PKF worldwide tax update

December 2023

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.

Contents

Welcome

In this fourth 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 Hungary and Malta
- Case law and administrative rulings in France and India
- Significant personal and corporate income tax changes in China, Mexico, Poland, Romania, Ukraine and the UAE
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in Ecuador, France, Hungary, the Netherlands, Papua New Guinea, Peru, Slovak Republic, Switzerland and the US.

We trust you find the PKF Worldwide Tax Update for the fourth 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**.

Chile

Remuneration of a shareholder of a closely held corporation who is also a director

The IRS has recently ruled on income received by a majority shareholder of a closely held corporation for their work as a member of the board of directors and the remuneration under an employment contract with the same company, both for the purposes of deductibility as an expense at the level of the company and the tax treatment of the income at the level of the beneficiary.

In this regard, the tax regulations establish that taxpayers of the first category tax can deduct from their gross income all the expenses necessary to produce it, i.e. those that have the ability to generate income in the same or future years and are associated with the interest, development or maintenance of the business, paid or owed, during the corresponding commercial year, as long as they are reliably accredited or justified.

Remuneration is deductible for tax purposes as an expense if it is reasonably proportionate to the importance of the company, the declared income, the services provided and the profitability of capital, which is assigned to the partner, shareholder or individual entrepreneur who actually works in the business or company.

It also takes into account the situation of business owners, in particular smaller ones, who actually work in their companies, directing, organising, making decisions and also carrying out operational activities. So although they do not qualify as 'workers', as they lack the dependency and subordination inherent to an employment contract, they actually provide personal services to the company. Therefore, from a tax point of view, it is appropriate to accept arm's-length remuneration as an expense.

Consequently, the requirement relating to the necessity of the expense must be evaluated in particular considering whether the shareholder effectively works in the company and based on the limit of a salary at arm's-length value.

Regarding remuneration or compensation paid to directors in their capacity as such, their functions or activities are established and regulated by legal provisions, so the amounts paid must meet the general requirements for deductibility as an expense.

Therefore, the deduction as an expense for remuneration described above is subject to its reasonableness and amount. If the requirements are not met, the disbursements made by the company will be subject to the third paragraph of article 21 of the Income Tax Law. Consequently, such disbursements must be included in the tax base of the shareholder's complementary global tax, and the rate of this tax must be increased by 10%.

Comments

The IRS has concluded that the remuneration of shareholders, partners and entrepreneurs is deductible as an expense at the level of the company that pays them, to the extent that they meet the requirements established in the law, in particular those referring to the reasonableness and amount of the expense. Therefore, remuneration which is not accepted as a deductible expense will constitute an item that the beneficiary must include in the determination of their personal taxes, being subject to a surcharge of 10% of the amount of the item. For this purpose, the amount of the disputed item must be certified to the interested party and reported to the IRS (affidavit 1909). It should be noted that the remuneration paid to a person for their position as a director and for their services as a worker must also be certified to the beneficiary for their personal income tax return, which would eventually result in duplication in such taxes. The income indicated and/or the taxes withheld are also reported to the IRS by the company through affidavits 1879 and 1887.

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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 Chilean taxation, please contact Antonio Melys Alvarez at amelys@pkfchile.cl or call **+56 22650 4332**.

BACK ↗

China

Reinforced research and development expenditure super deductions policy

From August to September 2023, the Chinese Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued over 30 tax regulations to extend existing tax incentive policies which had expired or were close to expiry. Almost all these tax incentive policies continue to be effective and the new expiration dates are set at 31 December 2027.

A new highlight of these extended tax incentives is that the super deduction for research and development (R&D) was reinforced in Announcement No. 44 of 2023 jointly issued by the MOF, SAT, National Development and Reform Commission and Ministry of Industry and Information Technology.

According to the tax law and regulations, there are two types of R&D expenses that can be deducted from enterprise income tax: the first one is the actual R&D expense and the second one is an extra deduction which is calculated based on the first deduction.

When the super deduction for R&D expenses was implemented in 2008 for the first time, the percentage of extra deduction was 50% of the actual R&D expense. The percentage was increased to 75% in September 2019 and to 100% in March 2023 across all industries. In Announcement No. 44, the percentage was increased to 120% for two industries, i.e. integrated circuit companies and industrial machine tool companies.

The tax authorities continually encourage enterprises to take advantage of this tax incentive. Qualifying enterprises can benefit from this policy when they submit the tax return in July for the R&D expense of the first half of the year or in October for three quarters of the year. They can also opt to benefit from it via the annual tax return in the subsequent year for 12 months. No proof or supporting documents are required when enterprises submit the monthly or quarterly return; however, the supporting documents still need to be prepared for the purposes of the annual filing.

PKF Comment

The tax incentive for R&D expenses – super deduction – is one of the most encouraging policies from the tax administration. The increased percentage is usually adopted in certain industries first, after which it will be applied across all industries. We therefore expect the 120% to be applied across all industries soon. Enterprises should review their R&D activities and try to take advantage of this incentive.

For any further information or advice concerning PRC tax, please contact Jason Li at jason@pkfchina.com or call **+86 137 643 031 51**.

BACK

Croatia

Recent amendments to tax regulations

Amendment to the regulation on administrative cooperation in the field of tax

The tax administration has introduced new amendments to the Law on Administrative Cooperation in the Field of Tax ('the Regulation' or 'the Law'). The most significant changes relate to the implementation of multilateral agreements between competent authorities, which also apply to offshore structures.

Another meaning of the term 'other jurisdiction' has been added, which will now also be considered to be a jurisdiction which, on the basis of an agreement concluded between competent authorities, exchanges information prescribed by article 35.l of the Law. The term 'other jurisdiction' is also appropriately added to the term Member State when discussing the exchange of specific information. In order for the tax administration to carry out automatic exchange more efficiently, it can send a request for reporting to the operator of the reporting platform if the latter does not provide all the data in order to be able to fulfil the obligation of automatic exchange of information.

As part of the implementation of the multilateral agreement between competent authorities on the automatic exchange of information regarding arrangements to avoid the Common Reporting Standard (CRS) and non-transparent offshore structures, a new section 7 has been added. The reporting obligation for persons dealing with intermediaries in relation to an arrangement or a non-transparent offshore structure to the tax administration is prescribed.

The deadline for the delivery of information related to an arrangement or a non-transparent offshore structure is 30 days after concluding an arrangement or structure or providing a relevant service in relation to the same. The tax administration submits this information to the competent authority of the jurisdiction in which the taxpayer being reported is tax resident. Such information comprises the names and addresses of persons in the arrangement or structure and their details.

Amendment to the regulation on contributions (entry into force on 1 December 2023)

The tax administration has introduced new amendments to the Law on Contributions.

A reduction in the insured's monthly basis for calculating contributions (i.e. salary or income from independent work) has been introduced. The monthly gross salary up to €700 included will be reduced by a fixed allowance of €300. Also, for amounts of monthly gross wages from €700.01 to €1,300, the amount of the allowance will be gradually reduced by the amount obtained from the calculation of 0.5 x (1,300 – the total amount of gross wages for a given month). These reductions will be applied regardless of the number of insured days in a given month and regardless of whether an individual works full or part-time.

The basis for the calculation of contributions also takes into account other sources from self-employed work, which include insurance premiums that employers pay for their workers on the basis of life insurance, insurance of their property, private health insurance, supplementary and additional health insurance above the prescribed amount and voluntary pension insurance above the prescribed amount.

Amendment to the regulation on corporate income tax

The tax administration has introduced new amendments to the Law on Corporate Income Tax ('the Regulation').

A change in the withholding tax rate has been enacted, such that tax will now be withheld at a rate of 15% and 10% on dividends and profit shares respectively. It should also be noted that the withholding tax for market research and business consulting has been repealed, except for non-cooperative jurisdictions. Withholding tax is paid at a rate of 25% when doing business with such jurisdictions if Croatia does not have a double tax treaty in place.

An article 31.f was added, stipulating that the provisions of this Regulation relating to companies that are resident in an EU Member State for tax purposes also apply to companies that are resident in a Member State of the European Economic Area for tax purposes.

Amendment to the regulation on income tax

The tax administration has introduced new amendments to the Income Tax Regulation. Regulation of tax rates is transferred to representative bodies of local self-government units.

The rates are prescribed by law, depending on the type of local self-government unit:

a) municipality – a lower rate in the range of 15% to 22% and a higher rate in the range of 25% to 33%;

b) a city with fewer than 30,000 inhabitants – a lower rate in the range of 15% to 22.4% and a higher rate in the range of 25% to 33.6%;

c) a city with more than 30,000 inhabitants – a lower rate in the range of 15% to 23% and a higher rate in the range of 25% to 34.5%;

d) Zagreb – a lower rate in the range of 15% to 23.6% and a higher rate in the range of 25% to 35.4%.

If the representative body of the local government unit does not make a decision on the level of tax rates within the prescribed period, a rate of 20% will be set on the tax base up to €50,400 and 30% on the part of the tax base that exceeds €50,400.

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PKF Comment

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

BACK

Ecuador

Introduction of the Common Reporting Standard (CRS)

Through Resolution No. NAC-DGERCGC23-00000031 dated 18 October 2023, the tax administration issued the rules and procedures for the effective implementation of the automatic exchange of information under the standards approved by the Council of the OECD, in compliance with international requirements derived from Ecuador's accession to the Global Forum on Transparency and Exchange of Information for Tax Purposes. Furthermore, the Annex of Financial Accounts of Non-Residents is approved, which provides the following:

- Required to report:
  - Financial institutions resident in a participating jurisdiction, excluding branches of such institutions located outside of the participating jurisdiction.
  - Branches of financial institutions not resident in a participating jurisdiction, where such branches are in that participating jurisdiction.
- Financial institutions include:
  - A public body, an international organisation or a central bank.
  - A broad participation retirement fund, a reduced participation retirement fund, a pension fund of a public body, an international organisation or a central bank, or a qualified credit card issuer.
  - An exempt collective investment vehicle.
  - A trust, to the extent that the trustee is a reportable financial institution and reports all information to be provided with respect to all reportable accounts in the trust.
  - Any other entity, whose use as a channel to evade taxes, presents a low risk.

The obligated institutions must report the annex annually, with the information of all natural persons and/or companies not tax resident in the country, as well as natural persons exercising control in companies that are not tax resident in Ecuador, for each account opened.

The resolution can be accessed **here** (only in Spanish).

Amendment to transfer pricing regulations

Through Resolution No. NAC-DGERCGC23-00000025 dated 13 September 2023, the tax administration amended the previous regulations regarding the submission of the transfer pricing annex and the comprehensive transfer pricing report.

Companies that engage in transactions with related parties for a cumulative amount greater than \$3 million must report the 'annex of operations with related parties' (anexo de operaciones con partes relacionadas). In cases when the cumulative amount is greater than \$10 million, the taxpayer must submit the aforementioned annex and the 'comprehensive transfer pricing report' (informe integral de precios de transferencia).

For the calculation of the amount of transactions between related parties, the following must be considered:

Excluded:

1. Income derived from agricultural activities subject to a single income tax, as well as assets, liabilities or expenses attributable to the activity generating such income.
2. In transactions between local related parties, activities that are covered by a methodology approved via acquittal of prior assessment consultation.
3. Liabilities, except for any loans obtained in the reporting period.

Included:

4. Transactions with local related parties when the taxable person has taken advantage of an income tax exemption or has taken advantage of a partial or total reduction of the income tax rate.

A new comprehensive transfer pricing report may not be submitted for the same period for which the tax administration exercises or has exercised its right to assessment.

The resolution can be accessed **here** (only in Spanish).

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PKF Comment

The Ecuadorian government considers that the exchange of tax information is an important tool to combat tax evasion and fraud, since this allows governments to identify productive factors, activities and capital outside of their jurisdiction, with the purpose of having more people subject to the payment of taxes.

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

France

2024 Draft Finance Bill –transposition into domestic law of the OECD Pillar 2 Directive –introduction of a global minimum rate for multinational groups and large-scale national groups

The draft Finance Law 2024 transposes into domestic law the rules of the so-called 'Pillar 2 Directive' and establishes a minimum tax rate set at 15% on the profits of multinational groups with a presence in France. The scheme will also concern large national groups that develop their activities only in France.

