INTERNATIONAL BUSINESS

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Auren International Business is a quarterly publication, made up of contributions from colleagues all around the world. The newsletter compiles country focus articles, international tax cases as well as technical updates on a variety of topics that impact business.

Experts in Auren have the knowledge and experience to help you on your journey, and this issue should be the starting point for your inquiries.

Features of this edition include:

A Brief on the Taxation of Share-based Payments in Nigeria; Taxation of income received by a foreign company or foreign individual in Russia and Benefits for Angel Investors in Israel.

We hope you find the contents of this newsletter useful and informative. Happy reading!

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Expatriates in Colombia

The Natural persons in expatriate status, who are on mission and representing multinational companies, that have operations in Colombia, have experienced some changes in the regulatory evolution in tax matters, especially in recent years, where the country has been introducing changes, in accordance with existing provisions in member countries of the OECD, of which our country has been part since the last year.

Obligations of expatriate employers

The multinational companies that require expatriate workers on mission, must to coordinate the work visa, obtain an Identification Card, sign a work contract, affiliate the expatriate to the social security system and must comply with the obligations of social benefits and legal payments that correspond according to the salary remuneration and other payments or compensations made to the expatriate.

Residence for Tax purposes

The Nationals or foreigners who meet the requirements established in the National Tax Statute, acquire residency for tax purposes, if they remain for more than 183 days in Colombian territory, during a period of 365 days, continuously or discontinuously, that is to say, from on day 184, they are considered tax residents.

The foregoing, leads to the expatriate from that moment, become a taxpayer of income taxes and complementary, both for incomes obtained in Colombia and how the incomes obtained in other countries. On the other hand, expatriates are obliged to declare the property possessed abroad, it is important that the expatriate validate if in Colombia there is a agreement to eliminate double taxation with their country of origin, since it can represent discounts for taxes paid abroad.

Tax obligations

The expatriates who are residents for tax purposes and who additionally comply with the limits of income or assets established in the National Tax Statute, must comply with the following obligations:

1. **Unique Tax Registry RUT.** The expatriate must manage with the tax authority, Directorate of Taxes and National Customs DIAN, the issuance of Tax Identification Number **NIT**, in order to comply with the obligations that correspond it.
2. **Tax Income and Complementary Declaration.** The expatriate must comply with the obligation to present and pay the income and supplementary tax in accordance with the forms prescribed by the DIAN, in the terms established in accordance with the last two numbers of the NIT, the tax rate will depend on the rank in the which are the liquid taxable income.
3. **Declaration of Assets Abroad.** The expatriate must comply with the obligation to present the declaration, in accordance with the forms prescribed by the DIAN and within the deadlines established in accordance with the last two issues of the NIT.

Non residents

The expatriate workers who do not meet the requirements to be considered tax residents in Colombia, for having less than 183 days of continuous or discontinuous stay and for having annual incomes or assets lower than the established limits, will not be required to present declarations of taxes, the company employer will make at the time of payment of salary income or for services rendered, a withholding tax at the current rate of 15%.

Ricardo Sierra J.
aurencolombia@bog.auren.com
Auren Colombia

What is the PSD2 and how is Croatia preparing for a change of game in the payment industry?

PSD2 (Second Payment Services Directive) is an EU Directive with a huge impact on payment processing industry. The traditional role of banks in this sector is drastically changing as they are faced with the obligation to open their communication channels to external parties and allow access to payment account data.

The European Banking Authority (EBA) - a body that issued the underlying Regulatory Technical Standards (RTS) – has stated that the *"primary goal of the directive is to create a single integrated market for payment services by standardizing the regulations for the banks and for the new payment service providers"* and that *"the banks' monopoly on their customer's data disappears"*. What does it mean? It means that payments are now available through different channels and providers, who can - through an innovative, fast and flexible interface - connect to payment accounts opened at credit institutions and execute payments faster and cheaper.

Obviously, a series of questions and concerns have been, and are still being raised, starting from GDPR to cybersecurity. Which data will be accessed? How will it be monitored? Will our bank accounts still be secure? Will new providers provide a cheaper transaction price? The Directive is quite extensive and has covered most of the issues by setting strict rules regarding payment authentication, confidentiality and integrity of data, as well as the right of account holders to approve access of TPPs to their own accounts.

