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Contributions for Edition 16 of the EMEA Tax Bulletin should be with Emma Dewick at emma.dewick@bkremea.com by 14th October 2017.

Dear Friends and Colleagues,

Welcome to the summer edition of the EMEA Tax Newsletter. Writing these lines, I must admit that it did not feel much like summer this morning, as the rain came down relentlessly here in Hamburg. However, my day brightened up immediately when I found the draft of this newsletter in my inbox – I was amazed at the number and length of articles that had been contributed to this issue! Many thanks indeed to all authors!

There are articles on tax news from Spain, Germany, Italy, Cyprus, Northern Ireland, South Africa and France, as well as a view on Brexit from an Irish perspective. There is also a report on the new Employment Taxes Practice Group which had its kick-off telephone conference recently, and news on Blick Rothenberg´s newly appointed partners.

There is much going on in our region, and the joint meeting in Singapore back in May gave those who attended the perfect opportunity to share thoughts and ideas with our colleagues from the Asia Pacific region. And there will be more opportunity on an even larger scale at the next Worldwide Meeting in London in October. The meeting will this year also include an additional International Tax Meeting on Wednesday, 25 October 2017. This will be in addition to the EMEA Tax Meeting which will, nonetheless and as every year, take place in Amsterdam in November. Remember to save both dates!

Again thank you to all who have contributed to this newsletter, as well as to Emma, Tim and Julia for putting it together. Please keep sending us articles, as they do not only brighten up cloudy days (the rain has stopped now!), but give us all something to read, learn, and think about and to keep us connected across our region.

If there is anything the tax committee can do for you, if there is anything we can assist with, please do feel free to contact us. In the meantime, I hope that you all have a fantastic summer!

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Blick Rothenberg appoints four new partners

BKR's London firm Blick Rothenberg welcomed James Dolan and Daphne Hemingway to the corporate tax department, Lee Hamilton to its award-winning Global Mobility tax team, and Lynne Pearson to its growing Private Client tax team.

James Dolan joins as a Corporate Tax partner, bringing a wealth of experience in providing cross-border tax advisory services to multinational groups across a range of industries and sectors. He specialises in helping US groups establish UK and European operations including advice on tax efficient holding and financing platforms, ownership and commercialisation of intellectual property and mergers and acquisitions. He was previously part of the International Tax team at Ernst & Young and also lived in New York, where he was part of the UK tax desk advising US multinational groups on expansion into the UK.

Daphne Hemingway joins as a VAT partner to work alongside the firm's VAT specialist and partner Alan Pearce. She has 20 years' VAT experience in the Big 4 firms and in the accounting industry, specialising in property, construction, charities and not-for-profit, banking, finance, technology, VAT litigation and disputes resolutions with HMRC.

Lee Hamilton is a recognised expert in the fields of expatriate tax, employment tax and international social security with nearly 20 years' experience advising a diverse range of clients. He is a member of HMRC Expatriate Tax Forum, is a published writer for Tiley & Collison's Annual UK Tax Guide (2013/14 and 2014/15) and he has also presented on technical matters at numerous seminars in the UK and overseas.
Lee, who was previously at PwC, joins Blick Rothenberg from Crowe Clark Whitehill, where he built and led their expatriate tax practice.

This key appointment will strengthen Blick Rothenberg's Global Mobility practice, which focuses on helping organisations and individuals with managing expatriate tax, payroll, social security, pension and HR issues.

Lynne Pearson is a Chartered Tax Adviser with almost 30 years' experience working with private clients. Her areas of expertise include assisting shareholders of owner managed businesses on transactions and reconstructions, dealing with non-UK domiciled clients and their offshore structures and advising individuals on leaving the UK.

She has also advised clients with complex enquiries and settlements with HMRC. Lynne joins Blick Rothenberg from BDO.

The firm continues to make lateral hires and will shortly be announcing the hire of further partners. For further details on this article, please contact email@blickrothenberg.com

Spain - Tax benefits to take into consideration in the Declaration of Personal Income Tax

At the date of the writing of this article, we are immersed in the income tax campaign (remember that it ends on June 30, although the direct debit period deadline is on the 26th), so we consider it interesting to remember the main tax benefits that are available to taxpayers within the scope of the personal income tax (hereafter IRPF):

- **Pension plans:** Contributions to pension plans (with an annual maximum of 8,000 euros in general) allow for a reduction in the tax base of IRPF in the year in which the contribution is made, which means that the Tax office will refund (or be paid less) part of the amount invested. This amount will depend on the marginal rate of IRPF that each taxpayer individually has. On the other hand, the day on which the pension plan is redeemed (in the form of periodic or capital income) will have to be taxed from the first euro of the contribution. The advantage lies in the fact that, first of all, the tax benefit is applied today and its refund will happen in the future, and secondly, in the fact that, in general, the amount of savings today will be greater than the amount to be taxed in the future (by applying a lower marginal rate).

- **Sale of residence for people over 65 or people in a situation of severe dependence or high dependence**. The equity gain that could become manifest is exempt from IRPF tax, which means an important tax saving assuming that the capital gains are taxed at a rate of between 19% and 23%.

