

Contributions for Edition 17 of the EMEA Tax Bulletin should be with Tim Morris at [tim.morris@bkremea.com](mailto:tim.morris@bkremea.com) by 12th January 2018.

# EMEA TAX BULLETIN

OCTOBER 2017 - ISSUE 16

## Dear Friends and Colleagues,

Welcome to the autumn edition of the EMEA Tax Newsletter. October already, and as every year, autumn comes with interesting events for BKR and our region.

Those of you who attended the Worldwide Meeting in London have hopefully enjoyed “Uniting in the Kingdom”, and maybe some of you even stayed on for the first BKR International Tax Workshop following the general conference. Double Tax Treaty Provisions, Global Tax Transparency, shared experiences on cross border transactions – there was certainly something for everybody on the agenda, and a great opportunity to discuss with colleagues from around the world.

I dare to promise that the same will apply to our region’s annual tax meeting which is coming up again in Amsterdam on 27 November 2017. If you have not registered for the event yet, make sure you still do and bring your colleagues along, too! This year, the agenda includes panels on VAT and recent ECJ cases, as well as discussion rounds on other tax matters and we will also talk about BREXIT and its consequences for international

taxation. I look forward to seeing many of you in Amsterdam!

This newsletter features articles on tax and other news from Italy, Cyprus, France, Austria and the UK, as well as an update on the new Employment Taxes Practice Group. And, as BKR International keeps growing, there are news on a new member firm in Kenya.

A big thank you to all who have contributed to this newsletter, as well as to Emma, Tim and Julia for putting it together again. Without your continuing support, this newsletter could not exist. Therefore please keep sending us articles, and maybe also encourage some of your colleagues to do so., thus making sure that we all stay well connected!

Last but not least - 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!  
Petra

**Petra Owen**  
**EMEA Tax Committee Chair**  
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## Update from Italy

### 1) Direct Income Tax – implementation of rules with respect to the foreign branch exemption option

The Italian tax authorities decision no. 165138 of August 28, 2017 defined the procedures for implementing rules with respect to “foreign branch exemption option” as per Article 168-ter of Italian tax law.

Such regime confers on companies, resident in the territory of the State, the option of exempting profits and losses attributable to all their permanent establishments located abroad (but not established in the privileged tax territory) for the purpose of the taxation of its income in Italy.

Consequently, if before this provision the income of the Branch was taxed both abroad and in Italy (with the deduction of the foreign tax credit related to the taxes already paid abroad), adhering to the branch exemption regime the taxation of the foreign permanent establishment will be carried out exclusively in the foreign territory in which they are located.

The provision established that:

- The company must exercise the option in the income tax declaration relating to the tax period of the setting-up of the branch: from this period the regime is effective. For foreign Branches existing at the time of issuance of the provision, the option may also be exercised in the tax return for the second tax period after October 7, 2015 (tax period 2017 for “solar subjects”).
- The option has an effect on all company’s permanent establishments existing at the time of the option, as well as for those established later, and cannot be revoked. Effectiveness of the option ceases following the closure, also for liquidation or sale, of all existing Branches (all-in, all-out principle).

### 2) VAT – Intrastat returns – simplification measures

On September 25, 2017, the Italian Tax Authorities issued provision no. 194409, which foresees simplification measures (with effect from January 1, 2018) with respect to the submission of Intrastat returns, following the amendments introduced by Law Decree no. 193 of October 22, 2016 and Law Decree no. 244 of December 30, 2016.

### Main simplification regarding the purchase of goods and services

With regard to the purchase of goods and services the following is foreseen:

- the abolition of quarterly Intrastat returns;
- monthly Intrastat returns must be filed exclusively for statistical purposes;
- the increase in the quarterly acquisition threshold (different limits are now provided) above which it is obligatory to submit the summary lists relating to purchases of goods and services with monthly frequency;
- the simplification in filling-in some fields contained in the summary listings relating to intra-Community purchases.

