BKR INTERNATIONAL

Contributions for Edition 28 of the EMEA Tax Bulletin should be with Sunny Rowley at sunny.rowley@bkremea.com by 10 October 2020.

EMEA TAX BULLETIN

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Dear Friends and Colleagues,

Summertime once more, and yet all is different this year due to COVID-19… Holiday plans may have been changed or put on hold. There may be far less work than before or even more than ever. Most of us probably got used to working remotely – finding challenges as well as benefits in doing so. The last few months, there is no doubt about it, have not been easy and as yet there does not seem to be a clear picture of the months lying ahead.

Nonetheless, I believe that the current situation has also been able to let us see things in a slightly different way, maybe made us re-appreciate things which we had almost taken for granted. That life and work is all about people, and how fortunate we are if we can meet people in person. To share a coffee with the colleague next door, to have lunch together, to laugh together…, it is mostly little things which help us to connect, to build and maintain good relationships. And within BKR, we have also missed our personal meetings which we had grown so accustomed to. I am sure, when the time comes and we can all get together again, we will all do so with even more gratitude, attentiveness and appreciation.

In the meantime, the EMEA Tax Bulletin is one of the many ways we have to stay connected. In this summer edition, you will find COVID-19 and tax updates from Kenya, Italy, Israel, Romania, India, Germany and the UK. And there is award-winning news from London – well done!

Thank you to all who have contributed to this newsletter. Your efforts are highly appreciated! And of course, as always thank you to Sunny, Tim and Julia for putting it together.

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. Whether you are working (from home or in your office) or whether you are enjoying your well-deserved holiday – I hope that you have a good summer. Stay safe!

Petra Owen
EMEA Tax Committee Chair
E: Petra.Owen@hansapartner.de

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Kenya - Mitigating the Impact of COVID-19

The Spontaneous spread of Corona virus disease 2019 in our generation reminds me of a story told by a twenty-eight year old French writer Albert Camus in his book La Peste (French), meaning The Plague in 1947. It is the story of a plague that spreads uncontrollably from animals to humans and ends up destroying half the population, sweeping the French Algeria city of Oran in 1899. Before Covid-19, the world had recently been faced with other respiratory disease in the genre of corona virus that threatened mankind; Read SARS and MERS. Severe Acute Respiratory Syndrome (SARS) was believed to have originated from Guangdong, China, on November 16, 2002. It spread across many territories infecting scores of people and killing more than 700 individuals. A decade later, another respiratory disease was believed to have originated from the Middle East in June 2012 and later named Middle East Respiratory Syndrome – Coronavirus (MERS-Cov).

Even though the two were the most life threatening respiratory diseases in the recent years, the world has never seen a more devastating pandemic like the now famous Covid-19 for a long time. It's outbreak from a regional crisis in China's Hubei province in December 2019 to a global pandemic has got the world's attention. It was not until mid -February 2020 when the Cases grew rapidly as the outbreak spread across Europe that the world realized that this was not a mere respiratory disease, a number of European countries like Italy, Germany and Spain started reporting their cases. It did not take time before the Americas became the new epicentre of the pandemic, United states is now leading the highest number of infections as at the month of June 2020. Initially there was a myth that Covid-19 does not affect people of African descend -premised by the previous infections. The first case hit African continent on 14th February through travellers returning from hotspots in Asia, Europe and the United States to Egypt.

In Kenya, the first case was registered on Friday 13th March 2020, it was a Kenyan national who had just return from United States via London. Since then, more than 95% of African countries have reported cases. The virus has so far spread very first in almost every part of the continent defeating the strategies put by various governments for its containment.

In-depth analysis of this shows that this could have been fuelled by the position of Africa in the world's economy. You see, Africa is the most sort destination in terms of growing population which provides cheap labour and diverse technical capabilities. Africa is still rich in natural resources, a reason why China and western countries are battling for their space in the continent. As at now, there is a presence of china in almost all the territories of Africa. Availability of manpower means there will be a persistent movement in and out of Africa to exploit the same, the worrying part is that this disease spread through human movements. The African healthcare system is still very weak and cannot contain the drastic spread of the pandemic, many African countries depend on loans from developed countries and Other International financial institutions. In fact, according to world bank report of 2013, posits that the Africa's GDP is almost a third that of United States of America.

Covid-19 will take a toll on individuals and businesses. World Health Organization (WHO) recently pronounced that this pandemic will be with us for a while. Across the globe, nations came up with various measures to combat the virus including lockdowns, evening-to-dawn curfews and other propositions by the WHO. Whereas the measures helped in containing the virus to some extent, the continued upsurge in infections in Europe, Americas and in even parts of Africa is a sign of desperation. The impact these restrictions have put on businesses looks unsustainable and governments have had to rethink and adjust to live with the virus. Almost every government is now putting in place strategies to open up their economies. They have already reacted and put together comprehensive rescue packages that must now reach those businesses and freelancers who urgently need them at least with the aim of eventually overcoming the impact of this global crisis.

In Kenya, the curfews and lockdowns seemed to have not effectively contained the spread of the virus and the government is currently flexing the measures to relieve the businesses from the economic distress; meaning that, we might just have to live with Covid-19. A lot of measures have thus been proposed to cushion Kenyans from the impact. This has been done at various levels and I am glad to highlight some of them, specifically measures taken the government through CBK as well as financial sector wide recommendations:

Kenya - Mitigating the Impact of COVID-19 (contd.)

Measures Taken by Financial Institutions to Mitigate the Impacts of Covid-19 Pandemic

Digital Platforms:

On March 16 2020, the CBK announced a number of measures that banks through the Central Bank of Kenya have put in place to increase the use of mobile money transactions instead of cash. This was necessary to reduce the transmission and consequently spread of the Corona Virus through physical exchange of money.

These measures include:

- Removal of charges for mobile transactions up to Kshs. 1,000 and for transfer between mobile money wallets and bank accounts.
- Increased transactions limit to Kshs. 150,000
- Increased limit on mobile money and daily transactions to Kshs. 300,000.

Bank Borrowers:

On March 18 2020, the CBK announced emergency measures to mitigate the adverse economic impacts on bank borrowers. These Measures include:

- Provision of relief to borrowers on loans
- Provision of one-year relief period on personal and mobile money loan
- Enabling MSME (Micro, Small and Medium Enterprises) & Corporate borrowers to assess and restructure loans
- Commercial banks to bear cost of extending & restructuring loans
- Banks, to waive all charges for balance inquiries
- Restrictions of fintech financial service providers from listing citizens from CRBs

Monetary Policies:

On March 23, the CBK's Monetary Policy Committee (MPC) resolved to:

- Reduce the Central Bank Rate (CBR) from 8.25% to 7.25%
- Reduce Cash Reserve Ratio (CRR) from 5.25% to 4.25%
- Enable banks to release Ksh.35.2B additional liquidity to directly support distressed borrowers due to COVID-19

Measures by the government to Mitigate the Impacts of Covid-19 Pandemic

The Kenyan government has put in place several measures to combat the economy from the negative impact of the pandemic. Some of these include:

1. Directing the KRA to settle the payment of all verified VAT refund claims to Kshs. 10bn within 3 weeks
2. Directing all the government ministries and departments to clear all payments of pending bills of at least Kshs.13bn.

Partnership between the Kenyan Government through Central Bank of Kenya and World Bank

The Kenyan Government has partnered with the world bank to issue grants to strengthen the health system which faces an extraordinary challenge to contain the spread of COVID-19 and care for the infected, the world bank has also issued grants to the government to cushion the economy from the effects of the pandemic. The world bank has approved $50 million support to address Covid-19 Pandemic through Kenya Covid-19 Emergency Response Project, world bank report April 2, 2020 reveals. It further approved $1 billion loan to Kenya to help close a gaping budget deficit and tackle the economic shocks from the corona Virus pandemic.