- **Sale of any other asset by people over 65 years**. In these cases (for instance, sale of shares, second residence,...), in case of an equity gain, provided that the total amount obtained by the sale is used in the next six months to constitute a life annuity insured in favour of the seller, will be exempt from taxation, with a maximum limit of 240,000 euros.

- **Sale of the residence of any taxpayer with reinvestment of the amount obtained in the transmission in the purchase of a new residence**. In these cases it is not required to be over 65 years old so that the equity gain is exempt from personal income tax, but it is only required that the amount obtained in the sale of the usual housing is reinvested in the purchase of another residence. If the amount reinvested is lower than that obtained from the sale, the exemption will be applied on a proportional basis.

- **Renting of buildings used for housing (non-local).** They are entitled to a reduction of 60% of the net income obtained by the rent, that is to say, after deducting all deductible expenses (interest, taxes, community expenses, security guard, home insurance, amortization of property, etc.).

- **Deduction for investment in residence**. Although this deduction was eliminated from the year 2013, it continues to be applied on a temporary basis for those taxpayers who came to apply it before. This is one of the most powerful tax reductions, since it can mean a saving in the IRPF payable fee of up to 1.356 euros.

- **Deduction for donations**. The amounts donated to non-profit organizations have a deduction of 75% for the first 150 euros donated, applying a deduction of 30% of the amount donated on the excess of 150 euros referred.

- **Deduction for rent of usual housing in the Valencian Region**. The tenant has the right to a deduction of 15% of the amount paid (with the limit of 459 euros per year), provided that, among other requirements, the corresponding deposit has been deposited in the Generalitat Valenciana and the amount of the general taxable base and the savings taxable base does not exceed 25,000 euros at the individual level, or 40,000 euros in joint taxation.

- **Deduction for crèche in the Valencian Region**. There is an autonomic deduction of 15% of the amounts paid in this concept, with a limit of 270 euros per year for each child under three years registered in the nursery or child education center.

In another order of things, remember that those taxpayers with a net worth of more than 600,000 euros, or with assets and/or rights with a value greater than 2 millions of euros, are obliged to tax for the Tax on the Patrimony (IP, hereinafter). Note that although in the year 2015 were exempt from taxation the first 700,000 euros (in the area of the Valencian Region), for the year 2016 has been lowered that figure to 600,000 euros,

Spain - Tax benefits to take into consideration in the Declaration of Personal Income Tax (contd.)

so at the same level of equity, in 2016 the taxation will be slightly higher. In order to optimize the tax burden in the IP, it is convenient to review and analyze the corporate structures of the different family companies, since an adequate planning and design of the same will allow to obtain important savings in the Tax of the Tax on the Patrimony, as well as to the future in the Tax of Inheritance and Donations.

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Germany limits the tax deductibility of royalties

Both houses of the German parliament have recently passed a law limiting the deductibility of royalty and licence fees paid to “IP-boxes” to prevent taxation mismatches. The new section 4j “Expenditure on the transfer of rights” has been created in the Income Tax Act. Effective date will be January 1, 2018.
The new rule restricts the tax deductibility of royalties and other expenses for the transfer of rights to related parties according to section 1 (2) Foreign Tax Act, if the income tax is less than 25 % at the recipient due to a preferential tax regime like an “IP box“. The amount of the deductible royalties or other expenses for the transfer of rights depends on the tax rate of the recipient on the payment and is determined by the following formula:

$$\frac{25\ \% - \text{special tax rate at recipient in }\%}{25\ \%}$$

	Tax deductibility in Germany	
Special tax rate at recipient on royalties	Non-deductible royalties	Deductible royalties
0%	100%	0%
5%	80%	20%
10%	60%	40%
15%	40%	60%
20%	20%	80%
25%	0%	100%
30%	0%	100%

Hence, the lower the tax rate, the higher the non-deductible percentage. For example if the special tax rate at recipient on royalties amounts to 5 % only 20 % of the royalties are tax-deductible in Germany.
When determining the tax rate all provisions affecting the taxation of revenue from the transfer of rights, in particular fiscal reductions, exemptions, credits or reductions, shall be examined.
The new provision includes all fees paid for the use of a wide range of intellectual property.
Only intra-group royalties are affected by the new provision. Branches are considered to be intra-group. Intra-group back-to-back or flow-through structures are also captured.
“IP-boxes” that comply with the “Nexus Approach” in accordance with Chapter 4 of the BEPS Final Report 2015, Action Point 5, OECD (2016) “Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance” agreed by OECD and G20 are not considered as harmful and are therefore not covered by the regulation. In this case the royalties are 100 % deductible regardless of the tax rate at the

Germany limits the tax deductibility of royalties (contd.)

recipient. The "Nexus Approach" requires a substantial activity to generate the income that falls under the preferential IP-regime. According to the "Nexus Approach" benefiting from a preferential regime is only authorized if the recipient has borne certain research and development costs to develop this IP itself.
Even if there are many constitutional and European concerns regarding the application of the new provision it is recommendable to examine existing IP-Boxes and Germany for possible effect 2018 and, if necessary, to adapt them.

