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PKF

tax newsletter

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PKF Worldwide Tax Update

Welcome

In this third quarterly issue for 2018, the PKF Worldwide Tax Update newsletter 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 400 offices, operating in over 150 countries across our 5 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:

- Key tax changes for 2018 (and beyond) in Australia, Jordan and Rwanda;
- Interesting higher court case law in Belgium (fairness tax), Germany (withholding tax) and Russia (thin capitalisation);
- VAT developments in Italy, Nigeria, the UK and the UAE;
- Tax amnesty developments in Turkey;
- Developments in the area of taxation of non-residents in the Netherlands, New Zealand and the USA;
- An update from the USA on the treatment of bonus depreciation as a result of a May 2018 IRS Notice;
- An update on certain aspects of the Swiss Tax Reform.

The PKF Worldwide Tax Update for the third quarter of 2018 is informative and interesting. Please contact the PKF tax expert directly (mentioned at the foot of the respective PKF Commentary) to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at www.pkf.com/pkf-firms.

2018/19 Worldwide Tax Guide

The latest PKF worldwide tax guide featured 134 countries and over 1,500 copies were ordered in EMEI, APAC and Africa. Its resounding success is a result of the energy, time and support of individuals and firms of the PKF family and to all we owe a big thank you. We are extremely grateful to all those that provided country submissions, and of course, to each person who purchased a guide and supported this very marketable and impressive publication. The shipment and delivery of the 2018/19 Worldwide Tax Guide is underway and we thank you for your continued support.

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Australia

2018/19 Federal Budget highlights

The Federal Treasurer of Australia handed down his Budget on 8 May 2018. The budget is focused on a "coming back to balance" and further strengthening of Australia's economic position projecting a return surplus earlier than expected in 2019-20. Below are some of the tax highlights of the 2018/19 Budget.

Income tax rates
Corporate income tax: The government reaffirmed its commitment to its 10 year enterprise plan to reduce the corporate tax rate by 25% by 2026-27.

Personal income tax: A seven-year plan commencing from 1 July 2018 will be implemented in three steps to reduce personal income tax. First, a low and middle income tax offset will be introduced. Then middle income taxpayers will be provided relief for bracket creep in phases and the 37% bracket will be removed.

PKF Comment

These measures are consistent with previous budget announcement. Due to political reality, the reduced rate of 25% rate has been enacted but only for companies with an aggregated turnover of up to AUD 50 million. The standard rate of 30% is still applying to all other companies, which is globally uncompetitive to attract international investment. The personal tax cuts are welcome especially in light of the next Federal Election.

Significant global entity definition broadened
The current definition of a "significant global entity" (SGE) applies only to an entity which is a member of a group headed by a public company or a private company required to provide consolidated financial statements. This definition of SGE will be amended to include members of large multinational groups headed by private companies, trusts and partnerships. It will also include members of groups headed by investment entities. The measure will apply to income years commencing on or after 1 July 2018.

PKF Comment

Foreign investment funds and foreign pension funds may now enter in the classification of SGEs for tax purposes. The SGE definition identifies entities which are required to prepare country-by-country reports, lodge general purpose financial statements and is used to determine entities which may be subject to Australia's multinational

tax integrity rules, such as the multinational anti-avoidance law and the diverted profits tax. The broadening of the definition will significantly increase the number of multinational entities that are subject to Australia's enhanced compliance measures and integrity rules.

Tightening of cross-border financing and thin capitalisation rules

The thin capitalisation rules will be amended to require entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements. In addition, consolidated groups and multiple entry consolidated groups that are foreign controlled, which in turn control a foreign entity themselves, will be treated as both outward and inward investment vehicles for thin capitalisation purposes. This change is intended to ensure that inbound investors cannot access tests that are only intended for outward investors. These measures will apply to income years commencing on or after 1 July 2019.

PKF Comment

Under the new rules, there will not be any more flexibility to align the value for thin capitalisation purposes with the commercial and economic values of assets. These additional integrity measures are in line with the continued Government focus on multinational and Base Erosion and Profit Shifting (BEPS).

Taxation of digital economy

While no announcements were made in the Budget, the Government indicated that it will soon release a discussion paper that will explore options for taxing digital business in Australia. The measures are expected to target multinational digital and technology companies who provide services to Australian customers. In addition, this year's budget confirms the Government's commitment to take further steps in relation to the digital economy by extending the application of Goods and Services Tax to Australian hotel bookings made through offshore digital sellers.

PKF Comment

Identifying appropriate rules which deal with the taxation of digital business is high on the Government's agenda. This is in line with the OECD's BEPS action and the Government's work with the G20 to bring the digital economy into the global tax net.

List of information exchange countries to be updated

Listed countries are those which have established the legal relationship enabling them to share taxpayer information

with Australia. The update will add the 56 jurisdictions that have entered into information sharing agreements since 2012.

Certain distributions from Australian managed investment trusts (MITs) to investors in these jurisdictions should thus be eligible to access a reduced withholding tax rate of 15% instead of the default rate of 30%. The updated list will be effective from 1 January 2019.

PKF Comment

*This measure supports the operation of the MIT withholding tax system by providing the reduced withholding tax rate only to residents of countries that enter into effective information sharing agreements with Australia. For further information or advice concerning the Australian's Federal Budget or any advice with respect to Australian taxation, please contact Iain Spittal at **ispittal@pkf.com.au** or Emma Roulet at **eroulet@pkf.com.au** or call **+61 2 8346 6000**.*

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Austria

Jahressteuergesetz 2018 – Horizontal monitoring to be an alternative way for audits by the tax authorities

A pilot project was started in June 2011 between the Austrian tax authorities and a few Austrian companies regarding so-called "horizontal monitoring" and lasted until June 2016. With the new "Jahressteuergesetz" horizontal monitoring is going to be implemented in Austria on a permanent basis.

What does "horizontal monitoring" mean and how does it work?

Horizontal monitoring is an alternative to audits by the tax authorities as we know it now. Companies that participate in this procedure and meet the conditions mentioned below will not be part of an audit by the tax authorities years after the tax declaration was accepted by them. These companies will be accompanied during the year by the tax authorities and pending difficult issues regarding tax risks have to be communicated in advance, at least on a quarterly basis.

Additionally, the companies have to implement an internal tax control system, which has to be verified by a tax consultant or an auditor.

Which companies can participate and how?
Companies will have the possibility to file an application via Finanzonline, subject to the following conditions:

- For accounting purposes Austrian GAAP are applied (Unternehmensgesetzbuch/UGB);
- No major cases with respect to criminal tax law during the last five years;
- Revenues over EUR 40 million during the last two years at least for one consolidated company;
- Tax control system confirmed by a tax consultant or auditor every three years.

Before entering into the new monitoring system the tax authorities will perform a tax audit for the unaudited years.

What are the pros of horizontal monitoring for companies?
The accounting will be under permanent control with respect to taxation. Difficult tax issues will be solved immediately, and tax risks will be monitored. The planning security will be higher, internal resources do not have to focus on historic years anymore and short checks concentrated on certain aspects will be performed while high unexpected tax payments can be avoided.

PKF Comment

The "Jahressteuergesetz" is still under review. The already tested system is bound to be implemented. The internal tax risk management system will be checked on a regular basis, even without participating in such an advanced tax check system. Pending issues have to be discussed immediately. Sometimes the opinion about the consequences of tax laws is different from the view of the tax authorities. We cannot estimate whether dissent opinions will slow down the implementation of new projects. It is a question of a company's compliance culture to either pro-actively perform checks or check tax afterwards. In both systems the taxation has to be done properly. For further information or advice please contact Stephan Rößlhuber at ***stephan.roesslhuber@pkf.at*** *or call* ***+43 662 84 22 90****.*

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Belgium

5.15% fairness tax abolished by Belgium Constitutional Court

On 1 March 2018, the Belgium Constitutional Court has abolished the so-called fairness tax. Summarised, the fairness tax is a flat 5.15% Belgium corporate tax rate which is applied to "large" Belgium tax resident companies and permanent establishments that distribute a dividend and have a low effective Belgium corporate tax rate due to a "significant" use of notional interest deduction and tax losses carried forward. The fairness tax was introduced in 2013, but has now been abolished as of 2018. The Belgium Constitutional Court thus follows the view of the EU Court of Justice which ruled on 17 May 2017 that the fairness tax infringes the EU Parent-Subsidiary Directive, to the extent that a Belgium company redistributes a dividend received in a way that the underlying dividend income becomes effectively taxable at a rate exceeding 5%. Since the Belgium dividend participation exemption only amounted to 95% of dividend income (Belgium only has a 100% dividend participation exemption as of 2018) while the re-distribution of that dividend triggered 5.15% fairness tax, the likelihood that such 5% threshold would be exceeded is high.

PKF Comment

Belgium companies and permanent establishments now have six months as of the publication of the Constitutional Court decision in the Belgium Official Gazette to file a claim against fairness tax that was levied during 2013 – 2017. In addition, taxpayers that had already filed a claim in prior years can definitively use the Constitutional Court decision as a very strong additional argument to support their pending case. Please feel free to contact Kurt De Haen at ***kurt.dehaen@pkf-vmb.be*** *or call* ***+32 2 460 0960*** *for any further questions.*

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Bulgaria

Changes to Company Law related to share transfers in limited liability companies

Recent amendments to the Labour Code as of December 2017 have led to changes of the provisions in Company Law related to share transfers in limited liability companies. Additional requirements are being implemented so that at the date of the share transfer, companies should not have liabilities towards the Income Revenue Agency related to employees or social security contributions. This rule applies to both a company's current employees and those

whose legal relationship with the company ended up to three years prior to the share transfer.