The scheme will apply to companies located in France that are members of a group of multinational companies with consolidated revenues of €750 million or more in at least two of the four financial years preceding the financial year in question, as well as companies located in France that are members of a group, applying the same turnover threshold, whose activity is developed on French territory only.

It will result in the introduction of an additional tax charged to the parent entity of the group when the effective tax rate of the constituent entities of the group located in the same state is lower than the minimum tax rate of 15%.

This additional tax may be collected under two separate rules:

- A primary rule called the income inclusion rule (IIR) where the top-up tax is paid by the ultimate parent entity;
- A subsidiary rule called the undertaxed profits rule (UTPR), where the total amount of this additional tax could not be collected under the IIR, in particular in the absence of an IIR in the legislation of the state of residence of the group's ultimate parent entity.

The transposed text complies with the text of the directive.

In addition, France has decided to exercise its option to institute a supplementary national tax in France.

Amounts paid to a non-resident for artistic services provided or used in France are subject to withholding tax

Amounts paid to a non-resident for artistic services provided or used in France are subject to withholding tax (CGI art. 182 A bis), subject to the application of international tax treaties. This applies, according to the French Supreme Court, not only to artistic performances themselves, but also to performances which constitute their inseparable accessory.

Thus, withholding tax is validly applied to the aggregate of the sums paid by a French company co-producing a variety show to an American company, in respect of the salary of the artist for their participation in the rehearsals and the performances agreed, the control and validation of the operations inherent to the stage performance provided on behalf of the artist by the American company and the granting of rights relating to the promotion of the show in question. The absence of a direct legal link between the French company and the artist is irrelevant.

It could therefore be recommended, from a French perspective, to apply French withholding tax on all remuneration paid to the foreign artist; however, this may give rise to difficulties regarding the offset of a tax credit in the country of residence of the artist, as local tax authorities may have a different interpretation of the tax treaty.

PKF Comment

For further information or advice concerning French taxation, please contact Elena Orlova at elena.orlova@pkf-arsilon.com or call **+33 (0)4 93 37 20 64** or Jean-Gabriel Boulic at **jean-gabriel.boulic@pkf-arsilon.com** or call **+33 (0)1 42 94 42 45**.

BACK

Germany

'Plastic tax' will be introduced from 2024

Disposable plastic products are often disposed of incorrectly and pollute the environment as a result. To ensure that the 'plastic' resource is used as sustainably as possible, Germany is introducing a plastic tax from 2024. The following explains who will have to pay this tax, how much the tax is and what the tax will be used for.

1. Background

In the so-called 'Green Deal', the EU States agreed on the goal of climate neutrality by 2050. In this context, it was decided to introduce a 'plastic tax' on plastic. The EU Member States were allowed to set the plastic tax individually. The national implementation of the directive therefore varies greatly.

2. Implementation in Germany

In Germany, manufacturers have to pay into a fund for affected products. Cities and municipalities report their cleaning costs to this fund. These cleaning costs include, for example, waste management, cleaning in public areas and waste advice. The amounts paid out to the cities and municipalities are based on a points system.

2.1 Affected products

The plastic tax must be paid on products that are made entirely or partially of plastic. This includes, for example, boxes with and without lids for food, foil packaging with food or beverage containers up to three litres or beverage cups, and, in addition, bags and film packaging as well as certain wet wipes, balloons, filters for tobacco products and (from 2026) fireworks.

2.2 Parties liable to pay

Manufacturers within the scope of the law and therefore obliged to pay are, for example, producers, sellers and importers. Foreigners who sell digital goods directly to Germany are also obliged to pay. These market participants require a domestic authorised representative who fulfils the obligations in their own name.

3. Notification

3.1 Timing

For 2024, affected companies must submit the first notification by 15 May 2025. In this notification, the affected products must be reported in kilograms.

Manufacturers must register. The notification must be checked and confirmed by a registered expert, auditor or tax consultant. Failure to comply with the requirements can lead to a fine of up to €100,000.

3.2 Fee rates

The Federal Environment Agency issues a fee notice each year. The fee rates in euros per kilogram are set out below:

Food containers	0,177
Bag and film packaging	0,871
Non-deposit beverage containers	0,181
Beverage containers with deposit	0,001
Beverage cups	1,236
Lightweight plastic carrier bags	3,801
Wet wipes	0,061
Balloons	4,340
Tobacco products	8,972

Note: The fee rates and the points system are reviewed every three years and adjusted if necessary.

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PKF Comment

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

BACK ↗

Hungary

Introduction of global minimum tax from 1 January 2024

In order to comply with the relevant Council directive of the European Union and the OECD Model Rules on the global minimum tax (GloBE), Hungary will introduce GloBE from 1 January 2024. This means that the so-called income inclusion rule and the qualified domestic minimum top-up tax will come into effect from 2024 while the undertaxed profits rule will become effective on 1 January 2025.

Hungary will base its qualified domestic top-up tax on the GAAP companies use for local statutory reporting purposes. Having said that, if applicable, the qualified domestic top-up tax will be determined based on the local GAAP and the Hungarian subsidiaries of a relevant group will be able to calculate and possibly pay their global minimum tax in Hungary with the ultimate parent entity being exempted from making the calculations on behalf of the Hungarian subsidiaries. Furthermore, Hungary will introduce its own definition regarding covered taxes which can be taken into account when calculating the effective tax rate for GloBE purposes. Covered taxes would include, for example, corporate income tax, local business tax, innovation contribution and tax on energy suppliers. The GloBE information return can be disclosed in Hungarian or English and the top-up taxes can be paid in forints, euros or US dollars.

VAT digitalisation in Hungary – eVAT is coming

Hungary has long been committed to digitalising the whole VAT compliance and invoicing procedure. Thanks to the application of the mandatory online invoice data reporting and the cash register's online access, the tax authorities now have sufficient information to prepare draft VAT returns for the taxpayer's approval.

The new scheme of eVAT, to be introcuced from 1 January 2024, offers two solutions. On the one hand, taxpayers will receive a draft VAT return on the tax authorities' designated platform. The draft return will be deemed to be filed upon the taxpayer's approval including the indication of the intention to apply the right to VAT deduction (the deductible VAT will be calculated automatically in the draft). On the other hand, if the taxpayer's ERP system is capable of providing the tax authorities with transactional data in a predefined data structure and the system is registered with the tax authorities, a machine-to-machine solution will also be available, whereby the draft return could be received, verified and approved through the ERP system. However, it remains at the taxpayer's discretion to apply the regular VAT returns, instead of making use of eVAT.

Furthermore, the Hungarian legislator is ready to extend the online data reporting liability to receipts and introduce the new generation of e-cash registers with the aim of replacing paper-based receipts with electronic solutions, providing not only the receipt but facilitating the warranty process as well. Under the planned new scheme, the tax authority could receive transactional level information on B2C sales without the personal data of the customer being disclosed. Although the current government proposal contains some regulations on the new reporting liability, and the national tax authority published a brochure on the planned structure, the set-up of the whole e-receipt system is scheduled for July 2024.

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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

India

Recent Supreme Court cases on international tax law

Supreme Court (SC or 'the Court') lays down law on tax treaty interpretation, rejects 'black letter' approach; upholds legislative primacy (Assessing Officer Circle (International Taxation) vs Nestle SA & others)

In a judgment with enormous significance for the interpretation of double tax treaties, the SC holds that a notification under section 90(1) of the Income Tax Act ('the Act') is necessary and a mandatory condition for a court, tribunal or an authority to give effect to a tax treaty, or any protocol changing its terms that has the effect of altering the existing provisions of law.

The apex court of India had passed the judgment after perusing international law including the Vienna Convention on Law of Treaties, judgments of the International Court of Justice (ICJ), International Law Commission (ILC) Draft Conclusions on Subsequent Agreements and Subsequent Practice and Klaus Vogel's treatise on double taxation conventions.

The key findings of the apex court and the summary of the judgment are given below:

The SC's findings (summarised):

The Indian Constitution enables the Indian government to enter into international treaties. However, the treaty must be enacted by law or through legislation for it to be binding on Indian nationals if it restricts or affects the rights of citizens or others or modifies the law of India.

The Indian government, in the past, has followed the practice of expressly issuing notification under section 90 of the Act to give effect to the most favoured nation (MFN) clause of the original country when a subsequent tax treaty results in a more beneficial arrangement with a third country.

The interpretation and integration of treaties into domestic law are influenced by constitutional and political factors specific to each signatory.

Domestic courts cannot approach treaty interpretation by merely applying black letter law (i.e. well-established legal rules that are certain and no longer disputable).

Where a third country is an OECD member whose beneficial treatment is accorded by invoking the MFN clause, the Court held that the verb 'is' used in this MFN clause – 'third state which is a member of OECD' – is written in the present tense and, thus, to claim the favourable benefits at issue, the third state should be an OECD member at the time it enters into a tax treaty with India.

Conclusion:
The SC ruled that to give effect to a tax treaty or any protocol changing its terms or conditions, which has the effect of altering the existing provisions of law, notification under section 90(1) of the Indian Tax Laws (ITL) is mandatory. With reference to an MFN clause already agreed to as part of an existing treaty, the beneficial provisions entered into with a third country cannot be made automatically applicable unless a notification is issued.

The SC held that the beneficial treatment agreed with a third country can be applied by invoking the MFN clause only if the third country was an OECD member.

PKF Comment

This is a significant ruling in the context of interpreting Indian tax treaties. Given that the decision was pronounced by the apex court, it will be regarded as the law of the land and binding on all parties.

There were two significant issues before the SC:

- First issue – Interpretation of the word 'is' as appearing in the MFN clause, i.e. whether the third state must be an OECD country at the time of entering into the tax treaty with India. This question was more relevant in the context of reduced dividend tax of 5% available based on the tax treaties entered into by India with Colombia, Slovenia and Lithuania. To this question, the SC answered in favour of the tax administration. Thus, the reduced dividend tax claims made by the taxpayers, predominantly with Dutch holding entities, would now be reversed. The repercussions of this, in the form of foreign tax credit, etc. in holding entity jurisdictions would have to be evaluated, if it is taxable at all.
- Second issue – On the requirement of a notification to effectuate an MFN clause, the SC has held that a notification is mandatory for the judiciary to read an MFN clause into the treaty. It should be noted that in many cases where an MFN clause is applicable, notification has not been issued by the government. Cases where taxpayers have validly made claims based on an MFN clause but without a notification from the government stand to be tested in future. The taxpayers are eagerly awaiting on two counts – whether the government will issue notifications for validating the MFN claims and, if so, whether the notifications will be issued retrospectively.

BACK

SC lays down principles on secondment taxation (CC, CE and ST Bangalore (Adjudication) vs M/S Northern Operating Systems Pvt Ltd)

The SC provided an important ruling in the case of CC, CE and ST Bangalore (Adjudication) vs M/S Northern Operating Systems Pvt Ltd ('NOS judgment') which unsettles the existing position of law relating to the applicability of indirect taxes to secondments.

Northern Operating Systems (NOS), the assessee, had executed multiple secondment agreements with Northern Trust Company, the overseas group company (OGC) for a specific period. As part of the arrangement, NOS could request personnel from OGC to assist with tasks requiring specialised skills and technical expertise. OGC would transfer its employees for a limited duration after which they would return to OGC. NOS would be liable for the secondees and supervise and control their work. They would be part of the OGC payroll and NOS would reimburse OGC for salaries and other compensation without any mark-up on expenses.

The service tax authorities ('Revenue') raised a demand against NOS for service taxes under the reverse charge mechanism. Revenue contended that NOS is the recipient of manpower supply services from OGC. The Customs, Excise and Service Tax Appellate Tribunal ('Tribunal') set aside Revenue's demand which was appealed to the SC. The SC, by applying the legal provisions and reassessing the facts of the case, narrowed down the relevant questions to be:

- Who is the real employer of the secondee and what would be the nature of the arrangement? Is it one of contract of service (employer-employee) or an underlying contract for service where the employer lends the employee's services to another entity?