In this new setting, two new categories of payment services providers have emerged: Payment Initiation Service Providers (PISP) and Account Information Service Providers (AISP). These providers are collectively referred to as Third Party Payment Service Providers (TPP). Their services are based on the access to the bank accounts destined for payments and which are accessible online (via internet banking or mobile banking). Such right to access requires from banks to open their communication channels so that TPPs could access data of their customers' accounts. The access is made through an interface that enables automatic exchange of data between the software of the bank and the software of the TPP, the so-called Application Program Interface or API or "access to account interface" (XS2A interface).

What are payment initiation services? The EU payment market is now open for companies to offer services based on the access to the information contained in a payment account. They cannot open and manage accounts on behalf of customers; this process is still restricted to credit institutions. For example, for online payments, they function as an alternative to credit card payments – the consumer only needs to have an online payment account. In order to provide these services, TPPs will not have full access to the account of the payer. They will receive only a yes/no answer whether there are sufficient funds on the account, before proceeding with the transaction. Transaction will have to be authorised by the account holder.

What are account information services? Account information services provide to their customers an overview of their financial situation on a global level, gathering information from different payment accounts from different banks and provide charts, forecasts, categorisations and similar, helping customers in financial planning and budgeting. Account information service providers will receive the information explicitly agreed by the payer and only to the extent they are necessary for the service provided to the payer.

Both types of service already exist, but through the PSD2 they are regulated on the EU level for the first time, removing thus national barriers for licensed providers and allowing them to offer services across Europe. In fact, Sofort in Germany, IDeal in the Netherlands and Trustly in Sweden already provide such services, allowing online shoppers to make purchases without a credit card. These are innovative and low-cost payment solutions and they have posed a threat to card issuing companies such as Visa, MasterCard and American Express. For the latter, the impact of PSD2 was too harsh and AmEx decided to abandon its business model adopted in the EU, which was based on licencing and exclusive cooperation with one bank in a country. AmEx withdrew from the EU until a new model will be relaunched.

Although somewhat revolutionary, the adoption of PSD2 shall be gradual. As a first step, the banks will open only information on current and gyro payment accounts, whereas the info on credit cards and other ways of payment shall be accessible in the upcoming years. Banks are therefore undergoing a significant digital transformation in order to adjust their systems and prepare for integration with external systems. It will be mandatory for the customer to have the opportunity and possibility to choose to which TPP he or she shall grant the access and TPPs will have to comply with the requirements of the so-called strong customer authentication (SCA) while initiating an electronic payment transaction. Strong customer authentication uses two or more operations for the transaction validation, e.g. PIN/password, and/or a token or similar validation code device, and/or fingerprint/voice recognition. The rules however are not unified and the EBA's Regulatory Technical Standards are still just mere guidelines, so the full impact of the Directive's implementation remains to be seen. The banks are confident that the account holders will give precedence to trusted, long-term partners (i.e. banks), whereas TPPs see their future in new generations, who are more inclined to innovative, fast, flexible, and cheaper providers available round-the-clock.

The Directive (full title: *Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication*) has been issued in November 2017 and entered into force on March 14, 2018 but the final deadline for the implementation is set for September 14, 2019. The Croatian government has issued the new Payments Act to adopt these changes. The Payments Act ("Zakon o platnom prometu"), published in the official gazette "Narodne Novine" no. 66/2018, entered into force on July 28, 2018, with the exception of articles transposing the article 30, paragraphs 3 and 5 of the Directive, entering into force on September 14, 2019, and the article 48 paragraph 8, entering into force on July 28, 2020. The latter concerns the right for refund of already authorised payments in Croatian Kuna, bypassing the conditions foreseen by the rest of the provision of the cited article 48.

The Croatian Banking Association conducted a research on changes brought by the PSD2. The research showed that 44% of survey participants are ready to consider mobile and internet banking payment providers which are not banks, 37% will evaluate the quality of such a new offer and 19% would never leave their bank. 53% of the respondents have stated that they will change the provider because of lower transaction fees, whereas 27% sees as a main motive the simpler and more innovative service. Croatian citizens expect from banks a higher level of security and protection and in fact almost 1/3 of survey participants would not grant access to their data by TPPs. A significant 46% would first have to be convinced about the security of data protection before allowing access. The majority (69%) feels that banks are more capable of providing higher security level of data protection, whereas 31% is more inclined towards new companies because they are more advanced in digital technology. 30% would choose a domestic FinTech company or a telecom operator.

