PKF worldwide tax update

June 2023

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

Contents

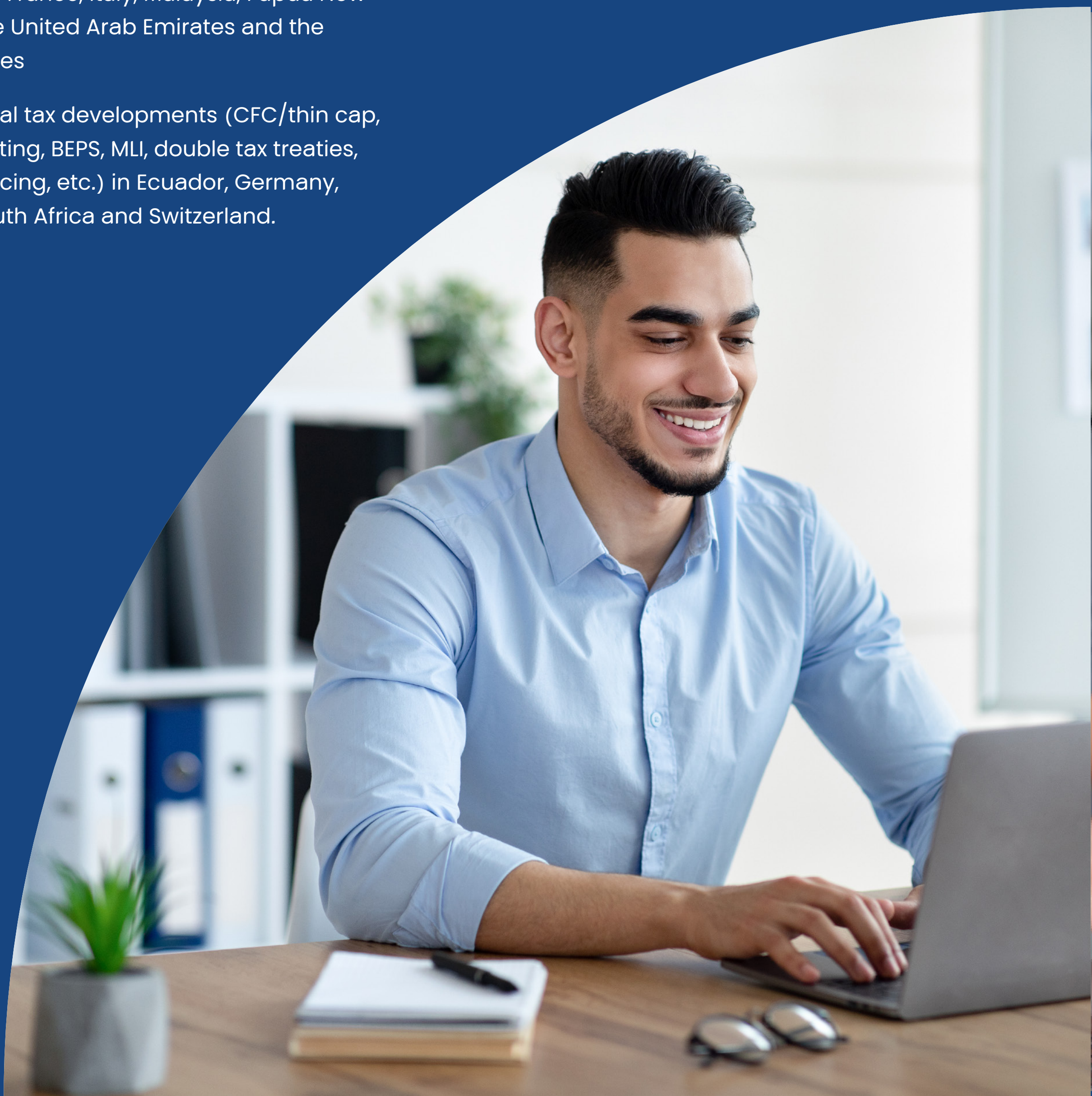
Welcome

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

In this issue featured articles include discussions on:

- (EU) VAT updates in Romania and Slovakia
- Case law and administrative rulings in Chile
- Significant personal and corporate income tax changes in France, Italy, Malaysia, Papua New Guinea, the United Arab Emirates and the United States
- International tax developments (CFC/thin cap, CbC Reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in Ecuador, Germany, Poland, South Africa and Switzerland.

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



Chile

Prevention of double taxation with respect to the dual application of transfer pricing and thin capitalisation regulations

A company recently requested an **administrative response** from the tax authority ('SII') with respect to the application of the taxes established in articles 41 E and 41 F of the Income Tax Law ('LIR') regarding interest on a loan that the company had to pay to a related company domiciled abroad.

Legal background

Article 41 E of the LIR

Article 41 E of the LIR, introduced by Law 20,630 and effective from 27 September 2012, provides rules on transfer pricing for:

- transactions between related parties;
- dealings between PEs (branches) and head offices or other PEs of the same enterprise; and
- business restructuring and company reorganisations that involve the transfer abroad of assets and activities that could generate taxable income in Chile (effective from 1 October 2014 under Law 20,780).

The rules are based on the arm's-length principle and cover definitions of related parties, transfer pricing methods, studies, adjustments by the tax administration, reporting obligations, advanced pricing agreements (APAs) and corresponding adjustments.

Article 41 F of the LIR

Effective from 1 January 2015, thin capitalisation rules are governed by a new article 41 F of the LIR.

Thin capitalisation measures (known in Chile as 'excessive indebtedness') provide that excessive interest is subject to a final tax at a rate of 35% (these rules do not recharacterise the interest payments as dividends). These rules apply to outbound interest paid on excessive debt and put the liability for the 35% tax on the payer of the interest.

The facts

AAA SpA is a Chilean shipping company that is part of a Norwegian business group whose business is the exploitation of all kinds of vessels and the provision of maritime transport services for the fishing and salmon industry.

In the context of a tax audit of year of assessment 2020, the transaction reported by the taxpayer in affidavit No. 1907 on transfer pricing with respect to accrued interest on a credit or financing with a related company domiciled in Norway was reviewed.

The audit revealed that the interest reported in the declaration resulted from the balance of the price of a purchase and sale of a ship and began to accrue from 2017. However, it was determined that the interest rate agreed in the operation was higher than that which would apply under normal market conditions in accordance with the provisions of article 41 E of the LIR, and thus not at arm's length.

The single tax of article 41 F of the LIR was declared and paid in year of assessment 2020, and the interests associated with the operation that were paid in the period were included in the tax base of this tax.

The company requested confirmation of the application of the tax of the first paragraph of article 21 of the LIR with respect to the differences determined by virtue of article 41 E of the LIR regarding the interest of the credit purchase and sales operation and clarification of the method that prevents the application of two unique taxes to the same legal fact, taking into consideration that part of the interest of the operation was incorporated by the taxpayer in the tax base of the tax of article 41 F of the LIR in the year of assessment 2020.

Analysis by the SII

As already stated above, article 41 F of the LIR establishes a 35% tax levied on certain amounts that affect the results of a taxpayer domiciled, resident, established or incorporated in Chile, that are paid, credited to the account or made available for the direct or indirect benefit of foreign related companies, by virtue of loans, debt instruments and other contracts or operations referred to in article 41 F, and that correspond to the excessive indebtedness determined at the end of the fiscal year.

As already stated above, article 41 E of the LIR authorises the SII to challenge the prices, values or returns set by taxpayers in operations carried out with related parties, or to establish them if they have not been set, when they do not conform to normal market parameters, following the procedures and methods established in article 41 E, i.e. when they are not at arm's length.

In accordance with the provisions of No. 4 of article 41 E of the LIR, the differences determined by the SII by virtue of the price adjustments, values or normal market returns made by the SII, will be allocated to the year that corresponds to the tax of the first paragraph of article 21 of the LIR.

SII conclusions

According to the SII, articles 41 E and 41 F of the LIR are independent control regulations with different taxable facts and both taxes must be applied in accordance with the relevant regulations and, by express provision of the law, the indicated taxes are applied on a single basis.

In order to avoid the taxpayer being taxed on the same amounts with two taxes that are unique, the interest incorporated in the tax base of article 41 F of the LIR must be deducted from the differences determined by virtue of the adjustment of No. 4 of article 41 E of the LIR, being deducted from the tax base of the tax of the first paragraph of article 21 of the LIR.

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

Ecuador

Recent tax developments

- On 11 May 2023, China and Ecuador signed a free trade agreement (FTA), making Ecuador the fourth Latin American trading partner of China. The agreement covers topics such as national treatment of goods, market access, sanitary and phytosanitary measures, economic and investment cooperation, e-commerce and competition, among others. China and Ecuador will cancel tariffs on 90% of tax items, 60% of which will be cancelled as soon as the agreement is effective.
- The Ecuador Foreign Trade Committee has published a new list of tariffs replacing the previous list included in Resolution 020-2017.
- Resolution No. 002-2023 was adopted in the session of 2 March 2023, and will enter into force on 1 September 2023, without prejudice to its publication in the Official Gazette. It can be accessed here (in Spanish only).
- On 1 March 2023, Costa Rica and Ecuador signed an FTA, in San José.

PKF Comment

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

BACK

France

New requirement to report occupancy of primary and secondary properties

From 1 January 2023 to 30 June 2023, all owners of real estate for residential use in France must declare the occupation of their properties to the French tax authorities.

This obligation applies to all owners – individuals and companies – of real estate in France, regardless of the type of property (direct or indirect ownership – assets held through 'SCI' (French real estate companies) are included). All owners of a primary or secondary residence, whether rented or not, must indicate for each of their properties whether they occupy it or declare the identity of the persons who occupy it. They must also indicate the period during which the property is rented or occupied by another individual or by themselves.

In order to make the declaration, owners must log on to their personal or professional space on the 'impots.gouv.fr' website with their tax number and password and go to the 'Real Estate' tab to make a declaration of occupancy (main residence, secondary residence, rented premises, premises occupied free of charge, vacant premises) and of monthly rent (optional) for each of their properties.

Only a change of situation will later require a new declaration because the occupancy data known to the tax authorities will be pre-displayed.

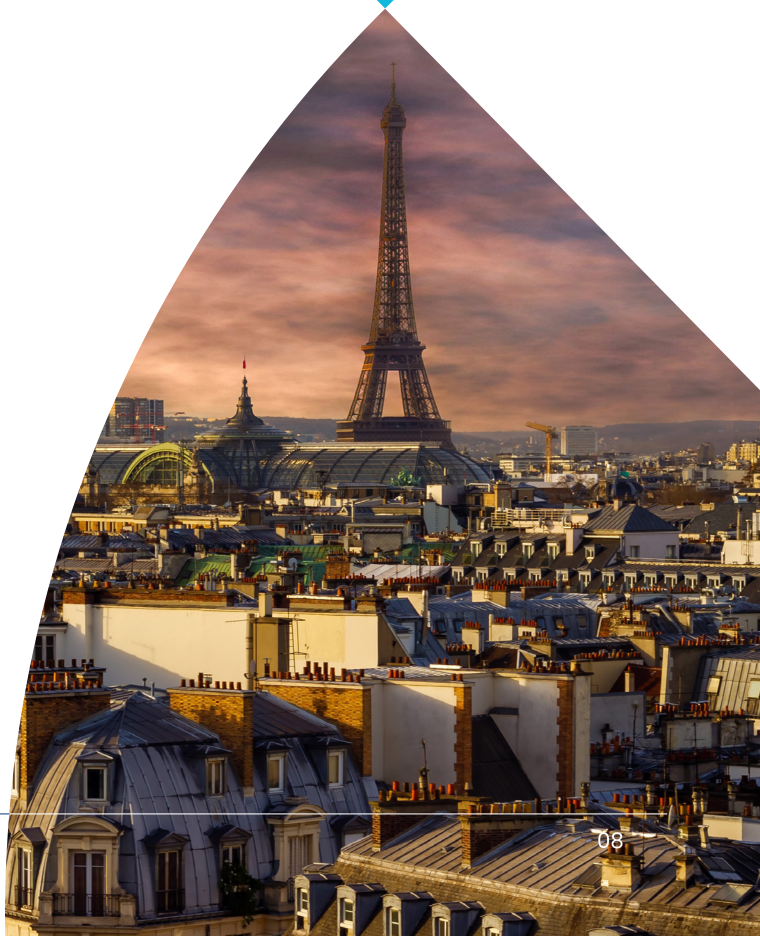
The purpose of this new declaration is to identify the primary and secondary residences of property owners in France, as the occupancy tax was abolished for primary residences from 2023 but maintained for secondary residences.

Measures to support businesses in paying their gas and electricity bills

Many measures have been adopted to help businesses cope with rising energy prices.

The 'tariff shield' ('bouclier tarifaire') aims to limit the increase in electricity costs to 15% and benefits so-called very small businesses ('VSEs') that have a low-power electricity meter.

