the Administrative Penalties for Violation of Tax Laws in the UAE' along with public clarification (TAXP004)**

  This amendment mainly provides an extended timeframe for registrants to settle the outstanding payable taxes along with 30% of total unsettled administrative penalties until 31 December 2022. The effective date of this cabinet decision is 1 January 2022.

  Additionally, a public clarification on 'Redetermination of Administrative Penalties Levied Prior to the Effective Date of Cabinet Decision No. 49 of 2021 (TAXP004)' was also issued by the FTA. The public clarification states that where certain specified conditions are met, the FTA will redetermine the unsettled part of administrative penalties equivalent to 70% of the total amount imposed at the end of year 2022.

- **User guide on 'Raqeeb: Whistle Blower Program for Tax Violations and Evasion' (USEGWB001)**

  As part of its mandate to enforce federal taxes in the UAE, the FTA continuously monitors taxable persons to ensure compliance with the applicable tax legislation, leading to a prosperous business environment of fair and equal opportunities. The FTA further encourages reporting non-compliant business activities through the 'Raqeeb: Whistle Blower Program for Tax Violations and Evasion', as explained in this guide.

  The guide helps informants successfully submit information in a secure and confidential manner of any tax evasions or tax offences.

- **VAT refund for foreign businesses in the UAE**

  During the period from 1 March 2022 until 31 August 2022, the FTA will accept applications for the UAE VAT refund for the foreign business scheme. The reclaim window will be open for qualifying non-UAE established businesses to submit their VAT refund requests to the FTA for the 2021 calendar year.

Source: https://www.tax.gov.ae/en

BACK

PKF Comment

Considering the effective date of corporate tax being financial years starting from 1 June 2023, further development towards the introduction of corporate tax law can be expected soon.

Businesses to proactively carry out an initial qualitative impact assessment of the proposed introduction of the UAE CT and transfer pricing regime on their current/proposed businesses and be UAE CT compliant from the outset.

Businesses in the UAE which have identified themselves as in-scope for the purposes of UAE ESR are required to continue to comply with the prescribed filing requirements within the timelines provided by the MOF.

VAT and excise tax user guides and public clarifications continue to provide valuable guidance in assessing the VAT and excise tax implications of various transactions and provide further clarity thereon.

Further, the user guide on 'Raqeeb: Whistle Blower Program for Tax Violations and Evasion' will prove a very helpful tool in detecting non-compliant businesses/practices and consequently ensuring required compliance with the applicable tax legislation.

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to UAE taxation, please contact Ms. Sarika Dhameja at **sdhameja@pkfuae.com** or Mr. Chaitanya Kirtikar at **cgk@pkfuae.com** or call **+971 4 3888 900**.

COVID-related tax relief from April 2022

The lifting of pandemic restrictions in the UK means that most employees will no longer be eligible to claim the GBP 6 per week tax relief if they continue to work from home from April 2022 as working from home is no longer deemed 'necessary' for the performance of duties.

Tax relief on employee incurred expenses is only available if no such appropriate facilities are available to the employee on the employer's premises (or the nature of the job requires the employee to live so far from the employer's premises that it is unreasonable to expect them to travel to those premises on a daily basis).

HMRC expect tax relief claim levels to return to something close to pre-pandemic levels for the current tax year (2022/23).

Similarly, for employers providing certain expenses and benefits to their employees such as COVID tests and PPE, HMRC have withdrawn the guidance regarding tax exemption. If you continue to provide such benefits, we suggest seeking advice about the reporting obligations.

Employment allowance for National Insurance increase

From April 2022, the employment allowance increased to GBP 5,000 per year. This change has now come into effect. It allows employers to deduct a maximum of GBP 5,000 from their secondary (employer) Class 1 National Insurance liability in the 2022/23 tax year.

You can only claim the employment allowance if your total secondary Class 1 National Insurance contributions liability is below GBP 100,000 in the 2021/22 tax year. The claim can be made through the payroll using the Employer Payment Summary (EPS).

Off-payroll working rules (IR35)

Companies should review their status and check if the reporting rules for off-payroll workers are now applicable. This is particularly true if you have:

- become a newly formed business
- been bought by another organisation
- grown in size over the last few years.

