PKF worldwide tax update

March 2024

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 first quarterly issue for 2024, 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 Romania
- Case law and administrative rulings in Germany
- Significant personal and corporate income tax changes in Austria, Ecuador, Ghana, Malta, Mexico, Romania and Slovak Republic
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in Chile, Hong Kong, Italy, South Africa, Switzerland and the US.

We trust you find the PKF Worldwide Tax Update for the first quarter of 2024 both informative and interesting and please do contact the PKF tax expert directly (mentioned at the foot of the respective PKF commentary) should you wish to discuss any tax matter further or, alternatively, please contact any PKF firm (by country) at **www.pkf.com/pkf-firms**.

Austria

Recent amendments to tax regulations

Reduction in corporation tax

The corporate income tax rate was already reduced to 24% in 2023. From 1 January 2024, a corporation tax rate of 23% will apply.

Tax-neutral withdrawal of business premises

The aim is to make it easier for tax purposes to use vacant business buildings outside of the business, e.g. for private residential purposes or for renting out. Since 1 July 2023, the withdrawal of buildings has therefore been tax-neutral at book value, just as the withdrawal of land has been to date. The hidden reserves of the building are only taxable at the time of any subsequent sale.

Zero tax rate for photovoltaic systems

No VAT is payable on supplies, intra-Community acquisitions, imports and installations of photovoltaic modules to be carried out after 31 December 2023 and before 1 January 2026. This VAT exemption does not exclude the right to deduct input VAT, provided that:

- the supplies, installations, intra-Community acquisitions or imports are made by the operator;
- the output of the photovoltaic system does not exceed or will not exceed 35 kilowatts (peak); and
- the photovoltaic system is to be operated on or in the vicinity of the following buildings:
  - buildings used for residential purposes;
  - buildings used by public corporations; or
  - buildings used by corporations, associations of persons and property funds that serve charitable, benevolent or ecclesiastical purposes.

Tax concessions for start-ups and new legal form for companies

Start-ups and young SMEs are often unable to provide appropriate remuneration for their highly qualified employees due to a lack of liquidity. The granting of capital shares can compensate for this, but the immediate taxation of the non-cash benefit would lead to an additional liquidity requirement for the recipient. In addition to a new company form ('Flexcap'), special company shares (company value shares) and a tax deferral until the shares are actually sold are also planned.

The flexible capital company ('FlexKapG', also known as 'Flexible Company' or 'FlexCo') is a new type of corporation introduced by law in 2023, which is intended to offer an internationally competitive option for innovative start-ups and founders in the early stages in particular. The company is a legal entity with its own legal personality. It can acquire rights, enter into liabilities, sue and be sued. A FlexKapG can also only be established by one person. The share capital to be raised by the shareholders must be at least €10,000. The minimum share capital of the existing legal form of private limited companies was reduced to €10,000 (minimum contribution €5,000).

Income tax

The third bracket of the income tax rate was already reduced from 42% to 40% from 1 July 2023. To simplify matters, a mixed rate of 41% was applied for the whole of 2023. For 2024, the tax rate for this level is 40%. The threshold amounts for the progressive brackets of the rate – with the exception of the 55% bracket – and certain deductible amounts were also increased.

Tax benefits in connection with employees

In order to recognise overtime for tax purposes, the maximum possible tax-free allowance for the first 10 hours of overtime per month has been increased to €120. For a limited period until the end of 2025, up to €200 can be paid tax-free for the first 18 hours of overtime per month.

Also, the so-called 'employee bonus' creates the possibility of granting employees additional payments of up to €3,000 free of tax and duties. The full amount of the employee bonus must be tied to salary-setting measures. The employee bonus must be an 'additional payment', i.e. a payment that has not normally been granted in the past.

Profit allowance increase 2024

The profit allowance for the self-employed currently amounts to up to 15% of profits. This is made up of a basic tax-free allowance for profits up to €30,000 (until 2023) and an investment-related profit allowance. The basic tax-free allowance will now be increased to profits of up to €33,000 from 2024 to provide further relief for the self-employed. This equity-strengthening measure will support in particular those sole traders and partnerships that do not benefit from the reduction in the corporation tax rate.

Package for non-profit organisations

From 1 January 2024, every association and corporation has the opportunity to receive a donation deduction notice from the tax office in order to be included on the list of charitable organisations if it meets the formal criteria for charitable status. This means that donations to such an association or corporation are tax deductible. In addition to extending the deductibility of donations, the package also introduced measures to simplify and reduce bureaucracy. The areas of sport, art and culture in particular benefit from this. For art and culture, massive administrative simplifications will be created. Access to donation deductibility will also be accelerated by shortening the entry period for proof of charitable status from three years to one year. Furthermore, there will be a largely automated and simplified procedure for small associations in the future.

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Austrian taxation, please contact Clemens Corti at cc@pkf-graz.at or call **+ 43 316 826 082 21**.

BACK

Chile

Double tax treaty between Chile and the US has entered into force

On 19 December 2023, the Chile–United States Income and Capital Tax Treaty (2010) and the additional corrections and exchanges of notes of 2011, 2012 and 2023, entered into force.

The treaty generally applies from 1 January 2024 for other taxes and from 1 February 2024 for withholding taxes. The provisions of Article 27 (Exchange of Information) have effect from 19 December 2023, without regard to the taxable period to which the matter relates.

The maximum rates of withholding tax are:

- 15% on dividends in general, reduced to 5% if the beneficial owner is a company that owns directly at least 10% of the voting stock of the company paying the dividends. However, these maximum rates do not apply in respect of dividends paid by Chilean companies to non-residents under certain conditions.

  Also, from the point of view of income from Chilean sources, the protocol to the treaty includes a so-called 'Chile clause', similar to those contained in other tax treaties concluded by Chile. This refers to the fact that the rules on dividends will in no case limit the application of the additional tax to the extent that, in accordance with Chilean legislation, the first category tax is fully deductible in the determination of the amount of the additional tax. This benefits US investors who, by applying this rule, will reduce their total tax burden from 44.45% to 35%. In effect, the general income tax regime in Chile is the so-called partially integrated one, in which the corporate tax (first category, with a rate of 27%), is attributable to the final taxes of the investors, whether they are an individual entrepreneur, partners or shareholders of companies. Because it is partially integrated, in the end the imputation does not correspond to the entire corporate tax but only to 65% of it, unless the 'Chile clause' is applicable as in this case.
- 15% on interest in general for a five-year period from the effective date and 10% subsequently, reduced to 4% for interest derived by: (i) a bank; (ii) an insurance company; (iii) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business provided that the enterprise is unrelated to the payer of the interest; (iv) an enterprise that sold machinery or equipment and deriving the interest in connection with the sale on credit of it; and (v) any other enterprise, provided that in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50% of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50% of the assets of the enterprise consist of debt-claims against unrelated persons.
- 10% on royalties in general, reduced to 2% for royalties for industrial, commercial or scientific equipment.

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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

Tax implications of non-monetary asset contributions in China

The adjustments made to non-monetary asset contributions in China's newly revised 'Company Law' reflect the law's response to new situations and issues arising in economic practice. The revised Company Law provides more explicit and detailed provisions for non-monetary asset contributions, which helps to standardise shareholder contribution operations, optimise the capital structure of enterprises and also imposes higher requirements, especially in terms of tax treatment.

The tax treatment of non-monetary asset contributions is indeed complex, involving multiple aspects such as VAT and corporate income tax. When enterprises make non-monetary asset contributions, they need to assess the fair value of the target assets and handle tax matters based on the assessment results. This involves a remeasurement of the assets, which may generate related tax liabilities for VAT and corporate income tax.

In terms of VAT, if the contributed non-monetary assets fall within the taxable scope, such as goods and fixed assets, then such contribution operations may be deemed to be sales, thus necessitating the payment of VAT. However, if it is a 'bulk transfer' during asset restructuring, VAT may not be levied.

Regarding corporate income tax, the tax treatment of non-monetary asset contributions will vary depending on the specific circumstances. For example, if non-monetary assets are used for external investment and certain conditions are met, enterprises can opt for a tax deferral policy, spreading the income from the transfer of non-monetary assets over a period not exceeding five years for tax purposes.

Furthermore, if it involves equity (asset) acquisitions or equity (asset) transfers, special tax treatment policies may apply. For instance, subject to certain conditions, equity acquisitions can benefit from special tax treatment policies; similarly, when transferring non-monetary assets from a parent company to a subsidiary, special tax treatment policies may also apply.

PKF Comment

If you believe the above may impact your business or personal situation or require any advice with respect to PRC taxation, please contact Allan Jiang at allan.jiang@pkfchina.com or call **+86 21 6076 0876**.

BACK

Ecuador

Various updates on personal and corporate income tax

- **Unified basic salary for the year 2024**
  Ministerial Agreement MDT-2023-175 established that the monthly unified basic salary for the year 2024 will be $460.

- **Reduction for 2024 of the tax rate on foreign payments eliminated**
  Executive Decree No. 98 removed the reduction of the tax rate on payments abroad for 2024, keeping it at 3.5%.

- **FY 2024 brackets for personal income tax, undivided inheritances and inheritances, legacies and donations**
  Through Resolution No. NAC-DGERCGC23-00000036, brackets were set for personal income tax, undivided inheritances and inheritances, legacies and donations for the year 2024, as follows:

  Table No. 1 – Personal and inheritance income tax

Year 2024			
Basic fraction (US$)	Excess up to (US$)	Basic fraction tax (US$)	Surplus fraction tax
-	11,902	-	0%
11,902	15,159	-	5%
15,159	19,682	163	10%
19,682	26,031	615	12%
26,031	34,255	1,377	15%
34,255	45,407	2,611	20%
45,407	60,450	4,841	25%
60,450	80,605	8,602	30%
80,605	107,199	14,648	35%
107,199	and above	23,956	37%

Table No. 2 – Income tax on income from inheritances, legacies, donations

Year 2024			
Basic fraction (US$)	Excess up to (US$)	Basic fraction tax (US$)	Surplus fraction tax
0	76,558	-	0%
76,558	153,115	-	5%
153,115	306,231	3,828	10%
306,231	459,379	19,139	15%
459,379	612,515	42,112	20%
612,515	765,630	72,739	25%
765,630	918,725	111,018	30%
918,725	and above	156,946	35%

- **Income tax exemption for new investments**

  Generation of non-conventional renewable energies and production, industrialisation, transport, supply, marketing of natural gas or green hydrogen

  Exemption from income tax for 10 years from the year in which income is generated. The waiver cannot exceed the total investment amount.

Tourism projects qualified by the Ministry of Tourism

Exemption from income tax for seven years from the year in which income is generated. Investment projects must be at least $100,000 and 10% must be allocated to rural tourism.

- **Newly created rates for additional deduction on advertising, promotion, sponsorship expenses**

  An additional 150% deduction is granted for the calculation of the taxable income tax base with regard to advertising, promotion and sponsorship expenses, incurred in respect of:

  1. Private educational institutions at the basic and baccalaureate levels that are in rural and marginal urban areas;
  2. Non-profit entities whose activity focuses on the care of people with disabilities, qualified by the governing body in the matter;
  3. Non-profit entities whose activity focuses on the care of people with catastrophic, orphan or rare diseases, or comprehensive cancer care, qualified by the governing body in the matter;
  4. Non-profit entities whose main activity focuses on the care, defence and protection of animals;
  5. Non-profit entities whose main activity focuses on the care, defence and protection of children and adolescents;
  6. Non-profit entities that accredit at least 10 years of experience qualified by the governing body in the field, whose activity focuses on the construction of emergency housing solutions for families or communities that are in situations of poverty or extreme poverty; also, in the event of a natural emergency, to families or communities affected by possible natural disasters; and
  7. National Police, for donations of equipment and supplies for internal protection and the maintenance of public order and citizen security. The equipment and supplies that are donated must be new or in optimal condition for use according to the competent body.

- **Additional deduction for net increase in jobs**

  Those that generate a net increase in jobs will be granted an additional deduction of either 50% or 75% of the taxable income tax base with respect to the expense of salaries and wages on which social security has been contributed, as follows:

  Additional 50% deduction

  — For young people between the ages of 18 and 29.

  — For people who are obliged to pay alimony.

  — For people who have been deprived of liberty without an enforceable conviction.

  Additional 75% deduction

  — For young people between 18 and 29 years of age who have graduated from public universities and higher technical, technological, pedagogical, arts and higher conservatory institutes or from public, municipal or public educational institutions.

  — For the construction and agriculture sector.

  — For people who have served a custodial sentence of more than one year, or for their spouses or common-law partners.