This measure applies to all expenses incurred between 1 February 2023 and 31 December 2023. In addition, a limitation of the price of electricity to EUR 280/MWh has been implemented at the level of



VSEs that do not benefit from regulated electricity rates. Companies can benefit from this measure if they have fewer than ten employees, a turnover of less than EUR 2 million and if they have renewed their electricity supply contract during the second half of 2022.

In addition, a measure has been put in place for SMEs to support those who have higher energy contracts. In concrete terms, the government will pay the difference between the contracted energy price and EUR 180/MWh (i.e. EUR 0.18/kWh) on 50% of the electricity consumed.

The French government will therefore intervene directly with regard to electricity bills, which are currently increasing in tandem with the wholesale market prices, and will thus pay part of the electricity bill.

Further measures include the deferred payment of taxes and social security contributions in favour of VSEs/SMEs and the introduction of an eco-energy loan of up to EUR 500,000 for SMEs that have been in business for more than three years or for micro-enterprises to finance an energy renovation.

Finally, a deferred payment of energy bills is offered by energy suppliers and encouraged by the government. Electricity suppliers are currently granting payment facilities to VSEs and SMEs with cash flow issues.

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PKF Comment

For further information or advice concerning French taxation, please contact Isabelle Vendeville at **iv@vendevilleavocats.com** or call **+33 (0)1 80 49 34 34** or Jean-Gabriel Boulic at **jean-gabriel.boulic@pkf-arsilon.com** or call **+33 (0)1 42 94 42 45.**

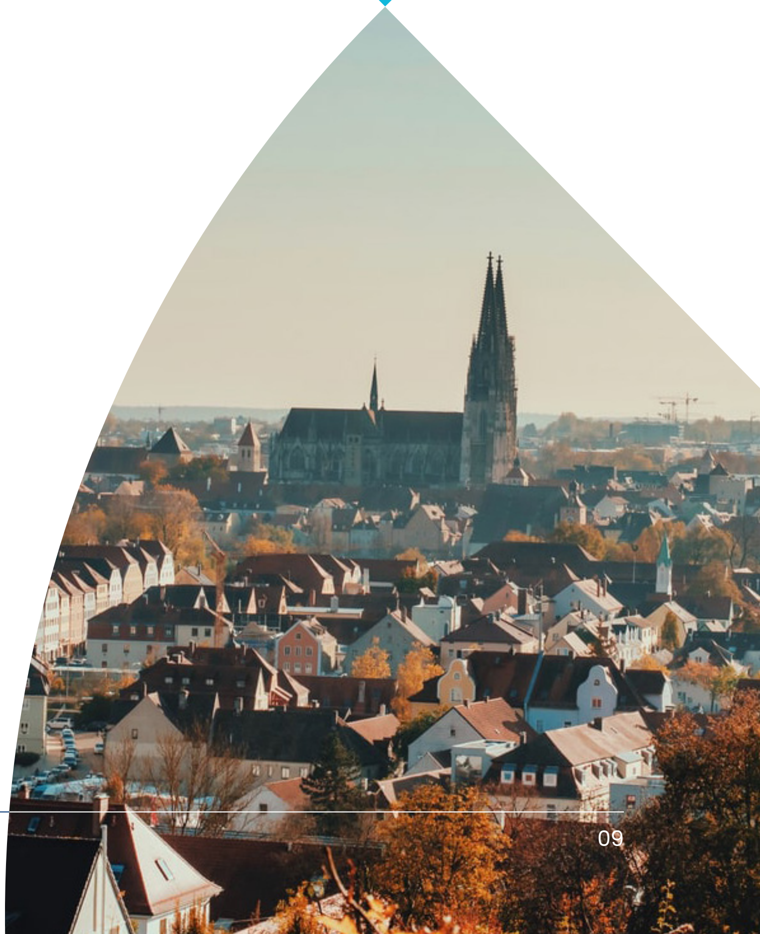
BACK

Germany

Inclusion of Russia and other jurisdictions on the EU blacklist:selected consequences in German tax law

1. Background

In February 2023, the EU added four additional jurisdictions – Russia, the British Virgin Islands, the Marshall Islands and Costa Rica – to its list of non-cooperative jurisdictions (the so-called 'blacklist'). This list of tax jurisdictions that do not ensure sufficient tax information exchange, engage in unfair tax competition or do not meet the minimum standards of the OECD/G20 BEPS project therefore



now includes the following tax jurisdictions (new additions highlighted in red):

- American Samoa
- Anguilla
- Bahamas
- British Virgin Islands
- Costa Rica
- Fidschi
- Guam
- Marshall Islands
- Palau
- Panama
- Russia
- Samoa
- Trinidad and Tobago
- Turks and Caicos Islands
- American Virgin Islands
- Vanuatu

2. Direct consequence: obligation to report certain cross-border tax arrangements (DAC6)

To the extent that cross-border tax arrangements have as their object that

- cross-border payments are made between associated enterprises, and
- these payments are deductible as business expenses at the level of the payer,

these arrangements need to be reported to the Federal Central Tax Office (Bundeszentralamt für Steuern (BZSt)) if the payee is resident in a tax jurisdiction included in the above-mentioned blacklist.

3. Further consequences to be expected

It is to be expected that the Federal Ministry of Finance will adapt the Tax Havens Defence Ordinance (Steueroasenabwehrverordnung (StAbwV)) to the German Tax Havens Defence Act (Steueroasenabwehrgesetz (StAbwG)) by also including the new jurisdictions on the EU list in the StAbwV. The following consequences, some of them significant, are then to be expected:

- **No expense deduction:** If a taxpayer maintains business relations or shareholdings in or with reference to a non-cooperative tax jurisdiction (hereinafter referred to as a tax haven), expenses with respect to such business transactions may not reduce the taxpayer's profit unless and to the extent that:
  - the income corresponding to the expenses is subject to unlimited or limited tax liability within the meaning of the German Personal Income Tax Act, Corporate Income Tax Act or the above-mentioned StAbwG, or
  - there is CFC taxation (Hinzurechnungsbesteuerung) due to which the income from the transaction, which is derived by the counterparty to that transaction, is taxed at the level of a (direct or indirect) shareholder of that counterparty.

If the StAbwV is amended in 2023, the ban on the deduction of expenses is expected to take effect from 1 January 2027 with respect to the new jurisdictions that will, in all probability, be included.

PKF Comment

Although there might still be some time to react, it is advisable to start a review of potentially affected expenses in a timely manner.

BACK

- **Application of CFC taxation rules:** If taxpayers subject to unlimited individual or corporate income tax liability hold a controlling interest in a foreign company which is domiciled in a non-cooperative tax jurisdiction (having a registered office there meets this condition), German CFC taxation generally applies to all income of the foreign company with a tax burden below 25%, whether or not this is of an active or passive nature, whether or not proof of substance can be provided, or whether or not the exemption limit for mixed income is complied with.

If the StAbwV is amended in 2023, this specific taxation regime can be expected to take effect from 1 January 2024 with respect to the new jurisdictions that will, in all probability, be included.

PKF Comment

In this respect, there may be a need for short-term action. As a first step, all domestic-controlled companies with their registered office in the respective jurisdictions should be identified. Subsequently, it should be examined to what extent low-taxed income will accrue in these companies from 2024 onwards.

BACK

- **Additional withholding taxes:** If persons resident in a non-cooperative jurisdiction (in this respect as well, having a registered office in a tax haven suffices, e.g. in the case of companies) generate income from

  — certain financial relationships,

  — insurance or reinsurance premiums,

  — services,

  — trade in goods/services, or

  — the letting/leasing or disposal of rights entered in a public book/register,

  this income is subject to a German withholding tax of 15% of the income, irrespective of any deviating double tax treaty regulations. The German contracting partner must withhold, declare and pay this withholding tax.

  Should the StAbwV be amended in 2023, the withholding tax obligation is expected to take effect from 1 January 2024 with respect to the new territories that will, in all probability, be included.

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PKF Comment

It is therefore recommended to review all business relationships with residents in such tax jurisdictions in the short term.

BACK

- **Full tax liability of profit distributions and share disposals:** Profit distributions from a company resident in a tax haven or profits from the sale of an interest in such a company are generally subject to full taxation at the level of the recipient. Thus, neither the partial income procedure nor the corporate tax (95%) exemption nor any privileges under tax treaty law apply.

  Should the StAbwV be amended in 2023, it is expected that the regulations for distributions/capital gains will apply from 1 January 2026 with regard to the new jurisdictions that will, in all probability, be included.

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PKF Comment

We recommend to analyse in due time how this will affect distributions, disposals and corporate structuring in general and, if necessary, to take measures to avoid any unnecessary tax burden.

BACK

- **Increased obligations to cooperate:** With regard to business transactions covered under the first bullet point, the taxpayer must prepare records similar to transfer pricing documentation no later than one year after the end of the relevant calendar or business year, submit them to the German tax authorities and, upon request, affirm their accuracy in lieu of an oath.

  If the StAbwV is amended in 2023, the documentation requirements are expected to apply from 1 January 2024 with regard to the new jurisdictions that will, in all probability, be included.

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PKF Comment

The records that may potentially be required should therefore be prepared and drawn up in due course.

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

BACK

Taxation of salary income from abroad in Germany

If an employee resident in Germany works abroad, the question arises as to whether and to what extent this income is also taxable in Germany. Even if the foreign state has the right of taxation according to the double tax treaty, there may be circumstances in which the income received abroad is taxed in Germany.

1. Avoidance of double taxation

If an employee regularly works abroad, this income is taxable in the foreign country. In addition, Germany also has the right of taxation because of the employee's residence in Germany. In order to avoid double taxation, the so-called exemption method is used to exempt the income from taxation in Germany. In principle, when applying this method, it is irrelevant whether the foreign country in which the employee works claims its right of taxation or not. However, a prerequisite for the application of the exemption method in Germany is that the income is actually taxed abroad. Taxation in Germany is also possible if only part of the income is not taxed abroad.

2. Different legal situations in Germany and the Netherlands

An employee living in Germany who had received salary income from his Dutch employer recently brought an action before the Düsseldorf Tax Court.

In the Netherlands, employees who take up employment there and for this reason move or travel daily from abroad to the Netherlands receive a refund. These so-called extraterritorial costs are intended to compensate for the additional expenses incurred by employees as a result of their stay in the Netherlands. As an alternative to the reimbursement of extra costs, the employer can also pay 30% of the employee's salary tax-free. With this alternative, the actual costs incurred do not have to be proven.

The only requirement is that the employee has special expertise in a particular industry.

In Germany, the responsible tax office did not completely exempt the plaintiff's foreign income from tax, but deemed the part of the income – the 30% – that was not taxed in the Netherlands to be subject to German tax.

3. Only the part actually taxed abroad is exempted

The double tax treaty with the Netherlands stipulates that the income is also 'actually taxed' in the Netherlands. Under German law, however, a proportionate taxation of the income abroad is not sufficient to exempt the entire income in Germany.

The German Tax Court has ruled that only those parts of the salary income that were actually taxed by the foreign country are not taxed in Germany. Accordingly, the 30% that is not taxed in the Netherlands is subject to German tax. Although parts of income are also not taxed in Germany on a flat-rate basis (so-called Werbungskostenpauschale of EUR 1,200), the 30% rule is probably more comparable to a basic tax exemption than to a lump-sum provision. In order to avoid a significant overcompensation of actual expenses, only the part actually taxed abroad is exempt in Germany.

PKF Comment

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

BACK

Italy

Tax regime for new residents in Italy

According to the Italian Ministry of Economy, based on 2021 tax returns (related to tax year 2020), 400 high net worth individuals (HNWI) decided to transfer their residence to Italy in order to benefit from the preferential tax regime. In particular, more than 400 individuals filled out the 'New Residents' form and 46% of them produced in Italy a total income of EUR 94.4 million, 74% of which arose from income from employment.

Starting from 2017, the tax regime for new residents (individuals who transfer their residence to Italy) envisages a substitute tax on their foreign income. This regime aims to enhance investments and attract HNWIs to Italy. Individuals who have not been tax resident in Italy for at least nine years out of the ten years before their transfer to Italy may benefit from the regime and may apply a substitute tax to their foreign income, up to EUR 100,000 for each tax year, instead of the ordinary Italian income tax. This may also be extended to family members (EUR 25,000 each). This taxation acts as an alternative to the ordinary taxation for a period of 15 years. However, all income produced in Italy, and not abroad, is subject to domestic tax rates.

Individuals transferring their tax residence have to pay inheritance and donation tax only on properties and assets located within the Italian territory.

PKF Comment

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

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

BACK

Deductibility of blacklist costs

By way of Law 197/2022, the Italian 2023 Budget Law reintroduced the so-called 'blacklist costs' rules.

