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Dear Friends and Colleagues,

Welcome to the April edition of our EMEA Tax Newsletter. I cannot help the feeling that time is flying even faster than normal this year, and spring started well over a month ago already. This newsletter, thus, reaches you just days before the first major BKR event of this year - the much-awaited joint EMEA / AsiaPac Regional Meeting, which will take place in Singapore.

This being our second joint conference of the two regions, it gives us even greater opportunities to connect with friends and colleagues, to share ideas, experience and laughter and to learn from each other. The business agenda promises many interesting sessions. I look forward to seeing as many of you as possible there!

The April edition of the newsletter features articles from Austria on tax advantages for scientists, from the UK on VAT and the latest budget, a tax update from Cyprus and – in view of the joint meeting coming up - an analysis of the Union Budget from India. Many thanks to all who have volunteered to contribute articles to this edition, as well as to Tim, Emma and Julia for putting it together.

As always, please do keep in mind that it is your contributions that shape this newsletter, and your ongoing support is greatly appreciated.
If there is anything the tax committee can do for you, if you have any queries or concerns, if there is anything we can assist with, please do feel free to contact us. We will of course be available during the upcoming meeting, and look forward to catching up with you!

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Contributions for Edition 15 of the EMEA Tax Bulletin should be with Emma Dewick at emma.dewick@bkremea.com by 14th July 2017.

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Austria is becoming a more attractive location for scientists and researchers

Within the scope of tax reform 2015/2016 the attractiveness of Austria for scientists and researchers has been improved: the tax advantage for scientists and researchers who relocate to Austria is now extended and the procedures are simplified.

The aim is to avoid the additional tax burden that certain groups of persons have after moving to Austria. The measure was implemented to promote Austria's competitiveness; which is the reason for the extension of the tax advantage.

Target group of the benefit?

A regulation was implemented to control the granting of the tax advantage. The prerequisite is primarily that there is a public interest in the immigration of the person concerned. Furthermore the person must be working in the top level of their field (science, research, art, sport) and be in possession of the highest qualifications. University professors (or professors at universities of applied sciences) are assumed to be working in top level and having the necessary qualifications. This also applies to scientists working within the framework of their postdoctoral studies. The requirements must be examined in a case-by-case basis.

How does the benefit work?

The foreign tax level should be maintained by applying a flat rate taxation. The tax rate is determined by the tax burden before the relocation to Austria. The tax rate is not less than 15% on the income not included by the limited tax liability (and the addition of EUR 4.500).

In addition, a generous allowance in the amount of 30% of the income (domestic and foreign regular rate income) can be granted for the first five years after relocation. Thereby the moving expenses, double residence costs, travel costs, language course costs, school fees, etc. are compensated.

Example: Mr. M is working at a university in the state of M. He gets an offer to work on a research project in his postdoctoral position at an Austrian university and moves to Austria. Since he has no foreign income, the flat tax rate does not lead to any better or worse position. He has the costs of searching for accommodation and the relocation to Austria with his family. He and his family attend a language course and his children attend an international private nursery school (in their mother tongue). Due to the allowance, he benefits from the 30% and has to tax only 70% of his income in Austria.

How is the application done?

Significant for the application is also the residence of the person: where the person is resident and has been in the last 10 years. The new regulations are applicable if the relocation took place after August 15, 2015. The application must be submitted 6 months after relocation at the latest. In addition to the application, it is necessary to submit a tax return for the relevant tax year, which must be accompanied by supporting documentation. We would be happy to assist you with the application and the submission of the annual tax return.

A further measure is the increase in the research bonus for the in-house research and commissioned research from 10% to 12% in 2016.

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UNW bridge gap in Durham Cathedral VAT dispute

A landmark VAT court ruling has led to Durham Cathedral, with assistance from UNW, being reimbursed to the tune of several thousand pounds.

The focal point of the city alongside the castle, Durham Cathedral attracts around three-quarters of a million visitors per year, and has shared a long successful working history with UNW. This collaboration took on extra precedence in October 2015 when UNW became aware of an interesting new EU tax ruling.