The key findings of the apex court are given below:

The SC concluded that the overseas group entities were the 'real' employers of the seconded employees, in light of the following factors:

- **Lien on employment of seconded employees vested with the overseas entity –** The SC noted that the seconded employees continued to be on the foreign entity's payroll. Further, all salary payments and social security benefits were paid by the foreign entity. While the operational and functional control was exercised by the assessee over the seconded employees only for the secondment period, such control was necessary to ensure performance of the duties entrusted to them. However, it was merely superficial. Thus, the arrangement was a 'contract for service' and not a 'contract of service'.

- **Specialised nature of services –** The Court took cognizance of the 'vital fact' that the nature of business of the overseas group entities was to secure contracts which required highly trained and skilled personnel. Thus, the seconded employees possessing the specific skill sets were being deployed to the assessee which is also evident from the nature of the perks and salary paid. Thus, it was observed that the seconded employees were seconded to the assessee for the use of their specific skills.
- **Repatriation back to overseas entity –** The letter of understanding between the assessee and the seconded employees nowhere stated that the seconded employees would be treated as employees of the assessee after the period of secondment. Further, the assessee could not terminate the employment of seconded employees on cessation of the secondment period; the seconded employees had to be repatriated to their overseas employer and could be sent elsewhere on secondment. Thus, the assessee was not empowered to terminate the employment of the seconded employees or even amend their terms of employment in an adverse manner.
- **Salary/allowances in foreign currency –** The fact that the salary package, allowances, etc., were all expressed in foreign currency and separate allowances were granted for working in India further buttressed that the seconded employees were the employees of the overseas entity.

Conclusion:
Accordingly, it was held that the assessee was the service recipient of manpower recruitment and supply services provided by the overseas entity, vis-à-vis the employees it seconded to the assessee, for the duration of their deputation or secondment.

Further, this judgment has rejected the 'economic employer theory' which means that future agreements based on this theory would also face the same fate as that of this case. This is in addition to the fact that some tax treaties include 'provision of services of technical or other personnel' as part of the definition of fees for technical services (FTS) under the 'make available' condition (article 12, para 4 (b) in the treaty with the US, for example) which makes such arrangements taxable under FTS. The scope of such income would include salaries, social security contributions, benefits (such as housing, travel etc.) and other payments in the form of charges, markup, consideration, etc., if any.

PKF Comment

Under the present GST regime, the issue of taxability of secondments would continue to remain more contentious than ever, with Revenue pushing for taxing more secondment agreements with the newly raised issues in this case and the assessees differentiating their case from this NOS one based on facts. The judgment would also have ripple effects under income tax laws, on issues such as fees for technical services, permanent establishment and taxability of reimbursements.

Separately, it is also important to be mindful of whether the secondment can result in a taxable presence (i.e. permanent establishment) of the foreign entity in India adding to the complexity and tax claims by the tax authorities.

If you believe the above measures may impact your business or require any advice with respect to Indian taxation, please contact Sudha Ashok at sudha.a@pkfindia.in or call **+91 44 2811 2985**.

BACK

Malta

Various updates on VAT, BEFIT and DAC 7

New reduced VAT rate introduced

LN 231 of 2023 has introduced a reduced rate of 12% which will apply with effect from 1 January 2024 to four categories of services:

- custody and management of securities;
- management of credit and credit guarantees by a person or body other than those who granted the credit;
- hiring of a pleasure boat for a period not exceeding five weeks (subject to the conditions specified); and
- services consisting of the care of the human body by a medical professional (subject to the conditions specified).

The legal basis for the new VAT rates included in the Eighth Schedule to the VAT Act is article 105a of the VAT Directive 2006/112EC introduced by Council Directive (EU) 2022/542 (the 'VAT Rates Directive').

BEFIT directive proposal published

On 12 September 2023, the European Commission adopted a package of initiatives intended to reduce tax compliance costs for large, cross-border businesses in the EU.

The proposal for a Council directive on Business in Europe: Framework for Income Taxation (BEFIT) establishes a common set of rules to determine the tax base of companies that are part of a group which prepares consolidated financial statements and which is subject to corporate income taxation in a Member State.

The package also includes a proposal aimed at harmonising transfer pricing rules within the EU and ensuring a common approach to transfer pricing.

The proposed implementation dates are 1 July 2028 for BEFIT and 1 January 2026 for the transfer pricing proposal.

DAC 7 guidelines – updated

The Malta Tax & Customs Administration (MTCA) has announced that Version 1.1 of the DAC 7 guidelines has been issued with updates to section 6.1 and now reads as follows:

'6.1 First Year of Registration
A Platform Operator satisfying any of the conditions laid down in Section 2.4.1 must register with the Competent Authority in Malta as a RMPO by 31 October 2023. Any changes in registration must be completed by 31 December 2023. An Excluded Platform Operator must register with the Competent Authority in Malta and provide proof of such classification by 31 October 2023. Platform Operators which commence their activities after 31 October 2023 must register with the Competent Authority in Malta by the 31 December 2023. These Platform Operators are obliged to register within two weeks of the commencement of their activities. This also applies to Excluded Platform Operators.'

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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

Meetings of shareholders by electronic and remote communication

On 20 October 2023, a decree was published that amends the General Law of Mercantile Societies (LGSM) in Mexico. The main objective of the reform is to regulate the conduct of shareholders and board of administration meetings through electronic and technological means. This includes the possibility of simultaneous participation and functional equivalence to in-person meetings.

Furthermore, it establishes the obligation to verify the identity of attendees and generate evidence to ensure transparency in the process. Resolutions of managers can also be issued electronically if the by-laws so permit.

The reform clarifies that the use of electronic means does not imply that a meeting is held outside the company's registered office unless all shareholders approve it. The location of the meeting must be specified in the minutes.

It also specifies that notices of the meetings will be made through the electronic system of the Ministry of Economy of Mexico and must include the agenda and be signed by the convenor. This change will take effect on 20 April 2024 and is required to modify the corporate by-laws to enable the holding of electronic meetings.

Finally, the possibility of signing meeting minutes using an electronic signature is introduced. These changes came into effect on 21 October 2023. The reform aims to adapt corporate regulations to technological advancements, enabling process optimisation, cost reduction and increased transparency through the publication of notices on the Mexican Ministry of Economy's electronic system. This set of reforms allows companies to adapt to new forms of work and communication, harnessing the advantages of technology for their operations.

Fiscal incentives for Hurricane Otis affected areas

In response to the impact of Hurricane Otis, which struck Guerrero on 24 October 2023 resulting in significant material damage and adverse economic consequences, on 30 October 2023 a decree was published in the Official Gazette of the Federation, which establishes several tax incentives for taxpayers affected by this natural disaster.

The decree applies to the municipalities in the state of Guerrero that have been declared as affected areas by the competent authority, which includes Acapulco de Juárez and other municipalities.

It outlines a comprehensive set of measures aimed at supporting the affected regions. It proposes exemptions from certain tax payments and allows for the deferment of others to the latter part of 2023. Furthermore, it authorises an immediate 100% deduction for investments in fixed assets made in the affected zones. Taxpayers can also postpone partial contributions for three months.

Mexico's 2024 economic package

On 8 September 2023, Mexico's Federal Executive presented the 2024 economic package to the Mexican Congress, comprising the general economic policy guidelines, and the Mexican Revenue and Budget Federal Laws. The key international highlights of this package are summarised below.

The package maintains fiscal stability, with no amendments to existing tax laws and no tax increases. This provides for a predictable environment for international investors and businesses operating in Mexico.

For 2024, projected revenues amount to 7.3 trillion Mexican pesos, with a focus on increasing tax revenues by 6.1%. The rates for late payments for extensions remain unchanged such as the fiscal incentives from 2023, including the credit against income tax (ISR) for IEPS paid on diesel acquisitions for various cases, such as machinery, agricultural activities, and specific vehicle uses. Furthermore, fiscal incentives for transport service providers, fossil fuel acquirers for non-combustion purposes, mining concessions, and book, newspaper and magazine sellers remain in place.

Finally, there is a significant increase in the tax rate applied to interest-bearing capital by financial institutions, from 0.15% in 2023 to 1.48% in 2024, representing an increase of 887%.

These fiscal measures aim to provide stability and economic support for Mexico in 2024. The Federal Revenue Law for Fiscal Year 2024 was published in the Official Gazette of the Federation on 11 November 2023.

OECD Pillar 2 – Mexico

Mexico is part of the initiative of more than 130 countries to establish a new tax on multinational companies, in the context of globalisation and the digital age.

The challenge for Mexico is to analyse the possible effects of the implementation of this initiative by the OECD, since it is a novel concept of global taxation. Thus, the tax authority in Mexico must evaluate the impact this system will have on foreign companies that are transferring their operations to the country –nearshoring.

An additional aspect to analyse is whether, in accordance with the new OECD model that requires the elimination of contributions to digital services, the VAT that is currently charged on digital platforms will have to be eliminated.

The adoption of the global minimum tax would lead to the elimination of VAT, which would eventually have an unfavourable impact on federal revenue.

Tax incentives for key sectors of the export industry

To offer opportunities to improve competitiveness and maximise profitability to key sectors of the export industry, on 11 October 2023, a decree was published in the Official Gazette of the Federation granting fiscal incentives to this sector.

Among the key sectors of the export industry that are considered for this stimulus are the semiconductor, automotive (especially in electromobility), electrical and electronics, medical pharmaceutical devices, agricultural industry, human and animal food processing industries, among others.

To qualify for these tax incentives, the amount of income from the export of goods must be at least 50% of total turnover in each fiscal year. The incentives will only apply in fiscal years 2023 and 2024.

The benefits of these tax incentives are:

Deduction of operational assets

A tax incentive is available to key sectors of the export industry comprising accelerated tax depreciation for investments in new fixed assets. The accelerated depreciation takes the form of an immediate deduction of a percentage of the asset's acquisition cost for investments made during the period covered by this incentive. The percentages range from 56% to 89% depending on the type of assets and the taxpayer's main business activity.

Additional deduction for training expenses

Due to the importance of promoting the development of workers' technical and labour skills, an additional deduction is available equal to 25% of increased expenditure on training (as compared to fiscal years 2020, 2021 and 2022).

It is worth mentioning that this tax incentive will not be considered taxable income for the taxpayers.

As a final consideration, taxpayers with firm tax credits and those who are covered under article 69-B of the Federal Tax Code, among others, will not be able to access the tax benefits referred to in this decree.

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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

Netherlands

Bill on classification of foreign legal entities (hybrids)

In September 2023, the Dutch government submitted a bill regarding the Dutch classification of foreign legal entities and partnerships. The Netherlands currently deviates from the classification of certain foreign legal entities compared to international standards. The goal of the bill is to better align with international standards and to minimise hybrid mismatches in an international context. If the bill is passed, the rules will enter into force from 1 January 2025. A transitory rule will apply from 1 January 2024 so that implementation of the bill in conjunction with the Withholding Tax Act 2024 for dividend distributions will not result in withholding tax being levied on dividend distributions in favour of an open CV (open commanditaire vennootschap).

The current method to determine whether a foreign legal entity is deemed to be transparent or opaque for Dutch fiscal purposes is comparison-based (i.e. the comparability assessment). This implies that a foreign entity will be deemed comparable to a Dutch legal entity which most closely resembles its legal characteristics (i.e. on the basis of property, liability, share capital, conditions of admission). The foreign entity is then treated for fiscal purposes in the same way as the Dutch entity to which its legal form is comparable.

In the proposed bill, the comparability assessment is retained as the main method. However, if no comparable Dutch legal equivalent can be found, foreign entities are to be classified under an alternative approach. The bill introduced two alternative approaches:

1. Fixed approach: if the foreign legal entity is deemed to be established in the Netherlands (i.e. has its place of effective management in the Netherlands), the entity will always be classified as non-transparent. This means that the foreign legal entity is exclusively liable to Dutch corporate income tax.
2. Symmetrical approach: this method concerns foreign legal entities that are not deemed to be established in the Netherlands. If the tax law of the state in which the foreign legal entity is established classifies the entity either as transparent or opaque, the Netherlands will follow this classification for Dutch tax purposes.