These rules limit the possibility for Italian companies to deduct for tax purposes the costs arising from transactions with companies resident (or professionals domiciled) in foreign non-cooperative jurisdictions as per Annex 1 to the EU list adopted by the Council of the European Union, i.e. American Samoa, Anguilla, the Bahamas, the British Virgin Islands, Costa Rica, Fiji, Guam, the Marshall Islands, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

Therefore, costs related to the aforementioned transactions are deductible within the limit of the 'normal value' as per article 9 of the Italian Tax Code, which refers to the price generally applied to similar goods and services on the free market.

Businesses joining the collaborative fulfilment regime, as provided by Legislative Decree 128/2015, can make use of this procedure by establishing – in a ruling with the Italian tax authorities – the calculation methods for the normal value to be used in transactions with parties located in blacklisted countries or territories.

The obligation to separately report costs in the tax return has been reintroduced, regardless of whether or not they exceed the normal value.

In the event of omission or incomplete reporting of expenses and other deductible components, an administrative fine is applied equal to 10% of the total amount of expenses and deductible components not reported in the tax return, with a minimum of EUR 500 and a maximum of EUR 50,000.

It is worth noting that the above limitations do not apply to transactions with non-resident subjects to which the CFC regime is applicable as the CFC rules take priority (as clarified by Circular No. 39/2016 under the previous regime), allowing the Italian company to avoid double taxation on the same item of income (on the one hand, as a non-deductible cost subject to tax in Italy on the basis of the blacklist costs rules and, on the other hand, as revenue included in the non-resident company's income subject to tax in Italy under the CFC transparency regulations).

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PKF Comment

If you believe any of the above measures may impact your business or personal situation or if you require any advice with respect to Italian taxation, please contact Federica Godoli at fgodoli@studiogodoli.it or call **+39 051 232450**.

BACK ↗

Introduction of a one-off substitute tax on the undistributed profits of subsidiaries subject to a privileged tax regime

Under the standard tax regime, dividends paid by foreign subsidiaries to Italian companies are generally subject to a 95% participation exemption resulting in an effective tax rate of 1.2%. However, full taxation (24%) or 50% taxation (12%) may apply to dividends distributed by subsidiaries located in low-tax regimes (unless such profits have already been directly imputed to the Italian shareholder under the CFC transparency regulations).

However, the 2023 Budget Law has also introduced a one-off substitute tax on the undistributed profits of subsidiaries subject to a privileged tax regime.

Qualifying resident enterprises may opt for the application of a reduced/substitute tax on the undistributed profits or reserves of their non-resident subsidiaries, as resulting from their financial statements for 2021, which would not benefit from the domestic participation exemption regime, in order to exclude them from taxable income upon their distribution. The substitute tax applies at a rate of 9% (30% for individual entrepreneurs), reduced to 6% (27% for individual entrepreneurs) where: (i) the foreign earnings shall be physically repatriated by the deadline for the income tax balance payment for fiscal year 2023, i.e. generally 30 June 2024 for enterprises adopting the calendar year; and (ii) the repatriated earnings are set aside in a specific equity reserve for at least two years. Failure to meet these conditions results in a recapture of the benefit with additional taxes (3%), penalties (20%) and interest.

The reduced/substitute tax is determined in proportion to the participation held in the foreign company but may also apply to a fraction of the undistributed profits share under a cherry-picking approach. The tax is due in full by the deadline for the payment of the balance of income taxes due for fiscal year 2022 (i.e. generally 30 June 2023 for enterprises adopting the calendar year).

Any one-off election must be made in the 2022 tax return (generally to be filed by November 2023).

PKF Comment

If you believe any of the above measures may impact your business or personal situation or if you require any advice with respect to Jtalian taxation, please contact Federica Godoli at fgodoli@studiogodoli.it or call **+39 051 232450**.

BACK

Malaysia

Malaysia Budget 2023

The following tax measures are introduced under the Malaysia Budget 2023:

Review of income tax rate for resident individuals

The income tax rates for resident individual taxpayers range from 0% to 30%, while the income tax rate for non-resident individual taxpayers is fixed at 30%. With effect from year of assessment (YA) 2023, the income tax rates for resident individuals with a chargeable income band from MYR 35,001 to MYR 100,000 will be reduced by 2%. On the other hand, the income tax rates for resident individuals with a chargeable income band from MYR 100,001 to MYR 1,000,000 will be increased by 0.5% to 2%.

Chargeable income (MYR)	Existing tax rate (%)	New tax rate starting YA 2023 (%)	Increase / (reduction)
1–5000	0	0	-
5,001–20,000	1	1	-
20,001–35,000	3	3	-
35,001–50,000	8	6	(2%)
50,001–70,000	13	11	(2%)
70,001–100,000	21	19	(2%)
100,001–250,000	24	25	1%
250,001–400,000	24.5	25	0.5%
400,001–600,000	25	26	1%
600,001–1,000,000	26	28	2%
1,000,001–2,000,000	28	28	-
Above 2,000,000	30	30	-

Review of income tax rates for micro, small and medium enterprises (MSME)

MSME refers to a company with paid-up capital in respect of ordinary shares of not more than MYR 2.5 million or a limited liability partnership (LLP) with total contribution of capital of not more than MYR 2.5 million, and with gross business income of not more than MYR 50 million. The corporate tax rates for MSMEs will be reduced from 17% to 15% on the first MYR 150,000 of chargeable income effective from YA 2023. Effective from YA 2023, the preferential corporate tax rates applicable to MSMEs are shown below:

Chargeable income	Corporate tax rate
First MYR 150,000	15%
MYR 150,001 to MYR 600,000	17%
MYR 600,001 and above	24%

The preferential corporate tax rates will not apply to a company if more than 20% of its paid-up capital in respect of the ordinary shares at the beginning of the basis period for a YA is directly or indirectly owned by foreign companies or foreign individuals.

Proposed introduction of new taxes in Malaysia

Based on the Malaysia Budget 2023, the following new taxes will be introduced:

- luxury goods tax to be imposed on luxury items which exceed a threshold value in year 2023;
- capital gains from disposals of unlisted shares made by companies effective from year 2024.

The above proposals are still under review by the government of Malaysia.

Reintroduction of amnesty programme (Special Voluntary Disclosure Programme)

The government has reintroduced an amnesty programme and offers a 100% waiver of penalties for voluntary disclosures made by taxpayers during the period between 1 June 2023 and 31 May 2024. The programme covers both direct taxes and indirect taxes, which will be administered by the Malaysian Inland Revenue Board and the Royal Malaysian Customs Department respectively.

Review of tax incentives on automation equipment

To encourage businesses to adopt advanced technologies in Malaysia, the government has widened the scope of incentives benefitting the manufacturing, services and agriculture sectors. A qualifying company is eligible to enjoy the incentives as follows:

- accelerated capital allowance (ACA) of 100% on the qualifying capital expenditure incurred on automation equipment; and
- income tax exemption equivalent to the ACA, which is restricted to 70% of statutory income derived from the qualifying project.

Under the Malaysia Budget 2023, the maximum qualifying capital expenditure (QCE) is increased to MYR 10 million from MYR 4 million (maximum QCE for high-labour intensive industries) and MYR 2 million (maximum QCE for other industries) to encourage Malaysian businesses to expedite the adoption of automation technologies. Prior approval is required, and the application should be submitted to the Malaysian Investment Development Authority (MIDA) and the Ministry of Agriculture and Food Security (MAFS) from 1 January 2023 until 31 December 2027.

Tax incentives for companies relocating their operations

a) New and existing companies that relocate their manufacturing business to Malaysia are eligible to enjoy the following incentives:

Eligible capital expenditure	New manufacturing companies		Existing companies in Malaysia relocating overseas facilities into Malaysia	
	Tax incentive	Period	Tax incentive	Period
MYR 300million to MYR 500 million	Special income tax rate of 0%	10 years	Investment tax allowance – 100% to offset against 100% of statutory income	5 years
Above MYR 500 million		15 years		

b) New and existing companies that undertake selected service activities, including companies adopting Industrial Revolution 4.0 and digitalisation technology which have a significant multiplier effect are eligible to enjoy the following incentives:

New service companies		Existing companies with new service segment	
Tax incentive	Period	Tax incentive	Period
Income tax rate = 0% to 10%	Up to 10 years	Income tax rate = 10 %	Up to 10 years

The special tax incentives for relocation of operations in Malaysia will be extended to year 2024. Prior approval is required, and the application should be submitted to the MIDA from 1 January 2023 to 31 December 2024.

Tax incentives for manufacturers of electric vehicle charging equipment

To promote the electric mobility ecosystem, it is proposed that manufacturers of electric vehicle charging equipment will be given tax incentives as follows:

- income tax exemption of 100% on statutory income from the YA 2023 to YA 2032; or
- investment tax allowance of 100% for a period of five years, which can be set off against up to 100% of the statutory income for each YA.

Prior approval is required, and applications should be submitted to MIDA from 25 February 2023 to 31 December 2025.

Tax deductions for rental of non-commercial electric vehicles

Generally, businesses that rent non-commercial motor vehicles, including electric vehicles (EV), are eligible for the following tax deductions:

Cost of the vehicle	Maximum rental amount allowed for tax deduction
Not exceeding MYR 150,000	MYR 100,000
Exceeding MYR 150,000	MYR 50,000

To encourage the use of low-carbon vehicles and reduce the carbon footprint in Malaysia, companies are able to enjoy a higher tax deduction for the rental of non-commercial EVs from YA 2023. The maximum rental amount allowable for tax deduction for the rental of non-commercial EV cars will be increased to MYR 300,000.

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PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Malaysian taxation, please contact Lim Ai Chen at aichen@pkfmalaysia.com or call **+603 6203 1888**.

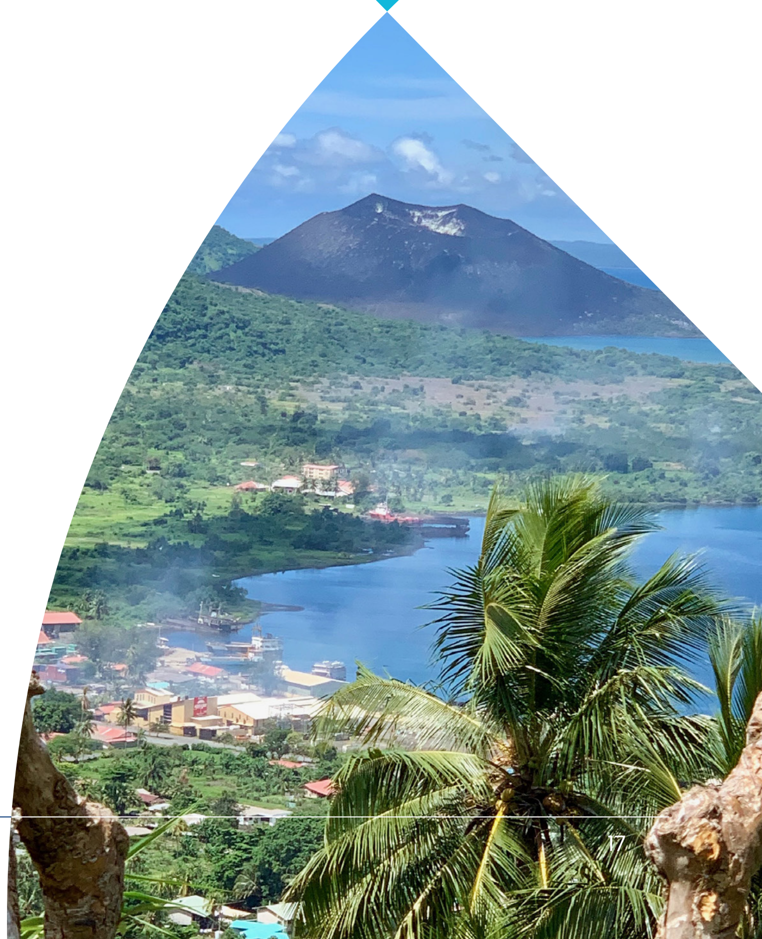
BACK

Papua New Guinea

Legislative changes in relation to local and overseas company registrations in PNG

Legislative changes

On 11 January 2023, key legislative changes were announced in the Investment Promotion Act and Associations Incorporation Act respectively. The new Investment Promotion Act is now called the Investment Promotion (Amended) Act 2022 and the legislative changes include:



- Changing the foreign certification system to process applications quicker, and automatically rejecting applications for reserved activities to support small and medium-sized enterprises;
- Reviewing the reserved activities list at least every three years;
- Introducing more reporting obligations on foreign investors, and providing powers to cancel certification where key business laws are breached;
- Improving the Investment Promotion Authority's (IPA) enforcement and compliance, and making better allowances for cross-agency enforcement; and
- Creating a dedicated Registrar of Foreign Investment to oversee the system with powers to speed up much-needed incoming investment, automatically deny unethical and unwanted investment, and enforce compliance.

