PKF

PKF worldwide tax update

December 2024

Contents

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.

Welcome

In this fourth quarterly issue for 2024, the PKF Worldwide Tax Update newsletter again brings together notable tax changes and amendments from around the world, with each followed by a PKF commentary which provides further insight and information on the matters discussed. PKF is a global network with 480 offices, operating in over 150 countries across our five regions, and its tax experts specialise in providing high quality tax advisory services to international and domestic organisations in all our markets.

In this issue featured articles include discussions on:

- (EU) VAT and excise tax updates in Italy, Slovak Republic, Switzerland and the UAE
- Case law and administrative rulings in Hungary
- Significant personal and corporate income tax changes in India, Ireland, Kenya, Malta, Namibia, Romania and the United Kingdom
- International tax developments (CFC/thin cap, CbC reporting, BEPS, MLI, double tax treaties, transfer pricing, etc.) in Australia, Belgium, Peru, Portugal and Singapore

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

Australia

Thin capitalisation reforms and their impact on corporate tax management

As of 8 April 2024, the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Act 2024 has officially been enacted. This landmark legislation introduces major reforms to Australia's thin capitalisation regime, which will apply to income years commencing on or after 1 July 2023. In this article, we provide an overview of the new rules, including potential impacts to your financing arrangements.

Background: Global tax environment and reform of thin capitalisation rules

In broad terms, the thin capitalisation provisions were introduced to prevent enterprises from deducting interest in high-tax countries through borrowing, thereby reducing their tax liabilities. These rules were considered a significant measure to prevent eroding national tax bases through debt financing strategies. The traditional thin capitalisation rules mainly relied on the 'safe harbour debt test', which limited the deductible interest on debt based on the value of corporate assets. However, given the complexity of multinational corporate capital structures, this asset-based debt limitation method could no longer effectively meet new challenges.

Being a member of the OECD, Australia has actively responded to the BEPS Action Plan, reforming the thin capitalisation provisions in an approach which follows the OECD's earnings-based interest limitation rule. These rules not only aim to limit profit shifting through debt arrangements but also attempt to match corporate tax burdens more closely with actual business conditions by introducing earnings-based limitation tests.

1. Core changes and detailed analysis of the new rules

The new thin capitalisation rules introduced several significant changes, especially strict restrictions on debt deductions, and these changes may affect multinational groups' financial and tax planning activities.

The bill introduces the concept of general class investors, consolidating the existing general classes of entities including outward investor (general), inward investment vehicle (general) and inward investor (general). This simplified classification allows taxpayers to focus on compliance with earnings-based tests applied to the broad general class investors. By unifying these previously distinct categories, the new rules reduce the complexity of navigating multiple entity classes.

Fixed ratio test

This test has replaced the old 'safe harbour test'. According to the new rules, an enterprise's net debt deductions are limited to 30% of its tax EBITDA. This change may pose significant challenges for capital-intensive industries and enterprises that rely on highly leveraged operations, as these entities may find their actual debt deductions exceeding the 30% limit.

The newly implemented fixed ratio test is now directly tied to corporate operating profits. As a result, previous strategies that focused on increasing asset bases to raise debt deduction thresholds are no longer applicable.

For example, industries including construction, infrastructure and the energy sector typically require significant borrowing to support their project development. Debt deductions exceeding 30% of tax EBITDA are no longer deductible in the relevant income year but may be carried forward for up to 15 years where the continuity of ownership or business continuity conditions are satisfied.

Group ratio test

This test provides greater flexibility for highly leveraged multinational groups and replaces the existing worldwide gearing test. Unlike the fixed ratio test, the group ratio test allows enterprises to calculate net debt deductions based on the accounting EBITDA and net third-party interest expenses of their global group. This method is particularly beneficial for large multinational groups operating globally, as these groups can ensure tax compliance in Australia and other markets by appropriately arranging their global debt structures.

The group ratio test also provides enterprises with additional flexibility, enabling them to claim higher debt deductions in Australia, based on the global group's debt levels despite exceeding the fixed ratio of 30%. However, this method requires enterprises to maintain comprehensive group financial statements and be able to clearly demonstrate their global third-party debt ratio. This could increase compliance complexity for some multinational groups, especially when debt arrangements vary significantly across different regions within the group.

Third-party debt test

This test allows all debt deductions that are attributable to genuine third-party debt only (that is, debt that satisfies the third-party debt conditions), while entirely disallowing debt deductions that do not meet the requisite conditions (including all related party debt deductions).

This method is particularly suitable for enterprises needing large external financing, such as in the infrastructure, real estate development and energy industries. However, enterprises need to ensure that their debt arrangements are genuine external borrowings, and not structured through complex related party transactions. Accurate and complete documentation including contemporaneous loan agreements, cash flow trails and related collateral terms are critical in substantiating the external financing.

2. Scope of application and exceptions

The new thin capitalisation rules apply to various entities, including:

- foreign-controlled Australian entities, such as foreign-owned Australian subsidiaries or branches;
- Australian entities investing overseas, such as Australian businesses with subsidiaries or investment projects abroad;
- foreign entities' operations in Australia, such as foreign companies with branches or permanent establishments in Australia;
- financial entities, including banks and other financial institutions, which typically have higher leverage ratios.

Additionally, certain types of businesses and industries enjoy specific exemptions. For example, non-ADI financial entities (such as non-bank lending institutions) will operate under the new third-party debt test, no longer restricted by the fair debt test. Plantation forestry enterprises are also exempt from the new rules, continuing to apply the old thin capitalisation rules. These industry-specific exemptions reflect the government's consideration of specific industry needs when formulating the new rules but also indicate that most multinational enterprises must engage in stricter tax planning under the new regulations.

Note the A$2 million de minimis threshold still applies and taxpayers with an associate-inclusive debt deduction of less than A$2 million in an income year are not subject to the debt deduction limitation under the thin capitalisation provisions.

3. New debt deduction creation rules

The new debt deduction creation rules apply to income years starting on or after 1 July 2024 and aim to prevent entities from creating debt deductions through internal transactions to exploit additional debt deduction capacity.

The debt deduction creation rules focus on the use of related party loans. Specifically, if an enterprise utilises a related party loan to acquire capital gains tax (CGT) assets, pay dividends or undertake capital returns, the debt deduction attributable to the related party borrowing will be restricted. Additionally, the rules also apply to enterprises borrowing from related parties to pay specific types of expenses, such as royalties for the use of a right.

The debt deduction creation rules are designed to prevent entities from artificially creating debt deductions through complex internal related party dealings and ensure genuine and commercially justified debt deductions remain deductible.

4. Interaction with transfer pricing rules

The interaction between thin capitalisation rules and transfer pricing rules is a key factor that enterprises must consider in the compliance process. Taxpayers are required to assess their debt arrangements from a transfer pricing perspective before applying the thin capitalisation rules. This means that enterprises not only need to prove that their interest rates meet arm's-length pricing but must also evaluate whether the quantum of the loan is at arm's length.

For example, when enterprises borrow from related parties, they need to ensure that the terms of their loans match those of independent third-party loans. During an Australian Taxation Office (ATO) audit or review, it is likely that related party financing arrangements would be subject to increased scrutiny, and it would be critical for the taxpayer to be able to provide relevant documentation substantiating arm's-length dealings between international related parties. Loan interest rates, repayment schedules and collateral arrangements will likely be reviewed as part of an audit, and enterprises need to ensure their records are complete and meet the standards of arm's-length transactions.

5. Our key observations

These new rules may impact how your businesses account for and report debt deductions. Here are our key observations for consideration:

- **Expanded definition of debt deduction:** The new rules broaden the scope of what qualifies as a 'debt deduction'. This could mean that a wider range of costs now fall under the thin capitalisation regime compared to the previous rules.
- **Economic equivalence to interest:** Payments or receipts that are economically equivalent to interest must be examined closely. The substance of each arrangement should be reviewed to determine if amounts qualify as debt deductions.
- **Accounting records:** Instances where a debt deduction is not reflected as an expense in the accounts – such as interest capitalised to an asset – should be carefully monitored.

6. Enterprise response strategies: Adjusting capital structures and tax planning

In light of the new thin capitalisation rules, enterprises will need to undertake adjustments to their capital structure and tax planning strategies. The following are some approaches businesses may consider:

- **Optimising capital structure:** The implementation of the new regulations necessitates that enterprises reassess their capital structures and strategically adjust the balance between equity and debt financing. This is essential to maintain financial flexibility and improve internal cash flows. Particularly for capital-intensive industries, businesses may need to refine their project financing strategies to ensure that their overall leverage levels are in compliance with the new tax requirements.
- **Adjusting global group structures:** The group ratio test may provide more flexibility to some multinational groups. A careful analysis of the group's debt levels is required, and appropriate documentation will need to be retained to support the higher deductions claimed.
- **Strengthening documentation and tax compliance:** Enterprises will need to ensure that contemporaneous documentation is retained to support the relevant debt levels, debt deductions claimed and compliance with the fixed or group ratio tests. Loan agreements, cash flow records, collateral terms and other documentation are critical as part of a taxpayer's audit defence file. Accurate records will assist with mitigating tax risks and provide taxpayers with a reasonably arguable position.

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PKF Comment

The updates to the thin capitalisation rules and the addition of new debt deduction creation rules mark a change in Australia's tax system and an alignment with the OECD's model. These rules aim to limit multinational enterprises from engaging in tax planning through complex capital structures while encouraging enterprises to enhance operating profits and capital efficiency.

Pillar 2 implementation in Australia: Current state of play

On 22 August 2024, the Australian House of Representatives passed a new law that introduces a 15% global minimum tax and a domestic minimum tax for large multinational companies with yearly global revenues over €750 million. This move follows the Australian government's 2023-2024 Budget plan, which included adopting the OECD/G20 two-pillar solution to tackle tax challenges brought on by the digital economy. The bill is now being reviewed by the Senate.

This article analyses the key aspects of this legislation, explores its implications, and offers strategic recommendations to assist businesses in effectively navigating these new requirements.

Australian legislative framework

The Australian primary legislative framework on Pillar 2 implementation comprises three bills:

1. **Imposition bill:** Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024 establishes the imposition of top-up tax.
2. **Assessment bill:** Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024 provides an implementation framework for the imposition of top-up tax.
3. **Consequential bill:** Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024 addresses consequential provisions for the administration of top-up tax.

OECD Pillar 2 Global Anti-Base Erosion (GloBE) Rules Framework

Purpose

The GloBE rules aim to implement a global minimum tax rate of 15% to deter multinational enterprise (MNE) groups from shifting profits to low-tax jurisdictions. By setting this minimum threshold, the rules aim to prevent profit shifting and base erosion, and to ensure fair tax payments across jurisdictions.

Key mechanisms

1. **Income inclusion rule (IIR)**
   - **Function:** Allows jurisdictions to impose a top-up tax on the income of multinational parent entities when their effective tax rate in other jurisdictions is below 15%.
   - **Application:** The IIR ensures that the parent entity will be taxed on the shortfall between the local tax rate and the 15% minimum.
2. **Undertaxed profits rule (UTPR)**
   - **Function:** Acts as a backstop to impose a top-up tax on profits not adequately taxed under the IIR.
   - **Application:** The UTPR applies if profits are reported in jurisdictions with an effective tax rate below 15% and are not covered by the IIR.

Domestic minimum tax option

- **Function:** Jurisdictions can apply a domestic minimum tax before considering the IIR and UTPR, giving them the option to prioritise their own tax claims on profits within their borders.

Applicability of the GloBE rules in Australia

Effective dates

- **IIR and domestic minimum tax:** Apply to fiscal years starting on or after 1 January 2024.
- **UTPR:** Applies to fiscal years starting on or after 1 January 2025.

Scope

- **MNE groups:** Applies to MNE groups with annual revenues exceeding €750 million.

Application

- **IIR or global minimum tax:** Allow Australia to apply a top-up tax on a resident multinational 'parent' company, where the group's income in another jurisdiction is being taxed below the global minimum rate of 15%.
- **Domestic minimum tax:** Allows Australia to apply a top-up tax on a resident subsidiary member of MNE groups located in Australia in order to bring the effective tax rate up to the 15% minimum rate.
- **UTPR:** Allows Australia to apply a top-up tax on a resident subsidiary member of a multinational group if the group's income in another jurisdiction is being taxed below the global minimum rate of 15% and where no IIR applies.

Lodgement obligations

Lodgement forms

It is anticipated that four new obligations will be introduced, which entities may be required lodge:

1. GloBE information return (GIR)
2. Foreign lodgement notification
3. Australian IIR/UTPR tax return (AIUTR)
4. Domestic minimum tax return (DMTR)

GIR is an information return that provides data to help tax administrators evaluate an MNE's compliance with the GloBE rules, as described in the OECD Pillar 2 Framework.

Foreign lodgement notification, AIUTR and DMTR forms are under development in Australia and will be available before the first lodgement deadline, due by 30 June 2026.

Lodgement timelines

- **GIR and foreign lodgement notification:** Due 18 months after the end of the first fiscal year (for example, the lodgement due date for 31 December 2024 and 30 June 2025 year ends will be 30 June 2026 and 31 December 2026, respectively) and 15 months after the end of subsequent years.
- **AIUTR and DMTR:** Due 18 months after the end of the first fiscal year, with potential extensions for deadlines.

OECD safe harbours

Several safe harbours defined in the OECD Framework are available to simplify compliance:

1. **Transitional country-by-country reporting (CbCR) safe harbour:** Allows use of existing CbCR data for compliance up to fiscal years beginning on or before 31 December 2026.
2. **Qualified domestic minimum top-up tax (QDMTT) safe harbour:** Eliminates the need for GloBE calculations if a jurisdiction applies QDMTT.
3. **Non-material constituent entity simplified calculations safe harbour:** Provides simplifications for non-material entities.
4. **Transitional UTPR safe harbour:** Details are under development.

Australia intends to align with OECD guidelines and will not offer additional concessions.

Our key observations

1. **Compliance challenges:** Businesses face varying levels of readiness, with many anticipating significant compliance hurdles. The GloBE rules introduce complex requirements that may strain existing systems and processes.
2. **Australian-specific issues:**
   - **Administrative penalties:** Concerns about penalties and clarity on enforcement are anticipated.
   - **Safe harbours:** Reliance on OECD safe harbours will be crucial for compliance.
   - **Interaction with existing regime:** Questions about how GloBE rules will interact with the current Australian tax regime need careful interpretation.

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PKF Comment

Our recommendation

1. **Assess readiness:** Perform a thorough Pillar 2 readiness assessment to determine your business's preparedness and develop a compliance strategy addressing identified challenges and resource needs.
2. **Conduct modelling:** Evaluate the potential for global and domestic minimum taxes in jurisdictions where your business operates and adjust its global tax strategy accordingly.
3. **Plan for data management:** Manage data capture requirements for the GIR and invest in system upgrades or manual processes to streamline data collection and ensure accuracy.
4. **Engage with advisors:** Consult with tax advisors to navigate the GloBE rules and leverage their expertise for impact assessments and to understand data requirements.
5. **Monitor legislative developments:** Stay informed about legislative progress and actively participate in consultations to voice concerns and seek clarifications.

By proactively addressing these areas, your business can be well positioned to effectively manage the complexities of the GloBE rules and ensure compliance with the new global and domestic tax measures.

For further information or advice in relation to this, or with respect to Australian taxation, please contact Becky Nguyen at bnguyen@pkf.com.au or call +61 3 9679 2291.

BACK

Belgium

Transfer pricing: Recent changes to the local file, master file and CbCR requirements

Since the introduction of the 1 July 2016 programme law, Belgium has introduced transfer pricing documentation in accordance with the OECD guidelines. Through the mandatory annual delivery of a number of reports (i.e. local file, master file and country-by-country reporting (CbCR) file), multinationals can no longer escape a well thought-out and detailed transfer pricing policy. The application of transfer pricing to inter-company transactions has a direct impact on the distribution of group profits among different companies. Consequently, this also affects the tax revenues of the countries involved.