The case centred around the VAT regulations of the Cathedral itself, which are a rather complicated affair. While procedures such as acquiring accounting services, or restorations to the building itself, were deemed partially VAT recoverable, 'non-business' activities are excluded from any such deduction.

This arrangement was part of a long-standing agreement with HMRC, and had until recently remained largely uncontested.

However, this all changed when UNW reacted quickly to a relevant VAT case that had emerged from the European Court of Justice (ECJ). SVEDA, a commercial Lithuanian company, had commissioned the construction of a path, for which they provided free access. The path led past one of SVEDA's shops, where visitors could purchase gifts, souvenirs and food and drink.

After deducting the input VAT on the costs it incurred from the creation of the path, SVEDA were challenged by Lithuanian VAT inspectors, who claimed that since the path had free access, and visitors had no direct obligation to purchase goods from the shop, the path was a part of SVEDA's non-business activities.

SVEDA took the case to court, where a judge subsequently decided the creation of the path was undertaken with the intention of attracting visitors, and potential customers, to the site. The VAT was deemed all recoverable.

This gave the tax team at UNW an idea. In 2011, Durham Cathedral carried out restoration to the neighbouring Prebends' Bridge, which was considered a non-business activity by HMRC, despite the startling similarities to the woodland path in the SVEDA case. The Cathedral recovered no VAT from the building costs.
Durham Cathedral, supported by UNW, took the example to HMRC, who rebuffed the claim, stating the restorations were all a part and parcel of their 'non-business' activities.

Mark Hetherington, partner at UNW, outlined UNW's role in the process: "We always keep our fingers on the pulse when it comes to tax cases that may be of interest to our clients, and we quickly highlighted how similar the case of SVEDA was to the Cathedral's predicament. We felt the decision to label restorations to the bridge as 'non-business' activities unjust.

"It was a huge shock when HMRC rejected the Cathedral's claim for input tax.

"Believing it to be an extremely strong case, we advised the Cathedral to take it to a first-tier tax tribunal, in which we would support them at every step.

Tax judge Richard Thomas decided in favour of the appeal, stating that the bridge had as much to do with Durham Cathedral's business as it did its religious activities. UNW's Mark Hetherington represented Durham Cathedral in court.

Jacqui Brown, Head of Finance at Durham Cathedral, said: "While we have always felt slightly disappointed by the earlier VAT ruling that surrounded Prebends' Bridge, it's something we had accepted.

"However, this all changed when UNW told us about SVEDA, and they really went beyond their call of duty in helping us win this landmark case. Without them, we would never have been aware of the opportunity to reclaim expenditure, or been in the position to successfully appeal HMRC's decision.

UNW bridge gap in Durham Cathedral VAT dispute (contd.)

"While the amount we won was nominal (£7,000), the bridge will soon require a far larger restoration project. The ruling not only saves us money now, but will yield considerable financial benefits well into the future."

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Cyprus Tax Update

1. Changes in Cyprus Tax residency certificates for individuals

On 10 March 2017, the Cyprus Tax Office issued circular 2017/08 according to which changes have been introduced in the criteria for obtaining tax residency certificates.

Specifically, tax residency certificates may be issued during a tax year provided that the individual:

a) Registers with the Cyprus tax department and is assigned a tax identification code (T.I.C.)
b) Submits a declaration according to which:
   His/her intention is to stay in Cyprus for a total period exceeding 183 days; and
   Committing that in the case where the individual does not become a Cyprus tax resident during the said year, he/she will inform the Tax Department so that the tax residency certificate is annulled.

The reason of the above amendments is to avoid the complications of the prior criteria of obtaining tax residency certificates, according to which a tax residency certificates were only issued once the 183 days rule had been met, and to enable eligible individuals to enjoy the benefits of Cyprus' double tax treaties.