The new Associations Incorporation Act repeals the old Act which has not been updated since it was passed in 1966. The amendment of the Associations Incorporation Act is expected to address key issues that have been identified as problematic for local associations. These include:

- who can form and register as associations;
- committee member role formalised;
- clarifying role of the public officer;
- financial transparency to members;
- improved reporting to members and the registrar;
- improving the registrar's powers; and
- anti-money laundering compliance.

The above changes hope to ensure that associations operate in a transparent and more accountable manner.

New Investment Promotion Authority's online registry system

The IPA of PNG through the Office of the Registrar of Companies launched a new online registry system on 1 December 2022. The new system replaces the old system which facilitates registration of companies, business names, associations, business groups and foreign enterprise certifications.

The new system requires online submissions except for certain IPA applications. All IPA registered companies are required to re-register on the new IPA online registry system from the periods 1 December 2022 to 30 November 2023. Key points to note are as follows:

- Transitional updates: business names, associations and business groups must update their records to transition into using the new online registry services.
- IPA re-registration is free from IPA registration fees for all compliant companies.
- Companies with outstanding annual returns should file such returns during the re-registration periods. IPA minimal penalty fee will apply.
- All companies that fail to re-register will be struck off.
- Re-registration includes registration for overseas companies and foreign certification in respect of companies with non-resident shareholders.

At the end of March 2023, the IPA announced a successful completion of its data migration process. This means that entity records from the old registry system are outdated and irrelevant. Clients who need to access historical information about their entities would need to search the new registry to obtain such information. The information presented will reflect what was there before the new system went live on 1 December 2022.

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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

Poland

Transfer pricing – significant changes in obligations for 2022

Deadlines – longer, yet shorter than in previous years

According to the regulations applicable to transfer pricing documentation prepared for 2019, the deadline for fulfilling transfer pricing obligations, in accordance with the Income Tax Acts, expired at the end of the ninth month after the end of the tax year. However, at the beginning of 2020, the outbreak of the COVID-19 pandemic contributed to the modification of a wide range of reporting deadlines. This included the above-mentioned deadline for fulfilling obligations related to transfer pricing. The COVID regulations extended this deadline to the end of the twelfth month after the end of the tax year. This year (in relation to the obligations for 2022) for the first time, the amended provisions of the tax laws apply, according to which:

- The deadline for preparing local transfer pricing documentation expires at the end of the tenth month after the end of the tax year;
- The deadline for submitting the transfer pricing report with an embedded statement of possession of documentation is the end of the eleventh month after the end of the tax year.

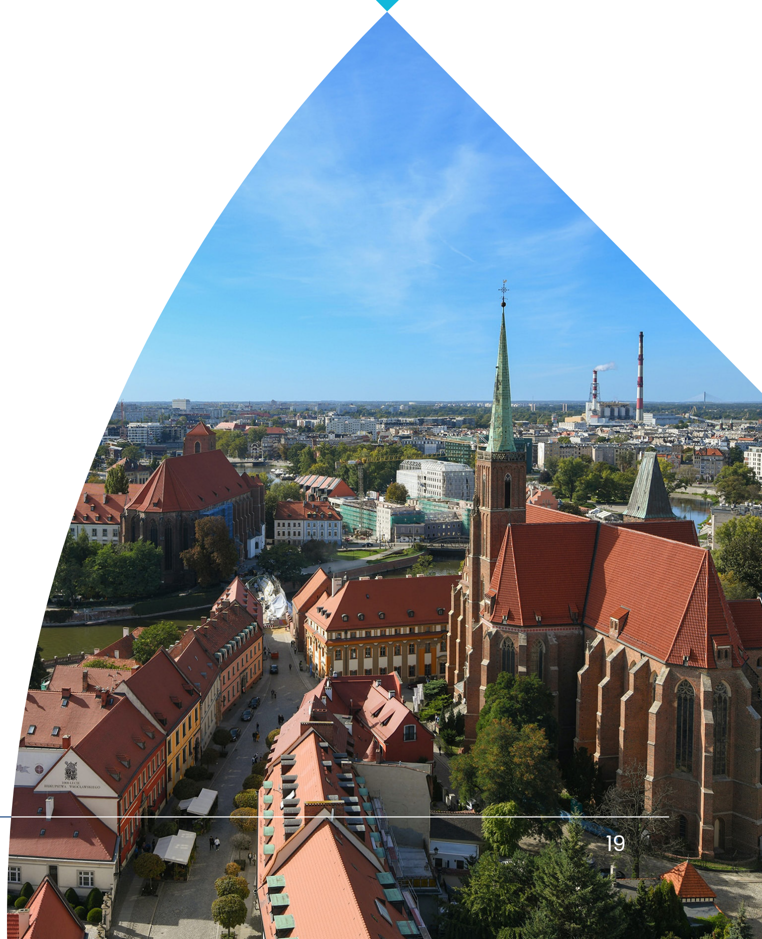
Therefore, the deadlines have been formally extended in relation to those applicable under the Income Tax Acts but, in practice, compared to the extensions in force in recent years, they are significantly shorter.

It is worth noting that, despite the extension of the deadline for submitting the CIT-8 tax return for 2022, the Ministry of Finance has directly indicated that it does not intend to extend the deadlines for fulfilling reporting obligations. Thus it should be assumed that the deadlines related to transfer pricing will not be extended either.

Tightening of sanctions

In 2023, tightened penalties imposed under the Fiscal Penal Code came into effect, with respect to the taxpayer's failure to comply with transfer pricing obligations. It should be noted that the amount of the penalty, determined using daily rates, depends on the amount of the minimum wage, which will change in 2023. It increased for the first time on 1 January, and the next increase will take place on 1 July. The currently applicable sanctions are prescribed as follows:

- If local transfer pricing documentation is not prepared (at all) or the group documentation (master file) is not attached to it, the taxpayer may be fined up to 720 daily rates (PLN 33.5 million, according to the current applicable amounts).



- The same fine is imposed on the taxpayer in the event of preparation of local or group documentation contrary to the actual state.
- In the case of late preparation of documentation, a sanction of up to 240 daily rates applies (PLN 11.2 million, according to the current applicable amounts).
- Failure to submit or submit unreliable transfer pricing information is subject to a sanction of up to 720 daily rates.
- Submission of transfer pricing information after the deadline is subject to a sanction of up to 240 daily rates..

Tax haven transactions – relaxation of regulations

Pursuant to the amendment to the Income Tax Acts, published in the Journal of Laws on 7 October 2022, the documentation obligation has been repealed for so-called indirect tax haven transactions, i.e. concluded with contractors who do not have their place of residence, registered office or management in the territory or in the country applying harmful tax competition, if the actual owner had their place of residence, registered office or management in the territory or in the country applying harmful tax competition.

At the same time, the threshold values for direct tax haven transactions (carried out for the benefit of a counterparty with a place of residence, registered office or management board in the territory or in a country applying harmful tax competition) were increased to the amount of:

- PLN 2,500,000 – for financial transactions;
- PLN 500,000 – for non-financial transactions.

Until now, this limit was PLN 100,000, regardless of the type of transaction. The change in the value of the documentation thresholds, although beneficial, will not significantly reduce the scope of obligations in many cases, because reaching the amount of PLN 500,000 per year for a goods or services transaction is not unusual for even a medium-sized enterprise.

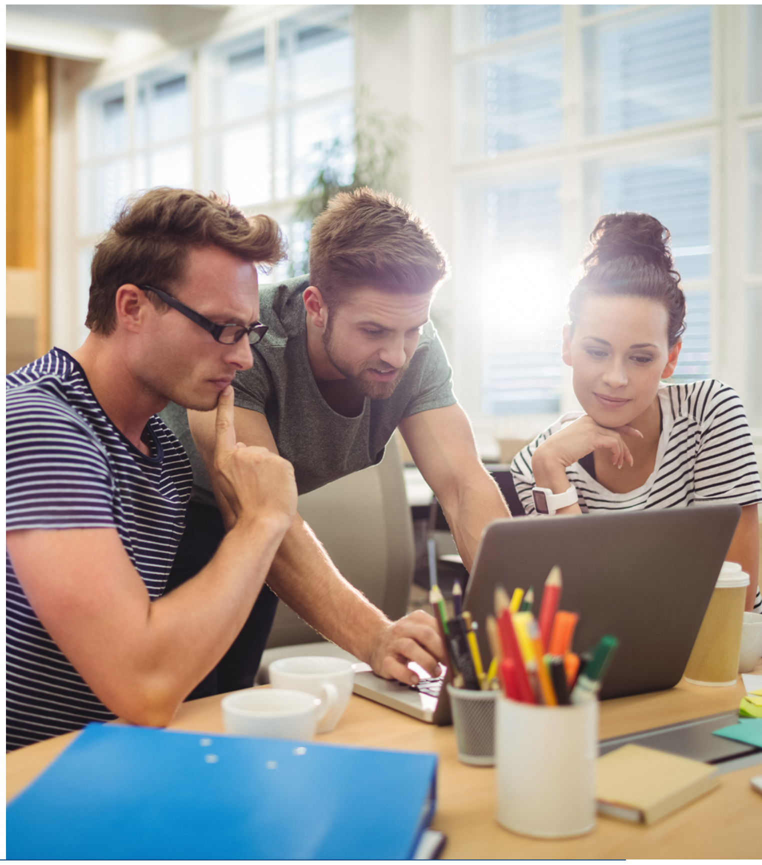
Pursuant to the transitional provisions, these regulations were already applicable to the fulfilment of the documentation obligation for 2021.

Simplifications for micro and small entrepreneurs

In the case of transactions concluded by related entities that are micro or small enterprises, the local transfer pricing documentation need not contain a benchmarking or compliance analysis. The provision applies to an entrepreneur who met the conditions set out in the Entrepreneurs' Law in the last tax year.

Pursuant to the Entrepreneurs' Law Act (article 7(1)(1) or (2)), the status of a small entrepreneur or micro-entrepreneur is granted to entities that meet the conditions set out in the Act in at least one of the last two financial years. However, pursuant to the Income Tax Acts, the right to exemption from attaching a transfer pricing analysis is vested in an entrepreneur who in the last tax year met the conditions set out in the Entrepreneurs' Law.

Pursuant to the transitional provisions, this exemption was already applicable to the fulfilment of the documentation obligation for 2021.



However, it should be noted that the simplification of the exemption from the preparation of a transfer pricing analysis does not mean that the transaction cannot be verified by the tax authorities in terms of arm's-length prices. In addition, despite the right to exemption, even a micro or small entrepreneur is required to submit a declaration on the arm's-length character of the transaction. Thus, in order to make the declaration in question truthfully and at the same time protect oneself against the possible sanctions mentioned above, it may be necessary to prepare appropriate analyses.

Changes in the TPR form – greater detail

Although the new transfer pricing reporting (TPR) form, appropriate for reporting transactions carried out after 31 December 2021, has not yet been published, significant changes in the reported data emerge from the wording of the new transfer pricing regulations. The table below presents a comparison of the scope of reported information in terms of the introduced changes.

2021 TPR form	2022 TPR form
The value of a homogeneous controlled transaction shown as the sum of the values for all counterparties, with the country of residence indicated at the same time.	The requirement to assign the value of transactions that make up a homogeneous transaction to the country of residence of the other party to the transaction.
Indication of the value of remuneration in connection with restructuring.	In addition to the value of the restructuring fee, it should also be indicated whether it was actually paid or received and in what form (cash or otherwise).
Obligation to provide the following indicators for the reporting period: ▪ operating margin; ▪ gross profit margin; ▪ return on assets; and ▪ return on equity.	In addition to the existing ratios, the obligation to calculate and present an additional financial ratio – the share of costs of operating activities with related entities in the total amount of operating costs.
Obligation to indicate whether a comparability adjustment was made as part of the transfer pricing analysis.	If it is indicated that a comparability adjustment was made as part of the transfer pricing analysis, it should be specified whether, as a result of the adjustment, the result of the analysis changed by more or less than 30% (or whether it is impossible to determine such an impact).
The reporting did not cover transactions covered by an advance pricing agreement (APA).	Mandatory inclusion of APA transactions.
Re-invoice transactions have dedicated codes.	Separation of a new 'F' category covering re-invoice transactions (for which dedicated codes are also assigned), so reporting should be simpler.
No obligation to mark the status of a micro or small entrepreneur.	The obligation to indicate whether the taxpayer has the status of a micro or small entrepreneur, for which the scope of information to be completed at the TPR level is significantly limited by the lack of obligation to provide details regarding transfer pricing verification.
Statement on the preparation of transfer pricing documentation submitted independently of reporting.	Declaration of possession of local documentation and application of market prices included in the TPR form.

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PKF Comment

Taking into account all the presented changes, work to fulfil the taxpayer's transfer pricing obligations for 2022 should be carried out as soon as possible.