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PKF Comment

According to the explanatory note to this bill, a number of foreign legal entities (such as a limited liability partnership (LLP) under UK law, an unlimited company (ULC) under Irish law and a Kommanditgesellschaft auf Aktien (KGaa) under German law) are examples that are not comparable to a Dutch legal entity. For such entities, the bill may lead to a change in the fiscal classification, with all of its consequences. In particular, for these entities it should be considered whether sufficient substance is present or what the preferred location of the effective seat of management should be. 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

Bill on Minimum Profit Tax Act 2024 (Implementation of Pillar 2)

The Dutch government sent the Minimum Profit Tax Act 2024 as a draft bill to Parliament in order to implement the EU guideline (2022/2523) guaranteeing a global minimum level of taxation for groups of multinational enterprises (MNEs). The directive must be transposed into national law by 31 December 2023. Background for the implementation of the EU guideline lies in the OECD's Base Erosion and Profit Shifting (BEPS) 2.0 Global Anti-Base Erosion (GloBE) Pillar Two proposal.

The Minimum Tax Act 2024 introduces a 15% global minimum effective tax rate for multinational and domestic companies with a group turnover of €750 million or more. This bill aims to limit tax competition and tax avoidance to create a more equal level playing field for internationally operating companies.

With the bill, the Dutch government introduces:

- a qualifying domestic minimum top-up tax (QDMTT), which introduces a domestic minimum tax intended to additionally tax Dutch 'low-taxed entities';
- an income inclusion rule (IIR), on the basis of which it becomes possible that the Netherlands will additionally tax income from a foreign-based subsidiary to the tax base of a Dutch-based parent entity, if this income is not taxed at an effective tax rate of 15%; and
- an undertaxed payment rule (UTPR), on the basis of which it becomes possible that the Netherlands will additionally tax income from a foreign-based parent company to the tax base of a Dutch-based subsidiary, if this income is not taxed at an effective tax rate of 15%.

The QDMTT and IIR are intended to become effective for financial reporting years on or after 31 December 2023. The UTPR in principle becomes effective from 31 December 2024, unless an (ultimate) parent entity is resident in another EU Member State that has opted to defer the IIR or the UTPR measure, in which case the UTPR can become effective as early as 31 December 2023.

Additional highlights

The most important addition of the bill to the initial published EU directive lies in the subsequent guidance issued by the OECD in July 2023. This subsequent guidance includes the transitional safe harbour rules and administrative guidance.

More specifically, the administrative guidance will reflect the Inclusive Framework's common understanding of how the GloBE rules should be interpreted and applied, and such guidance will play an important role in ensuring coordinated outcomes under the GloBE rules and provide a level playing field for MNE groups.

On the basis of the safe harbour rules the possibility is implemented to make simplified minimum profit tax calculations, or omit them altogether as the top-up tax is basically set to zero. These safe harbour rules come in the form of a de minimis exclusion rule, based on revenue and profit, a temporary country-by-country reporting (CbCR) rule and a permanent CbCR safe harbour rule.

Finally we would like to point out that the Netherlands will not levy a top-up tax if a top-up tax return is filed in another country. However, there remains a duty to file a so-called top-up tax information return for a group company located in the Netherlands, even if the safe harbour rules apply.

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PKF Comment

The complex Pillar Two legislation impacts the entire (global) business organisation of in-scope companies. It is therefore essential that companies start determining the financial and administrative impact of these new rules. For further information or advice regarding the potential Dutch tax effects, please contact Ruud van der Linde at **ruud.van.der.Linde@pkfwallast.nl** or call **+31 6 10 266 08 34**.

BACK

Papua New Guinea

New tax administrative changes

Administrative changes by the Internal Revenue Commission

The Internal Revenue Commission (IRC), PNG's taxation office, issued public notices to all taxpayers on 26 October 2023 in respect of administrative changes to the goods and services tax (GST) return form (G1 Form). Additionally, a new credit request form (Form CR) is expected to replace the current transfer request (CR1) and refund request (CR2) forms. The new forms are expected to be used from 1 January 2024. This means that until 31 December 2023, the current forms will continue to be used.

Briefly, in respect of the GST return, the main difference to the current form is that the new form provides updated instructions to taxpayers on how to complete the form when lodging their GST returns. The key point to note is that only the notes (guidance details on the G1 Form) have changed to assist taxpayers.

As with the new credit request, the Form CR is to be used for both requests for transfer and refund of taxes. The usual relevant supporting documentation should also accompany the requests when submitting the form to the IRC.

Tax treaties ratified

Multilateral Administrative Assistance Convention and Multilateral Instrument

On 1 September 2023, the IRC Commissioner General announced PNG's active participation in the Multilateral Administrative Assistance Convention (MAAC) and the adoption of the Multilateral Instrument (MLI). These treaties underwent successful ratification and were formally deposited with the OECD.

Amongst 147 nations, the endorsement of the MAAC signifies PNG's commitment to transparency and financial information exchange. The MAAC empowers countries to collectively address cross-border tax evasion and was developed jointly by the OECD and the Council of Europe in 1988.

Additionally, PNG adopted the MLI as part of its commitment to the Base Erosion and Profit Shifting (BEPS) project. The MLI stands as a vital tool that aligns bilateral tax treaties across 100 nations with the BEPS project's outcomes, thereby addressing gaps in existing international tax rules.

These ratified treaties hold the potential to amplify PNG's ability to combat tax evasion and avoidance practices.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Papua New Guinean taxation, please contact Thomas Taberia at **thomas.taberia@ktk.com.pg** or call +**675 321 6070**.

BACK

Peru

Recent tax developments

Peru and Qatar sign an air services agreement

Qatar's Civil Aviation Authority released a press release on 12 November 2023 according to which Peru and Qatar have signed an air services agreement in Lima.

Extension of income tax return filing deadline for SMEs and individuals

The Peruvian Congress has extended the annual income tax return filing deadline for individuals and SMEs until June of the subsequent year, except for SMEs that are part of an economic group.

Furthermore, taxpayers opting not to apply this extension will enjoy certain tax benefits, yet to be determined by the tax administration.

Law 31940 was gazetted on 22 November 2023 and entered into effect since then.

Tax exemption for copyright royalties introduced

Article 14 of Law 31893 (gazetted on 11 October 2023) has introduced a three-year income tax exemption for copyright royalties received by resident and non-resident authors and translators from 1 January 2024.

Tax on online gaming and sports betting

On 13 August 2022, Peru enacted Law 31557 establishing rules for online gaming and sports betting that are conducted on digital platforms and introducing a new tax applicable to those business activities.

The Law applies to Peruvian legal entities and branches of non-resident entities engaged in the business of online gaming and sports betting conducted on digital platforms.

The tax rate will be equivalent to 12% of the tax base, which is composed of the monthly net income less the maintenance expenses of the platform used to execute the games and/or bets remotely.

The Law allows Peruvian entities to treat the tax paid as a deductible expense for income tax purposes.

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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

Poland

Electronic delivery (e-delivery) is coming soon

As early as 10 December 2023, some entities will be obliged to use a mandatory e-delivery system.

What are e-deliveries?

E-delivery is a new, completely digital form of communication between entrepreneurs and public administration bodies (public entities), which will be equivalent to registered mail with return receipt. It will enable entrepreneurs to send, receive and keep correspondence online. It differs from regular email (it is separate from the email address) in that it is a so-called trusted service that guarantees security and certainty of legal consequences.

The e-delivery service is provided exclusively by trusted service providers: Poczta Polska S.A., as a public provider, and commercial non-public providers, entered in the register kept by the Minister of Digitisation.

As the Ministry of Development and Technology points out, the e-delivery service will guarantee:

- unambiguous identification of the sender and the recipient;
- the confidentiality of correspondence;
- non-falsification (integrity) of transmitted data;
- access to reliable and legally acceptable evidence of sending and receiving;
- access to information about the date and time of sending and receiving correspondence; and
- ability to quickly determine the recipient's e-delivery address.

E-delivery mailbox

There are three types of platform for sending and receiving electronic correspondence, assigned to the e-delivery address:

- business – for correspondence of the organisation where the user works;
- personal – for correspondence on individual matters; and
- shared – to handle correspondence on behalf of other users.

A mailbox in the entrepreneur's account will allow messages to be sent, received and stored, as well as access to addresses entered in the database of electronic addresses. An entrepreneur registered in CEIDG (the central national register of entrepreneurs and traders) has the option to manage the mailbox themselves or appoint an administrator, while an entrepreneur registered in the National Court Register is obliged to appoint a mailbox administrator.

The e-correspondence box will eventually replace correspondence conducted via ePUAP (Poland's electronic platform of public administration services).

Who is covered by e-delivery?

The Ministry of Digitisation has published a timetable for making the National Electronic Delivery System mandatory, according to which joining the system should be mandatory:

- **From 10 December 2023:**

  Public entities:

  a) government administration authorities and budgetary units serving these authorities;

  b) other public authorities, including state control and law protection bodies, and budgetary units serving these bodies;

  c) the Social Insurance Institution and the funds it manages, and the Agricultural Social Insurance Fund and the funds managed by the president of the Agricultural Social Insurance Fund;

  d) the National Health Fund;

  e) executive agencies, budget economy institutions, state special purpose funds, independent public healthcare institutions, public universities, the Polish Academy of Sciences and organisational units created by it, state and local government cultural institutions, other state or local government legal entities created under separate laws to perform public functions; and

  f) local government units and their unions and metropolitan unions, as well as local government budgetary establishments, with respect to the public service of registered electronic delivery.

  Non-public entities:

  a) public professionals, including advocates, attorneys-at-law, tax advisors, restructuring advisors, patent attorneys and notaries public; and

  b) non-public entities registered in the National Court Register from 10 December 2023.

- **From 1 January 2024:**

  a) non-public entities applying for CEIDG entry after 31 December 2023; and

  b) non-public entities submitting an entry to CEIDG by 31 January 2023 (if they change something in CEIDG from 30 September 2025 to 30 September 2026).

- **From 10 March 2024:**

  a) non-public entities registered in the National Court Register before 10 December 2023.

- **From 1 January 2025:**

  a) other public entities.

- **From 1 October 2026:**

  a) non-public entities registered in CEIDG before 31 December 2023, if they have not changed anything in CEIDG from 30 September 2025 to 30 September 2026.

- **From 1 October 2029:**

  a) local government units and their unions, as well as metropolitan unions and local government budget establishments – for the public hybrid service; and

  b) courts, tribunals, bailiffs, prosecutors, law enforcement agencies and the prison service.

How do you get an address for e-delivery?

An application for the creation of an e-delivery address can be submitted now. It should be filled out, signed electronically (by persons authorised to represent you or by a proxy authorised to submit the application) and submitted through Business.gov.pl.

The application can be signed in one of the following ways:

- with a trusted profile;
- qualified signature;
- e-ID; or
- electronic stamp.

The Minister of Digitisation will confirm the setting up of the e-delivery address and the mailbox (in a separate email with instructions for activating the e-delivery address). Once the mailbox is activated, there will be an automatic entry of the address into the database of electronic addresses ('BAE'), which is equivalent to a request for delivery of correspondence by public entities to this address. From then on, correspondence will, as a rule, be sent to the e-delivery address, so be sure to log in regularly to the e-delivery mailbox.

One e-delivery address for each entity is entered into the database; nevertheless, in the case of having different statuses in the public space there will be a need to create a separate e-delivery address for each role:

- as an individual;
- for your company; and
- as a person who performs a profession of public trust.

The e-delivery address will become the official address for communication with state authorities, and correspondence will be sent to this address. Importantly, entry in the BAE does not exclude the possibility of a non-public entity addressing letters to a public entity in paper form. The entry of an address into e-delivery is made for a period of three years for individuals and indefinitely for other entities. The possibility of extending the entry for another three years will take place upon submission of a declaration of intent to extend it. Crucially, the entry of an e-delivery address into the BAE is voluntary for individuals and, as a result, there is an option to opt out of disclosing an e-delivery address in this database.

Foreign companies doing business in Poland and not registered with the National Court Register

The Act on electronic delivery does not oblige such companies to have an address for e-delivery. However, foreign companies that do business in Poland may obtain such an address if they have been assigned a Polish tax identification number (TIN).

Summary

E-delivery is intended to be a model in which correspondence takes place digitally. Certainly, an e-delivery address can facilitate correspondence. It is, however, the setting up and activation of an e-delivery address itself that will result in official correspondence being directed exclusively to this address from that point on, resulting in the need to check the mailbox on an ongoing basis to avoid negative delivery consequences.