### Main simplification regarding the sale of goods and services

With regard to the sale of goods and services the following is foreseen:

- to maintain the existing Intra forms as well as confirmation of the threshold of Euro 50.000,00, to define the monthly or quarterly frequency for the submission of the summary lists;
- in the monthly Intrastat returns, the statistical section must only be completed where the amount of such sales is equal to or higher than Euro 100,000.
- the simplification in the filling-in some fields contained in the summary listings relating to intra-Community services rendered.

### 3) Anti-Money Laundering Directive

Legislative Decree no. 90 of May 25, 2017 which entered into force on July 4, 2017, implements the Anti-Money Laundering Directive (2015/849), focusing on preventing money laundering and terrorist financing.

In particular, credit and financial institutions, professionals, providers of gambling services and other qualifying persons will be requested to identify and assess risks regarding money laundering and terrorist financing, as well as report information on suspicious transactions. Furthermore, this Decree introduces new rules related to the identification of the ultimate beneficial owner and amends applicable administrative and criminal penalties.

## Italy update contd.

### 4) Labour law: the new contract and relative fulfillments

Article 54-bis of Legislative Decree number 50/2017, established the new non-recurring work services contract (so-called "prestazioni occasionali").

The provision allows the employer to use non-recurring work services, within the limits foreseen by the law, according to the formalities provided by the related contract.

With circular no. 107/2017, the National Institute for Social Security (INPS) describes the operating instructions concerning the new contract.

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## Introducing the EMEA BKR Employment Tax Practice Group

On Thursday 5th October 2017 BKR EMEA Region held its second BKR Employment Tax Practice Group meeting. The initial call during the summer was by phone and it has now moved onto a webinar format so that attendees can present slides and it can be recorded. Seven members from around the region and from AsiaPac attended to discuss 'Tax Relief for Internationally Mobile Employees' and was chaired by Vanesha Kistoo (Blick Rothenberg). Details of the meeting are in the members area at <http://www.bkrema.com/practice-group/employment-tax-practice-group/> The original idea was from Mark Abbs (Blick Rothenberg) and is being operated on a trial basis.

Mark's thoughts on initiating the group are:

### Introduction:

- Initially on a trial basis
- Focused on these employer/employment related tax services\*
- Attended by specialist managers:
  - o Interact with their peers in other BKR firms
  - o exchange technical updates relevant to their clients
  - o joint marketing of international client targets
  - o potentially work on global employer projects
- \* eg how could BKR firms provide a global compensation reporting service to clients.

### Background:

- Opportunities for BKR member firms to work more

closely together

- Local and international aspects \*
- Subjects include:
  - o advice on payroll/withholding regulations
  - o employee/director expense policies
  - o benefit & expense reporting
  - o payroll audits/disputes
  - o related employer tax advice
  - o International employee issues etc.
- \* eg 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 eg global compensation gathering for international employers.

### 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;

### Next Meeting

Any members who think they might benefit from the Practice Group can sign up for it. The next meeting is scheduled for the new year and details can be obtained from the Executive Director, Tim Morris.  
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## German Ministry of Finance on coordinated tax audits with foreign tax administrations

The German Ministry of Finance has released a guidance note - in particular with regard to legal bases and practical implementation - on coordinated external tax audits with foreign tax administrations dated 6 January 2017.

### Objectives of coordinated external audits

The main objective of coordinated external tax audits is to achieve a consensual conclusion of the decisive facts with the participation of foreign officials in order to avoid or simplify the international conflicts of taxation. Furthermore, the consensual determination of the decisive facts can be the basis for the application for an Advance Pricing Agreement (APA) by the taxpayer.

### Legal basis for coordinated external tax audits

In the guidance note two different types of coordinated external tax audits are named: Simultaneous external tax audits and joint audits.