The mandatory documentation was created by the legislature with the goal of achieving greater tax transparency and has just been tightened for the upcoming years. More specifically, the Belgian tax authorities have recently published adjusted transfer pricing documentation forms and guidance, which will come into effect for financial years starting from 1 January 2025. The adjusted forms and explanatory notices were included in the royal decree dated 16 June 2024 and were published on 15 July 2024 in the Belgian Official Gazette.

Recap: TP documentation requirements in Belgium

A Belgian company part of a multinational group has the obligation to submit a local file (275 LF) and a master file (275 MF) if it exceeds at least one of the following criteria during the fiscal year preceding the reporting year, based on its individual annual accounts:

- a total of €50 million in operational and financial revenue (excluding non-recurring income);
- a balance sheet total of €1 billion; or
- an annual average of 100 full-time equivalent employees in the workforce.

Note that these thresholds apply not only to 'truly' large companies. We refer to a multinational group when two or more companies are connected (through ownership and control) and are located in different jurisdictions.

Hence, if a Belgian company has one subsidiary or permanent establishment abroad and exceeds one of the aforementioned criteria, the reporting obligation applies.

Additionally, Belgian entities that are part of a multinational group with a consolidated gross revenue of €750 million or more have to meet the CbCR notification obligation (i.e. 275 CBC NOT and/or 275 CBC in case they are also the ultimate parent entity). In particular, a CbCR notification requirement needs to be filed by each Belgian constituent entity which is part of a group that falls under the CbCR requirements.

Changes to the local file (275 LF)

- Starting in 2025, there should be separate country-by-country reporting. Instead of an aggregated overview of all countries combined, cross-border transactions should be reported by business unit and country.
- Detailed information about the transfer pricing methodology and studies must be submitted (in PDF format) along with the form. Previously, only their existence and availability had to be reported.
- Available framework agreements or model contracts related to the transfer pricing policy must also be included (in PDF format) as an attachment to the XML file that needs to be submitted.

Based on the new mandatory requirements above, it can be assumed that the Belgian tax authorities' data-mining tool will likely identify those companies that declare the availability of only limited documentation as potential TP audit targets going forward.

Changes to the master file (275 MF)

- A more detailed description of the analytical framework for the value chain and functional analysis, including a comparison with transfer pricing results, is required.

  Note that this goes beyond the requirements of the OECD Transfer Pricing Guidelines.
- Information related to DEMPE (development, enhancement, maintenance, protection and exploitation) functions associated with intangible assets should be more detailed. More specifically, a detailed analytical framework for DEMPE functions should be provided, but also, for example, a list of transferred hard-to-value intangible assets.
- Finally, there is an expansion of the description of financial policies and transactions. It includes specific information on financial guarantees and in-house (re)insurance.

Changes to the CbCR notification file (275 CBC NOT)

From 2025, entities must specify the type of notification, whether it is the first notification, an amendment to a previous notification or a termination of the notification requirement. The notification form must also be submitted upon the termination of the notification obligation.

Timing stays the same

Important to note is that the submission period of the local file, master file and CbCR file remains unchanged compared to prior years. However, please note that those forms have different deadlines.

The deadline for the local file aligns with the filing of the corporate income tax return in Belgium.

The master file and the CbCR file must be submitted within a period of 12 months from the last day of the group's reporting period. Consequently, for fiscal years ending 31 December 2023, this means that the filing deadline is set to be no later than 31 December 2024.

Finally, a CbCR notification form should be filed by the end of the group's reporting period. The CbCR notification does not need to be filed annually if no changes have occurred since the last filing.

Administrative fines

Failure to comply with the transfer pricing reporting obligations may result in administrative fines. Non-compliance includes late, incorrect or missing submissions of Belgian transfer pricing documentation.

The first violation is often disregarded. However, as from a second violation, fines are imposed. They start at €1,250 and increase with each additional violation. They can reach up to €25,000.

In recent years, these administrative fines have been more of a theoretical deterrent. However, the first fines are effectively being enforced by the Belgian tax authorities, indicating the importance of the correct and timely preparation and submission of the aforementioned TP documentation in Belgium.

PKF Comment

If you believe the above measures may impact your business or require any advice with respect to Belgian taxation, please contact Aleksandr Natanelov at **aleksandr.natanelov@pkfbofidi.com** or call **+32 2 486 59 75** for any further questions.

BACK

Chile

Specific procedure for registration in the Tax Identification Registry

All natural and juridical persons and entities or groups without legal personality, which due to their activities are required or may be required to withhold taxes in Chile, must generally be registered in the Tax Identification Registry, maintained by the Chilean tax administration (Chilean IRS). The tax administration may establish simplified or alternative procedures for this purpose.

However, Law No. 21641 published in the Official Gazette on 30 December 2023 introduced provisions that facilitate the registration of foreigners in the Tax Identification Registry in certain cases and under certain conditions. Indeed, banking or financial institutions established in Chile may request registration in the Tax Identification Registry from the IRS or the granting of an alternative tax identification number with respect to persons or entities that meet the following conditions:

a) Foreign or international banking or financial institutions that open correspondent current accounts with banking or financial institutions established in Chile and directly carry out financial operations with the latter.

b) Natural persons, juridical persons or other entities without domicile or residence in Chile that are clients of the aforementioned entities and are represented by them to carry out financial operations on their behalf with natural persons or legal persons or other entities domiciled or resident in Chile or abroad.

The entities and persons mentioned in (a) and (b) above must be resident or domiciled for tax purposes in countries or jurisdictions that have signed an agreement with Chile or are part of multilateral treaties with Chile, which allow the exchange of information for tax purposes, must be in force and must not contain limitations that prevent an effective exchange of information. Only those entities and persons who carry out financial operations in Chilean pesos, authorised by the Central Bank of Chile through banking or financial institutions established in Chile, will be able to access this alternative system. The IRS will specify those financial operations that can be carried out under this procedure, a matter that is still pending.

For registration in the Tax Identification Registry or to obtain an alternative tax identification number or enrolment number, the IRS may request the following information from banking or financial institutions established in Chile regarding the entities and persons to be enrolled:

i. name, denomination or corporate name, as appropriate;

ii. country or jurisdiction of domicile or residence for tax purposes;

iii. tax identification number used in the country or jurisdiction of residence;

iv. identification of the directors, managers or legal representatives, where applicable, providing the information indicated in points (i), (ii) and (iii) above; and

v. any other information that allows the entities and persons to be identified, as determined by the IRS.

The aforementioned information will be provided by banking or financial institutions established in Chile in the manner, time frame and conditions determined by the IRS with the supporting documentation. In addition, they must attach authorisation that the required information may be provided to the IRS.

The procedure described is not applicable to taxpayers without domicile or residence in Chile who are already registered in the Tax Identification Registry or who have obtained an alternative tax identification number or enrolment number. Without prejudice to the above, the IRS will regulate the manner and conditions in which such taxpayers may carry out the financial operations covered by this procedure.

The IRS may require banking or financial institutions established in Chile to provide the information indicated above regarding persons or entities that, during the previous business year, have received or made transfers of funds, credits, charges or withdrawals in the respective accounts, together with the total amount of the operations carried out under this procedure during the reporting period and any other information it determines.

The late or incomplete delivery of information to the IRS due to a cause attributable to banking or financial institutions established in Chile will be sanctioned with a fine equivalent to one annual tax unit ($900) for each of the accounts or operations in respect of which any of the obligations indicated above are infringed. The total annual fine to be paid may not exceed 500 annual tax units ($450,000). In certain cases, this limit may not apply.

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

Germany

Profit distribution in Germany: No need to correspond to the shareholding

In 2022, the highest fiscal court in Germany (BFH) released its judgment on the distribution of profits in companies. This judgment allows companies more flexibility as to the distribution of profits to their shareholders. The judgment has now also been recognised by the highest fiscal authority.

1. What has changed?

Normally, profits in a company are distributed in a way that corresponds to the shareholders' stakes in the company. When profits are distributed differently, it is called an 'incongruent profit distribution'. On 28 September 2022, the BFH ruled that an incongruent profit distribution is recognised for tax purposes if all shareholders agree to such a distribution in a resolution. This judgment differs from the previous view of the tax authorities. Until now, an incongruent profit distribution was only possible if it was regulated in the articles of association. The tax authorities have now changed their opinion. Incongruent profit distributions are now also recognised if they are based only on a shareholder resolution.

2. Conditions for tax recognition

There are now various possibilities for an incongruent profit distribution to be recognised for tax purposes. These also depend on the legal form of the company.

2.1 Limited liability company (GmbH)

Articles of association: The company's articles of association may stipulate a profit distribution that differs from the shareholdings. This is valid and is recognised for tax purposes.

Shareholder resolution: If all shareholders decide together to distribute the profits differently, this will be accepted. The shareholders do not have to amend the company agreement for this. However, this resolution is invalid if certain formal requirements are not met, which include, for example, the convening of a shareholders' meeting and the quorum. The invitation must be issued in due time and in the proper manner. The shareholders' meeting must attain a quorum. As a rule, a certain minimum number of shareholders must be present for this. If the resolution requires a majority, but this has not been achieved, the resolution is invalid.

Please note: The tax authorities also recognise distributions at different times if profits are distributed at different times.

2.2 Joint-stock company

In the case of stock corporations, the recognition of incongruent profit distributions is stricter, so the new ruling changes nothing in this respect. Profits must be distributed in accordance with the shares in the company's capital. Incongruent distributions are only recognised for tax purposes if another distribution is expressly permitted in the articles of association of the stock corporation. A resolution passed without amending the articles of association is not permitted.

Improved accessibility to products and services in Germany

In 2025, the Accessibility Strengthening Act (BFSG) will come into effect. The aim of the law is to give people with disabilities improved access to certain products and services. This law is also based on European Union rules.

1. Aim and content of the BFSG

The BFSG is the German version of the European Accessibility Act (EAA). This EU directive from 2019 requires EU countries to have accessibility rules in place for certain products and services. The law requires companies to design their products and services so that they can be understood and used by everyone. Furthermore, the law only applies to products and services that come onto the market after 28 June 2025. Older products do not need to be altered.

2. Which products and services must be accessible?

Selected products:

- computer hardware (e.g. keyboards, monitors)
- certain vending machines, such as ticket machines and ATMs
- devices used for telecommunications and media (e.g. cell phones, televisions)
- e-book readers.

Selected services:

- telecommunications services (such as telephone and internet)
- parts of transportation such as aeroplanes, buses, trains and ships
- banking services
- e-books and their software
- online services (e.g. websites and apps for purchases or bookings).

3. Exceptions and simplifications

Smaller companies can be exempted from certain requirements if they can prove that implementing them would be too expensive for them.

4. Consequences of non-compliance

Companies that do not comply with the accessibility rules may be subject to fines. In addition, competitors or consumer organisations can take legal action against them. In serious cases, a company could be forced to withdraw products from the market.

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PKF Comment

The BFSG ensures that many companies, particularly in the IT, telecommunications, banking and transport sectors, will have to adapt their offerings. It makes sense to take early action to comply with the accessibility rules and avoid legal problems.

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

Greece

Cancellation of stamp duty and introduction of digital transaction fee

The Greek government has enacted legislation abolishing stamp duty and introducing a digital transaction fee, applicable to Greek residents and permanent establishments, on various transactions such as loans, deposits, awards and compensation from 1 January 2025.

The enacted bill, dated 16 September 2024, is available here (as a PDF and in Greek only).

The digital transaction fee ('the fee') will be imposed on transactions, regardless of the place of their completion, as long as at least one contracting party has a tax residence or permanent establishment in Greece and there is no reason for exemption for the contracting parties. These transactions are expressly named in the law and are not subject to other indirect taxes.

The fee will apply, among others, to the following transactions:

- loans
- deposits and withdrawals
- sale of movable property or intangible goods
- transfer of business
- distribution of inheritance, legacy and general shared property
- settlements
- default interest and statutory interest
- bank cheques
- subscriptions paid to professional chambers, associations, clubs and societies
- prizes and awards
- other specified contracts.

Exemptions from the fee include:

i. cases where there is an obligation to withhold income tax (certification and payment is based on the withholding tax deadlines);

ii. rents (payment is made through the submission of the income tax declaration); and

iii. the case of a current account (declaration and return is due within the first month of the following tax year).

For transactions with the state, the fee is paid electronically before the relevant contract/transaction is drawn up/undertaken.

The fee for transactions between individuals will be verified by means of an electronic declaration through the new digital platform that will be put into operation by IAPR (Independent Authority of Public Revenue). Declaration and return of the fee is due by the end of the month following the transaction.

Applicable rates and main categories

- 3.6% on real estate rents, compensation for statutory and late payment interest, and contracts between individuals not engaged in business activities. The 3.6% rate also applies where one of the contracting parties is in the public sector (e.g. the state, municipality).
- 2.4% if all the contracting parties or business partners are engaged in a business activity, or at least one of them has the legal form of S.A., Ltd or PEC (private equity company – 'IKE').
- 1.2% on payment of remuneration to individuals or members of the management, and on deposits or withdrawals from the funds of legal entities.
- 0.3% on cheques presented to credit institutions.

It should be noted that stamp duty is cancelled on 30 November 2024 with regard to a number of important transactions, such as utility loans, insurance transactions, establishment and capital increases of non-profit legal persons/entities, guaranteed bank credits in favour of importers, and contractual interest on loans and credits. In addition, it is cancelled with regard to various transactions involving stamps on receipts (e.g. marriage licence, professional licences).

PKF Comment

For further information concerning the above or any service request with respect to Greek taxation, please contact Dora Kappou at kappoud@pkf.com.gr or call **+30 693 801 3360.**

BACK

Hungary

Important ECJ case affecting the Hungarian 'medicine tax'

The European Court of Justice in the Hungarian-related case C-248/23 Novo Nordisk A/S has ruled that the statutory payment made by medicine distributors under the so-called Medicine Distribution Act, commonly known as the 'medicine tax', qualifies as a discount for VAT purposes resulting in the reduction of the taxable amount. The judgment may open the door for taxable persons to reduce their VAT base by the amount of the medicine tax payment liability or to reclaim the VAT already paid on the medicine tax.

PKF Comment

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

BACK

India

Finance (No. 2) Bill, 2024 – Significant amendments

The Finance (No. 2) Bill was presented by the Honourable Finance Minister (FM) Nirmala Sitharaman on 23 July 2024. While moving the bill for approval by the Lok Sabha on 7 August 2024, the FM introduced amendments to Finance (No. 2) Bill, 2024. The amendments are generally intended to address certain ambiguities and uncertainties arising from the proposals as contained in the bill. President Droupadi Murmu gave her assent to the Finance (No. 2) Bill, 2024 on 16 August 2024. This made the bill law and concluded the budget exercise for the first full year of Modi 3.0.

Direct tax amendments

1. Corporate tax

Before Budget	After Budget
Corporate tax rate for foreign companies reduced	
Corporate tax rate for foreign companies was 40%.	Corporate tax rate for foreign companies reduced from 40% to 35%.
Abolition of 2% equalisation levy	
2% equalisation levy applied to consideration received or receivable by a non-resident e-commerce operator from e-commerce supply or services.	2% equalisation levy will no longer apply, effective from 1 August 2024.
Filing of appeal before ITAT/HC/SC (section 268A)	
The monetary limits for filing appeals were as follows: ▪ Income Tax Appellate Tribunal (ITAT): Rs. 50 lakhs ▪ High Courts: Rs. 1 crore ▪ Supreme Court (special leave petitions – SLPs): Rs. 2 crores.	The revised monetary limits are as follows: ▪ Income Tax Appellate Tribunal (ITAT): Rs. 60 lakhs ▪ High Courts: Rs. 2 crores ▪ Supreme Court (special leave petitions – SLPs): Rs. 5 crores.
Angel tax on start-ups (section 56(2)(viib))	
Angel tax applied to companies on receipt of consideration in excess of fair market value in respect of shares issued to investors.	Angel tax has been removed.