Legal basis

E-delivery is regulated in two legal acts:

a) in the Act of 18 November 2020 ('the Act') on electronic delivery (i.e. Journal of Laws of 2023, item 285) and implementing Acts to the above-mentioned Act; and

b) in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS Regulation) (OJ EU. L. of 2014, No. 257, p. 73).

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Polish taxation, please contact Agnieszka Chamera at agnieszka.chamera@pkfpolska.pl or call **+48 609 331 330**.

BACK

Puerto Rico

Puerto Rico's Department of Economic Development and Commerce issues Regulation for the Medical Tourism Program

On 20 September 2023, the Puerto Rico Department of Economic Development and Commerce ('DDEC', by its Spanish acronym) issued Regulation No. 9504, Regulation for the Medical Tourism Program ('the Regulation').

The Regulation implements Law No. 196 of 15 December 2010, known as the 'Puerto Rico Medical Tourism Act' ('Act No. 196-2010') which aims to promote and incentivise investment in Puerto Rico's tourism industry related to medical care, given Puerto Rico's competitive advantages, including: (i) Puerto Rico's rigorous standards and modern health facilities on a par with any state in the US; (ii) 60% lower costs on healthcare procedures than the US mainland; (iii) bilingual, US-certified health professionals; (iv) strategic location for worldwide travellers; and (v) no passport requirements for US citizens travelling to Puerto Rico.

The Regulation also establishes the framework for the Medical Tourism Program under the DDEC and the Medical Tourism Advisory Board.

Medical Tourism Advisory Council

Act No. 196-2010 created a Medical Tourism Advisory Board to advise the DDEC Secretary and Medical Tourism Program Office.

As set forth in the Regulation, the Medical Tourism Advisory Board will have at least six members (serving three-year terms with no limits) appointed by the DDEC, representing key stakeholders such as: (i) the College of Physician-Surgeons of Puerto Rico; (ii) the Puerto Rico Medical Association; (iii) the Puerto Rico Hospital Association; (iv) the Puerto Rico Hotel Association; (v) the University of Puerto Rico – Medical Sciences Campus; and (vi) the Nursing Professionals Association.

Applicability of the Regulation

The Regulation applies to any individual or entity that has established or intends to establish an 'eligible business' dedicated to medical tourism in Puerto Rico and seeks a medical tourism certification. The one-year medical tourism certification will be renewable annually.

An 'eligible business' includes both new or existing businesses dedicated to medical tourism, such as hospitals, clinics, doctors' offices, hotels, pharmacies or other accredited businesses.

'Medical tourism' is the travel by patients from other jurisdictions to Puerto Rico to obtain medical care and treatment at DDEC-certified and Department of Health-accredited health facilities.

Tax benefits

Certified medical tourism businesses may qualify for tax incentives under the following laws, subject to meeting their eligibility criteria. However, a business can only claim incentives under one law for each activity.

- **Act No. 60-2019: Puerto Rico Incentives Code**

The incentives provided by the Puerto Rico Incentives Code ('Incentives Code') for activities related to tourism activities include: (i) 4% tax rate on income from eligible activities; (ii) 50% exemption on municipal contributions; (iii) 75% exemption on real estate and personal property taxes; (iv) 0% tax rate for shareholders on distributions and dividends related to income from eligible activities; (v) 75% exemption from municipal construction excise tax; (vi) 100% exemption from sales and use taxes on items purchased and used in the tourism activity; (vii) 100% exemption from taxes applicable to oil derivatives and/or hydrocarbons used in the generation of energy in the tourism operation; and (viii) 12% tax rate on royalties paid to foreign persons who do not do business in Puerto Rico.

These benefits are granted for a 15-year period, which can be renewed.

In addition to the previously described tax incentives, tourism activities could be eligible for investment tax credits equal to as much as 30% to 40% of the 'total project cost', as defined in the Incentives Code.

- **Act No. 168-1968: Hospital Facilities Tax Exemption Act**

The incentives provided by the Hospital Facilities Tax Exemption Act ('the Act') for a hospital unit in Puerto Rico that was operating as of 31 December 2015 include: (i) a tax credit of up to 15% of eligible payroll expenses, which can be used to cover up to 50% of the income tax liability; (ii) 100% exemption on real estate and personal property taxes for property located within the perimeter of the institution (limited to 10 acres); (iii) 100% exemption from sales and use taxes on items expressly designed for the diagnosis and treatment of human diseases and introduced by or consigned to the hospital unit; and (iv) 100% exemption from taxes applicable to oil derivatives and/or hydrocarbons used in the generation of energy in the hospital unit operation. These benefits were granted for a 10-year period.

Certification criteria

To obtain the medical tourism certification the eligible business must meet the following requirements:

(i) Be accredited by the Puerto Rico Health Department to provide health services in Puerto Rico; and

(ii) Provide lodging for patients and companions travelling to Puerto Rico that meet the requirements of Regulation Number 8399 of 5 November 5 2013, Minimum Requirements for Lodging Establishments in Puerto Rico.

Additional requirements apply for a hospital or medical facility:

a) The hospital or medical facility must be affiliated with a globally recognised health system through at least two of the following elements:

   i. a contractual relationship in which the healthcare system provides clinical or operational supervision to the hospital or medical-hospital facility;

   ii. a contractual relationship in which the healthcare system offers consulting, education and training services to the facility's staff; and

   iii. a contractual relationship in which the healthcare system provides clinical services to patients at the hospital or medical-hospital facility.

b) The affiliation must include a licence for the use of the healthcare system's name, allowing for the identification, promotion and marketing of the relationship between the facility and the healthcare system within and outside Puerto Rico.

c) At least 80% of the facility's rooms must be private, allowing accommodation for at least one companion in each room.

d) The hospital or medical facility must demonstrate an annual investment or recurring expenses for international marketing and promotion of the facility as a medical tourism destination in Puerto Rico based on a marketing plan to be submitted for approval to the DDEC. For fiscal years 2023 to 2024, the annual investment requirement for international marketing and promotion outside Puerto Rico will be $1,050 per private bed and from the fiscal year 2025 onwards, the annual investment requirement per private bed will increase by 5% every five years.

e) It must register with the Puerto Rico Tourism Company to obtain a hostelry identification number within 30 days of commencing operations.

f) It must charge and remit to the Puerto Rico Tourism Company an occupancy fee equivalent to 7% of each private room, following the provisions of Law 272-2003, known as the 'Law of the Room Occupancy Tax of Puerto Rico'. These provisions include providing an annual bond through an insurance policy or letter of credit to guarantee tax payment, and submitting a monthly declaration within the first 10 days following the declared operating month.

The term 'health system' is defined as an organisation or system meeting each of the following criteria: (i) dedicated to providing health services, hospital administration and training to hospital personnel in no less than three jurisdictions in or outside the US; (ii) recognised for its accomplishments in the field of health and medicine, such as medical research and health personnel education and training programmes; (iii) acknowledged as a global leader in its field by organisations or entities evaluating the performance and reputation of health service institutions, organisations or systems over the five years preceding the application; (iv) recognised as a leader in most or all major medical specialties; (v) known as a health system to which patients from around the world travel to receive medical care and treatment; and (vi) duly licensed and certified in the jurisdiction(s) where it is located.

Application process

To apply for the medical tourism certification the eligible business must submit a medical tourism certification application through DDEC's digital portal. The filing fee will be $1,000.

Along with the application, the eligible business must provide various documents, including:

a) a detailed document describing the medical tourism activity that will be carried out and for which the medical tourism certificate is being requested;

b) copy of the certificate of incorporation issued by the Department of State and/or authorisation to do business in Puerto Rico;

c) copy of the employer identification number (EIN) letter issued by the US IRS;

d) merchant registration certificate issued by the Department of Treasury (including the location of the medical tourism activity);

e) copy of the municipal licence;

f) single-use permit, including health and fire department licences;

g) evidence that the eligible business is properly licensed, certified and authorised by the Department of Health to operate a medical facility. This should include a copy of the permanent operational licence issued by the Health Regulation Assistant Secretary's Health Institutions Section and/or a copy of the Joint Commission certification;

h) copy of the 'Board certified' certification for all doctors who will be providing services or treatment to patients in Puerto Rico as part of the medical tourism activity;

i) copy of the Department of Health's medical tourism certification, at a cost of $1,000;

j) debt and/or filing certificates issued by the following Puerto Rico governmental agencies: Department of Treasury, Department of State, Municipal Revenue Collection Center, Department of Labor, State Insurance Fund and ASUME;

k) public liability insurance certificate issued by an agency authorised by the Commissioner of Insurance of Puerto Rico as an additional insured entity, with public liability waiver to the Department of Economic Development and Commerce, the Tourism Company and the Department of Health;

l) organisational chart of related entities of the eligible business, if applicable; and

m) any other additional documentation requested by the Department for the evaluation and justification of the requested medical tourism certification..

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PKF Comment

In light of the recent issuance of Regulation No. 9504, governing Puerto Rico's Medical Tourism Program, it is evident that the government of Puerto Rico is taking significant steps to boost the tourism industry related to medical care in the region. The Regulation aligns with the objectives set forth in Act No. 196-2010 and establishes a comprehensive framework for the operation and certification of medical tourism businesses in Puerto Rico. Notably, this programme offers substantial tax benefits to certified medical tourism entities, which is an attractive incentive for potential investors.

Businesses looking to participate in this programme should carefully review the specific requirements and consider the long-term benefits it offers.

For further information concerning taxes in Puerto Rico, please contact Mr. Edwin Torres Castro (**etorres@pkfpuertorico.com**), Mrs. Marisel Valentín Márquez (**mvalentin@pkfpuertorico.com**), or Francisco González Khouri (**fgonzalez@pkfpuertorico.com**), or call **+1 787 400 9548**.

BACK

Romania

Various tax updates

On 27 October 2023, Law No. 296/2023 was gazetted (No. 977), which introduces significant amendments to financial and accounting regulations, financial discipline, the Fiscal Code and the Fiscal Procedure Code.

Minimum tax on turnover

Starting from fiscal year/amended fiscal year 2024, for commercial companies paying profit tax a minimum tax on turnover has been introduced, if the turnover exceeds €50 million in the previous year of calculation.

If companies in this category determine a profit tax lower than the minimum turnover tax in the calculation year, they are required to pay profit tax at the level of the minimum turnover tax.

Businesses that exclusively carry out activities involving distribution, supply or transport of electricity and natural gas and that are regulated or licensed by the National Energy Regulatory Authority are exempt from this tax regime.

The minimum tax is calculated in the current quarter/year by applying a tax rate of 1% on the turnover (total income), adjusted downwards by:

1. Income categories such as:
    - revenue related to product inventory costs;
    - revenue related to the costs of services in progress;
    - revenue from the production of tangible and intangible assets;
    - revenue from subsidies;
    - the income obtained from compensation from insurance/reinsurance companies for damages caused to goods of the nature of stocks or own tangible assets;
    - revenue representing excise taxes that were simultaneously reflected in the expense accounts.
2. Investments – the value of fixed assets under construction originating from the acquisition or production of assets, recorded in the accounting records starting from 1 January 2024.
3. Depreciation – accounting at the level of the historical cost related to assets purchased or produced starting from 1 January 2024. This indicator does not include the accounting depreciation of the assets included in point 2.

In determining the turnover, the assets taken into account (investments and amortisation) are those to be established by an order of the Minister of Finance, and the selection of eligible asset categories will be made based on criteria related to the nature of the activity carried out. The deadline for issuing this order is 60 days from the entry into force of the law.

If the negative adjustments to the total income result in the calculation of a negative turnover, the minimum tax due on the turnover is zero.

All companies concerned will pay either profit tax or the minimum turnover tax, whichever is higher.

To determine which is the higher tax, the minimum turnover tax is compared with the quarterly/annual profit tax before the deduction of amounts set by law, adjusted as follows:

- Amounts representing sponsorship or patronage are deducted from this profit tax, as are other amounts that are deducted from profit tax, according to current legislation, as well as the reduction according to the provisions of Government Emergency Ordinance No. 153/2020 for the establishment of fiscal measures to stimulate the maintenance or increase of own capital, as well as for the completion of some normative acts.
- Amounts representing external tax credit, exempted profit tax according to art. 22 of the Fiscal Code and exempted profit tax according to the Agricultural Cooperation Law No. 566/2004, are also deducted, as appropriate. If the minimum turnover tax is due, sponsorships are deducted from it at the level of the minimum value between the value calculated by applying 0.75% to the turnover and the value representing 20% of the profit tax.

