PKF

PKF worldwide tax update

September 2023

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The content of this PKF Worldwide Tax News has been compiled and coordinated by Stefaan De Ceulaer (stefaan.deceulaer@pkf.com) of PKF International. If you have any comments or suggestions please contact Stefaan directly.

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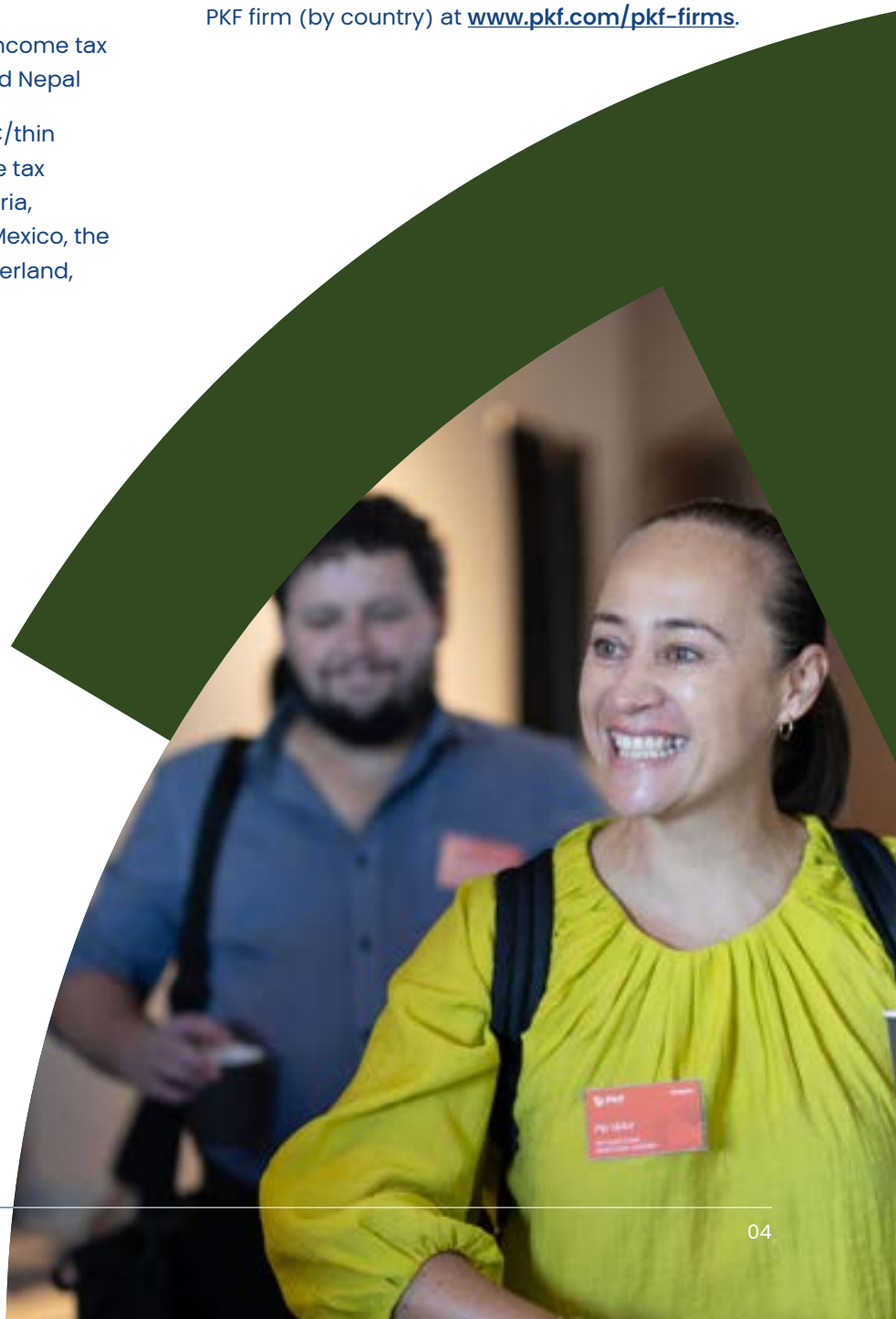
Welcome

In this third quarterly issue for 2023, the PKF Worldwide Tax Update newsletter again brings together notable tax changes and amendments from around the world, with each followed by a PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with 480 offices, operating in over 150 countries across our five regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

In this issue featured articles include discussions on:

- (EU) VAT updates in Romania and the UAE
- Case law and administrative rulings in Ghana and Malta
- Significant personal and corporate income tax changes in Chile, Hungary, Kenya and Nepal
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in Austria, Cyprus, Germany, Hong Kong, Italy, Mexico, the Netherlands, Peru, South Africa, Switzerland, Ukraine, the UK and the US.

We trust you find the PKF Worldwide Tax Update for the third quarter of 2023 both informative and interesting and please do contact the PKF tax expert directly (mentioned at the foot of the respective PKF commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at **www.pkf.com/pkf-firms**.



Austria

Latest developments on remote working

The Austrian tax authority has addressed the issue of establishing a tax-related permanent establishment through home office activities in several responses to enquiries and in the transfer pricing guidelines. In one enquiry in particular, the tax authority evaluated the question of establishing a permanent establishment through a manager (working two days a week) in her private residence for a German-based executive holding company. The tax authority believes that using the home office for two days would not qualify as an 'occasional' use that would exclude the establishment of a permanent establishment. Article 5 (4) of the Austria–Germany double tax treaty is also deemed not applicable since providing central services by a non-operational executive holding company to affiliated companies cannot be considered auxiliary activities.

The tax authority once again emphasises the importance of 'effective control', which would be negated if the employer does not require the employee to work from home because a workplace is permanently available at the employer's location, and it is actually used. However, the tax authority argues that if an employee works three days a week at an available and dedicated workplace at the employer's premises, it can be assumed that the employer does not require home office work, and thus the 'effective control' over the home office is absent. It remains unclear from the tax authority's perspective whether the criterion of 'not being required' would similarly affect the creation of a permanent establishment for employees in managerial positions, so the fact that home office work is conducted at the employee's request is not decisive for determining the existence of a permanent establishment. The tax authority did not provide a specific assessment of the situation, although it is not comprehensible and not derivable from the OECD Model Convention why the question of establishing a permanent establishment through home office activities by executives should be treated differently.

Despite the fact that basing the analysis on the employer's 'requirement' leads to arbitrary results, neither Austrian nor German case law recognises home office permanent establishments. If the co-use of a desk in another taxpayer's office space is insufficient to confirm control over a fixed place of business, the same principle applies to an employee working from their own home. The concept of 'control' as a criterion for determining a permanent establishment requires that the entrepreneur possesses a legal position that cannot easily be withdrawn or altered without their involvement. The entrepreneur must have the authority to exclude others from using the establishment. However, this right solely lies with the employee and not the employer.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Austrian taxation, please contact Stefan Frank at stefan.frank@pkf.at or call **+43 1 5128780 292**.

BACK

Chile

Introduction of a new mining royalty

Law 21.591 published in the Official Gazette on 10 August 2023 introduces an annual tax called the mining royalty that will affect mining operators, depending on their level of sales and the minerals exploited. This tax will not affect small miners who sell or process up to 10,000 tons of minerals per month or their equivalent in mining products, and other small-sized mining operators.

The new tax consists of three components, the total sum of which comprises the mining royalty, i.e.

- Component 1: **Ad valorem** component of the mining royalty at a rate of 1%, on annual copper sales of mining operators whose annual sales are greater than the equivalent of 50,000 metric tons of fine copper. If in a given business year the adjusted mining operational taxable income is negative, this negative amount will be deducted to obtain the final **ad valorem** component.
- Component 2: 'Component on the mining margin' is applied to the adjusted mining operational taxable income of the mining operator (only if it is positive). It will affect mining operators who have more than 50% of their annual sales deriving from copper and who produce more than 50,000 metric tons of fine copper. The rate of this component will be determined according to the mining operating margin of the respective year, depending on where the mining operating margin falls within the four established ranges. The first tranche is 8% for those who obtain a mining operating margin of up to 20, and the last tranche is 26% when the mining operating margin is greater than 60.
- Component 3: The mining operators to whom the provisions of component 2 do not apply will be subject to a progressive scale of tax rates, according to the annual value of equivalent annual sales in metric tons of fine copper, which will be applied to the adjusted mining operational taxable income. This scale of tax rates ranges from 0.4% on the value that exceeds the equivalent of 12,000 tons and reaches 4.4% for equivalent annual sales of up to 50,000 tons. For mining operators whose sales exceed 50,000 tons, a progressive tax rate scale will be applied according to the mining operating margin of a given year. This scale ranges from 5% if the mining operating margin does not exceed 35 up to 34.5% if the margin does not exceed 85. If the mining operating margin exceeds 85, the applicable rate will be 14%.

The law determines the information and the way in which it should be considered for the purposes of setting the amount of the mining royalty (how sales are determined, the adjusted operational taxable income, etc.), and the instalment payments that must be made monthly to account for this tax.

The new law sets a maximum potential tax burden for mining operators subject to the mining royalty, equivalent to 46.5% of the adjusted mining operational taxable income. In this respect, corporate income taxes (first category tax) and final taxes which combined result in a tax burden of 35% will be considered, in addition to the determined mining royalty. If the total amount indicated is less than 46.5% of the adjusted mining operational taxable income, the amount of the mining royalty must be increased up to the amount of the maximum potential tax burden. If the sum of the indicated items is greater, no adjustments will be made. However, the potential maximum tax burden will be 45.5% for mining operators whose sales do not exceed 80,000 metric tons of fine copper.

The law on the mining royalty will take effect from 1 January 2024. On the same date, the specific tax on mining activity contained in the Income Tax Law will be repealed.

Mining projects that currently have tax stability due to special legal provisions will be governed by the regulations in force as of 1 January 2022 until the date on which the tax stability ends. However, they can voluntarily adopt the mining royalty regulations in advance.

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Chilean taxation, please contact Antonio Melys Alvarez at **amelys@pkfchile.cl** or call **+56 22650 4332**.

BACK

Cyprus

Simplified procedures – Related party transactions

On 6 July 2023, the Cyprus tax authorities issued a circular with respect to transactions that fall below the local file threshold.

The circular applies to all taxpayers with related party transactions (controlled transactions) that are exempted from the obligation to be documented in a Cyprus local file, due to the fact that these transactions do not exceed (or would not have exceeded, based on the arm's-length principle) the threshold of €750,000 in aggregate per category per year.

In addition, for certain types of transactions, the circular provides simplification measures in the form of minimum and maximum acceptable profit margins ('safe harbours'), provided that they fall below the aggregate threshold of €750,000 per category per year and assuming that adequate minimum transfer pricing documentation (TP) is maintained.

Hence, the minimum documentation required to comply with the arm's-length principle for persons who are exempt from the obligation to keep a local file and have controlled transactions in any category of transactions is set as follows:

a) a brief description of the functional analysis (functions, assets, risks);

b) a description of the characterisation of the entity, based on the results of the functional analysis;

c) a record of the reasons that make the chosen pricing method the most appropriate; and

d) determination of the equidistance value on the basis of benchmarking results, internal or external comparables, as appropriate, or any other relevant analysis in the case where, based on the OECD Guidelines on Controlled Tariffs for Multinational Enterprises and Tax Authorities as amended (hereinafter referred to as 'OECD GO'), it is appropriate to use valuation models, as in the case of financial guarantees.

Applicability

With regard to the simplification measures, these are applicable in the following cases:

- financing arrangements with related parties involving borrowings (e.g. back-to-back loans);
- financing arrangements to related parties financed out of equity;
- financing obligations/arrangements where the funds are used in the business; and
- low value-added services.

Safe Harbour clauses for certain types of transactions:

- For back-to-back loans the required net return (before tax) has been set at 2.5% on the average principal of the loan receivable during the year, including any accrued interest;
- For loans/arrangements financed out of equity/ own funds, the minimum return has been set as the equivalent of the 10-year government bond yield of the country of residence of the borrower plus 3.5% (before taxes). The return is calculated based on the average principal of the loan receivable during the year, including any accrued interest;
- For financing arrangements in which the Cypriot entity is the borrower, and the funds have been used for business purposes, the maximum allowable borrowing cost will be calculated based on the 10-year government bond yield of Cyprus of the tax year under consideration, plus 1.5% (before taxes). The calculation will be based on the average principal of the loans during the year (plus any accrued interest);
- For low value-added services, as defined in the circular and the TP guidelines issued by the OECD, a minimum return of cost-plus 5% will be accepted where the Cypriot entity is the provider of the services. Where the Cypriot entity is the receiver of the services, then the cost-plus 5% will be the maximum allowed expense.

50% tax deduction on employees' income

On 30 June 2023, the income tax legislation was amended with respect to the existing article 8(23A) in relation to the 50% tax deduction given to employees who come to Cyprus to be employed.

Basic incentive

Articles 8(23) and 8(23A) provide for a tax deduction of 50% on the remuneration of an employee of a Cyprus permanent establishment if, in the previous tax year, the employee was residing overseas, as an incentive to attract high calibre talent into Cyprus.

Effective date

These changes have retrospective effect from 1 January 2022.

Conditions

It must be highlighted that certain conditions need to be met in order to grant the tax deduction.

The changes to the articles are summarised as follows:

1. Individuals who meet the conditions for the 50% exemption are allowed to continue to benefit from this exemption even if they change employer during the years they are entitled to claim the 50% exemption.
2. For the purposes of claiming the 50% exemption, the number of years that an individual must not have been resident in the Republic before their first employment in the Republic has been increased from 10 to 15 consecutive tax years.
3. The following sentence has been deleted:

   'The exemption is granted during the tax year of termination of employment in Cyprus or at

the end of the 17-year period, provided that the remuneration from employment in Cyprus during the last 12 months of employment in Cyprus exceeds €55,000.'

4. Individuals who during the year 2022 qualified for the 50% exemption, based on the initial provisions of article 8(23A), and now, based on these amendments, do not qualify for the 50% exemption, have the right to continue claiming the 50% exemption provided that the conditions of article 8(23A) which were in force before the tax amendments came into force are met.

5. The tax exemption is granted for a period of 17 tax years or until the abolishment of the relevant subsection of the legislation, whichever occurs earlier, commencing from the year of commencement of first employment in the Republic.

6. The exemption is granted in any year in which the remuneration from employment in Cyprus exceeds €55,000, regardless of whether in any tax year the remuneration is reduced below €55,000, provided that in the first or second year of employment in Cyprus the remuneration exceeded €55,000 per annum and the Commissioner is satisfied that the fluctuation in the annual remuneration is not an arrangement put in place with the purpose of obtaining the exemption.

Scope of 'first employment' in article 8(23A)

Commencement of first employment in the Republic is considered to be when a person for the first time, after a period of 15 consecutive tax years in which they did not exercise any salaried services in the Republic, starts exercising salaried services in the Republic, either for an employer resident in the Republic, or for an employer not resident in the Republic.

Transitional rules

Furthermore, regarding employments which commenced before 1 January 2022, article 8(23A) provides that, irrespective of the year of commencement of the first employment in the Republic, the provisions of article 8(23A) shall apply from 1 January 2022 for 17 consecutive tax years, or until the abolishment of the relevant subsection of the legislation, whichever occurs earlier, beginning from the tax year in which the first employment commenced in the Republic. The provisions apply to individuals who have continuous employment in the Republic from the year of commencement of their first employment up until the tax year 2021 and who, for a period of at least 15 consecutive years immediately before the commencement of their first employment in the Republic, were not residents of the Republic and:

i. benefited from the 50% exemption in accordance with the provisions of article 8(23) of the Income Tax Law; or

ii. whose first employment in the Republic commenced during the years 2016 to 2021 with remuneration exceeding €55,000 per annum, or

iii. whose first employment in the Republic commenced during the years 2016 to 2021 with remuneration less than €55,000 per annum and within six months from the date of publication of the income tax amendments, their remuneration exceeds €55,000 per annum.

Finally, it is noted that:

1. Where the exemption under article 8(23A) of the Income Tax Law is granted, the exemptions of articles 8(21), 8(21A) and 8(23) of the Income Tax Law are not granted.