New insertion:

- **Taxation of domestic cruise ship operations by non-residents**
  - New presumptive taxation regime introduced for domestic cruise ship operations by non-residents.
  - 20% of revenue of the non-resident cruise ship operator, on account of the carriage of passengers, to be deemed as business income.
  - In the case of a foreign company, income from lease rentals is proposed to be exempted if both the foreign company and the cruise ship operator have the same holding company.
- **Introduction of Direct Tax Vivad se Vishwas (DTVSV) Scheme 2024**
  - A mechanism of settlement of disputed cases and issues, the scheme has been implemented with effect from 1 October 2024.
  - The DTVSV Scheme provides for lesser settlement amounts for 'new appellants' in comparison to 'old appellants'. The DTVSV Scheme also provides for lesser settlement amounts for taxpayers who file declarations on or before 31 December 2024 compared to those who file after that date.
  - Four separate forms will be used for the purposes of the DTVSV Scheme:

    Form-1: Filing of declaration and undertaking by the declarant

    Form-2: Certificate to be issued by designated authority

    Form-3: Intimation of payment by the declarant

    Form-4: Order for full and final settlement of tax arrears by designated authority.
  - The applicable settlement amounts/rates are shown in the table below:

Nature of tax arrears	Appeal filing period	Scheme availed on or before 31 December 2024	Scheme availed on or after 1 January 2025
Tax, interest and penalty	After 31 January 2020 but on or before 22 July 2024	Disputed tax	Disputed tax + 10% of disputed tax
Tax, interest and penalty	On or before 31 January 2020	Disputed tax + 10% of disputed tax	Disputed tax + 20% of disputed tax
Interest or penalty	After 31 January 2020 but on or before 22 July 2024	25% of disputed interest or penalty	30% of disputed interest or penalty
Interest or penalty	On or before 31 January 2020	30% of disputed interest or penalty	35% of disputed interest or penalty

  - Filing a declaration under the DTVSV Scheme 2024 does not mean that the taxpayer has accepted or conceded to the tax assessment.
  - It grants immunity from any proceedings, penalties or interest related to tax arrears for cases opted into the scheme.
  - It does not apply to certain cases, including those involving search and seizure, prosecution, undisclosed income or assets located abroad, or matters under other specified laws.

2. Personal tax

<table>
<tr><th>Before Budget</th><th>After Budget</th></tr>
<tr><td colspan="2">New slab rates under section 115BAC for individuals and Hindu undivided families (HUF) have been passed.</td></tr>
<tr><td>
<table>
<tr><th>Total income</th><th>Rate of tax</th></tr>
<tr><td>Up to Rs. 300,000</td><td>Nil</td></tr>
<tr><td>From Rs. 300,001 to Rs. 600,000</td><td>5%</td></tr>
<tr><td>From Rs. 600,001 to Rs. 900,000</td><td>10%</td></tr>
<tr><td>From Rs. 900,001 to Rs. 1,200,000</td><td>15%</td></tr>
<tr><td>From Rs. 1,200,001 to Rs. 1,500,000</td><td>20%</td></tr>
<tr><td>Above Rs. 1,500,000</td><td>30%</td></tr>
</table>

Standard deduction was Rs. 50,000.
Deduction on family pension for pensioners was Rs. 15,000.
Deduction available to employers for contribution to New Pension Scheme (NPS) was 10%.

</td><td>
<table>
<tr><th>Total income</th><th>Rate of tax</th></tr>
<tr><td>Up to Rs. 300,000</td><td>Nil</td></tr>
<tr><td>From Rs. 300,001 to Rs. 700,000</td><td>5%</td></tr>
<tr><td>From Rs. 700,001 to Rs. 1,000,000</td><td>10%</td></tr>
<tr><td>From Rs. 1,000,001 to Rs. 1,200,000</td><td>15%</td></tr>
<tr><td>From Rs. 1,200,001 to Rs. 1,500,000</td><td>20%</td></tr>
<tr><td>Above Rs. 1,500,000</td><td>30%</td></tr>
</table>

Standard deduction has been increased to Rs. 75,000.
Deduction on family pension for pensioners has been increased to Rs. 25,000.
This deduction has been increased to 14% of an employee's salary.

</td></tr>
<tr><td colspan="2">Offset of TCS against salary TDS (section 192(2B))</td></tr>
<tr><td>Credit for tax collected at source (TCS) paid by employees is not allowed to be set off against salary tax deducted at source (TDS).</td><td>Now credit of TCS paid by employees is allowed to be considered for the purposes of computing TDS required to be withheld from salary by the employer. This provision is effective from 1 October 2024.</td></tr>
<tr><td colspan="2">Reporting of foreign assets (sections 42 & 43)</td></tr>
<tr><td>Failure to report/inaccurate reporting of foreign income/overseas assets attracts a penalty of Rs. 10 lakhs regardless of the value of asset/income, with an exception for foreign bank account(s) with an aggregate balance not exceeding Rs. 5 lakhs.</td><td>This penalty has now been relaxed for foreign assets (other than immovable property) where the aggregate value of such assets does not exceed Rs. 20 lakhs. This provision is effective from 1 October 2024.</td></tr>
<tr><td colspan="2">Income from letting out a residential house (section 28)</td></tr>
<tr><td>Section 28 provided various types of income that shall be chargeable under the head 'Profits and gains of business or profession'.

The section was silent on whether income from letting out a residential house or part of a house by the owner shall be chargeable under the head 'Profits and gains of business or profession'.</td><td>An explanation has been added to section 28 to provide that any income from letting out a residential house or part of a house by the owner shall not be chargeable under the head 'Profits and gains of business or profession' and shall be chargeable to tax under the head 'Income from house property'.

This amendment will take effect from 1 April 2025.</td></tr>
</table>

3. Capital gains

Before Budget	After Budget
STCG on sale of equity-oriented mutual funds (section 111A)	
Short-term capital gains (STCG) rate was 15%.	This rate has been increased to 20% from the existing rate of 15%. Short-term capital gains on the sale of other financial assets will be taxed at the applicable slab rates.
LTCG on non-equity assets (section 112)	
Tax rate on long-term capital gains (LTCG) was 20%.	The tax rate has been decreased to 12.5%. No indexation benefits available.
LTCG on transfer of equity shares, units of equity-oriented funds and units of a business trust (section 112A)	
Tax rate on LTCG was 10%. Threshold of exemption for LTCG of Rs. 1 lakh per year for securities transaction tax (STT)-paid equity shares and units of equity-oriented funds.	The tax rate has been increased to 12.5%. The limit will be enhanced to Rs. 1.25 lakh per year.
Rates of securities transaction tax on sale of an option in securities was 0.0625% of the option premium and on sale of futures in securities was 0.0125% of the price at which such 'futures' are traded.	Increase in rates of securities transaction tax on sale of an option in securities from 0.0625% to 0.1% of the option premium and on sale of futures in securities from 0.0125% to 0.02% of the price at which such 'futures' are traded.

- **Indexation benefits restored**
  - On property transactions, taxpayers can avail either a lower tax rate of 12.5% without indexation or a higher tax rate of 20% with indexation, if the property was acquired before 23 July 2024.
  - Taxpayers can compute taxes under both schemes and will be able to pay tax under the scheme which gives rise to the lower amount of tax.
  - If the taxes computed using a 12.5% rate (without indexation) exceed the taxes computed with indexation, then the excess shall be ignored.
  - Any losses arising solely due to indexation shall not be allowed to be set off or carried forward.
  - The indexation benefit will not be available for properties acquired after 23 July 2024.
  - Applicable only to individuals and Hindu undivided families; applicable to resident individuals only; applicable for land and buildings only.

4. Other amendments and insertions

Before Budget	After Budget
Time limit to issue notice for reassessment for escaped income (section 149)	
Reassessment notices could be issued up to three years from the end of the assessment year. Reassessment notices could be issued beyond three years from the end of the assessment year only if the escaped income was Rs. 50 lakh or more, and up to a maximum period of 10 years from the end of the assessment year.	Reassessment notices can be issued beyond three years from the end of the assessment year only if the escaped income is Rs. 50 lakh or more, and up to a maximum period of five years from the end of the assessment year.
Time limit to issue notice in search cases (section 153)	
In search or seizure cases, the time limit for reassessment was up to 10 years before the year of search. Under the provisions of Finance Act, 2021, sections 153A and 153C of the Act (Block Assessments) were amended to provide that these provisions shall only apply to search and seizure proceedings under section 132 or requisition under section 132A of the Act initiated on or before 31 March 2021. The separate regime for search assessments was abolished and such assessments were subsumed into the reassessment provisions.	The Finance (No. 2) Bill, 2024 has introduced a completely new procedure of assessment in cases of initiation of search 'on or after 1 September 2024'. The 'block period' shall consist of previous years relevant to six assessment years preceding the previous year in which the search was initiated under section 132, or any requisition made under section 132A. The tax shall be charged at 60% for the block period, as per section 113 of the Act.

Before Budget	After Budget
Buy-back of shares now taxable as dividend in hands of recipient; exemption provided under section 10(34A) removed	
Shareholders were exempted from paying tax on the amount received from a company's buy-back of shares, subject to certain conditions. This exemption was provided under section 10(34A) of the Income Tax Act, 1961. The amount received by shareholders from buy-back of shares was not treated as dividend income and hence was not taxable in their hands.	Buy-back tax which was payable by domestic companies is abolished, and such income will be taxable in the hands of the shareholders as a deemed dividend. No deduction for expenses will be available against such dividend income. Domestic company to withhold tax at 10% from payment to resident shareholders. This provision is effective from 1 October 2024.
Gujarat International Finance Tec-City International Financial Services Centre (GIFT IFSC)	
Tax framework prescribed for retail schemes and exchange traded funds set up in IFSC	
Non-retail schemes set up in IFSC as Category III alternative investment funds and having only non-resident investors (except manager/sponsor contribution) are regarded as specified funds under section 10(4D) of the Income Tax Act, 1961. Certain income of such specified funds is exempt from tax in India.	Retail schemes and exchange traded funds regulated by the International Financial Services Centres Authority and which satisfy certain conditions as may be prescribed will also be regarded as specified funds.
Thin capitalisation exemption to IFSC finance companies (section 94(B))	
Interest payments made to non-resident associated enterprises are restricted to 30% of EBIDTA, with non-banking finance companies, banks and insurance companies being exempted.	Finance companies set up in the IFSC, under the IFSC Authority (Finance Company) Regulations, 2021, will also be exempted, provided they satisfy certain conditions as may be prescribed.

Before Budget	After Budget
Tax exemption to clearing corporation set up in IFSC	
Specified income of core settlement guarantee funds, set up by a recognised clearing corporation in accordance with the regulations as may be prescribed by the central government, is exempt.	The definition of recognised clearing corporation has been expanded to include clearing corporations set up under the IFSCA (Market Infrastructure Institutions) Regulations, 2021.
Unexplained credit exemption to venture capital funds (VCF) set up in IFSC	
Where the source of credits/funds is not explained, such amounts are subject to income tax. Further, it is prescribed that the source of such creditor/ lender/shareholder is also required to be explained. This requirement (verifying source of source) was exempted for VCFs registered with the Securities and Exchange Board of India.	The definition of VCF has been expanded to include VCFs set up under the IFSC regulations.

5. Changes to withholding tax provisions and rates

- **Rate changes in certain TDS sections**

Section	Nature of payment	Existing rate	Amended rate	Effective date
194D	Payment of insurance commission to a person other than a company	5%	2%	1 April 2025
194DA	Payment in respect of life insurance policy	5%	2%	1 October 2024
194G	Payment of commission, remuneration or prize on sale of lottery tickets	5%	2%	
194F	Payments for repurchase of units of mutual fund or Unit Trust of India	20%	Omitted	
194H	Payment of commission or brokerage	5%	2%	
194-IB	Payment of rent by certain individuals or HUF	5%	2%	
194M	Payment of contractual fee, commission, brokerage or professional fee by individual or HUF	5%	2%	
194-O	Payment by e-commerce operator to e-commerce participant	1%	0.1%	
194T	Payment of salary, remuneration, interest, bonus or commission exceeding Rs. 20,000 in a financial year by partnership firm to partners	Nil	10%	1 April 2024

- **Other key amendments to withholding tax provisions**

Before Budget	After Budget
Rationalisation of prosecution provisions for delays in depositing TDS	
Currently, the Income Tax Act, 1961 contains prosecution provisions for delays in depositing TDS within the prescribed time limit.	An exemption from such prosecution provisions has been introduced where TDS has been deposited on or before the due date for filing the TDS return for that quarter. This amendment took effect from 1 October 2024.
Reduction in time limitation for passing orders under section 201(1)/(1A) deeming any person to be assessee in default	
Under subsection (3) of section 201 of the Income Tax Act, 1961, no order shall be made deeming any person to be assessed in default for failure to deduct/ collect the whole or any part of the tax from any person, at any time after the expiry of **seven years** from the end of the financial year in which payment is made or credit is given or tax was collectible or two years from the end of the financial year in which the correction statement is delivered, whichever is later.	An amendment to subsection (3) of section 201 and a new subsection (7A) in section 206C of the Income Tax Act, 1961 has been made, to provide that no order shall be made deeming any person to be assessed in default for failure to deduct/collect the whole or any part of the tax from any person, at any time after the expiry of **six years** from the end of the financial year in which payment is made or credit is given or tax was collectible or two years from the end of the financial year in which the correction statement is delivered, whichever is later. The amendments will take effect from 1 April 2025.

6. Amendments related to firms

- **Partners' remuneration-related amendments**

Any payment of remuneration to any partner who is a working partner, which is authorised by and is in accordance with the terms of the partnership deed and relates to any period falling after the date of such partnership deed insofar as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as set out below:

Before amendment

Profit	Remuneration
On the first Rs. 300,000 of the book profit or in case of a loss	Rs. 150,000 or at the rate of 90% of the book profit, whichever is greater
On the balance of the book profit	At the rate of 60%

After amendment

Profit	Remuneration
On the first Rs. 600,000 of the book profit or in case of a loss	Rs. 300,000 or at the rate of 90% of the book profit, whichever is greater
On the balance of the book profit	At the rate of 60%

Indirect tax amendments

Goods and Services Tax Act

1. **Introduction of new goods and services tax (GST) section 74A (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards)**
   - Establishes a uniform time limit for issuing demand notices and orders, irrespective of whether the matter involves fraud, suppression, wilful misstatement, etc., starting from the financial year 2024-25.

2. **Amendments to GST section 73 (Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts) and section 74 (Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts)**
   - Specifies distinct time limits for issuing demand notices and orders concerning periods up to the financial year 2023-24.

   In essence, from financial year 2024-25 the new section 74A would be applicable instead of the existing sections 73 and 74.

3. **Modification to Schedule III (Activities or transactions which shall be treated neither as a supply of goods nor a supply of services)**
   - Clarifies that co-insurance premiums apportioned by lead insurers to co-insurers and transactions of ceding or reinsurance commissions between insurers and reinsurers would be considered as neither a supply of goods nor a supply of services.

4. **Amendments to GST sections 54 (Refund of tax) and 16 (Zero rated supply) of the Goods and Services Tax Act**
   - Blocks IGST refunds on goods subject to export duty and those exported or supplied to special economic zones, regardless of tax payment status.

5. **New insertions**
   - **Subsection (5) to GST section 16 (Eligibility and conditions for taking input tax credit)**
     - Extends the deadline for claiming input tax credit (ITC) on invoices or debit notes under section 16(4) of the CGST Act to 30 November 2021 for the financial years 2017-18, 2018-19, 2019-20 and 2020-21. This extension applies to returns filed in Form GSTR-3B.
     - Any invoice/debit note filed in a return from the date of cancellation of registration and the date of revocation of cancellation order, filed within 30 days of the date of order for revocation of cancellation order, time limit under section 16(4) has not expired.
   - **Introduction of new section 11A (Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice)**
     - Authorises the government to regularise past differences in tax practices through notifications, ensuring businesses are not unfairly penalised for adhering to generally accepted but incorrect tax practices.
     - Several impending industry issues likely to be considered for evaluation.
   - **Reduction in the amount of pre-deposit for filing of appeals**
     - Maximum amount for filing appeal with appellate authority reduced from Rs. 25 crores to Rs. 20 crores (CGST and state goods and services tax (SGST) charged separately).
     - Amount of pre-deposit for filing appeal with the Appellate Tribunal reduced from 20% with a maximum amount of Rs. 50 crores to 10% with a maximum of Rs. 20 crores (CGST and SGST charged separately).
   - **Sunset clause for anti-profiteering**
     - The GST council recommended that new applications for the anti-profiteering clause will not be accepted starting 1 April 2025.
     - The Appellate Tribunal is included as the authority to act under this section.
   - **Amendment to GST section 112 (Appeals to Appellate Tribunal)**
     - Adjusts the time frame for filing appeals with the GST Appellate Tribunal (GSTAT), allowing a three-month period starting from a date announced by the government for appeals or revision orders. This change is effective from 1 August 2024.