PKF Comment

The tax consultancy team of PKF Bulgaria has substantial knowledge and expertise and is in the position to provide assistance at each stage of Bulgarian tax planning and compliance procedures to both foreign and local individuals. We have successfully consulted our PKF clients who operate in various fields of business on how to be compliant with the rapid changes of the tax legislation in the ever changing business environment. For further information or advice concerning Bulgarian tax planning, please contact Venzi Vassilev on ***venzi.vassilev@pkf.bg*** *or call* ***+359 2439 4242****.*

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Chile

Cryptocurrency taxation

Since the second semester of 2017, the Internal Revenue Service of Chile (IRS) has been targeting cryptocurrencies as a result of its explosion in popularity and value, in particular Bitcoin, a cryptocurrency that had a 1,500% increase in value. As a consequence, the IRS started studying the nature, transactional system and different participants in the market.

During the first semester of 2018, the IRS wanted to define the proper affidavit in which the different companies that are involved in the cryptocurrency market have to use to disclose their activities.

In this respect, the IRS Director clarified that as a general rule all intermediaries are obliged to inform payment receivers to emit the proper documentation, and investors to declare and pay all capital gains.

In March 2018, the IRS gave their first view on cryptocurrencies for tax purposes. As to what its nature is, the IRS believes that according to Chilean legislation, they cannot be treated as a currency, because, as the Central Bank of Chile stated, they need to be legally recognized as such. On that basis, they determined that cryptocurrencies are monetary assets agreed among privates. As a consequence, the IRS stated that every person who obtains income as a result of any transaction involving cryptocurrencies must declare it, according to the general regime of the Income Tax Law.

Finally, with regards to Value Added Tax, because of the non-tangible nature of cryptocurrencies, they are not affected by the mentioned tax.

PKF Comment

Chile should advance with the regulation of cryptocurrencies and the companies involved in their transactions, in particular regarding their taxation. Nevertheless, taxpayers should be aware that due to the broad concept of Income, as established in the Income Tax Law, every earning, gain or equity growth obtained in Chile or abroad as a consequence of cryptocurrency transactions should be declared and thus taxed. For further information or advice concerning Chile tax ruling decisions or any advice with respect to Chilean taxation, please contact Sebastian Vicuna at ***svicuna@pkfchile.cl*** *or call* ***+562 2650 4300****.*

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China

China to lower tariffs on certain products

The State Council, China's Cabinet, decided on 30 May 2018 to further cut tariffs on a number of imported goods starting on 1 July. The decision, at an executive meeting presided over by Premier Li Keqiang, was described as continuing the country's opening-up to benefit domestic consumers and boost industrial transformation.

The decision mainly includes:

- Average tariff rates for clothes, shoes, hats, kitchenware and sports products will be reduced to 7.1% from the current 15.9%, according to a statement released after the meeting.
- Average rates for household appliances like washing machines and refrigerators will drop to 8%, 12.5 percentage points lower. Tariffs on aquatic products and mineral water will be 6.9% on average, down from the existing 15.2%, while cleaning products, cosmetics and some healthcare products will be levied at 2.9%, down from the present 8.4%, the statement said.
- Commitments made to cancel or ease restrictions on foreign investment in such manufacturing sectors as automobiles, shipping vessels and aircraft will be promptly implemented.
- The mechanism regarding qualified overseas investors

will be expanded. This will encourage such investors to participate in future trading of crude oil and iron ore and provide more support to foreign-invested financial institutions in underwriting local government bonds.

- Investment facilitation will be enhanced based on international standards. The negative list in the market access of foreign investors will be revised and released before 1 July.
- Provincial governments will be given the authority to set up or alter the businesses of foreign-invested enterprises with total investment of USD 1 billion or less. Filing requirements in the pilot program will be relaxed to give eligible multinational companies greater flexibility in managing their foreign currency capital in China.
- Permitting procedures for foreign talent will be simplified, and eligible foreign employees hired by enterprises registered in China will get work visas within two working days.

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to China taxation, please contact Rachel Zhang at ***rachel.zhang@pkftax.com*** *or call* ***+86 18611393933****.*

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New tax incentives introduced

The Ministry of Finance (MOF) and State Administration of Taxation (SAT) issued Caishui [2018] No. 54, and No. 51 on 7 May 2018 and No. 50 on 3 May 2018, which are three new tax incentives related to enterprise income (EIT) and stamp duty (SD).

According to Caishui [2018] No. 54, the enterprise can claim an EIT deduction in one year for any newly acquired device or equipment if the unit value of the device or equipment does not exceed RMB 5 million. However, real estate or constructions are not included. This policy is available from 1 January 2018 to 31 December 2020. There is nearly no tax depreciation for new fixed assets if a small or intermediate enterprise has no real estate.

According to Caishui [2018] No. 51, any enterprise will be eligible to claim an employee education expense deduction for EIT up to 8% of total salaries and wages from 1 January 2018. The excess amount can also be carried forward to subsequent years. As before, the employee education expense deduction is limited to 2.5% while only High and New Technology Enterprises and Advanced Technology Service Enterprises are eligible for 8%.

According to Caishui [2018] No. 50, the Stamp Duty on paid-up capital and capital reserves is eligible for a 50% reduction (the original Stamp Duty rate is 0.05%) while all other accounting books are exempt from Stamp Duty, which is RMB 5 per book. This new rule is effective from 1 May 2018.

PKF Comment

Caishui [2018] No. 54, No. 51 and No.50 are part of seven tax-related preferential treatments that were decided at an Executive Meeting of the State Council on 25 April 2018. These tax incentives are aimed to reduce the tax burden and encourage the development of enterprises. Other tax-related preferential treatments will be announced by the MOF and SAT shortly. For any further information or advice concerning PRC tax, please contact Jason Li at ***jason@pkfchina.com*** *or call* ***+86 137 643 03151****.*

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Cyprus

Tax incentives for non-Cyprus domiciles

Introduction of Domicile term

The 'non-dom rule' has created significant tax incentives to individuals who consider taking up residency in Cyprus (while not domiciled there), especially corporate executives and high-net-worth individuals.

- The inclusion of the term "domicile" (for individuals) in the defence tax legislation in addition to the definition of the term tax resident as given to it under the Income tax legislation, means that only Cypriot tax resident and domicile individuals will be taxed under Defence tax legislation.
- This amendment exempts defence tax from popular sources of income like dividend income, currently at 17%, interest income currently at 30% and 75% of the rental income at 3%.
- An individual is considered of a Cyprus domicile if he/she has a domicile of origin in Cyprus based on the provisions of the Will and Succession legislation.

- Examples of domicile may include domicile of the parents at the time of birth or permanently living and intending to live in a country.
- An individual is not considered of a Cyprus domicile if he/she has acquired a domicile of choice outside of Cyprus provided that he/she has not been a Cyprus tax resident in the last 20 years prior to the relevant tax year (irrespective whether he/she is of a Cyprus origin) or although of a Cyprus origin, has not been a Cyprus tax resident for the last 20 years.
- Notwithstanding the above, an individual who although not of a Cyprus origin has been a Cyprus tax resident for 17 out of the last 20 years, prior to the relevant tax year, is considered as a Cyprus domicile.
- Certain restrictions as regards the transfer of assets from a Cyprus domicile to a non-Cyprus domicile but a relative up to the third degree have been inserted.

PKF Comment

This is another incentive for shareholders/wealthy individuals to move their tax residency in Cyprus and obtain tax free investment income. For further information or advice on any Cyprus tax matter, please contact Nicholas Stavrinides at ***nicholas.s@pkf.com.cy*** *or call* ***+357 258 68000****.*

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Germany

German Federal Ministry of Finance reacts to the ECJ decision with restriction of Anti-Treaty-Shopping Rule

In its administrative guideline issued on 4 April 2018, the German Federal Ministry of Finance (FMF) published its view regarding the continued application of Sec. 50d para. 3 German Income Tax Act ITA (the relevant Anti-Treaty-Shopping Rule), which was incompatible with EU law, at least its 2007 version which was applicable up to and including 2011.

Generally, both versions of Sec. 50d para. 3 ITA deal with the requirements for foreign corporate shareholders seeking withholding tax relief on dividends. The European Court of Justice (ECJ) held in its decision of 20 December 2017 that the German Anti-Treaty-Shopping Rule laid down in sec. 50d para. 3 ITA violates both the freedom of establishment and the Parent-Subsidiary Directive (cases Deister Holding AG C 504/16 and Juhler Holding A/S C 613/16). The FMF administrative guideline, which is the response to the ECJ ruling, deals with both the current version of the Anti-Treaty-Shopping Rule and its preceding version as follows:

i. Sec. 50d para. 3 ITA 2007: no longer applicable.

ii. Sec. 50d para. 3 ITA 2012: applicable to all pending cases but with much more taxpayer-friendly requirements for claiming a reduction of dividend withholding tax. Among others, this concerns holding companies because their activities now also qualify as genuine business activities or at least qualify with respect to other operating group companies located in the same country.

However, the administrative guideline only applies to cases falling under the Parent-Subsidiary Directive, i.e. it only affects cross-border dividends within the EU between group companies. It neither exempts dividends paid to EFTA or non-EU countries, nor dividends subject to a tax treaty, nor royalties and interest from the application of the 2012 version of the Anti-Treaty-Shopping Rule.

PKF Comment

For different reasons it is still questionable whether the FMF administrative guideline is sufficient to make the German Anti-Treaty-Shopping Rule fully compliant with EU law. First of all, a mere administrative guideline does not have the force of law. Furthermore, in view of the limited scope of application to cases falling under the Parent-Subsidiary Directive, the modification still appears to be insufficient to comply with the freedoms under EU law. Despite the exemption made in the guideline, the denial of a refund is still based on the general assumption of an abuse.

Further developments remain to be seen but for the time being the general advice to foreign taxpayers whose withholding tax refund applications have been denied because of sec. 50d para. 3 ITA is to keep such cases open. For further information or advice concerning the application of the German sec. 50d para. 3 ITA or above commented FMF administrative guideline or any advice with respect to German taxation, please contact Isabee Falkenburg at ***isabee.falkenburg@pkf-fasselt.de*** *or Thomas Rauert at* ***thomas.rauert@pkf-fasselt.de*** *or call* ***+49 40 35552 137****.*

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Federal Tax Court (I R 58/15): Can the Final Effect of Withholding Tax be avoided by having a deemed commercial limited partnership as an intermediary?