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Brexit - Impacts for Tax Law (or maybe, The Possible Impact on Tax Law)

European Union (EU) Member States have the right to withdraw from the Union under the Treaty on European Union (TEU), Article 50, which states that: "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements." No Member State has to date withdrawn, however the United Kingdom (UK) is the only full member state that voted in a referendum in June 2016 to leave the EU. On the 29th of March 2017, Theresa May's government served formal notice under Article 50 of the termination of the UK's membership in the EU. This notice has started the clock for the two-year negotiation period, and the Prime Minister has indicated that she plans on achieving a new trade agreement by 2019. The treaties of the EU would cease to be applicable to the UK from the date an agreement is reached. If an agreement is not reached within two years, the UK will no longer be part of the EU unless the Member States unanimously agree to extend this period.

The exact impact of a Brexit on UK tax law is difficult to assess and certainly not possible to determine until the precise manner and timings of the exit negotiations are agreed. It is imperative that any agreement reached, will not have an adverse impact on current trading relationship between the UK and the EU. And so, there is an incentive to keep cross-border trade moving. Ireland certainly needs trade to keep on moving, particularly as we are only surfacing from one of the biggest economic downturns of recent times, and the fact that we are the UKs largest export market.

Most of us are now familiar with the various trade models that could be adopted between the UK and the EU following a Brexit, which we outline below:

Norwegian Model: The UK joining the European Free Trade Association (EFTA) and the European Economic Area (EEA) and so maintaining its access to the Single Market. The UK would have to comply with EU regulations (including the free movement of people) as well as making a financial contribution.

Swiss Model: Switzerland is a member of the EFTA, but it is not a member of the EEA. Switzerland has numerous bi-lateral agreements with the Member States of the EU, many of which incorporate EU law. Switzerland has partial access to the EU Single Market via regularly updated bi-lateral agreements. The UK and the EU could enter into a bi-lateral agreement.

Turkish Model: Establishment of a Customs Union between the UK and the EU, where external tariffs apply to cross-border trade with non-EU countries.

World Trade Organisation (WTO) Model: This model would be the default model if the UK fails to successfully agree on another model. Other nations, including Canada, have chosen to have trade agreements with the EU via the WTO agreements. Under this model, the UK would charge WTO tariffs on imports and exports to other EU countries, and vice versa. The UK is currently a member of the WTO and would continue to be a member after Brexit.

Brexit - Impacts for Tax Law (contd.)

No Deal: The UK severing all trade and Customs Union relationships with the EU.

There are serious concerns as to the implications for businesses not being part of the Single Market or the Customs Union, and possibly being totally segregated from the EU if a deal cannot be reached. It could be said that Brussels has recently thrown a lifeline by putting forward an interim solution suggesting the UK could temporarily become a member of EFTA, which governs free trade between Norway, Iceland, Liechtenstein and Switzerland. This would allow the UK to become a member of the EEA, and thus gain access to the Single Market. However, following this type of transitional model would not sit well with hard-line Brexiteers, as it would require the UK accepting the four EU freedoms, rendering the UK unsuccessful in achieving their goals, one of which is clearly taking back control of immigration policy.

We now set out some of the possible tax implications of a Brexit:

VAT: The immediate turbulence of a Brexit will be felt in the arena of indirect taxes. UK VAT law derives from European law under which VAT is largely harmonised across Member States. The UK will no longer be required to adhere to EU VAT rules and could opt not to operate VAT at all. VAT generates substantial revenues for the UK government; it is impossible to believe that the UK would abolish VAT without introducing their own sales tax. The UK will be free to make changes to the VAT rates; they might extend the application of the zero rate or introduce VAT reliefs to give the UK a competitive edge. While these changes might confer a trading advantage, the UK will now be a third country from a EU VAT perspective meaning VAT may arise on cross-border supplies. The zero rate of VAT will no longer apply to purchases and sales between Ireland and the UK. VAT costs can result in cashflow difficulties for businesses and in some cases, undermine their continuance. The UK will likely update the current VAT reclaims procedure which enables UK businesses to reclaim from the relevant EU Tax Authority, any technical changes must result in an efficient process absent of time delays and compliance costs.

The UK could lose access to the EU's simplification measures such as; Triangulation, which reduces the administrative and compliance burden for traders and the relevant Tax Authorities in a situation where there are two supplies of goods between three EU-based VAT registered traders. The EU 'one-stop shop' removes the need for a business to be VAT registered in up to 28 jurisdictions. The loss of these measures could lead to additional administrative costs for UK businesses engaging in cross-border trade.

Although none of us know the outcome of a Brexit, it is generally thought that the UK is unlikely to substantially deviate from the current EU VAT system.

Customs Duty: The EU is a Customs Union and a Single Market; Customs Duties do not exist within the Single Market. On the importation of goods from outside of the EU, Member States apply common tariffs. The EU has also negotiated numerous free trade deals. Post a Brexit the UK may not have access to the Union nor these trade deals. Imports from the UK could be subject to Customs Duties and the administrative burdens of customs procedures. The possible imposition of Customs Duty together with the uncertainty as to what type of agreement the UK will eventually negotiate are of foremost concern for UK and Irish businesses alike. We would be hopeful that free trade between Ireland and the UK would continue despite a Brexit.