2. The exemption is granted to each person once in a lifetime, for those years that the provisions of article 8(23A) apply.

3. Notwithstanding the remaining provisions of article 8(23A) of the Income Tax Law, a person who was a beneficiary of the exemption of article 8(23A) prior to the publication of the tax amendments of 2023, continues to benefit from the exemption of 50% of the remuneration from first employment, provided that the conditions of article 8(23A) are met, before the tax amendments of 2023 came into force.

PKF Comment

For further information or advice on any Cypriot tax matter, please contact Nicholas Stavrinides at nicholas.s@pkf.com.cy or call **+357 258 68000**.

BACK

Ecuador

Law to promote the strengthening of the family economy

On 20 June 2023, the law to promote the strengthening of the family economy was published, introducing a number of new provisions.

New personal income tax rates for year 2023

Personal income tax rates have been amended with the following progressive structure (for year 2023, payable in 2024):

Year 2023 (USD)			
Minimum allowance	Maximum allowance	Tax payable on the minimum allowance	Tax rate on the excess
0	11,722	0	0%
11,722.01	14,930	0	5%
14,930.01	19,385	160	10%
19,385.01	25,638	606	12%
25,638.01	33,738	1,356	15%
33,738.01	44,721	2,571	20%
44,721.01	59,537	4,768	25%
59,537.01	79,388	8,472	30%
79,388.01	105,580	14,427	35%
105,580.01	Above	23,594	37%

Tax on sports betting

A tax is introduced on income from Ecuadorian sources earned by tax residents in Ecuador or abroad, from sports betting activities developed live, through the internet or any other means.

- The tax rate is 15%.
- The tax base for residents will be the total income generated (including commissions) minus the total prizes paid within the tax year, provided that the withholding at the respective source has been made on the payment of the aforementioned prize.
- The tax base for non-residents will be the total value of bets placed.

VAT on public performances

Public shows will be subject to a 12% VAT rate.

PKF Comment

These fiscal measures seek to alleviate the economic burden of households and promote the welfare of citizens, allowing them to have higher levels of savings and consumption of goods and services. Moreover, requiring the payment of taxes for income generated through electronic platforms reduces the possibility of tax evasion, ensures that digital companies contribute fairly to the tax system thus avoiding a disproportionate tax burden on traditional companies and allows the government to increase its tax revenues.

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

BACK

Germany

Important changes in international tax law from 1 January 2024

In Germany, a draft tax law has been published. On the one hand, the minimum taxation of worldwide income for large companies will be regulated for the first time. However, on the other hand all other internationally oriented companies could also be affected by the law. The new regulations are to apply from fiscal year 2024.

1. Minimum taxation for large companies

The OECD has developed a two-pillar model for reforming the internationally applicable tax law. This model affects groups with a minimum consolidated turnover of €750 million per annum. Pillar I provides for an extension and redistribution of taxation rights between countries of residence and market countries. Pillar II regulates a global minimum taxation of these groups. These OECD requirements are now to be implemented in German law as follows.

The minimum tax will be introduced in the Minimum Tax Act ('MinStG') as a separate type of tax. This is intended to ensure that the consolidated income of all business units in a corporate group is taxed at a minimum rate of 15%. If this minimum tax rate is not achieved within the regular income taxation, an additional taxation shall be levied. The tax is levied regardless of the legal form. Within the business group compensation claims can be made. These will neither increase nor decrease taxable income. If the business units located in Germany are subject to an effective tax of less than 15%, a national supplementary tax will apply. This national supplementary tax is then to be offset at the level of the ultimate parent company.

2. New regulations for internationally oriented companies

The draft law also provides for the cancellation of the licence barrier. Due to the licence barrier, licence expenses were previously only tax deductible to a limited extent despite double taxation agreements. This was only the case if the income of the related licensee was taxed at a minimum rate of 25%. Due to the setting of the minimum tax rate at 15%, the licence barrier is now to be cancelled completely.

The purpose of the additional taxation regime is to prevent the practice of relocating profits from passive activities to low-taxed foreign countries. Therefore, interest income, for example, is subject to taxation again in Germany if the tax rate abroad is below a certain rate. Up to now, this tax rate has been 25%. This minimum tax rate is to be lowered to 15%. This is intended to achieve a considerable simplification and reduction of bureaucracy. In addition, a synchronisation between additional taxation and global minimum taxation is to be achieved. Because of this reduction of the minimum tax rate to the currently applicable corporate income tax rate of 15%, the trade tax liability of the additional tax amount shall consequently also be eliminated. The trade tax liability of additional amounts is planned to be cancelled.

PKF Comment

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

BACK

Ghana

New tax legislation and recent case law

New tax legislation

Several new Acts have recently been introduced:

Growth and Sustainability Levy Act 2023 (Act 1095)

This Act imposes a levy in respect of the following persons:

- Persons in Category A – 5% of profit before tax
- Persons in Category B – 1% of gross production
- Persons in Category C – 2.5% of profit before tax

Entities in Category A:

i. banks

ii. non-bank financial institutions

iii. insurance companies

iv. telecommunication companies

v. breweries

vi. inspection and valuation companies

vii. companies providing mining support services

viii. bulk oil distributors

ix. oil marketing companies

x. communication tower operators

xi. companies providing upstream petroleum services

xii. companies and institutions registered by the Securities and Exchange Commission

xiii. specialised deposit-taking institutions

xiv. electronic money issuers

xv. shipping lines, maritime and airport terminals.

Entities in Category B:

Mining companies and upstream oil and gas companies.

Entities in Category C:

All other entities not mentioned within Category A or Category B.

Years covered by the levy

The levy is payable in respect of the 2023, 2024 and 2025 years of assessment.

Levy not an allowable deduction

The levy is not an allowable deduction for the purposes of ascertaining the chargeable income of a person under Act 896.

Filing of estimate and payment by instalment

Persons affected by this levy are to submit an estimate of the levy payable and also pay on a quarterly basis on or before 31 March, 30 June, 30 September and 31 December.

Levy returns

Persons specified in the various categories are to file returns in respect of the levy with the Commissioner-General of the GRA in the manner, time and place determined by the Commissioner-General of the GRA.

Excise Duty (Amendment) Act 2023 (Act 1093)

This Act has amended the First Schedule of Act 878 amended by substitution for the First Schedule (refer to the First Schedule of Act 1093).

Commodity	New rate	Old rate
Mineral water, non- alcoholic beer, energy drinks, fruit juice	20% of ex-factory price	Nil
Malt drinks	Between 10% and 20% of ex-factory price depending on local raw material content	Between 7.5% and 17.5% of ex-factory price depending on local raw material content
Spirits	50% of ex-factory price	25% of ex-factory price
Cigarettes and cigars	50% of ex-factory price plus a specific duty of 28 pesewas per stick	150% of ex-factory price
Negrohead, snuff and other tobacco products	GH₵ 280 per kilogram	170.65% of ex-factory price

Inocome Tax (Amendment) Act 2023 (Act 1094)

This Act has amended the following sections:

- Section 2A of Act 896 amended

  Minimum chargeable income of 5% on turnover where a person has declared losses for the previous five years of assessment. This excludes persons engaged in farming or entities operating within the first five years from commencement.

- Section 6 of Act 896 is amended to include assessment of lottery winnings.
- Section 17 of Act 896 is amended to grant carry forward losses for any of the previous five years of assessment for all types of businesses.
- Section 25 of Act 896 is amended to disallow:

  i. unrealised foreign exchange losses; and

  ii. foreign exchange losses arising from a transaction between two resident persons.

  Persons who realise an asset or liability must file a return to the GRA within 30 days of the realisation.

- Section 39 of Act 896 is amended by the insertion of Section 39A for persons to submit returns on gains on realisation of assets and liabilities.
- Section 94 of Act 896 is amended to include the current economic hardship as a reason to exempt persons who withdraw from a provident fund or personal pension scheme.
- Sections 100 and 115 of Act 896 are amended to tax persons who win the lottery or games.
- Sections 115, 116 and 119 of Act 896 are amended to extend withholding tax to cover winnings from the lottery and the realisation of an asset or a liability.
- Section 128 of Act 896 is amended to extend the definition of 'persons in a controlled relationship'.
- Section 133 of Act 896 is amended to include definitions for the following terms:

  i. betting

  ii. game of chance

  iii. lottery

  iv. stake

  v. gaming.

- The First Schedule of Act 896 is amended to:

  i. revise the rate of income tax for individuals;

  ii. tax the income of persons engaged in lottery operations at the rate of 20%;

  iii. tax the income of non-resident individuals at 25%; and

iv. increase from 15% to 25% the optional rate for individuals who opt to tax separately their gains from the realisation of investment assets and gifts received (other than gains from business activities or employment).

- The Fourth Schedule of Act 896 is amended to change the benefit-in-kind rates for individuals:

  i. Driver and vehicle with fuel – 12.5% of total cash emoluments (TCE), limited to GH₵1,500 per month

  ii. Vehicle with fuel – 10% of TCE, limited to GH₵1,250 per month

  iii. Vehicle only – 5% of TCE, limited to GH₵625 per month

  iv. Fuel only – 5% of TCE, limited to GH₵625 per month.

- The Sixth Schedule of Act 896 is amended to increase the tax rate of persons under temporary concessions from 1% to 5%

Case law/Ruling decision

Perseus Mining (Ghana) Limited vs the Commissioner-General of the Ghana Revenue Authority, in an appeal suit number H1/137/2022 dated 1 June 2023 in the matter of declaring and setting aside the decision of the appellate judge of the High Court (Commercial Division), Accra, dated 8 February 2022 which went in favour of the Commissioner-General of the Ghana Revenue Authority.

We refer to our update in the Q2 2022 tax newsletter for the facts of the case and the initial ruling.

The reliefs requested by Perseus Mining (Ghana) Limited were as follows:

- That the judgment of the High Court was against the weight of evidence available to the Court;
- That the learned appellant judge erred in law by applying the law without first resolving the primary facts and stating his findings;
- That the learned appellant judge erred in law by misconstruing the legal requirements under section 92(1) of the Revenue Administration Act, 2016, (Act 915);
- That the learned appellant judge erred in law by holding that the loss from the forward sales contract is not deductible from business income;
- That the learned appellant judge misdirected himself by holding that the appellant used two different prices in calculating royalties paid to Franco Nevada Corporation and the government of Ghana;
- That the learned appellant judge erred in law by failing to measure the Commissioner-General's exercise of discretion of re- characterisation of the forward sales contract in accordance with the provision of article 296 (c) of the 1992 Constitution; and
- That the learned appellant judge misdirected himself by holding that the forward sales contract was a related transaction.

Ruling

The Appeal Court granted all the reliefs, except the contention that the Commissioner-General failed to measure its exercise of discretion under article 296 of the 1992 Constitution.

The Appeal Court therefore set aside the entire judgment of the appellate High Court.

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Ghanaian taxation, please contact Nana Abena Adu-Gyamfi at nana-adugyamfi@pkfghana.com or call +233 302 22 12 16.

BACK

Hong Kong

Hong Kong proposes a tax certainty enhancement scheme for onshore gains on disposal of equity interests

Earlier this year, the Hong Kong government issued a consultation paper entitled 'Enhancing Tax Certainty of Onshore Gains on Disposal of Equity Interests', introducing a tax certainty enhancement scheme ('the Enhancement Scheme') which aims to provide a set of objective eligibility criteria for determining whether onshore gains on disposal of equity interests ('the gains') would be regarded as non-taxable in Hong Kong.

Background

Under the current Hong Kong tax rules, the gains are not subject to Hong Kong profits tax if they are capital in nature. In this regard, it is normal practice for the Hong Kong Inland Revenue Department (IRD) to adopt a 'badges of trade' approach, where consideration is given to the relevant facts and circumstances of each case, such as the frequency of similar trades, the holding period, the shareholding ratio, reasons for purchase or sale of the equity interests, etc. However, the application of the 'badges of trade' approach can often be contentious, resulting in disputes between the IRD and taxpayers.

To provide greater tax certainty, the Enhancement Scheme proposes that the gains would not be subject to profits tax if an eligible investor entity has held at least 15% of the total eligible equity interests in an investee entity for a continuous period of at least 24 months immediately prior to the disposal.

Whilst the Enhancement Scheme is designed to ensure competitiveness, there are certain exclusions for the gains which are normally not considered as capital in nature and for which the risk of abuse is relatively high. Notwithstanding such exclusions, the gains derived by excluded investor entities or in relation to excluded equity interests will continue to be examined by the IRD using the 'badges of trade' approach under the current tax rules.

After the consultation period which ended in June, an amendment bill is now being drafted by the Hong Kong government and will be introduced into the Legislative Council in the fourth quarter of 2023. Once the codification has been completed, it is envisaged that the Enhancement Scheme will become effective on 1 January 2024.

PKF Comment

It is expected that the competitive tax system of Hong Kong will be further elevated when the proposed Enhancement Scheme becomes effective. As we understand that the IRD will carry on refining the details of the proposed Enhancement Scheme, taxpayers who may be affected, and particularly those with equity investments or who are looking to expand/ restructure, should remain watchful on further developments and seek advice from professionals.

For further information concerning the above or any service request with respect to Hong Kong taxation, please contact Henry Fung (Tax Partner) at henryfung@pkf-hk.com or call **+852 2806 3822**.

BACK

Refinements to Hong Kong's foreign-sourced income exemption regime for foreign-sourced disposal gains

Background

The Hong Kong SAR government ('HK government') passed the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 on 14 December 2022, which came into effect on 1 January 2023. In the meantime, the EU promulgated updated guidance on foreign-sourced income exemption (FSIE) regimes which explicitly sets out that the scope of foreign-sourced disposal gains under Hong Kong's FSIE regime is not wide enough.

Hong Kong has remained on the EU watchlist since the existing FSIE regime in Hong Kong only covers foreign-sourced interests, dividends, equity disposal gains and income from the use of intellectual properties (IP), but not foreign-sourced disposal gains on assets apart from equity interests. To avoid being blacklisted, the HK government has committed to refining the existing FSIE regime to bring it in line with the latest FSIE guidance introduced by the EU.

In this regard, the Financial Services and Treasury Bureau (FSTB) issued the consultation paper 'Refinement to Hong Kong's Foreign-sourced Income Exemption Regime for Foreign-sourced Disposal Gains' on 6 April 2023. The consultation period lasted for two months and the FSTB invited stakeholders and interested parties to comment on the paper by 6 June 2023. The HK government plans to introduce the relevant amendment bill into the Legislative Council in October 2023 with a view to securing the passage of the bill by the end of 2023. It is expected that the amendment bill will meet the EU's requirement to implement the further refined FSIE regime from January 2024.

For details of the FSIE regime, please refer to the tax articles previously published by PKF in Hong Kong and linked here: **September 2022 article, December 2022 article** and **March 2023 article**.

Proposed refinements to the FSIE regime

A. Covered assets for the purpose of evaluating the taxability of disposal gains

The HK government proposed to define the 'covered assets' with an exhaustive list of assets of:

i. debt instruments;

ii. movable properties;

iii. immovable properties;

iv. IPs; and

v. foreign currencies.

Nevertheless, according to the EU's requirements, a non-exhaustive list of assets (instead of the above positive listing approach) would need to be adopted in the FSIE regime to ensure an approach that is consistent with other jurisdictions. The EU has also stated that any disposal gains should be considered relevant regardless of whether the assets are financial or non-financial in nature. The HK government therefore sought the views of various stakeholders on the aforesaid dilemma.

B. Computation of disposal gains or losses

To avoid the foreign-sourced disposal gains being taxed retrospectively, the HK government has taken up with the EU the proposed rebasing approach to rebase the cost of the covered assets as at the effective date of the refined FSIE regime during the computation of the taxable amount of disposal gains.

However, the EU has raised concerns over the above grandfathering rule because such an approach for FSIE regimes has never been accepted by the EU for other jurisdictions.

With the view that the rebasing arrangement may not be accepted by the EU, the HK government, together with stakeholders, are exploring other means with the EU. One of the options is the taper relief, which is to reduce the taxable amount of disposal gains with reference to the duration that the taxpayer has held the assets for.

C. Other exemptions or reliefs

- **Disposal gains for traders**

The HK government proposed to carve out foreign-sourced disposal gains in relation to an asset derived by a trader of the asset as part of its income derived from substantial business activities in Hong Kong from the scope of the refined FSIE regime.