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

BACK

Romania

VAT changes and other legislative changes

VAT changes

From 11 June 2023, the following supplies will be VAT-exempt:

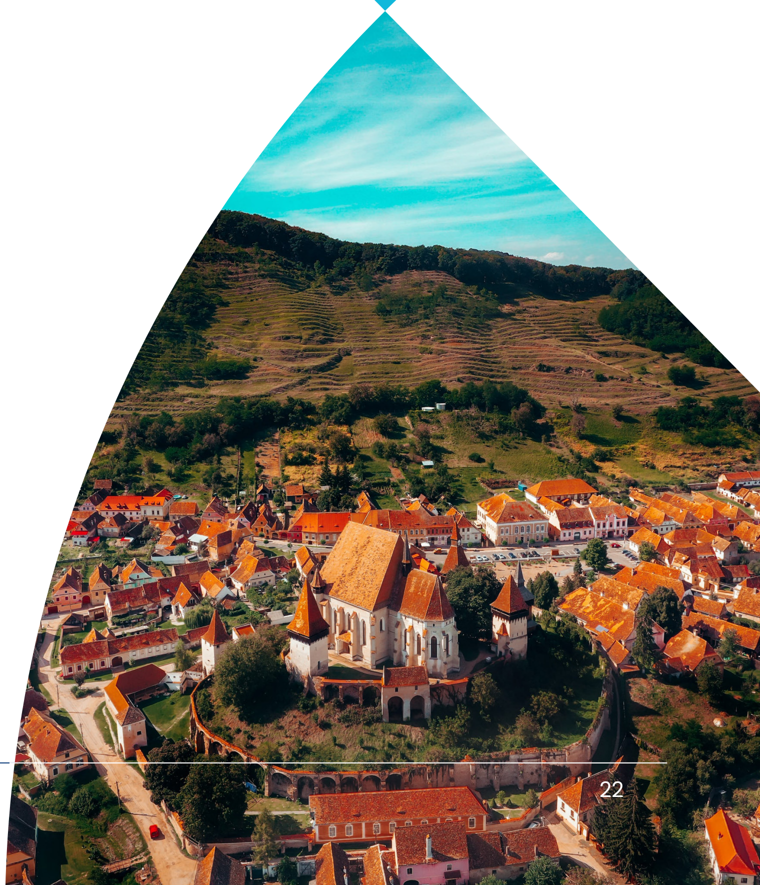
- construction, rehabilitation and modernisation services for hospital units within the public network, as well as construction, rehabilitation and modernisation services for hospital units which are supplied to non-profit entities registered in the Public Register organised by the tax authorities if the services are intended for hospital units owned and operated by the non-profit entity or those from the public network, as the case may be;
- medical equipment, devices, articles, accessories and protective equipment, materials and consumables for sanitary use, normally intended for use in the field of healthcare or for use by disabled persons, essential goods for compensating for and overcoming disabilities, other than those mentioned below, as well as the adaptation, repair, rental and leasing of such goods, carried out for hospital units in the public network, as well as those carried out for non-profit entities registered in the Public Register organised by the tax authorities if they are intended for hospital units owned and operated by the non-profit entity or those from the public network, as the case may be;
- prostheses and accessories, with the exception of dental prostheses legally exempt from VAT;
- orthopaedic products.

The VAT exemption for the supply of the goods/services mentioned above applies:

1. directly, by the suppliers of goods/services issuing invoices without VAT if the beneficiary of the goods/services is a hospital unit within the public network or, if applicable, the central or local public institution/authority which ensures its financing, according to the law;
2. by way of VAT refunds on the purchase of goods/services by non-profit entities according to a procedure established by order of the Minister of Public Finance. The VAT refunded from the state budget must be used by non-profit entities exclusively to finance the acquisition of the aforementioned goods/services.

Other legislative changes

By way of Law No. 69/2023, the tax authorities have expressly stipulated that digital nomads, i.e. foreigners who come to Romania to work remotely for foreign companies by using information and communications technology, are expressly exempted from the requirement to pay income tax and social insurance contributions on the salary income gained from abroad.



The tax exemptions are valid only if the digital nomad stays in Romania for no more than 183 days (either a single period or several cumulative periods) during any consecutive 12-month period ending in a specific calendar year.

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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 at **florentina.susnea@pkffinconta.ro** or call **+40 2131 73190** or **+40 722 209 753**.

BACK ↗

Slovakia

Changes to the VAT Act

Several changes to the VAT Act have been introduced with effect from 1 January 2023.

VAT (de)registration requirement

Taxable persons established or having a VAT establishment in the Slovak Republic must register for VAT purposes once they have reached a turnover of EUR 49,790 in the 12 preceding consecutive months. From 1 January 2023, resident taxable persons who exclusively carry out VAT-exempt activities under sections 37–38 of the VAT Act (i.e. insurance services, financial services and the supply and rent of real estate (in specific cases)) are not obliged to register for VAT, even after exceeding the turnover limit. However, the respective taxable persons may still apply for voluntary VAT registration.

If resident taxable persons reach the turnover limit (also) from activities other than selected VAT-exempt supplies, they will still be obliged to apply for VAT registration.

On the other hand, resident taxable persons who became VAT payers in the past and exceeded a turnover of EUR 49,790 in the 12 preceding consecutive months exclusively due to the supply of selected VAT-exempt goods and services (i.e. financial services, insurance services, supply and rent of real estate (in specific cases)), may submit a request to the tax authorities for a VAT deregistration.

VAT rate – temporary reduction

A temporary reduction in the VAT rate from 20% to 10% has been introduced for: (i) transport of persons via cable car and ski lifts; (ii) access to indoor and outdoor sports facilities; (iii) access to swimming pools; and (iv) restaurant and certain catering services.

This amendment was introduced to support the tourism and catering sectors.

Bad debt relief for suppliers

When a customer does not pay the taxable person, the latter may be entitled to bad debt relief. In such cases, the taxable amount should be reduced accordingly.

Further to the new amendment, a receivable becomes irrecoverable for the purposes of the VAT Act if 150 days have elapsed since the receivable for the supply of goods or services became due and the receivable:

- is not more than EUR 1,000 including tax, and the VAT payer proves that they have taken action to obtain payment of the receivable;
- is more than EUR 1,000 including tax, and the VAT payer proves that they are seeking payment of the receivable by filing a lawsuit, except through arbitration court; or
- is more than EUR 1,000, including tax, and the VAT payer proves that it is being recovered in enforcement proceedings.

With the amendment, the rule that a VAT debt will be deemed to be irrecoverable only if it has been outstanding for more than 12 months and the receivable is valued at up to EUR 300 is hereby cancelled.

The new rules apply to receivables that are 150 days overdue after 31 December 2022.

Correction of deducted VAT for non-payment of consideration for the supply of goods and services

VAT payers are now required to correct input VAT deducted from goods and services purchased in Slovakia provided they are (partially) overdue on the payment for more than 100 days.

South Africa

SARS additional disclosure requirements for tax clearance in respect of transferring funds abroad

SARS (the South African tax authority) has introduced an enhanced compliance system change in relation to the current tax clearance status (TCS) required for the transfer of funds by a taxpayer intending to make use of their foreign investment allowance (FIA) of up to ZAR 10 million per calendar year. It has been noted that the effective date of this change is 24 April 2023.

The enhanced changes to the TCS system require additional information on the approval of international transfer (AIT) applications, to aid SARS in ensuring that all required tax payable has been duly reported by the taxpayer. It is further noted

that this would only apply for amounts in excess of ZAR 1 million. No TCS is required for transfers up to ZAR 1 million per calendar year.

Supporting documents required for tax residents and non-tax resident applications

When making an application for FIA for individual taxpayers, the following supporting documents must be submitted:

- evidentiary documentation for the source of the capital to be invested (as per each source criteria);
- statement of assets and liabilities for the previous three tax years (including disclosure of all investments, loan accounts, distributions from local and foreign companies and trusts); and
- power of attorney (required when the TCS application is submitted on behalf of the individual taxpayer).

Non-resident applications

In addition to the above-mentioned supporting documentation, the following is required:

- proof that the individual taxpayer ceased to be tax resident in South Africa, including the date of tax residency cessation;
- capital gains tax (CGT) calculation schedule, as determined at the time of cessation of residency noting that the cessation of tax residency gives rise to a deemed disposal of an individual's worldwide assets which may result in CGT.

Where the non-resident application is for a family unit and one or more of the members thereof are registered for tax purposes in South Africa, then those members of the family unit must make a separate application to be issued a TCS PIN.

In respect of withdrawals from retirement funds, where a South African tax resident ceases residency, payment of such benefits shall only be allowed where the individual remained non-tax resident for at least three uninterrupted consecutive years.

Supporting documents per source criteria

As discussed above, the following evidentiary documentation is required to demonstrate the source of the funds. SARS has issued a comprehensive list of the evidentiary documents that are required per category depending on the source of income.

1. Distributions from a trust
    - Copy of trust deed;
    - Trustees' resolution for distribution;
    - Details of source of funds distributed by the trust;
    - Bank statement of the taxpayer (not older than one month), issued on the date of the TCS application, reflecting the distribution from the trust;
    - Bank statement of the trust, reflecting the distribution to the taxpayer, not older than one month;
    - Trust's latest share portfolio statement (not older than one month), including the number of shares and current market value; and
    - Latest trust financials.
2. Donations
    - A declaration of the donation (IT144);
    - Bank statement of the donor, reflecting the donation paid, not older than one month;
    - Bank statement of the donee (not older than one month), issued on the date of the TCS application, reflecting the donation received; and
    - Proof (copy of the receipt) of donations tax paid (not applicable to donations between spouses).
3. Earnings
    - Where a taxpayer has recurring foreign investments not exceeding ZAR 30,000 per annum, a copy of a salary slip is needed once a year; and
    - The policy number noting that the institution (e.g. Sanlam/Old Mutual) will apply on behalf of the taxpayer.

4. Income from companies, local or foreign, where the taxpayer holds direct or indirect beneficial interest
    - The nature of relationship with the entity;
    - Proof of amounts/distribution received from such entities;
    - For an owner of any business, the company group structure, profile and other group investments; and
    - If a director of the company or member of a close corporation is a shareholder, a shareholder's agreement and share incentive scheme agreement.
5. Inheritance
    - A copy of the final liquidation and distribution account stamped and signed by the Master of the High Court; and
    - Bank statement issued on the date of the TCS application, reflecting the inheritance received.
6. Investment income – local and foreign
    - Schedules of the interest/dividends received indicating the source and amount of interest/dividends.
7. Loan between individuals
    - The signed and complete loan agreement;
    - Bank statement of the lender, showing the loan amount, not older than a month;
    - Details of the source of capital of the lender; and
    - Bank statement of the borrower issued on the date of the TCS application, showing the loan amount.
8. Loan between trust and trustee or beneficiary
    - The signed and complete loan agreement;
    - Bank statement of trustee or beneficiary issued on the date of the TCS application, showing the loan amount;
    - Latest trust financials;
    - Bank statement of the Trust, showing the loan amount, not older than a month; and
    - Trust's latest share portfolio statement (not older than a month), including the number of shares and current market value.
9. Loan between company and director or employee
    - The signed and complete loan agreement;
    - Bank statement of the borrower issued on the date of the TCS application, showing the loan amount; and
    - Company's latest annual financial statements.
10. Other
    - Documentary proof and explanation.
11. Royalty income
    - Source of royalty income; and
    - Proof of royalty payment.
12. Sale of crypto assets
    - Trading account statement reflecting the trade of the crypto asset;
    - Bank statement, issued on the date of the TCS application, reflecting the amount available for transfer; and
    - Bank statement, not older than three months.
13. Sale of property
    - Original letter of the conveyancers to confirm the transfer of the property and that the money will be transferred from the trust account or proof of receipt of the proceeds in the applicant's bank statement not older than a month;
    - Where the property was jointly owned, the proceeds of the sale to be clearly split as per source document; and
    - Capital gains tax calculation on the sale of property.
14. Sale of shares and other securities
    - Capital gains tax calculation on the disposal of the shares; and
    - Portfolio statement reflecting the sale of shares, not older than a month, including the number of shares and current market value.

It is added not to insist that the taxpayer transfer shares, investments, unit trusts, fixed deposits over to a savings account.

15. Savings/cash
    - Bank statement issued on the date of the TCS application, reflecting the cash/savings value; and
    - Supporting documents that demonstrate and/or prove where the cash/savings originated from.

    It is advised that should the taxpayer claim that the source of the funds to be invested is annual income/salary, then the administrator must review the past three years' taxable income on the income tax system to ascertain the reasonableness of the statement.
16. Transfer of listed securities
    - Details of the locally listed securities that the taxpayer will be transferring to an exchange that is outside South Africa; and
    - Capital gains tax calculation on the transfer of the shares.

PKF Comment

These changes identified above have placed a significant and higher burden of proof on the taxpayer intending to invest funds abroad whilst obtaining the TCS. This is imperative for the transfer of funds out of the country for which approval is also required from the South African Reserve Bank (SARB). It is therefore critical that the TCS application is formulated correctly to ensure compliance with the required supporting documentation.