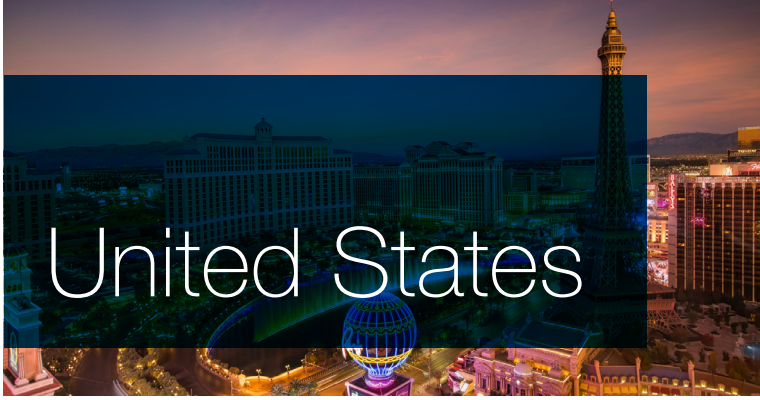
As a reminder, the rules will apply to medium or large-sized corporate entities that meet at least two of the following criteria for two consecutive financial years:

- turnover of more than GBP 10.2 million
- a balance sheet total (assets) of more than GBP 5.1 million
- an average of more than 50 employees.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to UK global mobility, please contact Louise Fryer at **lfryer@pkf-l.com** or call **+44 (0)20 7516 2446**.



United States

US state and local tax – protections of Public Law 86-272 no longer apply to certain fact patterns in California

A state in the US is not allowed to impose a net income tax on income derived within its borders from interstate commerce according to Public Law 86-272 (PL 86-272) if the only business activity of an entity within the state consists of the solicitation of orders for sales of tangible personal property and orders are to be sent outside the state for acceptance or rejection. If the order is accepted, it must be filled by shipment or delivery from a point outside the state. PL 86-272 does not protect the sale of intangible property, services or any combination of goods and services. Also, a business cannot claim the protection of PL 86-272 if it has a physical presence in a state such as an office or warehouse or stores products in a 3PL warehouse. Many states require businesses to file a tax return to claim the protection of PL 86-272. Although the protection of PL 86-272 can be claimed in California, businesses may be considered to be doing business in California and may be liable for filing and paying a minimum franchise tax of USD 800. First-year exemptions may apply.

The Multistate Tax Commission (MTC), an intergovernmental state tax agency, updated its 'Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law 86-272' in August 2021. One of the key messages of that statement was that a business is losing the protection of PL 86-272 when it is conducting certain activities in a state over the internet.

MTC suggestions do not become law on a state level automatically but have to be adopted by the state legislature. California is the first state to provide guidance in response to the MTC policy update. On 14 February 2022, California issued a technical advisory memorandum (TAM) 'determining whether the protections of PL 86-272 apply to fact patterns that are common in the current economy due to technological advancements for purposes of California Income and Franchise tax'.

The TAM is not law but will serve as guidance for the California Franchise Tax Board (FTB). During tax audits, the FTB will most likely use the TAM to support its position. The TAM does not mention an effective date but during a call with the FTB it was mentioned that it is effective for 'all years'. Thus, taxpayers should be prepared for retroactive application of the TAM.

The TAM includes the following activities that disqualify a business from the protection of PL 86-272 in California:

- Placing internet 'cookies' onto electronic devices of California customers to gather customer search information that will be used to adjust production schedules and inventory amounts, develop new products or identify new items to offer for sale.
- Providing post-sale assistance to customers in California via either electronic chat or email that customers initiate by clicking on an icon on the business's website.
- Fixing or upgrading products for customers in California remotely by transmitting code or other electronic instructions to those products via the internet.
- Offering and selling extended warranty plans via a business's website to customers in California. The sale of warranty plans is not protected by PL 86-272 in the first place as it is not considered a sale of tangible property.
- Soliciting and receiving online applications for a branded credit card via the business's website from California customers and the credit card will generate interest income and fees for the business.
- Inviting viewers in California to apply for non-sales positions through a website. The website enables viewers to fill out and submit an electronic application, and to upload a cover letter and CV/résumé.
- Contracting with a marketplace facilitator that facilitates the sale of products on the facilitator's online marketplace. The marketplace facilitator maintains stock from a business at fulfilment centres where the business's customers are located.
- Contracting with customers in California to stream videos and music to electronic devices for a charge.

BACK

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to US taxation, please contact Ralf Ruedenburg at **rruedenburg@pkfod.com** or call **+1 646 965 7778**.

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right size
right solutions

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