2. Expected introduction of transfer pricing rules

The Cyprus Tax Authorities, taking into consideration the International developments (OECD/G20 initiative – BEPS) have decided to proceed with the alteration of the current tax regime in relation to profit margins on loans between related parties.
Specifically, it is expected that as of 1st of July 2017, all loans between Cyprus Tax Resident Companies and their related companies, will now have to be supported by Transfer Pricing Studies. These will have to be prepared by independent transfer pricing experts and be based on the OECD principals. This new rule will affect all the financial transactions between related companies for both tax assessment purposes and for the issuance of tax rulings.

In addition, all tax rulings which have been issued up to 30th June 2017 in relation to this subject will become void.

3. Notional Interest Deduction, BEPS and Tax Structuring

In 2015, Cyprus introduced Notional Interest Deduction ('NID') in its tax law, which relates to a notional interest deduction on new equity which can be set against taxable income generated by the company as a result of the funds from the new equity.

NID is equal to the interest yield of the 10 year government bond yield of the country in which the new equity is invested increased by 3% (the minimum rate being the yield of the Cyprus 10 year government bond increased by 3%). The bond yield rates to be used are those of December 31 of the year preceding the assessment year.

On 17 February 2017, the Cyprus Tax Department issued an announcement informing on the bond yield rates as at 31 December 2016 for the below jurisdictions which should be increased by 3% to determine the reference rates to be used for the NID of 2017.

Having in mind all changes in tax resulting mainly from

Cyprus Tax Update (contd.)

Country	Rate (%)	Country	Rate (%)
Cyprus	3.489	Romania	3.748
Czech Republic	0.414	Russia (denominated in USD)	8.380 4.409
Germany	0.204	Ukraine	8.705
India	6.878	United Arab Emirates	3.326
Latvia	0.894	United Kingdom	1.326
Poland	3.627		

the BEPS Action Points, NID is an important tool which can be used in tax structuring.

As per BEPS Action Point 6 (preventing the granting of treaty benefits in inappropriate circumstances), one of the main issues under discussion is the beneficial ownership of income. An anti-avoidance measure in relation to this is the introduction of limitation of benefit clauses in double tax treaties. Even though Cyprus does not have a limitation of benefit clause in all its double tax treaties, all the new treaties which have been signed or are currently being negotiated do or will include such a clause. The beneficial ownership of income issue is also present with countries with which a limitation of benefit clause does not exist in the double tax treaties, like Russia, where the courts will often disregard intermediary companies if they were created with the purpose of avoiding tax.

The beneficial ownership of income issue is an area which could be overcome by using NID since by granting loans out of equity funds, there is no contractual obligation to pay interest income in other jurisdictions. The use of NID in tax structures could also be viewed in combination with the expected changes in Cyprus tax law, since as mentioned above, back-to-back loan arrangements profit margins will be abolished by 1st July 2017 and will be replaced with transfer pricing.

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Analysis of Indian Union Budget 2017

Union Budget, 2017 has been presented today on an auspicious day which is celebrated in the Eastern parts of India as Saraswati Puja (worship of Goddess of Learning) and as Vasant Panchmi in the rest of India.

This budget is historic as it is a break from the tradition that Union Budgets are usually presented on the last working day of February. Not only this long-standing practice of introducing a separate Railway Budget has been done away with, and it is now combined with the general Union Budget. Further, from this Budget the Central Government has done away with the concept of the plan and non-plan expenditure and has introduced revenue and capital expenditure.

After the presentation of the last budget on 29 February 2016, major events have taken place which would have a long range impact not only on the economy of the country but also on the cultural and social milieu. In the months after the presentation of the last budget

Analysis of Indian Union Budget 2017 (contd.)

some steps have been taken to eradicate “black money” (Subterranean money) from the system. The first of these steps was “Income Disclosure Scheme” (IDS) which closed on 30 September 2016. In accordance with the amendment made to the Indian Income Tax Act, 1961, by the Finance Act, 2016, Direct Tax Dispute Resolution Scheme, 2016 also came into force which was open until 31 January 2017.

The government also operationalised Benami (Transactions) Prohibition Act, 2016 which was with effect from 1 November 2016, and Insolvency & Bankruptcy Code was also made effective.
However, the greatest game changer was demonetization of Rs.500/- and Rs.1000/- notes. This was announced on the evening of 8 November 2016, and the holder of such notes had time until 31 December 2016 to change/ deposit such notes. There has been no major and visible opposition on demonetization from the public as a whole. Almost 85% of the Indian currency was held in these two currencies nearly all of which has come back into the banking system. However, the same amounts of new currency notes have still not been put in the system.