Please note that this article does not constitute professional advice and the reader should seek professional advice to understand the complexities and procedural requirements of reporting TCS.

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

BACK

Switzerland

Public vote on implementation of OECD minimum taxation

On 18 June 2023 the Swiss population will vote on the change of the constitution in order to have the legal basis to implement a minimum taxation of 15% in line with the OECD standards as per 1 January 2024. The federal council, the national council as well as the council of ministers are in favour of the implementation.

PKF Comment

The Swiss government shows its commitment to OECD minimum taxation by supporting the change to the constitution.

BACK

Safe harbour rates for inter-company loans

In early February 2023, the Swiss federal tax authorities published the safe harbour rates for inter-company loans, i.e. the accepted minimum and maximum interest rates without third party comparison. As expected, the rates increased significantly compared to those for the previous year.

PKF Comment

The adjustment of the interest rates is in line with the current general interest environment. Most importantly, a margin on inter-company back-to-back financing must remain in Switzerland.

BACK

Acceptance of notification procedure on dividend payments based on double tax treaty extended to 5 years

Where dividend payments are made from a Swiss entity to a foreign entity under a double tax treaty (DTT), the so-called notification procedure can be applied, i.e. the dividend can be notified and only a potential residual withholding tax has to be remitted to the federal tax authorities. In order to use the notification procedure, the entities have to apply with a respective form, whereas the Swiss tax authorities verify whether the (substance) requirements to apply the DTT are met. All applications filed up to 31 December 2022 were valid for three years, whereas for applications filed from 1 January 2023, the validation has been extended to five years.

PKF Comment

The extension reduces the administrative burden for the taxpayer as well as for the federal tax authorities. However, it has to be noted that the application is only valid where no significant changes occur to the circumstances, in particular the shareholding structure.

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

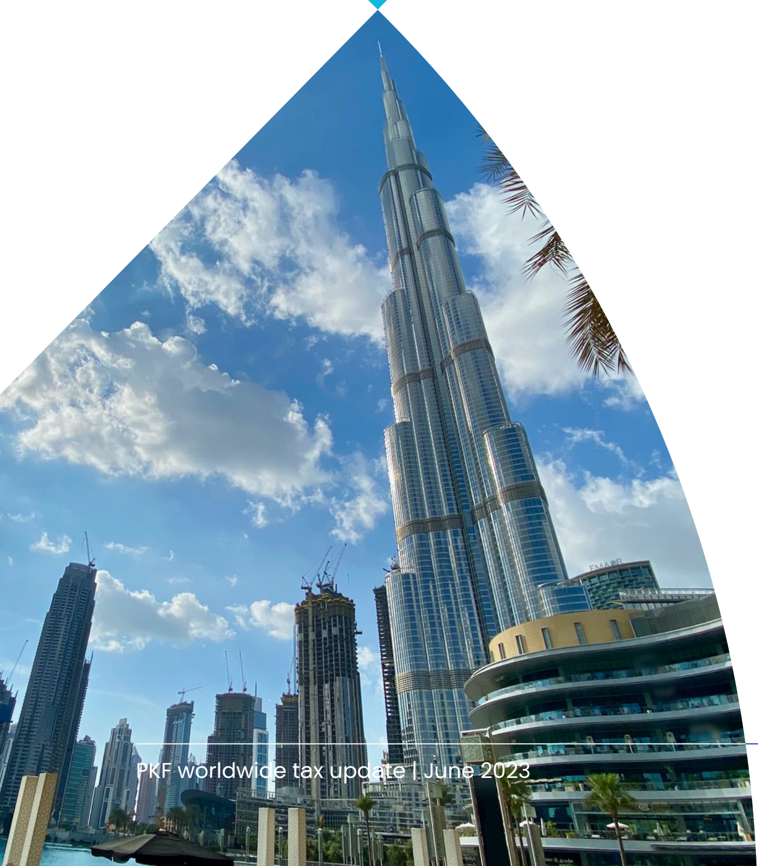
United Arab mirates

UAE tax updates

Corporate tax

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

In this regard, the Ministry of Finance (MoF)/FTA have released some cabinet decisions/ministerial decisions/FTA decisions that provide further guidance on CT Decree-Law provisions; however, many cabinet/ministerial/FTA decisions are still awaited.



Also, the corporate tax registration process of certain taxable persons has been initiated on the EmaraTax portal while the MoF and the FTA have issued some cabinet/ministerial decisions.

Cabinet/ministerial/FTA decisions issued so far can be summarised as follows:

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
1	**Cabinet Decision No. 116 of 2022 – Determination of the Amount of Annual Income Subject to Corporate Tax** The cabinet vide its Decision No. 116 of 2022 has announced the threshold as AED 375,000. The corporate tax rate will be applicable progressively as follows: ▪ 0% on the annual taxable income up to AED 375,000; and ▪ 9% on the annual taxable income exceeding AED 375,000.
2	**Ministerial Decision No. 73 of 2023 on Small Business Relief** The decision provides for an applicability threshold of small business relief, conditions for claiming relief and applicability of general anti-abuse rule (GAAR) provisions for claiming such small business relief. Some of the salient features of the scheme are given below: ▪ Applicable to taxable persons that are resident persons whose revenue in the current tax period and previous tax periods is below AED 3 million. ▪ Revenue threshold of AED 3 million will be applicable for tax periods starting on or after 1 June 2023 to the tax periods that end before or on 31 December 2026. ▪ Not available to qualifying free zone persons, non-residents (i.e. UAE branches of foreign companies) and group companies of MNE groups exceeding consolidated group revenues of AED 3.15 billion.
3	**Cabinet Decision No. 37 of 2023 regarding the Qualifying Public Benefit Entities (QPBEs)** The decision provides a list of entities to be considered as QPBEs which shall be exempt from CT subject to fulfilment of conditions. It also provides for roles and obligations and deductibility of expenses incurred on donations/gifts made to such QPBEs. The QPBEs at a federal and emirate level are as follows:

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
	<table><tr><th>QPBEs</th><th>No. of entities listed</th></tr><tr><td>Federal entities</td><td>198</td></tr><tr><td>Abu Dhabi</td><td>95</td></tr><tr><td>Dubai</td><td>53</td></tr><tr><td>Sharjah</td><td>94</td></tr><tr><td>Ajman</td><td>25</td></tr><tr><td>Umm Al Quwain</td><td>15</td></tr><tr><td>Ras Al Khaimah</td><td>11</td></tr><tr><td>Fujairah</td><td>30</td></tr><tr><td>**Total**</td><td>**521**</td></tr></table>
4	**Ministerial Decision No. 43 of 2023 concerning Exception from Tax Registration** The decision provides that taxable persons need to register for CT Law with the FTA, except the following persons: a) a government entity; b) a government controlled entity; c) a person engaged in an extractive business that meets the conditions of article 7 of the CT Decree-Law; d) a person engaged in a non-extractive natural resource business, that meets the conditions of article 8 of the CT Decree-Law; and e) a non-resident person that derives only state sourced income under article 13 of CT Decree-Law and that does not have a permanent establishment (PE) in the UAE.
5	**Ministerial Decision No. 68 of 2023 on the Treatment of all Businesses and Business Activities Conducted by a Government Entity as a Single Taxable Person** The decision provides for the following: ▪ Conditions to treat the local government's businesses and business activities as a single taxable person; ▪ Conditions to treat the federal government's businesses and business activities as a single taxable person; ▪ The start date and end date for treatment as a single taxable person; and ▪ Determination of taxable income for a single taxable person.
6	**Ministerial Decision No. 82 of 2023 on the Determination of Categories of Taxable Persons Required to Prepare and Maintain Audited Financial Statements** The decision provides guidance on taxable persons that are required to prepare and maintain audited financial statements. The following categories of taxable persons shall prepare and maintain audited financial statements: 1) a taxable person deriving revenue exceeding AED 50,000,000 during the relevant tax period; and 2) a qualifying free zone person.
7	**Ministerial Decision No. 83 of 2023 on the Determination of the Conditions under which the Presence of a Natural Person in the State would not Create a PE for a Non-Resident Person** The decision provides for the conditions where the presence of a natural person in the UAE shall be considered a consequence of a temporary and exceptional situation of a private and public nature. The decision further provides an illustrative list of exceptional circumstances of **a public and private nature**.
8	**Federal Tax Authority Decision No. 5 of 2023 on Conditions for Change in Tax Period** The decision provides the timelines and conditions under which the taxable person can make an application to the FTA to change the start and end date of the tax period or use a different date. This FTA decision is effective from 1 June 2023.
9	**Federal Tax Authority Decision No. 6 of 2023 on Tax Deregistration Timeline** The decision provides the timeline for deregistration as follows: ▪ **Natural persons** shall be required to file a tax deregistration application within three months of the date of cessation of the business or business activity. ▪ **Juridical persons** shall be required to file a tax deregistration application within three months of the date the entity ceases to exist, cessation of the business, dissolution, liquidation or otherwise. This FTA decision is effective from 1 June 2023
10	**Federal Tax Authority Decision No. 7 of 2023 on Provisions of Exemption from Corporate Tax** The decision provides for categories of persons for corporate tax registration and procedure for application for exemption from corporate tax along with timelines for making the application for exemption. The decision is effective from 1 June 2023.
Tax residency	
11	**Cabinet Decision No. 85 of 2022 on Determination of Tax Residency (effective from 1 March 2023)** The decision specifies the requirements and conditions for determining the tax residency status of a natural and a legal person in the UAE, for issuance of a 'tax residency certificate' (TRC) in the UAE.

Sr.no	List of cabinet/ministerial/FTA decisions and explanation
	i. Applicability to legal persons ▪ A legal person established, formed or recognised in accordance with the legislation in force in the UAE shall be considered as a UAE tax resident. ▪ A legal person considered as a tax resident under the applicable tax law in the country shall also be considered as tax resident. ▪ Branches of a foreign company/entity in the UAE shall not be considered as a UAE tax resident. ii. Applicability to natural persons A natural person shall be considered as a UAE tax resident if any of the following conditions is met: ▪ If their usual or principal place of residence and the centre of their financial and personal interests are in the UAE, or if they meet the conditions and criteria specified by a decision of MOF; ▪ If they have been physically present in the state for a period of 183 days or more during the relevant 12 consecutive months; ▪ If they have been physically present in the country for a period of 90 days or more during the relevant 12 consecutive months, and hold the nationality of the state or hold a valid residence permit in the state or hold the nationality of any of the member states of the Gulf Cooperation Council, and meet any of the following: A. they have a permanent place of residence in the country; B. they exercise a job or business in the country. The cabinet decision also specifies that the above conditions will need to be examined for issuing a TRC for 'domestic tax purposes', whereas for issuing a TRC for 'tax treaty purposes', provisions of the relevant tax treaty with UAE will prevail..
12	**Ministerial Decision No. 27 of 2023 on Implementation of Certain Provisions of Cabinet Decision No. 85 of 2022 on Determination of Tax Residency** The decision provides additional details regarding the conditions in determining tax residency for natural persons with respect to usual or primary place of residence and centre of financial and personal interests in the UAE, calculation of time period, exceptional circumstances, permanent place of residence, employment, etc.

Economic Substance Regulations

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

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

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

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

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

VAT and customs duties update

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

Date	Tax	Type of update	Particulars of update
February 2023	VAT	Public clarification & ministerial decision	Amendments to Emirates' Reporting – Electronic Commerce Supplies by Qualifying Registrants and Ministerial Decision No. 26 of 2023 on Criteria and Conditions for Electronic Commerce for Purposes of Keeping Records of the Supplies Made
March 2023	VAT	VAT guide	Input Tax Apportionment guide

A summary of the updates is as follows:

- **Amendments to Emirates' Reporting – Electronic Commerce Supplies by Qualifying Registrants and Ministerial Decision No. 26 of 2023 on Criteria and Conditions for Electronic Commerce for Purposes of Keeping Records of the Supplies Made**

  The FTA has recently issued VAT public clarification VATP033 – Amendments to Emirates' Reporting – Electronic Commerce Supplies by Qualifying Registrants and Ministerial Decision No. 26 of 2023 on Criteria and Conditions for Electronic Commerce for Purposes of Keeping Records of the Supplies Made (with effect from 1 July 2023). The key areas covered in this public clarification and ministerial decision can be summarised as follows:

  A. Who will qualify as qualifying registrants?

  Taxable persons supplying goods and services through e-commerce exceeding AED 100 million over a calendar year are referred to as qualifying registrants.

  B. What is the provision relating to record-keeping requirements for qualifying registrants?

  Qualifying registrants are required to keep records of transactions to prove in which emirate the supply is received by the customer. The supporting documents and information relating to prove the emirate is required to be kept by qualifying registrants and it may be required by the FTA as part of a tax audit.