- Additionally, reduces the pre-deposit amount required for filing GSTAT appeals.

— **Introduction of new GST section 128A (Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods)**

- Exempts interest and penalties for demand notices issued under section 73 for taxpayers who pay the full tax amount by 31 March 2025.

6. **Relevant notifications/circulars**

— **Circular No. 210/04/2024-GST dated 26 June 2024 (Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit (ITC))**

Through this circular, the department has clarified that in cases where a foreign affiliate is providing services to a related domestic entity, for whom full ITC is available, then the value of supply declared in the invoice by the domestic entity may be deemed as open market value in terms of the second proviso to rule 28(1) of the Central Goods and Services Tax Rules.

In case an invoice is not issued by the recipient, the value of services may be deemed to be declared as nil and may be deemed as open market value.

— **Circular No. 225/19/2024-GST dated 11 July 2024 (Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons)**

Through this circular, the department has provided much-needed clarity and guidance on the taxability and valuation of corporate guarantees between related parties under the GST regime. The circular retrospectively confirms that corporate guarantees provided to related entities are taxable under GST, even those issued before the introduction of the specific rule in October 2023. The circular also confirms that valuation will be based on the guaranteed amount, irrespective of the loan availed or disbursed.

Customs

- **Trade facilitation measures effective from 24 July 2024 and time limit for re-export extended**

— The time limit for export in case of aircraft and vessels imported for maintenance, repair and overhauling is increased from six months to one year, further extendable by one year.

— The time limit for duty-free reimport of goods (other than those under export promotion schemes) exported under warranty is increased from three years to five years, further extendable by two years.

- **Change in rate of basic customs duty on consumer products and retail**

Particulars	Existing duty	Revised duty
Gold and silver bars	15%	6%
Gold and silver dorés	14.35%	5.35%
Platinum	15.4%	6.4%
Cellular mobile phone and charger/adaptor	20%	15%
MDI for manufacture of spandex yarn	7.5%	5%
Real down filling material from duck or goose for use in the manufacture of textile or leather garments for export	30%	10%

PKF Comment

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

BACK

Ireland

Budget 2025

On 1 October 2024 the Irish Finance Minister, Jack Chambers, presented Budget 2025. The main changes announced in this Budget are discussed below.

International tax

A new participation exemption for dividends received from companies located in EU/EEA and double tax agreement countries was announced. This will provide a full exemption from Irish tax on qualifying dividends instead of the current 'tax and credit' method. Companies will have the choice of continuing to use this current method or applying the new participation exemption rules to qualifying dividends.

Updates to Pillar 2 measures are to be implemented to legislate for additional administrative guidance issued by the OECD in December 2023 and June 2024.

Ireland has also entered into new double tax agreements with Oman and Jersey.

Pension changes

The Finance Bill to implement the majority of these changes was published on 10 October 2024. In addition to the measures announced in the Budget, the Finance Bill contains proposed amendments to the treatment of employer contributions to a personal retirement savings account (PRSA). Currently, an employer can make contributions to an employee's PRSA of up to €2 million without any tax liability for the employee. The Finance Bill proposes a cap on employer contributions in a year of up to 100% of the employee's salary. It is proposed these changes will take effect from 1 January 2025.

The bill also confirms the standard fund threshold will be increased from the current amount of €2 million to €2.8 million by 2030 by way of annual increases of €200,000 between 2026 and 2029.

Thereafter, it is proposed this threshold will be increased in line with inflation. However, there were no changes to the tax rates on lump sums drawn down from a pension fund on retirement.

The bill also provides for the introduction of an automatic pension enrolment scheme set to be introduced in September 2025.

Changes to retirement relief

The planned cap on retirement relief on disposals to children of €10 million which was announced in Budget 2024 and due to take effect from 1 January 2025 was amended to only apply if the asset is disposed of by the child within 12 years. The increase to 70 years before the reduced cap on transfers applies was retained and comes into effect from 1 January 2025.

Other tax changes

- Increase in personal tax bands and credits.
- Increase in annual small benefit exemption for non-cash benefits provided by an employer from €1,000 to €1,500. The number of benefits which can be provided in a year is also being increased from two to five times per year, subject to the overall cap of €1,500 per year.
- Benefit in kind exemption for the costs incurred by an employer in connection with the installation of a charge point for the charging of vehicles at the home of a director or employee.
- Increase in vacant home tax from five times local property tax (LPT) charge to seven times LPT charge.
- Extension of mortgage interest relief and Help to Buy schemes.
- Increase in VAT registration threshold to €42,500 for services and €85,000 for goods.
- Reduction in VAT on the supply and installation of heat pumps in residential premises from 13.5% to 9%.
- Increase in the first-year threshold for R&D refund from €50,000 to €75,000.
- Increase to maximum annual claim for tax relief on employment investment incentive (EII) investments from €500,000 to €1,000,000.
- Increase in tax-free thresholds for receipt of gifts and inheritances.
- Amendments to agricultural relief requiring the disponer to satisfy 'active farmer test' in order for relief to apply. It is expected the effective date of this change will be postponed to allow for consultation on this change.
- Increase in stamp duty from 2% to 6% on residential property valued above €1.5 million. This increased rate applies to transfers on or after 2 October 2024 (unless a binding contract was in place before this date and the instrument is executed before 1 January 2025).

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PKF Comment

If you believe the above may impact your business or personal situation or require any advice with respect to Irish taxation, please contact Michael O'Leary at **michael@pkfbl.ie** or call **+353 (01) 668 9760**.

BACK

Italy

Flat tax on high net worth individuals moving to Italy still attractive despite increase

The flat tax was first introduced by the 2017 Budget Law to encourage high net worth individuals (HNWIs) to move to Italy and was intended to support the country's economic development. The provision, originally set to €100,000, particularly aimed to appeal to professional footballers, sportspeople, managers, professionals and generally HNWIs.

The regime was recently amended with the introduction of the so-called 'Omnibus' Decree-law, that passed an upward revision of the flat tax applicable to private individuals who move their residence to Italy. The tax has been increased to €200,000.

It should be recalled that the flat tax applies only to income earned abroad, unlike the more expensive IRPEF (personal income tax) levy with increasing and progressive rates based on the amount of income earned, while the income produced in Italy is subject to ordinary rates.

Moreover, this optional regime can also be extended to family members with a substitute taxation of €25,000.

The amended flat tax, still attractive despite the increase, will only apply to private individuals who transfer their residence to Italy after the entry into force of the new decree. Therefore, those who opted into the regime before 10 August 2024 will still have to pay €100,000 for the whole duration of the benefit (15 years), while those who apply for the regime after 10 August 2024 will have to pay an increased substitute tax of €200,000 starting with the 2025 tax period.

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PKF Comment

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

Customs Regime 42: Innovations introducing the provision of alternative guarantee

Article 6 of Legislative Decree 141/2024, effective from 4 October 2024, introduces paragraph 2-quater of article 67 of Presidential Decree 633/72, allowing the Customs Agency to require importers to provide a guarantee in order to benefit from the so-called 'Regime 42', which allows for the suspension of VAT on imports if the goods are intended for another EU Member State.

According to the new article 67, the request for the guarantee by the Customs Agency should occur after a risk analysis of the importer and the request for the necessary documentation to benefit from the suspensive regime (importer's VAT number, VAT identification number of the EU purchaser, as well as further documents suitable for proving the actual transfer of goods to another Member State).

The guarantee to be provided is equal to the amount of the VAT on importation that is not applied, and it may be collected by the Customs Agency if the required documentation is not received within 45 days from the date of release of the goods or if the documents are deemed insufficient to prove the actual transfer of the imported goods to the other Member State.

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PKF Comment

If you believe the above regime may have an impact on your clients and you need support on this subject, our VAT team in Italy will be available to provide any additional information you may need. Please contact Giulia Podesta at g.podesta@pkf-tclsquare.it or call **+39 010 818 3250** (Genoa office).

Reform of customs and excise regulations – New sanctions regime

With Legislative Decree 141/2024, significant changes have been introduced to the sanction framework in customs matters, including the following that are worth noting:

- An administrative penalty ranging from 100% to 200% of the customs duties owed in cases of failure to declare customs or submission of an inaccurate declaration to customs, unless there are aggravating circumstances or customs duties exceed €10,000 (article 96 of the complementary national provisions), with the possibility of reducing the penalty to one-third under certain conditions.
- In cases of evasion of due customs duties with administrative relevance, confiscation of the goods involved in the offence is mandatory (redeemable only by payment of the corresponding value).
- If aggravating circumstances are present or the amount of at least one of the customs duties due exceeds €10,000, the act has potential criminal relevance, the assessment of which, from a subjective standpoint, is left to the judicial authority.
- The provision of a smuggling offence for inaccurate declaration, when there is a deliberately intended discrepancy regarding the quality, quantity, origin and value of the goods or any other element necessary for the application of the rate, and the calculation of the duties owed (article 79 of the complementary national provisions).

PKF Comment

If you believe the above customs and excise regulations may have an impact on your clients and you need to be supported on this subject, our team in Italy will be available to provide any additional information you may need.

You can contact our professional Tax experts at PKF Studio TCL - Tax Consulting Legal at **studiotcl@pkf-tclsquare.it** or call **+39 010 818 3250** (Genoa office).

Facilitated regime for 'expatriates' – Seconded worker

With Ruling No. 2343 of 10 September 2024 of the Regional Tax Commission of Lombardy, the possibility of enjoying the facilitated regime for 'expatriates', even by a seconded worker, was acknowledged.

In the case at hand, the taxpayer had worked abroad on a secondment basis and then returned to Italy, where he had obtained a new position with the Italian company of the same multinational group and had established his tax residence.

It should be noted that the facilitation rule does not require formalisation in Italy of a new employment contract at the time of the taxpayer's return and therefore the need for a formal interruption of the employment relationship. Therefore, the interpretative practice that subordinates the facilitation to further requirements not provided for by the rule is unlawful.

PKF Comment

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

BACK

Kenya

Key 2024 tax developments

Rejection of Finance Bill 2024

On 26 June 2024, the President of Kenya issued a presidential memorandum of referral declining to assent to the Finance Bill 2024 ('the Bill') following nationwide protests from Kenyans who expressed their dissatisfaction with the various tax proposals in the Bill. The president referred the Bill back to the National Assembly for reconsideration with a recommendation to delete all clauses in the Bill. This was done in exercise of powers conferred to him by the Constitution of Kenya 2010 in article 115(1)(b) and this was the first time it was witnessed in Kenya since the promulgation of the new constitution in 2010.

Re-registration of charitable organisations

The Income Tax (Charitable Organisations and Donations Exemption) Rules, 2024, which came into effect on 18 June 2024, are designed to prevent charitable organisations from being misused for tax avoidance purposes. They introduce stricter criteria for tax exemption, requiring organisations to limit their activities to charitable purposes. To achieve this, their activities should directly benefit Kenyan residents, align with public benefit objectives (e.g. relief of poverty or advancement of religion), provide clear beneficiary selection processes and prohibit private gains.

Charitable organisations are prohibited from holding more than 15% of surplus funds for a consecutive period of three years. It is worth noting that surplus funds exclude gains and profits from any business that is carried out to support charitable activities, or where work in relation to such business is mainly carried out by beneficiaries, or where rent is received from leasing of land or chattels.

Donors intending to claim tax deductions for their charitable activities will be subject to additional requirements, such as providing proof of the donation, which includes evidence of receipt of the donation by the exempt persons and a copy of the exemption certificate, among others.

Effective date: 18 June 2024

Execution of newly introduced Social Health Insurance Fund

The Social Health Insurance Act, Primary Health Care Act and Digital Health Act came into operation on 22 November 2023 to replace the National Health Insurance Fund (NHIF). The Ministry of Health further gazetted the Social Health Insurance Regulations ('the Regulations') on 8 March 2024 to operationalise the Primary Healthcare Fund, the Social Health Insurance Fund (SHIF) and the Emergency, Chronic and Critical Illness Fund.

The Regulations required every person resident in Kenya to register with the Social Health Authority before 30 June 2024. Employers' deduction and remittance of contributions were expected to commence on 1 July 2024 but a public notice was issued by the Ministry notifying employers of the transition to SHIF with effect from 1 October 2024. The contributions are set at 2.75% of the employee's gross income.

Effective date: 1 October 2024

PKF Comment

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

BACK

Malta

Budget 2025: Finance Minister proposes to reduce personal income tax rates

Malta's Minister of Finance delivered the Malta Budget speech for 2025 to the parliament on 28 October 2024. The Budget proposes among other things a reduction in personal income tax rates for single, married and parent computations. These revised tax rates are expected to result in income tax reductions ranging between €345 and €675. The new applicable tax rates are as follows:

Single		Married		Parent	
Income (€)	Rate (%)	Income (€)	Rate (%)	Income (€)	Rate (%)
0 – 12,000	0	0 – 15,000	0	0 – 13,000	0
12,001 – 16,000	15	15,001 – 23,000	15	13,001 – 17,500	15
16,001 – 60,000	25	23,001 – 60,000	25	17,501 – 60,000	25
60,001 and above	35	60,001 and above	35	60,001 and above	35

PKF Comment

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

BACK

Namibia

Budget 2024: Changes to personal and corporate income tax

Personal income tax

Namibia has increased the minimum threshold for personal income tax from N$50,000 to N$100,000, effective from 1 March 2024. This is intended to alleviate the tax burden on low-income earners.

Corporate income tax

The key corporate income tax changes include:

- Reduction of the non-mining corporate income tax rate from 32% to 31%, effective as from 1 January 2024 and further from 31% to 30%, effective as from 1 January 2025;
- Reduction of the corporate income tax rate from 32% to 20% for small and medium enterprises (SMEs), subject to a pre-defined annual turnover threshold;
- Limiting assessed losses carried forward to 10 years for companies operating in the natural resources sector and to five years for companies in other sectors;
- Replacing the thin capitalisation rules with a 30% limited net interest deduction rule;
- Introduction of a 10% dividend withholding tax on dividends declared to individuals, effective as from 1 January 2026;
- Cancellation of the non-resident shareholders tax (i.e. withholding tax on dividends declared to foreign shareholders) exemption on dividends declared by long-term and short-term insurance companies, effective during the 2024/2025 financial year;
- Introduction of a special economic zones (SEZ) regime in which SEZ participants will be subject to a lower corporate tax rate of 20% and will further benefit from normal deductions for corporate tax purposes;
- Introduction of an internship tax incentive programme that will provide an additional corporate tax deduction for employers employing interns; and
- Introduction of a 10% capital allowance on improvements to buildings, effective during the 2024/2025 financial year.

PKF Comment

If you believe any of the above measures may impact your business or personal situation or require any advice with respect to Namibian taxation, please contact Lynique Käser at lynique@pkf-fcsnam.com or call +264 64 215 100.

BACK

Peru

Transfer pricing – Application of other methods

On 24 September 2024, the Executive Branch, in exercise of the power delegated by Congress to legislate on tax matters, issued Legislative Decree No. 1663, which incorporates other valuation methods for the analysis of transfer prices to better reflect the economic reality of the operations.

The aforementioned legislation states that when the conventional transfer pricing methods described in numeral e) of article 32 A are not applicable, other methods may be used, fulfilling the following conditions:

a) The prices and amounts of the established considerations correspond to the value that would have been agreed with or between independent parties under equal or similar conditions; and

b) The other method used turns out to be the most appropriate to reflect the economic reality of the operations.