- **Temporary tax residency**

  Individuals who have not acquired the status of Ecuadorian tax residents and who have not maintained such residence at any time prior to the entry into force of the Organic Law on Economic Efficiency and Employment Generation (20 December 2023) may benefit from temporary tax residence, which will last for five years from the year in which they meet the conditions.

  Those subject to this tax residency regime will pay income tax only on Ecuadorian-source income.

  The condition to access this regime is to make an investment in real estate or productive activities in Ecuador of at least $150,000 or to have a proven monthly income that is not from Ecuadorian sources of at least $2,500. In the first case, the investment must remain in Ecuador for a period of at least five years and in the second case, the natural person must be affiliated to social security during the time he or she remains in the country.

The conditions must be met within a period between the first day and the 120th day, counted from the date on which the natural person enters Ecuadorian territory.

- **New cases of VAT refunds**

  Real estate projects

  VAT paid on local acquisitions or imports of goods and services for the construction of real estate projects is entitled to be refunded, without interest, within 90 days, through the issuance of the respective credit note. Real estate projects must be registered with the relevant ministry or entity, except those that are intended for an individual's own housing and where no more than two projects are completed per year.

  Individuals who undertake more than two projects will not benefit from the exemption provided for in numeral 14 of article 9 of the Internal Tax Regime Law, with respect to the capital gain obtained in the fiscal year in which the refund is credited.

  Leasing, commercial leasing or leasing services

  VAT paid for the rental of 100% electric vehicles or other zero-emission technologies for public, commercial and self-employed transport services, by those who hold the corresponding enabling title, are entitled to be reimbursed for this tax, without interest, within 90 days through the issuance of the respective credit note.

- **Remission of interest, penalties and surcharges on outstanding tax obligations**

  Total or partial payments of tax obligations generated until 31 December 2023 will benefit from a remission of 100% of interest, fines and surcharges derived from the taxes whose administration and collection correspond to the Internal Revenue Service.

  Payment must be made by 31 July 2024.

  The President of the Republic, Provincial and National Assembly Members or their relatives (up to the fourth degree of consanguinity and the second degree of affinity) may not take advantage of this measure.

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PKF Comment

The government seeks to promote economic growth by encouraging investments, innovation and the creation of new sources of employment, to increase tax revenue that will allow it to obtain the necessary resources to finance essential public expenditure such as education, health, infrastructure and social services, as well as security, improving the equipment and working conditions of the police and other law enforcement agencies.

If you believe the above may impact your business or personal situation 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

Finance Act 2024 changes to transfer pricing, intra-group dividends and global minimum tax

Finance Act 2024 changes regarding transfer pricing – article 116

The Finance Act 2024 has significantly amended transfer pricing legislation.

- **Lowering the threshold for companies to provide transfer pricing documentation**

  The Finance Act 2024 lowers the threshold above which groups are required to provide formal documentation of their transfer pricing policy. The turnover (or total gross assets) threshold will fall from €400 million to €150 million with effect from 1 January 2024.

- **Reinforcement of penalties**

  Where required, transfer pricing documentation must be made available to the tax authorities on the date on which the accounting audit is initiated. If this documentation is not available at this date, or is only partially available, the tax authorities will send the company formal notice to produce or complete it within 30 days, specifying the nature of the documents or additions expected. This formal notice must indicate the penalties applicable in the event of non-response or a partial response.

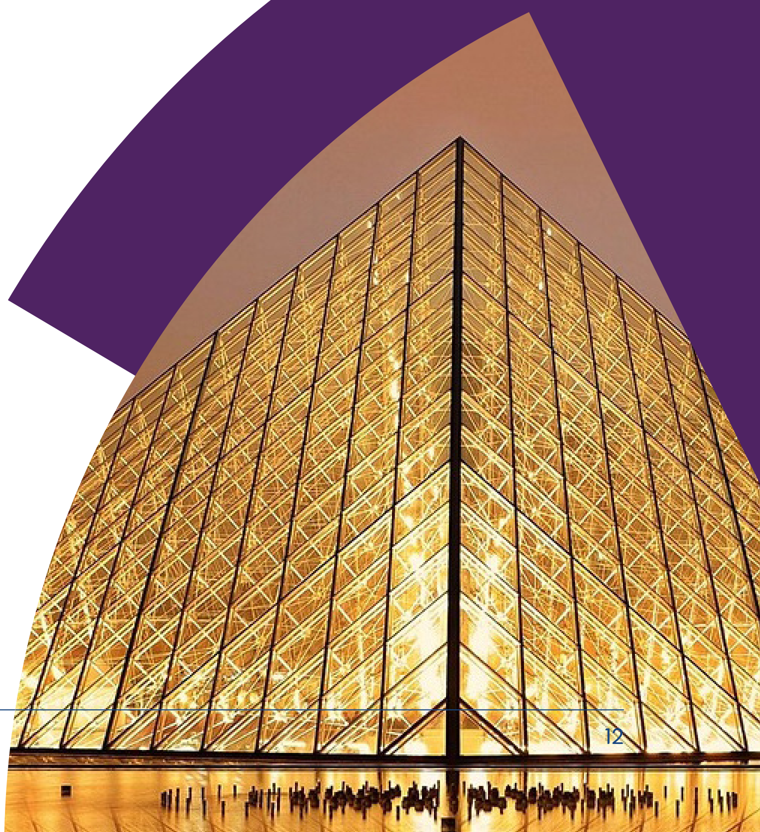
  Failure to provide a response or a partial response to the formal notice will result in the application, for each financial year audited, of a fine of up to the higher of the following two amounts, depending on the seriousness of the shortcomings:

  - 0.5% of the amount of the transactions concerned by the documents or additions that have not been made available to the tax authorities after formal notice;
  - 5% of the adjustments relating to the transactions concerned by the transfer pricing.

  The minimum fine, previously set at €10,000, has been increased to €50,000 for financial years beginning on or after 1 January 2024.

- **In the event of a discrepancy between the transfer pricing documentation and the method actually used, the difference is deemed to constitute an indirect transfer of profits abroad**

  The Finance Act for 2024 stipulates that, for financial years commencing on or after 1 January 2024, where the method used to determine transfer prices differs from that provided for in the documentation made available to the tax authorities by the company, the difference between the result and the amount it would have been if the documentation had been complied with is 'deemed' to constitute an indirect transfer of profits, unless the company can demonstrate that there has been no transfer, either by increasing or decreasing the purchase or sale prices, or by any other means.



- Extension of the statute of limitations for transfers of intangible assets that are hard to value

  In principle, the administration's right of recovery is limited to the end of the third year following the year in respect of which the tax is due (LPF art. L 169). The Finance Act 2024 adds that the right of recovery, in this context, is exercised until the end of the sixth year following the year in respect of which the tax is due (LPF art. L 171 B new). The tax authorities will be able to carry out an audit without this being considered as a repeat of an accounting audit (LPF art. L 51, 8° new).

Finance Act 2024 changes for intra-group dividends – article 52

The benefit of the reduced rate of 1% is now limited to distributions made by companies that have been consolidated for more than one financial year.

These changes apply to financial years ending on or after 31 December 2023.

Transposition of EU Directive 2022/2523 – article 33

Following on from the news of the fourth quarter of 2023, the Finance Act 2024 transposed into domestic law Council Directive (EU) 2022/2523 of 14 December 2022 aimed at ensuring a minimum level of worldwide taxation for multinational enterprise groups and large-scale national groups.

The directive introduces a minimum level of taxation set at 15% for multinational groups with consolidated sales of €750 million or more in at least two of the four financial years preceding the financial year in question.

This additional tax will be collected through the introduction of a 'qualified domestic top-up tax' (QDTT).

This new tax will apply to financial years beginning on or after 31 December 2023.

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PKF Comment

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BACK

Germany

Federal Tax Court case law on transfer pricing and the transfer of functions

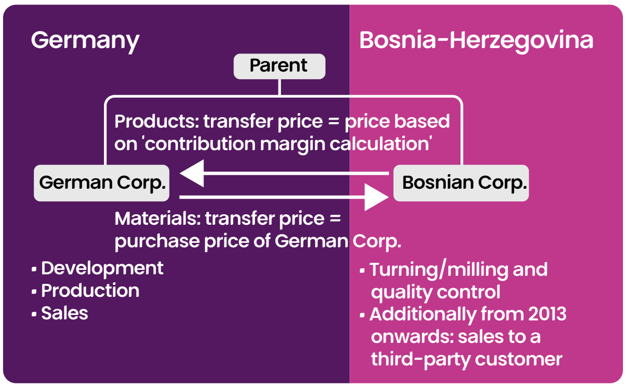
In a recently published judgment (dated 9 August 2023, I R 54/19), the German Federal Tax Court (Bundesfinanzhof – BFH) commented on numerous questions regarding transfer pricing and the transfer of functions. Although the judgment relates to the years 2011–2013, which is a long time ago and therefore partly also concerns old versions of legislation, various insights can nevertheless be gained from it, most of which still apply today.

I. The case

A German GmbH ('German Corp.') developed, produced and sold products in the field of cutting/machining technology. Its Bosnian sister company ('Bosnian Corp.'), founded in 2007, turned/milled workpieces and also manufactured finished/semi-finished products. The GmbH financed the establishment of the foreign sister company, provided personnel to train the employees of the foreign company and, from 2012, an employee of the GmbH also managed the Bosnian company, with Bosnian Corp. bearing the personnel costs.

German Corp. invoiced Bosnian Corp. for materials at its own purchase costs; Bosnian Corp. invoiced the return delivery of the semi-finished or finished products using a 'contribution margin calculation' based on value chain analyses. From 2013 onwards, Bosnian Corp. also sold products directly to an external third party that had previously been supplied by the German GmbH.

The case can be graphically outlined as follows:



As part of a tax audit, the tax authorities took the following view:

- Ongoing exchange of services: From the functional and risk analysis, it was concluded that Bosnian Corp. was to be assessed as a toll manufacturer. The transfer prices for the services of that company were to be determined using a markup rate of 12% on the costs, whereby the material deliveries by the German GmbH were not to be included in the cost base. In the subsequent judgment of the Munich tax court, this cost markup rate was then corrected to 17%.
- Insofar as the sales of materials by German Corp. to Bosnian Corp. served to manufacture products that were sold by Bosnian Corp. to third-party customers, overheads, if any, or at least a profit markup of 5% should be taken into account.

II. The Federal Tax Court judgment and its evaluation

Apart from various technical questions regarding the relationship between different profit adjustment provisions, the Federal Tax Court (BFH) judgment contains the following relevant statements:

- The BFH expressly confirms the admissibility of the usual view in transfer pricing issues that an overall tax assessment of several civil law transactions can be justified, taking into account the economic content of the transaction. Thus, in the judgment case, the supply of materials from Germany to Bosnia-Herzegovina and the return delivery of products can be considered together as 'contract manufacturing', provided that the materials are not incorporated into products that the Bosnian company itself sells on to the third-party customer.
- In accordance with the prevailing view, the BFH also considers the application of the cost-plus method (preferably based on planned costs) to be appropriate for a toll manufacturer, whereby the costs of the material provided (economically by the German Corp.) as 'non-value-adding costs' are not to be included in the cost base.
- The BFH sets specific requirements for the estimation of the profit markup rate (for toll

manufacturing). Thus, estimates based on 'general experience rates' or on (obviously not further specified) 'internet research' are rejected and instead a comparison is required, e.g. taking into account the functional/risk profile of the industry. This means that benchmark studies will continue to gain in importance in transfer pricing practice, not only for large companies but also for SMEs. Nevertheless, individual adjustments may still be required, e.g. with regard to location advantages, which must be allocated on a case-by-case basis according to functions, risks, assets used and realistically available alternatives. The BFH therefore considers a flat-rate 50:50-allocation of location advantages, which is often favoured by the tax authorities, to be inadmissible.

- The judgment also makes it clear that transfer pricing issues often depend on the assessment of the facts. Regarding these circumstances, the Federal Tax Court is generally bound by the findings of the local tax court; decisions by the local tax court on transfer pricing issues can only be successfully revised by the Federal Tax Court to a very limited extent. Strong efforts must therefore already be made before the local tax court to convincingly argue the taxpayer's facts and judgements.
- With regard to the transfer of business with a third-party customer from German Corp. to Bosnian Corp. in 2013, the BFH rules out a transfer of functions: it was not apparent that the activities for the third-party customer were an organic part of the overall business and therefore a function. In this context and, although insignificant for the outcome of the Federal Tax Court's judgment, its obiter dictum doubting the correctness of an opinion of the Lower Saxony tax court (of 16 March 2023, 10 K 310/19) deserves attention. In that judgment, the local tax court had stated for transfers of functions up to 2021 that a transfer of functions requires a mandatory causal relationship between the restriction of functions at the transferring company and the exercise of functions at the receiving company. As that case is currently subject to revision by the Federal Tax Court (I R 31/23), the further development of German case law remains to be seen.