Withholding Taxes: A Brexit could terminate the UK's rights under EU laws, resulting in certain EU Directives which minimise the tax burden for companies operating within the EU not being available to UK companies. The Interest and Royalties Directive relieves withholding taxes (WHT) on interest and royalty payments between the UK and associated companies based in the EU, and the Parent-Subsidiary Directive (PSD) eliminates WHTs on dividends paid between associated companies based in different EU countries. With access to these Directives denied, the UKs current Tax Treaty network (which will remain in force post a Brexit) will have to be relied upon in the event of double tax arising on dividends or WHT being imposed on interest and royalty payments. Although, in some cases, full relief from WHT may not be available, for example; under the UK / German DTA, WHT could range from 5% to 15%. Under an agreement between the EU and Switzerland, provisions equivalent

Brexit - Impacts for Tax Law (contd.)

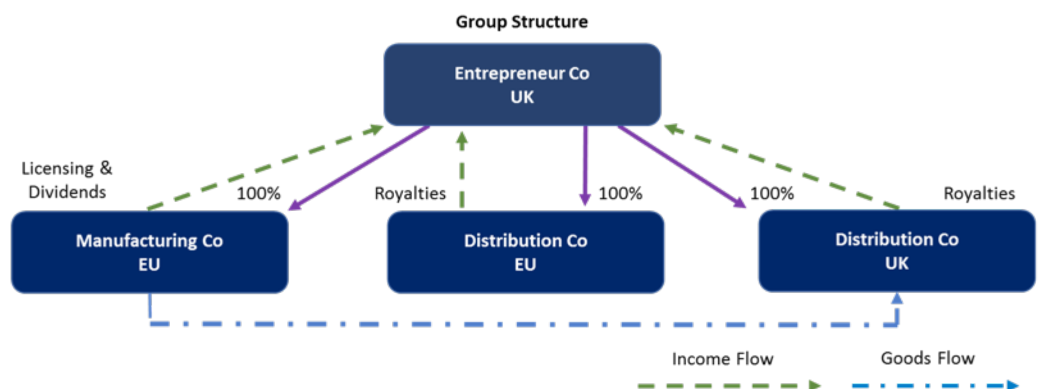
to the PSD are extended to companies in Switzerland, perhaps the UK could enter a similar agreement post a Brexit.

Corporation Tax: While UK domestic law determines the rules for UK Corporation Tax, it must be consistent with EU law. The design of the UK Corporate Tax system has been heavily influenced by EU law in the areas of transfer-pricing, group relief, and controlled foreign companies. The outcome in the prominent ECJ Marks & Spencer case afforded cross-border group loss relief so that the freedom of establishment was not compromised. A Brexit will confer freedom on the UK to amend its tax law, perhaps by introducing pro-business tax benefits for domestic companies. However, the UK is a popular destination for international companies to operate and holding companies to locate, the UK government will want to maintain this business and encourage others to invest in their country. Although armed with fiscal sovereignty little may change.
The EU commission is increasingly active in its proposals to consolidate Corporates Taxes with the Anti-Tax Avoidance Directive (ATAD), introduction of a Common Consolidated Corporate Tax Base (CCCTB), and via the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan implementation. It is evident from the recent signing of a Multilateral Instrument by Member States that there is a consensus among them to harmonise international tax practice. A Brexit means the UK will no longer be party to EU policy negotiations, this might hasten the introduction of the CCCTB for the remaining Member States. Although a Brexit will remove EU policy constraints, the fact that Britain is heavily engaged in cross-border trade means EU measures do and will matter.

Currency Exposure: The volatility in the sterling exchange rate has made EU exports to the UK less profitable. On the flip side imports are cheaper. The latter is a positive for Ireland as we take in significant levels of goods from the UK. Businesses will need to identify their currency risk and determine if they have any tax exposure on realised foreign exchange gains. Sterling fluctuations are inevitable for the foreseeable future.

Social Security Contributions: Under the EU Social Security system an individual working in the UK can work in any other Member State of the EU and will pay contributions in that State only. Following a Brexit this system will not apply to UK workers, thus resulting in Social Security Contributions applying in the UK and the temporary State of work. The UK may sign up to the EU system to avoid the double collection of contributions.
Funding: Certain institutions and businesses, including farmers and charities, receive funding from the EU. UK based recipients will probably not be entitled to these EU subsidies and/or grants after a Brexit. Doubtless, they will call on the UK government to continue these subsidies and grants.