The other methods permitted by the rule are the following:

1) discounted cash flow method
2) multiples method
3) equity value method
4) appraisal
5) multi-period excess earnings method (MPEEM).

In the case of shares or participations representing capital that are not listed on a stock exchange or in a centralised negotiation mechanism, the standard indicates that the other applicable methods would be 1), 2), 3) and 4). For other transactions, the standard indicates that the five new methods would be applicable.

Regarding the discounted cash flow method, the standard indicates that it is not applicable in the following cases:

a) When the transferor has a participation of less than 5% of shares or participations representing the paid-in capital of the legal entity whose shares or participations are being transferred; or

b) When the net income accrued in the previous taxable year of the issuing company whose shares or interests are sold does not exceed 1,700 taxable units (UIT, **Unidad Impositiva Tributaria**).

Likewise, the rule indicates that when any of these new methods are applied, a technical report must be available to support the calculations of the market value of the transactions, which must be submitted at the request of the Tax Administration.

PKF Comment

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

BACK

Portugal

Transposition of Pillar 2 directive into domestic law enters into force

On 8 November 2024, the Portuguese law transposing Pillar 2 directive (Law No. 41/2024) was gazetted. The law entered into force from 9 November 2024.

On 11 September 2024, the Portuguese Council of Ministers had adopted a draft bill for implementing the European Union Minimum Taxation Directive (2022/2523) to ensure minimum global taxation for multinational enterprises (MNEs) with a consolidated turnover of at least €750 million and large domestic groups in the European Union.

The European Union Member States agreed on the directive to ensure a global minimum level of taxation for MNEs and large domestic groups within the European Union on 15 December 2022. The directive seeks to ensure a global minimum level of taxation (at the rate of 15%) for MNEs in the European Union.

The bill implements the directive and is largely based on the EU directive and the OECD GloBE Model Rules. The bill also includes a qualified domestic top-up tax. This will affect the local subsidiaries of large MNE groups, which will be required to pay a qualified top-up tax in Portugal whenever their effective tax rate does not comply with the agreed minimum effective rate of 15%.

Budget 2025 – Personal income tax proposals include new benefits for young workers

On 10 October 2024, the government presented its 2025 draft Budget Bill to the parliament, proposing several changes regarding personal income tax, including tax benefits for young workers.

The proposed regime comprises an exemption from personal income tax of salaries and wages earned during the first 10 years (increased from five years) of activity, with the following annual exempt amounts:

i. 100% during the first year of activity
ii. 75% from the second to the fourth years of activity
iii. 50% from the fifth to the seventh years of activity
iv. 25% from the eighth to the 10th years of activity.

The annual exempt amount is subject to a cap of 55 times the monthly value of the IAS (**Indexante Apoios Sociais** – Social Support Index) (in 2024: €509.26, corresponding to an annual exempt amount of €28,009.30; the IAS value will be increased in 2025 and likewise the exempt cap will also increase).

In the event that an individual interrupts their professional activities, the benefit is suspended while the individual does not obtain income, remaining valid for the remaining period provided the individual remains younger than the maximum age of 35 years (increased from 28 years).

This new tax regime is aimed at reducing youth emigration as well as attracting young workers to come and work in Portugal.

PKF Comment

For further information or advice concerning Portuguese tax matters, please contact José Parada Ramos at paradaramos@pkf.pt or call **+351 213 182 720**.

BACK

Romania

Recent key tax developments

1. Increase of the non-taxable retirement pension ceiling

Law No. 244 of 5 September 2024 was published in the Official Gazette No. 899 of 5 September 2024, amending para (1) of article 100 of Law No. 227/2015 on the Tax Code and establishing certain tax measures.

Starting from October 2024, the monthly taxable income derived from pensions is determined by deducting the monthly non-taxable amount of 3,000 lei from the pension income (previously, the non-taxable ceiling was 2,000 lei).

2. Import duty relief and import VAT exemption for goods belonging to people fleeing military aggression between Ukraine and Russia

Order No. 4.233 of 27 August 2024 was introduced further to Commission Decision (EU) 2024/775 of 4 March 2024 that must be complied with by the Romanian state. To benefit from these tax reliefs, it is necessary to follow the procedure implemented by the authorities and to meet several cumulative conditions:

- Persons who have made such imports may benefit from the relief from 9 September 2024.
- The list of goods qualifying under this category, along with the application model to be completed, is included in Annexes 1 and 2 of Order No. 4.233/2024.

3. Cancellation procedure for outstanding budgetary obligations

Further to the approval of Emergency Ordinance No. 107/2024 regarding the cancellation of specific budgetary obligations, the Ministry of Public Finance has established a procedure for taxpayers to cancel outstanding tax liabilities as of 31 August 2024, subject to specific conditions. The procedure outlines the eligible tax liabilities, debtor categories and applicable tax relief. Judicial or special administrators must obtain creditor approval to access tax relief under this new procedure.

For individuals, the amnesty applies to tax obligations arising in 2019 and 2020, allowing penalties to be waived provided that principal obligations are settled by 25 November 2024. The same procedure addresses budgetary obligations involving state aid recovery, EU budget refunds and liabilities linked to criminal cases, final criminal decisions, and damages under Law No. 241/2005 on tax evasion.

For debtors on payment plans, compliance with both the instalment conditions and debt cancellation criteria is required to qualify for the amnesty.

The procedure was introduced by Order No. 5521/2024 published in the Official Gazette No. 944 of 19 September 2024 and Emergency Ordinance No. 112/2024 published in the Official Gazette, Part I No. 959 of 25 September 2024.

4. Declaration of reciprocity by Romania to the United Kingdom of Great Britain and Northern Ireland

From 22 August 2024, Romania's declaration of reciprocity to the United Kingdom of Great Britain and Northern Ireland entered into force. It thus became possible to claim a VAT refund on imports of goods, acquisitions of goods and services made in Romania by taxable persons established in the UK, in accordance with the provisions of the 13th Directive.

5. Extension of the application of tax facilities for research and development to taxpayers paying minimum turnover tax

The government has extended the granting of fiscal facilities to stimulate research and development activities and regulates their granting for taxpayers paying minimum turnover tax.

Taxpayers can deduct from the minimum turnover tax the amount obtained by applying the 16% rate to the amount representing the additional deduction of 50% of eligible expenses for research and development activities. The reduction of this value will be carried out within the limit of the minimum turnover tax due.

The newly inserted provision applies from tax year 2024 or the modified tax year beginning in 2024.

The additions to Law No. 227/2015 on the Tax Code were introduced by Emergency Ordinance No. 115/2024 published in the Official Gazette No. 970 of 26 September 2024.

6. Tax Code amendment regarding reduced VAT rate for food products

Amendments to the Tax Code clarify the application of a 9% reduced VAT rate for certain human and animal food products starting from 1 January 2025. Exclusions will be announced later via application norms. The amendments aim to support the local agricultural sector.

The amendments were introduced via Law No 254 of 7 October 2024.

7. Registering providers of payment services

Order No. 6508 from the National Agency for Fiscal Administration establishes Form 709 for non-resident payment service providers to register for VAT reporting in Romania. This aligns with EU Directive 2020/284, which mandates that payment providers monitor and report cross-border transactions of more than 25 payments per quarter, aiming to curb VAT fraud in e-commerce.

8. Excise duty changes

To support the National Administration of State Reserves as Romania's central storage entity, urgent amendments were made to the Fiscal Code ensuring that emergency and specific stock locations are treated as fiscal warehouses, aiming to safeguard minimum reserves of petroleum products for supply security during crises.

These changes were introduced by Emergency Ordinance No. 123 of 23 October 2024, amending and supplementing Title VIII 'Excise duties and other special taxes' of Law No. 227/2015 on the Tax Code (Official Gazette No. 1070 of 24 October 2024).

9. Property tax

The implementation deadline for new measures regarding the taxation of residential and non-residential buildings, outlined in Ordinance No. 16/2022, has been postponed to 1 January 2026. To meet commitments contained in the National Recovery and Resilience Plan (NRRP), the Ministry of Finance will establish a specialised directorate-level structure with at least four managerial positions to oversee property taxation policies and real estate taxation models. Additionally, the National Agency for Cadastral and Real Estate Publicity (ANCPI) will provide necessary access and resources for IT systems to the Ministry of Finance.

These measures were introduced by Emergency Ordinance No. 124 of 23 October 2024 on the extension of certain deadlines and strengthening administrative capacity in the field of property taxation (Official Gazette No. 1069 of 24 October 2024).

10. Cash register tax receipts changes

Emergency Ordinance No. 125 of 23 October 2024 allows electric vehicle charging services to accept payments via vending machines without requiring electronic cash registers until 31 December 2024.

Furthermore, the same obligation introduced in July 2024, regarding the minimum information content of issued cash register tax receipts, is suspended until September 2025.

PKF Comment

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

BACK

Singapore

Bills passed to implement global minimum tax

The parliament passed the Multinational Enterprise (Minimum Tax) Bill and the Income Tax (Amendment) Bill on 15 October 2024 to implement the multinational enterprise top-up tax (MTT) and the domestic top-up tax (DTT) to ensure that the minimum effective tax rate is 15%. The amendments are set to apply to multinational enterprise (MNE) groups in Singapore from 1 January 2025.

This development is in line with the Global Anti-Base Erosion Model Rules (Pillar 2) (the GloBE rules) of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which require that MNE groups be subject to a minimum effective tax rate of 15%.

Updated transfer pricing guidelines

As part of their ongoing initiatives to constantly update the existing transfer pricing rules and regulations for making the overall compliance process simpler for taxpayers, the Singapore tax authority has recently announced certain amendments to the existing transfer pricing documentation rules. These are known as Income Tax (Transfer Pricing Documentation) (Amendment) Rules 2024 and came into operation on 10 June 2024.

The key amendments may be summarised as follows:

a) New rules for related party domestic loans entered into on or after 1 January 2025;

b) Increase in the threshold for certain transactions from S$1 million to S$2 million;

c) Updated guidance on strict pass-through costs;

d) Increased focus on the basic underlying principle that all related party transactions must be transacted on an arm's-length basis;

e) Update of the process for filing a mutual agreement procedure (MAP) application;

f) Updated guidance on transfer pricing adjustments relating to capital transactions.

PKF Comment

The above amendments are indeed a welcome sign for Singapore taxpayers in terms of reducing their compliance and administrative burden, to a certain extent. However, at the same time, the above amendments also indicate that depending on the nature, purpose and quantum of related party loans, a certain margin will have to be applied, i.e. an interest-free loan arrangement would not be typically considered as an appropriate arm's-length price in most cases. Therefore, taxpayers are required to analyse the nature, purpose and quantum of related party loans in greater detail and apply the appropriate pricing policy, depending upon the facts and circumstances of the transaction.

Further, the amendments to inter-company transaction thresholds as mentioned above would still not preclude compliance with the primary and main requirement prescribed under Singapore transfer pricing rules, i.e. all related party transactions, whether domestic or cross-border, must be transacted on an arm's-length basis, supported and validated by a robust benchmarking analysis, as this primary requirement is not subject to any thresholds.

Accordingly, taxpayers must ensure that all their related party transactions are fully compliant with the prescribed arm's-length principles and standards, supported and validated by an appropriate analysis undertaken in complete accordance with the transfer pricing rules.

If you believe the above measures may impact your business or personal situation, or require any advice with respect to Singaporean taxation, please contact Bun Hiong Goh at **bunhiong@pkf.com** or call **+65 6500 9366**.

BACK

Slovak Republic

Changes to VAT and income tax rates from 1 January 2025

The Slovak Republic has gazetted a bill amending several acts, including tax acts to improve the state of public finances. With respect to taxes, the bill also increases the standard corporate income tax rate to 24% for some companies, the standard VAT rate to 23% and special levies for businesses in specific industries.

The bill was published in the Collection of Laws under No. 278/2024 Coll. on 25 October 2024. The full text of the bill amending several acts to improve the state of public finances can be found here (in Slovak only).

VAT

We provide below an overview of VAT rates applicable from 1 January 2025 in comparison to VAT rates applicable until 31 December 2024:

	From 1 January 2025	Until 31 December 2024
Standard rate	23%	20%
Reduced rate	5%* / 19%**	5% / 10%

* basic groceries/foods, restaurant services (food only), accommodation services, medicines, books, entrance to fitness centres, e-books, etc.

** supply of electric energy, non-alcoholic beverages served in restaurants, foodstuffs other than basic groceries/food.

Corporate income tax

We provide below a summary of income tax rates for legal entities and self-employed individuals effective from 1 January 2025 and the corresponding income tax rates applicable until 31 December 2024:

	Tax periods from 1 January 2025	Tax periods up to 31 December 2024
Self-employed individuals	15% (income up to €100,000)	15% (income up to €60,000)
	19% / 25% (income above €100,000)	19% / 25% (income above €60,000)
Legal entities	10% (taxable revenues up to €100,000)	15% (taxable revenues up to €60,000)
	21% (taxable revenues from €100,000 up to €5,000,000)	21% (taxable revenues exceeding €60,000)
	24% (taxable revenues exceeding €5,000,000)	

It is also worth noting that withholding tax on dividend payments distributed by Slovak legal entities to individuals will return to 7% (currently 10%). Dividends distributed by Slovak legal entities to another legal person established in Slovakia or in cooperative states are still not subject to income tax in Slovakia.

Tax on sweetened non-alcoholic beverages

The Slovak Republic has gazetted a bill that introduces a tax on soft drinks sweetened with sugar and other sweeteners with effect from 1 January 2025.

The president signed the bill on 20 September 2024 and it was published in the Collection of Laws under No. 251/2024 Coll. on 5 October 2024. The full text of the bill can be found here (in Slovak only).

The Act introduces a new tax related to beverages sweetened with sugar or any other sweeteners. The tax on sweetened non-alcoholic beverages will represent an indirect consumption tax which will essentially be collected and paid into the state budget by entrepreneurs that will realise the first supply of beverages in Slovakia (i.e. manufacturers or first suppliers). The tax on sweetened non-alcoholic beverages will be collected as part of the price of the sweetened non-alcoholic beverage.

The tax will be levied on the following items:

- packaged sweetened non-alcoholic beverages intended for direct consumption (such as flavoured mineral waters or lemonades, fruit and vegetable juices, sweetened non-alcoholic beer, sweetened non-alcoholic beverages containing coffee, tea or their substitutes);
- packaged concentrates containing sugar or sweeteners, from which a sweetened non-alcoholic beverage is prepared by mixing water, ice, milk or its plant substitutes (such as syrups and concentrates with sugar, instant and powdered drinks); and
- high-caffeine beverages defined by the Act on sweetened non-alcoholic beverages tax as non-alcoholic beverages with a caffeine content of more than 150 mg/litre (mainly energy drinks).

The Act on sweetened non-alcoholic beverages tax will generally not apply to sweetened non-alcoholic beverages that are a medicinal drug or dietary supplement, or products for special medical purposes.

Depending on the category and type of sweetened non-alcoholic beverage/product, the tax rates range from €0.15/litre to €8.60/kilogram.

The tax period will be a calendar month. Taxpayers will be obliged to file a tax return within 25 days after the end of the tax period.

PKF Comment

If you believe the above measures may impact your business or personal situation, or require any advice with respect to Slovak taxation, please contact Pavol Schwartz at **schwartz@pkf.sk** or call **+421 948 274 280**.

BACK

Spain

Spain's impatriates regime, non-resident taxation and eIDAS authentication for EU citizens

Although there have not been major updates on the taxation regimes for non-residents or impatriates in Spain recently, it is worthwhile highlighting some key features and developments from recent years, along with the framework that governs electronic identification for EU citizens in Spain ('eIDAS').

Main features of the impatriates regime in Spain

Individuals who acquire tax residency in Spain as a result of moving to the Spanish territory may choose to pay non-resident income tax, while maintaining their status as taxpayers of personal income tax as a Spanish tax resident, during the tax period in which the change of residence takes place and during the following five years.