Economic Recovery Strategies

According to the information from the Central bank, a survey done at end of April 2020 indicated that three quarters of the businesses do not have cash beyond two months and cannot survive the effects of Covid-19 beyond the month of June. The Kenyan government has promised to provide guarantees for loans given to Kenya-based small and medium-sized businesses, it therefore implies that government commits to repay banks a share of the loans should the small traders default. SMES should take this opportunity to gain from this stimulus package offered by the government. From our analysis, the government has come up with great steps to bring businesses back to life. However, it remains to be seen how the government would address its greatest challenge which is the criteria to be used while identifying which businesses qualify for these funds, given the challenges that most SMES undergo in their operations e.g.

- Lack of proper book keeping
- Non-compliance with statutory regulations on taxation and other frameworks
- Lack of good corporate governance structures
- Lack of business continuity strategies
- Unsustainable business models which cannot survive

Kenya - Mitigating the Impact of COVID-19 (contd.)

the impacts of Covid-19

This means that SMES need to work closely with professionals to help them package themselves in order to benefit from these programs, they also need banks to support them and bridge the gap between the disbursements since they are the custodians of these funds from the government. We therefore believe that the government should have provided proper guidelines for qualifications, nevertheless, it is incumbent upon the SMES to visit intermediary banks and find out the conditionality

Measures that can be taken by SACCOs to Mitigate the Impacts of Covid-19 Pandemic

Loan Rescheduling/ Restructuring to members
The of effects the pandemic in the economy is unforgiving and the SACCO members, purchasing power has significantly reduced. This is due to less disposable income or job losses and therefore the societies need to re-look at the impact on their loan books, engage members who had active loans prior to the pandemic to review the underlying terms and conditions by possibly extending the repayment period.

Keeping close relationship with members

Most people are now disturbed mentally, economically, psychologically and even socially. They need emotional support too. Societies should offer support centres that provide counselling to its members as part of CSR. A phone call that is not business related but find out the welfare of members can go a long way strengthening the relationship between the society and its members. A friend in need is a friend indeed.

Advising members to adopt alternative ways of doing business

The statistic has shown that most businesses are going to die due to the impacts of the pandemic in the economy, this especially to those business that still depend on the old ways of operations. It is this time that they so badly need financial and risk expertise offered by the societies to help the sail through this turbulence economic conditions. They need to be advised to adopt technologies like e-commerce and teleconferences to sell their products and maintain close relationships with their clients during lock-down. Member education has never been critical than this time.

Adoption of digital platforms

Like banks, Sacco's should adopt digital platforms of transaction business with members to ensure social distancing and reduce presence in the banking halls. They too will be able to take advantage of the abolished money transfer fees in certain digital platforms.

Introduction of special Products-short term loan to cushion members.

This should be specifically with intention of helping its members to come out of this economic depression. The loans, unlike the normal ones which have some complicated requirements, should be easily accessible without too much conditions.

Living with Covid-19:
The Silver Lining

Many a times we have looked at the negative effects of Covid-19 to the economy and the livelihood of mankind. However, our analysis reveals that there are some positive impacts of the pandemic that can improve our lives and businesses. These include:

Improved family and business Relationships

We all have been having busy work schedule, running up and down with little time to listen to some people in our lives. These could be our valued customers, friends and families who need our attention. The Covid-19 situation has positively impacted the way you relate and maintain relationships. You get to spend your time with your family and plan your work better. As life slowed down, we have found ways to stay connected with people, even if it's virtually. In business, we are now able to connect directly with our customers and hold virtual meetings anytime when need be

Improved Technology and Innovations

Companies across the world have started thinking about coming up with product & service ranges that enable you to be as connected as you are with your teams and also your loved ones. This has opened a new way of thought. Strategies to ensure business continuity are now being implemented, Countries are now using robots to deliver Medicines in the Hospitals, other developed countries like Singapore, Germany, Japan and Sweden are using robots in manufacturing. All these may as well lead to breakthroughs & innovations. You see, they say necessity is the mother of invention and innovation happens for nothing, but when the environment demands it.

Kenya - Mitigating the Impact of COVID-19 (contd.)

Working From Home

We can say this one is going to beat traffic challenges that have been a big headache to many governments. Running businesses remotely is no longer something that we think is impossible. May companies including Facebook, Capital One, Amazon, Microsoft, Zillow and others, have announced that they'll extend their work-from-home programs

Improved Health Care

Just like after war and any natural calamities, mankind thinks differently, Innovation in health care system must now rise. This pandemic found most medical facilities in deplorable conditions, it has treated every government in the world equally. Any proper thinking government must have realized the need to improve its medical facilities since there is no wealth in the world more than life.

Improved Hygiene

People are now aware of how important it is to keep yourself clean. The idea to keep clean is the new way of survival, this reduces chances of contracting some disease. That's not going to change, and that's something we cannot. We were all aware of the need to maintain hygiene but now we have to do it more than ever before.

Rethink of Cost Model

There has been unprecedented rise in technology owing to the effects of pandemic. Many businesses are now realizing that there are some unnecessary costs that can be abolished. They are now focused more on 'Rethinking Cost-Benefits Analysis'. CFOs should now rethink their cost accounting model. This includes reduction of unnecessary office space since employees can now work remotely, scrapping costs that are directly related to supervision because employees can now self-supervise, booking of meeting venues are not necessary anymore since zoom have taken its place, corporate meetings can now be scheduled with less cost, performance is now based on work output as opposed to presence in the office. Companies should now invest on tech-based equipment to enhance their efficiency in operations.

Noah Ndakala
Ronalds
E: noah@ronalds.co.ke

Dennis Ouru
Ronalds
E: clientrelations@ronalds.co.ke

Learn About Kenyan Turn Over Tax

Administration of Turn Over Tax

The Tax Law Tax Amendment Act brought into effect the following changes:

- The turnover tax rate applicable is 1%.
- The qualifying threshold for turnover tax is between Kshs 1 Million to Kshs 50 Million
- The penalty for filing turnover tax is Kshs. 1,000.

Turn Over Tax is not applicable to the following income;

- Management fees, professional fees or training fees.
- Rental Income.
- Other Incomes subject to withholding tax which is final.

The taxpayers whose turnover from businesses is Kshs 1 Million and below shall be exempt from Turn Over Tax.

Further guidance by the Kenya Revenue Authority on filing Turn Over Tax returns

- Taxpayers whose turnover from business qualifies the threshold should register for Turn Over Tax via their i-tax profile.
- When registering for Turnover Tax, those taxpayers who had losses brought forward as at 1st April 2020 shall forfeit the losses upon registration for Turn Over Tax.
- Taxpayers currently under the annual income tax regime and opts to register for the Turn Over Tax obligation starting 1st April 2020, they shall be required to close their annual income tax regime.

Learn About Kenyan Turn Over Tax (contd.)

The taxpayer shall prepare the financial statement up to 31st March 2020 and then file the corresponding income tax return upon closing the annual income tax regime.

- The taxpayers who receive tax credits starting 1st April 2020 shall offset them through a section provided in the turn over tax return.
- For the taxpayers whose gross receipts/ turnover meets the threshold of between 1 Million to 50 Million, but stick with the annual income tax regime (they do not opt for turn over tax obligation), by default they shall be deemed to have informed the Commissioner of their choice by not registering for the Turn Over Tax.

Other Considerations

Value Added Tax

A person is required to register for Value Added Tax if he/she has made or expects to make Kshs 5 Million in a period of 12 months.

Some of the taxpayers under Turnover Tax regime whose annual gross receipts/turnover is Kshs 5 Million and above are obliged to register Value Added Tax which is remitted not later than the 20th of the following month.

When computing for Turn Over Tax, the taxpayers registered for Value Added Tax shall deduct the Output VAT from the gross receipts before applying the 1% rate for Turn Over Tax.

See the illustration below;

	Amount in Kshs.
Total Gross Receipts in a Month	600,000
Output VAT	73,684
Total Receipts to be declared in the Turn Over Tax Return	526,316
Turn Over Tax Payable (at 1%)	5,264

It is important for all the taxpayers to note that the due date for Turn Over Tax is on or before 20th of the following month.