For illustrative purposes, we set out a brief example of some of the possible tax implications for a corporate group post a Brexit:



UK Entrepreneur Co receives royalty income from UK and EU Distribution Cos, and licensing and dividend income from EU Manufacturing Co: Royalty and licensing income will continue to be liable to UK CT at the prevailing rate (currently 19%, with the intention to reduce it to 17% by the 1st of April 2020). The dividend from EU Manufacturing Co should still be exempt from CT under UK domestic law. WHT should not apply on the payment of royalties, licensing fees and dividends, as WHT from non-UK based companies should be relieved under the relevant DTA. No WHT should arise on the

Brexit - Impacts for Tax Law (contd.)

royalty payments from UK Distribution Co to UK Parent Co as they are in a 100% group relationship.

In this example VAT on royalties and licensing fees is currently tax-neutral. If the UK were to leave the EU, then presumably the UK will still have a sales tax. This sales tax could be charged on cross-border royalty and licensing fees levied on the EU group companies, therefore, resulting in an added cost, which would no longer be recoverable by means of the EU Directive.

UK Distribution Co purchases finished goods from EU Manufacturing Co for distribution in the UK: As mentioned above, if the UK were to leave the EU, then EU Manufacturing Co may have to levy local VAT on the sale of goods to the UK; these would no longer be zero-rated for VAT using the reverse-charge mechanism. UK Co could be liable to import, customs and excise duties on the importation of the goods. This would result in time delays due to the re-establishment of border crossings and, in turn, potentially harm business relationships with customers. Costs would further rise due to additional tariffs, in that there would no longer be any cross-border exemptions. This could lead to a loss of cost competitiveness and the erosion of profits.

The Unthinkable: The European Union (Withdrawal) Bill sets out the UK government's proposals for ensuring a functioning statute book once it has left the European Union. It provides detail about:

- The repeal of the European Communities Act 1972;
- How EU law will be converted into UK law;
- How corrections will be made to the statute book to ensure that the law continues to function once the UK has left the EU;
- Ministerial powers to amend legislation.

These powers will allow legislation to be amended using statutory instruments that do not require much parliamentary scrutiny. Going forward, these recently reported powers will be of great concern to the government's opposition, anti-Brexit campaigners and the overall democratic process.

However, the current and long-awaited Brexit negotiations may result in the UK crashing out of the Customs Union & the Single Market in two years' time, and an ensuing period of instability that may weaken the value of sterling significantly. Furthermore, if the question of the status of EU citizens currently living in the UK and vice versa is not resolved, there could be further instability and uncertainty, as characterised by the recent beginnings of an exodus of EU workers from the UK that is already facing a skills gap that could take a generation to fill.

If a scenario of this nature were to materialise or the agreements reached severely restrict UK companies' ability to do business, companies may have to invest heavily in capital, for example, to re-locate the business, to train new staff and so on, rather than investing in growth. For example, the recent announcement by EasyJet to set up operations in Austria in order to protect its routes within the EU from any adverse effects of a Brexit. All these aspects are of concern and continue to underpin the general uncertainty as regards this issue. We are in uncharted waters with a Brexit; long, slow, hard, soft; call it what you May!

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Update from Italy – Country by Country Reporting ("CbC Reporting")

On March 8, 2017, the Ministerial Decree of February 23, 2017, issued by the Ministry of Economy and Finance, was published in Official Gazette No. 56, outlining details about the application of the so-called form "Country by Country Reporting".

Such provision confirms that Italy as well continues the process of harmonisation with the internal European rules regarding the compulsory automatic exchange of information in the fiscal area as well as with the Directives issued by the Organisation for Economic Cooperation and Development (OECD).

1) Definition

Stability Law 2016 (art. 1 paragraph 145 and 146 of Law Decree 208/2015), in line with EU Directive dated May 25, 2016 (Action 13 of project "Base Erosion and Profit Shifting" - BEPS), introduced the obligation, for controlling companies belonging to multinational Groups resident in Italy, to draw up and file an annual "Country by Country Reporting" with specific evidence of Group aggregate data and information.

Such document is an addition to the existing regulations regarding Transfer Pricing, which provides for the voluntary drawing up, for penalty protection, of master files or country files, in compliance with the provisions of Law Decree 78/2010.

The entities that meet the requirements of the following cases are obliged by the Law to draw up a "CbC reporting".

2) Subjects obliged to draw up the document

As a general rule, the Law obliges controlling companies heading multinational Groups resident in Italy that:

- are due to draw up the Consolidated Financial Statements;
- have a consolidated turnover, generated by the Group of multinational companies in the period before the reporting period, exceeding EUR 750 million;
- are not controlled by other companies or entities.

The obligation is however transferred to one of the controlled companies that is resident in Italy in case the controlling company:

- is resident in a country that did not introduce the reporting obligation;
- is resident in a country that does not have an agreement with Italy allowing the exchange of reporting information;
- does not fulfil the obligation of exchange of reporting information related to "CbC reporting".

The obligation for the controlled company is generated at the occurrence of one of the above-described conditions. In accordance with the provisions of the EU directive, it is possible to identify a single company within the Group (provided that it is resident within the European territory) in order to keep and draw up such document (so-called. "Surrogate Entity").

In case the document is drawn up by an Italian company, the latter shall inform the tax authorities through its tax return (form REDDITI SC 2017 – line RS268), indicating whether it is a controlling or surrogate entity.