Finally, the BFH points out that the transfer of third-party customer business from German Corp. to Bosnian Corp. can – even if no transfer of functions comes into play – trigger taxation in Germany in accordance with the principles of a deemed profit distribution. The fact that this aspect, which is actually self-evident, has apparently not been sufficiently examined by the parties (as well as by the local tax court) shows once again that business restructurings, in particular in an international environment, regularly require intensive tax advice in order to recognise and avoid any pitfalls.

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PKF Comment

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BACK

Ghana

Introduction of 2024 tax legislation

New tax legislation

Seven new Acts have recently been introduced, which the Parliament of Ghana passed as bills on 29 December 2023 into Acts of Parliament. They received presidential assent on 29 December 2023 and were gazetted on 29 December 2023 to enter into force. Implementation of these Acts is expected to commerce from 1 January 2024.

A summary of this new tax legislation is as follows:

- Customs (Amendment) Act, 2023 (Act 1106)
- Value Added Tax (Amendment) Act, 2023 (Act 1107)
- Excise Duty (Amendment) (No. 2) Act, 2023 (Act 1108)
- Income Tax (Amendment) (No. 2) Act, 2023 (Act 1111)
- Stamp Duty (Amendment) Act, 2023 (Act 1109)
- Exemptions (Amendment) Act, 2023 (Act 1110)
- Emissions Levy Act, 2023 (Act 1112)

Customs (Amendment) Act, 2023 (Act 1106)

The First Schedule of the Customs Act, 2015 (Act 891) has been amended to include 431 additional tariff descriptions to the customs tariff.

Also included in the Act is a provision for the waiver of duty on the importation of raw materials for the local manufacture of sanitary towels.

Value Added Tax (Amendment) Act, 2023 (Act 1107)

Included in this Act are provisions for the following:

- Rental for commercial activities

  Section 1 of Act 1107 amends section 3 of Act 870 resulting in the introduction of a new VAT rate of 5% to the VAT regime in Ghana. There are therefore four VAT rates in Ghana:

  i. zero-rated items;

  ii. 3% VAT flat rate for retailers and wholesalers of goods with annual turnover between GH₵200,000 and GH₵500,000;

  iii. 5% VAT flat rate for rentals of commercial immovable property other than for accommodation in a dwelling by a person other than a commercial rental establishment; and

  iv. 15% VAT standard rate for any other taxable supply other than those listed above.

- VAT on sale of land

  Section 5 of Act 1107 requires estate developers to account for VAT at a 5% flat rate on the supply of an immovable property, including land.

- Non-deductible input VAT

  Section 3(b) of Act 1107 amends section 48 of Act 870 to indicate that a taxable person to whom section 1 of Act 1107 applies does not qualify for input VAT deduction in respect of the supply of immovable property for commercial rental or a supply of immovable property by an estate developer.

  In summary, the above amendments require that any person who is not a commercial rental establishment who rents an immovable property for commercial purposes is to account for VAT on the rental at a 5% flat rate without taking a deduction for input VAT.

- Penalty for appointed VAT withholding agents

  Section 2 of Act 1107 amends section 47 of Act 870 and imposes a penalty of 30% on VAT withholding agents who fail to withhold 7% VAT on standard-rated invoices and pay this over to the Commissioner-General of the Ghana Revenue Authority (GRA) by the 15th of the following month. Such a withholding agent will not have recourse to recover the VAT from the suppliers who received the payment.

  There are currently 124 VAT withholding tax agents appointed by the Commissioner-General of the GRA to withhold VAT.

- Amendment to First Schedule (Exempt Schedule)

  Section 4 of Act 1107 amends the First Schedule of Act 870 to revise the Exempt Schedule as follows:

  i. Redefine 'estate developer' to mean a commercial establishment or an individual engaged in the business of construction or renovation and supply of immovable properties; and

  ii. Exclude the following from the VAT-exempt list:

     a) imported textbooks, exercise books, newspapers, publications and charts, architectural plans and similar plans, drawings, scientific and technical works, periodicals, magazines, trade catalogues, price lists, greetings cards, almanacs, calendars, diaries and stationery and other printed matters;

     b) supply of haulage or the rental or hiring of passenger and other vehicles;

     c) supply of immovable property by an estate developer;

     d) domestic air transport;

     e) financial services relating to non-life insurance; and

     f) cost of postage supplied by Ghana Post, other than for expedited services or for a philanthropic purpose.

- Amendment to Second Schedule (Zero-Rated Schedule)

  Section 5 of Act 1107 amends the Second Schedule of Act 870 to revise the Zero-Rated Schedule as follows:

  i. Extend the supply of locally manufactured textbooks approved by the Ministry of Trade and Industry up to 31 December 2025;

  ii. Supply of locally manufactured vehicles under the Ghana Automotive Development Programme from 1 September 2022 to 31 December 2025; and

  iii. Supply of locally manufactured sanitary towels.

Excise Duty (Amendment) (No. 2) Act, 2023 (Act 1108)

The purpose of this Act is to harmonise the duties for both imported and local goods.

The Act amends the First Schedule to the Excise Duty Act, 2014 (Act 878) to realign the duty rates of imported excisable goods with its locally manufactured counterparts to promote healthy competition.

Included in the Act are the following:

- an increment in the excise duty rate on cider beer;
- reduction of the excise duty rate on plastics; and
- expansion of the coverage of excise duty on plastics to imported plastic packaging.

Income Tax (Amendment) (No. 2) Act, 2023 (Act 1111)

The First Schedule of Act 896 has been amended to revise the rates of income tax for individuals as follows:

Annual – 2024

	Chargeable income	Rate of tax	Tax payable	Cumulative income	Cumulative tax
	GH₵		GH₵	GH₵	GH₵
First	5,880	0%	0	5,880	0
Next	1,320	5%	66	7,200	66
Next	1,560	10%	156	8,760	222
Next	38,000	17.5%	6,650	46,760	6,872
Next	192,000	25%	48,000	238,760	54,872
Next	366,240	30%	109,872	605,000	164,744
Exceeding	600,000	35%	210,100		

Monthly – 2024

	Chargeable income	Rate of tax	Tax payable	Cumulative income	Cumulative tax
	GH₵		GH₵	GH₵	GH₵
First	490	0%	0	490	0
Next	110	5%	5.50	600	5.50
Next	130	10%	13	730	18.50
Next	3,166.67	17.5%	554.17	3,896.67	572.67
Next	16,000	25%	4,000	19,896.67	4,572.67
Next	30,520	30%	9,156	50,416.67	13,728.67
Exceeding	50,000	35%	17,500		

Observations:

- Although this Act sets the maximum cap at GH₵600,000 per annum, adding the levels up gives cumulative income of GH₵605,000 per annum. The issue is that there will be a challenge when computing the tax for individuals whose annual income falls between GH₵600,000 and GH₵605,000.
- This apparent error is in favour of individual income earners because GH₵5,000 of his/her income will be taxed at 30% instead of 35%.
- Tax experts propose the following corrections:
  a) Changing the maximum tax band from GH₵600,000 to GH₵605,000; or
  b) Changing the fourth tax band from GH₵38,000 to GH₵33,000.
- Persons within the highest tax band would have much more reduction in tax than persons in the lower tax bands.
- The first tax band has increased from GH₵4,824 to GH₵5,880.
- The fourth tax band has increased from GH₵36,000 to GH₵38,000.
- The fifth tax band has decreased from GH₵196,740 to GH₵192,000.
- The sixth tax band has increased from GH₵359,556 to GH₵366,240

tamp Duty (Amendment) Act, 2023 (Act 1109)

The Act has increased the First Schedule of the Stamp Duty Act, 2005 (Act 689) upwards to realign the rates with current economic situations.

Economic activities likely to be affected by this upward amendment include the following:

i. mortgages
ii. bonds
iii. debentures
iv. covenants
v. guarantees
vi. liens or instruments of securities of any type or contracts.

Exemptions (Amendment) Act, 2023 (Act 1110)

The Act has made a provision for a waiver of customs duties and taxes in respect of the importation of fishing gear for agricultural purposes.

Emissions Levy Act, 2023 (Act 1112)

The Act imposes an emission levy on carbon dioxide equivalent emissions from specified sectors and internal combustion engine vehicle emissions as follows:

Type of emissions	Sector/Motor vehicle	Rate (GH₵)
Carbon dioxide equivalent emissions	• Construction sector • Manufacturing sector • Mining sector • Oil & gas sector • Electricity & heating sector	100 per tonne of emissions per month
Emissions from motor vehicles	Internal combustion engine vehicles	
	• Motorcycles & tricycles	75 per annum
	• Motor vehicles, buses and coaches up to 3,000cc	150 per annum
	• Motor vehicles, buses and coaches above 3,000cc	300 per annum
	• Cargo trucks and articulated trucks	300 per annum

Introduction of a special voluntary disclosure programme

The GRA will not pursue criminal prosecution for a tax offence.

The GRA, a member of the OECD Global Forum on Transparency and Exchange of Information for tax purposes, has since the beginning of 2022 received financial accounts information on Ghanaian tax resident persons (individuals and entities) who hold financial accounts and receive foreign income from 168 member countries of the Global Forum.

In line with the above, the GRA will introduce a special voluntary disclosure programme (SVDP) from March 2024, which will give an opportunity to non-compliant persons to disclose offshore accounts, assets and income to the GRA thereby regularising their tax affairs without incurring any penalties or sanctions.

This policy is in line with the Multilateral Competent Authority Agreement (MCAA), the Standard for Automatic Exchange of Financial Account Information in Tax Matters Act, 2018 (Act 967) and the Revenue Administration Act, 2016 (Act 915) as amended.

The following reliefs shall be available under the SVDP:

1. Relief from penalties for making false or misleading statements as specified under section 74 of the Revenue Administration Act, 2016 (Act 915);
2. 100% relief from an administrative non-compliance penalty that was or may be imposed under the Act, or a penalty imposed under a tax Act, including a penalty for the late filing of a return.

All Ghanaian tax residents who hold assets, income or accounts outside Ghana are therefore encouraged to take advantage of this window to disclose their offshore account information voluntarily to the Commissioner-General, GRA, before a tax audit is performed.

PKF Comment

If you believe the above measures may impact your business or personal situation or require any advice with respect to Ghanaian taxation, please contact Albert Cofie at **albert.cofie@pkfghana.com** at or call **+233 302 221 216**.

BACK

Hong Kong

Expansion of the existing foreign-sourced income exemption (FSIE) regime

When the FSIE regime was first introduced into Hong Kong tax law in 2023, it imposed Hong Kong profits tax on specified foreign-sourced income accrued to a multinational enterprise (MNE) entity that carried on a trade or business in Hong Kong when such income is received in Hong Kong. At that point, 'specified foreign-sourced income' only covered interest, dividend and intellectual property (IP) income, and equity interest disposal gains.

With the expansion of the FSIE regime, effective from 1 January 2024, the scope of assets in relation to foreign-sourced disposal gains was expanded to cover all types of property (beyond equity interest disposal gains). This includes IP disposal gains (i.e. any gain or profit derived from the sale of IP) and non-IP disposal gains (i.e. any gain or profit derived from the sale of immovable or movable property, which is not IP). The existing exception requirements, which include the economic substance requirement, participation requirement and nexus requirement, will remain unchanged and shall equally apply to the different types of disposal gains to exclude them from the FSIE regime.

Other notable points of the expanded FSIE regime include the trader exclusion, which excludes non-IP disposal gains from the scope of the FSIE regime if such gains are accrued to a trader and are derived from or incidental to its business as a trader, and an intra-group relief to defer the imposition of tax on the transfer of property between associated entities.

Hong Kong roadmap for BEPS 2.0 Pillar 2

In late December 2023, the Hong Kong government launched a consultation exercise to gather opinions on the implementation of the global minimum tax under Pillar 2 of BEPS 2.0 as proposed by the OECD. In accordance with the international consensus to enhance tax transparency and combat tax evasion, Hong Kong is committed to implementing the global minimum effective tax rate of 15% on in-scope MNE groups from 2025 onwards. The legal and operational frameworks are expected to be established in the second half of 2024.