- **Intra-group transfer relief**

For intra-group transfers of assets between associated companies, the HK government proposed that the taxation of foreign-sourced disposal gains derived from the transfer of assets will be deferred until the assets are further transferred outside the group.

'Associated companies' are defined as one of the following:

i. One of the companies concerned must be the beneficial owner of not less than 75% of the issued share capital of the other company concerned; or

ii. A third company must be the beneficial owner of not less than 75% of the issued share capital of each company concerned.

Appropriate safeguards and anti-avoidance measures will be put in place by the HK government to prevent abuse of the above exemption.

Unchanged features of the FSIE regime

- **Covered taxpayers**

Only multinational enterprise (MNE) entities are covered in the FSIE regime. The foreign-sourced disposal gains on covered assets (except IP assets) derived by MNEs or regulated financial entities which are enjoying other existing preferential tax regimes in Hong Kong will still be excluded from the scope of the FSIE regime.

- **Economic Substance Requirement (ESR) (for gains in relation to non-IP assets)**

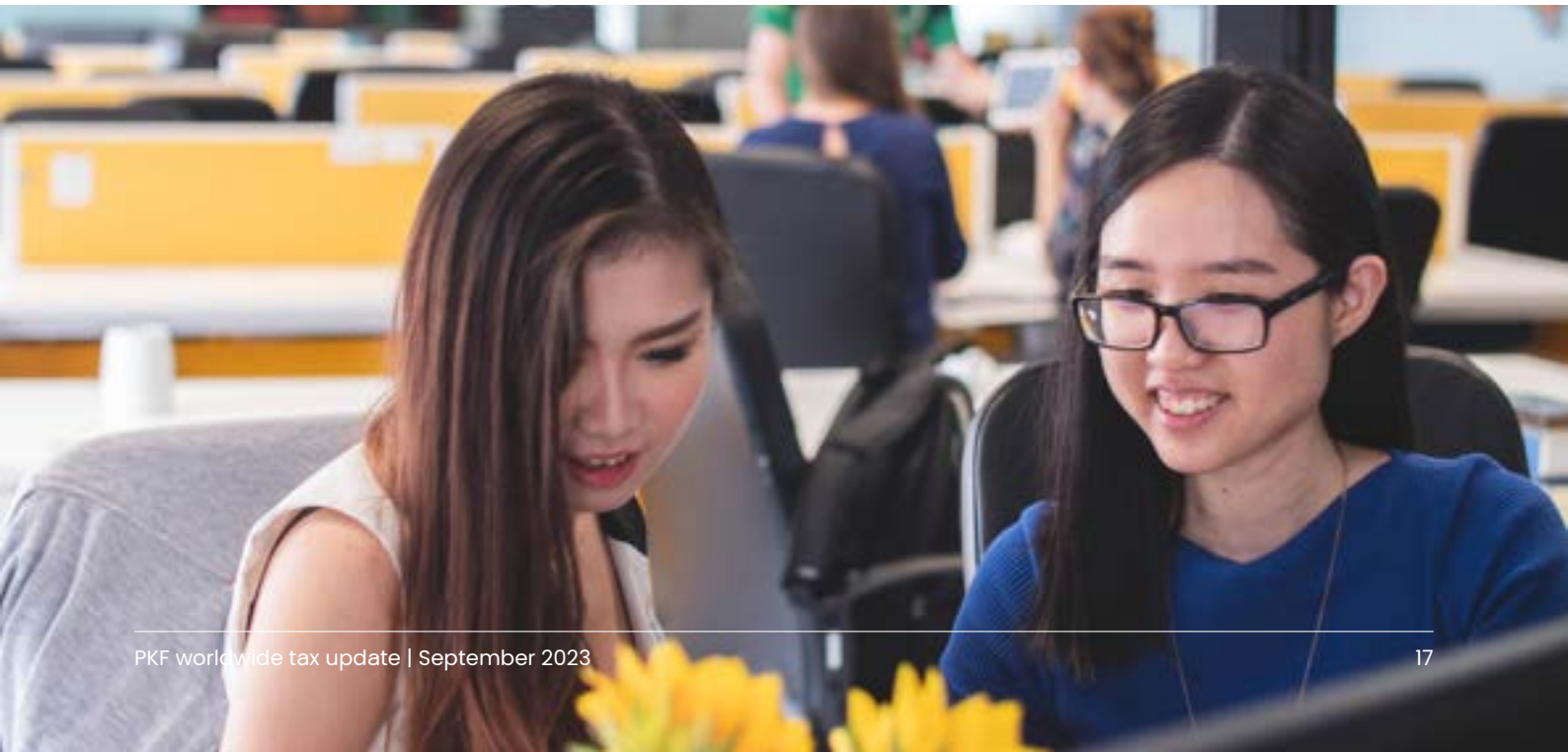
The ESR framework will remain unchanged in the FSIE regime. Foreign-sourced disposal gains in relation to covered assets (except IP assets) will be tax-exempt if the taxpayer carries out, or arranges to carry out, substantial economic activities with regard to the relevant income in Hong Kong.

- **Nexus approach (for gains in relation to IP assets)**

Similar to the existing FSIE regime, the nexus approach adopted by the OECD will apply in determining the extent to which the foreign-sourced disposal gains in relation to IP assets are to be tax-exempted.

- **Participation exemption**

The participation exemption will only apply to foreign-sourced disposal gains in relation to shares or equity interests, but not other assets.



- **Double taxation relief**

Any covered taxpayer who fails to meet the exemption conditions of the FSIE regime in Hong Kong may suffer from double taxation in both Hong Kong and the overseas source jurisdiction. To mitigate this double taxation issue, the affected taxpayer could be allowed a tax credit or a tax deduction for the tax paid overseas if relevant conditions are satisfied.

- **Treatment of disposal losses**

Foreign-sourced disposal losses in relation to the proposed added assets can only be used to set off against specified foreign-sourced income accrued in the same year and subsequent years of the same taxpayer.

- **Business facilitating measures**

Covered taxpayers are expected to report to the IRD in their profits tax returns with a simplified reporting procedure regarding their compliance with the FSIE regime.

- **Advanced rulings/Commissioner's opinion**

Covered taxpayers may apply for the Commissioner's opinion (i.e. before the enactment of the refined FSIE regime) or advanced ruling (covering a maximum of five years of assessment commencing from the year of assessment 2023/24) in respect of their compliance with the ESR for the foreign-sourced gains from the disposal of additional covered assets (except IP assets) under the refined FSIE regime.

PKF Comment

The proposed further refinement of the FSIE regime will expand its scope to cover additional assets and those MNEs deriving foreign-sourced disposal gains in Hong Kong will be subject to heavier scrutiny. While it is welcomed that the HK government is proposing certain approaches (such as the taper relief and the intra-group relief) to mitigate the additional tax burden on the covered taxpayers, it should be noted that such proposals will be subject to the EU's review. In view of the uncertainty and the potentially substantial tax effects, it is suggested that relevant taxpayers should evaluate the possible impacts of the refined FSIE regime on their business and, if required, consider taking appropriate planning or restructuring exercises to mitigate the potential tax exposures. Corporate taxpayers which are considered to have met the ESR after the aforesaid self-evaluation may consider applying with the IRD for the Commissioner's opinion (for disposal gains on the additional covered assets) or an advanced ruling (for various non-IP incomes) to gain more certainty on relevant tax treatments.

For further information concerning the above or any service request with respect to Hong Kong taxation, please contact Melody O (Tax Manager) at **melodyo@pkf-hk.com** and Henry Fung (Tax Partner) at **henryfung@pkf-hk.com** or call **+852 2806 3822**.

BACK

Hungary

Various recent tax and social security updates

Input VAT on the purchase of Hungarian immovable property is reclaimable under the 9th Directive procedure

Businesses established in the EU will be entitled to reclaim Hungarian VAT on the purchase of immovable property, under the 9/2008/EC Directive procedure. According to the transitory measures, any input VAT accounted for after 31 December 2021 is reclaimable provided that the purchaser has not reclaimed it yet by other means.

PKF Comment

The deadline of 30 September 2023 is applicable to the retrospective VAT reclaim if the purchase of the immovable property took place in 2022.

BACK

Some of the Extended Producer Responsibility (ERP) measures have been implemented into Hungarian VAT law

Cash reimbursements on non-recyclable goods subject to the mandatory take-back scheme, introduced under the common ERP regime, are out of scope of VAT, whereas the operator of the mandatory take-back scheme is deemed to perform a taxable supply in terms of the items that were not returned in the course of the calendar year. This special VAT liability should be assessed by the operator on the last day of the calendar year. When calculating the VAT liability, the non-reimbursed fee of the returnable goods should be regarded as gross amount (including VAT).

PKF Comment

Uncertainties may arise as to whether unreturned items by the last day of the calendar year are indeed missing or the customer has just not used them by that time.

BACK

Transfer pricing adjustments are to be considered in the innovation contribution base

The basis for the innovation contribution aligns with the local business tax base in terms of transfer pricing (TP). The arm's-length price to be considered for the contribution base must be determined according to the TP methodology prescribed in corporate taxation, which includes, among other things, the obligation to adjust to the median.

PKF Comment

Innovation contribution is already payable on the local business tax base in which the TP adjustments are considered. The legislator has just clarified that any TP adjustments will affect the innovation contribution base as well.

BACK

Extended permanent establishment definition for local business tax purposes

The airport from which a relevant airline is departing aircrafts will constitute a permanent establishment for local (municipal) business tax purposes. Pursuant to the amended permanent establishment definition of the law, the net sales revenue of non-Hungarian air passenger transport enterprises having a Hungarian permanent establishment should also include the revenue realised from air passenger and connected services on aircrafts departing from Hungary. 'Air passenger transport enterprise' shall mean an enterprise with at least 75% of its net sales revenue derived from air passenger services and connected services. Furthermore, in the case of manpower-leasing, the service provider is deemed to have a permanent establishment for local business tax purposes if the deployed personnel worked at least 1,440 hours in aggregate in the territory of the municipal government during the fiscal year.

PKF Comment

Local business tax is payable to the municipal governments. Basically the tax is levied on the (adjusted) gross profit derived from the local business activity. The tax rate is determined at the municipal government's discretion but may not exceed 2%. In Budapest, the maximum (2%) tax rate applies.

BACK

Most of the sectoral extra-profit taxes remain effective in 2024

Credit institutions, financial enterprises, energy suppliers, medicine manufacturers, telecommunication enterprises and insurance companies will remain liable to pay sectoral extra-profit taxes in 2024. The transitory extra-profit taxes are frequently modified by government decrees, depending on the economic circumstances. Close monitoring of any changes is recommended for all enterprises operating in the abovementioned industries.

PKF Comment

Despite their extension to 2024, extra-profit taxes are still transitory measures and will hopefully be cancelled or significantly reduced in the foreseeable future.

BACK

13% social security contribution tax is levied on a private individual's interest income

Interest income as defined by Hungarian personal income tax law is subject to 13% social security contributions in addition to the prevailing 15% personal income tax liability. The new tax liability affects, inter alia, interest from debt securities, bonds, collective investment securities, bank deposits and life and pensioner insurance savings. However, government bonds are exempted.

PKF Comment

The objective of the additional tax liability is to incentivise private individuals to invest in government bonds, the gain from which is tax-exempt.

BACK

There will be no effective Hungarian–US double tax treaty as of 2024

As things stand, the prevailing Hungarian–US double tax treaty will be terminated with effect from 1 January 2024. Accordingly, in the absence of an effective double tax treaty between the two countries, transactions and arrangements involving entities and private individuals having tax residencies in the relevant countries will face new taxation rules and adverse consequences, e.g. increased withholding tax rates and personal income tax rates.

PKF Comment

For further information or advice concerning the above or any advice with respect to Hungarian taxation, please contact Krisztián Vadkerti at **vadkerti.krisztian@pkf.hu** or call **+36 1 391 4220**.

BACK

Italy

Dividends paid to a Swiss parent company exempt from withholding tax

With Resolution 46/E of 31 July 2023, the Italian Tax Agency confirmed the full application of the withholding tax exemption regime in relation to dividends paid to a Swiss parent company by an Italian subsidiary, as provided for by the EU–Switzerland agreement of 26 October 2004.

According to Article 9 of the agreement (as resulting from the Amendment Protocol of 27 May 2015), the exemption is subject to the following conditions:

- Either the parent company directly holds at least 25% of the capital of the subsidiary for a minimum period of two years, and one of the two companies is tax resident in the EU and the other in Switzerland; or
- Neither company is resident for tax purposes in a non-EU state by convention; or
- Both companies are subject to direct tax on profits without benefit of exemptions and adopt the status of a corporation.

According to the latter condition, due to the special holding company regime provided for in Switzerland by article 28 of the Federal Act on the Harmonisation of direct taxes of Cantons and Municipalities, the Revenue Agency had previously ruled out that the exemption from withholding tax could apply to dividends distributed to Swiss companies qualifying as holding companies (Resolution 93/E of 2007).

Subsequently, the exemption was granted subject to the condition that the Swiss parent company waived the special regime (Resolution 57/E of 2019). Switzerland then repealed the special regime with effect from 1 January 2020.

As a consequence, dividends in Switzerland are currently uniformly subject to federal, cantonal and municipal taxes by benefiting from a reduction (provided for in Article 69 of the Direct Federal Tax Act) which – even if calculated under a special method – produces the effects of the participation exemption enforced in Italy (Resolution 288/E of 2007).

Reply 135 of 2021 of the Revenue Agency therefore clarified that there are no longer any obstacles to the application of the exemption under Article 9 of the EU/Switzerland Convention.

In conclusion, Resolution 46/E of 31 July 2023 generally confirms that Resolution 93/E of 2007 has been 'overruled'.

The Agency also followed the European Court of Justice ruling C-448/15 (Wereldhave Belgium and others) according to which denying the exemption in the case of only partial taxation of the profit in the state of the parent company would lead to violating the 'tax neutrality' objective pursued by the European law.

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PKF Comment

If you believe the above measure may impact your clients and need further clarification on this subject, our team in Italy is available to provide additional information and support your clients.

You can contact PKF TCL Group Tax Consulting Legal (Stefano Quaglia) at **s.quaglia@pkf-tclsquare.it** or call **+39 02 9285 4246** (Milan office).

BACK

Kenya

Key tax amendments through the Finance Act, 2023 (FA 2023)

1. Tax treatment of realised foreign exchange losses

The FA 2023 has amended Section 4A of the Income Tax Act (ITA) to provide that realised foreign exchange losses will only be deferred by a company whose gross interest paid or payable to a non-resident person exceeds 30% of the company's earnings before interest, tax, depreciation and amortisation (EBITDA) in any year of income. The deferred foreign exchange loss shall be claimed for a period of not more than five years from the date the loss was realised.

Previously, realised foreign exchange losses were deferred if the gross interest expense had exceeded 30% of EBITDA on all loans, whether local or foreign loans, and there was no time limit within which the realised foreign exchange losses could be claimed.

Effective date: 1 July 2023

2. Clarification on interest restriction provisions

The Finance Act, 2021 introduced interest restriction provisions effective from 1 January 2022. These provisions provided for the restriction of the gross interest paid or payable to related persons and third parties in excess of 30% of EBITDA and was applicable on all loans, whether local or foreign loans.

FA 2023 has clarified that the only interest to be restricted is in respect of loans received from non-residents in excess of 30% of EBITDA. The loans from non-residents could either be from related persons or third parties.

The restricted interest shall be an allowable deduction in the subsequent three years of income to the extent that the deduction shall not exceed the 30% of EBITDA threshold..

Effective date: 1 January 2024

3. Introduction of branch repatriation tax

Branches and other permanent establishments (PEs) are not subject to tax on repatriated income to the head office.

With effect from 1 January 2024, FA 2023 has introduced a branch repatriation tax at the rate of 15% on the repatriated income to the head office. Additionally, FA 2023 has reduced the corporation tax rate for branches and other PEs operating in Kenya from 37.5% to 30% of their taxable gains.