The research shows that almost all Croatian banks are in the final stage of aligning to the PDS2, except for technical requirements on SCA, which will have to be done by September 2019. Some banks have already adopted new innovative business models and solutions and pose a significant threat to traditional banks with slower digital transformation strategy. The majority of banks already cooperate with domestic FinTech companies and are managing to follow the pace of western European trends. In fact, a taskforce group organised back in October 2017, comprised of 7 Croatian banks and FINA (Croatian Financial Agency) is working on issues related to the implementation of the so-called "instant payments". The taskforce is considering a new platform to facilitate development of new payment products. The taskforce is organised under the Croatian National Bank and its members come from different professions and expertise areas such as legal, consumer rights, payment processing, IT, cybersecurity, central banking operations etc. The Croatian National Bank Guvernor, Mr. Vujčić has stated that the setup of this taskforce is a direct result of the intention to bring together and unify operations of different areas, considering the multidisciplinary nature of the PSD2 and payment industry as a whole. New instant payment products of Croatian banking community should be available to banks and their clients by the end of 2019.

Eurofast remains committed to closely following the developments in the payments services arena and to provide custom made solutions to clients seeking professional guidance in Croatia and the wider region.

Silvia Cancedda
David Jakovljevic
zagreb@eurofast.eu
Croatia

Member of
Alliance of independent firms

Shell Companies in Cyprus

On the 2nd of November 2018, the Central Bank of Cyprus has issued a Circular defining the term ''Shell Company''.

The term ''Shell Company'' refers to a limited company or any other entity that has the following characteristics,

- Has no physical presence or operations in Cyprus and/or other jurisdictions; "physical presence" includes employees, office space, telephone line, etc. Nominee services does not constitute on its own physical presence, even if a director or secretary exist; and
- Has no established economic activity
- Companies excluded from Shell that could be considered as having economic activity need to have the following features,
- Company which holds stock or shares or any other equity instruments of another entity/company where the Ultimate Beneficial Owner is identified,
- Company which hold intangible or other assets including real estate, ship, aircraft, portfolio of investments, debt and financial instruments,
- Company that has been incorporated to facilitate currency trades and asset transfers, corporate mergers, as well as carrying out asset management activities and trading of shares,
- Company that acts as treasurer for other companies, recognized as a group or manages the activities of the group.

Further to the above characteristics, in the situations where the companies and/or entities are incorporated in any Offshore Jurisdiction where it is not obligatory to submit to the authorities audited financial statements and as a consequence do not proceed voluntarily to prepare them by independent qualified professional accountants, then the banks will proceed with enhanced due diligence measures and checks. In addition, banks will avoid engaging in a business relationship with these companies/entities.

In all other cases, the bank institutions in Cyprus shall decide on whether to engage in or maintain a business relationship, applying a risk-based approach, in accordance with the legal and regulatory framework of the respective jurisdiction, where the company/entity is established. All bank institutions need to comply with the circular.

The combination of the existing anti-money laundering law and the circular in addition with some other international treaties have created a hostile business environment for companies/entities in Cyprus. Due to these the professional service industry seeks to help/assist their client to establish their own substance in Cyprus.

Concluding, banks and any other credit institutions are reminded of their obligations under all applicable legislation and directives to conduct all necessary due diligence measures and checks, especially concerning the identity of the ultimate beneficial owners, have all necessary documents, the source of funds and the transactional behaviour of their customers.

Zoe Kokoni
zoe.kokoni@zathea.com.cy
Cyprus

ZATHEA-ZOE QUALITY SERVICES

Member of Antea Alliance of independent firms

The deductibility of expenses in Ecuador

The National Court of Justice, the highest ordinary Court in the Ecuadorian Justice system, issued a mandatory jurisprudential precedent regarding the concept of deductible expenses for the calculation of income tax in the country. This due to the development of a common plot line of its Specialized Tax Chamber. The Tax Chamber established the need to verify the source of the obligation from which the sales, retention and complementary receipts are obtained; thus, the form of payment of the transaction and its accreditation in the beneficiary's account must also be verified in order to rate the quality of an expense and its deductibility. Thereby, the transfer of the good or performance of the service is effectively demonstrated.