One of the latest decisions made by the German Federal Tax Court (BFH) deals with the question whether a domestic partnership whose only general partner is a corporation and where solely a corporation is authorized to manage the partnership's business (so-called deemed commercial partnership), can be used to protect foreign limited partners from the final effects of withholding tax (BFH I R 58/15 dated 29 November 2017). If dividend income were recognized in the tax assessment of the German partnership, corporations resident in non-treaty countries would be protected from the final tax on dividends at a rate of 25%. The foreign corporation would then be exempt from German corporate income tax under sec. 8b para. 1 and 5 CIT and would be able to credit the withholding tax.

The BFH held that the final effect of withholding tax is suspended through the deemed commercial partnership if the following conditions are met:

i. Corporate partners in non-treaty countries have to maintain a permanent establishment (PE) in Germany. According to the BFH, the deemed commercial partnership is able to provide the partners with a domestic PE because they derive commercial income from it. Whether the income is deemed to be commercial income as such or is qualified as commercial income under German law, is irrelevant.

ii. In a second step it has to be demonstrated which income is attributable to the actually existing PE in Germany. Especially in cases where the limited partners also carry on a business abroad, the allocation may require further information. The extent to which the shareholding held by the partnership is attributable to the domestic PE has to be determined by applying the principle of causation. For further investigation on this aspect, the BFH referred the case back to the Lower Tax Court in Bremen (FG Bremen).

PKF Comment

Although there are some points left open, this decision outlines significant clarifications to some fundamental issues in German taxation. Additionally, it provides the taxpayer with a possibility to bypass the restriction imposed by sec. 50d para. 3 ITA (reference in this respect is made to the foregoing article in this edition under the Germany section). It remains interesting to see what the results of the FG Bremen and the reaction thereto will be. For further information or any advice with respect to German taxation, please feel free to contact Isabee Falkenburg at ***isabee.falkenburg@pkf-fasselt.de*** *or Thomas Rauert at* ***thomas.rauert@pkf-fasselt.de*** *or call* ***+49 40 35552 138****.*

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Italy

Tax free shopping – Introduction of mandatory e-invoicing

As from 1 September 2018, e-invoicing will become mandatory regarding "tax free shopping". The Customs Agency and Revenue Agency defined the implementation rules for electronic invoicing under the so-called "tax free shopping" regime.

VAT regulations, provided that supplies of goods to individuals domiciled or resident outside the European Union, for a total amount (VAT included) exceeding EUR 155 and for personal or family use transported in personal luggage outside the EU customs territory , can be made without paying the tax (according to art. 38-quater, Presidential Decree 633/1972). Moreover, according to the same decree, for the purchase of consumer goods made in Italy by foreign travellers (resident or domiciled outside the European Community), the value added tax paid is refunded. This measure aims to encourage the growth and development of Italian commerce at an international level.

The requirements to get the VAT refund are the following:

- The property is purchased by a private citizen;
- The purchase pertains to goods (and not services) for an amount exceeding EUR 154.94 including VAT;
- The goods are destined for personal or family consumption;
- The goods are transported in personal luggage outside the European Community within 3 months of the purchase;
- An invoice is issued.

Following the introduction of the electronic invoicing obligation, the Customs Agency created an updated version of the software through which the data flow can

be managed, i.e. OTELLO 2.0. In this way, the transferor issues an electronic invoice and transmits a message containing data to OTELLO 2.0 at the moment of issue. Therefore, it makes the document available to the transferee (in analogical or electronic form), containing the code received that certifies the successful acquisition by the system. Then the transferee provides proof of exit of the goods, mandatory for the refund of VAT no longer through the stamp affixed on the tax document by the exit customs, but through the unique digital visa code generated by OTELLO 2.0.

If the exit out of the European Union occurs from a second member state, different from the one where the goods were bought, the proof of exit of the goods is provided by the customs authorities of the second member state, according to the law in force in that member state.

PKF Comment

For further information on this matter or any advice on Italian taxation, please contact Stefano Quaglia at ***stefano.quaglia@tclsquare.com*** *or call* ***+39 010 8183250****.*

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Ministerial Decree aligns TP rules with current OECD standards

A Ministerial Decree of 14 May 2018 containing the guidelines for the application of the provisions on Transfer Pricing has been published in the Official Gazette No. 118 of 23 May 2018. The Decree contains nine articles and reflects both the BEPS project and the 2017 revision to the OECD guidelines. The main technical features of the Decree are described hereafter:

- The subjective requirement is linked to the presence of "associated companies" (i.e. the resident company and the non-resident companies) when one of them directly or indirectly participates in the management, control or capital of the other one, or if the same subject participates, directly or indirectly, in the management, control or capital of both companies;
- The objective requirement is represented by the presence of "controlled transactions" (i.e. transactions between associated companies).

With regard to the principle of free competition, the decree establishes that this must be applied for each transaction. However, if an associated company realizes two or more controlled transactions that are closely related to each other (or that form a unitary complex that cannot be valued separately) these transactions must be aggregated together to carry out a comparability analysis.

The most suitable way to determine transfer pricing should be chosen according to the circumstances of the case and, according to OECD standards, the "price comparison method" is preferred.

Finally, a simplified approach is introduced for "low added value services". The aim is to ascertain that the value of the service is determined by adding direct and indirect costs related to the provision of the service, plus a profit margin of 5% on the above mentioned costs.

PKF Comment

The guidelines contained in the Decree are extremely innovative and should be favourably accepted. In addition to clearly reiterating the free competition approach compliant with the one adopted by the OECD, it is important that they provide basic indications on key aspects of the domestic discipline. For further information on this matter or any advice on Italian taxation, please contact Fabrizio Moscatelli at ***fabrizio.moscatelli@tclsquare.com*** *or call* ***+39 010 81 83 250****.*

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Jersey

A new retail tax to be introduced

In 2018, the introduction of a new standard rate of tax on 'large corporate retailers' has been proposed. Definition of large corporate retailer:

- 60% of company's turnover is derived from retail sales in Jersey;
- Retail sales in Jersey are not less than GBP 2 million;
- Amalgamation rules for associated companies;
- Applies to non-Jersey owned and Jersey owned companies.

The new tax is as follows:

- Where taxable profits are less than GBP 0.5 million the tax rate is 0%;
- Where taxable profits exceed GBP 0.75 million the tax is 20%;
- Tapering provisions apply between GBP 0.5 million and GBP 0.75 million.

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to Jersey taxation, please contact Rob Behan at ***robert.behan@pkfbba.com*** *or Joanne Routier at* ***joanne.routier@pkfbba.com*** *or call* ***+44 1534 858 490****.*

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Jordan

2018 Tax Amendments

On 17 January 2018, the tax amendments published in the Official Gazette (issue number 5496) entered into force and we have hereafter summarised the salient features.

A. Issuance of Regulation number (3) for the year 2018 amending the Special Tax (ST) Regulation No. (80) for the year 2000. The amendments under the new regulation are:

- Imposing a new Special Tax within different rates (500, 750, 1000 and 1,500 JOD) on cars that operate in whole or in part on gasoline, depending upon the weight of the car.
- Increasing Octane gasoline 95 and 98 Special Tax rate from 24% to 30%.
- Increasing taxes on other items.

B. Amendments to Article 26/D of the Jordanian General Sales Tax Law No. (6) for the year 1994, whereas postponing payment of the due sales tax on goods and services was cancelled.

PKF Comment

Postponement is now only allowed for the due sales tax on manufacturing entities provided they satisfy the postponement conditions on import and after ensuring they have the financial capabilities and they actually conduct manufacturing activities. The reason for the decision was to limit tax evasion because taxpayers used the postponement to evade tax by creating unreal purchase/sale transactions to cover the due sales tax, which resulted in creating credit for them with the department that equals or exceeds the due tax which affects the treasury negatively.

C. Amendments to the General Sales Tax (GST) Tables attached to the Jordanian General Sales Tax Law No. (6) for the year 1994. The amendments were:

- Cancellation of the attached tables 2 and 3 annexed to the GST Law and implementing instead the following tables:
  - Table (2) of items subject to zero tax (annex 1);
  - Table (3) of items exempted from tax (annex 2).
- Cancellation of all the Prime Ministry decisions which reduce GST to 4% except decision number (407) dated 18 January 2018.
- Reduction of GST on the following items based upon article (22/C) of the GST Law number (6) for the year 1994:
  - Reduce GST from 16% to 4% on items stated in annex 3;
  - Reduce GST from 16% to 5% on items stated in annex 4;
  - Reduce GST from 16% to 10% on items stated in annex 5.

PKF Comment

A quick check of the amendments on the annexed tables reveal the increase or imposing of taxes on items which were exempted or subject to either zero tax or lower rates of tax, we broke them down to the following:

- 19 items which were subject to zero rated tax are now subject to 10%, some of these items are: books, certain types of machines and certain types of food;
- 179 types of food which were either exempted or subject to 4% are now subject to either 10% or 16% tax;
- 7 items which were exempted from tax are now subject to 5%, some of these items are: jewellery, silver, gold and diamonds;
- 2 Services which were exempted from tax are now subject to 16%:
  - *Training and physical education*
  - *Goldsmithing*
- 48 items which were subject to 4% tax are now subject to 16%, some of these items are: raw phosphate, potash and some desserts;
- 5 items which were subject to 8% tax are now subject to 16%, some of these items are: internet services, certain types of food and hotel accommodation services;
- Olive oil which is an essential ingredient in all households was exempted from tax but is now subject to 4%.

As can be seen these amendments impact several areas which are important and affect individuals and companies' daily activities from food products to services.