After demonetization, the government has laid great emphasis on the digitisation of the economy which may necessitate amendments to certain laws. It is also the intention of the government to provide appropriate cyber security. Not only this, it appears that the government in the near future may also come down heavily on illegal deposits/ transactions and big time offenders who have misused the public money/funds.

Effective from 17 December 2016, the Government announced another scheme known as PMGKY Deposit Scheme under which one more opportunity was given to those persons who did not disclose their untaxed income under the earlier scheme of IDS. Under PMGKY scheme a person on payment of tax @50% of the undisclosed income and deposit of 25% of the said income could avail immunity from a penalty and prosecution else he would be liable for harsher tax/penalty as well as prosecution.

Please use the following link for the full analysis of the Indian Budget: Union Budget 2017 – 18

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UK tax changes effective from April 2017

The UK’s latest Budget took place on 8 March 2017 and it was fairly uneventful, no doubt in anticipation of the triggering of Article 50. Some of the changes that are effective from April 2017 were pre-announced with other amendments proposed in the recent Budget.

Corporation tax loss relief reform

Fundamental changes to corporation tax loss relief, which were announced in Budget 2016, will provide greater flexibility in the use of losses incurred after 1 April 2017.

Previously, losses carried forward from earlier periods could only be used by the company that incurred those losses. Further restrictions applied to the offset of losses against different streams of income (e.g. trading losses carried forward could only be offset against future profits of the same trade).

The reform means that all post-April 2017 losses carried forward can be used against total profits, rather than having to be streamed, and / or they can be surrendered to group companies.

There will be a restriction to the utilisation of losses to 50% of the taxable profits of the claimant company or the claimant group that are in excess of £5 million. The restriction is intended to prevent a large company from paying no tax in a year that it makes substantial profits. Any losses incurred prior to 1 April 2017 can only be used against the relevant source of income in future years, and by the company that incurred those losses.
The new rules do not apply to capital losses which may only be offset against capital gains.

Immovable property situated in the UK

It was announced in the Budget 2016 that new rules would be put in place to ensure that all profits from

UK tax changes effective from April 2017 (contd.)

trading in and developing UK land would be brought within the charge to UK tax regardless of the residence of the company carrying on the trade or whether there is a UK permanent establishment (PE).

It was previously possible for offshore property developers to avoid UK tax on the development of UK land through the provisions of relevant double tax treaties normally on the basis that the activities did not result in a UK PE.

A charge has been introduced to tax profits arising when UK land is sold and on other disposals that are enveloped UK land disposals, such as the sale of shares in a company whose value is at least 50% derived from UK land.

UK legislation has been specifically extended to tax non-resident companies and unincorporated businesses on profits arising from UK land, which supersedes the normal rules that non-residents are only taxed on profits of a UK PE.

The new rules applied to disposals made on or after 5 July 2016 but in the Budget 2017 it was announced that legislation would be introduced to ensure that all profits recognised in the accounts on or after 8 March 2017 will be taxed regardless of the contract date. This is intended to counter attempts to crystallise profits on projects in existence at the date the original announcement was made.

Qualifying Recognised Overseas Pension Schemes (QROPS)

A 25% tax charge has been introduced for individuals who request an overseas pension transfer on or after 9 March 2017. The charge is targeted at those seeking to reduce their tax liability by transferring their pension wealth to another jurisdiction using a QROPS.

Exceptions will apply so that tax-free transfers (up to a lifetime allowance of £1 million) can be made if there is a genuine need for the pension fund to be situated in another jurisdiction. These include the individual and the QROPS being in the same country after the transfer, or when the QROPS and the individual are both located within the EEA.

Anti-avoidance measures mean that the tax charge will also apply if, within five years of the pension transfer, the individual becomes resident in another country such that the exceptions could not have applied to the original transfer.

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