The Specialized Tax Chamber of the National Court of Justice issued several judgements with the previously indicated criteria. In cases 520-2012, 382-2012, 248-2012, 378-2014 and 634-2014, the specialized Chamber determined the need of a material sequence of the expense, in that way, an expense cannot be considered deductible if the taxpayer only exhibits the accounting entry and an invoice. It is necessary to analyze everything that justifies that the expense was actually made as the effective disbursement such as the source of the obligation, the corresponding invoice and the accreditation of the values in the beneficiary's account. In addition to the above, the Chamber in cases 144-2012, 181-2013 and 409-2013, mentioned that the invoices must be recorded in the name of the taxpayer and stressed the importance of complying with the formal requirements to support the accounting records.

Moreover, there must be proof of the economic existence of the transactions to determine that there are expenses, in accordance with Article 10 of the Internal Tax Regime Law, which indicates that the costs and expenses incurred to obtain, maintain and improve income from Ecuadorian sources that are not exempt will be deducted, provided that they must be duly supported by sales, retention and complementary receipts that meet the legal requirements established for this purpose. In this regard, the importance of good taxpayers accounting management is emphasized so that it is the true reflection of economic activity.

Compliance with the formal requirements is not enough, it must be demonstrated that the transfer of the asset was actually made or that the service has been provided. Likewise, the true essence and economic nature must be analyzed to verify the real existence of the transactions, not only through the sales, retention and complementary receipts that in the first instance transparent the economic exchange and therefore contribute to the confirmation of the realization of the economic fact, the sequentiality and the linking of the economic fact with the taxable income must also be verified, fully complying with the complete accounting cycle.

However, the resolution of the Ecuadorian National Court of Justice can be interpreted in the sense that taxpayers can access tax benefits despite the existence of deficiencies in their forms, if they demonstrate the materiality of their transactions and that the transaction has actually been carried out by transferring the good or providing the service. In this line of interpretation, when there are deductible expenses not supported with forms, it is necessary to make a complete review with a financial department to determine the elements that demonstrate the materiality of the transactions. The clear limit to this practice must be simulated operations, therefore, taxpayers could access tax benefits despite deficiencies in their forms if they demonstrate the materiality of their transactions, unless there are acts of simulation in accordance with the Ecuadorian Criminal Code.

Arturo Rivas
arturo.rivas@abcglobal.tax
Ecuador

ABC ADVICE, BUSINESS, CONSULTING

Member of Antea Alliance of independent firms

The Avoidence of Double Taxation for Expatriates resident in Germany

Moving from one state to another expatriates are facing different systems of taxation and the risk of tax disadvantages.

Establishing a place of residence in Germany triggers the tax liability in Germany. The residence principle in conjunction with the world-wide income principle means the risk of double taxation.

As the state of residence Germany eliminates the double taxation on income derived from employment out of Germany by exempting this income taking account of the progression clause.

The exemption assumes a taxation abroad. As an documentary evidence of the taxation abroad the German tax authorities are requiring a concrete proof of tax payments.

How the progression clause works?

The basic regime is, that the taxable income is taxed by the applicable tax rate. The method of progression clause is adding the tax exempted income in order to determine the new (higher) applicable tax rate.

The tax finally will be calculated based on the taxable income without the exempted income but using the higher tax rate.

Comprehensive changes with important details

A circular of the Federal Ministry of Finance (BMF) dated May, 3rd. 2018 replaced various previous notes from 2005 and 2014 and settled outstanding questions concerning the taxation of income derived from employment.

The circular is referring to adjustments to the OECD Model Tax Convention, changes to the German income tax law and to the jurisdiction of the German Federal Finance Court.

- E.g. In case a double tax treaty does not contains a tax exemption of income derived from employment but the credit method, the estimated taxes have to be paid abroad, can be registered as a personal tax allowance to lower the taxable income in Germany.
- The de minimis limit of an amount of EUR 10,000 shall apply for a year but not for any number of states in which the expatriate were resident.
- In accordance with Sec 23 IV OECD model the circular is pointing out, that in case of fully non taxation a fall-back clause shall apply which should grant the taxation at the state of residence.