D. Put a stop to exemptions:
Decision by the Prime Ministry upon recommendation made by the Economic Development Committee to stop exemptions from income and sales tax and fees granted to companies, institutions and other private parties by a decision from the Prime Ministry only if it does not state a specific amount nor exemption duration as of 1 April 2018, provided that this decision does not affect the exemptions granted in accordance with treaties and contracts concluded with the government and the exemptions granted according to the law.

PKF Comment

The decision left an open window for companies, institutions and private parties which still need the exemption allowing them to apply for a renewal between 1 January and 31 March 2018.

E. New Income Tax Law
A new Income Tax Law is under discussion and it is projected to enter into force in 2019. The new law has been widely debated within the Jordanian community, businesses, individuals and throughout all the sectors. So far, the feedback is negative as it imposes further taxes and reduces exemptions. Under the current economic status, the Jordanians found this law to be detached from reality and unreasonable.

PKF Comment

For further information related to the 2018 tax amendments or any advice on Jordan taxation, please contact Amani Kattan at ***akattan@pkf.jo*** *or call* ***+962 6 5627129****.*

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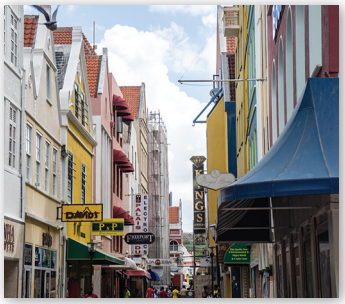
Netherlands

Non-residents capital gain taxation on foreign substantial interest in Dutch company



As already mentioned in the Q1 update of 2018, the Dutch dividend withholding taxation has been adjusted as per the year 2018. As a result of this adjustment, most distributions made by a Dutch resident company are fully exempted from Dutch dividend withholding tax unilaterally by the Netherlands, provided that a qualifying double tax treaty is in place. Linked to this adjustment and the accompanying new anti-abuse legislation, the Dutch non-residents capital gain taxation on foreign substantial shareholders of Dutch companies was also adjusted. In this update we elaborate on this adjustment.

In a regular (i.e. non-abuse) situation, a foreign company holding a substantial interest (for which in principle a minimum 5% shareholding is required) in a Dutch resident company, will not be subject to Dutch corporate income taxation on the capital gain realised on the sale of its shares. However, anti-abuse legislation was triggered if the substantial interest was held with the (main) purpose to avoid personal income tax and/or Dutch dividend withholding tax liability of an indirect-shareholder of the Dutch resident company without any valid business reasons for the group structure or (series) of transactions.

As of 1 January 2018, the above anti-abuse legislation has been adjusted. Based on the adjustments, the following amendments were made:

- The foreign substantial interest shareholder will no longer be liable to Dutch corporate income tax, if the (main) purpose of the shareholding is to avoid Dutch dividend withholding taxation. From January 2018 onwards, this “aim” will – subject to conditions – be taxable solely with Dutch dividend withholding tax. The statutory tax rate of both taxes is different: 20%-25% for the Dutch corporate income tax and 15% for the Dutch dividend withholding tax; and
- Anti-abuse legislation in the corporate income tax act is still triggered if both a “subjective” and an “objective” test is met:
  - Subjective test: the substantial interest is held with the (one of the main) purpose(s) to avoid personal income tax of an indirect-shareholder of the Dutch resident company;
  - Objective test: the structure consists of one or more ‘artificial‘ steps whereby artificial should be interpreted as performed without valid business reasons (i.e., mostly or solely tax driven).

The subjective test is met if the foreign shareholder holds the interest in the Dutch company with (one of the) main purposes to avoid another one’s personal income tax. In order to determine whether personal income tax has been avoided, a comparison is made at the level of the first material enterprises above the Dutch company between the taxation with and without the interposing of

the shareholder of the Dutch company. If the personal income taxation is lowered thanks to the interposing of the shareholder, the group structured is deemed to be aimed at lowering taxation and the subjective test is met.

The objective test is not met if the direct shareholder carries out an active business or is an intermediate holding company which has a linking role with the active business of the indirect shareholder whilst also meeting a minimum level of relevant substance requirements. Two new requirements are added to the list of relevant substance requirements: The intermediate holding company/direct shareholder of the Dutch company must have at least EUR 100,000 of payroll expenses connected to the holding activities and rent/own an office space which it (intended to be) used to perform the holding activities.

Please note that even if the new Dutch legislation triggers Dutch corporate income taxation or dividend withholding taxation, the tax treaties for the prevention of double taxation and the EU Parent-Subsidiary directive still need to be observed.

PKF Comment

Whilst the above new legislation could impact every group structure with a Dutch company, special attention is asked for foreign tax resident persons which own the shares in a Dutch company via their foreign holding company. In these simplified group structures it would be challenging to either not meet the subjective or objective test. For more information or advice on any aspect of the above new legislation, please contact Ruud van der Linde at ***ruud.van.der.linde@pkfwallast.nl*** *or Jeroen van Strien at* ***jeroen.van.strien@pkfwallast.nl*** *or call* ***+31 15 261 31 21****.*

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New Zealand

Extension of the bright-line test for residential property to 5 years

A bright-line rule is a clearly defined rule that leaves no room for interpretation. If you enter into an agreement to purchase residential property on or after 29 March 2018 and sell it within five years, taxpayers will need to consider if any gain is taxable under the bright-line test. This period was previously two years.

The bright-line test doesn't apply if the property is:

- a main home;
- transferred as part of an inheritance;
- transferred to as an executor/administrator of a deceased estate.

PKF Comment

While New Zealand doesn't currently have a broad-based capital gains tax, this is another step in that direction and is a further attempt by Government to crackdown on property speculation. The obvious downside is that if a taxpayer sells a residential property within five years for good reason, they will still be caught by these provisions. For further information or advice concerning New Zealand taxation, please contact Jono Bredin at ***jono@pkfbmr.nz*** *or call* ***+64 3 951 3162****.*

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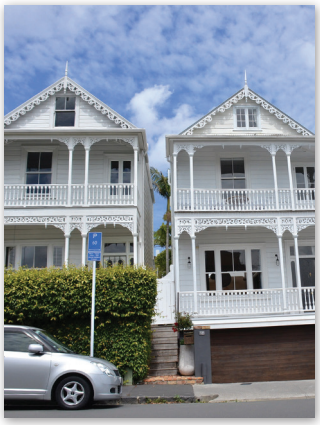
Residential land withholding tax (RLWT) changes for offshore owners of residential property



The RLWT criteria have changed as a result of the extension of the bright-line test as outlined above. From 29 March 2018, the sale of New Zealand residential property by an offshore person may now be required to have RLWT withheld if it is sold within 5 years of purchase.

With this extension, RLWT will apply if:

- a sale amount is paid or payable on or after 1 July 2016; and
- the property sold is New Zealand residential land; and
- the seller:
  - has purchased the property on or after 1 October 2015 through to 28 March 2018 inclusive, and owned the property for less than two years before selling; or
  - has purchased the property on or after 29 March 2018 and owned the property for less than five years before selling, and
  - is an offshore RLWT person.

PKF Comment

Offshore taxpayers who own New Zealand residential land should carefully evaluate prior to entering any agreements, what the likely RLWT cost could be. There is also a legal requirement on conveyancers to withhold such amounts. For further information or advice concerning New Zealand taxation, please contact Jono Bredin at ***jono@pkfbmr.nz*** *or call* ***+64 3 951 3162****.*

»BACK

Nigeria

Contract for the supply of goods and services by non-resident companies is liable to Value Added Tax (VAT)

On 19 December 2017, the Federal High Court (FHC) in Nigeria held that a contract for the supply of goods and services by non-resident companies is liable to VAT(Vodacom Business Nigeria Limited vs. Federal Inland Revenue Service (FIRS)). The decision originated from a dispute between the Federal tax authority and a Nigerian company on the VAT treatment of a contractual arrangement between the Nigerian company and a non-resident company under which bandwidth services were supplied in the Netherlands but consumed in Nigeria, which was decided at the Tax Appeal Tribunal in favor of the Federal tax authority.

The FHC held that in the first instance, all transactions including transactions with non-resident entities are liable to VAT in Nigeria except those that have been expressly exempt in the VAT Act. Also in transactions involving a non-resident supplier, the material consideration is whether the service/good was received/consumed in Nigeria. The court further held that the recipient of the service in Nigeria is liable to self-charge VAT and remit VAT on the transaction to the tax authorities under the reverse-charge system.

PKF Comment

This decision has given legal basis to the applicability in Nigeria of the destination principle in the OECD International VAT/GST Guidelines published on 12 April 2017. Non-resident business entities need to be aware of the VAT implications of their transactions in Nigeria. The fact that VAT has not been charged on its invoice or that it's a one off transaction does not preclude the VAT obligation. For further information or advice concerning Nigerian tax rulings or decisions or any advice with respect to Nigerian tax issues, please contact Tajudeen Akande at ***tajudeen.akande@pkf-ng.com*** *or call* ***+234 903 000 1352/ +234 802 303 9317****.*

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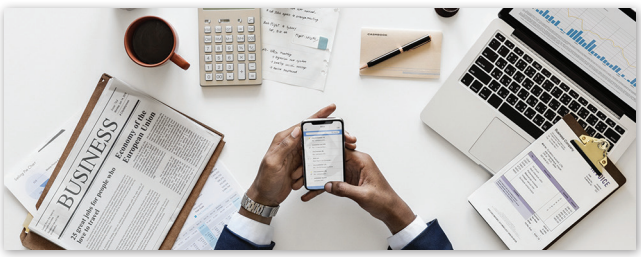

Romania

Changes regarding the tax on micro-company revenue

Starting 1 January 2018, all companies which obtained in the previous year revenue of up to the RON equivalent of EUR 1 million at the exchange rate valid at year end, which are not owned by the state and are not in dissolution/ liquidation procedure have been obliged to apply micro-companies tax instead of Romanian corporate income tax. Micro-companies tax is computed based on total revenues obtained, to which a percentage of 1% in case of companies with 1 employee, or 3% in case of companies with no employees is applied.