Effective date: 1 January 2024

4. Clarifications on country-by-country (CbC) reporting requirements for multinational enterprises (MNEs)

FA 2023 has clarified that the obligation to file a CbC report shall be bestowed on an ultimate parent entity (UPE) that is tax resident in Kenya and where the consolidated group turnover of the MNE group exceeds KSh95 billion in the preceding year.

A constituent entity of an MNE group that is resident in Kenya, and which is part of an MNE group whose consolidated group turnover exceeds KSh95 billion in the preceding year shall file a CbC report with the Commissioner in the instance where:

a) the UPE is not obligated to file a CbC report in its jurisdiction of tax residence;

b) the jurisdiction in which the UPE is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the CbC report for the reporting financial year; or

c) there has been a systemic failure of the jurisdiction of tax residence of the UPE that has been notified by the Commissioner to the constituent entity resident in Kenya.

The time frame for filing the CbC report remains to be by the last day of the 12th month after the financial year of the group.

The new amendments bring clarity to the filing requirements for both UPEs and constituent entities in terms of CbC reporting.

Effective date: 1 July 2023

PKF Comment

For further information or advice on Kenyan taxation, please contact Michael Mburugu at mmburugu@ke.pkfea.com or call **+254 20 42 70000**.

BACK

Malta

Recent tax updates and case law

Group dedutions (income tax) rules revised

LN 40 of 2023 has revised the conditions to rule 3 of the group deductions rules (SL 123.205), which now read:

'Provided that the total allowable deductions that may be claimed shall not exceed one million euro (€1,000,000) per group of companies and the total amounts surrendered in each year of assessment shall be equal to the amounts so claimed in each year of assessment…' and

'Provided further that the total allowable deductions that may be claimed by a claimant company in the year of assessment 2022 and in the year of assessment 2023 shall not exceed the claimant company's total income for the years of assessment 2022 and 2023 respectively…'

Assignment of rights under a POS rules revised

LN 99 of 2023 has revised rule 12 of the assignments of rights acquired under a promise of sale (POS) agreement rules (SL 123.198), deleting the reference to 31 December 2022, thereby extending the application of the 15% tax rate where the consideration does not exceed €100,000 (rule 5) which applies to assignments made after 31 December 2020, beyond 31 December 2022.

Amendments to the Income Tax Act

Article 27A of the ITA

This is basically an amendment of an enabling provision. With this amendment, the transfers that qualify for special treatment due to restructuring will include transfers between companies and persons that are related to it, provided they meet the conditions that are specified in the rules. New rules are intended to be published to implement these measures. This amendment is applicable from the date of publication.

Amendments to the Income Tax Management Act

Article 43 of the ITMA

This amendment clarifies that the provisions regarding the provisional tax that apply in the case of a transfer of securities or transfer of value in securities shall also apply in the case of a transfer of interest in a partnership.

Article 44 of the ITMA

As announced in the budget speech for 2022, the interest rate on tax due has changed. Although this article already gives the power to the Minister to change the rate through rules, the wording of the law contemplates a change in the rate that applies to any tax that is due when the change is made, while the amendment allows changes that do not affect tax amounts that have become due before September 2022.

Article 45 of the ITMA

According to this article, the payment of disputed tax is suspended if there is an objection, but the amount due after the objection is finalised will be due with interest. The amendment links this article with the amendment being made to article 44 (mentioned above) in the sense that the interest rate that is applicable depends on the date when the tax was due.

Article 48 of the ITMA

This article imposes interest that is due from the Commissioner when tax refunds are issued late at the same rate that is paid to the Commissioner on tax due by taxpayers. The new interest rate paid by the Commissioner applies from 1 September 2023 even on refunds that were due before that date.

A further amendment to this article is intended to extend the time the Commissioner has at his disposal to issue a refund when there is a need for in-depth due diligence due to suspicions of illicit activities. The extension is for a 12-month period.

Others

Increased administrative penalty for failure to submit recapitulative statements (indirect tax – VAT)

The Budget Measures Implementation Act of 4 April 2023 has increased the administrative penalty for failure to submit recapitulative statements to €50 per month of default (currently €10), capped at €600 per statement (currently €120).

The Act has also introduced an enabling provision, a new article 55A pursuant to which the Minister may make regulations requiring any person to retain and furnish information required with a view to combating VAT fraud, notwithstanding professional secrecy requirements. The penalty for failure to furnish information requested pursuant to article 55A is €50 per month of default capped at €600.

Judgments

Anthony Farrugia v. Prime Minister (2017)
The Constitutional Court decided on a judgment relating to the issue of VAT penalties together with criminal charges. Malta's VAT legislation allows heavy administrative fines for late VAT payments, in conjunction with court proceedings which could lead to an effective prison term.

The decision taken in the court judgment, **Anthony Farrugia v. Prime Minister**, may lead to amendments in the local tax legislation. The Constitutional Court declared that if local VAT legislation is in breach of fundamental human rights, the individual is to be tried twice for the same offence.

The plaintiff argued that article 83(3) of the Value Added Tax Act breached his right as he was penalised twice for the same offence. Furthermore, it was argued that the above-mentioned article, allowing for both an administrative fine as well as court proceedings against a person violates the ne bis in idem principle.

This rule is afforded protection by virtue of article 39(9) of the Constitution of Malta and Article 4 of Protocol Number 7 of the European Court of Human Rights, being the right not to be punished or else tried twice.

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PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Maltese taxation, please contact George Mangion at gmm@pkfmalta.com or call +356 21 484 373.

BACK

Mexico

Publication of updated list of non-resident digital service providers for VAT purposes

From 1 June 2020, digital services provided by non-residents to recipients located in Mexico are subject to VAT there, as a result of which non-residents are required to register with the federal taxpayers' registry ('RFC').

The tax authority has provided an updated list (gazetted on 14 July 2023) of non-residents without a permanent establishment in Mexico who, up to 30 June 2023, have complied with the obligation to register with the RFC.

The list contains the following information:

i. name of the non-resident
ii. commercial name of the non-resident
iii. city and country of origin
iv. date of registration with the RFC
v. Mexican tax ID number.

Decree granting tax benefits to taxpayers carrying out productive economic activities within the 'Tehuantepec isthmus' region

On 5 June 2023, the tax authority gazetted a presidential decree that encourages investments by taxpayers who carry out productive economic activities within the development poles for the well-being of the isthmus of Tehuantepec (located in the states of Veracruz and Oaxaca), granting tax benefits and administrative facilities by the decentralised public organism called the 'Interoceanic Corridor of the isthmus of Tehuantepec'. The decree came into force on 6 June 2023.

The decree lists the following productive activities within the well-being development poles, among others:

i. electrical and electronics;

ii. semiconductors;

iii. automotive (electric mobility);

iv. auto parts and transportation equipment;

v. medical devices;

vi. pharmaceutical;

vii. agro-industry;

viii. electric power generation and distribution equipment (clean energy);

ix. machinery and equipment;

x. information and communication technologies;

xi. metals and petrochemicals; and

xii. others determined by the governing board of the Interoceanic Corridor of the isthmus of Tehuantepec for the poles of development for well-being, in terms of the applicable legal provisions.

Taxpayers who carry out productive economic activities within the well-being development poles interested in obtaining the tax benefits and administrative facilities provided for in this decree must meet, among others, the following requirements:

i. be in compliance with their tax obligations;

ii. have a valid concession title or be the owner of some area within a well-being development pole;

iii. submit, if applicable, the investment project for which the concession title referred to in the previous section was granted; and

iv. have their tax domicile in the well-being development pole where they carry out their productive economic activities.

The tax incentives granted to companies that develop productive economic activities in the development poles are:

i. Total exemption of income tax ('ISR') during the first three years of operations. In years four, five and six, these companies will pay only 50% of the ISR. This discount can reach up to 90% as long as the employment goals established in the corresponding guidelines are reached.

ii. Accelerated depreciation option for investments during the first six years of operation.

iii. Operations carried out within the development poles, and between them, will be exempt from VAT. In addition, the recovery of VAT paid on purchases made outside the poles will be allowed for four years. For the poles that are declared after the publication of the decree, this period will begin from the entry into force of the declarations.

In order to maintain the aforementioned tax benefits, taxpayers must show progress in the aforementioned investment project and comply with the minimum levels of employment determined by the Authority, in accordance with the provisions of the project and in accordance with the economic activity that is developed.

Full details of this decree can be found at the following link (in Spanish): **DOF - Diario Oficial de la Federación**.

Multilateral instrument (MLI) enters into force with respect to Mexico

On 19 June 2023, a Promulgatory Decree of the Multilateral Convention to Implement Tax Treaty Related Measures To Prevent Base Erosion And Profit Shifting (MLI) was published in the Official Gazette. This promulgation concludes the legislative process in Mexico for the adoption and implementation of this instrument which started with the agreement made in Paris, France, on 24 November 2016, was ratified by the Senators Chamber on 6 October 2022 and properly notified before the General Secretariat of the OECD on 15 March 2023.

The MLI will enter into force with respect to the covered bilateral agreements entered into by Mexico from the first day of the fourth month following the date on which Mexico deposited its respective instrument of ratification before the OECD General Secretariat. However, the provisions will be applicable as follows:

i. Regarding taxes withheld in the country of source, from the first day of the calendar year following its ratification and deposit.

ii. Regarding the rest of the provisions of bilateral agreements, from the first day of the sixth month following its ratification and deposit.

The MLI thus entered into force from 1 July 2023 and its provisions will be applicable to bilateral agreements entered into by Mexico, both regarding withholding taxes and other provisions of the agreements, from 1 January 2024.

Mexico wishes to cover 61 tax treaties under the MLI.

PKF Comment

The Mexican government is committed to granting certainty to taxpayers and to new investments in Mexico, sending a message that the country is a good option to conduct business with and, at the same time, helping the region in its economic development.

BACK

Mexico ratifies protocol to tax treaty with Germany

On 15 June 2023, the president of Mexico approved the protocol that modifies the tax treaty between Mexico and Germany to avoid double taxation and tax evasion in income and wealth taxes, dated 9 July 2008.

The protocol was approved by the united commissions of Foreign Affairs, European Foreign Affairs and Finance Ministry in the Mexican Congress.

The main objective of the protocol is to implement measures to prevent tax base erosion and profit shifting, as well as to avoid double taxation in transactions between both countries.

With the approval of this protocol, cooperation between Mexico and Germany in the tax field is strengthened, which will contribute to ensure greater transparency and fairness in the tax system of both countries.

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Mexican taxation, please contact Antonio Garcia at **antonio.garcia@pkf.com.mx** or call +52 (81) 8363 8311 and Jimy Cruz at **jimy.cruz@pkf.com.mx** or call +52 (33) 3122 2081.

BACK

Nepal

Various tax updates –Budget Announcement for FY 2023-24 and major tax amnesties

Changes in tax law by Budget Announcement for FY 2022-23

On 29 May 2023 the Finance Minister, Government of Nepal presented the full budget for the FY 2023-24. The major changes in the tax laws by the budget are as follows:

Direct Taxes

i. There has been a revision in the slab for the calculation of tax on the remuneration income of a resident natural person. The applicable tax rates on the income of a resident individual in any income year shall be computed by applying the following rates:

For resident natural persons opting for individual assessment

Existing		Amended	
Limit	Rate	Limit	Rate
Up to Rs 500,000	1%	Up to Rs 500,000	1%*
More than Rs 500,000 up to 700,000	10%	More than Rs 500,000 up to 700,000	10%
More than Rs 700,000 up to 1,000,000	20%	More than Rs 700,000 up to 1,000,000	20%
More than Rs 1,000,000 up to 2,000,000	30%	More than Rs 1,000,000 up to 2,000,000	30%
In excess of Rs 2,000,000	36%	More than Rs 2,000,000 up to 5,000,000	36%
		In exess of Rs 5,000,000	39%

For resident natural persons opting for couple assessment

Existing		Amended	
Limit	Rate	Limit	Rate
Up to Rs 600,000	1%	Up to Rs 600,000	1%*
More than Rs 600,000 up to 800,000	10%	More than Rs 600,000 up to 800,000	10%
More than Rs 800,000 up to 1,100,000	20%	More than Rs 800,000 up to 1,100,000	20%
More than Rs 1,100,000 up to 2,000,000	30%	More than Rs 1,100,000 up to 2,000,000	30%
In excess of Rs 2,000,000	36%	More than Rs 2,000,000 up to 5,000,000	36%
		In exess of Rs 5,000,000	39%

* This is the social security tax to be deposited in a separate revenue account (11211) provided for this purpose. However, taxpayers registered as a sole proprietorship or on pension income or income from contribution-based pension funds shall not attract social security tax (i.e. 1%). If the taxpayer is depositing the amount in the social security fund (SSF) then for those taxpayers social security tax is not applicable.

ii. There has been a revision in the applicable advance tax rate, as per section 95A, that is to be collected by relevant banks, financial institutions and money transfer institutions. This applies to resident natural persons who are not engaged in business operations but receive payment in foreign currency for providing the following services outside Nepal:

Nature of service	Applicable tax rate	
	Existing	Amended (FY 2023-24)
Software or similar type of other electronic services [95A (6)(b)]	1%	5%
Consultancy services [95A (6)(c)]	1%	5%
For uploading audio-visual content on social media [95A (6)(d)]	1%	5%

Note: Since the revised rate of 5% has been included in Schedule 1(2)(4A), it is the final rate of tax.

iii) A resident electronic business operator (e-commerce operator) shall collect advance tax at the rate of 1% while making payment of the amount to a person associated with their platform for the sale of goods, services or goods and services through its platform.

iv) The proviso clause of section 89(3) has been withdrawn and, as an impact, tax deduction at source (TDS) shall be applicable on payments made to non-residents for the purchase of arms and ammunitions, weapons and communication equipment for self-use by the Nepal Army, Nepal Police and Armed Police Force.

v) Proviso clause has been added to section 95A (7) which implies that an advance tax of 1.5% shall be collected on the import of goods attracting VAT.

vi) There are no revisions in the applicable tax rate on transactions, except exempt transactions of cooperatives registered under the Cooperatives Act, 2074. The applicable tax rate on transactions for credit cooperatives registered under the Cooperatives Act, 2074 dealing in saving has been amended as follows:

perational area	Applicable tax rate	
	Existing	From FY 2023-24
Municipality level	7.5%	10%
Sub-metropolitan level	10%	15%
Metropolitan level	15%	20%

vii. Revision in the presumptive tax rates as follows:

Particulars	FY 2023-24 (Rs)	FY 2022-23 (Rs)
Vehicle tax		
Minibus, mini truck, water tanker	8,000	6,000
Mini tripper	9,000	7,000
Truck and bus	10,500	8,000
Dozer, excavator, roller, loader, crane and similar machinery	15,500	12,000
Oil tanker, gas bullet, tipper	15,500	12,000
Car, jeep, van, micro bus		
(a) 0 to 1300 cc	5,500	4,000
(b) 1301 to 2000 cc	6,000	4,500
(c) 2001 to 2900 cc	6,500	5,000
(d) 2901 to 4000 cc	8,000	6,000
(e) 4001 cc and above	9,000	7,000
Three wheeler, auto rickshaw, tempo	2,500	2,000
Tractor	2,500	2,000
Power tiller	2,000	1,500

viii. Introduction of presumptive tax on electric vehicles from FY 2023-24:

Electronic vehicle with engine capacity	FY 2023-24 (Rs)
(a) 0 to 50 kW	3,000
(b) 50 to 125 kW	4,000
(c) 125 to 200 kW	6,000
(d) 200 kW and above	7,500

ix. TDS at 5% shall be applicable on the interest for a loan received in foreign currency from an international bank and other international financial institutions by reservoir or semi-reservoir-based hydropower projects generating above 200 MW of energy and attaining financial closure by mid-April 2024 (prior year: TDS exempt under section 88 (4)(kha2)).

x. Revision in TDS rate from 5% to 6% on payment of interest on deposits, bonds, debentures and government bonds to any natural person by a resident bank, financial institution, cooperative, any other body issuing bonds or company listed in accordance with prevailing laws.

xi. TDS at 1.5% shall be applicable to payments made to transportation service providers, registered under VAT.

xii. Concessions on business income

Industries	Concession
Special industry as defined in section 11 of the Income Tax Act 2002	
Section 11(1) Income derived from agriculture business, vegetable dehydration business and cold store business by registered firms, companies, partnerships and organised institutions.	50% rebate on the applicable tax rate (prior year: 100% rebate on the applicable tax rate).
Section 11(3gha)(ka) Income derived by a person licensed for production, transmission or distribution of electricity produced from hydropower, solar, wind and biological substances by mid-April 2028 (Chaitra end 2084). (Period extended from mid-April 2027 to mid-April 2028.)	100% tax exemption for the first 10 years from the date of commencement of commercial production or transaction and 50% exemption for the next five years.
Section 11(3gha)(ka) Income derived from a reservoir or semi-reservoir-based hydropower projects generating above 40 MW of energy, as well as the tandem operation of hydropower plants for harnessing renewable energy and attaining financial closure by mid-April 2029 (end of Chaitra 2085). (Period extended from mid-April 2027 to mid-April 2029.)	100% tax exemption for the first 15 years from the date of commencement of commercial production or transaction and 50% for the next six years.
Section 11(3nga)(ga) – newly inserted – additional Foreign currency earned from the export of business processes outsourcing, software programming and cloud computing services.	Eligible for 50% tax exemption on income earned in foreign currency up to FY 2027-28 (prior year: It was a special rate of 1% tax mentioned in the Finance Act).