Simultaneous external tax audits are independent tax audits carried out at the same time by the participating financial authorities in their own territories according to their applicable tax code. Relevant information will be exchanged between the participating financial authorities afterwards. They can take place in relation to EU-Member states as well as to third countries.

At joint audits the tax authorities investigate the facts together. German officials are present in the other state during relevant stages of the audit and vice versa. Officials from EU Member States are entitled to an active right of examinations in the presence of domestic officials, if the taxpayer agrees. In the case of third countries, the officials only have the right to be present during the audit. They do not have an active right of examinations.

### Practical implementation of coordinated external tax audits

For conducting coordinated tax audits the Federal Central Tax office as the central liaison office is in charge of communicating with the foreign and domestic tax authorities. Amongst others it accepts proposals from foreign tax administrations and submits proposals for examination by the German Tax administration to the foreign tax authorities concerned. Furthermore

it verifies the legal admissibility of incoming and outgoing audit suggestions. Since the intergovernmental assistance for coordinated external audits constitutes an interference with the rights of the involved person the taxpayer and all other domestic parties to which the exchange of information pertains must be consulted in a timely manner. Objections to the planned exchange of information and the presence of foreign officials during investigations in Germany generally have to be raised against the German tax office responsible for the external audit. Then the Federal Central Tax office makes a decision on the taxpayers' objections. The domestic and foreign officials involved in the joint audit are expected to produce a coordinated results report regarding the joint external audit.

Joint tax audits are to be separated from the consultation and preliminary consultation procedures. The exercise of the functions of the competent authority for the purposes of consultation and prior consultation shall not be delegated to the internal auditors involved in the audit. If the aim is to reach a legally binding agreement regarding the tax treatment of the consensually determined facts, a corresponding application by the taxpayer by means of a mutual agreement procedure is necessary.

### Conclusion

A joint tax audit may, for example, be helpful when a transaction is subject to different tax rules in each jurisdiction, such as transfer pricing disputes. Moreover since the introduction of the Mini One Stop Shop, tax audits have been an important but unsolved issue. Harmonized rules have not been established by the Member States. Neither the EU VAT Directive nor the VAT Implementation Regulation contain any corresponding provisions. The present guidance note eliminates some of the existing legal uncertainties, at least from a German perspective.

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## Cyprus Income tax exemptions: What you need to know!

On 24 July 2017, the Cyprus Tax Department issued Interpretative Circular 2017/4 in relation to the income tax exemptions, sections 8(21) and 8(23) of the Income Tax Law 118 (I)/02.

The specific criteria of sections 8(21) and 8(23) are listed below:

**Exemption of section 8 (21):** Employees are exempt from income tax on 20% of their remuneration or €8.550 (whichever is lower) for employment exercised in Cyprus. This exemption is applicable to individuals who were not Cyprus tax residents during the year preceding the year of commencement of employment in the Republic. The exemption begins from the 1st of January of the year which follows the year in which the employment commenced. It should be noted that for:

- Employment which began in any year before and until 2011, the exemption is granted only for 3 years
- Employment which began from year 2012 onwards, it is granted only for 5 years.

The exemption can be claimed until 2020 when the scheme will expire.

**Example:** An individual who was a non-tax resident during the year 2018, began his employment during 2019. Such individual shall be entitled to the application of the exemption only for the year 2020.

### **Exemption of section 8 (23):**

The second exemption which has been in effect since 1 January 2012 (and updated in 2015) relates to a 50% exemption of the remuneration from any employment exercised in Cyprus if this exceeds €100.000 annually. The exemption is applicable irrespective of whether in one year the income from employment falls below €100.000 provided that at the commencement of working in the Republic, the income from employment in the Republic exceeded the €100.000 threshold and the Commissioner is satisfied that the fluctuations in the salary is not a scheme intended in obtaining the relevant tax exemption.

The exemption has been restricted so that individuals who were tax residents in Cyprus in any 3 out of 5 years preceding the year of employment (not applicable for individuals with a commencement of employment in 2012 to 2014) and in the year preceding the year of

employment will not be granted the exemption.