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PKF Comment

With the expansion of the FSIE regime to cover all types of property disposal gains, affected taxpayers should proactively assess the impacts by seeking tax advice where necessary, including the applicability of the new relief measures. Taxpayers seeking tax certainty on the new rules may consider applying for an advance ruling with the Hong Kong Inland Revenue Department.

Meanwhile, MNE groups with a presence in Hong Kong should remain watchful of the developments with respect to BEPS 2.0 implementation in Hong Kong.

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

BACK

Hungary

eVAT has been launched from 1 January 2024

The Hungarian tax authority has successfully introduced the eVAT system in line with the legislative framework entered into force from 1 January 2024.

Under eVAT, taxable persons have two solutions available:

- The tax authority automatically provides a draft of VAT analytics on a designated online platform which is to be verified and approved by the taxpayer with the manual adjustment and confirmation of the calculated deductible VAT. Only the approved VAT analytics are considered a VAT return. This tool still does not handle transactions which were not subject to Hungarian online invoice data reporting (e.g. intra-Community acquisition of goods) and the draft VAT analytics cannot include more than 100,000 transactions.
- Taxpayers may preliminarily agree with the tax authority on a machine-to-machine (M2M) VAT compliance procedure. Under this solution, taxpayers can upload their VAT analytics to the tax authority's system which will run an automatic validation and verification process. On the basis of the validation log, the taxpayer may arrange for the necessary corrections and approve the draft return generated by the system. Draft returns are not considered a VAT return until approved. As the VAT analytics should be uploaded by the taxpayer, M2M treats taxable transactions of any kind and the number of transactions is unlimited. If the taxpayer goes for this option, the tax authority may not initiate a tax audit within 15 days and the submitted VAT returns can be self-revised free of self-revision charges within this period.

Choosing eVAT also means that the taxable person will not be obliged to report purchase invoices upon which VAT deduction was performed.

eVAT currently remains an option, as an alternative to regular VAT returns (to be filed electronically as well).

E-receipts and e-cash registers are coming

The Hungarian legislator has also adopted the legal framework for e-receipts and e-cash registers; however, the introduction will most likely be delayed to 2025. E-receipts can be described as receipts issued by e-cash registers with an extended data content and attachments and kept in a cloud-based database. Customers will have a mobile application available through which the e-receipts can be downloaded and used for any commercial purposes (e.g. for warranty claims). Customers not making use of the mobile app should be provided with a hard copy, upon request. Furthermore, all receipts will be subject to online data reporting from 2025.

The new generation of e-cash registers with an online data reporting function are intended to replace the current online cash registers (still capable of automatic data reporting). The first e-cash registers are anticipated to operate from early 2025 with the current cash registers being phased out gradually by July 2028.

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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

Italy

Italian participation exemption regime to include non-resident companies

Pursuant to Law No. 213 of 30 December 2023 (Budget Law 2024), the Italian participation exemption regime (such as, for example, 95% exemption on capital gains from shares where certain conditions are met) has been extended to non-resident companies without a permanent establishment in Italy with respect to capital gains realised on the disposal of Italian-based companies.

The exemption can be applied if the seller is:

- a company or an entity engaged in a commercial activity; and
- resident for tax purposes in an EU or EEA country.

Furthermore, the participation must:

- qualify as a non-portfolio participation; and
- meet all established requirements in order for the Italian participation exemption regime to apply in the hands of Italian taxpayers.

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Italian taxation, please contact Barbara Pollicina at b.pollicina@pkf-tclsquare.it or call **+39 010 81 83 250** (Genoa office).

BACK

Italian exemption on sale of real estate collective investment vehicles

Pursuant to statement No. 76 of 22 December 2023, the Italian tax authorities have clarified that capital gains realised by foreign collective investment vehicles (CIVs), pension funds and other foreign institutional investors located in white-listed countries (pursuant to a ministerial decree of 4 September 1996) on the sale of Italian real estate CIVs are exempted from Italian capital gains taxes in accordance with article 5 of Legislative Decree No. 461/97.

Where the Italian CIVs derive most of their value from real estate properties located in Italy, the exemption still applies.

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Italian taxation, please contact Stefano Quaglia at s.quaglia@pkf-tclsquare.it or call **+39 02 9285 4246** (Milan office).

BACK

Shortened deadline for finalisation of TP documentation

Transfer pricing (TP) documentation in Italy allows for companies to benefit from the so-called penalty protection in case of a tax audit by the tax authorities on intra-group transactions, for which penalties generally amount to 90% of the higher tax assessed.

Following provisions introduced from tax period 2020, TP documentation must be finalised by the deadline for submitting the income tax return, communicating in the return the availability of the TP documentation.

Until tax period 2022, Italian taxpayers were required to file their income tax returns within 11 months from the end of the financial year. Therefore, in the event of a financial year ending on 31 December 2022, the income tax return had to be filed by 30 November 2023. Consequently, TP documentation also had to be finalised by that date.

From 2024, the deadline to submit the income tax return, and consequently to finalise the TP documentation, has been shortened from 11 to nine months.

Nonetheless, it is still possible to communicate the availability of TP documentation by means of a corrective income tax return within 90 days after the ordinary deadline and consequently the communication can be made by remission of the original tax return within the deadline for submitting the first useful corrective income tax return.

In conclusion, the new Italian regulations have only modified the deadline for the finalisation of the TP documentation and this change should be carefully considered where it is necessary to wait for the completion of TP documentation in foreign countries, in which case various Italian taxpayers will need to opt for communication within 90 days after the regular deadline.

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to transfer pricing, please contact Fabrizio Moscatelli at f.moscatelli@pkf-tclsquare.it or call **+39 02 9285 4246** (Milan office).

BACK

Jersey

Short term business visitors

From 1 January 2024, the rules regarding the tax liability of non-resident individuals working in Jersey have been relaxed. Where an individual spends less than 60 days in Jersey during the year to 31 December, they will not be liable to Jersey income tax in respect of any remuneration received for employment duties performed in Jersey. These employees are referred to as short term business visitors. This change will be primarily of interest to persons who may work in Jersey for an employer established in Jersey or persons working in Jersey for an employer established in a jurisdiction with which Jersey does not have a double tax arrangement that covers employment income.

For the purposes of counting whether a short term business visitor has spent 60 days or less in Jersey, a day will be counted where an individual is in Jersey for any part of that day.

The amendment only covers short term business visitors who are not otherwise resident for tax purposes and spend less than 60 days in Jersey.

The amendment also makes clear that employers who only have short term business visitors are not required to register with Revenue Jersey as an employer or withhold tax from the employees' remuneration.

Further guidance will be released in the coming months regarding the practical implementation of the new rules.

Enhanced deduction expenditure on RegTech

From 1 January 2024, eligible companies will be able to deduct 150% of qualifying expenditure related to the purchase and implementation of RegTech in the year of acquisition. By rewarding investment in automated processes, the policy intends to help businesses free up Jersey's workforce to focus on revenue-generating activities and innovation.

Only financial service companies that are liable to income tax at 10% and are regulated by the Jersey Financial Services Commission, withing the meaning of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, are eligible to claim the enhanced deduction for qualifying expenditure.

Eligible expenditure includes revenue and capital expenditure on the assets listed below as part of a regulatory compliance activity. A regulatory compliance activity is broadly an activity to prevent financial crime, the management of data, information and cyber risks or regulatory reporting analytics and compliance activity related to the aforementioned activities. The expenditure may be incurred on:

a) computer hardware;

b) software, including software subscriptions and licences; and

c) training that is delivered by an external provider on hardware or software.

Further guidance will be released in the coming months.

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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 Jersey taxation, please contact Anthony Chandlen at **anthonyc@pkfbba.com** or call **+44 1534 883 048**.

BACK

Malta

Various updates on notional interest deduction, deductions for intellectual property rights, OECD Pillar 2 and the Minimum Tax Directive

Guidelines in relation to the notional interest deduction rules ('the Rules')

The Malta Tax and Customs Administration issued guidelines in terms of article 96(2) of the Income Tax Act (Chapter 123 of the Laws of Malta). These guidelines are to be read in conjunction with the Notional Interest Deduction Rules (S.L.123.176) and have been issued with updates to point (ii), (iv) and included a new point (xiii).

Points (ii), (iv) and (xiii) now read as follows:

'ii. Approval for claiming the NID

The shareholders or partners in an undertaking, as the case may be, as at the end of the year preceding the year of assessment are required to give their approval for the undertaking to claim a NID by the earlier of the date on which the said undertaking files its income tax return for that particular year of assessment or the date on which any one of the said shareholders or partners ceases to be a shareholder or partner of the undertaking, as the case may be.

It is hereby being clarified that the approval mentioned in the previous paragraph must be given in respect of the year of assessment in which, and to the extent that, a claim for NID causes an actual reduction in the total income.'

'iv. Exchange of information

When the Commissioner exercises his discretion in terms of the proviso to subrule (3) of Rule 5 of the Rules to allocate the deemed interest income on a basis other than the nominal value of the risk capital held by the shareholder or partner, as the case may be, the criteria on which the Commissioner has based his decision in this respect shall be published as part of these Guidelines.

Any decision taken by the Commissioner in terms of the said proviso shall, where applicable, constitute an exchangeable ruling in terms of the Cooperation with Other Jurisdictions on Tax Matters Regulations [S.L. 123.127] and the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters Order [S.L. 123.150].'

'xiii. Other considerations

(A) Claiming of NID against foreign-sourced income arising from immovable property

The allowance of deductions from income which falls within the purview of Article 4(1)(e) of the Income Tax Act is regulated by the Deduction of Expenses in respect of Immovable Property Rules [S.L. 123.26].

It is hereby clarified that where an undertaking derives foreign-sourced rental income which falls within the purview of article 4(1)(e) of the Income Tax Act, that undertaking is also eligible to claim a notional interest deduction in respect of risk capital employed in acquiring the said income when determining the amount chargeable to income tax in Malta in terms of S.L. 123.26.

For the avoidance of doubt, the NID allowable as a deduction must not be taken into consideration when determining the 20% further deduction provided for in sub-rule 3(d) of S.L. 123.26.'

Deductions in respect of intellectual property and intellectual property rights

With effect from the period covered by the year of assessment 2024, any expenditure of a capital nature incurred on intellectual property (IP) or IP rights may, at the option of the person that has incurred such expenditure, be deducted in full under article 14(1)(m) of the Income Tax Act (Cap. 123 Laws of Malta) in the year that the expenditure has been incurred or in the year in which the IP or IP rights are first used or employed in producing the income.

With respect to expenditure of a capital nature on IP and IP rights that was incurred before the period covered by the year of assessment 2024, any deductions that were yet unclaimed as at the year of assessment 2023, may be claimed in full in the year of assessment 2024. Thus, if, for example, IP was acquired in the year of assessment 2023 and a 33.33% deduction of the expense was claimed in that year of assessment, the person can claim the remaining 66.67% in the year of assessment 2024.

The accelerated deductions being notified above may only be claimed against income produced through the use or employment of the IP or IP rights.

Transactions within an exclusive economic zone within the scope of Malta VAT

Act XXXV of 2023 has amended the definition of 'Malta' for the purposes of the VAT Act (CAP 406) to include the 'exclusive economic zone' and now reads: 'the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof, the continental shelf and subject to the provisions of sub-article (4), also includes any exclusive economic zone area'.

According to a new sub-article (4), for the purpose of sub-article (1), an exclusive economic zone area shall be deemed to form part of Malta only to the extent of activities undertaken pursuant to, or which are directly related to, an authorisation or licence granted in accordance with the Exclusive Economic Zone Act.

Taxation of gains or profit from activities carried out in an exclusive economic zone

Act XXXV of 2023 has revised the proviso to article 4(1) of the Income Tax Act (CAP 123) to stipulate that income or capital gains arising from activities carried out in an exclusive economic zone area are deemed to be carried out in Malta for the purpose of the Income Tax Acts only where such activities are licensed or otherwise authorised to be undertaken in accordance with the Exclusive Economic Zone Act. The proviso clarifies that transfers of assets situated within the exclusive economic zone area shall be deemed to have taken place in Malta and the provisions of articles 5 and 5A of the Income Tax Act apply accordingly.

A new enabling provision (article 96(5)) allows the minister for finance to make, amend, substitute or repeal rules or regulations in relation to the tax treatment of activities carried out within an exclusive economic zone area.

OECD Pillar 2

Malta will not be adopting the main components of the OECD Pillar 2 initiative in 2024. Instead, Malta will utilise the derogation provided by the Minimum Tax Directive, Council Directive (EU) 2022/2523 delaying the transposition of the income inclusion rule (IIR) and the undertaxed profits rule (UTPR).