Noah Ndakala
Ronalds
E: noah@ronalds.co.ke

Appealing to the court against a tax order

Introduction

Shimon Yarel, from Yarel + Partners CPA (Israel) is a member of the tax committee of the Israeli CPA institution. In Israel there is a proposal to change the law requesting 33% payment upfront after receiving the order if the entity or individual are appealing to court. The Israeli CPA institution is against this proposal, which stands to be approved shortly. To gather more information, Shimon has asked several members the following:

- If a tax payer (entity or individual) decides to appeal to court regarding a tax order made by the tax authorities,(after all the stages of appealing to the tax authorities were rejected) to pay an X amount, due to the tax authorities position, on a certain tax matter.
- Is the entity or individual required to pay something according to the law, which is applicable in your countries, before the court final decision? Or is the order request postponed until the final court decision.

Shimon wanted to share the results he has had back with members. If other members would like to assist Shimon (Shimon@bkr-yarel.co.il) please contact him about your jurisdictions.

Albania

In Albania the tax liability is to be paid since the 1st appeal phase with the General Directorate of taxes. 100% payment of the tax liability (not the penalties) or bank guarantee of the same amount. So the payment is done before going to court.

Appealing to the court against a tax order (contd.)

Australia

Generally, there is a still an obligation to pay a tax debt even if disputed.

Where the Australian Taxation Office determines that the level of risk necessitates action to secure payment of a disputed debt before resolution of a dispute, the following options will be considered as alternatives to the initiation of legal action for recovery of the debt or possible submissions from the taxpayer to mitigate the perceived risk:

- payment of the whole debt within 14 days of a demand being issued to the taxpayer
- payment of the whole debt by instalments
- payment of 50% of the disputed debt in a lump sum with the balance being paid by instalments
- payment of 50% of the disputed debt together with the provision of acceptable security for the remaining balance
- provision of acceptable security for the whole debt
- provision of financial documents to substantiate that payment of the disputed debt would cause serious financial hardship.

The ATO might also offer a 50/50 arrangement with taxpayers. This is an agreement whereby the taxpayer pays 50% of the disputed principal tax debt and the ATO agrees to defer collection action for recovery of the balance. The 50/50 arrangement usually continues through the AAT appeal stage, conditional on the ATO's continuing assessment of risk in the case.

Note that in practice when an amount is disputed that recovery of the debt while a court case is ongoing is able to be done, the Australian Taxation Office does not generally enforce the recovery of the amount in question however interest will continue to accrue on the disputed amount.

Bosnia

Same as Croatia - Appeal to tax decision does not postpone enforceability of the decision. Hence, you pay 100% and you get the money back if you prove you're right.

Bulgaria

In Bulgaria the taxpayer is not required to pay before applying to the court.

Croatia

Appeal to tax decision does not postpone enforceability of the decision. Hence, you pay 100% and you get the money back if you prove you're right.

Cyprus

The taxpayer is not required to pay before, during or after the first Court (in Cyprus case the local District Court) decision. The payment order is postponed until the issuance of the Supreme Court's final decision, provided that the appeal has been filed in the timeframe of 40 days after the District Court decision is given. Failure to file for an appeal, in accordance with the appeal rules and regulations, would deem the District (first) Court decision as final.

France

Tax disputes has until three possible steps: two before a Tax Court and the last one before a Supreme Court. Depending on the tax matter, there are two types of Courts: judicial and administrative.

The payment of the tax dispute is not a condition to proceed in Tax Court. The case can proceed to tribunal without payment.

But the tax order of the French tax authorities has the enforcement order. The non-payment become a debt recovery dispute, different from the tax dispute before Court. The taxpayer can ask for a suspension of payment (with warranty). There will be interests due on the tax that has to be paid later.

Germany

In Germany, generally, all taxes have to be paid as they are assessed, regardless of any appeal. This also applies if a taxpayer appeals to a court. There is, however, the possibility to apply for postponement (Suspension of

Appealing to the court against a tax order (contd.)

execution). This may be granted if there are serious legal doubts about the tax assessment. Such application must first be made at the tax authorities and can, if the tax authorities do not grant it, be made to the fiscal court. Fees apply if the taxpayer later loses the court case, as well as interest on any tax which has not been paid.

Georgia

Entity has the right to appeal the decision of tax authorities within 30 days. During this period and till the end of all stages of tax dispute, tax payment is suspended and the payment depends on the result of how the dispute ends.

Greece

For current tax obligations, a taxpayer should pay its obligation irrelevant if he will go for an appeal or court decision.
For previous year's tax obligations arising from tax authorities audit findings, there should be a final court decision for paying extra taxes.

Italy

Tax dispute has three possible steps: two before the Tax Court and the last one before the Supreme Court.

The taxpayer has to pay:

- 1/3 of the taxes challenged to appeal the first-degree tax court,
- the 100% of the taxes due in force of the first-degree decision to appeal the second-degree, and
- the entire amount due, penalties and interests included, in force of the second-degree decision to appeal the Supreme Court.

It is possible to apply for the suspension of the payments if they can jeopardize the financial position of the taxpayer (periculum in mora) and the dispute is effectively uncertain (fumus boni iuris).

Montenegro

The taxpayer has to pay immediately. This is not dependent on the intention to appeal in the court so yes, the answer is that it must be paid beforehand in full.

The Netherlands

You will receive postponement (upon request) on payment for the entire amount until a decision is made by the court. There is interest due on the tax that has to be paid later.

North Macedonia

You must pay 100% (otherwise it will be collected forcefully) and then you are eligible to dispute it.

Serbia

Upon decision for payment concerning tax obligation, taxpayer has to pay immediately. This is not dependent on an intention for an appeal or court decisions later, which might return what has been paid.

UK

Where amounts of tax are in dispute this must be paid in full before the case can proceed to tribunal. However, the taxpayer can make application for hardship to have the appeal process heard without payment of the tax.

Shimon Yarel
Yarel + Partners CPA
E: shimon@bkr-yarel.co.il

Italy Update

1) COVID 19 - Latest news on tax interventions

Present issue makes reference to some of the last measures introduced by Italian Government in order to support Italian business entities which are suffering the consequence of COVID 19 emergency and consequent lockdown incurred during past months.

In particular, the "Restart Decree" (Law Decree no. 34/2020) in May was the last of the major actions put in place by the Italian Government to face the COVID 19 emergency, following the "Heal Italy Decree" and the "Liquidity Decree", providing for further support in favour of enterprises and business activities.

Among the others it is allowed the request of a tax credit due to expenses for the sanitation of the work environments and tools used and for the purchase of personal protective equipment and other devices designed to guarantee the health of workers and users.

Recipients of the measure are individual entrepreneurs and business entities resident in Italy (also permanent establishments of non-resident subjects are admitted to the regime).

The tax credit amounts to 60% of the expenses but it cannot exceed 60,000 euros for each beneficiary, even if its exact amount will be proportionally determined considering all the requests that will be mandatorily transmitted to the Revenue Agency within September 7th.

Another action of the Revenue Agency has been the possibility to apply for the request of a non-refundable. Such contribution is destined to subjects carrying out business and self-employment activities (with the exclusion of professionals) who, in 2019, have achieved an amount of revenues or fees not exceeding 5 million euros and whose amount of turnover and fees in April 2020 is less than two thirds of the amount of turnover and fees for the corresponding month of 2019.

In June as well, the Revenue Agency confirmed the possibility of offsetting the tax credit for the paid monthly fee for the rental, leasing or concession of properties for use non-residential buildings intended for industrial, commercial, artisanal and agricultural activities, or in case of business rental.

Beneficiaries of the tax credit are business, art or profession activities, and also hotel and agritourism structures.

The maximum creditable amount is equal to 60 percent of the rent of properties for non-residential use and at 30 percent of the rent in cases of business lease contracts, or 20% or 10%, respectively, whether the turnover of the beneficiary is higher than 5 million euros.

The tax credit can be used either in offsetting other tax payment, in the tax return relating to the tax period for incurring the expense, or it can also be transferred in favour of the lessor or the grantor, or other entities, including credit institutions and other financial intermediaries.