However, which state may tax the compensation still remains to be resolved.

Stephen Schwedler
Stephen.schwedler@ham-auren.de
Auren Germany

Obligation to declare UBOs to Greek Ministry of Finance's Central Register

For the first time ever, legal persons and other entities are obliged to declare their UBO(s) to the Central Register of the Ministry of Finance (MFA).

In accordance with the Greek Anti-Money Laundering Law 4557/2018 - which implemented the EU Directive 2015/849/EU - specifically Article 20, as amended by the Law 4607/2019, Art. 62 (b), corporate and other entities with either registered seat in Greece or performing commercial activities that are subject to taxation in Greece, are now obligated to collect and maintain (in a special register maintained at their seat) adequate, accurate and current information on their beneficial ownership as well as to register this information with the relevant electronic platform of the General Secretarial of Information Systems of the Ministry of Finance.

Who is considered a "Beneficial Owner"?

A beneficial owner is considered to be the natural person(s) who ultimately owns or controls a legal person or legal entity, as well as the natural person on whose behalf a transaction or activity is being conducted.

Specifically, in the case of corporate entities, the beneficial owner could be the natural person(s) who hold the position of senior managing director(s), if, and only if, all possible means has been exhausted and there are no grounds for suspicion.

What Information shall be disclosed?

The information on the Beneficial Owner maintained with the special register includes at least the name and surname, date of birth, the nationality and the residence country of the beneficial owners, as well as the type and the extent of the rights they hold. The registry might include any other information that is necessary for the identification of the beneficial owner.

Special Register and Central Register of Beneficial Owners

This **Special Register** must be held adequately justified and updated under the liability of the legal representative or the specifically authorized person by a resolution of the competent body of the obliged legal person or entity. The details of the beneficial owner must then be disclosed and registered with the **Central Register of Beneficial Owners** within 60 days from date of the gradual commencement of its operation per type of entity, by using entry codes for the electronic platform (taxisnet) of the General Secretarial of Information Systems of the Ministry of Finance. According to our latest news the Central Register has not yet been put in place.

Any changes on the information of the beneficial owners must be registered within 60 days from their occurrence with the Central Register.

Violation of Law and fines

In case of violation of this obligation, a fine may be imposed amounting to **EUR 10,000**; in case of non-compliance or repetition such fine will be doubled. Additionally, no certification for tax status will be issued by the authorities unless the obligated corporate or other entity will fully comply with the obligations.

Maria Sarantopoulou
maria.sarantopoulou@eurofast.eu
Greece

Eurofast

Member of Antea Alliance of independent firms

Place of Effective Management (POEM)

1. What is POEM?

Place of effective management (POEM) is a recognised **test for determination of residence in India of a company incorporated in a foreign jurisdiction**. The POEM concept is one of substance over form. An entity may have more than one place of management, but it can have only one place of effective management at any point of time.

"Place of effective management" is defined in the Income tax act, 1961 to mean a place where **key management and commercial decisions** that are necessary for the conduct of the business of an entity as a whole are, **in substance**, made.

Provisions in the Indian Income tax Act, 1961 w.r.t Place of effective management (POEM) comes into force w.e.f 1st April 2016 (Assessment year 2017-18).

2. How to Determine Place of Effective Management?

There are certain guidelines which are laid down by the authorities for determination of POEM based on the bifurcation of **companies engaged in 'active business outside India (ABOI)**' and other companies.

Place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India.

2.1. Computational aspects for the determination of 'active business outside India (ABOI)' test: -

a) A company is said to be engaged in "active business outside India" if the passive income is not more than 50% of its total income; and

I) less than 50% of its total assets are situated in India; and

II) less than 50% of total number of employees are situated in India or are resident in India; and

III) the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Note: For the aforesaid purpose, -

- **The income shall be, -**
  - as computed for tax purpose in accordance with the laws of the country of incorporation; or
  - as per books of account, where the laws of the country of incorporation does not require such a computation.
- **The value of assets, -**
  - In case of an individually depreciable asset, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year; and
  - In case of pool of a fixed asset being treated as a block for depreciation, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;
  - In case of any other asset, shall be its value as per books of account;
- the number of employees shall be the average of the number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees;
- the term "pay roll" shall include the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer.

b) Passive income of a company shall be aggregate of, -

I) income from the transactions where both the purchase and sale of goods is from / to its associated enterprises; and

II) income by way of royalty, dividend, capital gains, interest or rental income;

However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.