The Minimum Tax Directive

The Minimum Tax Directive implements the Global Anti-Base Erosion Model Rules ('GloBE Rules') agreed upon by the OECD/G20 Inclusive Framework across the EU. These rules aim to impose a global minimum tax of 15% on multinational groups and large-scale domestic groups with an annual revenue of €750 million or more.

The rules include the IIR and the UTPR, which act as interlocking mechanisms to levy a top-up tax on profits with an effective tax rate below 15%.

The IIR requires parent entities to calculate and pay a top-up tax for low-taxed constituent entities they have an interest in, while the UTPR acts as a backstop for the IIR, imposing an additional cash tax expense on constituent entities subject to the GloBE Rules for any top-up tax not charged under the IIR.

The Minimum Tax Directive mandates all EU Member States to adopt both the IIR and UTPR, with the IIR applying from 31 December 2023 and the UTPR from 31 December 2024. However, Malta has exercised the right to delay the application of the IIR and UTPR for up to six consecutive years, in accordance with the derogation granted to Member States housing no more than 12 ultimate parent entities. For such Member States, the UTPR will apply to any top-up tax allocated to them by constituent entities within the EU from fiscal years beginning on or after 31 December 2023.

The GloBE Rules also allow Member States the choice to introduce a qualified domestic top-up tax (QDTT), which imposes a top-up tax on low-taxed constituent entities within their jurisdiction prior to the application of the IIR and UTPR.

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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

Various 2024 tax developments

Changes to the format for filing VAT declarations

On 1 February 2024, the tax authority launched the new provisional payment portal for the filing of the final monthly VAT declaration. The necessary amounts to calculate VAT will now be prefilled based on the content of the tax receipts issued and received in the month of the declaration, together with the payment complement (complemento de recepción de pagos).

One of the most important features of this update is the automatisation in obtaining tax information, since the format includes preloaded information obtained directly from the tax receipts and the payment complements. This provides greater security and accuracy for the taxpayer and for the tax authority and optimises the time to obtain data.

Additionally, preloaded information obtained in an automated manner can be edited by taxpayers in order for them to make the necessary modifications so that their tax filings are precise.

This update introduces a system in which accuracy is the key to avoiding issues with the tax authority.

Transformation of the Federal Court of Administrative Justice's structure

On 31 January 2024 an agreement was published that reduces the number of foreign trade specialised courts so the First and Second Foreign Trade Matters Courts will be transforming into a number of metropolitan regional courts.

So, foreign trade matters will return to the jurisdiction of the regional courts, contemplating the territorial jurisdiction that corresponds to the respective court.

Rate changes in remuneration taxes

Some states of Mexico have made rate modifications to remuneration taxes from 1 January 2024.

In Coahuila, for example, Congress approved in October 2023 an increase in the rate to 3%, i.e. a rise of 1% compared to last year. Meanwhile, in Chihuahua there was a decrease in the rate, from 3.5% to 3%.

Finally, Aguascalientes envisages the same rate; however, there is a total exemption for investors who decide to perform business in the state.

Audit Master Plan for FY24

On 22 January 2024 the tax authority published the Audit Master Plan in which it contends the principle points that the authority will use to monitor the correct compliance of tax obligations.

The Plan has three points: taxpayer assistance, income collection and tax audits, and it is noteworthy that from now on the authority will use artificial intelligence to focus on these points.

As regards income collection and tax audits, the authority will focus on credits with recovery potential, following up with taxpayers who fail to pay taxes, increasing audits and restricting digital seals to issue tax invoices only for taxpayers with simulated operations.

Therefore, audit behaviours will be focused on:

- corporate restructuring
- disposal of shares
- incorrect application of VAT
- capitalised liabilities
- VAT technologic platforms compliance
- foreign trade operations.

Actions to improve taxpayer assistance include:

- virtual offices
- application of benefits in cases of self-correction due to audits
- improvement in statement formats.

There are various economic sectors in which the authority will apply the aforementioned audit processes.

Temporality requirement for cancelling tax receipts

The Miscellaneous Tax Resolution, which is applicable from 1 January 2024, sets a temporality limit to cancel tax receipts.

The cancellation must be made no later than the month in which the annual declaration must be filed for the fiscal year in which the applicable tax receipt was issued.

Where this time limit requirement is not met, the taxpayer will be charged a penalty ranging from 5% to 10% of the value of the corresponding tax receipts.

Beneficial ownership information and reporting

From 2024 there is a new obligation for owners of entities such as limited liability companies, limited partnerships, corporations or certain types of trusts in the US. This is important for Mexican residents (individuals and legal entities) that have interests in US entities.

Under the new regulations, it is necessary to report who is the 'beneficial owner' of these corporations, i.e. those who own more than 25% of the entity or who exercise control over it.

If the entity was incorporated before fiscal year 2024, it has the entire year to file the information. However, for entities incorporated on or after 1 January 2024, there is a 30-day deadline (possibly to be extended to 90 days) to file the information.

Failure to comply or improper filing can result in fines of up to $500 per day and, in specific cases, imprisonment for up to two years. The importance of complying with this obligation is emphasised to avoid legal risks and disputes with US authorities.

No extension for the new version 3.0 of bill of lading (carta porte)

The tax authority has announced the update of the tax invoice with the bill of lading complement ('carta porte 3.0'). From 25 September 2023, the technical documentation corresponding to this new version of the complement has been made available. It is important to note that, at present, the use of the carta porte complement version 2.0 is still mandatory.

The entry into force of this new version will be scheduled for one month after its publication on the official website of the tax authority webpage. However, the tax authority has announced an extension of the deadline to 31 March 2024 for taxpayers obliged to use the tax invoice with the bill of lading complement, version 2.0, without incurring fines and penalties, despite the obligation to start using version 3.0.

Requirement of legal representatives' information

The Miscellaneous Tax Resolution, which is applicable with effect from 1 January 2024, introduces a new requirement which states that for tax purposes, details of a taxpayer's legal representatives must now be provided.

Previously, only people who are part of the organisational structure of a legal entity, as well as those who have control, significant influence or power of command were envisaged.

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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

Papua New Guinea

Changes to personal income tax

Personal income tax-free threshold maintained at PGK 20,000

The government of Papua New Guinea (PNG) decided in the 2024 National Budget to maintain the personal income tax-free threshold at PGK 20,000 per annum from 1 January 2024.

In the 2023 Budget, the government raised the income tax-free threshold temporarily to PGK 20,000 per annum from 1 January 2023 to 31 December 2023. The government has now decided to continue and maintain the threshold at PGK 20,000 per annum indefinitely from 1 January 2024 and onwards. The current rates which will continue from 1 January 2024 are as follows:

Rates for residents:

Taxable income (PGK)	Tax thereon (PGK)	Tax on excess (%)
20,000	nil	30
33,000	3,900	35
70,000	16,850	40
250,000	88,850	42

Rates for non-residents:

Taxable income (PGK)	Tax thereon (PGK)	Tax on excess (%)
0	nil	22
20,000	4,400	30
33,000	8,300	35
70,000	21,250	40
250,000	93,250	42

The government also announced the repeal of the dependant rebates effective from 1 January 2024. The concessional dependant rebates are PGK 1,050 per annum. However, the relevant Budget amendments have not been certified.

Developments on customs and excise taxes

Legislative amendments to the Customs Tariff Act 1990 and Excise Tariff Act (Chapter 107)

The PNG government passed legislative amendments to the Customs and Excise Tariff Acts in the 2024 National Budget to change some tax rates and these included:

- making permanent the second tier tobacco excise regime;
- reduction in progressive log export tax to 50% on average;
- reduction in import duty on soap noodles from 20% to 0% duty;
- reduction in import duty on flexible intermediate bulk containers from 10% to 0% duty;
- reduction in import duty on other packaging containers from 10% to 0% duty;
- reduction in import duty on boneless meat for manufacturing pork luncheon from 20% to 0% duty;
- reduction in import duty on margarine (shortening) used in manufacturing from 25% to 0% duty;
- reduction in import duty on caps used for beverages and the like from 20% to 0% duty; and
- reduction in import duty on mattress inner springs from 10% to 0% duty.

In respect of excise duty rates, these are expected to come into operation on 1 December 2023 while customs duty rates are expected to come into operation on 1 January 2024.

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

Modification of minimum interest rate allowed for national and foreign currency loans

Given that LIBOR rates will no longer be published, Legislative Decree 1545, gazetted on 15 March 2023, has entered into force on 1 January 2024.

It expressly establishes that all loans will accrue a minimum interest rate, even if the parties had agreed to a lower interest rate or had agreed the loan would not accrue any interest.

Loans issued in local currency will accrue interest at a rate no less than the monthly average active market lending rate in local currency (i.e. tasa activa de mercado promedio mensual en moneda nacional or TAMN, using the Spanish acronym), which is published by the Peruvian Banking Authority (Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones or SBS, using the Spanish acronym) and multiplied by an adjustment factor of 0.42.

Loans issued in foreign currency will accrue interest at a rate no less than the monthly average active market lending rate in foreign currency (i.e. tasa activa de mercado promedio mensual en moneda extranjera or TAMEX, using the Spanish acronym), which is published by the SBS and multiplied by an adjustment factor of 0.65.

The decree authorises the Ministry of Economics to update the referred adjustment factors, which must be greater than 0 and less than or equal to 1.

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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

Puerto Rico

Puerto Rico's Department of Treasury issues additional guidance for entities entering into public–private partnerships with the Puerto Rico government

Act No. 29 of 8 June 2009, known as the 'Public–Private Partnership Authority Act' ('Act No. 29-2009'), authorises government entities to establish public–private partnerships (PPPs) through partnership contracts ('Partnership Contract') with a partnering government entity to provide public functions, services or facilities, as defined in Act No. 29-2009. Implementation of Act No. 29-2009 is overseen by the Puerto Rico Public–Private Authority ('Authority') created in this Act.

Pursuant to section 12 of Act No. 29-2009, participants in a PPP are entitled to certain tax benefits in accordance with the agreements set forth in the Partnership Contract. Among the tax benefits available to the contractor of a PPP are the following:

- **Property tax exemption** – property tax exemption on real and personal property that constitutes the facility, or property used exclusively in or for the facility or for the services or functions that belong to the partnering government entity, and is made available to the contractor or that is acquired, built or owned by the partnership government entity and is made available to the contractor. The property tax exemption percentage shall be established by the Authority.
- **Municipal licence fees, excise taxes and other municipal taxes** – contractors and municipal governments may establish exemption for the payment of municipal taxes. Municipal governments are authorised to establish the terms and amount of the tax exemptions on such municipal taxes.
- **Income taxes** – the net income from the operations covered by a Partnership Contract will be calculated in accordance with the Puerto Rico Internal Revenue Code of 2011 ('PR Code'), but the income tax rate will be a flat income tax rate of 20% in lieu of any other income tax imposed by the PR Code including but not limited to alternative minimum tax. Distributions made out of the earnings and profits covered by the Partnership Contract will be exempt from income taxes. Also, a contractor under a Partnership Contract may not receive tax benefits provided for under Act No. 73 of 28 May 2008, known as the 'Economic Incentives Act for the Development of Puerto Rico', for the activity covered under such a contract.

However, Act No. 29-2009 is silent with respect to the responsibilities of a contractor in connection with the payment of sales and use taxes, excise taxes and the responsibilities of the contractor as an employer and withholding agent. Accordingly, the Puerto Rico Department of Treasury ('PRTD') has issued various administrative determinations to address some of these items.

Administrative Determination No. 20-06

The first guidance issued by the PRTD was Administrative Determination No. 20-06 ('AD 20-06') on 17 March 2020.

AD 20-06 addresses the tax rules applicable to contractors entering into operation and maintenance partnership contracts with government entities under Act No. 29-2009 or Act No. 120 of 21 June 2018, known as the 'Puerto Rico Electric Power System Transformation Act'.

Some of the key determinations stated in AD 20-06 are as follows:

i. fees collected by the contractor on behalf of the government entity from third-party customers and legally belonging to the government entity are excluded from the contractor's income and not subject to tax;

ii. reimbursements of pass-through expenditure incurred by the contractor on behalf of the government entity are excluded from income;

iii. the contractor is exempt from sales and use tax on items purchased on behalf of and becoming property of the government entity, provided the contractor obtains a certificate from the PRTD demonstrating it is acting as a government agent (however, tax applies to purchases for the contractor's own use);

iv. excise taxes on fuel and vehicles do not apply to items purchased on behalf of the government entity (if certified as such), but they apply to the contractor's own purchases;

v. the contractor is not subject to the 1.5% special tax under Act 48-2013, since it is not providing professional services but rather standing in the place of the government entity; and/or

vi. contributions to government retirement plans are tax-exempt for both employer and employee.