2) DAC6 Directive - recent development for the application

With reference to recent development for the application of the DAC6 Directive on the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (Directive 2011/16/EU), at EU level an agreement has been recently reached with Directive (EU) 2020/876 that provides for an option to postpone the start of the reporting obligation by 6 months (i.e. start of the re-porting obligation for new arrangements on 1 January 2021 only; filing deadline for arrangements of the transitional period on 28 February 2021).

Actually, Italy has not yet enacted any regulations on the matter (only a draft law provision is under discussion at Parliamentary level) but it is highly probable that the postponement will be accepted.

Marco Borioli
Borioli Colombo & Partner
E: marco.borioli@bc-tax.it

Giorgio Colombo
Borioli Colombo & Partner
E: giorgio.colombo@bc-tax.it

Mauro Manca
Borioli Colombo & Partner
E: mauro.manca@bc-tax.it

UK - Two wins for Blick Rothenberg in the Tolley's Taxation Awards 2020

Blick Rothenberg has been named as both the Best Corporate or Business Tax Practice and Best International Tax Team in the Tolley's Taxation awards 2020.

The leading tax and advisory firm won Best Corporate or Business Tax Practice and Best International Tax Team in the annual awards which made their debut in 2001. The Tolley's Taxation Awards quickly became recognised as marks of excellence within the tax profession and are now sought-after by UK tax professionals, whether they work for multinational companies or in accountancy and law firms.

Nilesh Shah, CEO of the firm said: "I'm very proud that the work our people undertake for our clients on a daily basis has been recognised by the tax industry through these illustrious awards. It was a great team effort and richly deserved.

"Tax can often be complex, and our people at Blick Rothenberg go out of their way to help clients, and each other. I am particularly pleased that this has been recognised at a time when they all have been under extreme pressure due to the current pandemic. It will give them a great boost."

Hosted virtually this year, the competition was fierce, but the two categories that the firm won were:

Best Corporate or Business Tax Practice

Criteria: This award went to the best corporate or business tax practice in 2019/20. The award was open to firms advising corporates on any aspect of their tax affairs, such as: the tax aspects of corporate, commercial and financial transactions; advising on significant tax planning assignments; managing tax and reputational risk; supporting efficient compliance and reporting processes; and transfer pricing issues.

Short-listing: Blick Rothenberg's Corporate tax team were one of five short-listed.

The organisers said: "The winning team has a strong presence in the tax world and, in the words of the judges: 'know what they're good at and stick to it'."

Best International Tax Team

Criteria: This award was open to international teams in larger firms or independent firms specialising in international tax. Qualifying firms could offer a broad range of international experience or expertise in a particular area of international tax, not only business taxes, but also the taxation of internationally mobile employees or international tax for high net worth individuals.

Short-listing: Blick Rothenberg's International Tax Team were one of three short-listed.

The organisers said: "The winning team showed that important and valuable tax work can be done for smaller medium-sized international business. The judges particularly liked how they brought together expertise in transfer pricing and customs duty when advising on supply chain management."

Blick Rothenberg were also a short-listed finalist in the 'Best Private Client Tax Practice' category.

Nilesh Shah
Blick Rothenberg
E: nilesh.shah@blickrothenberg.com

Romania Tax Update

Tax Amnesty News

The government has approved the tax amnesty proposed by the Ministry of Finance for interest, penalties and other accessories due to taxpayers who will pay the main arrears until December 15, 2020

The government is supporting the business environment affected by the Covid – 19 crisis, approving the tax amnesty for interest, penalties and other accessories owed by taxpayers.

The measure aims to collect latest on 15th of December 2020 the outstanding budget obligations as at March 31st 2020, as well as budget obligations due between April 1st 2020 and December 15th 2020.
The tax incentives target all taxpayers who have outstanding debts as of March 31st, 2020.

Fiscal facilities regulated by the Emergency Ordinance:
- Cancellation of interest, penalties and outstanding accessories on March 31st, 2020 inclusive, in the case of taxpayers with existing outstanding tax liabilities or tax liabilities declared additionally by the debtor by amending tax returns, due before March 31st, 2020 inclusive;
- Cancellation of interest, penalties and all accessories related to the main budgetary obligations due prior to March 31st, 2020, including the case when the taxpayer has only accessories tax liabilities.

In order to benefit from this measure, taxpayers must pay the outstanding tax liabilities, submit all tax returns and the application for cancellation of accessories latest on December 15th, 2020.

- Cancellation of interest, penalties and all accessories related to the main tax obligations due prior to March 31st, 2020 inclusive, established by a tax decision issued as a result of the tax inspection or verification of the personal tax situation, which is ongoing at the date of entry into force of the emergency ordinance.

In order to benefit from this measure, taxpayers must pay these obligations in the term set in the tax decision and submit the request for cancellation of the accessories within 90 days from the date of communication of the decision.

Iulia Lascau
Argus Audit
E: iulia.lascau@argusaudit.ro

Improve Tax Cash-Flow

VAT reimbursement in Romania will be accelerated during this period.

Companies having good tax payer behaviour, claiming VAT recoverable not older than 12 months could receive VAT back from the state with subsequent tax audit. This new approach is brought into practice by the Emergency Ordinance 48/2020.

This procedure will help cash-flow of companies.

New further actions are expected by business environment.

For instance, we look forward the government to take urgent measures to unblock and release also the reimbursement the huge amounts remaining to be reimbursed from long time ago from Health Fund, from contributions of employers for sick leave and maternity leave.

DAC6 & Covid19

Reporting deadlines for Directive on Administrative Cooperation 6 have been postponed in the context of Covid-19 pandemic and lockdown measures.

Cross-border arrangements to be reported and exchange of information will have new extended deadlines:
- New arrangements: to be reported latest 31st of January 2021
- Reporting of historical cross-border arrangements implemented between 25 June 2018 and 30 June 2020: to be reported latest 28th of February 2021.
- Marketable arrangements: 30th of April 2021
- First exchange of information: 30th of April 2021

Improve Tax Cash-Flow (contd.)

We expect Romania to amend local legislation implementing the new postponed deadlines. Also, additional clarifications are required regarding intermediary obliged to report.

Regardless of the postponement of the reporting deadlines, companies must document carefully cross-border transactions, determine if they are reportable and always maintain an audit trail, in order to avoid under- or over- disclosure of reported arrangements to the Tax Authority.

In the same time, the companies should adjust accordingly the forecast budget of 2021 taking into consideration the unfortunate increase of compliance cost for administration of cross-border transactions.

Iulia Lascau
Argus Audit
E: iulia.lascau@argusaudit.ro

UK - Latest UNW webinar - Life After Lockdown - Employment Taxes & Law Update

UNW have held the latest webinar in their 'Life after Lockdown' series of webinars.

In the wake of the COVID-19 pandemic, many businesses have been understandably focused on stabilising cash-flow. As restrictions start to be eased, businesses will begin to look to the future and plan for recovery. For this reason, we thought it would be helpful to hold a "Life After Lockdown" mini-series of free live webinars, dedicated to supporting businesses into the next phase of this crisis.

Our second webinar was hosted by Lee Muter, Employment Taxes partner at UNW, with guest speaker Jean-Pierre van Zyl, Head of Employment at Square One Law.

This is available, along with previous webinars and resources, HERE.

Lee Muter
UNW
E: leemuter@unw.co.uk

Germany - DAC 6 / Notification of cross-border tax arrangements

1 Background / OECD BEPS Action Plan

One of the consequences of the OECD's BEPS Action Plan are the DAC 6 / Notification of cross-border tax arrangements obligations. Point 12 of this plan provides that aggressive transactions, models or structures must be disclosed. The EU has implemented this through Council Directive 2018/822 dated 25 May 2018. The EU member states were obliged to transpose the directive into national law by 31 December 2019.

Legal frameworks used to exploit tax loopholes or tax rate differences have become increasingly public. Thus, the the main aims of the EU Directive are as follows:

- Identification of legal but unwanted tax arrangements
- Identification of "potentially aggressive cross-border tax planning"
- Enabling the tax authorities to take prompt action against harmful tax practices

Germany complied with this obligation through the "Act introducing an obligation to notify cross-border tax arrangements".