3. What are the impacts of Place of effective management (POEM)?

Provisions related to place of effective management will impact on the following: -

I) Global income of the foreign subsidiaries /Joint

Ventures would be liable to tax in India and they will be liable for all tax compliances in India;

II) Transaction of 'foreign subsidiary incorporated in India' with related foreign parties may be subject to Indian Transfer Pricing;

4. Exclusion from the applicability of POEM

Companies having turnover or gross receipts of INR 500 million or less in a financial year are exempted from the guidelines of POEM.

Vikas S. Chaturvedi
vikas@valuecent.com
India

Valuecent

Member of Antea Alliance of independent firms

Make in India

Make in India is a major new national programme of the Government of India designed to facilitate investment, foster innovation, enhance skill development, protect intellectual property and build the best in class manufacturing infrastructure in the country.

"I want to tell the people of the whole world: Come, make in India come and manufacture in India. Go and sell in any country of the world but manufacture here. We have skill, talent, discipline and the desire to do something. We want to give the world an opportunity that come make in India," The Prime Minister of India, Mr Narendra Modi said while introducing the programme in his maiden Independence Day speech from the ramparts of the Red Fort on August 15, 2014.

Why "Make In India": Local Manufacturing hub of the world.

The primary goal is to encourage multinational and domestic companies to manufacture their products in India. The Government in India has always been seen as a regulator and not a facilitator. The initiative intends to change this by bringing a paradigm shift in the way the Government interacts with various industries. It will focus on acting as a partner in the economic development of the country alongside the corporate sector.

China became an independent country on 1st October 1949, which is 2 years after India got independence. India & China together account for nearly 1/3rd of the world's population. What China started 4 decades ago led to becoming the world's highest producer of agricultural products as well as the world's highest industrial output whereas India stands 2nd in agricultural produce and 5th in the world in case of industrial Output.

Out of 1.3 billion human assets of India, 34% are youth which is the largest share of youth population in the world. By tapping and harnessing the huge reservoir of energy which will reduce the ongoing disparity & correct the course of India in improving its market position among the growing economies. India will continue to hold the position of the largest share of youth population for at least 20 years, which under the changing demographic profile of the world, has thrown a window of opportunity favouring India.

How "Make In India":

The policy laid out plans to boost the manufacturing sector by raising its contribution towards GDP to 25 percent and creating 100 million new jobs by 2025. For India to achieve its stated goals of reviving the manufacturing sector and providing jobs to millions of unemployed youth, it will need massive investment, including major contributions from foreign investors.

What "Make In India": Key sectors covered

The focus of Make in India programme is on 25 sectors, which includes: automobiles, aviation, chemicals, IT & BPM, pharmaceuticals, construction, defence manufacturing, electrical machinery, food processing, textiles and garments, ports, leather, media and entertainment, wellness, mining, tourism and hospitality, railways, automobile components, renewable energy, biotechnology, space, thermal power, roads and highways and electronic systems.

Make in India so far, 2014-18:

The "Make in India" move has undoubtedly resulted in an exponential rise in domestic production and has made India a local manufacturing hub. With its effective campaigns, it has encouraged both multinational and domestic industrialists across the globe to invest in India and manufacture their products on the Indian soil.

India was ranked at the 142nd position among 190 nations under ease of doing business when the Make in India campaign was initiated in 2014. India Jumped to 131st position the next year and rose to 100th position in the previous year, India improves its rank by 23 positions in Ease of Doing Business as per the World Bank latest Doing Business Report (DBR, 2019).

The country has emerged to be the world's fastest economy according to the CSO and the IMF. The world's seventh largest economy is expected to be among the top three economies in the next two decades.

Investor WIIFM: What's in it for me

India ranks third in terms of preferred investment destination (Just after China and the United States). With lower cost of production due to lower labour rates along with availability skilled manpower & abundant natural resources, India has emerged as one of the most attractive destination not only for investment but also for doing business in the recent years.