Administrative Determination No. 22-05

Administrative Determination No. 22-05 ('AD 22-05'), issued on 2 August 2022, covers the tax treatment of partnership contracts or long-term leases under Act No. 29-2009 entered into after its issuance date.

Some of the key determinations stated in AD 22-05 are as follows:

i. the upfront payment received by the contractor is amortisable over 15 years and improvements are depreciable over their useful lives;

ii. termination payments and other income are taxed at the 20% preferential rate, not the minimum alternate tax or the 10% deemed dividend tax (owners are exempt from tax on distributions of the net income);

iii. fees collected and retained by the contractor from customers, that were previously collected by the government entity, are taxed at 20% after expenses (however, fees collected but owed to the government entity under a revenue sharing provision are excluded);

iv. the contractor can request a certificate from the PRTD to make sales tax-free purchases on behalf of the government entity, but the contractor's own purchases remain taxable;

v. excise taxes apply to the contractor's purchases because the government entity's exemption does not extend to the contractor;

vi. the contractor is not subject to the 1.5% special tax under Act 48-2013 since it is not providing professional services;

vii. contributions to government retirement plans are tax-exempt for government employees that are hired by a contractor that enters into a Partnership Contract with a partnering government entity; and

viii. contractors entering into a Partnership Contract which, due to the specific factual background, requires a determination from the PRTD regarding certain tax considerations not specifically addressed in AD 22-05 should request the issuance of a private ruling from the PRTD.

Administrative Determination No. 23-04

Finally, Administrative Determination No. 23-04 ('AD 23-04'), issued by the PRTD on 28 November 2023, supplements the previous two administrative determinations regarding certain issues not expressly addressed. The definitions in the prior administrative determinations apply.

Some of the key determinations stated in AD 23-04 are as follows:

- **Treatment of the net income from the Partnership Contract derived by a contractor that is a pass-through entity or a disregarded entit** – AD 23-04 addresses how the special 20% income tax rate applies when the contractor is a pass-through entity or disregarded entity for Puerto Rican tax purposes.

  Pass-through entities themselves are not subject to income tax. Instead, the partners or members pay tax on their distributive share of the entity's income. Therefore, the 20% tax rate applies to the portion of the pass-through contractor's net income from the Partnership Contract that flows through to its partners or members.

  Similarly, a disregarded entity's income is reported directly by its sole owner. The 20% rate applies to the net income from the contract reported by the disregarded entity's sole owner.

- **Puerto Rican income tax withholding at source applicable to the distributive share of each partner in the net income from the Partnership Contract derived by a contractor that is a pass-through entity** – AD 23-04 also addresses the required estimated tax payments that a pass-through contractor must make on behalf of its partners or members. The applicable PR Code section generally requires 30% estimated payments on a partner's share of partnership income. However, income subject to a lower preferential rate under special laws requires estimated payments at that lower rate instead.

  Since the net income from a Partnership Contract is subject to a 20% preferential rate under Act No. 29-2009, a pass-through contractor must withhold estimated tax from its partners or members at 20% rather than 30% on the distributive share of the Partnership Contract net income.

  This rule is equally applicable in those cases in which the sole member of a disregarded entity is a pass-through entity for Puerto Rican income tax purposes. In that case, the distributive share of each partner in the net income from the Partnership Contract derived by the sole member of a disregarded entity that is a pass-through entity will be similarly subject to quarterly estimated tax payments at the preferential 20% income tax rate.

- **Treatment of the distributions of the income derived from the operations covered by the Partnership Contract** – AD 23-04 further clarifies that distributions from a contractor to its owners of earnings from Partnership Contract operations are exempt from income tax. This applies to initial as well as subsequent distributions made further up the chain of ownership.

PKF Comment

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

Significant 2024 tax changes

Corporate tax

For receivables registered from 1 January 2024, the deductibility of adjustments for the depreciation of receivables representing amounts owed by internal and external customers for products, semi-finished products, materials, goods sold, works performed and services rendered is limited to 30%.

From the year 2024 or the modified fiscal year starting in 2024, annual tax losses as established by the profit tax return can be set off against taxable profits, up to a limit of 70%, in the next five consecutive years.

Annual tax losses realised prior to 2024 that have yet to be utilised on 31 December 2023 can be set off against taxable profits arising in the year 2024 onwards, up to a limit of 70% of the applicable taxable profits. This loss relief is available over a period of seven consecutive years following the year the losses were recorded.

The deductibility of excess borrowing costs resulting from transactions/operations with affiliated entities, which do not finance the acquisition/production of fixed assets under construction/assets to be established by order of the Minister of Finance, will be limited to €500,000. This limit does not apply to credit institutions, Romanian branches of credit institutions, non-banking financial institutions, Romanian branches of non-banking financial institutions and investment companies.

The overall existing deductibility threshold of €1 million during a tax period is maintained in respect of total excess borrowing costs from transactions/operations carried out with both affiliated and non-affiliated entities.

Tax on microenterprise income

The shareholding condition for a company to be able to apply the microenterprise tax regime is amended to include direct and indirect shareholdings in one entity (previously the condition included direct shareholdings in no more than three entities). Accordingly, an entity may apply the microenterprise tax regime if, among other conditions, as at 31 December of the preceding fiscal year, shareholders held directly or indirectly more than 25% of the value/number of the participation titles or voting rights in a Romanian legal entity that applies the microenterprise tax regime.

Two new conditions were introduced for classifying a company in the category of microenterprises:

- The annual financial statements must be submitted in due time, if this obligation is required according to the law.
- The threshold of €500,000 regarding realised income is verified by taking into account the income generated by the Romanian legal entity, accumulated with the income of related enterprises, as defined according to the provisions of Law no. 346/2004 regarding the stimulation of the establishment and development of small and medium enterprises, with subsequent amendments and additions.

Additional minimum global tax regime

Law no. 431/2023 for ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups was published on 5 January 2024 in the Official Gazette No. 8 and:

- introduces a new mechanism for the taxation of groups of enterprises;
- enters into force in two phases, on 1 January 2024 and 1 January 2025;
- establishes measures for a global minimum level of taxation for multinational enterprise groups and national large-scale domestic groups;
- transposes into national legislation Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU.

The effective minimum taxation of multinational enterprise groups and large-scale domestic groups is implemented on the basis of the following rules:

a) **Income inclusion rule (IIR)** stipulates that an ultimate parent entity of an MNE group or of a large-scale domestic group, which is a constituent entity, will compute and pay in respect of the low-taxed constituent entities of the group its allocable share of additional tax on a multinational enterprise group.

b) **Undertaxed profit rule (UTPR)** underlines that a constituent entity of a multinational group is liable for tax that is recorded as an additional expense equal to its proportionate share of the supplementary tax which is not assessed under the IIR at the level of the ultimate parent company for the constituent entities of the group subject to reduced taxation.

The two rules form the Global Anti-Base Erosion Model (GloBE).

Additionally, for low-taxed constituent entities of the MNE group or of the large-scale domestic group, the law introduces the qualified domestic top-up tax (QDTT). This must be calculated on a priority basis, before applying the IIR and UTPR, and may reduce to nil the top-up tax due under the IIR and UTPR in other jurisdictions.

The legal provisions will implement the new procedures starting 8 January 2024, for financial years commencing on 31 December 2023, except for provisions related to the UTPR, which shall be applicable starting from financial years commencing on 31 December 2024.

The law consolidates the transitional Country-by-Country Reporting (CbCR), applicable only to MNE groups or QDTT groups that prepare CbCR reports based on qualified financial statements.

To qualify for the CbCR transitional safe harbour, constituent entities located in Romania must meet at least one of the following tests:

a) de minimis test (total revenue less than €10,000,000 and a profit/loss before tax less than €1,000,000);

b) simplified effective tax rate test (a simplified effective tax rate that is equal to or greater than the transitional rate in a jurisdiction for the financial year, being:r

  — 15% for financial years beginning before 1 January 2025;

  — 16% for financial years beginning in 2025; and

  — 17% for financial years beginning on or after 1 January 2026);

c) routine profits test (the profit or loss before tax is equal to or less than the substance-based profit exclusion).

The transitional period applies for a limited period of time. It starts no later than 31 December 2026, but does not include financial years ending after 30 June 2028.

The global minimum effective tax applies to the constituent entities that are located in Romania and are members of an MNE group or of a large-scale domestic group, those which are part of a group that has an annual revenue of at least the equivalent in lei of €750 million recorded in the consolidated financial statements of the ultimate parent entity, in at least two of the last four financial years (except for a governmental entity, a non-profit organisation, etc.).

VAT changes

As per the amendments introduced by Law 296/2023 to the Fiscal Code, the reduced VAT rate of 9% (increased from 5%) will be applied to the following services and supplies of goods:

- high-quality food (eco, bio or traditional food);
- real estate (usable surface area of a maximum of 120 sqm, excluding annexes) for which the value, including the land on which the property is built, does not exceed 600,000 lei (€120,000), without VAT;
- delivery and installation of photovoltaic panels, solar panels, heat pumps and other high-efficiency, low-emission heating systems, including installation kits, as well as all necessary components purchased separately;
- the delivery and installation of components for the repair and/or expansion of systems as a component part of construction deliveries, or as additional improvements when delivering a construction;
- services that consist of access to malls, amusement parks and recreational parks whose activities are included in NACE codes 9321 and 9329, fairs, exhibitions, cinemas and cultural events, other than those exempt from VAT.

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

- access to sports facilities whose activities are included in NACE codes 9311 and 9313;
- transportation services by trains or steam-powered vehicles on narrow gauge lines or using cable transport facilities – cable cars, chair lifts, ski lifts or in boats, for tourist or leisure purposes;
- transportation services for people with animal-drawn vehicles, used for tourist or leisure purposes; and
- services consisting of access to sports events.

For the following products, the VAT rate is increased from 9% to 19%: food containing at least 10g per 100g of added sugar or non-alcoholic beer, with the exception of Romanian specialties (i.e. traditional baked goods – cozonac) and biscuits.

Invoice submission via RO e-Factura system from 1 January 2024

The e-Factura system becomes mandatory from 1 January 2024 for all deliveries of goods and services taking place in Romania, made between taxable persons established in Romania B2B (business to business) and B2G (business to government).

The unique billing system will replace all other types of invoices, whether on paper or electronic.

Until 1 July 2024, regular invoices will continue to be accepted in conjunction with the e-invoices, but their reporting in the RO e-Factura system is mandatory regardless of the form of the invoice. Starting 1 July 2024, the invoices will be sent only via the e-Factura system and only the invoices submitted and validated in the system will be considered valid invoices. Starting from that date, all purchases based on invoices received in any other format risk being non-deductible. Only invoices transmitted and validated by ANAF will be considered valid.

The deadline for the transmission of invoices issued, for deliveries of goods and supplies of services that have the place of delivery or provision in Romania, in the e-Factura national system is five working days from the date of issue of the invoice, but no later than five working days from the deadline provided for the issuance of the invoice under article 319 (16) of the Romanian Tax Code.

Failure to comply with the deadline for sending invoices in the e-Factura national system constitutes a contravention and is sanctioned as follows:

- with a fine from 5,000 lei to 10,000 lei, for legal entities classified as large taxpayers, according to the law;
- with a fine from 2,500 lei to 5,000 lei, for legal entities classified as middle taxpayers, according to the law; and
- with a fine from 1,000 lei to 2,500 lei, for other legal persons as well as for natural persons.

For a brief transition period from 1 January to 31 March 2024, failure to comply with the deadline for sending invoices in the national system on electronic invoice RO e-Factura will not be sanctioned.

Starting from 1 July 2024, a 15% fine of the total value of the invoice will be applied as a sanction to the invoice beneficiaries who accept and pay invoices under the old format.

RO e-Transport

In the RO e-Transport system, the obligation to monitor international road transport of goods on the national territory has been introduced.

Thus, the identification of transported goods and the generation of unique UIT codes in the RO e-Transport system is carried out both for road transportation on the national territory of goods with high tax risk and for international road transportation of goods.