The minimum turnover tax is calculated and payable by the same payment deadlines as profit tax (quarterly/annually).

In the case of taxpayers who have opted for the annual system with advance payments, the minimum quarterly turnover tax is compared with the advance payment related to quarters I, II and III (cumulatively), and the final settlement is carried out at the deadline for submission of the annual return.

Additional turnover tax for banks

For credit institutions – Romanian legal entities and Romanian branches of foreign legal entities – in addition to the profit tax, an additional tax on turnover calculated by applying a rate of 2% (in 2024 and 2025), and 1% (from 2026) on the turnover has been introduced. The turnover subject to tax includes:

- interest income;
- income from dividends;
- revenues from taxes and commissions;
- gains (losses) from the derecognition of financial assets and liabilities that are not valued at fair value through profit or loss;
- net gains or losses related to financial assets and liabilities held for trading;
- net gains or losses related to financial assets not intended for trading, necessarily valued at fair value through profit or loss;
- net gains or losses related to financial assets and liabilities designated as being valued at fair value through profit or loss;
- net gains or losses from hedge accounting;
- net exchange rate differences (gain or loss);
- net gains or losses from the derecognition of non-financial assets; and
- net other operating income.

Thus, credit institutions will have to pay the two taxes (profit tax and additional turnover tax) simultaneously, so they will pay the aggregate of the profit tax and the turnover tax, not just one of these obligations. The turnover tax will be payable on the 25th of the month following a quarter, and for the last quarter up to and including 25 March of the following year. The turnover tax expense is not deductible when calculating the taxable profit.

The model and content of the additional tax declaration will be established by order of the president of the National Tax Administration Agency ('ANAF').

Specific tax for the oil and natural gas sector

Legal entities with activities in the oil and natural gas sectors, which in the previous year registered a turnover of over €50 million, will pay a specific turnover tax in addition to the profit tax, at a rate of 0.5% of turnover. The calculation base is established identically to the calculation base of the minimum turnover tax detailed above.

The specific turnover tax is a non-deductible expense when determining the fiscal result of these companies.

The specific turnover tax is calculated, declared and paid quarterly, as follows:

- for quarters I–III, up to and including the 25th of the month following the quarter for which the payment is to be made;
- for the fourth quarter, by the date of submission of the annual profit tax return.

Economic operators which exclusively conduct activities of distribution, supply or transport of electricity and natural gas and which are regulated or licensed by the National Energy Regulatory Authority are exempt from the application of the specific turnover tax.

Changes regarding microenterprise income tax

From 1 January 2024, the tax rates on the income of microenterprises will be:

- 1% for microenterprises that earn income that does not exceed €60,000 and that do not carry out main or secondary activities corresponding to CAEN codes: 5821 – Computer games publishing activities, 5829 – Other software product publishing activities, 6201 – Custom software development activities (customer oriented software), 6209 – Other service activities on information technology, 5510 – Hotels and other similar accommodation facilities, 5520 – Holiday and short-term accommodation facilities, 5530 – Caravan parks, campsites and camps, 5590 – Other accommodation services, 5610 – Restaurants, 5621 – Food activities (catering) for events, 5629 – Other food services not elsewhere classified, 5630 – Bars and other beverage serving activities, 6910 – Legal activities – only for companies with legal status that are not fiscally transparent entities, constituted by lawyers according to legislation, 8621 – General medical assistance activities, 8622 – Specialised medical assistance activities, 8623 – Dental assistance activities, 8690 – Other activities related to human health.
- 3% for microenterprises that earn income exceeding €60,000 or carry out activities, main or secondary, corresponding to the CAEN codes set out above.

Changes regarding VAT

From 2024, the rate increases from 9% to 19% for:

- non-alcoholic beverages that fall under NC code 2202;
- foods with added sugar, whose total sugar content is at least 10g/100g of product, other than cookies and biscuits.

The VAT rate increases from 5% to 9% for:

- delivery of high-quality food, comprising eco and traditional products;
- the delivery of housing as part of the social policy (useful surface of maximum 120sqm, exclusive of outbuildings, the value of which, including the land on which they are built, does not exceed the amount of 600,000 lei, excluding VAT). The reduced rate applies only to homes that, at the time of delivery, can be lived in as such;
- the delivery and installation of photovoltaic panels, solar thermal panels, heat pumps and other high-efficiency, low-emission heating systems, including installation kits, as well as all the necessary components purchased separately for homes, central public administration buildings or local buildings with the exception of commercial companies;
- the delivery and installation of components for the repair and/or expansion of systems as a component part of construction deliveries, or as extra options when delivering a construction;
- services consisting of access to pools, amusement parks and recreational parks whose activities are included in CAEN codes 9321 and 9329, fairs, exhibitions, cinemas and cultural events, other than those exempt from tax; and
- services consisting of access to sports events.

Transitional measures are established for the delivery of homes for which contracts were concluded prior to 31 December 2023, and which will be delivered between 1 January and 31 December 2024, in order to apply the reduced VAT rate of 5% or 9%.

The VAT rate increases from 5% to 19% for:

- the right to use sports facilities whose activities are included in CAEN codes 9311 and 9313, other than the exempt ones;
- the transport of people by train or historic vehicles with steam traction on narrow lines for tourist or leisure purposes;
- the transport of people using cable transport facilities – cable car, chair lift, ski lift – for tourist or leisure purposes;
- the transport of people by animal-drawn vehicles, used for tourist or leisure purposes; and
- the transport of people by boats used for tourist or leisure purposes.

The VAT exemption with the right of deduction applicable for the following operations performed by state hospital units is eliminated:

- construction, rehabilitation, modernisation services of hospital units from the state public network;
- deliveries of medical equipment, devices, articles, accessories and protective equipment, materials and consumables for sanitary use; and
- adaptation, repair, rental and leasing of such goods.

The VAT exemption applies if these operations are provided to non-profit entities registered in the Public Register organised by the ANAF and are intended for hospital units owned and operated by the non-profit entity or those in the state public network, as the case may be.

Electronic invoicing (RO e-Invoice) has been extended

From 1 January 2024, economic operators – taxable persons established in Romania, regardless of whether they are registered for VAT purposes or not, and taxable persons not established in Romania but registered for VAT purposes – have the obligation to submit invoices issued for the supply of goods and the provision of taxable services in Romania, conducted in B2B relationships, in the RO e-Invoice system, regardless of whether or not the recipients are registered in the RO e-Invoice register.

It is not mandatory to submit invoices issued for VAT-exempt operations within the meaning established in art. 294 para. (1) lit. a) and b) and para. (2) of the Fiscal Code.

Invoices issued for taxable operations in Romania to a public institution, as defined in the Administrative Code, must be sent through the RO e-Invoice system. It is mandatory to send the invoices specified above to the beneficiaries, in the sense of art. 319 of the Fiscal Code, except in cases where both the supplier and the beneficiary are registered in the RO e-Invoice register.

Invoices must be sent to the RO e-Invoice system within five working days from the date of issuance or the deadline provided in the Fiscal Code for issuing the invoice.

In case of non-compliance with this provision, contravention fines will be applied depending on the taxpayer category of the issuer, as follows:

- from 5,000 lei to 10,000 lei for large taxpayers;
- from 2,500 lei to 5,000 lei for medium taxpayers;
- from 1,000 lei to 2,500 lei for other legal entities and individuals.

In the period from 1 January 2024 to 31 March 2024, no sanctions will be applied for non-compliance with the obligations to submit invoices in the RO e-Invoice system.

From 1 July 2024, only invoices sent through the RO e-Invoice system will be considered invoices for the supply of goods and the provision of taxable services in Romania, conducted in B2B relationships between taxable persons established in Romania. The use of electronic invoices is subject to acceptance by the beneficiary, with the exception of invoices sent through the RO e-Invoice system.

The receipt and registration of invoices by the recipients – taxable persons established in Romania – other than through the RO e-Invoice system for B2B transactions is sanctioned with a fine equal to the amount of VAT entered in the respective invoice.

New requirements in relation to the RO e-Seal system

The law introduces a new national system, RO e-Seal, based on the use of electronic devices and an IT application that allows relevant authorities, such as the ANAF or the Romanian Customs Authority, to identify potential points of diversion of road transport of goods, regardless of whether they are in transit or have as their final destination a business in Romania.

Changes regarding income tax and mandatory social contributions

- Starting with income related to January 2024, holiday vouchers and meal vouchers are subject to CASS (health contribution) and thus, in addition to the 10% tax, they will also be subject to the 10% health contribution.

- For income from independent activities, an increased ceiling of 60 times the minimum wage has been introduced for the contribution to social health insurance.
  Authorised individuals (PFAs) and generally those who have independent activities will therefore owe CASS (at the 10% rate) on the new basis starting with the income related to the year 2024.

Capping the income tax exemption for taxpayers in the IT, construction, agriculture and food industries

Law No. 296/2023 amended article 60 point 2, point 5 c) and d) and point 7 letter c) of the Tax Code, so starting from 1 November 2023, an income tax exemption was introduced for taxpayers in the IT, construction, agriculture and food industries.

The income tax exemption for taxpayers in the IT, construction, agriculture and food industries applies to the primary job, for gross monthly incomes up to 10,000 lei, all inclusive. The part of the gross monthly income exceeding 10,000 lei does not benefit from the income tax exemption.

Amendments to tax facilities applicable to IT, construction, agriculture and food industry employees starting from 1 November 2023 according to the amendments regulated by Law 296/2023 by approving article 138^1 – article 138^4 of the Fiscal Code

The pension contribution rate will be reduced by the percentage of contribution to the privately managed pension fund for employees in the IT, construction, agriculture and food industries.

Individuals in the IT, construction, agriculture and food industries can choose to pay part of the contribution due to an elected privately managed pension fund.

Amendments regarding the health insurance contribution applicable to employees in the construction, agriculture and food industries, in force from 1 November 2023

Since article 154 paragraph (1), letters r) and s) have been repealed, employees in the construction, agriculture and food industries shall owe and pay the health insurance contribution for all income from salaries and assimilated to salaries.

Income from unidentified sources

From 1 July 2024, income assessed by the tax authorities under the terms of the Fiscal Procedure Code for which the source has not been identified will be subject to income tax at a rate of 70% (under the previous regulation, the rate was 16%) applied to the adjusted taxable base.

Special tax on high-value immovable and movable assets

From 1 January 2024:

- Individuals who on 31 December of the previous fiscal year owned or jointly owned residential buildings located in Romania will pay a tax of 0.3% on the difference between the taxable value of the building communicated by the local fiscal body through the taxation decision and the limit of 2.5 million lei if the taxable value of the building exceeds 2.5 million lei.

- Individuals and legal persons who own cars registered in Romania the individual purchase value of which exceeds 375,000 lei will pay a tax of 0.3% on the difference between the purchase value and the limit of 375,000 lei. The tax is due over a period of five years.

Public country-by-country reporting

- Romania gazetted Order No. 1730 on 7 June 2023, introducing amendments aimed at clarifying the public country-by-country (CbC) reporting stipulations outlined in Order No. 2048 from 1 September 2022. As per EU Directive 2021/2101, the reporting threshold stands at an annual consolidated revenue of 3.7 billion lei for each of the last two consecutive financial years, deviating from the standard €750 million. Notably, these requisites are applicable to financial years commencing on or after 1 January 2023, a notably earlier implementation date compared to the Directive's latest prescribed commencement on 22 June 2024.

- Order No. 1730 introduces crucial clarifications, particularly addressing the application of public CbC reporting requirements for medium and large subsidiaries of multinational enterprise (MNE) groups whose ultimate parent is not governed by the laws of any EU Member State. This entails that such subsidiaries must adhere to the requirements if the MNE group surpasses the consolidated revenue benchmark in each of the preceding two financial years. In such cases, any affiliated entity falling within the scope of the requirements can fulfil the obligation to publish the CbC report.

- Moreover, the order sheds light on the application of the safe harbour clause, permitting MNE groups to postpone the disclosure of commercially sensitive information for a maximum of five years, subject to specific conditions. It explicitly states that if a group opts to defer the disclosure of commercially sensitive information in its public CbC report, the subsequent report must incorporate such sensitive data corresponding to the current and previous financial years for which the information was withheld.