In order to limit the disadvantages of the micro-company tax, the Ordinance 25 published on 30 March 2018 introduces an exception to the above rule, allowing companies with a share capital of at least RON 45,000 (roughly EUR 9,600) and at least 2 employees to opt for becoming a Romanian corporate income tax payer starting 1 April 2018.

Also, starting 1 April 2018, micro-companies may benefit from tax credit facility for sponsorships carried out to support non-profit organisations that are providers of social services accredited with at least one licensed social service. The tax credit is up to 20% of tax due on micro-company income in the quarter in which the expense is recorded. Unused tax credits may be carried forward over a period of 28 consecutive quarters.

PKF Comment

With regards to the micro-companies tax, the level of expenses recorded does not influence the taxable base under this tax regime, affecting businesses with low mark-up. Moreover, tax losses cannot be carried forward during the period in which the company applies the micro-company tax regime, affecting businesses in the set-up/ investment phase. Due to these changes, the impact is favourable for businesses in the set-up/investment phase with tax losses because they are not obliged to pay the income tax and are allowed to carry forward tax losses declared in the annual profit tax returns for a period of up to seven years. For further information or advice concerning Romanian taxation, please contact Narcisa Chirila at ***narcisa.chirila@pkffinconta.ro*** *or call* ***+40 21 317 31 96****.*

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Russian Federation

Supreme Court rules on thin capitalisation and applicable withholding tax rates on re-qualified interest into dividends

On 6 March and 5 April 2018, the Supreme Court issued two important rulings on thin capitalisation and the applicable withholding tax rates on re-qualified interest into dividends.

The Court ruled that a loan can be considered an investment in capital when interest paid is re-qualified into dividends under thin capitalisation provisions and therefore the lower withholding tax rates for dividends under the applicable double tax treaties can be applied.

In the 6 March ruling the lender was a foreign grandparent entity of the Russian borrower (in a Cyprus-Russia context) while in the 5 April ruling the lender was a foreign sister company of the Russian borrower (in an Austria-Russia context). Both the Cyprus-Russia and the Austria-Russia double tax treaties set a financial threshold for the direct participation in the capital of the dividend payer to qualify for a reduced 5% dividend withholding tax rate (100,000 EUR in the case of Cyprus and 100,000 USD in the case of Austria), which was not met in these two instances.

The Supreme Court stated that if the loan amount had been contributed to the company's capital, it would have met the criterion for applying the 5% rate, i.e. would have complied with the threshold. Furthermore, the Court allows to qualify loans from companies having no shareholding in the borrower's capital as a capital contribution while the tax authorities had argued that the lower withholding tax rates could only apply when a loan is provided by a direct shareholder.

The Supreme Court has filed both cases at a first instance court for re-trial.

PKF Comment

The new approach from the Supreme Court grants the opportunity to benefit from lower withholding tax rates for double tax treaty purposes when thin capitalisation provisions come into play. For further information on this matter or any advice on Russian taxation, please contact Yulia Ponomarenko at ***y.ponomarenko@mef-consult.ru*** *or call* ***+7 495 988 15 15****.*

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Rwanda

Major highlights of the new income tax law

The new income tax law officially known as the Law No. 016/2018 of 13 April 2018 Establishing Taxes on Income was published in the official gazette on 16 April 2018 and came into force on the same day. This new law repeals the previous Law on Direct Taxes on Income which had been in force since 2005.

The new income tax law covers the following taxes:

- Personal income tax;
- Corporate income tax;
- Withholding tax;
- Capital gains tax.

Several amendments have been made in the new law and we have highlighted some of the changes that may have a fundamental impact on the way you do business in Rwanda from an income tax perspective.

We have categorized these changes into five main sections below:

1. General provisions
2. Taxation of employment income
3. Taxation of business profits
4. Taxation of investment income and capital gains
5. Withholding tax

General provisions

Permanent establishment

A permanent establishment (PE) is a fixed place of business which gives rise to a taxable presence in Rwanda. In the repealed law, the indicators of having a PE in Rwanda were if a foreign company had any of the following: a place of management, a branch, a factory/ workshop, a mine/quarry or a construction site. These indicators failed to effectively cover foreign entities carrying out services in Rwanda.

We are of the view that it is for this reason that the new law has introduced an additional PE threshold test which provides that a foreign person (entity) providing services in Rwanda with the support of employees or other personnel for more than 90 days in a 12 month period either continuously or intermittently shall be considered to have a PE in Rwanda.

Liberal profession
The new law has defined a liberal profession as 'a profession exercised on the basis of special skills, in an independent manner, in offering services to clients'. This definition is too broad and therefore could lead to inconsistent application of this provision. In our view, liberal professions would include lawyers, accountants, engineers, architects and other similar regulated professions.

Article 12 has excluded liberal professions from opting to pay tax under the lumpsum tax regime which is a flat tax rate of 3% on turnover. The lumpsum regime applies to taxpayers whose turnover is below RWF 50 million. However, liberal professions will now be required to declare tax under the real tax regime (30% of taxable profit) regardless of their turnover.

Taxation of employment income

Definition of an employee
The repealed law did not have a definition for who exactly is an employee. The new law has clearly defined an employee as any person who undertakes work for another person (employer) for a consideration (salary) under the supervision and in accordance with directives of his/her employer.

Going by this definition, the difference between an employee and a professional consultant is that the consultant must be seen to be working in an independent manner without being under the supervision of the contracting individual/entity in regard to the methodology used in his/her professional work.

Payments exempted from employment income tax
In the repealed law, retirement contributions made by the employer on behalf of the employee and/or contributions made by the employee to a qualified pension fund upto a certain threshold were exempt from employment income tax.

Under the new law, this clause has been deleted which now means that – in our view – the employer's contribution to a private qualified pension fund will now be included in the taxable income of the employee resulting in an increase in the applicable tax.

However, upon retirement, the new law provides that pension payments from both the state pension fund (RSSB) and private qualified pension funds will be exempt from employment income tax. This is a departure from the repealed law where only pension payments from the state pension fund (RSSB) were exempt.

We are of the view that the intended outcome of the above changes is to collect the tax on retirement contributions during employment and allow pensioners to receive their pension payments free of tax.

Benefits in kind
The new law has offered some much needed clarity on the value of taxable benefit in kind in cases where a rented house and a leased vehicle obtained for the benefit of the employee is paid directly by the employer. It provides that in these cases, the actual cost of rental or lease shall be considered as the taxable benefit in kind (similar to any other allowance).

This has been a contentious issue under the repealed law where – in our view – both rented and employer - owned house or car were subject to a taxable value equivalent to 20% and 10% of the employee's gross salary respectively.

Taxation of business profits

Proper support documents
The repealed law provided that one of the four conditions to be fulfilled for an expense to be deductible from taxable income was that the expense had to be substantiated by proper documents. This led to divergent interpretations as to what exactly constituted 'a proper document'.

The new law has addressed this issue by stipulating that for an expense to be deductible from taxable income, such an expense must be substantiated by proper purchase receipts.

Management, technical and/or royalty fees to non-residents
This is the more prominent of the two main amendments to the article on non-deductible expenses. The new law provides that management, technical and/or royalty fees paid to non-residents will only be allowable as a deduction on taxable income to a maximum of 2% of the taxpayer's turnover.

For instance, a company with a turnover of RWF 1 billion which pays a non-resident entity an annual management fee of RWF 100 million will only be allowed a tax deduction of RWF 20 million. RWF 80 million will be added back to taxable profit resulting in an additional tax liability of 30% of RWF 80 million which is equal to RWF 24 million in additional corporate income tax.

This clause is expected to have a significant impact on companies that can only source specialized management or technical expertise from outside Rwanda. We also expect businesses that make use of certain intellectual

property which can only be accessed from outside Rwanda to be adversely affected, e.g. international hotel franchises.

Depreciation rates
The new law has classified information and communications systems into two categories and the depreciation rates for each category is as follows:

- Information and communication systems whose useful life is under 10 years will be entitled to a depreciation rate of 50% on a reducing balance basis;
- Information and communication systems whose useful life is over 10 years will be entitled to a depreciation rate of 10% of acquisition cost on a straight line basis.

Tax losses carried forward
The new law provides that a taxpayer may request to carry forward tax losses for a period exceeding 5 years on condition that certain requirements which shall be issued by the minister of finance are fulfilled. This is a welcome departure from the repealed law.

However, the new law has retained the provision that a change in the direct or indirect shareholding of a company whose shares are not traded on a recognized stock exchange by more than 25% results in forfeiture of all tax losses carried forward.

Transfer pricing
The new law requires that related parties involved in controlled transactions must have documents justifying that their prices are consistent with the arm's length principle. This means that all companies transacting with related parties will now be required to develop and adopt a Transfer pricing policy.

Taxation of investment income and capital gains

Taxation of capital gains
The new law has introduced more comprehensive provisions on taxation of capital gains on sale or transfer of shares which was a contentious issue under the repealed law. The new law provides that the capital gain on sale or transfer of shares is the difference between the acquisition price and the selling or transfer price. The applicable tax rate is 5 percent of the computed gain.

Withholding and declaration of capital gains tax
The responsibility to withhold, declare and remit the capital gain tax has been placed on the company within which the sale or transfer of shares occurred. We are of the view that this article will prove to be controversial because transactions involving sale or transfer of shares are not captured in the company's books of accounts and neither is the payment made through the company's bank account. What this means is that companies have been tasked with the role of being withholding tax agents over payments that are outside their control.

This in itself is a fundamental flaw because in order to carry out the role of a withholding agent, an entity/person must have control over receipt, custody, disposal, or payment of the income that is subject to the withholding tax.