The exemption applies for 10 years.

### **Example:**

An individual was a tax resident in Cyprus during the years 2009-2013. He left Cyprus during the years 2014-2015. He returned in March 2018 and he was employed. The five years preceding the year of employment are 2011-2015 and out of these the 3 years (2011-2013) he was a tax resident. Therefore, the individual shall not be entitled to the exemption.

The following have been clarified in the Circular published:

- Exemption is applicable to any of the 10 years in which the annual remuneration exceeds €100.000. If any of these 10 years the income does not exceed €100.000 then the taxable person can claim the first exemption if the 5 year period has not expired.
- Exemption is granted if actual income within one year of assessment does not exceed €100.000 due to commencement or termination of contract but the income from employment exceeds €100.000 on an annual basis.
- The maximum years the exemption applies is 10 years including the year of commencement of employment.
- Bonuses and any other remuneration taxable in accordance with the Income Tax Law should be considered for the purposes of calculating the annual income of €100.000.
- The remuneration for the provision of services outside the Republic for which the 90 day rule deduction is granted, is not taken into account for the calculation of annual income threshold of €100.000 since this does not relate to income exercised in the Republic.
- Exemption is also granted if a person is employed by two or more employers in Cyprus, with the total remuneration exceeding €100.000 calculated on an annual basis.

### **Example:**

An individual who was not a tax resident in Cyprus in 2011, came to Cyprus and was employed on 15.6.2012 on a monthly salary of €8.500. For 2012 he is entitled to the 50% exemption because for 2012 his income was €55.250 but on an annual basis the income is over €100.000.

## Cyprus Income tax exemptions: What you need to know! Contd.

### Clarifications for both exemptions:

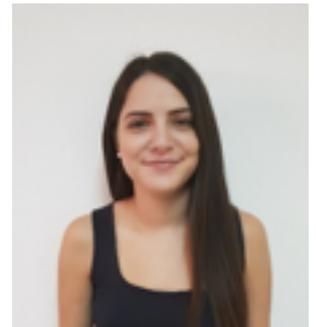
- For fiscal years up to and including 2014, an individual had to choose between the two exemptions available as these cannot be granted simultaneously. From the year 2015 and onwards it is specifically clarified that in the case where the exemption under section 8(23) is claimed then the exemption under section 8(21) cannot be claimed
- For each tax year a different exemption may be granted
- Exemption may be granted to individuals who are tax or not tax residents in Cyprus during the employment in the Republic
- Exemption may be granted to individuals whose commencement of employment begins later in the year of assessment, when they have already completed more than 183 days in Cyprus, provided that they were non-tax residents during the previous year of assessment.
- The exemptions are applicable irrespective of whether the individual carries out the employment in Cyprus with the same employer in which he was employed abroad or not.

- The exemptions may be granted in the case of graduates who complete their studies abroad and return to work in Cyprus, provided that during the previous fiscal year they were residents outside the Republic.
- Exemption may be granted simultaneously with the deduction which relates to the remuneration for the provision of salaried services outside the Republic for a total period of more than 90 days in a tax year.
- Exemption is also granted to a person who is employed in a company established by the same individual (i.e. a director or a shareholder of the company).

It is important to note that any cases not covered by the circular issued shall be forwarded to the Commissioner for a decision.

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## SFC Group (Paris) - How Are Dividends Taxed? Speed Mooc SFC: S01 - E11

Imposition at the progressive scale, abatement, lump-sum levy at source, social levies... Nicolas Total, a partner at SFC Lyon, takes stock in this new episode on the rules and the taxation modalities applicable to dividends.