2 Executive summary

From 1 July 2020 onwards, several cross-border tax

Germany - DAC 6 / Notification of cross-border tax arrangements (contd.)

arrangements need to be reported to the Federal Tax Office. Reportable tax arrangements especially occur in the area of cross-border transactions in which certain tax benefits are generated.

Domestic tax arrangements are not affected and will not have to be reported.

Main responsibility for disclosure and announcement of cross-border tax arrangements lies with the "User" and/or the so-called "Intermediary". Intermediaries are persons who market, design, organise or make available for use by third parties a cross-border tax arrangement or manage its implementation by third parties. The "User" is a beneficiary of the arrangement.

Some of the tax-arrangements only have to be reported if one of the main benefits of the tax arrangement was to generate a tax benefit (main benefit test). However, some of the tax arrangements also have to be reported if the main benefit test is not fulfilled. For details on the reporting requirements and the requirement of the main benefit test we refer to the attached annex.

Since the specific requirements of reportable tax arrangements – described as "Hallmarks"- are extensive and applicable in a broad way, we highly recommend to review the already implemented cross-border arrangements (from 25. June 2018 onwards) as well as future cross-border tax arrangements in detail in order to fulfil the reporting and declaration requirements. Furthermore, beside the reporting requirement of the cross-border tax arrangements, taxpayer have to declare in the respective tax return for the respective year the reportable cross-border tax arrangements. This already applies to the fiscal years 2018 and 2019 and is applicable from 1 July 2020 onwards.

Compliance tax advisor and accounting service usually process in the bookkeeping and financial statements circumstances that may qualify as reportable tax arrangements or prepare tax returns which include reportable tax arrangements. This, however, does not lead necessarily to the requirement that a compliance tax advisor or accounting service provider has the obligation to report the cross-border tax arrangement as a so called "Intermediary", since the compliance service provider is usually not primarily responsibly involved in the implementation nor have actively marketed or designed the tax arrangement for his clients. However, the client as user may have reporting obligations, with which the compliance tax advisor can assist with.

3 Domestic tax arrangements are not affected

In opposite to prior plans, the new regulation is applicable only to cross-border tax arrangements and not to German domestic tax arrangements.

4 Covered taxes

- Included:

All direct taxes such as income tax, corporation tax, real estate transfer tax, and inheritance and gift tax.

- Not-Included:
  - o Indirect taxes, i.e. Value Added Tax (VAT), import VAT, import and export duties (customs duties)
  - o Social security contributions

5 Reporting of tax arrangements by intermediaries

Intermediaries shall notify the cross-border tax arrangement to the Federal Central Tax Office. Intermediaries are persons who markets, designs, organizes or makes available for use by third parties a cross-border tax arrangement or manages its implementation by third parties (intermediary).

The following additional description on the qualification of an intermediary can be taken from the reasoning of the law:

The definition of an intermediary is linked to the involvement in the various stages of tax planning, from its creation to its implementation:

- Tax planning is marketed as soon as it is put on the market and offered there to third parties. Affiliated companies are not included.
- Designing is the planning, design or development of a concrete control design, usually in relation to a specific user or group of users.
- Organizing includes the systematic preparation and planning of the tax design, making it available for use and making it available for a specific use.
- Making available for use means that the intermediary has handed over to a potential user the information or (contractual) documents required for the implementation of a tax structuring or has otherwise made them individually accessible. The actual implementation of the tax structuring by the user is

Germany - DAC 6 / Notification of cross-border tax arrangements (contd.)

not yet required. The mere dissemination of general information about a tax structuring, e.g. by publishing non-binding information on the Internet or by publicly displaying or issuing generally accessible brochures, is not yet "made available for use".

- The management of implementation covers the responsible management of the concrete implementation of tax planning.

Important note:

 According to the before outlined requirements we (as your tax advisor) usually not qualify as intermediary since we, even if tax arrangements in your organisation exist, are neither that deeply involved in the implementation nor have actively market or designed the tax arrangement.

6 Reporting of tax arrangements by users

If there is no intermediary who fulfils the reporting requirement, the duty of notification with regard to all information is transferred to the user.
The user is only then not obliged to notify if he can prove that he himself, the intermediary or another user has already notified the same cross-border tax arrangement in another member state according to its law.

7 What needs to be reported?

- Identification of all taxpayers and intermediaries involved, including
  - o Name, date and place of birth (if an individual).
  - o Address.
  - o Tax residence.
  - o Tax Identification Number (TIN).
  - o Where appropriate, the associated persons of the relevant taxpayer.
- Details of the relevant applicable hallmark(s).
- A summary of the tax arrangement, including (in abstract terms) a summary of relevant business activities.
- The date on which the first step in implementation was or will be made.
- Details of the relevant local (tax) law.
- The value of the cross-border reportable arrangement.
- the Member States of the European Union likely to be affected by the cross-border tax arrangement
- Identification of relevant taxpayers or any other person in any Member State likely to be affected by the arrangement.

8 Reporting requirement in tax returns

If a user has implemented a cross-border tax arrangement, he must indicate this in the respective tax return. It is sufficient to declare the registration number and disclosure number allocated by the Federal Central Tax Office or the registration and disclosure number allocated by the competent authority of another member state of the European Union in the tax return.

9 Application dates

It was just recently announced by a representative of the Federal Ministry of Finance that, contrary to all expectations, Germany will not make use of the option decided at EU level to extend the deadline by up to six months. Thus, contrary to all prior announcements of the Federal Ministry of Finance, the originally announced application dates are still applicable
The announcement has therefore to be filed until 31 August 2020.

9.1 Tax arrangements between 24 June 2018 and 30 June 2020

The requirement to report cross border tax arrangements became applicable as of 1 July 2020 to all cases in which the first step in implementing a reportable cross border tax arrangement was made after 24 June 2018. The reporting of the tax arrangements has to take place until 31 August 2020 at the latest (2 month from 30 June 2020).

9.2 Tax arrangements from 1 July 2020 onwards

Tax arrangements from 1 July 2020 onwards have to be reported with the Federal tax Office within 30 days. The start of the notification period shall be determined by the date on which the first of the following events occurs:

1. the cross-border tax planning is made available to a user for implementation,
2. the user of the cross-border tax structuring is prepared to implement it, or
3. the first step for the implementation of the cross-border tax arrangement was made by the user.

9.3 Reporting requirement in tax returns

Cross-border tax arrangements must also be declared in the tax return from 1 July 2020 onwards. Thus, this already applies to tax returns for the fiscal years 2018

Germany - DAC 6 / Notification of cross-border tax arrangements (contd.)

and 2019 if the first step in implementing a reportable cross border tax arrangement was made after 24 June 2018.

10 Penalty as an administrative offence

According to the new law, violations of the obligation to report are to be assessed as an administrative offence. A fine of up to EUR 25,000 may be imposed.

11 Hallmarks

In the following we provide you with a short overview of the existing hallmarks in order to give you an idea of potentially reportable tax arrangements. For further and detailed explanations on the hallmarks we are happy to review certain arrangements for you or we refer to the attached ANNEX of the EU Council Directive 2018/822 dated 25 May 2018.

The letter and the number in the following overview refers to the order, structure, and numbering of the hallmarks in the ANNEX of the EU Council Directive. The letters and numbers are also used and required in the reporting of reportable tax arrangements with the Federal Tax Office.