The obligation to declare in the RO e-Transport system the data related to the international transport of goods to obtain UIT codes rests with:

- the recipient listed in the import customs declaration or the sender listed in the export customs declaration for goods that are the subject of import or export operations, as appropriate;
- the beneficiary from Romania for intra-Community purchases of goods;
- the supplier from Romania for intra-Community deliveries of goods;
- the owner of the warehouse for goods that are the subject of intra-Community transactions in transit, both for goods unloaded on Romanian territory for storage or for the formation of a new shipment from one or more consignments of goods, as well as for goods loaded after storage or after formation of a new consignment on the national territory from one or more consignments of goods.

The road transport operator is obliged to equip the transport vehicle with telecommunication terminal devices. The driver of the vehicle is obliged to switch on the positioning device before starting a delivery on the national territory and to keep it in operation until reaching the declared place of delivery on the national territory or after leaving the national territory.

Sanctions for non-compliance with the new measures will apply from 1 July 2024. For example, failure to comply with the obligations to declare international shipments of goods in the RO e-Transport system is sanctioned with a fine from 20,000 lei to 100,000 lei, in the case of legal entities, as well as confiscation of the value of the undeclared goods.

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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 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

Recent changes to corporate and personal income tax

Minimum corporate income tax

With effect from 1 January 2024 a so-called tax licence was introduced which represents a minimum corporate income tax. The tax licence is the minimum tax after deducting tax allowances or tax paid abroad, according to the Slovak Income Tax Act ('the SITA'), that must be paid by the taxpayer for each tax period for which the tax liability reported in the tax return is less than the amount of the tax licence pursuant to the SITA, or by taxpayers who generated a tax loss. The amount of the minimum tax depends on the taxable income generated by the taxpayer in the respective tax period, as follows:

Taxable income (revenue)	Minimum tax (tax licence)
up to €50,000	€340
from €50,000 to €250,000	€960
from €250,000 to €500,000	€1,920
over €500,000	€3,840

Certain exceptions (e.g. for employers of disabled persons, newly established taxpayers, non-profit organisations, etc.) or reductions (e.g. for tax periods shorter than 12 months) apply.

A positive difference between the tax licence and tax reported in the tax return can be credited against the tax liability during the three tax periods following the tax period in which the tax licence was paid.

The minimum tax for the relevant tax period is payable within the deadline for paying the tax liability, i.e. within the deadline for filing the tax return. The minimum tax will apply for the first time for the tax period starting on 1 January 2024.

Increase in the income threshold for self-employed persons

A new upper threshold of taxable income for the application of the beneficial 15% tax rate of €60,000 is set as from 1 January 2024. The new threshold represents an increase of the limit compared to the original limit linked to the VAT registration threshold (currently €49,790). The change in the threshold for applying the 15% tax rate would apply for the first time for the tax period starting on 1 January 2024 at the earliest.

Increase in the tax rate on profit shares (dividends)

The tax rate on profit shares (dividends) paid to individuals is raised from 7% to 10% and will apply to dividends paid from the profit declared for tax periods starting on or after 1 January 2024. In case of a liquidation surplus, the tax rate increase occurs if the company or cooperative enters into liquidation on 1 January 2024 at the earliest. The same procedure is also applied with respect to the settlement shares.

New top-up tax in Slovakia

Following EU legislation and the minimum global tax, a new Act related to top-up tax entered into force in Slovakia. The top-up tax will apply to companies falling under an ultimate parent company with consolidated revenues of at least €750 million in two out of the last four accounting periods.

The deadline for submitting tax returns for the top-up tax and notifications has been extended from the originally proposed 13 months after the end of the tax period to 15 months after the end of the tax period. The rules on the top-up tax will be applied for tax periods beginning on 31 December 2023 at the earliest.

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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

South Africa

PAYE obligations for foreign employers

Following the 2023 National Budget on 21 February 2023, draft legislation was published on 28 July 2023 where it was proposed by National Treasury (NT) that all foreign employers would be required to register for employees' tax (PAYE) and make the necessary payments to the South African Revenue Service (SARS) in respect of remuneration paid to any employees located in South Africa (SA).

Many commentators including PKF made submissions and engaged in the stakeholder meetings with NT, advising that this would significantly increase the administrative burden on foreign employers and potentially increase unemployment levels in SA as foreign employers would look to employ personnel in other countries.

Following this process, the final legislation was promulgated, and this new law was revised to only apply to foreign employers who have a 'permanent establishment' (PE) in SA. The effective date of this new legislation is 22 December 2023, resulting in the first PAYE obligation to be in relation to remuneration paid or payable on or after 22 December 2023 which may result in certain foreign employers currently being non-compliant for PAYE purposes.

This non-compliance is mainly attributable to the fact that a reasonable number of foreign employers must first determine if their operations or employees located in SA would constitute the foreign entity having a PE in SA as this would then lead to the aforementioned PAYE obligation.

The Income Tax Act definition of a PE makes reference to the definition contained in Article 5 of the OECD guidelines and Model Tax Convention on Income and Capital. A general definition of a PE is provided, as being a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Based on this general definition, most foreign entities would assume that in order to have a PE in SA they would be operating a branch in SA (e.g. having an office or premises located in SA with personnel that operate from such a location and regular business transactions are undertaken which causes a PE to arise).

The PE definition, however, extends much wider than that and can arise in instances that would not ordinarily seem like a PE, for example:

- a senior level employee working from their home office located in SA and part of that employee's job description may include signing powers to enter the foreign company into contracts, etc.;
- a construction project that is ongoing for at least a period of six months;
- a foreign company that rents storage property in SA to import and temporarily store goods that it has already sold to SA customers (pre-ordered before exporting to SA). This company may regard itself as merely a distributor and doing business with SA customers as opposed to carrying on a business in SA as the majority of the functions relating to the transaction are undertaken abroad and it merely has one employee located in SA to assist with distribution.

The application of the PE principle in relation to foreign employers is complex and requires a thorough analysis of the relevant double taxation agreement and potentially the multilateral agreement applicable in respect of the foreign company's tax jurisdiction and SA, as well as a proper understanding of all the facts. Hence, there is no general rule, and each case would have to be assessed separately by a qualified tax professional to make this determination.

It is recommended that foreign employers should not rush to register for PAYE, unless they are certain that they have a PE (e.g. a fully operational branch) in SA, but should obtain a tax opinion to confirm their position and thereafter undertake a PAYE registration, if applicable.

In circumstances where a foreign employer obtains a tax opinion that confirms that the foreign company does have a PE in SA, but has not registered for PAYE with SARS, this non-compliance may be remedied. One of the remedies, which can minimise or eliminate potential penalties is the utilisation of the voluntary disclosure programme (VDP) that SARS has available.

PKF Comment

The VDP process has strict criteria in order for the application to qualify, hence professional tax advice should once again be sought in this regard.

Should you require assistance or have any queries regarding this new PAYE obligation for foreign employers, please contact Paul Gering at paul.gering@pkf.co.za or call **+27 31 573 5000**.

BACK

New advanced pricing agreement legislation introduced in South Africa

Multinational enterprises (MNEs) are generally regarded as connected parties and/or associated enterprises located in different jurisdictions. Section 31 of the Income Tax Act requires that MNEs must transact with each other at arm's-length prices when transferring goods or services.

The OECD arm's-length principle helps MNEs determine transaction prices as if subject to market forces. The transfer prices set for transactions between unconnected persons serve as benchmarks to assess those between connected persons. Discrepancies may lead to potential adjustments and transfer pricing disputes between taxpayers and tax authorities.

To mitigate transfer pricing disputes, the OECD advocates for proactive and transparent discussions between taxpayers and tax authorities. A key mechanism is the use of advance pricing agreements (APAs), serving as a proactive tool to encourage early engagement and prevent disputes. In essence, APAs are formal agreements between taxpayers and tax authorities, facilitating the collaborative establishment of transfer prices for transactions involving connected parties.

Taxpayers dissatisfied with double taxation on a transaction typically follow the dispute process in the relevant tax jurisdiction, followed by applying for the mutual agreement procedure (MAP) or mandatory binding arbitration (where implemented). While these mechanisms address transfer pricing adjustments and document non-compliance reactively, the challenge lies in their limited proactive application. As long as these are the primary and only options available, transfer pricing disputes and double taxation issues remain inevitable. Therefore, it is crucial to develop and implement alternative methods, like APAs, that encourage proactive and upfront engagement between taxpayers and tax authorities to address transfer pricing disputes.

It is noteworthy that South Africa (SA) has recognised the significance of offering taxpayers increased confidence and predictability in managing their tax affairs, as evidenced by the APA programme being legislated on 22 December 2023.

The implementation of the APA programme in SA is advantageous as it reduces or eliminates regulatory uncertainties for MNEs determining transfer prices on an arm's-length basis, aligning with OECD guidelines. This, in turn, diminishes the risk of entities undergoing audits and incurring additional tax liabilities upon reaching an agreement on an arm's-length price. Consequently, the APA process enhances SARS' efficiency in combating base erosion and profit shifting (BEPS), allowing more time for implementation efforts rather than focusing on monitoring compliance through audits.

The APA process serves as a driving force for corporate governance, reinforcing governance for MNEs in tax administration. Additionally, it signals their commitment to complying with tax laws and meeting obligations voluntarily. Simultaneously, the process ensures tax authorities receive an equitable share of profits from MNE intra-group transactions, enabling the reallocation of resources to address other tax compliance matters.

PKF Comment

In summary, the implementation of the APA programme provides mutual benefits for both taxpayers and SARS, significantly reducing the likelihood of future disputes and alleviating the workload and capacity constraints faced by SARS officials.

Should you require assistance or have any queries regarding this new APA legislation, please contact Monique Fernandes Carvalho at moniquec@pkfoctagon.com or call **+27 76 981 5378**.

BACK

Switzerland

Introduction of OECD/G20 minimum tax rate with effect from 1 January 2024

During its meeting on 22 December 2023, the Federal Council decided to begin levying the supplementary tax in Switzerland from 1 January 2024. With this supplementary tax, Switzerland will ensure a minimum domestic tax rate of 15% for large multinational enterprises whose turnover exceeds €750 million. The Federal Council will decide on other elements of the OECD/G20 regulatory framework at a later date.

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PKF Comment

The introduction of the supplementary tax in Switzerland prevents erosion of the Swiss tax base in favour of other countries and shows Switzerland's eagerness to preserve its economic interests, to avoid administrative hurdles and, last but not least, to be internationally compatible.

Tax information – transfer pricing

The Swiss Tax Conference (cantonal as well as federal tax authorities) has for the first time published an official paper regarding the applicable transfer pricing guidelines in Switzerland. The paper is closely linked to the OECD guidelines and basically states that, where sensible, the OECD guidelines should also be applied from a Swiss perspective. Noteworthy is the fact that it is clearly mentioned that the federal and cantonal tax authorities are independent and can therefore have different views on the applicable guidelines. In case of getting a tax ruling for the applicable transfer pricing mechanism, it is therefore highly advised to file the tax ruling with the federal as well as the cantonal tax authorities.

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PKF Comment

Finally, the tax authorities have taken a stand regarding the long-lived practice to apply the OECD guidelines also in Switzerland. However, due to the fact that this paper is no source of law, deviations are still possible.

Safe harbour rates for interest payments to/from related parties

The federal tax authorities published the applicable safe harbour interest rates for Swiss as well as foreign currency. Interest payments to/from related parties not in line with the safe harbour rates can trigger adverse tax consequences.

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PKF Comment

Interest payments between related parties are always subject to discussions with the tax authorities in cases where they do not meet the safe harbour rates – good documentation of meeting the arm's-length principle is highly recommended in case of a deviation.

Developments regarding home office

Additional agreement to double tax treaty with France

The additional agreement regulates in particular the taxation of cross-border remote working of up to 40% of working hours per year and thus takes into account developments in the area of remote working.

International developments

Switzerland has updated the double tax treaty with Slovenia to implement the anti-abuse standards for double tax treaties (not in force yet).

The amended double tax treaty with Tajikistan implementing the anti-abuse standards has been in force since 2 November 2023.

Further, Switzerland has signed a new double tax treaty with Angola – in order to come into force, the double tax treaty needs to be approved by the parliaments of the respective countries.

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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

Cryptocurrency taxation rules

The Law of Ukraine On Virtual Assets No. 2074-IX was adopted on 17 February 2022 (a few days before the conflict in Ukraine started). However, it has not entered into force yet. It is set out that the Law shall enter into force from the effective date of another law on virtual assets taxation. In November 2023 the draft of the relevant tax law was submitted before the Ukrainian Parliament and it faces a lengthy legislative procedure.

It is worth mentioning that crypto transactions are not prohibited in Ukraine. Nevertheless, cryptocurrencies are not recognised as money, electronic money or a means of payment. Thus, at present, virtual assets and cryptocurrencies have neither a specified legal status nor a special tax regime in Ukraine.