Indirect taxes

Customs duties

i. Additional fee for under-declaration of goods on which customs duty is not applicable if the customs officer discovers that the importer has undervalued goods for which customs duty is not chargeable, but agricultural improvement duty or excise duty is applicable. An additional 50% of the agricultural improvement duty or excise duty shall be imposed on the undervalued amount.

ii. Amendment to the existing provision for the option of issuance of licence either from the customs department or office now restricted to the Department of Customs only.

iii. Major changes in customs duties rates are as follows:

Description of goods	Existing rate (%)	Revised rate (%)
Cardamom (ground and not ground)	10	20
Mixture of note (b) of chapter 9 (Mixed spices)	15	20
Poppy seeds (1207.91.00)	10	30
Beet sugar (1701.12.00), sakhhar (gud and vally), gudgatha (1701.13.10), khandasari sugar (1701.13.20), others (1701.13.90) and sakhhar (gud and vally), gudgatha (1701.14.10), khandasari sugar (1701.14.20), containing added flavouring or colouring matter (1701.91.00), sugar candy (1701.99.10), sugar cube (1701.99.20) and other (1701.19.90)	40	30
Tapioca (sabu dana) (1903.00.00)	5	10
Tobacco	20	30
Protein concentrates and textured protein substances (dalmot and namkeens) (2106.10.00)	20	30
White oil/liquid paraffin oil (2710.19.95)	15	20
Composite LPG gas cylinder (3923.90.10)	30	5
Registers, account books, notebooks (4820.10/20/90.00)	20	30
Folders and files cover (4820.30.00)	15	30
Outer soles and heels of rubber or plastics (6406.20.00) have been increased from 10% to 20% and for others (6406.90.00)	15	20
Photograph, frames and mirrors (8306.30.00)	10	20
Microbuses (from 11 to 14 seats) (8702.40.30)	1	10

iv. Customs duty on electric cars, jeeps and vans on the basis of pickup power has been set as follows:

Motor pickup power (kW)	FY 2079/80	FY 2080/81
Less than 50	10%	10%
50–100	10%	15%
100–200	15%	20%
200–300	45%	40%
More than 300	40%	60%

Excise duties

i. Excise duty on vein or sugarcane juice that comes out when sugar is made and molasses has been increased from Rs 96 to 105 per quintal.

ii. Excise duty on un-denatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher has increased by Rs 4 per litre.

iii. Increase in excise duty rate by Rs 50, Rs 39 and Rs 35 per litre for alcoholic beverages containing levels of alcohol of 48.5%, 42.8%, and 39.94%, respectively.

iv. Excise duty on cigarettes containing tobacco without a filter has increased from Rs 710 per metre to Rs 730 per metre.

v. Increase in the excise duty imposed on filtered cigarettes of 70mm by Rs 55 per metre, of 70–75mm by Rs 75, of 75–85mm by Rs 90 and cigar rates greater than 85mm by Rs 115.

vi. New inclusion of 5% excise duty on beard trimmers and razor blades.

vii. Excise duty levied on cutlery items (knives, scissors, forks, hairclips, paper cutters, spoons, ladles, skimmers, cake tongs) at 5%.

viii. Excise duty imposed at 5% on automatic data processing machines and their units, optical readers, data transcribing and processing machines.

ix. Revision of excise duty on goods where excise duty is levied based on the volume (litre) of the goods:

Description of goods	Existing rate per litre	Revised rate per litre
Fruit juice, including orange juice, grapefruit, pineapple, tomato, apple, cranberry and mixture of juices	11	13
Non-alcoholic beer	30	35
Beer made from malt	228	235
All kinds of alcoholic fluids including spirits used as raw material for wine or brandy, vodka, gin and genever	228	235
Homogenised and reconstituted tobacco	460	475
Tobacco intended for unburned inhalation, reconstituted tobacco, products containing nicotine or nicotine substitutes	460	475
Pan masala without tobacco	821	850
Scented areca nuts without tobacco	350	365

x. Revision of excise duty on goods where excise duty is levied based on the weight (kg) of the goods:

Description of goods	Existing rate per kg	Revised rate per kg
Pasta, whether or not cooked or stuffed (with meat or other substance)	17	20
Kurkure, kurmure, lays, cheese ball	17	20
Potato chips	17	18
Processed tobacco for cigarettes and beedies	343	350
Homogenised and reconstituted tobacco	460	475
Tobacco intended for unburned inhalation, reconstituted tobacco, products containing nicotine or nicotine substitutes	460	475
Pan masala without tobacco	821	850
Scented areca nuts without tobacco	350	365

xi. Excise duty on motorbikes (including mopeds) with reciprocating internal combustion piston engines of a cylinder capacity:

Cylinder capacity (cc)	Excise duty (%)
250–400	60
400–500 (unassembled)	60
400–500 (other)	80

xii. Excise duty on electric vehicles (cars, jeeps, vans) with various kW pickup power shall be charged as below:

Pickup power (kW)	Excise duty (%)
50–100	10
100–200	20

xiii. Revision of excise duty on goods where excise is levied as a percentage of the transaction value of the goods:

Description of goods	Existing rate (%)	Revised rate (%)
Cashew nuts (including the peels)	15	10
Telephones used for cellular networks or wireless networks	2.5	5
Microphones and stands	10	15
Optical fibre cable	10	15
Excise duty on motorbikes (including mopeds) with reciprocating internal combustion piston engine of a cylinder capacity exceeding 200 cc but not exceeding 250 cc	80	60

VAT

i. Regardless of whether a person is registered under the VAT Act 1996 or not, if they hire or receive carriage/transport services from an unregistered person, they are required to assess and collect tax on the taxable value as per the provisions of this Act and the rules established under it. This should be done at the time of payment or receipt of the service, whichever occurs earlier.

ii. If a person obtains an ineligible refund of VAT under the diplomatic VAT refund outlined in section 25(1) (Ka), (ka1), and (Ka2) through an automated electronic medium, a penalty of 25% on the taxable amount can be imposed by the tax officer.

iii. The Finance Bill 2080 has introduced significant changes in Schedule 1 of the VAT Act 1996, removing various items (goods and services) from the exempt list such that they shall now attract VAT. Some of the goods and services on which VAT shall now be applicable are:

- air travel service, hire charges on transportation services, carriage service and local cargo service;
- aircraft (e.g. helicopters, airplanes), spacecraft (including satellites) and suborbital and spacecraft launch vehicles;
- aircraft launching gear, deck-arrestor or similar gear, ground flying trainers, parts of the aforementioned items;
- frozen green vegetables, frozen sweetcorn, frozen potatoes, coffee (roasted, unroasted, decaffeinated and beans), avocados, kiwis;
- trekking and tour package related services;
- woollen carpets and their weaving, dying, washing and knitting; and
- various goods imported by the Nepal Army, Nepal Armed Police Force and Nepal Police.

PKF Comment

The government of Nepal (GoN) through the budget speech and finance ordinance has changed direct and indirect tax rates which may affect individuals and entities alike in Nepal. (Prospective) taxpayers in Nepal should be aware of the new tax rules effective for FY 2023-24.

BACK

Major tax amnesties announced through the Finance Act 2080

The GoN announced various tax amnesties through Finance Act 2023 to provide relief to those taxpayers already registered and also unregistered to bring them into the ambit of taxation. The brief overview of major tax amnesties is as follows:

a) Waiver of pending tax and interest

Pending tax and the applicable interest up to FY 2006-07 assessed up to 15 July 2008 shall be waived to the extent of Rs 50,000 per record.

b) Waiver of fees and interest for payment of taxes on bonus distributed from the premium collected on further public offerings (FPOs)

Entities that failed to include dividend income from shares issued at a premium through FPO for the distribution of bonus shares in their income up to FY 2021-22, as required by section 56(3) of the Income Tax Act, 2002, will have the opportunity to take advantage of the waiver on fees and applicable interest. This waiver will be granted if the applicable tax is paid by 16 December 2023 (end of Mangsir, 2080).

c) Waiver of fees and interest on bargain purchase gains in mergers and acquisitions

Entities that failed to include bargain purchase gains from mergers and acquisitions in their income up to FY 2021-22 will have the opportunity to take advantage of the waiver of the fees and interest. This waiver will be granted if the applicable tax is paid by 16 December 2023.

d) Tax exemption for media house business

A concession of 25% shall be provided on the applicable tax chargeable to business income for FY 2022-23 for a resident person carrying out media house business.

e) Waiver of tax, fees and interest relating to business of securities, land and real estate

A natural person engaged in the regular business of securities, land or real estate, who has not yet submitted business income details or filed tax returns for the financial years 2019-20 to 2021-22, will be eligible for a waiver of the remaining 50% of tax, fees and interest. To qualify for this waiver, the individual must declare the business income and pay 50% of the tax amount as per the Income Tax Act, 2002, by 12 April 2024.

f) Tax exemption to persons conducting foreign employment or educational consultancy service business

Persons engaged in foreign employment or educational consultancy services business, who have failed to declare their actual domestic or foreign income or pay the correct amount of tax in previous years, will be eligible for a waiver of fees and interest. This waiver will be granted if the outstanding tax is paid along with the necessary declaration by 12 April 2024.

g) Waiver of VAT for eye hospitals

Eye hospitals, engaged in VAT-applicable transactions, whether registered or not, will have the remaining 95% VAT, interest, additional fees and penalties waived if they make a payment of 5% of the transaction value between the period from FY 2019-20 to 28 May 2023 by 17 October 2023. Additionally, the VAT liability, along with applicable interest, fees and penalties for the period prior to FY 2019-20, will be fully waived. This waiver also applies to cases where payment is due after tax assessment or cases pending under administrative review or revenue tribunal, provided the cases are withdrawn at the respective levels.

h) Waiver of charges, interest and additional fees for non-resident persons

Non-resident persons providing electronic services with an annual turnover exceeding Rs 2 million will be eligible for a waiver of charges, interest and additional fees if they obtained a PAN number and filed VAT returns for the period up to 15 June 2023 by 10 July 2023. This provision also applies to non-resident people who have already obtained a permanent account number.

i) Waiver of VAT for hire purchase business

The applicable VAT, interest, additional fees and penalties will be waived for persons involved in the hire purchase business who have not collected and deposited VAT in the past. They will need to pay 2% of the total amount of taxable transactions from the financial year 2017-18 to 2020-21 by 16 December 2023. This will also result in the waiver of taxes, additional fees, interest and penalties for the preceding financial years. The same waiver facility applies to cases where payment is due after tax assessment up to FY 2020-21 or cases pending under administrative review or in legal proceedings in other judicial bodies, provided the cases are withdrawn at the respective levels.

j) Waiver of VAT for NGOs

Non-governmental organisations registered under the Associations Registration Act, 1977, that have

received grants or donations from donor agencies or international non-governmental organisations, will be eligible for a waiver of the assessed VAT, additional charges, interest and fines. To avail of this waiver, the NGOs must file an application to the relevant Internal Revenue Office by 16 December 2023, in cases where payment is due after tax assessment or the case is pending under administrative review or revenue tribunal after the cases are withdrawn at the respective levels.

k) Waiver of outstanding VAT for construction business

Fees, additional charges and penalties will be waived for persons involved in the construction business registered under the VAT Act 1996, who have not submitted returns or paid the applicable VAT up to 13 April 2023. To avail of this waiver, the person must furnish the VAT return and pay the outstanding VAT and 50% of the applicable interest by 14 January 2024. The waiver facility also applies to persons involved in construction businesses who have furnished returns up to 13 April 2023 without depositing the applicable VAT amount.

l) Waiver of VAT for carriage/ transportation business

Persons involved in the business of carriage/ transport services requiring registration under the VAT Act, 1996, but who have not paid the VAT amount due to non-registration, will be eligible for a waiver of the remaining VAT, additional fees, interest and penalties.

To avail of this waiver, they must pay 5% of the total value of taxable transactions of the relevant taxable period by 14 January 2024. This waiver also applies to cases pending under administrative review or in legal proceedings in other judicial bodies, provided the payment of 5% of the total value of taxable transactions of the relevant taxable period, as assessed, is made by 14 January 2024.

m) Waiver of VAT for herbal industries

Herbal industries, registered or not registered under VAT, conducting taxable transactions under the VAT Act, will have the remaining 95% VAT, interest, additional fees and penalties waived if they make a payment of 5% of the transaction value between FY 2014-15 to 28 May 2023 by 14 January 2024. This waiver also applies to cases where payment is due after tax assessment or cases pending under administrative review or in legal proceedings in other judicial bodies, provided the cases are withdrawn at the respective levels.

n) Special provisions for milk-based beverage industry

Waiver of delayed fees and penalties will be provided to milk-based beverage industries, whether licensed under the self-removal system of excise duty or not, if they register for excise duty (if not already registered), file the return and pay the duty for transactions up to 13 April 2023 by 17 October 2023. This waiver facility is also available on the withdrawal of cases pending under administrative review or in legal proceedings in other judicial bodies, and for filing the return and paying the duty for transactions up to 13 April 2023 by 17 October 2023 as assessed against the industries.

PKF Comment

The amnesty helps save the additional burden on taxpayers by discharging their liabilities at a concessional rate.

BACK

New interpretation on the computation of differential interest by banks and financial institutions on subsidised loans provided to employees

The Income Tax Act, 2002 provides that if any person has utilised a loan and is paying interest that is lower than the market interest rate, then such a differential amount shall be quantified and added to the income of that person. Consequently, the home loans provided by banks and financial institutions to their employees at concessional rates are subject to this provision. Banks and financial institutions used to compute notional income on the differential interest and add it to the income of employees to derive their annual income and withhold taxes based on such a computation.

In Case No. 073-RB-0206 **(Nepal Bank Ltd vs. Large Taxpayers Office)**, the Supreme Court has held that concessional loans provided by banks and financial institutions to their employees cannot be compared to other commercial loans and it is not fit and proper to add such notional income from the difference in interest rates to the income of the employee. It has stated that differences existed as a result of comparison with other commercial loans. The law shall be used to uphold the principle of 'equality among equals'. In this context, adding differential interest as income of the employee leads to tax officers fixing the interest rate of the banks which is against the legal norms. Hence, there is no need to compute the differential interest and add it to the employees of banks and financial institutions if they have benefited from loans at a concessional rate as per approved by-laws of the bank.

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PKF Comment

For further information or advice concerning Nepalese tax laws or if you have any specific query about a particular tax situation please contact Shashi Satyal at **shashi.satyal@pkf.com.np** or call **+977 01 441 0927**.

BACK

Netherlands

Implementation of ATAD III

In December 2021 the EC presented another anti-tax avoidance directive (2011/16/EU or ATAD III) to prevent the misuse of shell entities for tax purposes. With this directive a 'filtering' system is introduced for companies residing in the EU, which will have to pass a series of gateways, relating to income, staff and premises, to ensure there is sufficient economic 'substance'. Entities that are deemed to be lacking substance are presumed to be 'shell companies'. If they are unable to rebut this presumption through additional evidence regarding the commercial, non-tax rationale of the entity, or are not exempted, they will lose any tax advantages granted through bilateral tax treaties or EU directives, thereby discouraging their use.