11.1 General hallmarks (reportable if the main benefit test is fulfilled)

Specific agreements with user

A1: Agreement of a confidentiality clause

A2: Success fee agreement, intermediary paid by reference to the tax saving

A3: Standardized documentation/ structure (for multiple users)

Specific transactions / Tax Planning / with main benefit test

B1: Shell purchases with termination of activity (loss buying)

B2: Conversion of income into assets, donation or low-taxed types of income

B3: Circular transactions

C1 b (i): deductible cross-border payment between affiliated companies &recipient is resident in state which does not levy any corporation tax or corporate tax rate (close to) zero (= 4% or lower)

C1 c, d: deductible cross-border payment between affiliated companies &

(i): payment is subject to full tax exemption at recipient, or

(ii):benefits from preferential tax regime

11.2 Specific hallmarks (reportable regardless of main benefit test)

Specific transactions / Tax Planning / without main benefit test

C1 a, b(ii): Deductible cross-border payment between affiliated companies, if

(i): the recipient is not resident in any country/ territory or

(ii): in EU/OECD blacklist country

C2: Multiple depreciations of the same asset

C3: Multiple exemptions of

(i): the same asset or

(ii): income from tax base

C4: Transfer of assets with substantially different valuations in the involved countries

Intransparency

D1: Erosion of the notification obligation according to the automatic (financial account) exchange of information

D2: Concealment of the identity of the economic or legal owners (in transparent chain)

Transfer pricing

E1: Use of an unilateral Safe Harbour regulation

E2: Transfer of intangible assets that are difficult to value to affiliated companies/ permanent establishment (PE)

E3: Transfer of functions, risks or assets between affiliated companies or to a PE, so that the EBIT forecast of the transferor over 3 years drops by more than 50%

Peter Zimmermann
Schiff-Martini & Cie. GmbH
E: Peter.Zimmermann
@schiffmartini.com

Eva Rettler
Schiff-Martini & Cie. GmbH
E: Eva.Rettler@schiffmartini.com

DIRECTIVES
COUNCIL DIRECTIVE (EU) 2018/822
of 25 May 2018
amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements

Explanations:
BLUE-marked hallmarks are subject to notification if, in addition to the hallmark, the main benefit test (the main benefit or one of the main benefits consists in obtaining a tax benefit) is also fulfilled

RED-marked hallmarks must be reported even if the main benefit test is not fulfilled

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ANNEX 'ANNEX IV HALLMARKS

Part I. Main benefit test
Generic hallmarks under category A and specific hallmarks under category B and under points (b)(i), (c) and (d) of paragraph 1 of category C may only be taken into account where they fulfil the "main benefit test".

That test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

In the context of hallmark under paragraph 1 of category C, the presence of conditions set out in points (b)(i), (c) or (d) of paragraph 1 of category C cannot alone be a reason for concluding that an arrangement satisfies the main benefit test.

Part II. Categories of hallmarks

A. Generic hallmarks linked to the main benefit test
   1. An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.
   2. An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
      a) the amount of the tax advantage derived from the arrangement; or
      b) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.
   3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.

B. Specific hallmarks linked to the main benefit test
   1. An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss- making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
   2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.
   3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

C. Specific hallmarks related to cross-border transactions
   1. An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:

a) the recipient is not resident for tax purposes in any tax jurisdiction;
b) although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
   i) does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
   ii) is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
c) the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
d) the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes;

2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.
4. There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

D. Specific hallmarks concerning automatic exchange of information and beneficial ownership

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:
   a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
   b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;
   c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;
   d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;
   e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;
   f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.
2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:
   a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and
   b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and
   c) where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849, are made unidentifiable.

E. Specific hallmarks concerning transfer pricing
   1. An arrangement which involves the use of unilateral safe harbour rules.
   2. An arrangement involving the transfer of hard-to-value intangibles. The term “hard-to-value intangibles” covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:
      a) no reliable comparables exist; and
      b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 % of the projected annual EBIT of such transferor or transferors if the transfer had not been made.’

India - K C Mehta ‘s new publication KCMSpark cover: Africa - Evolving Tax Landscape

Snapshot

After Senegal, now Zambia has unilaterally terminated its Double Taxation Avoidance Agreement with Mauritius. Apart from witnessing unilateral termination of tax treaties for seeking fair share of taxes, countries from the African region are making significant progress in fighting tax evasions, curbing illicit financial flows and dealing with base erosion and profit shifting.

Various countries in the region are adopting or reforming Transfer Pricing regulations and making more detailed and stringent scrutiny to tackle tax avoidance issues. Transfer pricing regulations are being developed in lines with OECD guidelines with emphasis on principles like DEMPE in case of intangibles. Tanzanian regulations denying royalties for locally developed intangibles transferred and licensed back for use in Tanzania is a notable instance.

Judicial pronouncements have also been on the track where transactions designed for tax avoidance are disapproved.

More and more African jurisdictions have pledged to implement BEPS and other programmes at international forums. These are remarkable trends visible in the region which is also witnessing significant growth in economic development and foreign financial flows.
Countries from the region are moving towards higher level of tax transparency and focusing on exchange of information, including through implementation of Country-by-Country Report filings. There is significant increase in the number of exchange of information requests made by African countries, which has translated into additional tax revenues.

This Note captures select but important and trend-setting changes in tax policies from African region, highlighting evolution of African tax regimes:

- Tax Treaty Renegotiations
- Transfer Pricing Reforms
- Judicial Approach to Curb Tax Avoidance
- BEPS Implementation and Multilateral Instrument
- Tax Transparency Measures

These actions do not appear to be stray cases but appears to be part of larger picture where the African tax authorities have started demanding their fair share of revenue and heavy crackdown on tax avoidance through dubious means.

While these actions are currently visible in couple of jurisdictions in Africa, we anticipate that the other jurisdictions would also pick up a clue from their neighbours and implement such measures sooner than later in a bid to protect their tax bases from eroding. Therefore, the MNCs having business presence in Africa

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should evaluate their strategies and prepare themselves for the new approach of African tax authorities.

Background and Coverage

The African continent comprises of 54 countries with diverse set of geopolitical environment and varying stages of economic development. The region has, in recent years, been witnessing significant economic growth emanating from various initiatives for socio-economic development, increasing domestic demand and increasing foreign investments.

Many African governments and regional organisations have been closely working with international forums like Organisation for Economic Development (OECD), United Nations (UN), European Commission, etc. to achieve ‘Economic transformation’, the core of Africa’s development agenda and for design and implementation of policies in areas of economic and social well-being, political governance, development of external financial flows and mobilisation of domestic resources, industrialisation and entrepreneurship, global value chain initiatives, etc.

As per Report of the OECD on Africa’s Development Dynamics 2019 (Published in November 2019), the African continent recorded 4.6% annual gross domestic product (GDP) growth between 2000 and 2018, which is second fastest after Asia. Increase in domestic demand for processed products, which is expanding faster than world average has been the most important driver for growth in GDP. African Continental Free Trade Area was also launched in July 2019, to enable growth through expansion of market opportunities and better resource allocations in the region.

These factors have contributed to increasing financial flows from foreign jurisdictions in the region. Apart from socio-economic and political developments, there has been increasing participation from African countries in creating awareness and making policy changes for economic as well as tax reforms. The region has been making significant progress in fighting tax evasions and illicit financial flows and actively introducing reforms to its policies. Unlike various developed countries, where individual taxes, social insurance taxes and property taxes play a significant role, African countries’ tax structure places relatively higher reliance on corporate and consumption taxes.

Tax Treaty Renegotiations

In its Cabinet meeting held on June 22, 2020, Government of Zambia approved termination of Double Taxation Avoidance Agreement (DTAA) with Mauritius, citing intentions for negotiation of a new DTAA with shared taxing rights and anti-abuse clauses.
The DTAA which came into force from June 15, 2012, is proposed to be terminated with effect from December 31, 2020 in Zambia and June 30, 2021 from Mauritius perspective.

Currently, the DTAA between Zambia and Mauritius gives exclusive taxation rights to country of residence with respect to certain incomes (For e.g. Technical service fees and Capital gains in absence of specific article on the same) and restricts taxing rights of source country with respect to certain items of income such as 5% / 15% in case of dividends, 10% on interests, 5% on royalties, etc. It is interesting to note that Press Release on the said termination mentioned that Zambia does not retain taxing rights to tax dividends, interest and royalties arising in Zambia and payable to residents of Mauritius, which appears to be inadvertent. Considering that the DTAA already provided for limited taxing right in the source country, it appears that Zambian Government may be proposing to have right to tax certain incomes at a rate higher than that mentioned in current treaty.