In case an Italian company belonging to a multinational Group as described above does not meet any of the mentioned requirement, it is due to inform the tax authorities about the identity of the company that prepares the document, together with the information of its residence for fiscal purposes.

3) Structure

The document "CbC reporting" is composed, for each country where it operates, of two parts:

- the first part has to indicate aggregate data of Group companies, mainly regarding revenue, profit (losses) gross of income taxes, income taxes paid and accrued, share capital declared, profit non distributed, number of employees and tangible assets other than liquid assets or similar assets;
- the second part has to identify the entities belonging to the multinational Group, their country of incorporation or organisation, if different from residence for tax purposes, the activity or main activities carried out. Permanent establishments have to be listed with reference to their country, specifying the legal entity they are related to.

4) Terms

The obligation of drawing up of the "CbC reporting" is effective from the tax period beginning as at or after

Update from Italy – Country by Country Reporting (contd.)

January 1, 2016: therefore, with the entry into force of the Decree under analysis, the reporting shall be presented also with reference to the tax period 2016, although, in case of coincidence with the solar year, it is already closed.

The reporting has therefore to be filed within twelve months after the last day of the tax period subject to reporting of the multinational Group .

The operative procedure of filing of the reporting will be defined in the near future with dedicated provisions to be issued by the Director of Tax Office - Agenzia delle Entrate.

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Cyprus tax residency in 60 days

On 14th July 2017, the House of Representatives voted into law the revised criteria for determining the tax residency of individuals in Cyprus. The new law will be amending the rules for determining tax residency of individuals in Cyprus. Specifically, the 183 day rule will be replaced with the below mentioned three criteria which must be met cumulatively for an individual to be considered a tax resident of Cyprus:

a. Remains in Cyprus for at least sixty(60) days in the year of assessment,
b. Carries out any business in Cyprus and/or is employed in Cyprus and/or holds an office to a person resident in Cyprus at any time during the year of assessment,
c. Maintains a permanent residence in Cyprus owned or rented by such individual

The main purpose of the new law is to allow an individual who does not remain in any other state for one or more periods, which do not exceed 183 days in total, within the same year of assessment and who is not a tax resident in any other state for the same year of assessment, to be considered as a resident of the Republic of Cyprus.

The new law has not yet been published in the official gazette of the Republic of Cyprus but it is expected that it will be deemed to enter into force on 1st January 2017. An individual who will be considered a Cyprus tax resident will be taxed on their worldwide income under Cyprus tax. Currently the income tax rates in Cyprus are as follows:

Tax Base (EUR)	Tax rate (%)
Up to €19.500	0%
€19.501 to €28.000	20%
€28.001 to €36.300	25%
€36.301 to €60.000	30%
Over €60.000	35%

Individuals who are Cyprus tax resident but are not domiciled in Cyprus will be exempt from special defense contribution which is levied on dividends, interest, and rental income.

The following tax incentives exist for individuals employed in Cyprus who were previously not tax residents:

- Lower of €8.550 or 20% of the remuneration from any office or employments exercised in Cyprus is exempt

Cyprus tax residency in 60 days (contd.)

for a period of 5 years (this incentive will expire in 2020)

- For individuals with employment income exceeding €100.000 per annum, a 50% tax exemption exists which can be enjoyed for a period of 10 years.

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Cyprus releases long-awaited transfer pricing guidelines on intra-group financing

As of 1st July 2017, the tax treatment of intra-group financing arrangements has been amended in Cyprus. Intra-group financing transactions refers to finance activities between related parties (as defined in Section 33 of the Income Tax Law), including permanent establishments in Cyprus. Based on the Interpretative Circular issued by the Cyprus Tax Department, intra-group financing arrangements must be taxed from 1st July 2017 onwards under the arm's length principals (transfer pricing rules).

For the purposes of the transactions under the scope of the Circular issued, it must be determined for each intra-group transaction whether it complies with the arm's length principles. A comparability analysis must be performed in order to determine whether the transaction between independent entities is comparable to transactions between related entities.
The comparability analysis mentioned above should consist of the two following parts:

- Identification of the commercial financial relationship between entities and determining the conditions and economically relevant circumstances attached to those relations in order to accurately delineate the controlled transaction.
- Comparison of the accurately delineated conditions and economically relevant circumstances of the controlled transaction with those of the comparable transactions between independent entities.

It should be noted that the group financing company should be controlling the risk if it has the decision-making power to enter into a risk-bearing commercial relationship. In order to justify the risk control and further validate that the management and control are exercised in Cyprus, it is essential that the group financing company has an actual presence in Cyprus.

In case of companies with a profile comparable to the entities subject to Regulation (EU) No 5/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) NO 64/2012, a return on equity of 10% after-tax can be observed in the market and be considered as reflecting arm's length remuneration for the financing and treasure functions in question.

Simplified procedures exist, according to which the transactions of financing companies pursuing a purely intermediary activity are deemed to comply with the arm's length principle if the company under review receives a minimum return of 2% after tax on assets. In order to benefit from this simplification measure, the use of it should be communicated to the Tax Department.