1. **Eligibility criteria:** To qualify, individuals must not have been tax resident in Spain during the five tax periods prior to the one in which they move to the Spanish territory (prior to the reform introduced by Law 28/22 of 21 December 2022, the requirement was 10 years).
2. **Scope of income:** The move to Spain must take place in the first year of application of the scheme or in the previous year:
   - for an employment contract;
   - as a result of becoming a director of an entity in which the individual does not have an interest/shareholding; or
   - for the performance of an economic activity by a highly qualified professional (providing services to emerging companies or carrying out training, research, development and research activities, receiving remuneration that represents more than 40% of the individual's total income).

   The individual moving to Spain cannot obtain income by means of a permanent establishment (PE) in Spain.
3. **Reduced tax rate:** The taxable base comprises all income obtained in Spain during the calendar year, including all earned income. However, for the purposes of the application of different tax brackets, two categories are distinguished:
   - dividends and interest: 19-28% tax rate.
   - other income: 24% tax rate up to €600,000 (47% for income over €600,000).

Main income subject to non-resident income tax ('IRNR') in Spain

1. **Income from economic activities:**

   Spanish PE exists: Income from activities conducted through a PE in Spain.

   No Spanish PE exists:
   - income from activities performed in Spain, excluding installation of foreign machinery if under 20% of acquisition costs;
   - income from services used in Spain, in respect of the part related to activities in Spain; and
   - personal performances of artists and athletes in Spain, regardless of who receives the payment.
2. **Employment income:** Generally taxed if earned from work performed in Spain.

   Employment income includes:
   - public remuneration from the Spanish administration;
   - wages of international transport employees paid by Spanish residents; and
   - pensions related to work performed in Spain.
3. **Directors' compensation:** Income paid by Spanish entities.
4. **Capital income:**
   - Dividends: From shares in Spanish entities.
   - Interest: From capital lent to Spanish residents or establishments.

- Royalties: Paid by Spanish entities or for use of intellectual property/rights in Spain.
- Other capital income from economic activities conducted by Spanish residents.

5. **Real estate income:** Income from properties or rights related to real estate located in Spain.
6. **Imputed income:**
   - For individuals owning urban properties not used for economic activities.
7. **Capital gains:**
   - From assets issued by Spanish entities or located in Spain.
   - Gains from real estate located in Spain or other assets that relate to rights exercised in Spain, including gambling winnings.

Likewise, non-residents in Spain are taxed on a 'real obligation' basis regarding wealth tax (and temporary solidarity tax on large fortunes), i.e. they are taxed on goods and rights located in, or that can be exercised or fulfilled in, the Spanish territory.

However, taxpayers need to consult the provisions in the applicable double tax treaty, as appropriate.

New eIDAS authentication for EU citizens

Since 2 October 2024, eIDAS authentication has been available at the Spanish Tax Agency's Electronic Office, enabling EU citizens to access key tax procedures, such as filing personal income tax declarations and VAT forms, using their national electronic identification.

eIDAS (electronic identification, authentication and trust services) is a European regulatory framework that sets standards for electronic identification and trust services, allowing EU citizens to use their national IDs to access public services across Member States. This enhances secure and efficient access to public administration, promoting digital integration in Europe.

To utilise eIDAS for services at the Tax Agency, EU citizens must possess a Spanish identifier, such as an ID or tax identification number. While EU electronic IDs can be used, having a Spanish identifier is necessary for Tax Agency procedures.

A variety of procedures will be progressively available through eIDAS authentication at the Tax Agency's electronic office and users can check for eIDAS support in the authentication menu. Initially, the Tax Agency will offer eIDAS authentication in some of the main procedures related to the following matters:

- declarations and other income tax and corporate tax procedures
- VAT management and customs procedures
- debt management
- powers of attorney
- information reporting
- certain economic-administrative claims and special review procedures.

PKF Comment

Identifying the key features of the impatriate tax regime and non-resident income tax (IRNR) is essential for those considering relocating to Spain or who obtain income there without being Spanish tax residents. The eligibility criteria and reduced tax rates offer attractive options for newcomers, while familiarity with taxable thresholds helps to ensure compliance.

Additionally, the implementation of eIDAS authentication at the Spanish Tax Agency's Electronic Office enhances accessibility for EU citizens, providing access to basic tax procedures. Staying informed about these new identification systems will enable individuals to manage their tax and administrative responsibilities more efficiently.

If you believe the above measures may impact your business or personal situation or require any advice with respect to Spanish taxation, please contact Alberto Rodriguez at arodriguez@pkf-attest.es or call +34 945 137 426.

BACK

Switzerland

Partial revision of the VAT Act will come into force from 1 January 2025

Amongst other things, part of the partial revision of the VAT Act is the so-called platform taxation. Sales of goods that are processed via online mail order platforms will now be allocated to the platform for VAT purposes. This means that (foreign) operators of such platforms will be liable for VAT in Switzerland. The regulations only apply to the sale of goods. The rental of items or services that are processed via electronic platforms are not affected.

PKF Comment

The impact of the partial revision in practice, in particular the taxation of order platforms, will be seen in the future. The implementation will, however, not only have an impact on the platforms but also on potential sellers through these platforms and the set-up and potential impact on VAT needs to be carefully considered.

IIR international supplementary tax to come into force in 2025

On 4 September 2024, the Federal Council decided to bring the income inclusion rule (IIR) into force as of 1 January 2025. The IIR – together with the Swiss supplementary tax (QDMTT) which was already introduced in 2024 – ensures that tax income remains in Switzerland and provides legal certainty.

With the implementation of the IIR, the profits of foreign subsidiaries of Swiss corporate groups as well as intermediate holding companies of foreign corporate groups are taxed at 15% where the annual turnover of the group is at least €750 million. The implementation ensures that Switzerland can tax the foreign profits instead of other jurisdictions who have implemented the UTPR (undertaxed profits rule).

The Federal Council further decided not to implement the UTPR in Switzerland, based on risk considerations compared to potential revenue.

PKF Comment

The implementation of the IIR provides additional legal certainty and comparability to other tax-attractive countries.

Developments regarding home office

The Federal Council enacted the Federal Law on Taxation of Teleworking in International Relations as of 1 January 2025. This creates the basis to tax cross-border commuters even if they work from abroad. The agreement is limited to the five neighbouring countries of Switzerland (Germany, France, Italy, Austria and Liechtenstein).

PKF Comment

The law closes an existing gap in current legislation, caused by the developments with regard to working from home.

International developments

The Federal Council adopted the dispatch on the approval of an agreement between Switzerland and the United Kingdom on mutual recognition in financial services. The agreement boosts competitiveness and fosters the close cooperation between the two major international financial centres.

The agreement marks the first time two countries have concluded an international treaty on the equivalence of their respective legal and regulatory frameworks in selected financial areas. It will enable or simplify access to the other party's market and is supplemented by an enhanced regulatory and supervisory cooperation, which will ensure stability, integrity and the protection of clients.

The agreement requires approval by the parliaments of both countries before it can enter into force.

PKF Comment

Switzerland is leading the way in order to protect financial markets and boost the financial industry.

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 Emirates

UAE tax updates

Corporate tax

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

The Ministry of Finance (MoF)/FTA have also released several cabinet decisions, ministerial decisions and FTA decisions which provide further guidance on CT Decree-Law provisions. In addition to such decisions, the MoF has also released FAQs for additional clarification and guidance in this regard. The MoF has also recently released a 'Public Consolidation Document on Global Minimum Tax' ('PCD – GMT') seeking comments from the public. The MoF has also recently released guides on the computation of taxable income, real estate investment income, tax residents and tax residency certificates, tax manuals on several aspects and public clarifications.

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

Sr. no	List of cabinet/ministerial/ FTA decisions and explanation
1	**There are certain guides, public clarifications and business bulletins that have been issued recently with regard to UAE CT law, as set out below:** ▪ **Determination of Taxable Income** – The guide offers an in-depth exploration of the key aspects of determining taxable income and calculating corporate tax liabilities. It features detailed case studies that illustrate essential adjustments to accounting income, including the identification of deductible versus non-deductible expenses, the proper treatment of interest expenses and the application of tax loss relief. It is imperative to note that the guide provides more clarity on 'entertainment expenditure' and states that this expenditure is only 50% deductible for corporate tax because it often has a private element. However, there's a clear distinction from employee-related expenses, such as staff parties or off-site events. Such expenses are fully deductible, as long as they serve business purposes. Incidental expenses (like office refreshments) are also fully deductible. Entertainment at venues like restaurants, sporting events, etc. with customers, however, falls under the 50% deduction rule. Further, the guide provides clarity on the cash basis of accounting, the handling of unrealised gains and losses and the tax treatment of exempt income. The guide also addresses the implications and exemptions for foreign permanent establishments and non-resident entities conducting business in the UAE. ▪ **Corporate Tax Manual on Amend Corporate Tax Registration** – The manual provides help to corporate tax registered persons to amend their corporate tax registration information. It provides a step-by-step process for the amendment of the registration along with screenshots of the portal. ▪ **Corporate Tax Manual on Amend Taxable Person Details** – The manual provides help to an EmaraTax portal registered person to amend their taxable person profile information. It provides a step-by-step process for the amendment of the details along with screenshots of the portal. ▪ **Corporate Tax Manual on Corporate Tax Self Registration** – The manual provides help to an EmaraTax portal registered person to apply for their corporate tax registration application. It provides a step-by-step process for the corporate tax registration application along with screenshots of the portal.

Sr. no	List of cabinet/ministerial/ FTA decisions and explanation
	▪ During the relevant period, the FTA has issued several manuals, which are listed below. However, the manuals which are of primary importance have already been discussed above. – Taxable Person – Link Juridical Person Tax Agent to Taxable Person – Register Natural Person Tax Agent without Exam Schedule – Register Natural Person Tax Agent with Exam Schedule – Register Juridical Person Tax Agent – Natural Person Tax Agent Update Qualification – Natural Person Representative Agent – Link with Juridical Person Tax Agent – Link Juridical Person Tax Agent to Taxable Person – Link Juridical Person Tax Agent with Natural Person Tax Agent – Link Natural Person Tax Agent with Juridical Person Tax Agent – Link Juridical Person Tax Agent with Representative Agent – Edit Corporate Tax Bank Details ▪ **Corporate Tax Public Clarification on Postponement of the Deadline to File a Tax Return and Settle the Corporate Tax Payable for Certain Tax Periods | CTP004** – The clarification was issued in order to clarify the FTA decision on the postponement of the deadline to file the tax return and settle the corporate tax payable in respect of certain tax periods. The FTA decision and the clarification provided relief to taxpayers whose first tax period ended between 30 November 2023 and 29 February 2024, and who were supposed to file their corporate tax return within nine months from the end of this first tax period. For all such taxpayers, the due date for filing the corporate tax return for the first tax period has been extended to 31 December 2024. Consequently, the due date for making payment of any corporate tax liability is also extended to 31 December 2024.

Sr. no	List of cabinet/ministerial/ FTA decisions and explanation
	▪ **Tax Resident and Tax Residency Certificate | TPGTR1** – This guide provides general guidance on corporate tax in the UAE and on tax residency rules. It provides an overview of the following points: i. How a person can determine whether they are a resident person for corporate tax purposes; ii. How a person can determine whether they are UAE tax resident under domestic law and under a double taxation agreement (DTA); and iii. How a UAE tax resident can obtain a tax residency certificate. ▪ **Real Estate Investment for Natural Persons | CTGREI1** – This guide provides guidance for natural persons that derive real estate investment income. It focuses specifically on the application of Cabinet Decision No. 49 of 2023 which excludes from corporate tax the real estate investment income derived by a natural person where the specified conditions are met.

Economic Substance Regulations

Vide Cabinet Decision No. 98 of 2024, the MoF has announced amendments to the Economic Substance Reporting (ESR) requirements for companies for financial years starting from 1 January 2019 and ending after 31 December 2022.

A new article no. (2) has been added to the provisions of Cabinet Decision No. 57 of 2020 on economic substance requirements. While we await the official English version, below are the key highlights based on the Arabic version of the decision:

Article (1)

1. The applicability of ESR in the UAE is now limited to financial years ending on or before 31 December 2022.

Article (2)

- All administrative penalties imposed on the licence holder or those exempted, according to the provisions of Cabinet Decision No. 57 of 2020, shall be cancelled for financial years ending after 31 December 2022.
- In the event of any imposition of administrative penalties on the licence holder or those exempted, according to the provisions of Cabinet Decision No. 57 of 2020 for financial years ending after 31 December 2022, the National Evaluation Authority shall have the authority to refund those penalties and address all related grievances.

The Ministry confirmed that, while companies are no longer required to submit economic substance notifications or reports for financial years ending after 31 December 2022, they remain responsible for fulfilling compliance obligations for prior years, adhering to information or amendment requests from regulatory authorities or the FTA, and paying any penalties imposed by the FTA.

VAT and customs duties update

With respect to VAT and excise tax, the UAE FTA has recently released the following amendment/update which is given below:

Date	Tax	Type of update	Particulars of update
September 2024	VAT	Amendment to VAT Executive Regulation	Amendment of VAT Executive Regulation of VAT Decree-Law vide Cabinet Decision No. 100 of 2024

The update may be summarised as follows:

Amendment of VAT Executive Regulation of VAT Decree-Law vide Cabinet Decision No. 100 of 2024

The FTA has recently amended the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax ('the Executive Regulation' or 'ER') vide Cabinet Decision No. 100 of 2024 issued on 6 September 2024 (effective 15 November 2024). The key amendments are:

Particulars	Explanation
Documentation for export of goods [article 30]	For zero rating the export of goods, the FTA has relatively eased the requirements and has amended the rules pertaining to maintaining export documentation, thereby providing greater flexibility to exporters to benefit from VAT zero rating. Under the amended rules, the exporter should retain any of the following documents in cases of direct/indirect exports or customs suspension situations: ▪ a customs declaration and commercial evidence that proves the export; ▪ a shipping certificate and official evidence that proves the export; or ▪ a customs declaration that proves the suspension arrangement of customs duties, in cases where the goods are put into customs suspension. Article 30(2)(b) pertaining to indirect exports now includes reference to the term 'agent' who, along with an overseas customer, may secure export documents and provide them to a UAE-based supplier. Previously, the term 'agent' was only referenced in the definition of 'indirect export' under article 1; it has now also been referenced in article 30. The amended article has enhanced the scope of definitions of the term 'official evidence', as well as the terms 'commercial evidence' and 'shipping certificate':

Particulars	Explanation
	▪ 'Official evidence' means the export certificate issued by the customs departments in the state or a clearance certificate issued by these departments or the competent authorities in the state regarding the goods leaving the state after verifying their departure, or a document or clearance certificate certified by the competent authorities in the country of destination stating the entry of the goods into the country. ▪ 'Commercial evidence' means the document issued by sea, air or land transport companies and agents, proving the transfer and departure of the goods from the state to outside the state, and includes any of the following documents: 1. air waybill or air manifest 2. sea waybill or sea manifest 3. land waybill or land manifest. ▪ 'Shipping certificate' means a certificate issued by sea, air or land transport companies and agents as an equivalent of commercial evidence where such evidence is not available. Further, with the addition made in clause 6 of this article, the FTA is now empowered not to accept documents if they provide insufficient evidence of the exit of goods from the UAE.
Clarification in zero rating export of services [article 31]	▪ The conditions for zero rating the export of services have been amended to exclude those supplies for which the special place of supply rules under articles 30 and 31 of the VAT Decree-Law are applicable.

Particulars	Explanation
	▪ Such supplies are in the nature of: – services provided on goods, such as installation of goods; – supply of a means of transport to a non-taxable person; – restaurant, hotel, and food and drink catering services; – cultural, artistic, sporting, educational or any similar services; – real estate-related services; – transportation services or transport-related services; – telecommunication and electronic services. ▪ Further, in article 31(1)(a)(2), 'moveable personal assets' has been changed to 'moveable assets'.
Categories of exemption under financial services expanded to include fund management services and virtual assets [article 42]	The list of exempt services under the category of financial services has been expanded to include the following categories of financial services: **Fund management services (effective 15 November 2024)** ▪ Services performed by a fund manager independently for consideration, such as a fee. ▪ Funds should be licensed by a competent authority in the UAE. ▪ Services include but are not limited to: – management of fund's operations; – management of investments for or on behalf of the fund; – monitoring and improvement of the fund's performance.