It is worth noting that earlier this year, Senegal had unilaterally terminated its DTAA with Mauritius (decision was conveyed to Mauritius in June 2019) with a view to renegotiate a new DTAA. The Mauritius-Senegal DTAA which exempted incomes from interest, dividend, royalty, etc. in the Source country, has been terminated in Senegal with effect from January 01, 2020 and in Mauritius from July 01, 2020.

A new tax treaty was also signed between Kenya and Mauritius in April 2019, followed by a protocol in October 2019. The new DTAA was a fallout of a decision of High Court of Kenya in March 2019 citing that the Kenya-Mauritius DTAA signed in 2012 was null and void and that the treaty never entered into force because Kenya did not notify Mauritius of the completion of the ratification procedures.

Interestingly, as per a press release issued by Government of Netherlands on May 29, 2020, the Dutch Government has expressed willingness to amend tax treaties with 47 less developed nations to give them fair

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share of taxes by incorporating 'source state taxation rights' on technical service fees. Source state taxation will enable these developing countries to levy tax on fees for managerial, technical, consultancy services arising in these jurisdictions to residents of Netherlands. The list of countries impacted by these proposals of Dutch Government includes more than 30 African countries.

Transfer Pricing Reforms

Transfer pricing regulations in most African countries are at a nascent stage and has been focusing on certain industries like mining. Many African countries are however taking part in the global transfer pricing debates, especially regarding requirements for service transactions, capital-rich and low-function entities, and analyses of intangibles based on Development, Enhancement, Maintenance, Protection, and Exploitation (DEMPE).

South Africa's transfer pricing legislation was introduced in 1995 and overhauled as of April 2012 to align more with the OECD's guidelines. Recently, in 2019-20, South Africa has introduced draft interpretation notes for withholding tax on interest and royalty payments, proposals on interest limitations, updated interpretation note on connected persons and associated enterprises, updated guidance on mutual agreement procedures. The Democratic Republic of Congo has introduced various changes to its transfer pricing laws effective from January 2020, including:

- Introducing provisions for advance pricing agreements (APAs) for 4 years;
- Clarifying that taxpayers may need to justify arm's length price during audits at request of tax authorities and transfer pricing documentations may not suffice.

Transfer pricing regulations in Botswana took effect in July 2019.
Tanzania issued regulations in 2018 for filing of transfer pricing documentation with return of income for companies, with a threshold of USD 4.3 million along-with penalty provisions for non-compliance. The new rules include certain important provisions like:

- No royalties for locally developed intangibles that are transferred outside the country and then licensed for use in Tanzania (sale and lease back of intangibles)
- Remuneration for Service transactions to be on Cost basis
- The use of a tested party outside Tanzania is allowed only when the party's all relevant information, including financial statements, is provided
- Comparable uncontrolled price method and use of "quoted spot price" prescribed as the appropriate method for commodity transactions
- Rewarding a person other than legal owner at arm's length consideration based on DEMPE functions

Kenya, in 2018, expanded the scope of the country's transfer pricing rules to cover transactions of resident parties operating in beneficial tax regime with associated resident parties not operating in beneficial tax regime as well as transactions with related or unrelated non-resident parties in preferential foreign tax regimes and also transactions with non-residents, wherein either the transaction or the non-resident lacks economic substance. Other new rules require annual contemporaneous documentation, use of a prescribed method for commodity transactions, rejection of negative transfer pricing adjustments and acceptance of secondary transfer pricing adjustments. Transfer pricing has become a point of focus of the Kenya Revenue Authority (KRA) with increasing foreign investments.

Nigeria's transfer pricing regulations were revised in 2018, aligning with OECD recommendations, and introducing new requirements on procurement and intra-group service transactions, guidelines on pricing of commodities, limitation of deduction on royalty payment, clarification that only pricing arrangements approved by the tax authority (and not other government agencies) qualify for a safe harbour and strict penalties for non-compliance.

Judicial Approach to Curb Tax Avoidance

Intra-group transactions within multinational groups are being subject to more detailed and stringent scrutiny by revenue authorities and tax avoidance transactions by African entities are being viewed more strictly by the African judiciary in recent times.

In the case of a leading mining company Mopani Copper Mine Plc. (MCMP or Taxpayer), Zambian Supreme Court upheld the decision of Tribunal, confirming invocation of Anti-Avoidance provisions u/s 95 of the Income-tax Act by Zambian Revenue Authorities (ZRA) on international transactions undertaken by MCMP with its Swiss parent Glencore International AG (AE).

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The taxpayer had exported copper to its AE and prices for export of minerals were determined based on London Metal Exchange (LME) Copper A Grade cash settlement over a quotational period. However, based on ZRA's assessment it was found that the prices charged by the Taxpayer to its Swiss AE were much lower than prices charged to other parties. Accordingly, ZRA had proposed significant price adjustment u/s 95 of Zambian Income-tax Act which deals with transactions designed to avoid tax liability, which was upheld by order of the Tribunal. Appeal filed by the Taxpayer, against the Tribunal ruling in favour of ZRA, was dismissed by SC and price adjustments done by ZRA were upheld. SC also ruled that opinion from M/s Deloitte & Touche confirming arm's length nature of the transactions, relied upon by taxpayer, was not binding on the revenue authorities. In its detailed judgement dated March 3, 2020, SC also heard various international judicial decisions from Indian, French and English Courts.

Nigeria's Tax Appeal Tribunal has recently, on February 19, 2020, issued its first ruling on transfer pricing issue. The ruling concerns the appropriate transfer pricing method to be applied by a Nigerian company, Prime Plastichem Nigeria Ltd, engaged in trading of plastics and petrochemicals.

The taxpayer had used different methods for determining the arm's length price of its purchase of petrochemical products from an offshore related party, namely, Comparable Uncontrolled Price (CUP) Method in 2013 and Transactional Net Margin Method (TNMM) in 2014. The Tax Appeal Tribunal ruled in favour of Nigeria's Federal Inland Revenue Service (FIRS), rejecting CUP Method and upholding TNMM for determination of arm's length price due to failure on the part of taxpayer to provide sufficient and reliable information for the application of the CUP method and due to inconsistency in methods adopted by taxpayer in different years. The Taxpayer was issued an assessment for NGN 1.74 billion including interest and penalties.

BEPS Implementation and Multilateral Instrument
28 of 135 members of the OECD's Inclusive Framework are African jurisdictions and have been keen to implement the minimum standards laid by the Base Erosion and Profit Shifting (BEPS) Project of OECD. Many African countries are taking steps to implement the OECD's recommendations for countering harmful tax practices, Prevention of treaty abuse, Country-by-Country reporting, through coordinated international tax rules and enforcement efforts.

Action Plan 13 of the BEPS Project recommends exchange of information of multinational enterprise groups in form of Country-by-Country Report (CbCR) and suggests maintenance of Transfer pricing documents in form of Master file and Local file. CbCR is a snapshot of country-wise information of key indicators of MNE groups including revenues, profits, assets, employees, capital, accumulated profits, and taxes. Master file provides details of business activities, intra-group transactions with respect to intangibles, services and finance and transfer pricing policies of the group. 6 African countries, Cote d'Ivoire, Egypt, Gabon, Mauritius, Nigeria and South Africa, have legislated regulations relating to CbCR as per Action Plan 13 of BEPS. Legislations relating to maintenance of Master file by MNE groups have been introduced in 5 countries - Egypt, Gabon, Nigeria, South Africa, and Zambia. While, Botswana, Kenya, Namibia, Rwanda and Uganda have introduced draft laws or expressed intentions for implementation of reporting and exchange of CbCR and transfer pricing documentations in form of master file and local file.