The above mentioned percentages are valid as of the date of issuance of the Circular and will be reviewed by the Tax Department based on relevant market analysis and – if required - will be changed accordingly.

Cyprus releases long-awaited transfer pricing guidelines on intra-group financing (contd.)

Minimum requirements for the transfer pricing analysis exist and are necessary in order for the analysis to be in compliance with the principles of the new circular. Finally, any tax rulings relating to the matters of the Circular which were issued prior to 1st July 2017 will no longer be considered valid.

The above changes will have an immediate impact on all Cyprus financing companies with intra-group financing transactions and it is imperative that such structures are examined so as to ensure that their tax treatment is correct and their tax risk exposure is mitigated.

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Reduced Northern Ireland Corporate tax rate

The Corporation Tax (Northern Ireland) Act 2015 was passed in March 2015. This will devolve corporation tax rate setting powers to the local government in Northern Ireland. The Northern Ireland Executive has publicly indicated an intention for the rate to commence in April 2018 at 12.5%, although this time frame is likely to be pushed back due to the delay in the devolved government reconvening.

BKR member firms may have clients interested in taking advantage of the long term benefit of this reduced rate. Harbinson Mulholland are a Belfast based firm with extensive experience in working with inward investment companies that set up in Northern Ireland and can provide a full range of services to assist these clients including audit, accounts and tax services as well as the provision of registered office facilities.

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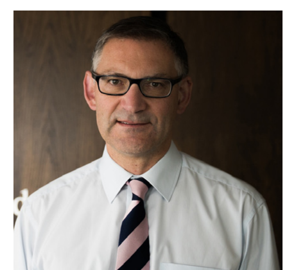

BKR Employment Taxes Practice Group

Background:

We believe there are opportunities for employment tax advisers in BKR member firms to work more closely together. These services are local and usually include some or all of the following advice on payroll/withholding regulations, employee/director expense policies, benefit & expense reporting, payroll audits/disputes, related employer tax advice, international employee issues etc.

There could also be international aspects to these services e.g. where BKR member firms work together to provide employment related tax services in different locations for international clients; also some projects maybe better done cross border e.g. global compensation gathering for international employers.

We had our first conference call in the first week of July which was a success. This Practice Group has been set up on a trial basis and it will be focused on the above mentioned employer/employment related tax services. We think these could be attended by specialist managers in BKR firms so they interact with their peers in other BKR firms; they could exchange technical updates that could be relevant to their clients; be involved in joint marketing of international client targets; and potentially work on global employer projects e.g. how could BKR firms provide a global compensation reporting service to clients.

Objectives:

- Promote and share best practice across firms;
- Develop a global capability/linked with BKR;
- Share technical updates;
- Share potential client targets;
- Personal development of the participants;
- Networking opportunities for the participants.

We will agree a core agenda ahead of each conference call. We also propose BKR plays a guiding role for example to pose the Practice Group a question to work on e.g. what is the payroll reporting in the X locations and draft a BKR/White Paper on the global payroll reporting for these or carry out a global research or surveys and BKR could say we have done a global survey of tax practitioners in X locations and publish the findings.

Questions:

1. Does your firm offer these specialist employer-related tax services?
2. If yes,
   a. Are they experts in this area?
   b. Do you have a full time person/team dedicated to these specialist tax services?
   c. Do you want your firm to contribute in this Group?
   d. Who do you nominate to participate (ideally a specialist manager)?

The next conference call has been scheduled for Thursday 5th October 2017 and will be chaired by Vanesha Kistoo from Blick Rothenberg (vanesha.kistoo@blickrothenberg.com) Confirmation will be sent nearer the time. If you have not already registered your interest and you would like to participate in the discussion, please let Emma know on emma.dewick@bkremea.com

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Boake Incorporated Tax Guide 2017/2018 – South Africa

Johannesburg firm Boake Incorporated have published a tax guide for the year 2017-18. The highlights are:

- New personal income tax bracket of 45% for taxable incomes above R1.5 million
- All rebates and taxable income bracket amounts, will be increased by 1% from 1 March 2017
- Tax rate for trusts other than special trusts has been increased to 45%
- Dividend withholding tax rate increased to 20%
- The annual allowance for tax free savings accounts will be increased to R33,000
- Ant-avoidance measures will be expanded to prevent taxpayers utilizing companies as a conduit for low interest loans to trusts
- With respect to employer provided exempt bursaries, it is proposed to increase the income eligibility threshold for employees from R400,000 to R600,000, and the monetary limits for bursaries from R15,000 to R20,000 for education below NQF level 7, and from R40,000 to R60,000 for qualifications at NQF level 7 and above
- The exemptions from income tax for employees working outside South Africa for more than 183 days a year is to be narrowed to only apply where the income is subject to tax in the foreign country
- A 30c/litre increase in the general fuel levy
- A 9c/litre increase in the Road Accident Fund Levy
- A duty-free threshold on purchases of residential property will increased from R750,000 to R900,000, effective 1 Match 2017
- Sugar Tax to be implemented as soon as necessary legislation is approved by parliament
- A revised Carbon Tax Bill will be published for public consultation and tabled in Parliament by mid-2017
- Excise duties on alcoholic beverages and tobacco products will increase by between 6.1% and 9%

If you would like to read the full report, please click here.