Particulars	Explanation
	Virtual assets ▪ Exemption is now available for the following categories of supplies: – transfer of ownership of virtual assets, including virtual currencies (this amendment is retrospectively applicable from 1 January 2018); – conversion of virtual assets (this amendment is retrospectively applicable from 1 January 2018); – keeping and managing virtual assets and enabling control (this amendment is effective from 15 November 2024). ▪ VAT exemption will not be available if the above-mentioned supplies are provided for consideration in the form of an explicit fee, commission, discount, rebate or similar.
Zero rating international transport services [article 33]	▪ **International transport of goods** – Zero-rating provisions concerning international transportation of goods have been revised to state that the benefit of zero rating for the local leg of international transport will be available if such local transport services are provided by the same supplier responsible for the international transport. ▪ **International transport of services** – Clause 2(b) has been amended to clarify that services provided during the supply of international transportation will be zero-rated only if they are supplied to the recipient of the transportation service.

Particulars	Explanation
Input VAT recovery on health insurance of dependants [article 53]	The exception list of non-recoverable input VAT has been updated to allow the taxpayer to recover input VAT on health insurance including enhanced health insurance for employees and dependants (up to one spouse and three children aged under 18 years), provided there is a legal obligation in the specific emirate.
Changes in tax invoices and tax credit notes [articles 59 & 60]	▪ The FTA has specified the timeline for issuance of different types of tax invoices: Type of invoice: Simplified tax invoice — Timeline: Tax invoice should be issued on the date of supply. Type of invoice: Summary tax invoice — Timeline: Tax invoice shall be issued and delivered to the recipient within 14 days from the end of the calendar month in which the date of supply occurs. ▪ Where more than one tax credit note is issued in relation to the same tax invoice, the value of the supply shown on the tax invoice in the subsequent tax credit note shall be the adjusted value based on the immediately preceding tax credit note. ▪ Where an agent issues a tax invoice or tax credit note on behalf of the principal, it must meet the following requirements: 1. the agent should retain sufficient records to determine the name, address and tax registration number of the principal supplier; and

Particulars	Explanation
	2. the principal supplier should retain sufficient records to determine the name, address and tax registration number of the agent.
Supplies related to government entities and charities [articles 3 (bis) & 5]	**Exception from scope of supplies** The following shall not be considered a supply under UAE VAT when such supplies are between two government entities: ▪ grant/transfer of ownership/ disposal of government buildings, real estate assets and other projects of a similar nature; ▪ grant/transfer of a right to use, exploit or utilise government buildings, real estate assets and other projects of a similar nature as from 1 January 2023. It also provides a list of categories that should be considered government buildings, real estate assets and other projects of a similar kind. **Exception from deemed supply** Separate limits for deemed supply have been introduced with respect to transactions between different government bodies/charities. The total sum of output VAT payable on a deemed supply must not exceed an amount of AED 250,000 for each person for a period of 12 months. Any excess amount beyond the specified limit should be considered payable VAT.
Changes in registration and deregistration [articles 8, 14 & 14 (bis)]	**Voluntary registration** ▪ When making an application for voluntary registration based on expenses, in addition to carrying out a business in the UAE, the FTA has also added one more criterion wherein a registrant is required to prove the intention to make supplies which are either zero-rated, standard rated or outside the scope of UAE VAT.

Particulars	Explanation
	Deregistration ▪ The FTA may deregister a registrant with effect from the date when it is satisfied that the conditions of deregistration are met. Previously, the effective date of deregistration was the last day of the tax period in which the FTA was satisfied that the conditions of deregistration were met. ▪ Once VAT deregistration has been initiated by the FTA, a taxpayer may be required to file another VAT registration application where VAT registration requirements are met. ▪ The FTA may issue a decision for deregistration if it is of the view that keeping registration would prejudice the safety of the tax system.
Input VAT apportionment [article 55]	▪ A new clause has been inserted for determining the tax year for input VAT apportionment: Situation / Timeline for tax year end Tax deregistration / Last day of being a taxable person Member joins a tax group / Last day before joining the tax group Member leaves a tax group / Last day of being a member of the tax group ▪ The FTA has amended the provisions wherein it is stated that proportionate adjustment of the existing limit of AED 250,000 is required when calculating the annual wash-up where the tax year is shorter than 12 months. ▪ Relief to taxpayers is available wherein an application can be provided to the FTA for approving the use of a specified recovery percentage to calculate the recoverable input VAT based on the recovery percentage of the preceding tax year.

Particulars	Explanation
Definitions [article 1]	The FTA has added important definitions in the updated Executive Regulation: ▪ **Business day:** Any day of the week, except weekends and official holidays of the federal government. ▪ **Virtual assets:** Digital representation of value that can be digitally traded or converted, can be used for investment purposes and does not include digital representations of fiat currencies or financial securities.
Other significant amendments	Other significant amendments include: 1. **Widening the scope of supply of goods for real estate [article 2]** – Supply of goods in the nature of supply of real estate has been enhanced to encompass any other forms of disposal causing the transfer of ownership between two persons, in addition to the sale and lease of real estate. 2. **Deregistration of a tax group [article 15]** – A member entity which is part of a tax group shall be removed from the tax group if it ceases to make taxable supplies. 3. **Profit margin scheme [article 29]** – A new definition of 'purchase price' used in the calculation of the profit margin scheme has been inserted which includes, in addition to the price of the good, any costs and fees incurred to purchase the good. 4. **Zero rating import of certain means of transport [article 34]** – The FTA has clarified that the import of certain means of transport as mentioned in article 34 of the Executive Regulation would be zero-rated. This amendment only aims to align with the provisions of VAT Decree-Law.

Particulars	Explanation
	5. **Zero rating goods and services in connection with means of transport [article 35]** – Services related to the operation, repair, maintenance or conversion of means of transport, as outlined in the Executive Regulation, will be zero-rated only when these services are performed on board. 6. **Definition of residential building [article 37]** – A hotel apartment has been explicitly excluded from the definition of a residential building. 7. **Zero rating of buildings specifically designed to be used by charities [article 38]** – A new clause 2 has been added outlining the definition of relevant charitable activity which has already been defined as part of the earlier amendment to VAT Decree-Law. 8. **Zero rating healthcare services [article 41]** – The FTA has clarified that the import of concerned goods with respect to healthcare services as mentioned in article 41 of the Executive Regulation would be zero-rated. This amendment only aims to align with the provisions of VAT Decree-Law. 9. **Composite supply treatment [article 46]** – The tax treatment for supplies consisting of multiple components has been revised to include a new clause indicating that the VAT treatment of a single composite supply, which does not include a principal component, should be evaluated based on the overall nature of the supply. 10. **Input VAT recovery in respect of exempt supplies [article 52]** – For the purposes of input VAT recovery on supplies of financial services provided outside the UAE, the criteria for determining

Particulars	Explanation
	whether a person is considered to be outside the UAE have been updated. Both of the following conditions should be satisfied: a) the presence in the UAE is short-term, of less than one month; and b) the presence in the UAE is not effectively connected with the supply. Through this amendment, the conditions are now aligned with those of article 31(2) of the Executive Regulation. 11. **Capital asset scheme adjustment [article 58]** – With respect to an internally developed capital asset, the first tax year for the capital asset scheme is the year in which the asset started to be used. 12. **Foreign governments [article 69]** – A time frame of 36 months from the date the tax was incurred or any other period specified under the provisions of an international treaty or other agreement has been provided for the submission of a tax refund claim.

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

PKF Comment

The CT Decree-Law is broadly in line with internationally accepted principles of corporate tax. Also, the release of cabinet decisions/ further guidance/FAQs with regards to certain provisions of the CT Decree-Law is a welcome step and quite helpful in the interpretation of the law.

As CT law is applicable for financial years starting on or after 1 June 2023, by now, businesses should have carried out CT and transfer pricing impact assessments on their current/proposed businesses and should aim to be UAE CT compliant from the very first tax period. The FTA issued a timeline for obtaining CT registration that every business must comply with. Further, the FTA has released a guide on the computation of taxable income and the return filing process for companies who have completed their first tax period has been enabled.

Businesses in the UAE are no longer required to file ESR notifications or reports going forward. Entities who have been charged a penalty for ESR filing for the tax period post 31 December 2022 may be issued a refund by the Ministry of Finance.

VAT amendments are generally related to documentation for the export of goods, zero rating the export of services, addition of exemptions under the list of financial services, zero rating international transport of services, changes in the timeline for issuance of different types of tax invoices, presentation of details on tax credit notes and provisions pertaining to the registration and deregistration process, input VAT apportionment, definition of business day and virtual assets, etc. These amendments may impact the current VAT positions adopted by business entities registered under UAE VAT law.

Other significant amendments relate to input VAT recovery on health insurance for dependants, the scope of supply of goods for real estate, deregistration of a tax group, the profit margin scheme, zero rating the import of means of transport and healthcare services, clarification on residential buildings, treatment of composite supplies, input VAT recovery of exempt supplies, capital asset scheme adjustment, etc.

For further information or advice concerning taxes in the UAE, please contact Mr. Shailesh Kumar at skumar@pkfuae.com, Mr. Mradul Gupta at mgupta@pkfuae.com, Mr. Anurag Sodhani at asodhani@pkfuae.com, Ms. Megha Lohia at mlohia@pkfuae.com, Mr. Harsh Modi at hmodi@pkfuae.com or Mr. Konan Shahid at konan@pkfuae.com or call **+971 4 388 8900**.

BACK

United Kingdom

Carried interest and non-domiciled taxation

Significant changes impacting the taxation of 'carried interest' and non-domiciled individuals were announced by Chancellor Rachel Reeves during the Autumn Budget of 30 October 2024. In this article we provide a high-level overview of these announcements.

Carried interest

Carried interest is defined by the government as a performance-related award received by fund managers.

The two current rates of capital gains tax (CGT) that apply to qualifying 'carried interest' of 18% and 28% will both be increased to 32%, effective from 6 April 2025. In addition, from April 2026, a simplification of the existing rules has been proposed.

From April 2026, we understand that the intention is for carried interest to be subject to income tax (IT) and National Insurance (NI), albeit with a modification in view of its unique characteristics. It is suggested that 72.5% of proceeds will be subject to income tax. Accordingly, under current rates, this would give an effective income tax rate of approximately 32% for additional rate taxpayers from April 2026, with NI due in addition.

In advance of the Autumn Budget, HM Treasury announced a call for evidence in which we provided comments. A further consultation process has been announced and will run until 31 January 2025. We will contribute our further comments to HM Treasury in due course.

Non-domiciled tax reforms

In line with earlier announcements, the government confirmed its intention to abolish the remittance basis of taxation for UK tax resident but non-domiciled individuals (UKRNDs) from 6 April 2025 and replace it with a residence-based regime.

In addition, the government announced that domicile is to be removed as a connecting factor to UK inheritance tax (IHT) from 6 April 2025 and modifications have been suggested in respect of the UK tax status of overseas trusts.

The government announced that further guidance will be published in due course in advance of April 2025. Furthermore, an opportunity has been provided for technical commentary to be submitted in response to announcements and draft legislation. We will contribute our detailed technical comments in due course.

Inheritance tax

The current rules apply domicile as a connecting factor to IHT. This will change from April 2025, whereby residence should be the determining factor of whether foreign assets are subject to IHT. The test will be whether the relevant individual has been resident in the UK for 10 of the 20 tax years preceding a chargeable event.

New foreign income and gains regime – IT and CGT

A new foreign income and gains (FIG) regime will be introduced from April 2025. Qualifying individuals will be eligible in their first four years of UK tax residence following a period of 10 consecutive years of non-residence. The statutory residence test will determine residence for this purpose.

An individual's domicile status will not be relevant for this test and therefore UK domiciled and long-term non-resident expats returning to the UK should qualify for the new regime.

The FIG regime will apply full relief on qualifying FIG in the four-year period. A claim will need to be made in the relevant individual's self-assessment tax return to quantify the relevant FIG, and no later than 31 January in the second tax year following the relevant year.

A claim can be made on a year-by-year basis and does not need to be made for every year of the four-year period. Making the claim will cause the loss of the personal allowance and capital gains annual exemption for the relevant tax year.

In addition, a form of rebasing to 5 April 2017 of foreign assets held personally can apply for former remittance basis users where certain conditions are met.

Temporary repatriation facility

Existing UKRNDs who have previously claimed the remittance basis with pre-April 2025 unremitted FIG will be able to remit them to the UK at reduced rates of tax for a three-year period. In 2025/26 and 2026/27, the rate of tax will be 12%, followed by 15% in 2027/28. An election will need to be made to designate the relevant amount and accounts.

The temporary repatriation facility may also be claimed by beneficiaries of offshore trusts that receive capital benefits in the three-year period that are matched with pre-April 2025 trust FIG.

Overseas workdays relief

The current rules in respect of overseas workdays relief (OWR) are to be reformed. From 6 April 2025, eligibility for OWR will primarily be determined by whether the individual meets the terms of the FIG regime. OWR will provide relief from income tax for a four-year period on a just and reasonable basis where employment duties are carried out overseas. The OWR will apply to the overseas duties even if the earnings are received or remitted to the UK.

Offshore trusts

The existing protections introduced in 2017 in respect of FIG arising within offshore settlor-interested trusts will no longer be available from April 2025. Where the FIG regime does not apply, the relevant individual will be taxed on distributions where they can be matched with the income and gains arising within the offshore trust.

It has been announced that a further consultation process will commence with a view to further reforms to the existing anti-avoidance rules impacting offshore structures. In addition to the above, any further changes are expected to be effective from April 2026. Subject to some transitional provisions, the 'excluded property' status of non-UK property held within overseas trusts will not be wholly determined by the status of the trust's settlor at the time property was added to the trust. From April 2025, we understand that foreign property within overseas trusts will continue to not be subject to IHT where, at the relevant time, the settlor is not a long-term UK tax resident. Accordingly, there are due to be significant changes to the IHT status of overseas trusts.

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PKF Comment

These are significant changes, announced along with substantial information and documentation released on the date of the Autumn Budget. We are reviewing the additional paperwork in detail and will continue to contribute to the evolving landscape.

If you believe the above measures may impact your business or personal situation, please contact Youcef Toumi at youcef.toumi@pkf-francisclark.co.uk or call **+44 1392 407624**.

Changes to capital gains tax and inheritance tax

The anticipation of increases to CGT and IHT was fervent. There were a number of announcements made in the Budget which may not have been at the most feared end of the spectrum, but nonetheless could have a meaningful impact for some individuals and business owners or those in agriculture.

Capital gains tax

We have ended up in recent years with a variety of CGT rates. The rates of CGT for most non-residential gains have increased from 10% to 18% for gains within the basic rate band and from 20% to 24% thereafter. Personal representatives of estates and trustees of trusts will be subject to a flat 24% rate rather than 20%.

This at least removes two rates from the list, by aligning them with residential property gains. This change is effective immediately.

Carried interest gains are discussed above and are set to increase to 32% from April 2025.

Business asset disposal relief (BADR) was widely expected to be abolished. This provided for a 10% CGT rate on disposals of certain business assets, subject to a lifetime limit of £1 million. However, that has not happened, and the lifetime limit has remained at £1 million. The 10% rate, however, will increase to 14% in April 2025 and to 18% from April 2026.

Investors' relief is similar to BADR and this provided for a 10% CGT rate on disposals of certain investment assets, subject to a lifetime limit of £10 million. As for BADR, the 10% rate will increase to 14% in April 2025 and to 18% from April 2026. The lifetime limit has been reduced to £1 million with immediate effect. For those that have already made gains of more than £1 million, no further relief is available.