Exemption from Capital Gains Tax (CGT)
Capital gain from the sale or transfer of shares traded on the capital market and capital gain from the sale or transfer of units of collective investment schemes is exempt from CGT.

Dividend income
The scope of dividend income has been broadened to include income from shares in societies, similar payments from entities that are subject to corporate income tax and the adjusted profit after transfer pricing adjustments by the Tax administration.

Inter-company dividends
Under the repealed law, dividends paid between two resident companies were exempt from both withholding tax and corporate income tax. Under the new law, inter-company dividends are now subject to withholding tax but remain exempt from corporate income tax.

Withholding tax

Scope of withholding tax
Under the new law, withholding tax will now be levied not only on payments as was the case in the repealed law but also on other methods of extinguishing an obligation. These methods could include conversion of debt to equity, bonus issue in lieu of dividend etc

Withholding tax is applicable if such payments or other methods of extinguishing an obligation are made to either (a) a person not registered with the tax administration or (b) person who does not have a recent income tax declaration.

It should however be noted that:

- Dividends paid by a resident company are subject to withholding tax regardless of tax registration/ declaration status.
- Persons/entities covered in category (b) above who are registered taxpayers may reduce their income tax payable by utilizing the deducted withholding tax.

The payments which are subject to withholding tax include dividends, interest, royalties, service fees, performance payments, gambling activities and goods sold in Rwanda.

Interest payments exempted from withholding tax
The following interest payments are exempted from withholding tax:

- Interest on deposits in financial institutions for a period exceeding one year.
- Interest on loans granted by a foreign development financial institution exempted from income tax in their country of origin. Article 3 defines a foreign development financial institution as an institution carrying out financial activities with public funds, for which administrative decisions are made by Government representatives and having public interest missions such as sustainable development and poverty reduction.
- Interest paid by banks operating in Rwanda to other banks or other foreign financial institutions.

Withholding tax on deemed payments
Under the repealed law, withholding tax was only due for declaration and remittance to RRA when payment was made. Under the new law, accrued expenses/liabilities which reduce the taxable income of the company in a particular tax period are deemed as paid if they remain unpaid for a period of six months following the end of that tax period.

For instance, a company has accrued expenses relating to services provided by a non-resident amounting to USD 10,000 as at 31 December 2018. If this liability remains unpaid on 30 June 2019 then this company will be liable to declare and remit withholding tax of USD 1,500 by 15 July 2019.

Consequently, this clause does not cover dividends declared but not paid or payments that are not subject to withholding tax.

Withholding tax on payments made by non-residents on behalf of their PEs in Rwanda
The new law has introduced a provision which stipulates that withholding tax is also applicable where a non-resident makes a payment on behalf of their local permanent establishment. It should be noted that Article 6 of this law provides that "the fact that a company controls or is controlled by another shall not of itself constitute either company a permanent establishment of the other."

In our view, therefore, this provision may not automatically apply where a non-resident company makes payment on behalf of its subsidiary or associate company which is resident in Rwanda. However, in the case of a non-resident having operations in Rwanda that give rise to a PE in the form of a branch or other forms highlighted under the article on permanent establishment (which do not have a separate legal identity from the non-resident) then any offshore payments made by that non-resident company on behalf of its PE will be subject to withholding tax in Rwanda.

There are divergent views on the application of this provision and we hope that the Tax Administration will give more guidance on it.

PKF Comment

We have a dedicated team of tax professionals who are at hand to help your business align its transactions and related tax compliance processes with the requirements of the new law. For further information or advice concerning Rwanda tax ruling decisions or any advice with respect to Rwanda taxation, please contact Gurmit Santokh at ***gsantokh@rw.pkfea.com*** *or call* ***+250 788 454 746*** *and* ***+250 788 386 565****.*

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Switzerland

Swiss Federal Council adopted the dispatch on tax proposal 17 (TP17)

Swiss voters rejected the third series of corporate tax reforms (CTR III) on 12 February 2017. The current tax system and the tax privileges of the cantonal status companies have thus remained in force. These privileges are no longer in line with international standards. During its meeting on 21 March 2018, the Federal Council adopted the dispatch on TP17, the latest presents itself as a suitable response from Switzerland to the worldwide tax trends.

The major proposed changes are:

i. The quintessence of the TP17 is the abolition of the arrangements for cantonal status companies which are no longer accepted internationally. In order for Switzerland to remain an attractive business location, this measure will be accompanied by the introduction of new tax-related special arrangements to promote R&D: the patent box will allow a portion of the profits

from inventions to be taxed at a reduced rate in the cantons in the future. Moreover, the cantons will have the opportunity to make provision for an additional deduction of no more than 50% for R&D expenditure. Both of these special arrangements will be accompanied by a relief restriction. It includes a binding provision for the cantons, whereby at least 30% of companies' profits must always be taxed before the special arrangements are applied.

ii. Foreign companies relocating to Switzerland will be able to disclose their hidden reserves including goodwill without Swiss tax consequences (step-up) and profit from additional tax deductible amortisations in the first few years. In order to prevent international double taxation, Swiss permanent establishments of foreign companies will be entitled to benefit from the lump sum tax credit in the future.

iii. The Federal Council adopted the dispatch on 21 March 2018. The parliamentary deliberations can thus be concluded in the 2018 autumn session. If a referendum is not called, the first TP17 measures can come into force at the beginning of 2019 and most of them can come into force as from 2020.

PKF Comment

We are closely monitoring the reform process, both from a political and an economic perspective. For further information or advice concerning the aforementioned changes in the Swiss tax legislation or assistance with respect to any other Swiss taxation issues, 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**.

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Turkey

Law No. 7143 on the Restructuring of tax and certain receivables and amending certain laws

The Law facilitates the payment of taxes, tax penalties, customs duties, SSI premiums, delay interests, late fees and administrative penalties which are prescribed in certain laws in respect of periods prior to 31 March 2018 and includes adjustments for tax receivables which are subject to examination and judicial proceedings, and in addition provides a tax base increase mechanism for income/corporate income tax, VAT and certain withholding taxes as well as a declaration of inventory, machinery, equipment and fixed assets which are not recorded in the company's books although they physically exist within the enterprise, and the commodities, cash balances and receivables from shareholders which are not present in the enterprise although they are recorded on the balance sheet.

As of the date on which the Law has been published (18 May 2018), in case the entire portion of taxes which are unpaid although they have become due or the unpaid portion thereof which has not yet become due, 50% of the tax penalties imposed regardless of the principal tax and of the tax penalties imposed due to participation, the entire unpaid portion of customs duties, 50% of the administrative penalties imposed regardless of the principals of the customs duties, 30% of the administrative penalties imposed based on the value of the goods in bond and the entire principal amount of customs duties if any, are paid within the period and in the manner specified in the Law, together with the amount which will substitute the secondary public receivables related thereto such as late interest payments and late fees, which will be calculated up to the date on which this Law was published based on the monthly rate of change of the domestic producer price index, the collection of the balance of the penalties and the delay interests and late fees shall be renounced.

Applications shall be filed by 31 July 2018. Applications for a tax base increase may be filed until the end of August 2018. For the years in which an increase is made as follows, no tax inspection in respect of the relevant tax types, which are Income Tax, Corporate Tax and VAT, and no other assessment for these tax types pertaining to these years shall subsequently be carried out. The corporate and income taxpayers who keep their books on a balance sheet basis, may correct their records by declaring to the tax offices until the end of the third month following the date on which this Law was published (i.e., 31 August 2018). The corporate and income taxpayers may record into their books the inventory, machinery, equipment and fixed assets which are not recorded in the company's books although they physically exist within the enterprise, at a market value to be determined by them or by their affiliated professional organisation, by notifying the same to the tax office with an inventory list until the end of the third month following the date on which this Law was published (i.e., 31 August 2018). Real and legal persons who report their money, gold, foreign exchange, securities and other capital market instruments which are located abroad to banks and intermediary firms in Turkey within the framework of the provisions of this paragraph by 30 November 2018, can freely dispose of such assets

PKF Comment

If you believe any of the above measures may impact your business or require any advice with respect to Turkish taxation, please contact Emrah Cebecioglu at ***e.cebecioglu@pkfistanbul.com*** *or call* **+90 212 426 0093**.

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Uganda

2018/19 income tax (amendment) bill imposing a tax rate for a person with assessed losses carried forward

Although there is no limit on the period for claiming income tax losses carried forward, the recent income tax (amendment) bill for the fiscal year 2018/2019 tabled before the Parliament of Uganda in April 2018 proposed an amendment that a taxpayer who has carried forward losses for a consecutive period of seven years of income shall pay a tax at a rate of 0.5% of the gross turnover for every year of income in which the loss continues after the seventh year.

Most profit-making entities usually attain the tax losses through utilisation of significant allowable capital deductions. It is expected that the tax authority shall implement stringent review procedures while examining all income tax returns filed with recurring tax losses in order to implement this new amendment.

PKF Comment

All multinational corporate entities obliged to account for corporation tax in Uganda on income sourced therein should be aware that the Uganda Revenue Authority will be monitoring the trend of tax losses declared in the income tax returns filed annually in regard to the cut-off period of seven (7) years and then scrutinise the eligibility for the imposition of tax on the gross turnover to generate more tax revenues for the Government of Uganda. This could, in particular, affect businesses with significant sales revenues where they will end up paying taxes more than they ought to have to pay if appropriate chargeable income is determined prior to the cut-off period of the seventh year. Therefore, it is important that multinational corporate entities benefitting significant capital allowances in Uganda make a deliberate effort to institute systems which monitor the trend of their tax losses in order to mitigate exposures, which affect investors' returns. For any further information or advice on Uganda tax matters, please contact Charles Oguttu at ***coguttu@ug.pkfea.com.tw*** *or call* ***+256 312 305800***.