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Clarification on the French 3% tax on dividend distributions

In 2012, France introduced the 3% tax on dividends distributed by entities subject to French corporate income tax.

This tax, levied at the level of the distributing company, is based on the gross amount of the dividend, with the tax due at the time of the distribution.

However, the profits distributed by a company that was a member of a French tax-consolidated group to another group company were exempt from the surtax.

The exemption from the 3% surtax, as well as the surtax itself, have been the subject of considerable controversy lately.

- French Constitutional Council has issued a decision on 30 September 2016, concluding that the exemption from the 3% surtax on distributions made within a tax-consolidated group does not comply with the equality principle in the French constitution and, therefore, is unconstitutional. The exemption has been abolished as from 1 January 2017.

According to the Constitutional Council (Cons. const. QPC 30-9-2016 n° 2016-571), the difference in treatment

Clarification on the French 3% tax on dividend distributions (contd.)

between distributions made within a tax-consolidated group (which is composed of French resident companies only) and those within a non-tax-consolidated group cannot be justified by the difference in situations or by reason of the public interest, even if the 95% holding requirements necessary to set-up a French tax-consolidated group are met (and particularly in the case where the parent company is established outside France).

To protect tax-consolidated groups from unexpected exposure to the 3% surtax for distributions already made, the exemption has been abolished as from 1 January 2017.

- To compensate this decision, the rectified Finance Law for 2016 has extended the exemption of the 3% tax to distributions specifically made to all foreign companies owning at least 95% of the capital of the French distributing company.

According to the rectified Finance Law for 2016, the new exemption is applying, as from 1 January 2017, to distributions made by a French subsidiary in the following cases:

- Where a French parent company holds, directly or indirectly, at least 95% of the French distributing company, and the two companies qualify to be members of the same tax-consolidated group (regardless of whether an election is actually made for tax consolidation); and
- Where the distribution is made to a foreign parent company and that foreign parent
    - is subject to a corporate tax similar to the French corporate tax in another European Union (EU) member state or in a non-EU country that has signed an agreement containing an administrative assistance clause with France (unless the latter country is deemed to be a "non-cooperative country" for French tax purposes);
    - and the foreign parent would be able to meet the requirements for being a member of the same tax-consolidated group as the distributing company had it been established in France, in particular, because the foreign parent holds at least 95% of the distributing company.

- The European Court of Justice (EJC) has issued a judgment on 17 May 2017 concluding that the 3% tax on certain distributions of profits made by French companies is not compatible with article 4 of the EU Parent/Subsidiary Directive when the parent company redistributes dividends received from its subsidiaries.

In addition to the above decision of the Constitutional Council, the French State Council (the French Administrative Supreme Court) has referred a case to the EJC, requesting a preliminary ruling on whether the surtax is in line with the EU Parent/Subsidiary directive.

The ECJ has judged that the liability of a French company for the 3% contribution on the redistribution of dividends it received from its subsidiaries established in another Member State of the EU is incompatible with the Parent/ Subsidiary directive in that it creates double taxation of profits made within the EU as prohibited by the directive (ECJ, 1st ch., 17 May 2017, case C-365/16, AFEP).

At this stage, the Court's decision prohibits the levying of the contribution on the redistribution of profits made by subsidiaries resident of the EU but does not prohibit the taxation of redistributions of profits by subsidiaries resident in France or in a third country to the EU.

The issue of potential reverse discrimination (i.e. when a domestic situation or a situation involving a third country is treated less favorably than an EU situation) should therefore be at the heart of the debates before the French State Council and probably before the French Constitutional Council (on the grounds of the equality principle of the French constitution).

In any event, ECJ decision does not answer all the remaining questions. In particular, in the case of a company having both operating profit and profit resulting from dividends paid by subsidiaries, the redistribution of the operating profit may be subject to the 3% tax while the redistribution of the dividends received would not.

It must be noted that the French Constitutional Council could limit the benefits of its decision to taxpayers having brought a claim before the French tax authorities before the date of its decision. It is therefore recommended

Clarification on the French 3% tax on dividend distributions (contd.)

to file claims in this respect in a timely manner: French parent companies that have distributed profits received from their EU subsidiaries should be able to obtain reimbursement of the excess 3% surtax paid from the French tax authorities. To do so, they will have to provide evidence on which amounts should have been excluded from the taxable base as redistributed dividends. To protect their rights to a refund, **affected companies should submit their claims expeditiously and, in any case, before 31 December 2017 for the tax paid in 2015**, to avoid being barred by the statute of limitations.

Naturally, we can assist the companies to this end.

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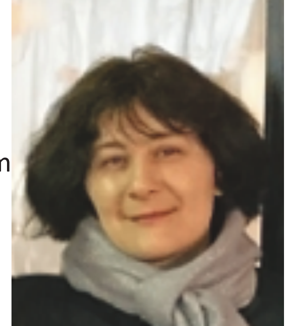

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