According to the Ukrainian tax authorities, this does not mean that cryptocurrency transactions are outside of the tax system and should not be taxed. The controlling bodies emphasise such transactions should be taxed under the general rules set out by Ukrainian tax legislation.

To be specific, an individual's income derived from a cryptocurrency sale should be included in the scope of annual taxable income as foreign income (if the income is foreign-sourced) or other income (if the income was derived within the territory of Ukraine).

The funds received by the taxpayer from cryptocurrency transactions (taxpayer's income) are subject to tax under the following rates:

- personal income tax of 18%; and
- military duty of 1.5%.

The obligation to withhold and pay taxes lies with the tax agent (if the income is paid by a resident of Ukraine) or with the individual who receives the cryptocurrency income (if the income is foreign-sourced).

It should be noted that individual entrepreneurs (single taxpayers under the simplified tax system) are not allowed to receive cryptocurrency income and sell cryptocurrencies within their business activity (at least not before the abovementioned laws enter into legal force).

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PKF Comment

The conflict in Ukraine delayed a lot of promising legislative initiatives. Virtual assets and cryptocurrency legislation are one of them.

It is worth mentioning that during the two years of the ongoing conflict, the Ukrainian tax system has only undergone minimal changes, for obvious reasons. However, recently, a big post-conflict tax reform was announced. After the end of the conflict we should expect a change in the mindset of the tax administration, a review of the simplified taxation system, a progressive personal income tax scale, changes to income taxation and a broad review of privileges. The envisaged measures were named in the National Revenue Strategy until 2030 and will be realised in line with European countries' best practices.

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 Yuliia Yaniv at y.yaniv@pkf.kiev.ua or call **+380 44 501 25 31**.

BACK

United States

IRS launches transfer pricing initiative to review inter-company transactions of multinational groups

The Internal Revenue Service (IRS) has launched an initiative to identify taxpayers that may not be compliant with US transfer pricing rules (§482 of the Internal Revenue Code (IRC) and regulations thereunder). Highlights include:

- Taxpayers that receive a notice from the IRS must declare under penalties of perjury whether they comply with US transfer pricing rules. A non-response will likely increase the risk of a formal audit. If a taxpayer states that they comply with US transfer pricing rules, supporting documentation must be submitted with their IRS notice response.
- The IRS stated target is mainly 'large foreign-owned US corporations', but it is sending out notices to taxpayers that do not match this profile.
- US taxpayers that file Forms 5472, 5471, 8858 and 8865 should review their transfer pricing policies, processes and procedures and consult with their tax advisor regarding this compliance review campaign.
- Although the US transfer pricing rules do not require the submission of transfer pricing documentation with a tax return, it still needs to be in place by the time a tax return is filed.
- The required documentation is necessary to reduce or eliminate penalties in the case of adjustments during a tax audit.
- Transfer pricing documentation under OECD rules including a US affiliate's local file may not be accepted for US transfer pricing purposes and, thus, would not prevent the IRS from imposing severe penalties in case of adjustments.

Backdrop

US transfer pricing rules (IRC §482 and regulations thereunder) allow the IRS to make adjustments to the income, deductions, credits or allowances if transactions between related parties (controlled transactions) do not meet the arm's-length standard. Generally, a controlled transaction meets the arm's-length standard if the results of the transaction are consistent with the results that would have been realised if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's-length result). The IRS stated purpose of a transfer pricing adjustment is to clearly reflect taxable income and prevent the evasion of US tax. Penalties can be up to 40% of the unpaid tax under certain circumstances.

IRS campaign

The IRS has now begun to act on a new enforcement initiative that was announced on 20 October 2023. Although the initiative is called 'large foreign-owned corporations transfer pricing initiative', it appears that the IRS is also reaching out to taxpayers that do not match this profile. Thus, taxpayers with international related party transactions with sustained low profitability or losses have a higher risk of being selected by the IRS.

The IRS has begun to identify taxpayers based on information provided with tax returns and is sending notices to taxpayers about the fact that they have reported losses or low margins on their prior year tax returns and that they may not be in compliance with US transfer pricing rules. The taxpayers are advised to review their transfer pricing policies and to amend prior years' returns, if needed.

In its communication, the IRS is expecting a response from taxpayers under penalties of perjury stating whether they have complied with US transfer pricing rules in the past or whether they are amending tax returns. If the taxpayer confirms compliance with US transfer pricing rules, a description of the transfer pricing policy and supporting documentation must be submitted with the response.

What happens if the taxpayer does not respond? It is likely that a non-response will increase the risk of being selected by the IRS for a formal audit.

IRS targets

Although it seems the IRS is mainly targeting inbound distributors, it is likely that other entities in a group's supply chain will be looked at in the future and all types of controlled transactions between related parties may be reviewed to determine whether they are in compliance with the arm's-length standard. Controlled inter-company transactions may include the inter-company use of intangibles (trademarks or patents), sale of tangibles, inter-company services and related party loans. It specifically includes management fee charges paid by a US subsidiary for services provided by another entity in the controlled group such as payroll or IT services. Another example is licence fees or royalties payable for the use of related party trademarks or patents.

One of the more common scenarios that is now under investigation is where a foreign business has incorporated a US subsidiary to distribute tangible products to customers. The US subsidiary is buying these products from the parent company or any other entity in a controlled group and is selling the products to customers in the US or abroad. In this scenario, the foreign related party's selling price for the products it sells to the US subsidiary has to satisfy the arm's-length standard. A purchase price that does not meet the arm's-length standard may lead to low profitability or even losses for the so-called inbound US distributor. This is a ripe area for IRS scrutiny.

Who's at risk?

Taxpayers submitting the following forms with their tax returns are at risk of being selected by the IRS as these forms include information about related party transactions:

- Form 5471, Information Return of US Persons with Respect to Certain Foreign Corporations;
- Form 5472, Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business;
- Form 8858, Information Return of US Persons with Respect to Foreign Disregarded Entities and Foreign Branches; and
- Form 8865, Return of US Persons with Respect to Certain Foreign Partnerships.

It should be noted that not only foreign-owned companies may be selected by the IRS but also US entities that own foreign businesses.

Why haven't taxpayers completed their transfer pricing documentation in the past?

In the past, many US taxpayers subject to the transfer pricing rules did not prepare transfer pricing documentation for several reasons. Some reasons include:

- Transfer pricing documentation must be prepared on a group level in accordance with OECD guidelines including a master file and local files. Local files typically include a US local file reporting much of the same information and analysis the IRS requires. However, although US transfer pricing rules are similar to OECD rules, they are not the same and US taxpayers falsely believe they have complied with their transfer pricing obligations. However, the IRS might reject the master and local file in case of an examination and would request transfer pricing documentation required under US rules. Since the US documentation would not be in existence by the time a tax return was submitted, the companies would not be protected against penalties in case of an adjustment.
- The IRS has not, prior to this initiative, proactively sought after taxpayers who are not in compliance with transfer pricing rules.
- The untrue perception that there is sufficient time to perform a full transfer pricing study if the issue is raised in an IRS examination.
- Taxpayers have mistakenly believed that the cost of a transfer pricing study far outweighs the benefits of the penalty avoided. This misconception could not be further from the truth since the potential penalty is 40% of the increased tax resulting from an IRS adjustment.

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PKF Comment

Taxpayers that are subject to the US transfer pricing rules should review their inter-company transaction policies and consult with their tax advisor. It should be noted that, in addition to the IRS looking at transfer pricing activities at a federal level, this is also an issue on a state level in the US. We refer to our **publication** from 6 July 2022.

PKF O'Connor Davies is following all developments in this transfer pricing initiative and will report on IRS activities in the future. Our international tax group can assist in responding to IRS notices and provide taxpayers with the following transfer pricing-related services:

- analysis of existing transfer pricing documentation/policies
- preparation of benchmarking studies
- preparation of annual transfer pricing documentation that is in compliance with US transfer pricing rules and regulations.

If you believe the above measures may impact your business or personal situation or require any advice with respect to US taxation, please contact Leo Parmegiani at **lparmegiani@pkfod.com** or call **+1 646 699 2848** or Ralf Ruedenburg at **rruedenburg@pkfod.com** or call **+1 646 965 7778**.

BACK

Global mobility: taxation of 401(K) payments in non-US jurisdictions – Germany

The US–German tax treaty allocates the right to tax 401(k) payments that German tax residents receive solely to Germany. Under German tax rules and regulations, 401(k) payments are treated as other income.

A recent German tax court decision determined that 50% of the difference between 401(k) contributions and a lump-sum payment received by a German tax resident has to be included as taxable income and is subject to individual income tax in Germany.

Generally, non-US individuals need to consider the US tax implications when participating in 401(k) plans while working in the US and for payments that will be received after retirement when they may not be US tax residents anymore.

If the 401(k) distributions are subject to tax in a non-US jurisdiction, taxpayers may have to produce supporting documentation to show contribution amounts so that taxable profit can be calculated.

Background

Social Security, governed by the US Social Security Administration, and retirement savings plans, such as 401(k) plans, are two of the key systems from which American workers can receive payments after retirement. 401(k) plans can be offered voluntarily by employers and are generally funded by pre-tax contributions from employees. Employers may match all or part of the contributions. In either case, amounts are contributed to the plans on a pre-tax basis. Contributions are generally invested in equity or bond funds based on the risk strategy determined by the employee. The return on investment over the years is typically higher than that which would have been earned in the social security system.

401(k) plans determine eligibility to participate based on the plan documents. Multinational employers may offer participation in the plan to non-US expatriates who are assigned to work in the US for a certain period of time.

Contributions to 401(k) plans are pre-tax, i.e. the portions of the salary or wages that are paid into the plan during employment are not subject to income tax. Withdrawals from the plan are subject to ordinary income tax rates. Penalty-free distributions are possible after the age of 59 and a half. Early distributions are subject to an additional 10% tax unless an exception applies.

Non-US expatriates

As expatriates generally return to their home country after their US assignment, they are not US tax residents when they are eligible for 401(k) withdrawals unless they are still US tax residents as US citizens or green card holders.

The question then arises, if and where 401(k) payments in the form of one-time payments or periodic recurring payments are subject to tax. In general, the 401(k) payments would be sourced to the US where the services were rendered. If, however, the US has a tax treaty with the foreign jurisdiction, treaty documents must be analysed to determine which country has the right to tax the payments.

US–German tax treaty – treatment of 401(k) payments

A recent tax court decision in Germany determined that 50% of the difference between 401(k) contributions and a one-time payment received is subject to income tax in Germany as other income. The decision is not final and has not been decided yet by tax courts in Germany. The parties have appealed, and the case is now with the tax supreme court.

The case

A German citizen was assigned to work in the US for a period of nine years. During this time, he participated in a 401(k) plan and made pre-tax contributions. He was eligible to withdraw funds from the plan after he had returned to Germany. At that time, he was solely a tax resident of Germany. He reported a one-time lump-sum distribution and claimed tax-free treatment according to German tax rules. The German tax authorities denied the claim and included 100% of the difference between contributions made by the taxpayer to the 401(k) plan and the amount received as taxable income. The taxpayer appealed and the case was decided by a tax court in Germany.

The decision (on appeal)

The tax court ruled that 401(k) payments fall under Article 18 of the US–German tax treaty. Article 18 assigns the right to tax such payments solely to Germany if the recipient is a German tax resident only.

Under German tax rules and regulations, 401(k) payments are subject to income tax as other income because 401(k) plans are similar to certain pension plans in Germany. There is no limitation to domestic retirement plans when it comes to the determination whether income is taxable in Germany or not. In this specific scenario, 50% of the difference between contributions made by the taxpayer and the amount received were subject to income tax in Germany.

As this matter has not been decided previously, the tax court allowed the parties to appeal the decision. The case is now with the tax supreme court in Germany.

The following table shows the contributions made, lump-sum distribution received as well as the initial tax treatment and correction after the tax court decision. The amounts are rounded.

401(k) contributions	$200,000
Lump-sum distribution	$300,000
Difference	$100,000
Initially included as taxable income in the year of distribution	$100,000
Amount to be included as taxable income in the year of distribution according to the tax court decision	$50,000

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PKF Comment

PKF O'Connor Davies will follow the developments in this case and will report in the future about the outcome of the tax supreme court decision in Germany.

Tax implications for expatriates when participating in retirement plans in the US need to be considered as part of the tax planning, and they should include an analysis of tax implications related to payments that may be made long after the working assignment has ended.

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

BACK

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