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United Arab Emirates

UAE joins the Inclusive Framework on BEPS

On 16 May 2018, the United Arab Emirates became the 116th jurisdiction to join the Inclusive Framework (IF) on BEPS with a commitment to implement the anti-BEPS minimum standards. The IF was established in January 2016, after the G20 Leaders urged the timely implementation of the BEPS package released in October 2015 and called on the OECD to develop a more inclusive framework with the involvement of interested non-G20 countries and jurisdictions, including developing economies.

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Issuance of new list of tax treaties and investor protection agreements

The official list of tax treaties for the UAE is now at 114 while also 78 Agreements for the Promotion and Protection of Investments have been signed. A list of double tax treaties can be found here: https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxtionAgreements/Pages/DoubleTaxtion.aspx and a list of investor protection agreements can be found here: https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxtionAgreements/Pages/InvestorProtection.aspx.

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Introduction of the new Investment Law

100% foreign ownership

Currently, foreign investment in the UAE mainland is restricted to 49% across all sectors. The UAE cabinet has recently made a major announcement approving a new investment law permitting 100% foreign ownership of companies in the UAE. Previously, this was limited to companies based in Free Zones in the UAE. The UAE Ministry of Economy (MOE) shall coordinate the implementation of these new rules, preparation of detailed reports to ensure these developments. The MOE and other relevant authorities are still weighing what industries are to be included in the law and the decision will be based on factors such as the ability to create jobs and transfer technology, etc. The new law is scheduled to be enforced by the end of this year.

Residence visa

The UAE Cabinet also announced the launch of an integrated visa system which is aimed at attracting professionals/talented people in all vital sectors of the national economy. It is anticipated that residence visas of up to 10 years may be given to the specialists/ professionals in categories that would be mentioned in the cabinet decision.

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UAE VAT update

In line with the growing competitiveness of the world economy, the UAE's shift towards a taxation economy is both commendable and necessary, as it encourages economic diversification and boosts transparency. In order to encourage registration and compliance from such persons, the Federal Tax Authority (FTA) had even postponed the levy of penalties for late registration for VAT until the end of April 2018.

While there are many who found the process to complete a VAT return and the attendant VAT compliances challenging, mandating the need for assistance from tax professionals, the FTA has been actively supporting and providing its guidance modules by way of issuance of various guides clarifying the tax positions, other e-learning modules and infographics to ease out the process of VAT compliances which includes step by step process to file tax returns, making the VAT payments and so on.
After the issuance of Cabinet Decision on Designated Zones, the FTA has issued key updates in areas like real estate, taxability of director services, guide on seeking clarifications from the FTA, refund of VAT for business visitors, etc. A few key areas are discussed below.

FTA VAT Guide on Real Estate

The FTA issued a VAT Guide on Real Estate in March 2018. It contains guidance on the VAT treatment of supplies of real estate, as well as various common transactions which occur within the real estate sector. Further, it provides an understanding of how VAT affects owners or landlords of real estate and other related businesses which operate in the real estate sector.

A summary of the VAT liability on supplies of real estate as provided in the Real Estate guide is given below for ready reference:

Sr No	Supply of:	VAT Liability*
1	A commercial property	5%
2	A new residential property	0%
3	An existing residential property	Exempt
4	Bare land	Exempt
5	Covered land	5%
6	A new charitable building	0%
7	An existing charitable building	5%
8	A property located within a Designated Zone	Out of scope

* The VAT liability is arrived at based on the conditions and explanations provided under the provisions of the UAE Vat Law read with the relevant sections of the guide on real estate.

VAT Refund User Guide

The FTA published the VAT Refund User Guide in February 2018. The same is intended to help Taxable Persons prepare the claim of refund to the FTA. The guide explains the process to be followed (effective from 1 February 2018) along with the forms and information that is required to be provided at the time of making a refund application with the FTA.

FTA published Taxable Person Guide for VAT

The FTA issued a Taxable Person Guide for Value Added Tax in March 2018. This guide provides the following:

1. An overview of the VAT rules and procedures in the UAE and how the compliance is required to be made;
2. Assistance with the likely questions that businesses may have; and
3. References to more specialized publications where they have been published.

FTA VAT Guide on Directors Services

The FTA recently issued a VAT Guide on Directors Services. It contains guidance on the characterization of director's services under several models to determine whether a taxable supply of services exists for VAT purposes and is relevant for any person appointed and providing services in the capacity of a director.

FTA released Guide on Clarifications

The FTA has released a clarification guide to help any person submit clarification requests to the FTA with respect to specific matters of uncertainty on which guidance may be required. Thus, the guide shall be helpful in seeking technical clarifications in matters of uncertainty arising upon analysis of the UAE VAT Law.

Release of Summary Guide and Form - Business Visitors scheme

The FTA has released a summary user guide (detailed guide awaited) which shall be useful to foreign businesses in order to claim their VAT refunds. Also, the form to claim such VAT refunds is now available on the FTA portal.

Exchange Rates against UAE Dirham for VAT related obligations

The UAE Central Bank has recently published foreign currency rates against AED (Arab Emirates Dirham) for the purposes of calculation of the VAT obligation of UAE business entities as per the provisions of the UAE VAT Law. These rates shall be updated Monday to Friday and

are based on forex rates prevailing at 6pm UAE time each day.

PKF Comment

The news on the UAE joining the IF is integral to the UAE proving to the world its increased commitment to international tax cooperation. News on the updated tax treaties list and the latest list of investor protection agreements only strengthens the UAE's international position of growing out of the shackles of being labelled as a tax haven and now being a torch bearer in regional and international tax cooperation.

The announcement of the 100% foreign investment law and ten-year visas for professionals is a focused attempt by the UAE to bolster the economy and also to stay ahead of other neighbours in the MENA region.

Issue of clarifications in key areas like real estate and director services is a step in the right direction as business across the board seek greater clarity on some of the finer nuances of the UAE VAT regime. Industry leaders are hopeful that they can have a more fruitful dialogue with the FTA through the clarifications channel. For further information or advice concerning VAT in the UAE or 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 38 88 900****.*

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United Kingdom

New Cyprus-UK Double Taxation Treaty

On 22 March 2018, the Government of the United Kingdom and the Government of the Republic of Cyprus, signed a new double tax treaty which will replace the current treaty of 1974. This new treaty was signed to aid development of the existing economic relationship between the countries and to allow collaboration on tax affairs. The new treaty also brings the agreement between the countries into line with the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention for the Avoidance of Double Taxation on Income and Capital.

The new treaty is not hugely different to that of 1974, the main changes being to dividends and capital gains. Regarding dividends, if the beneficial owner of dividends is resident in both the UK and Cyprus, then the dividends will not suffer withholding tax, unless they are obtained from immovable property. Prior to the new treaty, there was nothing included about the taxation of capital gains. The rules now state that where ownership of immovable property in one country is transferred by a resident of the other country, this will be taxed in the country in which the property is situated.

PKF Comment

The new rule about dividends will be beneficial to residents of both Cyprus and the UK who receive dividends from either of these countries as they will no longer suffer this tax. Owners of property in either Cyprus or the UK who are resident in the other country and plan to sell, need to be aware of these changes as this will affect their capital gains tax calculations, potentially leading to penalties. If you believe any of the above measures may impact your business or require any advice with respect to UK taxation, please contact Kieren Moody at ***kieren.moody@jcca.co.uk*** *or call* **+44 131 220 2203***.*

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Extension of first year tax credits and rate of claim reduction

Capital expenditure by a business on plant and machinery can qualify for tax relief in the form of capital allowances.

Under the enhanced capital allowances scheme, a 100% first year allowance (FYA) is available to support investment in energy-saving, and water-saving, plant and machinery.

The UK Government has extended the First Year Tax Credit scheme for 5 years until 31 March 2023, making sure that loss-making companies are encouraged to invest in energy and water efficient technologies.

When the scheme was originally introduced, the claim percentage was set at 19% which was two-thirds of the 28% CT rate. The new rate will, therefore, be set at two-thirds the rate of the corporation tax in line with the original policy intention, which will currently be around 12.67%.

The changes to the scheme came into effect on 1 April 2018.

PKF Comment

This scheme has meant the high purchase costs of these types of plant and machinery are lowered. The scheme encourages companies to purchase the most efficient plant and machinery which are the most cost-effective and beneficial for the environment. If you believe any of the

above measures may impact your business or require any advice with respect to UK taxation, please contact Amy Spencer at ***amy.spencerr@jcca.co.uk*** *or call* ***+44 131 220 2203****.*

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HMRC is set to update the VAT legislation for vouchers to bring it up to date with a revised EU VAT directive

Currently, VAT must be paid on single purpose vouchers (SPV) when they are issued. VAT due on any multi-purpose vouchers (MPV) does not have to be paid before the vouchers are redeemed. Under the current system, a voucher is an MPV if it can be redeemed against a range of goods or services, even if they are all subject to the same VAT rate. On 1 January 2019, the UK will align with the EU on how vouchers are treated. From this date the voucher will have to be redeemable against goods or services at different VAT rates to be a multipurpose voucher, otherwise it will be deemed a single purpose voucher and VAT will be due on issue, not redemption. The new law is the first EU wide definition of a voucher, and where and when it should be taxed. The proposed changes are needed to comply with the EU Vouchers Directive 2016/1065 issued on 27 June 2016.

PKF Comment

From a UK perspective, we are likely to see the removal of the distinction between credit and retailer vouchers, the definition of a single purpose voucher (SPV) will be widened, and there will be changes as to how intermediaries and issuers account for VAT in certain cases.

This measure will have an impact on all businesses, including small and micro businesses, who issue vouchers. One-off costs include familiarisation with the new rules. On-going costs could include determining whether vouchers are SPVs or MPVs, and some additional record keeping in order to calculate the correct amount of VAT due. Businesses who wish to continue benefiting from voucher planning arrangements around MPV's should also consider offering products subject to different VAT rates which the vouchers can be redeemed against.