  C. What is e-commerce and what are the criteria and conditions for a supply of goods and services to be considered as being supplied through e-commerce?

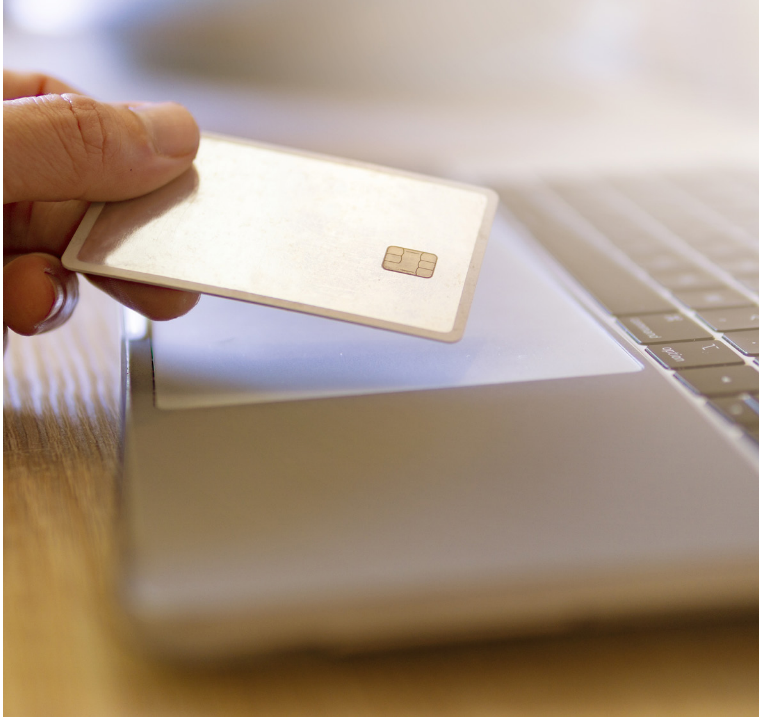
  — The FTA has defined e-commerce for the purpose of emirates' reporting. E-commerce is the process of selling goods or services through electronic means, an electronic platform, a store in social media or electronic applications.

  — This would also cover a website, portal, gateway, interface, platform, marketplace, API, similar applications, stores in metaverse, smart kiosks, robotic devices, etc.

  — A supply of goods or services shall be considered to be made via the e-commerce medium where all of the following conditions are satisfied:

Condition	Explanation
Listing or advertisement on an e-commerce medium	▪ Customer should be provided with all the required information of the goods or services to make an informed decision regarding purchase. ▪ Listing or advertisement of general categories of any goods or services without displaying a price or only providing a link to another website where goods and services are only listed would not satisfy the condition.
Order through the e- commerce medium, **regardless of online or offline payment**	▪ Full execution of order through e-commerce medium. Any manual procedure such as signing an offline contract or agreeing to terms and conditions on another e-commerce medium or email would not satisfy the condition. ▪ The mode of payment will not be a decisive factor for this condition.

Condition	Explanation
Delivery of goods to customer's location which is not owned or operated by supplier	▪ Where a customer elects to take delivery of goods from the supplier's store or any other operated location of the supplier (such as warehouses, stores of the supplier), supply would not be considered to be made through e-commerce. ▪ If the delivery location of the customer and billing address of the customer are different, then the delivery location specified by the customer would be considered as the emirate in which the supply is received.
Provision of services or the right to receive the services is granted to the customer with **minimal or no human intervention**	▪ There should be minimal or no human intervention where services are provided or a right to receive services is granted to customers. ▪ **Certain examples specified in the public clarification:** A. Considered supply through e-commerce: — Training consisting of automatic broadcasting of a pre-recorded lecture with automated assessment; — Granting right to receive meal delivery services even though delivery services are performed by human drivers. B. Not considered supply through e-commerce: — Training provided by a human lecturer through live stream; — Granting of right to receive services provided through intervention of chatbot operated by human being in a call centre; — Checking list of goods or services on e-commerce platform medium and calling or contacting the supplier who delivers the goods.



D. **Who would be liable to report VAT for supply to end customers where an e-commerce medium is acting as an undisclosed agent?**

— The public clarification provides that when an e-commerce operator acts as an undisclosed agent, the supplier shall be regarded as supplying the goods or services to the e-commerce medium, and the e-commerce medium shall be regarded as supplying the same goods or services to the customer.

— Therefore, the e-commerce operator shall be required to consider the supply to the end customer when determining the value of the taxable supply made by it through e-commerce.

E. **What would be the VAT implications for incidental supplies?**

Activities that support online transactions, such as payment systems, logistics for the delivery of goods and other similar platform services fall within the ambit of an e-commerce supply of goods provided these ancillary services are provided by the same supplier of the goods.

F. **What is the notification/intimation requirement for qualifying registrants (including registrants acting as undisclosed agents) from 1 July 2023?**

— FTA to be notified via the first VAT return to be submitted after exceeding the AED 100 million threshold.

— Confirmation of the date when the AED 100 million threshold was exceeded.

G. **What would be the first year for calculating the threshold limit of AED 100 million?**

— The first assessment of whether the AED 100 million threshold is exceeded is based on the calendar year 2022 (i.e. 1 January 2022 to 31 December 2022).

— If the registrant does not exceed the threshold in calendar year 2022, then the registrant must regularly conduct an assessment to determine whether the threshold is exceeded in any subsequent calendar years and inform the FTA through the first VAT return after the threshold was exceeded for any calendar year.

H. **What would be the revised reporting mechanism for qualifying registrants where the threshold of AED 100 million is exceeded?**

— From 1 July 2023 or the tax period following the calendar year in which the threshold was exceeded, as the case may be, qualifying registrants would be required to separately identify the emirate in which e-commerce and non-e-commerce standard rated supplies are to be reported, per tax period.

— This information shall be submitted as an underlying declaration and split between e-commerce and non-e-commerce standard rated supplies.

— The amounts declared in each of the relevant emirate fields under Box-1 of the VAT return shall still be the aggregate of e-commerce and non-e-commerce standard rated supplies.

- **Input Tax Apportionment guide – key highlights**

The FTA has recently updated its guide on input tax apportionment under UAE VAT law. The key highlights have been summarised below:

— Updated guide is more user-friendly by the addition of simplified examples for each of the special apportionment methods and simplified explanations;

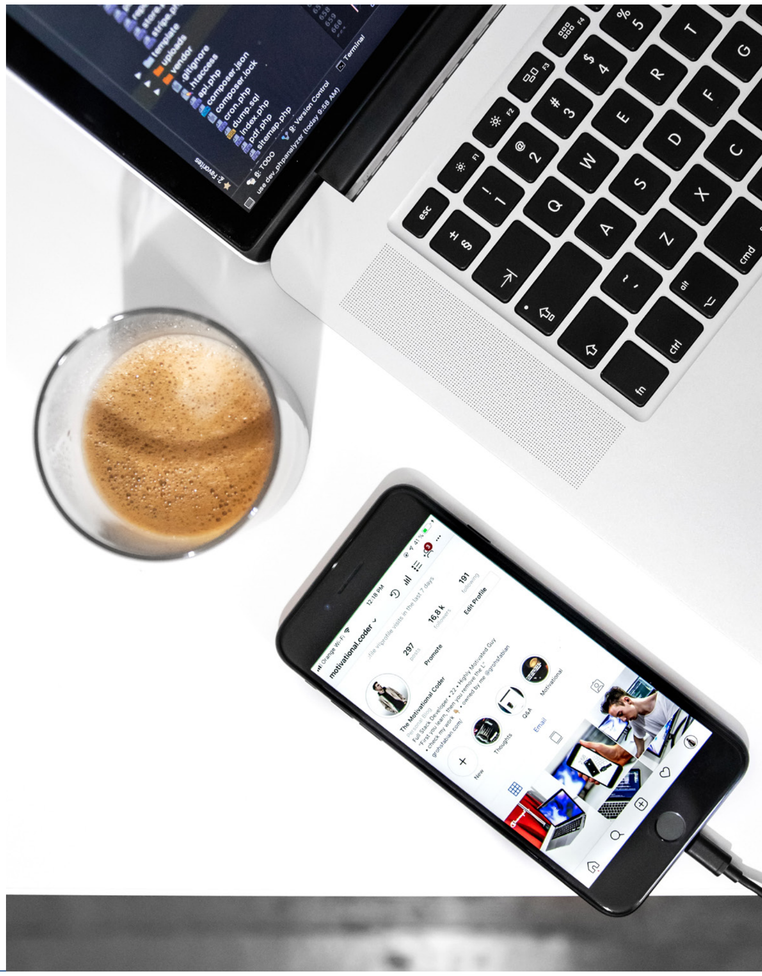
— Scope of output-based methods application has been extended to educational institutions and establishments such as art galleries, cultural entities and similar establishments conducting non-business activities;

— Scope of application of the floorspace method has been extended to landlords dealing in supplies of sales/rental of commercial/residential properties;

— The FTA has reduced the approval period from 80 days to 60 days for the non-sectoral method. If additional information is required in respect of the filed application, the FTA will request the additional information. It may take a further 40 or 60 business days (based on the method selected in the application) to respond to the updated request for a special input tax apportionment method;

— Guidance has been provided on how and when a registrant can reapply to continue using a special method after the expiration of the approval to use a specific special apportionment method.

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



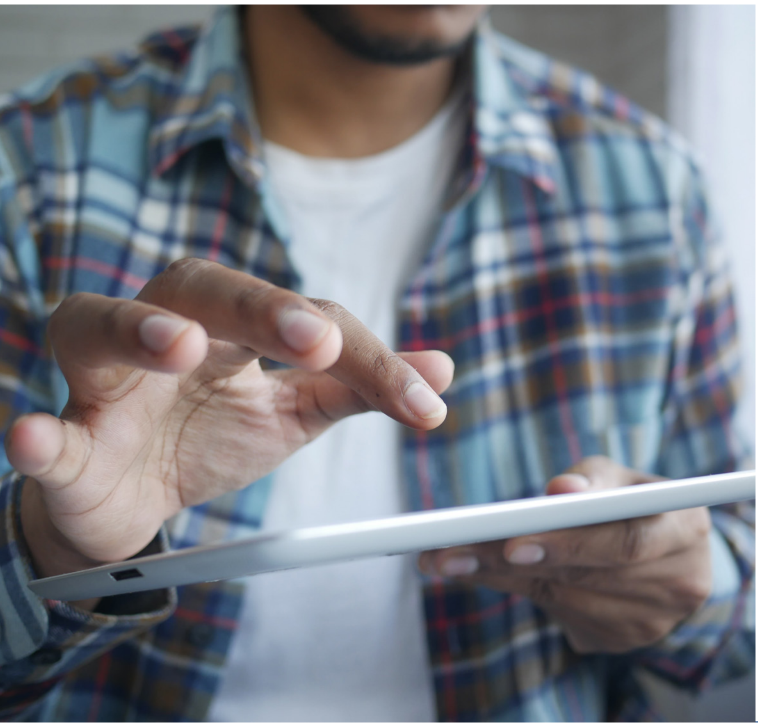
Other developments

Fee structure for private technical clarification by FTA effective from 1 June 2023

The FTA has recently amended Cabinet Decision No. 65 of 2020 via Cabinet Decision No. 7 of 2023.The FTA has announced a fee structure with effect from 1 June 2023 for seeking a private clarification from the FTA. The details are as follows:

Particulars	Fee for each request	Comments
Request relating to **single tax**	AED 1,500	It appears that if question/s pertaining to any one type of tax such as VAT, corporate tax or excise tax is included in a single private clarification application, then this lower fee would be applicable.
Request relating to **more than one tax**	AED 2,250	It appears that if question/s pertaining to more than one type of tax such as VAT, corporate tax or excise tax is included in a single private clarification application, then this higher fee would be applicable.

Previously, no fee was charged by the FTA for seeking a private clarification. Accordingly, there were no fees applicable for obtaining any private clarification before 1 June 2023.



PKF Comment

The issuance of cabinet and ministerial decisions with respect to certain provisions of the UAE CT Decree-Law has brought in much-needed clarity on various aspects. However, further guidance on the majority of the provisions of the UAE CT Decree-Law is still awaited and expected to be issued soon.

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

Regarding VAT, amendments to emirate-wise reporting of e-commerce supplies by qualifying registrants include provisions relating to record-keeping requirements for qualifying registrants, a definition of e-commerce and criteria and conditions for the supply of goods and services to be considered as being supplied through e-commerce, a revised reporting mechanism, etc. In addition, an update of the Input Tax Apportionment guide has widened the scope of the output-based method and floorspace method while reducing the FTA approval period and providing simplified examples of special apportionment methods.