The amended directive was adopted by the European Parliament on 17 January 2023. Although the date that the directive should enter into force is set at 1 January 2024, the directive has become relevant as of 1 January 2022. From that date, the 'look-back-period' started with regard to the gateways.

These gateways entail that an entity will face an aggravated reporting obligation on their economic substance if in the preceding two fiscal years:

- more than 65% of the entity's revenue is deemed 'relevant income' (i.e. passive income being, inter alia, dividends, interest and royalties);
- more than 55% of the book value of the undertaking comprises qualifying assets located outside the EU, or at least 55% of the 'relevant income' is derived from or paid via cross-border transactions;
- the entity outsourced the administration of day-to-day operations and the decision-making of significant functions.

An entity that meets these gateway criteria has to report in its annual tax return that it has:

- its own premises available for exclusive use in the Member State;
- its own and active bank account in the EU; and
- at least (i) one 'qualified director'; or (ii) a majority of employees that are qualified to carry out the activities that generate relevant income, who is/ are tax resident in the same (or a nearby) Member State as the entity.

If the entity does not comply with this reporting obligation, a penalty is charged of at least 2% of its revenue in the relevant tax year and a sanction of at least 4% is levied if the entity makes a false declaration in its tax return. However, the exact level of the penalty is at the discretion of the Member States.

For now the Dutch government has indicated that it approves the directive, but it also deems the implementation date (i.e. before 30 June 2023) ambitious. Furthermore, it deems certain aspects of the directive not enforceable. This is the case in particular with regard to deadlines by which information must be exchanged (i.e. 30 days) if an entity does not meet the required substance criteria.

PKF Comment

The implementation process for ATAD III has started. For certain entities located in the EU, the implementation might have significant tax effects. For further information or advice regarding the potential tax effects please contact Eelco van der Vijver at **eelco.van.der.vijver@pkfwallast.nl** or call **+31 6 82 90 09 64**.

BACK

Doubts around the compatibility of the Dutch specific and general interest deduction limitation rules with EU law

On 2 September 2022 the Dutch High Court submitted preliminary questions to the European Court of Justice (ECJ) with regard to the potential infringement of the Dutch specific interest deduction limitation rule of article 10a of the Corporate Income Tax Act (CITA).

In short, this rule limits the interest deduction when interest is paid on a loan between (future) affiliated entities (i.e. an (in)direct interest of at least one-third), and this loan can be connected to certain tainted transactions. These tainted transactions are, inter alia, acquisitions, dividend payments and capital contributions. However, the interest may still be deducted if the taxpayer can prove that the interest income is taxed at an effective tax rate of 10% or that the underlying tainted transaction and connected loan are predominantly based on business considerations.

On 20 January 2021 the ECJ ruled in the Lexel case (C-484/19) that a Swedish interest deduction limitation rule was not in line with the principle of freedom of establishment. In summary, this infringement was caused by the prohibition of deducting intra-group interest in cross-border situations, even when the transactions were carried out on an arm's-length basis, that is to say, in conditions analogous to those which would apply between independent parties.

This led the Dutch High Court to raise questions with regard to the compatibility of article 10a CITA with EU law, since this rule also limits interest deductions, outside the scope of the rebuttal possibilities, even when they were carried out on an arm's-length basis.

Under the referral of the Lexel case, the court of the European Free Trade Association (EFTA) ruled that the Norwegian earnings stripping rule leads to an infringement of EU law (EFTA, E-3/21). The earnings stripping rule namely limits interest deductions in cross-border intra-group situations, although this may not be the case between entities that may apply the Norwegian group contribution rule, under which group entities can transfer profits to each other. Although this difference may be justified, the court deems limitation disproportionate when the taxpayer does not have the opportunity to demonstrate that the transaction is genuine and on arm's-length terms.

In short, the Dutch earnings stripping rule limits the interest deduction to the greater of 20% of the fiscal EBITDA or €1 million. With regard to the EFTA-court ruling, the question may be asked if the interaction between the Dutch earnings stripping rule and the fiscal unity regime of article 15 CITA results in an infringement of EU law, in particular with regard to the limitation of interest deductions that are on arm's-length terms.

PKF Comment

With the judgments of the ECJ, EFTA-court and the preliminary questions of the Dutch High Court, the compatibility of the Dutch interest deduction limitations with EU law becomes increasingly doubtful. It can therefore be recommended to review interest transactions that are subject to these Dutch interest limitation rules. For further information and advice regarding this issue, please contact Ruud van der Linde at **ruud.van.der.linde@pkfwallast.nl** or call **+31 10 266 08 34**.

BACK

Peru

Modification of index to determine withholding tax rate applicable to foreign loan interest payments

The Ministry of Economy (MOF) has modified the index that must be considered to determine the amount of foreign loan interest payments that are subject to a withholding tax of 4.99%.

Background

Interest paid by banks or financial institutions for the use of credit lines in Peru, or loans obtained from unaffiliated foreign lenders, are subject to a 4.99% withholding tax, subject to the following conditions:

- The proceeds of the loan are brought into Peru as foreign currency through local banks or are used to finance the import of goods;
- The proceeds of the loan are used for business purposes in Peru.

An increased 30% rate applies to loans that do not comply with the requirements to be subject to the reduced 4.99% rate. The higher 30% rate also applies to loans between associated companies.

SOFR instead of LIBOR

The MOF amended section c of article 30 of the Income Tax Regulations due to the discontinuation of the LIBOR (London interbank offered rate) rates publication. Accordingly, the LIBOR index was replaced by the SOFR (secured overnight financing rate) average 30-day index.

Supreme Decree 137-2023-EF was published in the Official Gazette on 29 June 2023 and entered into force on 30 June 2023.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Peruvian taxation, please contact Renato Vila at rvila@pkfperu.com or call **+51 142 16 250**.

BACK

Romania

Various tax updates

1. Provisions on exemptions and reduced rates of VAT

Government Decision (HG) No. 653/2023 amending and supplementing Title VII 'Value Added Tax' of the Methodological Norms for the Implementation of Law No. 227/2015 on the Tax Code, approved by Government Decision No. 1/2016 was published in the Official Gazette (Part I) No. 722 on 4 August 2023.

Amendments relating to the application of Law 88/2023 (in force from 11 June 2023) were introduced, providing for a VAT exemption (with right of deduction) with respect to:

a) construction or rehabilitation or modernisation services of public hospitals or hospitals managed by non-profit entities, registered with the tax authorities;

b) supply of medical equipment, appliances, devices and consumables to public hospitals or hospitals run by non-profit entities registered with the tax authorities;

c) supply of prostheses and prostheses accessories; and

d) supply of orthopaedic products.

The provisions regarding the VAT rate of 9% for the supply of prostheses and accessories of prostheses and for the supply of orthopaedic products are repealed, these operations becoming exempt.

Other amendments and additions to the Methodological Rules – HORECA sector (i.e. food service and hotel industries) include:

- The reduced VAT rate of 9% applies to: beverages, edible vinegar and vinegar substitutes obtained from acetic acid, falling under NC codes 2201, 2202 and 2209 00, except those falling under NC codes 2202 10 00 and 2202 99.
- Accommodation is redefined with regard to the hotel sector or in sectors with similar functions, respectively within the intermediaries in such activities. The reduced VAT rate (9%) applies to: accommodation types in tourist reception structures with an accommodation function, for accommodation with breakfast, half board, full board or all inclusive. The reduced VAT rate applies to the total price of the accommodation, which may also include alcoholic beverages as well as non-alcoholic beverages.
- In the case of restaurant services, alcoholic beverages, as well as non-alcoholic beverages falling under NC codes 2202 10 00 and 2202 99, served in a restaurant or offered in the case of catering services, are subject to the standard VAT rate, without being considered as a separate supply of goods, the offering of beverages being part of the restaurant or catering services.

- For the application of the reduced VAT rate of 5% to housing deliveries, the limit value of 600,000 lei includes the value of the home, including the value of the undivided shares from the common parts of the building and the outbuildings and, as the case may be, the land on which the home is built, but excludes some servitude rights related to the respective dwelling.

2. Electronic invoicing, mandatory from 1 January 2024 for all business-to-business (B2B) transactions

On 27 July 2023, Implementing Decision (EU) 2023/1553 of the Council of 25 July 2023 authorising Romania to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of tax on added value was published in the Official Journal of the European Union No. L 188/48.

Starting from 1 January 2024, the decision allows Romania to institute mandatory electronic invoicing for all transactions made between taxable persons established in the territory of Romania. The derogation will apply from 1 January 2024 until 31 December 2026 or the date from which the Member States are to apply national provisions regarding ViDA (VAT in the Digital Age), whichever comes earliest.

In the next period, taxable persons have the obligation to issue electronic invoices in a business-to-business (B2B) relationship and transmit them through the national electronic invoice system RO e-Factura.

Electronic invoicing would enable the tax authorities to verify consistency between VAT declared and VAT due in a timely and automatic manner. The introduction of mandatory electronic invoicing would be a powerful tool for real-time tracking of VAT fraud chains, enabling tax authorities to take immediate action to identify and stop taxable persons from participating in such fraudulent activities. The aim of electronic invoicing is to encourage the digitisation and automation of the invoicing process, which can lead to more efficient management of resources and reduce the risk of human error in invoicing activities.

3. Increase in the value of meal vouchers

Emergency Ordinance No. 69/27.07.2023 for the amendment and completion of Law No. 165/2018 regarding the granting of value tickets was published in the Official Gazette. The government increased the value of meal vouchers starting on 1 August 2023 from 30 lei to 35 lei and, starting on 1 January 2024, to 40 lei.

4. Temporary measure to combat excessive price increases for certain agricultural and food products

Emergency Ordinance No. 67/2023, which entered into force on 30 July 2023, establishes a temporary measure (from 30 July to 28 October 2023) to combat excessive price increases for certain agricultural and food products.

The temporary measure to combat excessive price increases applies to all economic operators registered in Romania, regardless of their form of organisation, throughout the chain of production, import, intra-Community trade, distribution and retailing, for certain specific agricultural and food products.

The temporary measure to combat the excessive increase in prices consists of limiting the commercial additions applied for the products provided, as follows:

a) the commercial mark-up applied by the processor is a maximum of 20% compared to the production cost of the product, calculated according to the accounting regulations in force, respectively the Accounting Law No. 82/1991, which includes direct and indirect expenses;

b) the commercial mark-up applied cumulatively on the entire distribution chain, regardless of the number of distributors in the chain, is a maximum of 5% compared to the purchase price to which operational expenses are added;

c) the commercial mark-up applied by the trader for retail sales and cash and carry is a maximum of 20% compared to the purchase price, to which the direct and indirect expenses of the trader are added; discounts and refunds are provided in art. 3 point 6 of Law No. 81/2022

regarding unfair commercial practices between businesses in the agricultural and food supply chain.

Non-compliance with the above-mentioned commercial mark-up quotas by processors, distributors or merchants for retail and cash and carry sales constitutes a contravention, unless it was committed under such conditions that, according to criminal law, it constitutes a crime. The contravention is punishable by a fine ranging from 100,000 lei to 2,000,000 lei.

5. Changes to the Labour Code

Law No. 241/2023 provides that employees with dependent children up to 11 years of age are entitled to four days of work from home or teleworking per month on request.

An exception is made in cases where the nature or type of work does not allow work to be carried out under such conditions. In cases where both parents are employed, the application must be accompanied by an affidavit from the other parent stating that he/she has not simultaneously applied for home-working or teleworking for the same period.

Employees who request to work remotely/work at home must have all the necessary means to fulfil their duties according to the job description.

PKF Comment

If you believe the above measures may impact your business or personal situation, or require any advice with respect to Romanian taxation, please contact Carmen Mataragiu at **carmen.mataragiu@pkf.ro** or call **+40 744 534 721** or **+40 741 228 003.**

BACK

South Africa

Compliance with new beneficial ownership disclosures for companies and trusts

Due to the recent greylisting of South Africa, our government is introducing new laws and requirements regarding the disclosure of beneficial ownership of assets as part of the measures to address its laws regarding anti-money laundering and the combating of terrorism financing.

What is greylisting?

The Financial Action Task Force (FATF) is a global inter-governmental body that promotes policies and sets international standards relating to the combating of money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction.

Certain deficiencies were identified after evaluation of South Africa's compliance with the FATF recommendations and South Africa has accordingly been greylisted, which means that the SA government has adopted an action plan to address the deficiencies identified during its evaluation after an observation period, and has committed to implement this action plan within a defined time period. FATF will be monitoring the implementation.

As a result of the greylisting, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 was passed and came into effect on 1 April 2023 and amends the following legislation:

- Trust Property Control Act (TPCA)
- Non-profit Organisations Act
- Financial Intelligence Centre Act
- Companies Act 71 of 2008
- Financial Sector Regulation Act.

Companies and trusts were identified as vehicles susceptible for misuse in money laundering and terrorism financing activities, and accordingly the new legislation places greater compliance obligations on these entities.

What is required from companies and trustees in terms of the new legislation?

Companies

- Together with the submission of the annual return to CIPC, the company's securities register, register of beneficial owners, beneficial ownership disclosure (ownership structure diagram) and certified ID copies for each beneficial owner must be submitted. Any updates or changes must also be submitted periodically.
- An affected company must keep a register of disclosures of beneficial interests held on behalf of another person as well as a register of persons who own multiples of 5% (section 56).
- All companies must have a register of beneficial owners, file this with CIPC and file notices of any changes with CIPC (section 56(12)).
- Affected companies must include a list of holders of multiples of 5% in their annual financial statements.

Trusts

- Trustees have to disclose their position as trustee to any accountable institutions (as defined under FICA) and that the transaction relates to trust property.
- Trustees are to keep a record of prescribed details of all accountable institutions authorised to act as agent to perform trustee functions.
- Trustees are to keep a record of prescribed details of beneficial ownership relating to the trust assets. This record must be lodged with the relevant Master's Office and kept updated. Failure to lodge the record could lead to a fine of R10 million or up to 10 years imprisonment.

PKF Comment

For trust related queries please contact Karien Theron at **karien.theron@pkf.co.za** and for company related queries please contact Zurea Schloms at **zurea.schloms@pkf.co.za** or call **+27 21 914 8880**.

BACK

Switzerland

Prolongation of loss offset period

The Swiss Parliament wants to extend the loss offset period for companies from seven to 10 years. The aim is to facilitate the recovery of companies affected by the COVID-19 pandemic in particular, but it should explicitly benefit all companies and apply to losses from 2020 onwards. This could be very beneficial also for start-ups, considering that they usually have a longer build-up phase. The consultation lasts until 19 October 2023.

PKF Comment

The Swiss Parliament shows its support for entities that suffered from COVID-19 and Switzerland would become even more attractive for start-ups than it already is.

BACK

Developments regarding home office

Agreement in cases of habitual cross-border home office – social security only

Switzerland entered into an agreement with various states regarding social security in cases of habitual cross-border work. Where less than 50% home work occurs in the place of residence, social security falls to the state in which the employer has its registered office or place of business. There are several other requirements in order for the agreement to be applicable.

Subject to limited taxation in case of home office abroad for a Swiss entity

Employment income from a home office abroad should be taxable in Switzerland, provided that Switzerland has the right of taxation under an international treaty. So far, Switzerland only has a right to tax in cases where the work is physically carried out in Switzerland. The Federal Council submitted the revision of national tax law for consultation at its meeting on 9 June 2023.

PKF Comment

Cross-border home office is state of the art – the new agreement and planned law amendment bring further clarifications and legal certainty.

BACK

International developments

- Switzerland has updated the double tax treaty with Slovenia to implement the anti-abuse standards for double tax treaties (not in force yet).
- The changes in the double tax treaty between Switzerland and Armenia are in force and mostly applicable with effect from 1 January 2024.
- Switzerland entered into an agreement with Belgium on the mutual agreement procedure (article 25 of the applicable double tax treaty), resulting in more guidelines and legal certainty in case of a dispute.
- Russia is planning to freeze the current double tax treaty between Switzerland and Russia.