Action Plan 15 of the Base Erosion and Profit Shifting (BEPS) Project of OECD recommends entering into 'The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting', also known as Multilateral Instrument (MLI). MLI is an instrument that proposes to modify over 1000 bilateral tax treaties in a synchronised, fast, and consistent manner. MLI provisions inter alia include mandatory provisions such as Article 6 of Preamble of Treaties and Article 7 on Prevention of Treaty Abuse and Articles on dispute resolutions. Until July 7, 2020, 12 African countries have become signatories to MLI, namely, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Kenya, Mauritius, Morocco, Nigeria, Senegal, Seychelles, South Africa, Tunisia. And, 2 jurisdictions, Algeria and Eswatini have expressed their interest to sign MLI. However, as on July 7, 2020, only Mauritius has deposited instrument of Ratification and MLI has entered into force for Mauritian Tax Treaties from February 1, 2020. It is important to note that Mauritius has notified its tax treaties with 44 jurisdictions to which it intends to apply provisions of MLI, which however does not include India.

India - K C Mehta 's new publication KCMSpark cover: Africa - Evolving Tax Landscape (contd.)

Consequentially, India-Mauritius DTAA is not a Covered Tax Agreement and is therefore not subject to provisions of MLI.

Countries such as Uganda, Benin, Botswana and Zambia, are also imposing the OECD's new limitations on interest deductibility as a percentage of earnings before interest, deductions, taxes and amortization (EBITDA). South Africa proposes to limit interest expense deductions to 30% of EBITDA as per a discussion paper released in February 2020.

Tax Transparency Measures

'The Africa Initiative' is a focused programme, since 2014, by 32 African members of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes created to curb tax evasions and high levels of illicit financial flows from African countries. The same was created in partnership with a number of regional and international organisations including African Tax Administrative Forum, the African Union Commission, the African Development Bank Group, the European Union, World Bank Group, Finance (Ministry of Europe and Foreign Affairs), etc with an objective to unlock the potential of tax transparency and exchange of information for Africa.

The Annual Report - Tax Transparency in Africa 2020 was launched on June 25, 2020. The Report shows significant progress made on the two pillars of the Africa Initiative:

- raising political awareness and commitment in Africa and developing capacities in African countries in tax transparency and exchange of information.

The Report acknowledges that the exchange of information networks of African countries has further expanded to reach 3,262 bilateral relationships compared to 2,523 in 2018 which has significantly increased from merely 685 in 2013, which is mainly due to the growing number of countries joining the Convention on Mutual Administrative Assistance in Tax Matters.

There is significant increase in the number of exchange of information requests made by African countries, which has translated into additional tax revenue. In the year 2019, 5 African countries identified nearly USD 12 million additional tax as a direct consequence of the requests sent. Whereas, during the period of 2014 to 2019, a group of 8 African countries identified USD 189 million of additional taxes.

Apart from Exchange of Information on Request (EOIR), the programme has also been focussing on effective implementation of Automatic Exchange of Information (AEOI), expansion of staff's knowledge, the availability of beneficial ownership information and introduced measures including voluntary disclosure programmes. AEOI with various jurisdictions has been operational in Seychelles and South Africa since 2017 and Mauritius since 2018, whereas, Ghana has joined AEOI initiatives since 2019 and Nigeria is proposing to implement the same from 2020.

Tax transparency and EOI initiatives is playing a crucial role in helping African governments stem illicit financial flows, increase domestic revenue mobilisation and improve its ranking in ease of doing business.

Concluding Thoughts

Many African countries are implementing series of measures for curbing tax evasions and towards tax transparency. Most of these countries have been actively participating in implementation of recommendations from OECD's BEPS project, especially in respect of exchange of information through CbCR, curbing harmful tax practices, transfer pricing of intra-group services, transfer pricing of intangibles using analysis of DEMPE, etc.

A definite trend is visible in African jurisdictions, trying to plug loopholes and seeking fair share of taxes. Though these trends are currently considerably visible in few jurisdictions, the same are bound to emerge in most jurisdictions from the region.

Indian MNCs having operations in African continent will have to give due considerations to intra-group transactions considering the increasing importance towards the aforementioned parameters coupled with the approach being adopted by Transfer Pricing authorities, both in India and in the African jurisdictions.

Dhwani Shah
K C Mehta & Co.
E: dhwani.shah@kcmehta.com

UK - Were you born in the US, do you have a parent that is American, or do you hold a Green Card?

If so, you may owe the IRS taxes and face hefty penalties and this could be your last chance to take advantage of IRS Streamlined Filing Procedures

Are you a US taxpayer who is not up-to-date on their Federal tax filings with the US Internal Revenue Service (IRS)? Do you even realise you may owe the IRS tax? The current method that allows some people to comply with their US tax filings may be about to close, which could prove to be very expensive, so now is the time to act.

We have created a quick and easy tool to check if you should be filing US tax returns. Find it Here

The carrot and stick

The US tax regime requires non-resident citizens to pay full ongoing 'home country' taxation, even if they live or work elsewhere in the world. In fact, every US bi-lateral tax treaty contains a provision protecting their right to continually tax income and gains globally.
Often US taxpayers abroad become delinquent with their reporting obligations and the IRS wants these delinquents to be fully compliant. Since September 2012 they have used a 'carrot-and-stick' approach to those who have not deliberately defaulted.

The 'stick' is the possibility of hefty penalties in addition to the tax at stake with up to 50% penalties on undisclosed funds and up to 35% penalty on distributions from foreign trusts.

The 'carrot' is a scheme called Streamlined Filing Compliance Procedures.

What are Streamlined Filing Compliance Procedures?

The foreign streamlined procedure is a programme which allows US taxpayers to file the last three years of late US Federal income tax and information returns, six years of foreign bank account reports and settle any US tax payable with late interest, but not be subject to income tax and information return penalties.

To qualify for the foreign streamlined procedure an individual must meet the following criteria:

- Their failure to file is due to non-wilful conduct. This includes negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.
- The IRS has not initiated a civil examination of a tax return
- During the last three calendar years the individual must not have an abode in the US and have one year where they have been physically outside of the US for at least 330 days.

Why should I act now?

The IRS have always been clear that the programme will have an end date. Recent anecdotal evidence tells us that the end date is coming in the near future. Such a move might come with immediate effect, although there is some precedent to suggest that the closure would be at the end of a period of notice.

The current submission process takes time with everything required by the IRS to be presented in a single package rather than instalments. If the closure of the programme is announced soon and is subject to a short notice period, it may be impossible to assemble the necessary submission before the programme closes. Therefore, now is the ideal time for any US citizen with a delinquent tax profile who satisfies the 'non-wilful' test, to take advantage of the streamlined route back to compliance, before the opportunity disappears.

What is the Expatriation Initiative?

In 2019 the IRS introduced an additional initiative to the Streamlined Procedures, aimed at US taxpayers who had never filed US tax returns and had either given up their US citizenship or were considering doing so.
They require filing of six years of US income tax returns, with the added incentive that up to $25,000 of tax liabilities will be waived.

To qualify for these procedures an individual must:

- have relinquished their citizenship after March 18 2010.
- not have any tax filing history as a US citizen or resident.
- have a net worth of less than $2 million at both the time of expatriation and the time at which they make their submission.
- not have an aggregate tax liability over the year of expatriation and the five years prior exceeding $25,000 (after considering foreign tax credits, exclusions and exemptions but not after any US

UK - Were you born in the US, do you have a parent that is American, or do you hold a Green Card? (contd.)

Federal tax withholding)
- agree to complete and submit all required Federal tax returns (including Foreign Bank Account Reports and other information returns) for all six years
- have been non-wilful in their failure to file required Federal returns (including income tax returns, gift tax returns, information returns)

Conclusion

This really is the 'last chance saloon' for delinquent US tax filers to take advantage of the Streamlined procedures, to become compliant and avoid expensive penalties from the IRS.

Our US/UK private client team is made up of experienced personal tax advisers who are passionate about their field of expertise. We will work with you, your family and your business to minimise tax impacts across both the US and UK.

Adam Smith
Blick Rothenberg
E: adam.smith@blickrothenberg.com

BKR EMEA Tax Meeting 2020

The BKR EMEA Tax Meeting is currently planned for Monday, 23th November 2020 at the Hilton Hotel, Schiphol Airport, Amsterdam, Netherlands. With the current situation the format of the meeting is being discussed. Details to follow.