In partnership with the magazine, Chef d'entreprise, Speed Mooc SFC is a series of three-minute videos that present accounting, tax, or social information dedicated to creators and company heads (TPE and SMEs) on subjects related to the creation and management of their activities. Dynamic, animated, and educational, the videos are designed by SFC Group accountants for entrepreneurs who wish to be informed online in a synthetic and efficient manner. The information is delivered in a playful manner thanks to a simple and

rhythmic discourse, which simplifies subjects that sometimes appear to be complex.

All videos are available on the firm's YouTube channel: [https://www.youtube.com/channel/UCFYT0qvK-7F\\_zt\\_967P82A?disable\\_polymer=true](https://www.youtube.com/channel/UCFYT0qvK-7F_zt_967P82A?disable_polymer=true). (Some of them will be translated into English shortly.)

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## The MLI – International convention against tax avoidance concluded

In June 2017 Austria signed the Multilateral Instrument “MLI” in Paris together with almost 70 other states. The MLI is a convention which facilitates the implementation of tax treaty related measures to prevent base erosion and profit shifting, using the recommendations from the OECD BEPS Project. The MLI is designed to offer solutions to close gaps between international tax rules by directly modifying bilateral tax treaties. The measures are designed to make sure, that profits are taxed where actual economic activity and added value takes place. The transfer of profits to low-tax-countries should be stopped.

The MLI modifies double tax treaties directly, no further implementation is needed. In Austria, 38 double tax treaties are affected - including Germany, Switzerland, France and Italy. Austria also expressed some reservations, so the MLI is not fully applicable to every Austrian DTA. The alternative to implementation in a multilateral agreement would be to re-negotiate all DBAs individually, so the MLI is the fastest way to achieve the objectives which were set in the BEPS project. A list of the affected Austrian DBA can be found here: [https://www.parlament.gv.at/PAKT/VHG/XXV/I/I\\_01670/imfname\\_640078.pdf](https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_01670/imfname_640078.pdf)

The MLI includes the following measures:

- Measures to avoid hybrid mismatches
- Measures to avoid treaty abuse
- Measures regarding the avoidance of PE Status
- Measures to improve dispute resolution

### Impacts of the MLI on Austrian DTA

The first measure is to avoid hybrid mismatches – where jurisdictions have different regulations to qualify for example whether entities are transparent for tax purposes. This could lead to double taxation or no taxation.

Especially the minimum standards - for example the measures to avoid treaty abuse - are modifying existing Austrian DTA. The “Principal Purpose Test” should prevent, that the DTA benefits are applied, if the arrangement was made to achieve this DTA benefits in the first place. The DTA benefits may also not apply for entities located in third countries, if no actual activity is exercised.

Also the definition of permanent establishments is subject to changes in the MLI. Because the definition of the representative PE is not part of the minimum standard of the MLI, Austria has refrained from applying the provisions fully and has made reservations. The current administrative practice already provides a definition of the representative PE, but in order to be effective, the consent of both contracting parties (of the DTA) is required. Bilateral negotiations are planned. The definition of the auxiliary permanent establishment (preparatory activities) has effect on the Austrian DTA. Austria approved to the new mutual agreement procedure and the corresponding adjustments without major reservations.

### Implementation

The implementation of the MLI can be expected in 2019, since the MLI is a state contract it requires the approval of the national assembly.

A list of countries participating in the Agreement can be found here:

<http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>

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## BKR International Recruits New Kenyan Member Firm

BKR International is delighted to welcome its latest member firm, Ronalds & Associates, in Kenya. Ronalds and Associates join BKR International on 1st October 2017.

The Nairobi-based firm offers audit, tax, outsourcing and financial advisory services to a range of clients. The team prides itself on offering exceptional value services through its highly experienced professionals. Ronald Bwosi, Managing Partner of Ronalds & Associates, comments "we are thrilled to be part of the BKR International association. We feel that this

partnership will bring great opportunities for our firm, both in relation to enhancing our firm's image so that it appeals to international businesses, but also being part of the association will mean we have access to information from other member firms on global trends and specific insight into doing business across borders." Their specialist for all tax specialists is Peter Mwanja.