The CGT changes could have been worse. They can be summarised as follows:

Capital gains tax rates				
	Before the Budget	From 30 October 2024	From 6 April 2025	From 6 April 2026
Shares, non-residential property				
Basic rate	10%	18%	18%	18%
Main rate / estates	20%	24%	24%	24%
Residential property				
Basic rate	18%	18%	18%	18%
Main rate	24%	24%	24%	24%
Carried interest				
Basic rate	18%	18%	32%	
Main rate	28%	28%	32%	N/A
Investors' relief				
Rate of tax	10%	10%	14%	18%
Lifetime allowance	£10,000,000	£1,000,000	£1,000,000	£1,000,000
Business asset disposal relief				
Rate of tax	10%	10%	14%	18%
Lifetime allowance	£1,000,000	£1,000,000	£1,000,000	£1,000,000

Inheritance tax

There were a number of changes announced. The first is the continued freezing of the £325k nil rate band and the up to £175k residence nil rate band. These will remain unchanged until at least 2030.

In a positive move, agricultural property relief (APR) is extending to certain environmental land management agreements from 6 April 2025.

However, from 6 April 2026, both APR and business property relief (BPR) will be subject to a combined £1 million limit. It will apply proportionately if both apply to the same estate. Thereafter, the reliefs will be restricted to a 50% relief rather than the 100% relief we have in most cases today. Larger farms and business assets will be subject to an effective 20% IHT rate over the £1 million threshold from 2026 as a result.

The £1 million threshold will not be transferrable between spouses. It may therefore be less attractive to leave qualifying assets to a spouse on death rather than a chargeable beneficiary.

The £1 million limit also applies where qualifying assets have been gifted (from 30 October 2024) in the seven years prior to death, so the gifts are brought back into the equation for IHT purposes. Gifts made before 30 October 2024 can still qualify for 100% relief. Where a trust owns qualifying assets, the £1 million limit will apply to each existing trust, but for trusts set up from 30 October 2024 it will be shared across all new trusts set up by the same settlor.

Careful succession planning will be ever more important to allow farms and businesses to be passed on as tax efficiently as possible. This may include restructuring of the business ownership and the careful drafting of wills. Existing wills should also be reviewed. For example, those with particular arrangements in their will may need to consider the effect of the APR and BPR changes as they could result in an IHT charge which wasn't envisaged when the wills were originally drafted.

It is worth noting that whilst the IHT on farms and businesses can be paid over 10 annual instalments, they are interest-bearing and still of course need to

be funded. Where the only asset in an estate is the farm or the business then planning how to fund any IHT will need careful thought.

Shares classed as unlisted by virtue of being only on the alternative investment market (AIM) and certain other stock exchanges can currently enjoy full BPR. That will be restricted to 50% under the BPR changes and such shares will not qualify to fall within the £1 million limit otherwise available for BPR/APR assets.

Qualifying pension funds are currently not subject to IHT and can be passed on death outside of the taxable estate. A consultation has been announced with a view to removing this exemption from April 2027. It is proposed that pension funds would fall into a person's estate from then. Where the fund passes to a surviving spouse or civil partner then they will still inherit the fund free of IHT, although it may impact on the residence nil rate band if pushing the estate over £2m. However, where the fund passes other than to a spouse or civil partner, it will be subject to IHT, unless within the usual nil rate band. This will particularly impact unmarried couples where the survivor will receive the pension fund on the death of their partner. Lifetime pension planning will be important and particular care should be taken to review pension wishes on death.

IHT is also changing for non-domiciled individuals as the 'non-dom' regime is being abolished from 6 April 2025. IHT will no longer be assessed based on domicile, but will follow a residence-based approach. This will affect the scope of non-UK property brought into the scope of UK IHT where an individual has been resident in the UK for 10 out of the previous 20 tax years. They will then remain within the scope for up to 10 years after leaving the UK.

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PKF Comment

If you believe the above measures may impact your business or personal situation, please contact Steve York at steve.york@pkf-francisclark.co.uk or call **+44 1872 276477**.

Budget burden falls on business owners – but will it deliver growth?

The long-expected Budget has now happened. In the end, it was pretty well all trailed in advance, much of it testing opinion and then discounting options. The most surprising thing is how harsh the impact of the employers' National Insurance (NI) increase is on employers of lower-paid workers.

That looks unwise and may cause an unnecessary rise in business failures. The capital gains tax (CGT) rises were much as expected and at the softer end than they could have been. The inheritance tax increases also look manageable and again are not as severe as many feared. However, the impact does seem to pretty well all fall on the business sector – especially larger employers.

The Chancellor did stop short of increasing fuel duty – perhaps in order to try to keep inflation down – and has promised that the freeze on income tax thresholds and allowances will not be extended. However, 2028 is still some way off – so who knows?

There was also some amelioration of the impact of business rates on the high street. But stamp duty land tax (SDLT) has been increased for second homes, and the threshold for both first-time buyers and the 0% band will reduce from April 2025. Other changes are much as announced in the Labour manifesto (more or less).

Rachel Reeves was determined to increase investment spending by the government – that is largely spending on buildings and structures that in turn help leverage growth: hospitals, schools, road improvements, new railways, etc.

There is plenty of history of such investment boosting an economy – from 19th century public works to Roosevelt's New Deal. However, there are also echoes of five-year plans and more command-and-control style economies. Regardless of the look and feel of such spending, the big difficulty is the capacity of the private sector to deliver without producing inflation. A director of a large construction business recently indicated that their order book is full for the next two and a half years.

If this spending is to boost growth, then this is likely to take time, although the politicians tend to want to put the pedal to the metal too quickly and it stokes inflation instead. The Office for Budget Responsibility (OBR) doesn't think that it will.

As a result of the Budget, there is around an extra £70 billion per year of spending – two-thirds on day-to-day spending and one-third on investment spending. About half the spending (£36 billion per year) comes from tax rises, with the rest funded by borrowing (£32 billion per year).

That means about £10 billion per year of day-to-day spending is funded by debt. Whether that is fiscally prudent or not is debatable, but it is extra borrowing each year that has nothing to do with investment. Even then, much like beauty, what is day-to-day spending or investment is probably in the eye of the beholder.

These are not small numbers. The additional spending splurge is expansionary and inflationary, and it boosts the economy in 2025. However, looking at the OBR's growth and inflation forecasts, the growth cools after 2026. Some of that is because spending is higher in the earlier years relative to tax revenue, with tax revenue catching up as inheritance tax, capital gains tax and increased HM Revenue & Customs enquiry activity kicks in.

Business owners will feel unfairly picked on. The revenue raising is almost all coming from entrepreneurial activity. It's a big increase in spending, with employers principally paying for it.

Those employers that have large workforces of mainly lower-paid employees are particularly badly hit. The extra employers' NI is an extra £615 per employee on the first £9,000 of earnings. The additional employment allowance will help those with fewer than 10 employees, but those with larger workforces face a big increase in their costs from April 2025.

The position is particularly acute for hospitality businesses and also for care sector providers. This is exacerbated by the increases in the national living wage. The government may want to have a high-wage, high-skill economy, but you can't just wish it into existence.

For the hospitality sector, there is only so much you can charge for a plate of food. Prices have moved up considerably in the last few years. Customers need the stability that has been promised, and price stability is the most important of all. In that respect, the measures to give further business rates relief to the high street are to be welcomed.

For the care sector, there is a limit to what individuals can self-fund and how quickly will government-funded care packages increase to support those businesses? There are many owners who will be having sleepless nights, and our accounting and financial advice is going to be as important as ever.

The question many business owners will be asking is whether it is worth the effort. Apart from disparaging remarks about them by some government ministers, which were hardly motivational, the after-tax returns from building up a business are being curtailed.

CGT is increasing – not by as much as feared, but it is still further reducing the upside. As far as succession is concerned, then passing on the family business is going to be more difficult. Achievable with good advice, but the danger is that this detracts from the energy needed to build a successful business.

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PKF Comment

Our advice to all business owners is to take time to consider and reflect on the changes announced, take advice and make considered long-term plans for the future. What are the options? Reduce headcount, reduce future pay increases or increase prices. Ultimately, for most it will be about increasing prices, although technology and particularly AI might be an option.

It's not an easy time to be a business owner – but then no one ever set up a business because it was easy.

If you believe the above measures may impact your business or personal situation, please contact John Endacott at **john.endacott@pkf-francisclark.co.uk** or call **+44 1392 667000**.

BACK

United States

The grass may not be greener for expatriates leaving the US for tax relief

What we know about IRC 877A that may have expatriate hopefuls unpacking their bags

Section 877A was added to the Internal Revenue Code (IRC) in 2008, introducing the current tax regime for expatriates. Since then, a growing number of US citizens have relinquished their citizenships, with many long-term permanent residents also giving up their green cards.

For a multitude of reasons (e.g. business relocations, lifestyle preferences, country family ties, political inclinations), many US citizens are relinquishing their US citizenship and long-term permanent residents are formally giving up their green cards to end the maze of never-ending tax compliance and reporting obligations. This is true even for those who have already permanently moved outside the US.

These obligations include reporting income activity and asset holdings on a worldwide basis and could result in tens of thousands of dollars in tax compliance costs even if, in some cases, no taxes are owed. By giving up their ties to the US, they hope to be free of federal tax filings and also break tax residency in the state in which they reside to end their state tax responsibilities as well.

But not so fast. We would like to share what we know about section 877A that may make soon-to-be expatriates feel the grass won't be greener by leaving the US.

Summarised below is critical information to consider when deciding on relinquishing US citizenship or a green card, including the rules around giving up citizenship, the expatriate exit tax, the mark-to-market rule, exclusion amounts and allocating them across assets, reporting obligations and some of the IRS enforcement actions we've seen relating to 877A.

Relinquishing US citizenship

For the purposes of 877A, an individual relinquishes citizenship on the earliest date on which:

- They renounce US nationality before a diplomatic or consular officer of the United States.
- They furnish to the US Department of State a signed **Statement of Voluntary Relinquishment of US Nationality** confirming the performance of an act of expatriation.
- The State Department issues a **Certificate of Loss of Nationality** to the individual.
- A US court 'cancels a naturalised citizen's **Certificate of Naturalisation**'.

A person ceases to be a lawful permanent resident on the occurrence of the earliest of the following:

- Their green card is revoked or administratively or judicially determined to have been abandoned; or they:
  1) begin to be treated as a resident of a foreign country under a tax treaty between the United States and the foreign country;
  2) do not waive treaty benefits available to residents of the foreign country;
  3) notify the IRS of this treatment.

The 877A expatriate exit tax: Covered expatriates, qualifying conditions, amounts taxed

What a significant number of expatriate hopefuls do not know is that there is a potential hefty expatriate exit tax to pay, whereby covered expatriates meeting certain conditions are treated as having sold their worldwide assets at fair market value and are taxed on the deemed gain.

An individual is a 'covered expatriate' where certain conditions are met:

- any US citizen who relinquishes citizenship; or

- any long-term permanent resident who held their green card in at least eight of the last 15 calendar years and ceases to be a permanent resident.

In addition, any of the following conditions must be met:

- average annual net income tax liability over the last three years of $201,000 in 2024;
- net worth of $2 million on the date of the expatriation; or
- failure to certify or submit evidence of tax compliance for the preceding five years.

If the US person is considered covered and meets any one of the above conditions, an exit tax will be imposed:

- on the deemed gain of the asset (derived via a **mark-to-market** rule);
- for any amount that exceeds the IRS threshold for that tax year ($866,000 in 2024).

The mark-to-market rule for deemed sale of assets

All property of a covered expatriate under the mark-to-market regime is 'treated as sold on the day before the expatriation date for its fair market value'. For this purpose, covered expatriates are deemed to own:

1. 'any interest in property that would be taxable as part of his or her gross estate' for federal estate tax purposes if he or she had died on the day before the expatriation date;
2. 'his or her beneficial interest(s) in each trust (or portion of a trust)' that would not be part of the gross estate.

Fair market values are generally determined 'in accordance with the valuation principles' of the federal estate tax, applied as though the covered expatriate had died on the day before the expatriation date. Gift tax principles are used to value interests in trusts not includable in the expatriate's gross estate and life insurance policies.

The allowable exclusion amount…and allocating it across assets

For each tax year, there is an allowable exclusion amount that would be allocated across all the assets subject to the mark-to-market rule. For 2024, that amount is $866,000.

To calculate the allocation of an exclusion amount across each mark-to-market asset, the expatriating taxpayer would:

1. Determine the built-in gain or loss, G/(L), for each asset deemed sold (fair market value minus adjusted tax basis).
2. Calculate the total G/(L) for all assets.
3. Determine the allocation ratio of each asset by dividing built-in asset G/(L) by total G/(L).
4. Multiply each asset's ratio by the tax year exclusion amount to determine its allocation amount.
5. Subtract each asset's allocation amount from its built-in G/(L) to determine reportable G/(L).

Follow the example below to understand how the built-in gains would be derived and reported on Form 1040 by the taxpayer (in this instance, deemed gains are $1,020,600 and $113,400):

	Adjusted basis	Fair market value (FMV)	Built-in G/(L) of asset	Allocation ratio	Exclusion allocation*
Asset X	$200,000	$2,000,000	$1,800,000	$\frac{\$1,800,000}{\$2,000,000}$	$779,400
Asset Y	$800,000	$1,000,000	$200,000	$\frac{\$200,000}{\$2,000,000}$	$86,600
Total G/(L)			$2,000,000		

Note: *To calculate the exclusion allocation, multiply the allocation ratio by $866,000.

The exclusion amount allocated to each asset would then be subtracted from the amount of built-in gain deemed realised on each asset as follows:
Asset X: $1,800,000 – $779,400 = $1,020,600
Asset Y: $200,000 – $86,600 = $113,400

Assets excluded from the deemed gain calculation

Certain assets are excluded from this immediate gain calculation, such as tax-deferred accounts, retirement plans and interests in non-grantor trusts, but are subject to their own special tax regime designed to ensure US tax is imposed at a later date.

Other assets also have certain nuances under the mark-to-market regime which should be considered by the taxpayer, such as the deemed sale of a principal residence. Typically, a taxpayer could claim a section 121 exclusion of up to $250,000 ($500,000 for married taxpayers filing jointly) if they owned and used the property as the taxpayer's principal residence for periods aggregating two years or more during the five-year period ending on the date of the property sale or exchange.

However, the IRS has taken a position that a 'deemed sale' would not qualify the taxpayer for the section 121 exclusion, whereby the only exclusion amount that can be claimed on the deemed sale would be the allowable exclusion amount ($866,000 in 2024).

Reporting obligations for covered expatriates: Form 1040 or 1040NR + Form 8854

Along with Form 1040 or 1040NR, the covered/qualifying expatriate must file Form 8854 for the expatriation year, reporting information relevant to the application of these provisions. Form 8854 must be signed under penalties of perjury, with a separate copy also being sent to the IRS.

If the taxpayer fails to file it by the due date, fails to include all required information on the form or includes incorrect information, they are liable for a penalty of $10,000. The IRS may, however, waive the penalty if the taxpayer demonstrates that the failure was due to reasonable cause and not wilful neglect.

IRS enforcement actions

The IRS has noticed that the compliance rate for those required to file Form 8854 is low and has contacted taxpayers in a number of ways, from 'soft reminder letters' to full examinations.

In addition, since 2017, the IRS Large and International Business Division (LB&I) has launched various initiatives, identified problem areas and developed techniques to seek out taxpayers who have not complied and may owe significant tax interest and penalties.

The focus is on incomplete or inaccurate Form 8854 filings and using available government databases, such as social security numbers, to track down non-filers. A recent Treasury Inspector General report has even suggested that the IRS may work with the US Department of State to add social security numbers to the Certificate of Loss of Nationality to better track expatriating individuals who had failed to file Form 8854.

In any case, the IRS seems committed to improving its processes and pursuing expatriates who they believe did not expatriate properly, including potential criminal actions against individuals who intentionally and significantly under-reported their US income and assets in prior years.

Read more about section 877A here.

PKF Comment

The PKF O'Connor Davies International Tax team has significant experience in this area and advises clients on the risks, both as expatriation is considered and also before a green card is applied for, so that our clients can make prudent educated tax and financial decisions, especially since they could have lifelong effects.

Similarly, we advise those citizens and long-term residents who are living outside the US to stay current with their US tax obligations. We also advise those who have not kept up, assisting them in getting back into compliance with minimal penalties where possible.

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

BACK

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