Sustainable Development:

'Zero defect zero effect' is a key phrase which has come to be associated with the Make in India campaign. In the words of The Prime Minister Narendra Modi, "Let's think about making our product which has 'zero defect' and 'zero effect' so that the manufacturing does not have an adverse effect on our environment". Thus, sustainable development in the country is being made possible by imposing high-quality manufacturing standards while minimising environmental and ecological impact.

Citations:

www.makeinindia.com

www.worldatlas.com

www.ibef.org

www.investopedia.com

Nikhil S Shah
nikhil@mojca.in
India

M O J & Associates
Chartered Accountants

Benefits for Angel Investors in Israel

The State of Israel has decided to give significant tax benefits to investors in young R&D and start-up companies. According to the Tax Authority, "This legislation is unique and unusual in the field of tax law."

If you are an investor or considering investing in start-up companies, technology companies, or new ventures in Israel, you now have an opportunity to invest and receive significant tax benefits on your investment. You can benefit from Israel's new policies for encouraging and supporting investors in order to help propel the field of the R&D forward.

Why is Israel offering tax benefits?

Israel is known as a center for innovation and technological developments in every imaginable sector. In order to maintain and further develop Israel's leadership in this area, the State of Israel has decided to encourage angel investors in what are designated as "Beginner Company" (referred to young R&D companies or\and Start-up companies). With the goal of increasing the sources and scope of financing received by these companies, the tax authorities are now giving investors a significant incentive by deducting the amount of the investment from their current expenses. Usually, investments cannot be deducted from current accounts and do not result in any tax savings. With Israel's new and unique benefit, the investment can be deducted as a current expense and thus immediately reduce your tax exposure.

The company carries the liability, while investors receive benefits.

One of the unique advantages provided by the tax law's newly amended in the "Beginner Company" track is the high level of certainty offered to investors. First, compliance the law is easy to report, as the company only needs to provide an annual compliance approval prepared by an accountant. Second, in the event that the investor has used the tax benefit in their final tax report, and it is later determined that the company was not in compliance, the **company itself will return the original tax savings to the income tax authorities, while the investor remains safe.** This type of legislation, placing the entire liability with the company, is very rare in Israel or indeed anywhere in the world.

Tax Benefit Amount

For a partnership of individuals, or for a single investor making an investment in a "Beginner Company", the entire amount of the investment will be recognized as a deductible expense against any source of income the investor might have within that same tax year in Israel, **up to an amount of 5 million** Israeli's shekels (the maximum amount of investment); throughout the benefit period, on condition that all terms and requirements of the law are met, and that the company received an approval from the Israel Innovation Authority that it is recognized as a "Beginner Company", by its definition.

How can investors enjoy this benefit?

First, investors must confirm that the company for which their investments are targeted has received all required approvals and complies with the requirements of the law and the definition of a "Beginner Company".

Subsequently, investors must ensure that their investments comply with the following basic criteria:

- The total amount of investment permitted for a single investor when deducting from any of their sources of income may not exceed an accumulated sum of up to 5 million Israeli's shekels. In cases of a partnership of individual investors, the investment will be examined for each investor separately.
- The investment must have commenced as of November 1, 2016 or thereafter.
- To be eligible for a deductible investment, investors must hold the shares allotted to them in the target company throughout the benefit period. The benefit period is defined as a period of three fiscal years, beginning in the fiscal year in which the deductible investment sums were actually paid out.

Assuming that you comply with all of the conditions, we recommend that you meet with us and have us audit and prepare your annual tax report, including calculating the tax deduction to which you are entitled.

How can entrepreneurs obtain more investments and investors?

Our professional team uses innovative methods to create tailor-made tax strategies. It also helps entrepreneurs and R&D companies receive their benefit rights and enjoy these investments in accordance with the needs of their business, their shareholders, and their business plans.

Our specialists will be happy to help entrepreneurs and new companies interested in receiving state and tax benefits to advance their R&D activity. We will contact the Israel Investment Center and the Israel Innovation Authority for you, and **perform all required actions with the tax authorities to obtain the sought-after approval and benefits.**

Ofir Angel
Ofir.angel@auren.co.il
Auren Israel

Japanese Consumption Tax (JCT) reform

JCT is a kind of VAT in nature.

Rate of JCT will be increased to 10% from 8% effective October 1, 2019.