### **Peter Mwanja**

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## Blick Rothenberg appoints two new partners

BKR's London firm Blick Rothenberg welcomed Simon Sutcliffe to the Corporate Tax team and Fiona Fernie to the Tax Dispute Resolution Team.

### **Simon Sutcliffe**

Simon joins Blick Rothenberg's Corporate Tax Team, specialising in customs and excise duties and customs advisory as well as indirect tax disputes and litigation. He brings nearly 30-years' experience in law enforcement, intelligence, indirect tax and excise duties at senior levels within the police, customs and professional services. He has led large civil litigation cases in the Tax Tribunal on behalf of clients and advised on diverse areas such as customs valuation, accusations of diversion and mis-declaration, customs and excise warehousing regimes, import and export of many products especially alcohol and tobacco and also the detention, seizure and restoration of goods.

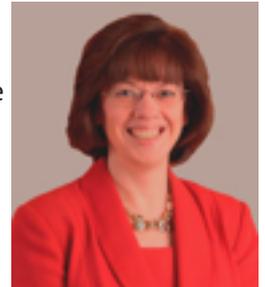


His expertise also extends to bespoke advisory services on customs tariff, classification of goods and services, registration requirements for various HMRC importation regimes and reliefs and the potential impact of Brexit on those regimes. Additionally, he advises organisations who are in dispute with UK and overseas customs authorities and law enforcement agencies.

### **Fiona Fernie**

Fiona joins Blick Rothenberg's Tax Dispute Resolution Team, having previously been Head of Tax Investigations

at a law firm, prior to which she spent a number of years as a Tax Dispute Resolution Partner in a large international accountancy firm.



She has over 30 years' experience in providing advice and support to clients who are subject to investigations/enquiries by HM Revenue & Customs to enable them to reach a satisfactory conclusion, with particular focus on large complex investigations, and those with an offshore element.

Fiona also advises both taxpayers and other professionals in relation to use of information and inspection powers, time limits for assessment, determining penalty loadings and all other aspects of the administration and enforcement aspects of the taxes statute. Her clients include individuals, trusts, corporates, partnerships and other professional advisers. She covers all types of direct tax.

Fiona has lectured extensively in relation to tax dispute resolution across the world at professional conferences, has written articles for the trade press and is quoted extensively in the national broadsheets on the subject, as well as making occasional appearances on BBC and Sky News. She is a Fellow of the Institute of Chartered Accountants in England and Wales and a full member of the Society of Trust and Estate Practitioners.

For further details on this article contact [email@blickrothenberg.com](mailto:email@blickrothenberg.com)

## The Introduction of the new EU General Data Protection Regulation (GDPR) could affect Members doing business with Europe

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The new EU GDPR changes the rules governing data protection. It will come into effect in May 2018 and applies to personnel data that firms hold. Members who offer goods or services to EU subjects, or collect data from EU subjects, may have to show that they are

compliant with the regulations. Members are advised to check in their own jurisdictions how they will be required to comply with GDPR. The UK's ICAEW have produced an Essential Guide to GDPR which can be downloaded at [GDPR Guide](#).

## BKR EMEA Region Tax Meeting

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The next EMEA Tax meeting is being held on Monday, 27th November 2017 at the Hilton Hotel, Schiphol Airport, Amsterdam, Netherlands. Details are at [EMEA Tax Meeting](#).

## Tax Specialist database

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The updated November 2106 Tax Specialist database is available in the Members Area of the EMEA website, where you will find details of specialists in the 5 main tax areas of Corporate International Tax, VAT/Sales Tax, Transfer Pricing, Personal International Tax and Expatriate Tax. Members are currently being asked to update this spreadsheet. Please send amendments to the Executive Director on: [tim.morris@bkremea.com](mailto:tim.morris@bkremea.com) and they will be included in the next update.

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