If you believe any of the above measures may impact your business or require any advice with respect to UK taxation, please contact Ross Cargill at ***ross.cargill@jcca.co.uk*** *or call* ***+44 131 220 2203****.*

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United States

Online Sales Taxes – SCOTUS hears South Dakota v Wayfair

On 17 April 2018, the Supreme Court of the US heard oral arguments on the tax case South Dakota v. Wayfair. South Dakota recently passed a law that requires Internet sellers to collect sales tax when selling to South Dakota residents. This law directly challenges the precedent established in Quill Corp v. North Dakota (1992), which held that a company could not be forced to comply with a state's sales tax collection and remittance requirements unless it had a physical presence in the state. If decided in South Dakota's favour, a reversal of the Quill precedent will result in internet sellers around the country being subject to the thousands of different state and local tax codes in the U.S. The Court indicated they would issue their decision by the end of June.

PKF Comment

Online retailers, with no PE in the US, selling products to US customers may be required to collect sales tax in the US based on the outcome of this decision. For further information or advice concerning USA state and local tax matters, please contact John Corn at ***john.corn@frazierdeeter.com*** *or call* ***+1 404 253 7444****.*

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IRS clarifies treatment of bonus depreciation when computing recognised built-in gain and loss under Section 382

At a Glance

On 8 May 2018, the IRS issued Notice 2018-30, which modifies previous guidance dealing with the computation of recognised built-in gain and loss under Section 382. The new guidance provides that the determination of such built-in gain and loss is made without regard to additional first-year depreciation under Section 168(k) (so-called "bonus depreciation"). The changes are effective for ownership changes occurring after 8 May 2018.

Background

Built-in Gain and Loss under Section 382

In general, Section 382 imposes a limitation on the amount of net operating loss and other tax attributes a corporation can use to offset taxable income following an ownership change. An ownership change is triggered when a corporation experiences a greater than 50% increase in ownership among 5% shareholders. The limitation generally equals the fair market value (FMV) of

the corporation immediately before the change multiplied by a specified federal rate.

Section 382(h) deals with the treatment of built-in gain and loss assets the corporation owns at the time of the ownership change. If the corporation has a net unrealised built-in gain (NUBIG) at the time of the change, any recognised built-in gain (RBIG) during a five-year recognition period increases the Section 382 limitation for that year (but not in excess of the NUBIG amount). If the corporation has a net unrealised built-in loss (NUBIL), any recognised built-in loss (RBIL) during the five-year recognition period is treated as a pre-change loss subject to the Section 382 limitation (but not in excess of the NUBIL amount).

When determining whether a corporation has a NUBIG or NUBIL, a de minimis rule provides that the NUBIG or NUBIL, as the case may be, must exceed the lesser of USD 10 million or 15% of the value of the corporation's assets immediately before the ownership change. If the threshold is not met, NUBIG or NUBIL is treated as zero.

Notice 2003-65

To assist taxpayers in computing built-in gain and loss under Section 382, the IRS issued Notice 2003-65, which provided two safe harbour methods: the Section 338 approach and the Section 1374 approach.

Under the Section 338 approach, built-in gain and loss items are identified by comparing the loss corporation's actual items of income, gain, deduction, and loss with those that would have resulted if a Section 338 election had been made with respect to a hypothetical purchase of all outstanding stock of the loss corporation on the date of the ownership change.

The Section 1374 approach incorporates the built-in gain and loss rules of Section 1374, which imposes a tax on an S corporation that was formerly a C corporation. The Section 1374 approach treats any allowable deduction for depreciation, amortisation, or depletion of a built-in loss asset as RBIL except to the extent the corporation establishes that the amount is not attributable to the excess of an asset's adjusted basis over its FMV on the change date, regardless of whether the amount accrued for tax purposes before the change date.

Notice 2018-30

The IRS has modified Notice 2003-65 on account of changes made by the recently passed Tax Cuts and Jobs Act (the Act). In particular, the Act amended the rules under Section 168(k) by allowing 100% bonus depreciation for property acquired and placed in service after 27 September 2017 and before 1 January 2023. Thereafter, the bonus percentage is phased down 20% each year for property placed in service through 31 December 2026. Additionally, the Act eliminated the requirement that the property's original use must begin with the taxpayer (i.e., property that is used in the hands of the taxpayer can now qualify for bonus depreciation).

A collateral effect of the bonus depreciation rules under the Section 338 safe harbour is increased RBIG amounts and decreased RBIL amounts in the first year of the recognition period. Also, in some instances, total RBIG would increase and total RBIL would either increase or decrease during the five-year recognition period. The Treasury and the IRS determined that such changes to RBIG and RBIL are not appropriate under Section 382. Notice 2018-30 provides that the hypothetical cost recovery deduction using bonus depreciation does not provide a reasonable estimate of the income or expense produced by a built-in gain or loss asset during the recognition period. The IRS states in the notice that "the use of this additional first year depreciation would invalidate the assumption that underlies the section 338 approach …".

The IRS goes on to explain that these concerns also apply to one aspect of the Section 1374 approach, as follows:

One acceptable method [under the Section 1374 approach] is to compare the amount of the amortisation deduction actually allowed to the amount of such deduction that would have been allowed had the loss corporation purchased the asset for its fair market value on the change date. The amount by which the amount of the actual amortisation deduction does not exceed the amount of the hypothetical amortisation deduction is not RBIL. This method is essentially the same as the 338 approach for determining RBIL. Accordingly, the Treasury Department and the IRS have determined that a hypothetical amortisation deduction using the additional first year depreciation allowed under section 168(k) does not provide a reasonable estimate of RBIL for purposes of section 382(h)(2)(B) under the 1374 approach.

Effective Date

The modifications made by Notice 2018-30 are effective for ownership changes occurring after 8 May 2018. The IRS is also requesting comments regarding the treatment of built-in gain and loss items under Section 382(h).

PKF Comment

The new Notice addresses questions under Notice 2003-65 that have impacted corporations subject to a Section 382 limitation. Loss corporations must now disregard bonus depreciation when computing RBIG and RBIL.

While the exclusion of bonus depreciation from RBIG will have a negative impact on the ability of corporations to increase their Section 382 limitation, the guidance nonetheless adds needed clarification. Additionally, the effective date of Notice 2018-30 leaves open the possibility for loss corporations to increase RBIG with bonus depreciation for ownership changes occurring prior to 9 May 2018. If you have any questions about your particular tax situation, please contact Michael De Prima at ***mdeprima@eksh.com*** *or call* **+1 303 740 9400***.*

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New York State expands taxation of non-residents

New York State is on a hunt for increasing personal income taxes on non-residents. Its method: expanding the definition of a non-resident individual's source income. Non-residents, of course, are the easiest of targets. They don't vote in the state.

In April 2018, the New York State Department of Taxation and Finance released Technical Memorandum TSB-M-18(1)I which states that a non-resident's New York sourced income now includes the gain or loss from the sale of ownership interests in certain entities (i.e., partnerships, LLCs and S corporations) that own shares in cooperative housing corporations located in New York.

The TSB-M addressed a tax law change in 2017. Even if you sold your New York co-op shares in 2017, you are out of luck. The law is effective for tax years beginning on or after 1 January 2017.

History of non-resident-sourced income

In general, non-residents of New York are subject to income tax on income or gain derived from or connected to New York. Also, income from the sale of intangible property (i.e., sale of a stock or even a partnership interest) is New York sourced income if the property is used in a business carried on in New York. Historically, however, by placing property in an entity and selling the interest in that entity, a non-resident could potentially avoid personal income tax on the sale of that asset.

To eliminate this 2009 "loophole" [via TSB-M-09(5)I] and the tax law it addressed, New York expanded its definition of non-resident New York source income to include gain attributable to the ownership of any interest in New York real property. The term "real property" in New York was changed to include an interest in a partnership, LLC, S corporation, or non-publicly traded C corporation with 100 or fewer shareholders, that owned New York real property with a fair market value that was 50% or more of all the assets in the entity on the sale date of the taxpayer's interest in the entity. But, somehow, ownership of cooperatives was not included in this change.

The latest change

Under the latest TSB, New York further expands its definition of New York real property for a non-resident to include an interest in a partnership, LLC, S corporation, or non-publicly traded C corporation with 100 or fewer shareholders that owns shares of stock in a New York cooperative, provided that the fair market value of the entity's real property and shares of New York cooperative stock equals or exceeds 50% of all the assets the entity has owned for at least two years as of the sale date. If all of the entity's assets have been owned less than two years, the 50% rule has been met. The TSB states that the rules apply to non-resident and part year resident trusts and entities in tiered structures.

Two other new non-resident New York sourcing situations addressed

At the same time as the issuance of the above TSB, two other TSBs were issued that address the sourcing of a non-resident's income to New York. The first, TSB-M-18(2) I, sets forth that where a non-resident partner has a gain on the sale of a partnership interest and the sale is subject to IRC § 1060 and occurs on or after 10 April 2017, then the gain from New York sources is determined by multiplying the gain by the partnership's business allocation percentage for the taxable year when sold.

The second, TSB-M-18(2)C, (3)I, provides guidance on how non-residents will determine the New York-source portion of non-qualified deferred compensation attributable to services provided prior to 2009 to an entity exempt from U.S. taxation. Such compensation was granted a deferral from taxation for 10 years. However, the previously untaxed amount is now included in taxable income federally. For New York, different rules apply depending on who is including pre-2009 non-qualified deferred compensation in their federal taxable income.

PKF Comment

As always, it is important to discuss any proposed transactions with your tax advisor and to recognise how tax authority changes are applicable to your ownership structure. While owning a cooperative in New York through an entity may have certain legal and tax benefits, it is important to understand how the New York tax rule change impacts you. If you have any questions about your particular tax situation, please contact Alan S. Kufeld at akufeld@pkfod.com or Sandy Weinberg at ***sweinberg@pkfod.com*** *or call* ***+1 646 449 6319*** *or* ***+1 203 705 4170*** *respectively.*

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