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

BACK

United States

Federal 2022 business tax returns and 2023 planning

As we gather information and documents for our 2022 business tax returns, it is a good time to review how recently enacted federal tax laws, as well as changes for the upcoming year built into the tax reform of 2017, may impact them. It is also a good time to plan an approach to our 2023 tax year. In this article, we will take you through changes which affect your 2022 and 2023 returns. As someone once said, 'The best way to get something done is to begin.' So, let's get started.

Bonus depreciation phase-out

Under the Tax Cuts and Jobs Act of 2017 (the TCJA), businesses were eligible to take 100% bonus depreciation on the qualified assets acquired and placed in service after 27 September 2017 and before 1 January 2023. This created a powerful incentive for investment in new assets. Starting in 2023, bonus depreciation begins to phase out - the percentage will drop by 20% every year until it is eliminated completely in 2027 (80% for 2023, 60% for 2024, 40% for 2025, 20% for 2026 and 0% for 2027 and later years). The impact of the changes in bonus depreciation is further discussed here.

Businesses are still eligible to take advantage of §179, expensing the cost of qualified assets in the year they are placed in service. The maximum deduction for §179, along with the phase-out thresholds, are adjusted annually for inflation. Starting in 2023, the maximum deduction is adjusted for inflation to USD 1,160,000 and will start to phase out once qualified assets exceed USD 2,890,000. Once it reaches USD 4,050,000, the deduction phases out completely. This adjustment upward could provide some cushion for the loss of bonus depreciation. However, unlike bonus depreciation, a §179 deduction cannot generate a net operating loss, meaning the deduction is only beneficial in the current year if the business is profitable for income tax purposes.

Interest expense deduction limit gets stricter

Under the TCJA, IRC §163(j) limits business interest expense deductibility to 30% of 'adjusted taxable income'. The limitation is not applicable for small businesses with three-year average gross receipts of USD 27 million or less for 2022 (a threshold that increases to USD 29 million for 2023). The TCJA built in a change in 2022 that makes the §163(j) limitation more restrictive in 2022.

Prior to 2022, the adjusted taxable income reflected the earnings before interest, taxes, depreciation and amortisation (EBITDA).

Starting in 2022, the add-back of depreciation and amortisation is disallowed - thus, adjusted taxable income is based on earnings before interest and taxes (EBIT). This change reduces adjusted taxable income (potentially greatly if a business has significant depreciation and amortisation), which consequently reduces a business's interest expense deductibility. Businesses with substantial interest expense should review the impact of these changes.

Research and experimentation expenditure capitalisation

Prior to the TCJA, businesses were allowed to deduct the cost of research and experimentation (commonly known as R&D) expenditure. Starting in 2022, the TCJA requires businesses to capitalise and deduct such expenses over five years (15 years for foreign R&D expenses). This capitalisation rule may increase the tax burden on businesses with significant R&D spend. Read our insight on this topic and meet our experts here.

Business meals deduction

The Consolidated Appropriations Act of 2020 temporarily allowed a 100% deduction of certain meals provided by restaurants for 2021 and 2022 tax years (increased from 50% under the TCJA). This temporary provision has expired, and deductibility has returned to 50% from 1 January 2023. A further discussion on the impact of the TCJA on the deductibility of meal expenses for businesses can be found here.

Corporate alternative minimum tax (AMT) returns - for a few

The Inflation Reduction Act (IRA), passed last summer, includes a couple of new provisions that will affect businesses for tax years beginning after 31 December 2022. The IRA restores a corporate AMT, which was previously repealed by the TCJA, but in much more limited fashion. Starting in 2023, a 15% AMT will be imposed on corporations with average book income of over USD 1 billion (over a three-year period). The Joint Committee on Taxation (JCT) estimates that the new corporate AMT is only expected to apply to 150 companies.

New excise tax on stock repurchases

The IRA also introduced a non-deductible 1% excise tax on stock repurchases occurring after 31 December 2022. This applies to US corporations whose stock is traded on an established securities market. This provision does not apply to repurchases under USD 1 million in fair market value.

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PKF Comment

The tax law changes provide an opportunity to review and re-evaluate your tax planning. It is a great time to consider whether any of the provisions and changes may impact your business and discuss with your tax advisors.

PKF O'Connor Davies has a team of experts to answer any questions you may have related to these tax changes. Please contact your client engagement partner or either of the following: Esther Park at epark@pkfod.com or Christopher Migliaccio at cmigliaccio@pkfod.com or call **+1 646 699 2890**.

BACK

Foreign cryptocurrency: US FBAR and FATCA reporting requirements

While US individuals and businesses have long dealt with Foreign Bank and Financial Account Reporting (FBAR) and Foreign Account Tax Compliance Act (FATCA) reporting requirements relating to foreign bank accounts and certain foreign assets, one area that still may be confusing to many is the treatment of cryptocurrency. Given cryptocurrency's novel status, how does it fit into these rules? Does it need to be reported? Could the current rules be in for a change?

Cryptocurrency has been excluded from FBAR requirements to date. However, with the recent proposed regulations, FinCEN (Financial Crimes Enforcement Network) is looking to include foreign cryptocurrency accounts in FBAR reporting. An example of such holdings may include Bitcoin, Ripple or Ethereum that are held in accounts outside of the United States.

Read on for more information about how the changing standards could affect your reporting.

Current FBAR reporting requirements

The FBAR reporting requirements include certain types of reportable foreign accounts:

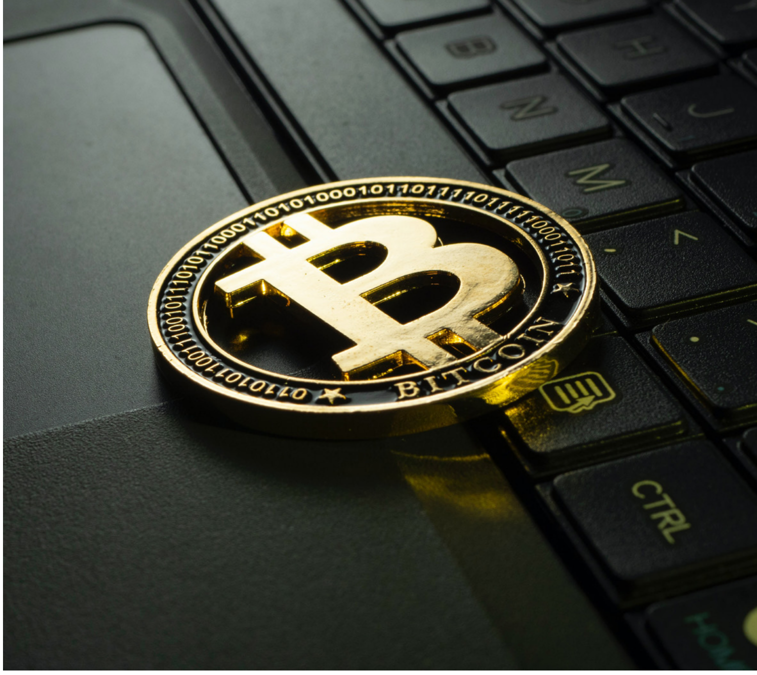
- bank account
- securities account
- other financial account
- accounts with mutual fund or similar pooled fund
- other investment account.

To satisfy the FBAR requirement, a US taxpayer uses Form FinCEN114 (which is not an IRS form, even though it is generally filed alongside a tax return). The due date to file FBAR is 15 October of the year following the reportable tax year.

The above foreign accounts become reportable on a US taxpayer's FBAR form when – in the aggregate – the maximum value on all accounts at any point during the year exceeds USD 10,000.

In Notice 2020-2, FinCEN has confirmed that the current FBAR regulations do not define a foreign account holding virtual currency as a type of reportable account. However, FinCEN in Notice 2020-2 indicated that it intends to propose an amendment to the regulation which will include virtual currency as a type of reportable account for the FBAR. This leaves filers with a clear position to not report these accounts now, but one that could change at any time.

It is interesting to note, however, that if the foreign account holding cryptocurrency is 'hybrid', the account could be reportable. A hybrid account would be one that holds some other currency (i.e. euros) or other reportable assets alongside the virtual currency.



Current FATCA reporting requirementss

Generally, every bank account that is reportable for FBAR purposes would be reportable for FATCA purposes if the value of all accounts exceeds the threshold imposed by FATCA rules. Unlike the FBAR, the FATCA reporting requirements threshold starts at a USD 50,000 value of the foreign financial assets and increases depending on the physical presence of the taxpayer and their filing status. The FATCA requirement is fulfilled by filing Form 8938 as part of a taxpayer's US individual income tax return.

Specified foreign financial asset

A reportable account/asset is referred to as a specified foreign financial asset.

Specified foreign financial assets include financial accounts maintained by a foreign financial institution and include the following foreign financial assets if they are held for investment and not held in an account maintained by a financial institution:

- stock or securities issued by someone that is not a US person (including stock or securities issued by a person organised under the laws of a US possession);
- any interest in a foreign entity; and
- any financial instrument or contract that has an issuer or counterparty that is not a US person (including a financial contract issued by, or with, a counterparty that is a person organised under the laws of a US possession).

Virtual currency or foreign currency is not included in the above definitions of a specified foreign financial asset. Frequently, crypto accounts are not even held with financial institutions. Furthermore, cryptocurrency is not considered currency at all for the purposes of the Internal Revenue Code. Based on IRS Notice 2014-21, it is an intangible asset. However, much like the hybrid account rules for the FBAR, since cryptocurrency can be held in a foreign financial account, it could potentially play a role in valuing that account for FATCA purposes.

PKF Comment

While there is no clear guidance that virtual currency is a specified foreign financial asset, there is also no clear guidance excluding it. Thus, for the reporting of virtual currency for FATCA purposes, we recommend reviewing each foreign account that holds cryptocurrency on a case-by-case basis.

Individuals and businesses with cross-border transactions should be aware of the potential non- compliance issues and should evaluate their foreign cryptocurrency holdings on an ongoing basis when transacting using virtual currency.

Our International Tax Group at PKF O'Connor Davies is available to assist with US tax compliance of cryptocurrency foreign assets or any other delinquent US tax filings related to foreign digital currency holdings. For further assistance, please reach out to your PKF O'Connor Davies client service team or Evgenia Belyavskaya at ebelyavski@pkfod.com or call **+1 646 449 6350**.

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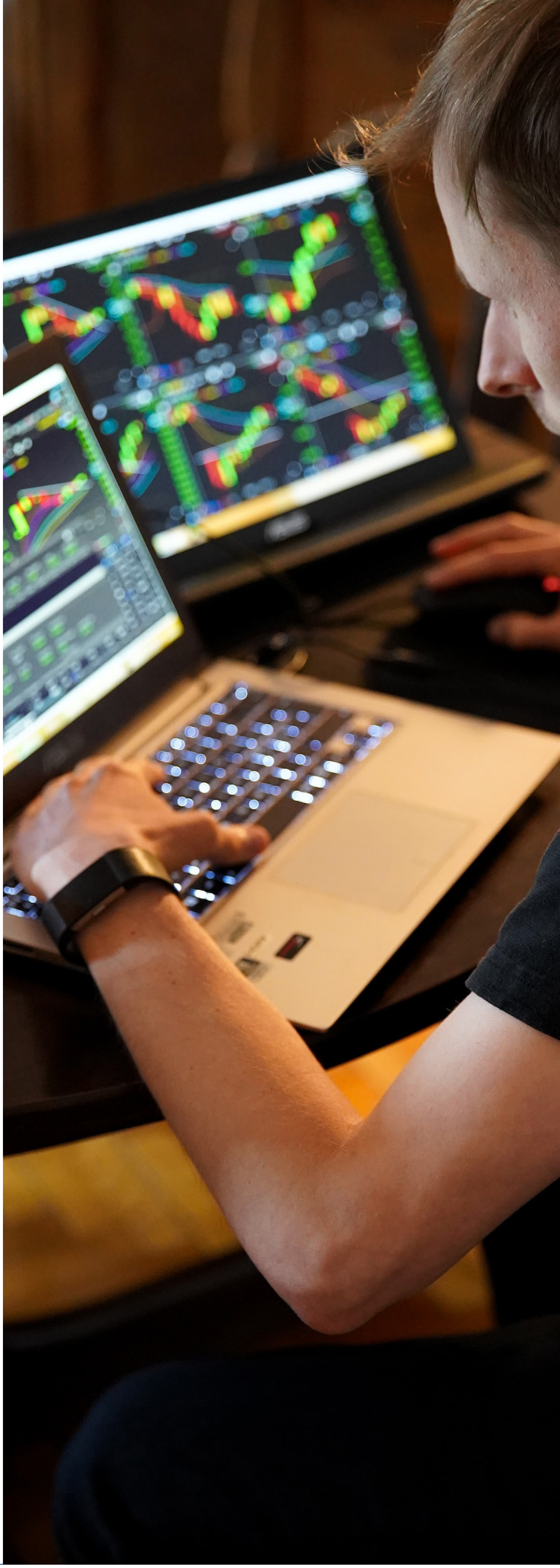

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