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 Florentina Susnea (Bucharest office) at **florentina.susnea@pkffinconta.ro** or call **+40 213 173 190/+40 722 209 753** or Carmen Mataragiu (Timisoara office) at **carmen.mataragiu@pkf.ro** or call **+40 744 534 721/+40 741 228 003**.

BACK

Slovak Republic

Various updates: CFC rules, beneficial owner status and transformation of companies

Repeal of rules for controlled foreign companies (CFCs) applicable for individuals (natural persons)

CFC rules for individuals were introduced from 1 January 2022. The purpose of the CFC rules was to prevent aggressive tax planning and limit the diversion of profits to foreign countries, especially to those with a low or no tax burden (i.e. tax havens). The amendment to the Slovak Income Tax Act was approved and became effective from 1 August 2023 thus repealing the CFC rules for individuals. Please note that the CFC rules for legal entities remain in force.

Proving the status of beneficial owner of income

The Financial Directorate of the Slovak Republic in collaboration with the Slovak Ministry of Finance have issued guidance on the way, form, scope and frequency of proving the status of the beneficial owner of income for Slovak tax purposes. Apart from the guidance, a draft statutory declaration of the beneficial owner of income as well as a draft questionnaire on proving status of the beneficial owner of income were also issued. Moreover, the guidance includes several examples of potential documents proving the status of the beneficial owner. Although this guidance is not legally binding, it is a significant step forward in the process of proving the status of the beneficial owner and the application of double tax treaties.

Act on Transformations of Companies and Cooperatives

On 1 August 2023 the Act on Transformations of Companies and Cooperatives (ATCC) entered into force. The aim of the ATCC is to establish unified, comprehensive and transparent legal regulations on transformations, cross-border transformations and changes of legal form for all types of commercial companies and cooperatives. The ATCC represents a separate legal regulation for mergers, amalgamations, divisions (split-ups, spin-offs), changes of legal form and also their cross-border alternatives, which were regulated by the Commercial Code in the Slovak Republic.

The ATCC introduced several new legal concepts:

- Spin-off – partial division, where the company being divided does not cease to exist and part of it is separated into another (recipient) company. Both national as well as cross-border divisions are applicable.
- Cross-border division – division where the successor company is a newly established company with a cross-border element in the form of at least one participating or successor company registered in another EU Member State.
- Cross-border change of legal form – the registered office of the company is changed from one EU Member State to another as well as the legal form of the company in accordance with the legislation of the EU Member State of the new registered office.

Under the transitional provisions of the ATCC, current legislation will apply if a draft merger agreement or a draft division project was adopted before 1 March 2024 and the application for registration of the merger or division of the company was submitted to the Commercial Register by 30 June 2024. This also applies in the case of a change of the company's legal form.

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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 Slovak taxation, please contact Pavol Schwartz at schwartz@pkf.sk or call **+421 948 274 280**.

BACK

Switzerland

Recent tax developments: personal income tax, trust law, home office, tax treaties

Individual taxation – key elements set by Federal Council

Currently, married couples tax resident in Switzerland file a joint tax return, which in certain cases leads to a higher tax liability compared to having filed single tax returns. The Federal Council has now set the following key elements for future individual taxation: implementation on all taxable levels (federal, cantonal and municipal), two tax returns instead of one for married couples and adjustment to deduction for children as well as applicable tax rates. The Federal Council will accordingly prepare legislation for discussion in Parliament by March 2024.

PKF Comment

The implementation of individual taxation is necessary to foster incentives for second earners towards equal workforce and after long discussions it is great to see some progress in this respect.

No trust law in Switzerland

The Federal Council decided that there is currently no majority to introduce Swiss trust law. The rules currently applicable in this regard (i.e. Hague Trust Convention and certain tax rules) therefore remain applicable.

PKF Comment

The introduction of Swiss trust law would have been an opportunity but also entailed risks with regard to existing structures. Switzerland will have to strengthen the applicable rules regarding the taxation in practice and, if necessary, through court cases.

Developments regarding home office and social security

New social security agreements with the UK and Albania

Switzerland entered into two new social security agreements, one with Albania and one with post-Brexit UK. The agreements are applicable from 1 October 2023.

Switzerland and Italy agree on permanent tax rules for working from home

A declaration between Switzerland and Italy was signed which permanently regulates the issue of taxation of home offices for cross-border commuters. According to the declaration, from 1 January 2024, all cross-border commuters will be able to work up to 25% of their working hours from home in accordance with the cross-border commuter agreement signed in December 2020. This has no impact on the state that has the righty to tax income from employment and on the status of cross-border commuters.

It was also decided to extend the transitional solution agreed by both countries on 20 April 2023. The competent authorities of both countries will agree on special rules for the taxation of home offices of cross-border commuters for the period from 1 February 2023 to 31 December 2023 by the end of November 2023.

PKF Comment

The conclusion of the agreements shows that Switzerland is keen to create legal certainty in the area of social security.

International developments

Switzerland has updated the double tax treaty with Serbia to implement the anti-abuse standards for double tax treaties (not in force yet). In addition, Switzerland has concluded a new double tax treaty with Ethiopia which is applicable from 1 January 2024.

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

Ukraine

Ukrainian e-residency for foreigners

Ukraine is launching an electronic residency system that will allow foreign individuals to become 'digital' residents (e-residents) and to do business online without their physical presence in Ukraine.

The relevant law on e-residency came into force on 1 April 2023, while the order for acquiring and cancelling the e-resident status defining the mechanism for obtaining e-residency status online was adopted on 5 September 2023.

In the near future, foreigners will have the option to start and run a business in Ukraine remotely without visiting Ukraine. In particular, e-residency allows foreigners:

- to register themselves as individual entrepreneurs and obtain e-residency status in Ukraine online in a few clicks;
- to open and manage bank accounts remotely: a digital identification and verification system allows individuals to open a bank account in Ukraine completely online;

- to sign contracts and other documents with a digital signature (e-signature);
- to communicate with Ukrainian authorities in electronic form; and
- to pay taxes on preferential terms, i.e.:
  - the simplified tax system: the third group of taxpayers;
  - the unified flat tax of 5% of the income (or 15% where the specified income limit of approximately €200,000 is exceeded);
  - lack of obligation to file tax returns and pay taxes by themselves. Tax payment and tax reporting will be performed by the Ukrainian bank where the foreigner has opened an account (i.e. the bank will act as its tax agent and take care of withholding tax obligations and payments).

The main advantage of Ukrainian e-residency is simplicity and transparency, as well as a simplified tax system that lets foreigners enjoy the relatively low tax rate offered to regular residents of Ukraine without having to be physically present in Ukraine.

These conditions become even more attractive considering the fact that Ukraine was recently granted the status of a candidate for EU membership, and in the near future will receive the status of an EU Member State itself. E-residency is successfully used in Estonia and has recently been introduced in Lithuania as well.

We should highlight that the acquisition of Ukrainian e-residency does not lead to either a temporary or permanent residence permit, or the status of a citizen of Ukraine.

It is worth mentioning that e-residency is not available to citizens of Russia, Belarus and countries on the Financial Action Task Force (FATF) 'grey' or 'black' lists. Further, the following persons are not able to obtain e-resident status in Ukraine:

- citizens of Ukraine;
- foreigners who hold permanent leave to remain in Ukraine;
- tax residents of Ukraine;
- stateless persons;
- persons under the age of 18;
- persons receiving income originating from Ukraine for goods, works or services (except for passive income, such as dividends or interest); and
- persons whose place of permanent residence is in states (jurisdictions) not included in the list of states whose citizens or residents may obtain the status of an e-resident in Ukraine. This list will soon be adopted by the Ministry of Digital Transformation of Ukraine.

As stated above, entrepreneurs who have income from goods, works or services in Ukraine cannot become e-residents. This means that e-residents will provide services exclusively to other foreigners (non-residents of Ukraine). At the same time, e-residents are restricted to only hire Ukrainian citizens or residents.

The main steps to become a Ukrainian e-resident:

1. Submit an online application for e-resident status through the e-resident system and provide a scanned copy of the passport;
2. Pass the identification procedures at the Ukrainian consulate;
3. Obtain a Ukrainian tax number and an e-signature (Diia ID) through the mobile app;
4. Register as a Ukrainian individual entrepreneur and taxpayer; and
5. Open a bank account with a Ukrainian bank available in the e-resident system.

Acquiring e-residence status is free of charge. The foreigner is free to cancel their status as a Ukrainian e-resident anytime, at their discretion.

Currently, the team of the Ministry of Digital Transformation, together with the National Bank of Ukraine, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Security Service of Ukraine and the State Tax Service, are working in order to allow the project to be fully launched and test the specified online service 'e-resident'. After the development and testing of the information system is completed, the service will be fully launched.

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PKF Comment

Ukrainian e-resident status will be useful for IT professionals, consultants and persons who are looking for a job in the globalised market. The Ukrainian government expects to attract about 1,000 e-residents after testing is completed. This project will help to add to the state budget of Ukraine and develop the digital brand of our state. We are confident that with this regime, as well as with Diia City (special legal and tax regime for IT businesses launched in early 2022), Ukraine will grow into a digital home and hub with inviting tax conditions for many around the globe.

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 Emirates

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 and FTA decisions in this regard which provide further guidance on CT Decree-Law provisions. However, further guidance on certain provisions, tax return and transfer pricing disclosure forms and other forms and application processes (in certain cases) are still awaited. In addition to such decisions, the MoF has also released guides, FAQs for additional clarification and guidance.

With regard to corporate tax registration, the process of registration for taxable persons has been initiated on the EmaraTax portal. However, the process for registration of a tax group is still awaited.

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

Sr.no	List of cabinet/ ministerial/FTA decisions and explanation
1	The Ministry of Finance has recently released the decisions regarding qualifying free zone persons (QFZP) which are as below: 1) Cabinet Decision No. 100 of 2023 on Determining Qualifying Income for the QFZP for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses; and 2) Ministerial Decision No. 265 of 2023 Regarding Qualifying Activities and Excluded Activities for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses. Cabinet Decision No. 55 of 2023 and Ministerial Decision No. 139 of 2023 issued earlier in this regard have been repealed as per articles 10 and 6 of the decisions respectively. Some of the key highlights of the decisions are: 1) Definition of 'qualifying income' expanded to include 'income derived from the ownership or exploitation of Qualifying Intellectual Property (QIP)'. • QIP is defined as patents, copyrighted software and any right functionally equivalent to a patent. However, any marketing related intellectual property assets, such as trademarks, are not included. • Qualifying income calculation formula in this regard is provided in the new ministerial decision. • Income derived from non-qualifying intellectual property and income in excess of qualifying income calculated using the prescribed formula shall be taxable at 9% and shall not be considered for the de minimis test. 2) Definition of 'non-qualifying revenue' is expanded to include transactions with a free zone person where such a free zone person is not the beneficial recipient of the relevant services or goods. 3) With regard to the condition of maintaining adequate substance for the QFZP, the following is provided: • A QFZP shall undertake its core income-generating activities (CIGA) in a free zone or a designated zone (DZ), depending on where such activities are required to be conducted.

Sr.no	List of cabinet/ ministerial/FTA decisions and explanation
	▪ CIGA can be outsourced to another person in a free zone or a DZ depending on where such activities are required to be conducted, provided the QFZP has adequate supervision of the outsourced activity. ▪ Also, without prejudice to the above, CIGA in respect of QIP can be outsourced to any other person in the UAE or to a non-related party outside the UAE. ▪ CIGA is explained stating that it can vary according to the specific activity but mainly consists of those significant functions that drive the business value for each activity carried out by a QFZP and is not exclusively or mostly support activities. 4) 'Trading of Qualifying Commodities' is added to the list of qualifying activities. Qualifying commodities are defined as 'Metals, minerals, energy and agriculture commodities that are traded on a Recognised Commodities Exchange Market in raw form'. 5) With regard to the 'Holding of shares and other securities' qualifying activity, it is provided that it should be for investment purposes and the period of holding should be for an uninterrupted period of at least 12 months. 6) 'Insurance activities' in the excluded activities shall not cover activities specified under the qualifying activity of 'Headquarter services to related parties', in addition to the activities covered previously. 7) 'Finance and leasing activities' in the excluded activities shall not cover activities specified under the qualifying activity of 'Ownership, management and operations of ships', in addition to the activities covered previously. 8) Meaning of the term 'ancillary' explained; an activity shall be considered ancillary where it is necessary for the performance of the main activity or where it makes a minor contribution to it and is so closely related to the main activity that it should not be regarded as a separate activity. 9) Scope and meaning of all the 'Qualifying activities' and 'Excluded activities' provided.