PKF Comment

For further information or advice concerning Swiss unilateral and international taxation, please contact Dominique Kipfer at **dominique.kipfer@pkf.ch** or Rilana Wolf-Bayard at **rilana.wolf@pkf.ch** or call **+41 44 285 75 00**.

BACK

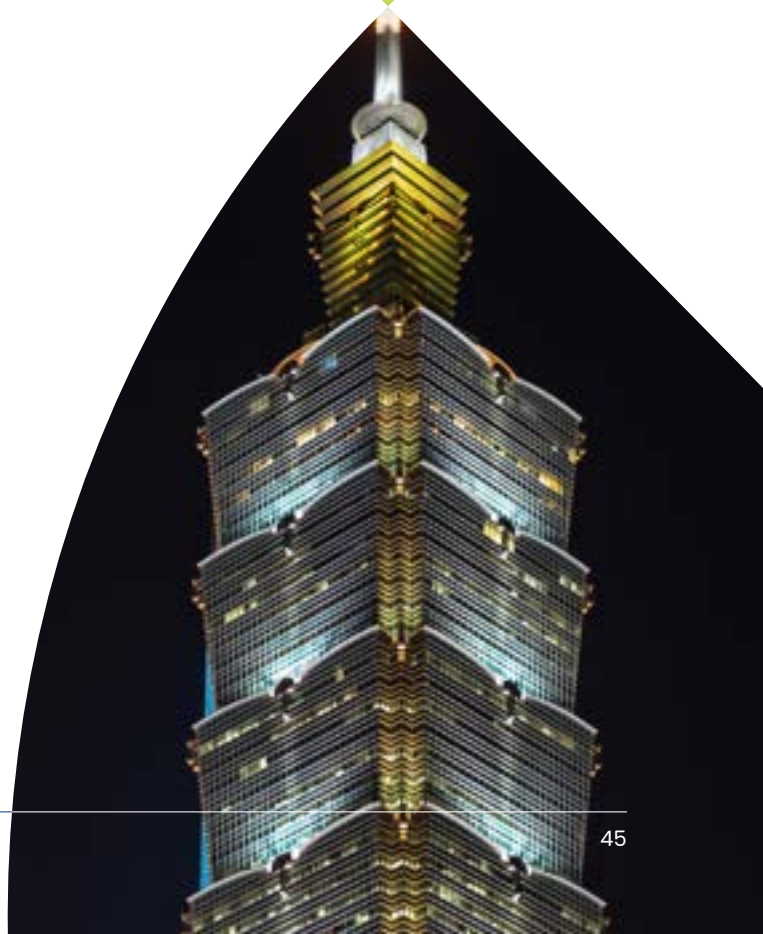
Taiwan

Ministry of Finance proposes 2.0 Housing Tax Differential Rate Plan to uphold residential justice

In an ongoing effort to uphold the principles of residential justice, the Ministry of Finance (MOF) has put forth the 2.0 Housing Tax Differential Rate Plan. This plan aims to combat property hoarding and encourage the release of houses back into the market. Subsequently, the MOF will deliberate on the amendment of housing tax regulations and present the proposal for discussion at the Executive Yuan. Upon approval, the proposal will proceed to the Legislative Yuan for further examination. If all goes smoothly, the new system is expected to be implemented in July 2024, with official tax collection commencing in May 2025.

The key elements of the 2.0 Housing Tax Differential Rate Plan are as follows:

1. Transition from 'regional registration' to 'national registration': This change will ensure that property hoarders who disperse their holdings across different regions can no longer evade detection.
2. Adjustment of statutory tax rates: The overall tax rate will be adjusted from the current range of 1.5%–3.6% to 2%–4.8%, with certain specific properties exempted from this rate increase.



3. Mandatory establishment of differential tax rates: Unlike the previous regulations that allowed local governments to opt in differential tax rates, the new plan requires that all regions throughout the nation must implement measures to combat property hoarding.

Under the new plan, specific residential properties designated for primary dwelling purposes (principal residence/main home) will be subject to a lower tax rate, and the tax rate for single-owner occupied residential properties falling under a certain value threshold will decrease from the current 1.2% to 1%.

Moreover, to incentivise property rental, property owners who declare rental income according to prescribed standards and individuals who inherit co-owned residential properties will face tax rates ranging from 1.5% to 2.4%. This approach aims to safeguard innocent parties from undue burdens and to prevent property owners from unduly transferring the tax burden to their tenants.

Regarding unsold properties owned by property developers, the tax rate will be set at 2% to 3.6% within the first two years and will revert to 2% to 4.8% after this initial period. This measure takes into account the existing market conditions and grants a two-year sales period to developers.

PKF Comment

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

BACK

Ukraine

CRS and CbCR standards – Ukraine starts international automatic information exchange

On 28 April 2023 the **'Law of Ukraine On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on the Implementation of the International Standard for Automatic Exchange of Financial Account Information'** No.2970-IX of 20 March 2023 ('the Law') entered into force.

The Law transposes into Ukraine domestic law provisions of a number of international agreements and standards, in particular:

- Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA CRS);
- Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA CbCR);
- Qualifying Competent Authority Agreement (QCAA);
- Common Standard on Reporting and Due Diligence for Financial Account Information (Common Reporting Standard, CRS);

- Agreement between the government of the United States of America and the government of Ukraine to Improve International Tax Compliance and to Implement the Provisions of the Foreign Account Tax Compliance Act (FATCA).

The Common Standard on Reporting and Due Diligence for Financial Account Information (CRS) is an international standard approved by the OECD Council on 15 July 2014, calling on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis under the MCAA CRS.

Further to the entry into force of tax legislation changes regarding implementation of the CRS from 1 July 2023, Ukrainian financial institutions are required to undertake due diligence measures in order to identify accountable accounts and to submit the relevant report to the State Tax Service. The report is submitted annually by 1 July. The very first report on accountable accounts has to be submitted in 2024 with regard to the second half of 2023 (the first reporting period).

New requirements should be applied to four kinds of organisations as prescribed by Section VIII of the CRS:

- depository institutions (banks, credit unions, etc.);
- custodial institutions (entities that hold, as a substantial portion of their business, financial assets on behalf of others);
- investment entities (investment funds, asset management companies, etc.);
- specified insurance companies (insurance companies, non-state pension funds).

Introducing the automatic exchange of information in Ukraine entails that these financial institutions are obliged to collect information about the accounts of foreign taxpayers in Ukraine and transfer it to the Ukrainian tax authorities that will, in turn, transfer this information to the tax services of the respective countries according to the taxpayer's tax residency. The Ukrainian tax authorities will also receive such information about their taxpayers from the tax authorities of countries that are parties to the relevant international agreement.

On 17 August 2023 the Ukraine Ministry of Finance notified that software development for international automatic information exchange according to the CRS and the CbCR standard had been completed. The State Tax Service of Ukraine now has the proper technical capacity to initiate the first exchanges of information (respecting the provisions of the Ukraine Tax Code) with tax authorities of each jurisdiction that participate in the CRS and CbCR on an annual basis, encompassing more than 100 foreign tax administrations.

The first information on financial accounts exchange under the CRS standard has to be submitted in 2024 for the second half of 2023 (the first reporting period). Henceforth, the previous calendar year will be considered as the reporting period.

Automatic exchange of tax information between Ukraine and other jurisdictions according to relevant reporting standards will contribute to an increasing level of efficiency of tax control while combating tax evasion.

It is noteworthy that the implementation of the CRS and CbCR is also an important milestone for Ukraine as a candidate country for EU accession in terms of harmonisation of domestic legislation with EU legislation.

PKF Comment

The accession of Ukraine to the international automatic information exchange system will contribute to a more transparent tax environment and improve the standing of Ukraine as a trustworthy and equal partner in international tax relations.

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Ukrainian taxation, please contact Sviatoslav Biloblovskiy at **s.biloblovskiy@pkf.kiev.ua** or Dmytro Khutornyy at **d.khutornyy@pkf.kiev.ua** or call **+380 44 501 25 31**.

BACK

United Arab mirates

UAE tax updates

Corporate tax

The Federal Tax Authority (FTA) of the United Arab Emirates (UAE) has released the Corporate Tax Decree-Law, i.e. 'Federal Decree-Law No. 47 of 2022 – Taxation of Corporations and Businesses' ('Corporate Tax Decree-Law'/'CT Decree-Law') applicable to financial years starting on or after 1 June 2023.

The Ministry of Finance (MoF)/FTA have released several cabinet decisions/ministerial decisions/ FTA decisions in this regard which provide further guidance on CT Decree-Law provisions. However, some cabinet/ministerial/FTA decisions are still awaited. In addition to such decisions, the MOF has also released FAQs for additional clarification and guidance. The MOF has also recently released a 'Public Consolidation Document on Qualifying Free Zones' ('PCD on FZs') seeking comments from the public.

Regarding corporate tax registration, the process of registration for certain taxable persons such as private companies and public joint stock companies has been initiated on the Emara Tax portal.

Recently issued cabinet/ministerial decisions can be summarised as follows:

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
1	**Cabinet Decision No. 49 of 2023 on Specifying the Categories of Businesses or Business Activities that are Subject to Corporate Tax** Resident or non-resident natural persons (individuals) shall only be subject to corporate tax where the turnover or gross amount of income derived from businesses or business activities exceeds AED 1,000,000 within a Gregorian calendar year. Such turnover may not include wages, prescribed personal investment income and prescribed personal real estate income.
2	**Cabinet Decision No. 55 of 2023 on Determining Qualifying Income for the Qualifying Free Zone Person** The decision provides that qualifying income of the qualifying free zone person shall include the following categories of income: ▪ income derived from transactions with other free zone persons, except for income derived from excluded activities; ▪ income derived from transactions with a non-free zone person, but only in respect of qualifying activities that are not excluded activities; and ▪ any other income provided that the qualifying free zone person satisfies the prescribed de minimis requirements.
3	**Cabinet Decision No. 56 of 2023 on Determination of a Non-Resident Person's Nexus in the State** The decision provides that any juridical person that is a non-resident person shall have a nexus in the UAE if it earns income from any immovable property in the UAE.
4	**Cabinet Decision No. 75 of 2023 on the Administrative Penalties for Violations** The decision provides penalties that would apply to a number of violations in relation to the UAE CT law, including a failure to file and pay the CT due within the set deadlines and many more.

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
5	**Cabinet Decision No. 81 of 2023 on Conditions for Qualifying Investment Funds** The decision provides conditions to be satisfied by qualifying investment funds to be eligible for exemption under the CT Decree-Law.
6	**Ministerial Decision No. 97 of 2023 on Requirements for Maintaining Transfer Pricing Documentation** The decision provides for the following: ▪ conditions and thresholds for maintaining a master file and local file (the threshold being where revenue of the taxable person is AED 200 million or more or where the taxable person is part of an MNE group having consolidated group revenue of AED 3.15 billion or more); ▪ transactions or arrangements to be specifically included in the local file; and ▪ transactions or arrangements that shall not be included in the local file.
7	**Ministerial Decision No. 105 of 2023 on the Determination of the Conditions under which a Person may Continue to be Deemed as an Exempt Person, or Cease to be Deemed as an Exempt Person from a Different Date** The decision provides conditions for: ▪ deeming the person as an exempt person in the event of liquidation or termination; and ▪ deeming the person as an exempt person where the failure to meet the conditions is of a temporary nature.
8	**Ministerial Decision No. 114 of 2023 on the Accounting Standards and Methods** The decision provides that financial statements may be prepared on a cash basis, where the revenue does not exceed AED 3 million or through an application in exceptional circumstances to the tax authorities. It further provides that International Financial Reporting Standards (IFRS) are the only applicable accounting standards.
9	**Ministerial Decision No. 115 of 2023 on Private Pension Funds and Private Social Security Funds** The decision provides conditions to be met by private pension funds (PPF) and private social security funds (PSSF) in order to be eligible for the exemption.
10	**Ministerial Decision No. 116 of 2023 on the Participation Exemption** The decision provides provisions relating to the application of the participation exemption on income recognised by taxable persons.

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
11	**Ministerial Decision No. 120 of 2023 on the Adjustments Under the Transitional Rules** The decision provides adjustments that are required to be carried out when determining a taxable person's taxable income on disposal/ deemed disposal of immovable property, intangible assets, financial assets and financial liabilities, owned prior to the taxable person's first tax period.
12	**Ministerial Decision No. 125 of 2023 on Tax Group** The decision provides the meaning of share capital for the purposes of satisfying the condition that the parent company must own at least 95% of the share capital of the subsidiary. It also clarifies that a foreign juridical person may form or join a tax group if that foreign juridical person is considered to be a resident person by virtue of being effectively managed and controlled from the UAE, subject to maintenance of documentation that supports the position that it is not a tax resident in the foreign territory. The decision further provides the administrative and computation mechanism for a tax group.
13	**Ministerial Decision No. 126 of 2023 on the General Interest Deduction Limitation Rule** The decision provides that in cases where the net interest expenditure is lower than AED 12 million, the general interest deduction rule may not apply. In cases where the net interest expenditure exceeds AED 12 million, the deduction on account of interest shall be the higher of: ▪ the actual interest amount or AED 12 million (whichever is higher); or ▪ 30% of the prescribed EBITDA (i.e. accounting earnings before the deduction of interest, tax, depreciation and amortisation) for the relevant tax period.
14	**Ministerial Decision No. 127 of 2023 on Unincorporated Partnership, Foreign Partnership and Family Foundation** The decision provides conditions for foreign partnerships and family foundations to be treated as unincorporated partnerships.
15	**Ministerial Decision No. 132 of 2023 on Transfers Within a Qualifying Group** providing definitions and detailed guidance in this regard.
16	**Ministerial Decision No. 133 of 2023 on Business Restructuring Relief** providing definitions and detailed guidance in this regard.

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
17	**Ministerial Decision No.134 of 2023 on the General Rules for Determining Taxable Income** This decision provides for certain adjustments to the accounting income for determining the taxable income.
18	**Ministerial Decision No. 139 of 2023 Regarding Qualifying Activities and Excluded Activities** This decision provides a list of qualifying activities and excluded activities with regard to qualifying free zone persons. The listed qualifying activities are manufacturing of goods or materials, processing of goods or materials, holding of shares and other securities, ownership, management and operation of ships, reinsurance services, fund management services, wealth and investment management services, headquarter services to related parties, treasury and financing services to related parties, financing and leasing of aircraft, including engines and rotable components, distribution of goods or materials, logistics services and any activities that are ancillary to the above-mentioned activities. The listed excluded activities are banking activities, insurance activities, finance and leasing activities, ownership and exploitation of immovable property, ownership and exploitation of intellectual property assets, any transactions with natural persons (except a few transactions prescribed) and any activities that are ancillary to the above-mentioned activities.
19	**PCD on FZs** On 9 August 2023, the MOF issued a PCD on FZs to seek views on certain elements of the proposed framework for the classification of qualifying activities and excluded activities. It has specifically mentioned in the PCD that it is issued for the sole purpose of obtaining input from interested parties and it does not constitute the final legislative position in respect of the matters set out. The PCD provides a detailed description of the qualifying activities and excluded activities along with illustrations for ease of understanding. It is pertinent to note that, among others, the PCD has covered the illustration of third port shipment and accordingly a view may be taken that this may be eligible for the 0% CT rate benefit, subject to fulfilment of other prescribed conditions under the qualifying activity of 'distribution of goods or materials'. Further, with regards to transactions with related parties, 'headquarter services to related parties' and 'treasury and financing services to related parties' cover a wide range of activities.

Economic Substance Regulations

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

The Regulations (as amended), inter alia, prescribe two types of annual compliances:

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

ii. Submission of the 'Substance Report' within 12 months from the end of the accounting year.

Accordingly, licensees with a financial year ending 31 December 2022 are required to file their Economic Substance Report on or before 31 December 2023. Similarly, licensees with a financial year ending 31 March 2023 are required to file their Economic Substance Notification on or before 30 September 2023.