Sr.no	List of cabinet/ ministerial/FTA decisions and explanation
2.	There are certain guides which have been issued recently with regard to UAE CT law, as set out below: ▪ **Transfer Pricing Guide** – the FTA issued a comprehensive transfer pricing guide, bringing much-needed clarity for businesses on the application of the arm's-length principle. The guide also provides insights into the FTA's interpretation of transfer pricing regulations under the Corporate Tax Law. ▪ **Exempt Income: Dividends and Participation Exemption** – the guide provides general guidance to taxable persons regarding exemptions in the Corporate Tax Law for dividends and other profit distributions, such as the participation exemption. ▪ **Taxable Non-Resident Persons** – the guide provides general guidance related to the taxability of non-residents and provides more clarity about which income of a non-resident is subject to corporate tax. ▪ **Accounting Standards and Interaction with Corporate Tax** – the guide provides general guidance on the interaction of accounting standards with corporate tax including the preparation of financial statements, cash/realisation basis of accounting, adjustments under transition rules and other adjustments. ▪ **Taxation of Foreign Source Income** – this guide provides general guidance to taxpayers on the taxation of foreign source income under the CT law. It explains the relevance of foreign source income under the CT law; what is considered foreign source income for taxable persons under the CT law; which taxable persons are subject to tax on foreign source income; when foreign source income is taxable; provisions regarding determining taxable income and exempt income in respect of foreign source income; and what is a foreign tax credit, and its computation. ▪ Apart from the above, a **General Guide on Corporate Tax** has also been issued covering all the topics.

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 30 June 2023 are required to file their Economic Substance Notification on or before 31 December 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
August 2023	VAT	Cabinet decision, ministerial decision & public clarification	Applicability of reverse charge mechanism on supplies of electronic devices

A summary of the updates is as follows:

- **Issuance of Cabinet Decision No. 91 of 2023:**

The FTA has recently issued Cabinet Decision No. 91 of 2023 – Application of the Reverse Charge Mechanism on Electronic Devices among Registrants in the State for the purposes of Value Added Tax.

1. **Definition of electronic goods** – mobile phones, smart phones, computer devices, tablets and pieces and parts thereof.
2. **Applicability** – electronic devices supplied to a UAE VAT registered recipient of goods.
3. **Conditions** – such goods would either be resold or used in producing or manufacturing electronic devices by the recipient.
4. **Transactions not covered** – electronic devices subject to zero rate of VAT in terms of clause 1 of article 45 of Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments.
5. **Responsibility to account for VAT** – by the recipient of the goods under the reverse charge mechanism (RCM).
6. **Documentary evidence** – required to be maintained by recipient and supplier for applicability of RCM.

   <u>Recipient's responsibility</u>

   - Provide the supplier of electronic devices with a written declaration indicating that the intent of the supply of electronic devices is to resell or use them in producing or manufacturing electronic devices.
   - Provide the supplier of electronic devices with a written declaration confirming that recipient is UAE VAT registered with the FTA.

   <u>Supplier's responsibility</u>

   - Receive and keep declaration provided by the recipient of goods.
   - Verify that the recipient of specified electronic devices is UAE VAT registered.

7. **Non-submission of declaration by recipient** – payment of tax by the recipient under RCM would not be applicable. Accordingly, the supplier should charge applicable UAE VAT to the recipient of such electronic goods.

   In case the supplier is required to charge VAT on the supply of electronic devices to the recipient as a result of the recipient not providing the supplier with the required declaration, the input VAT of such VAT charged by the supplier cannot be recovered by the recipient.

8. **Effective date** – the cabinet decision becomes effective 60 days from the date of publishing in the Official Gazette (30 August 2023)..

The FTA has released VAT public clarification VATP034 in respect of the cabinet decision. The key areas covered in this public clarification have been summarised below:

1. Devices purchased for the purpose of reselling to employees for use in business are not deemed to be purchased with an intention to resell.
2. The scope of the cabinet decision is limited to phones that operate through wireless transmission. Hence, phones operating through physical means such as wire or fibre-optic cables are considered outside the scope of the cabinet decision and the normal rules of VAT would apply. However, this does not apply to computer devices, as they would fall within the scope of the cabinet decision whether wireless or not.
3. E-readers (marketed as such, without any other features such as gaming functionalities or web browsing, and that may include different hardware and software compared to tablets) do not constitute 'electronic devices' and are therefore outside the scope of the cabinet decision.
4. A supply of electronic devices from the UAE mainland to a VAT designated zone, or a movement of such goods from the UAE mainland to a VAT designated zone, will be subject to the provisions of the cabinet decision.

- **Ministerial Decision No. 262 of 2023:**

The Minister of Finance has recently issued Ministerial Decision No. 262 of 2023 on Criteria to be followed in the Determination of Parts and Pieces of Electronic Devices.

1. **Definition of pieces and parts** – pieces and parts related to electronic devices.
2. **Criteria for determining pieces and parts related to electronic devices** –
   - Parts and pieces that are normally used for manufacturing or production of electronic devices and are considered necessary for the operation of electronic devices;
   - Pieces and parts that are not normally used for the manufacturing or production of electronic devices, but are normally necessary for the operation of electronic devices, such as chargers, power cords, battery packs and other similar pieces and parts; and
   - Parts and pieces that are replacement parts for electronic devices and meet the above condition.

The following parts and pieces are excluded and not considered as related to the electronic devices even though they satisfy the criteria above:

- Parts and pieces that enhance the functioning or enjoyment of electronic devices but are not necessary for the electronic devices' operation or to activate their features; and
- SIM cards or other external smart cards of the same nature or with the same purpose.

Source: https://mof.gov.ae/

PKF Comment

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.

For further information or advice concerning taxes in the UAE, please contact Mr. Shailesh Kumar at skumar@pkfuae.com, Mr. Chaitanya Kirtikar at cgk@pkfuae.com, Mr. Mradul Gupta at mgupta@pkfuae.com, Ms. Radhika Doshi at rdoshi@pkfuae.com, Ms. Megha Lohia at mlohia@pkfuae.com, Mr. Konan at konan@pkfuae.com or Pooja Khatri at pkhatri@pkfuae.com or call **+971 4 388 8900**.

BACK

United Kingdom

Treatment of electricity costs reimbursed by employer in relation to electric vehicles

HMRC have changed their view on the treatment of reimbursements by employers of electric charging costs for electric cars with some business use. The reimbursement used to be taxable as a benefit in kind on the individual receiving the reimbursement, but it is no longer treated as a benefit in kind.

This means that no separate charge to tax under the benefits code will arise where an employer reimburses the employee for the cost of electricity to charge their company car or van at home.

The exemption will only apply if it can be demonstrated that the electricity was used to charge the company car or van. Employers will need to make sure that any reimbursement made towards the cost of electricity relates solely to the charging of the employees' company car or van.

Voluntary National Insurance contributions deadline extended

The deadline for eligible individuals to fill gaps in their National Insurance records from April 2006 onwards has been extended until 5 April 2025 so individuals have longer to assess whether to pay voluntary contributions. Voluntary contributions help individuals to gain eligibility for certain state benefits such as the state pension.

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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 UK global mobility, please contact Louise Fryer at **lfryer@pkf-l.com** or call **+44 (0)20 7516 2446**.

BACK

United States

Latin America Regional Tax Cooperation Forum – implications for taxpayers

Sixteen nations agreed to create the Regional Tax Cooperation Platform ('LAC Platform') for Latin America and the Caribbean (LAC) at a two-day summit in Cartagena, Colombia in July. Organised by the Colombian Ministry of Finance, the summit was focused on addressing certain terms in the OECD's global tax agreement, perceived to have eroded LAC nations' legitimate share of tax revenue and some countries' dissatisfaction with the OECD's 2021 global tax agreement.

Background

The OECD is an international forum for the governments of 37 democracies with market-based economies to collaborate and develop policy standards, including international tax rules to promote sustainable economic growth. The US is a member of the OECD but does not incorporate its tax rules into the Internal Revenue Code nor the regulations thereunder. Currently, four LAC countries are member countries of the OECD and discussions have opened up with other LAC countries to join. The OECD is currently negotiating and implementing multilateral tax protocols for inter-company transfer pricing rules, country-by-country reporting and a global minimum tax rate.

Key LAC recommendations and goals

The major recommendations of the LAC Platform are planned to strengthen global tax coordination and negotiation in economic governance and to achieve greater equity in the global tax system. This would require taxpayers to align their tax footprint with socio-economic values, such as gender inequalities and groups that were historically discriminated against and also to meet stringent human rights criteria.

The LAC Platform and its recommendations are seen to be in line with UN resolutions to foster regional and global integration on matters of international tax cooperation, fighting illicit financial flows and combating aggressive tax evasion and avoidance.

The LAC Platform also recommends various disclosure requirements for non-financial, environmental, social and governance (ESG) reporting to clarify the rights-based implications of a company's tax planning in each jurisdiction in which taxes are paid. In addition, it emphasises progressivity and equity in the region's tax systems, departing from an over-reliance on consumption taxes, as well as a reform of corporate taxation. This objective is contrary to the OECD's recommendation that digital services should only be taxed at the point of consumption. Nine Latin American countries are currently levying VAT/indirect taxes on digital services and require the business to first set up a local establishment in the country. This is a different method of implementing digital taxes than the OECD's Pillar One recommendation in which the non-domicile supplier bears the onus of accounting for the taxes due and income would be shifted to the point of consumption. The LAC Platform indicates this would create disadvantages because the taxpayer will need to navigate a complex compliance challenge and must avoid gaps and mismatches while negotiating multiple jurisdictions.

The LAC Platform also has more general Pillar One comments which seek greater redistributive potential.

The Platform's goals also foster global tax governance that respects national sovereignty, given that some 27% of the wealth of the LAC region lies offshore, requiring much more diligent country-by-country reporting. This initiative draws on the Latin America Initiative established after the 2018 Punta del Este Declaration signed by Argentina, Panama, Paraguay and Uruguay following a plenary meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The Platform notes that small Caribbean islands are often stigmatised in the absence of objective criteria for what constitutes a 'tax haven'. The Platform recommends that what it believes are biased and arbitrary policy decisions be replaced with assessments based on rigorous and predictable evidence. The methodology used by the Tax Justice Network for its Financial Secrecy Index and Corporate Tax Haven Index is suggested as a starting point.

PKF Comment

In conclusion, the LAC Forum believes it is imperative for taxpayers operating in the region to uphold human rights, especially within the context of their fiscal decision-making procedures and that regional tax jurisdictions guarantee that their tax policies align with their human rights obligations and relevant international standards. The discussions are also a good reminder that implementation of any OECD standards will be country-by-country and an important signal that the nations agreeing to the platform may look to follow a different path.

PKF O'Connor Davies and PKF Mexico work closely together on tax and accounting issues which affect companies conducting business in the US and Mexico. We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relevant to business in Latin America. Please call +1 212 286 2600 or email any of the Latin America Desk team members:

Vic Peña
CPA, CGMA Partner
Latin American Desk Leader
+1 646 699 2848
vpena@pkfod.com

Leo Parmegiani
CPA, MST Partner
International Tax Practice Leader
+1 646.699.2848
lparmegiani@pkfod.com

Jimy Cruz Camacho
International Liaison Parter
Head of Transfer Pricing & Valuations
PKF Mexico
jimy.cruz@pkf.com.mx

Ralf Ruedenburg
CPA Partner
International Tax
+1 646 965 7778
rruedenburg@pkfod.com

Evelyn Bedoya
Supervisor
Financial Services
+1 646 699 2872
ebedoya@pkfod.com

BACK

PKF Global
15 Westferry Circus,
London, E14 4HD, United Kingdom

Tel: +44 20 3691 2500
pkf.com

TAXNQ42023