VAT and customs duties update

With respect to VAT and excise tax, the UAE FTA has recently released certain amendments/updates which are given below:

Date	Tax	Type of update	Particulars of update
July 2023	VAT	Public clarification & cabinet decision	Issuance of a new tax procedures executive regulation

A summary of the updates is as follows:

- **Issuance of a new tax procedures executive regulation:**

The FTA has recently released Cabinet Decision No. (74) of 2023 on the Executive Regulation of Federal Decree-Law No. (28) of 2022 on Tax Procedures (´New Executive Regulation´) on 28 July 2023, which has repealed Cabinet Decision No. (36) of 2017 on the Executive Regulation of Federal Decree-Law No. (7) of 2017 on Tax Procedures and its amendments ('Previous Executive Regulation'). In relation to the amendment, the FTA has also issued public clarification 'TAXP006 on Issuance of a New Tax Procedures Executive Regulation'. The key areas covered in the public clarification and cabinet decision have been summarised below:

1. **Definitions** – The definition of the term 'assets' has been expanded to include intangibles such as patents, brands, licences, trademarks, computer programs, copyright, goodwill and also customer lists.
2. **Record-keeping** – Businesses must retain all documents that support entries in the accounting records and commercial books of the business including tax invoices, licences and agreements related to the business, related party transactions and transfer pricing documentation.
3. **Period of record-keeping** – The period of retention of documents shall be as follows:
    - For real estate records, the retention period is seven years from the end of the calendar year in which the record or document was created.
    - The general document retention period of five years will be extended by one year starting from the date of submission of voluntary disclosure in the fifth year from the end of the relevant tax period.
    - Legal representatives are required to retain the required books and records of the person they are representing for a period of one year from the date on which such legal representation ends.
4. **Language** – The FTA may now accept the tax return, data, information, records and any other documents related to tax in English or Arabic. Arabic translations of the submissions must be submitted only if sought by the FTA.
5. **Tax registration and deregistration amendments** – The list of instances in which a registrant is required to notify the FTA of changes to their business data has now been expanded to include a change in:
    - email address;
    - trade licence activities;
    - legal status and partnership agreement for unincorporated partnerships.

    The FTA may, at its discretion, deregister a person where the person is required to deregister for a specific tax type but fails to submit a deregistration application. This may include the following instances:
    - continuous submission of nil returns for excise tax;
    - non-satisfaction of voluntary registration threshold limit for VAT registration;
    - ceasing to manufacture or import excise goods.

    UAE licensing authorities are required to notify the FTA within 20 business days of any issuance or renewal of a number of data regarding the licence.
6. **Submission of voluntary disclosure** – The FTA had amended the provisions of voluntary disclosure with effect from 1 March 2023 vide amendment of Tax Procedures Law by adding a new instance that 'if the Taxpayer discovers an error or omission in the Tax Return submitted to the Authority, where there is no difference in the amount of Due Tax, the Taxpayer must correct such return by submitting a Voluntary Disclosure'.

    The FTA has clarified the following instances which include errors with no impact on due tax:
    - failure to report import of services where the business is entitled to full input tax recovery;
    - error in emirate wise reporting of supplies in Box-1 of VAT return.
7. **Means of notification** – The FTA can now notify the person through text messages on mobile phones, notifications through smart applications and notifications through the FTA's electronic systems. It has been clearly specified that a verbal agreement will not be in line with the New Executive Regulation.
8. **Tax agents** – The New Executive Regulation provides the legal framework for the system of tax agents as follows:
    - Criteria to become a tax agent in terms of education and relevant tax, accounting or legal experience has been updated.
    - It is no longer a requirement for the tax agent to be able to communicate in both Arabic and English, as fluency in either of these languages is acceptable. Further, submission of proof that the person is medically fit to perform the duties of the profession is not required.

- Members of Tax Dispute Resolution Committee (TDRC) are not allowed to be registered as tax agents.
- A new concept of a juridical person tax agent has been added to the UAE tax legislation. A juridical tax agent must meet certain requirements to become a tax agent.
- The New Executive Regulation states the detailed procedure for listing and delisting tax agents. Tax agents are required to meet continuing professional development requirements and retain information, documents, records and data in respect of any person the tax agent represents.

9. **Notice of tax audits** – The FTA is now required to give a person at least 10 business days' notice before conducting a tax audit.
10. **Reconciliation in tax evasion crimes** – A person may submit a reconciliation application to the FTA before initiation of the criminal case, provided that the person undertakes to settle the full amounts of payable tax and administrative penalties to the FTA as consideration for the reconciliation.
11. **Extension of deadlines** – The new timelines have been prescribed by the New Executive Regulation as follows:
    - The FTA may extend the deadline for deciding on a tax assessment review request and a request for reconsideration for a period of 20 days if the extension is necessary to decide the request.
    - The TDRC may extend the deadline for deciding on a tax objection request for a period of 60 business days if the extension is necessary to decide on the objection.
    - In a case of bankruptcy, the FTA shall notify the appointed trustee of any taxes due or the initiation of tax audit within 20 business days after being notified of the trustee's appointment.
12. **Effective date of the New Executive Regulation** – The New Executive Regulation came into effect from 1 August 2023 except the clause for juridical person tax agent which shall come into effect on 1 December 2023.

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

PKF Comment

The CT Decree-Law released is broadly in line with internationally accepted principles. Cabinet decisions/further guidance with regard to certain provisions are still awaited and can be expected soon.

Considering the applicability of the CT law for financial years starting on or after 1 June 2023, businesses would be required to proactively carry out CT and transfer pricing impact assessments on their current/proposed business structures and be UAE CT compliant from the outset.

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

Significant amendments made to the Executive Regulation on Tax Procedures Law and public clarification include changes in definition and in (the period of) record-keeping requirements, clarification on submission of voluntary disclosure, changes in the legal framework of tax agents, timeline for notice for tax audit by the FTA, reconciliation in case of tax evasion crimes, extension of certain deadlines and other key changes.

For further information or advice concerning taxes in the UAE, please contact Mr. Shailesh Kumar at **skumar@pkfuae.com** or Mr. Chaitanya Kirtikar at **cgk@pkfuae.com** or Mr. Mradul Gupta **mgupta@pkfuae.com** or Ms. Radhika Doshi at **rdoshi@pkfuae.com** or Ms. Megha Lohia at **mlohia@pkfuae.com** or Mr. Kunal Bafna at **kunalbafna@pkfuae.com** or call **+97143888900**.

BACK

United Kingdom

UK implementation of Pillar 2

Overview

Pillar 2 consists of two mechanisms for collecting tax: the income inclusion rule (IIR), which is the main rule, and the undertaxed profits rule (UTPR), which is the backstop to the IIR and ensures that the charge will be collected in every relevant jurisdiction.

The principal aim of the rules is to ensure that large groups (broadly, groups with consolidated global turnover in excess of €750 million) pay tax at a minimum effective rate in every jurisdiction that they operate, irrespective of the headline CIT rate locally or the availability of tax reliefs, by charging a top-up tax.

Finance (No 2) Act 2023 received Royal Assent in July 2023, bringing the following rules into effect for accounting periods beginning on or after 31 December 2023:

- a multinational top-up tax (MTT) to implement the IIR;
- a domestic top-up tax (DTT) which will be a qualifying domestic minimum top-up tax (QDMTT) for the purposes of the Pillar 2 rules.

The UK government has stated that it remains committed to introducing the UTPR, the second of the charging mechanisms, but has confirmed that it will not apply to accounting periods beginning before 31 December 2024.

HM Revenue and Customs (HMRC) has published draft partial guidance on the MTT and DTT, seeking comments on the draft guidance and suggestions on what stakeholders would find useful in forthcoming guidance.

The deadline for a group's first information returns, notifications and top-up tax payments is 18 months from the end of the accounting period. A group with an accounting period ending 31 December 2024 (which is likely to be the first period for which the rules apply for many groups) will have until 30 June 2026 to deal with their Pillar 2 filing and payment obligations in the UK.

Preparing for the top-up tax

Whilst the rules have not yet come into effect, large corporate groups would be well advised to take steps now to ensure that they are suitably prepared. The following are some examples of steps that could be taken to prepare for the introduction of the rules:

- Establish which entities are part of the same worldwide group, including the identity of the ultimate parent.
- Establish the size of the worldwide group. In order to be within the scope of the MTT and DTT, a worldwide group needs to have exceeded consolidated annual revenues of €750 million in at least two of the preceding four accounting periods. On implementation, this is likely to involve a review of consolidated revenues generated in accounting periods going back to 2020.
- Finance teams (with support from their advisers) should work to understand the detailed information that will be required for the calculations so that they can understand data gaps and work to resolve these in good time.
- Review the extent of the likely compliance burden, including any payment and filing responsibilities or deadlines, so that internal responsibilities can be allocated ahead of implementation.
- Review the potential impact of the staggered pattern of implementation of the Pillar 2 rules across jurisdictions. The primary taxing rights are determined by which jurisdictions have enacted the IIR legislation and so the top-up tax could be payable in different jurisdictions from one accounting period to the next.
- Review the potential application of the transitional safe harbour provisions for periods beginning on or before 31 December 2026 and ending on or before 30 June 2028. Subject to meeting the qualifying conditions, where a valid election is made, UK group members will not have any top-up amounts for the relevant accounting period. This could substantially reduce a group's UK compliance obligations when first entering the regime.

It is important that large groups take steps to understand and prepare for the implementation of the Pillar 2 regime in the jurisdictions in which they operate. The rules are complicated and preparing for their introduction will inevitably absorb a significant amount of time for finance teams.

PKF Comment

If you require any advice with respect to UK taxation, including the implementation of the Pillar 2 regime, please contact Adam Kefford at **adam.kefford@ pkf-francisclark.co.uk** or Chris Rodgers at **chris.rodgers@pkf-francisclark.co.uk** or call **+44 1392 667000**.

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UK self-assessment tax return threshold change

From tax year 2023/24 onwards, the self-assessment threshold for individuals receiving employment income through pay as you earn only, has changed from £100,000 to £150,000. This means individuals earning less than £150,000 no longer need to complete an annual self-assessment tax return, unless they meet any of the other criteria for submitting a tax return, such as:

- receipt of any untaxed income;
- partner in a business partnership;
- liability to the high income child benefit charge;
- self-employed individual and with gross income of over £1,000.

Sole traders and partners will be assessed on the new tax year basis

Starting from the tax year 2023/24, there will be changes in the rules used by HMRC to calculate the profits of sole traders and partners for income tax in a self-assessment return. This change will impact businesses with an accounting date other than 31 March or 5 April.

Under the new rules, starting in April 2024, businesses will be taxed on profits for the tax year, rather than the accounting year ending in a tax year. In the transition year of 2023/24, businesses will need to declare profits generated from the end of their last accounting date in the tax year 2022/23

up to 5 April 2024. This transition year provides an opportunity for businesses to use any overlap relief due. HMRC is also developing an online form for submitting overlap relief requests and training more officers to handle related queries. Further guidance on claiming overlap relief for the tax years 2022/23 or 2023/24 will be published by HMRC.

Social security – UK will not sign up to the EU 'Framework Agreement' on telework

The EU allows a request to be submitted for an employee to be subject to the social security legislation of the state of registered office or place of business of his/her employer.

The UK will not be signing up to the new agreement on telework. The applicable legislation will be determined under the standard rules in Regulation (EC) 883/2004 for those in scope of the Withdrawal Agreement, the Trade and Cooperation Agreement (TCA) or, where relevant, the 2019 UK–Ireland Convention on Social Security. The decision will be kept under review.

HMRC's decision to not sign up to the 'Framework Agreement' on telework does not impact individuals' ability to request an Article 16 agreement where they are in scope of the UK–EU Withdrawal Agreement.

HMRC considers each application for an exception to the normal rules under Article 16 of Regulation (EC) 883/2004 on its own merits. Article 16 is usually used to prevent unjust outcomes for the worker. The UK and the relevant state may conclude an agreement where they consider it to be in the best interests of the worker.

PKF Comment

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

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United States

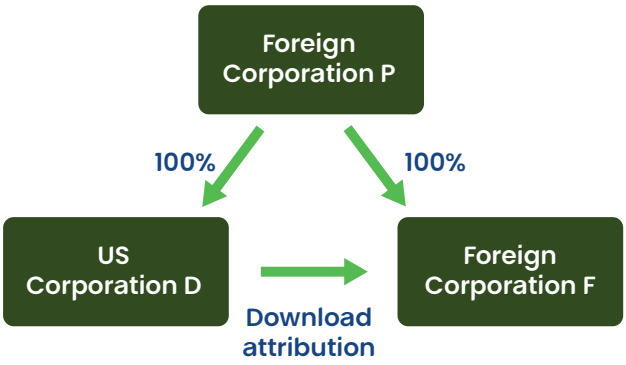
Attribution rules: Form 5471 foreign corporation reporting obligations

The Internal Revenue Service (IRS) requires US persons to provide information about foreign corporations using Form 5471, Information Return of US Persons with Respect to Certain Foreign Corporations. In many scenarios, it is unquestionable that the requirements to file the form are met. For instance, individuals, corporations or partnerships that wholly own a foreign corporation directly clearly must file Form 5471. In other situations, the filing requirement is not that obvious. US persons can be required to file Form 5471 even if they do not own a foreign corporation directly or indirectly since the repeal of an Internal Revenue Code ('the Code') section that prevented the so-called 'downward attribution'. The IRS has provided relief from this outcome, but not in all cases.

The issue

The Tax Cuts and Jobs Act (TCJA) of 2017 significantly expanded the constructive ownership rules for determining whether a foreign corporation is a controlled foreign corporation (CFC) and, thus, if Form 5471 needs to be filed or not. Overnight, thousands of foreign corporations became CFCs according to the plain language of the Code. Downward attribution is the concept that stock ownership by a corporation's owner is attributed as owned, for instance, by another corporation.

The following non-complex scenario is an example where the downward attribution is applicable. Foreign corporation P wholly owns two subsidiary corporations, foreign corporation F and US corporation D. Attribution rules require P's shares of F to be attributed downward to D, making D a US shareholder and F a CFC for D. With the repeal of the Code section that prevented this downward attribution, D is required to file Form 5471 with regard to F.



Although the repeal of the prohibition against downward attribution happened with the TCJA over five years ago, the application and consequences are sometimes overlooked, especially in multinational groups with a huge number of foreign subsidiaries and complex ownership structures.

The solution

As the IRS realised that the initial goal of the repeal to combat certain narrow decontrolling CFC transactions in connection with corporate inversions resulted in filing requirements for a huge number of US taxpayers, it has tried to provide relief from certain Form 5471 filing obligations. It must be noted that the Code itself has not been changed to provide relief as of now. Relief is only provided in IRS notices and revenue procedures that are implemented in the instructions for Form 5471.

First, the IRS created sub-categories of Form 5471 for constructive ownership, which provide a more limited scope of information than a typical Form 5471 filing. Further, the IRS provided two exceptions from filing Form 5471 in certain scenarios. The Form 5471 filing requirement for a Category 1 or 5 filer does not exist if the following requirements are met:

1. The Category 5 filer does not own a direct or indirect interest in a foreign corporation; and
2. The Category 5 filer is only required to file Form 5471 because of constructive ownership from a non-resident alien. This includes the constructive ownership based on the downward attribution rules, but would seem to apply only to ownership by foreign individuals.

The instructions also provide a second exception. A Category 1 or 5 filer does not have to file Form 5471 if all the following conditions are met:

1. The filer is a US shareholder that only owns stock, within the meaning of the constructive ownership rules in §958(b) in the foreign corporation;
2. The filer is not related, using principles of §954(d)(3), to the foreign corporation; and
3. The foreign corporation is a foreign-controlled corporation.

However, this exception would appear to be of limited value as, in the scenario above, the US corporation D is related to corporation F because it has greater than 50% common ownership.

The current instructions seem to provide a more narrow exception than the original IRS guidance in the area (and prior instructions) which provides an exception if the foreign corporation was a CFC solely because one or more US persons was considered to own the stock of the foreign corporation owned by a foreign person.

PKF Comment

US persons should review whether a Form 5471 filing requirement exists, considering the potential application of the attribution rules, particularly in light of the changes to the IRS instructions. The IRS provides relief from the filing requirements but only when certain requirements are met. US persons need to make certain that supporting documentation for the exception can be provided upon request of the IRS during an examination.

As always, if you need any assistance, please reach out to your PKF O'Connor Davies client service team or Ralf Ruedenburg, CPA at **rruedenburg@pkfod.com** or call **+1 646 965 7778**.

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