Reduced tax rate of 8% will be introduced for drinks and foods excluding alcohol and those services at restaurants and newspaper subscription fees.

Masahiro Sugiyama
sugiyama@cpa-sugiyama.jp
Japan

Member of Antea
Alliance of independent firms

The italian rules on labelling origin of the primary ingredient of food according to eu regulation

On 28th May 2019, the European Commission adopted the new implementing Regulation (EU) No. 775/2018 (from now on *"The Regulation"*) establishing rules for the application of article 26.3 of Regulation (EU) No. 1169/2011, as regards the rules for the country of origin or place of provenance of the primary ingredient of foods.

The Regulation makes an effort to ensure a high level of transparency, providing European consumers with clear information about the origin of food sold on the European market.

According to its scope, the law applies in cases where **the given origin of food is not the same as that of the primary ingredient**. In those cases, operators should provide complete information through the indication of the origin of the primary ingredient.

For instance, if the origin labelled on a food's package is *"Italy"* (e.g. pasta package with the Italian flag) but the primary ingredient of food originates from France (e.g. durum wheat semolina milled in France) the origin of the primary ingredient have to be indicated.

The Regulation does not apply to:

a) customary and generic names which include geographic terms that literally indicate origin but whose common understanding is not an indication of the origin of food (e.g. Risotto alla Milanese, Pandoro Verona, Panettone Milano, Thai green curry, Mexican chilli, Mustard de Dijon: this exemption is justified by the fact that customary and generic names are indeed not considered as referring to origin);
b) protected geographical indications and registered trademarks, even if they suggest the origin of food products from a lexical point of view (e.g. *"Italian sounding"*) or graphic (e.g. stylized flags or their suggestive colours).

The Regulation provides different options of labelling the origin of the primary ingredient the origin could be indicated alternately:

a) with a reference to one of the geographical areas contemplated by the Regulation (*"EU"*, *"non-EU"*, or *"EU and non-EU"*, Regions, any geographical area either within several Member States or within third countries, FAO, fishing areas, seas, etc.);
b) by means of a statement as follows: *"(named of the primary ingredient) do/does not originate from (the country of origin or the place of provenance of the food)"*, or any similar wording likely to have the same meaning for the consumer.

In an effort to not deceive consumers and to harmonize the information, the Regulation also clarifies how the origin of the primary ingredient shall be presented: in particular, the origin of the primary ingredient must appear in the same field of vision as the indication of the origin of the food, whether provided with words or by means of non-scriptural form.

The Regulation shall apply from **1th April 2020**: food placed on the market or labelled prior to the date of application may be marketed, according to previous laws, until the exhaustion of stocks.

There are many decrees adopted by the Italian government to prescribe the compulsory indication of primary ingredients in order to point out that a certain food is entirely made in our Italy (e.g. decree

9th December 2016 on labelling origin of the primary ingredient of milk and dairy products, e.g. decree 26th July 2017 on labelling origin of wheat and semolina in pasta, decree 16th November 2017 on labelling origin of tomatoes in preserved tomatoes sauces).

Davide Guardamagna
dguardamagna@gealex.eu
Italy

GeALex Studio Legale Guardamagna e associati

Member of Antea Alliance of independent firms

The Beneficial Right's Owner

Definition

The owner of beneficial Right's is the actual beneficiary of any ownership of funds, shares or actions in institutions and companies aiming to monitor financial operations to combat money laundering and terrorist financing. The owner of identify beneficial Right's is questioned in the general cases mentioned below:

- In cases where a procurement is given to someone with a non-professional like " a lawyer, a general agent or a financial broker, for example," other than any justification for his assignment that doesn't show.
- In cases when dealing through other accounts or through front companies or institutions.
- In cases where the financial position of the customer is known and the value of the transactions executed is disproportionate with his financial position or any other signaled indications.
- In cases of any other indicative institutions within the business framework.

According to the SIC Circular 24 dated 14/06/2018

The beneficial right's owner is any natural person (cannot be a legal entity) who ultimately owners or controls, directly or indirectly the "customers"/or the natural person on whose behalf the transactions/ operations are being conducted.

Indirect ownership and/or control cases, are cases where ownership and/or control are through a chain of ownerships, or through indirect control methods.

Specific procedures are established and maintained to identify and verity beneficial right's owner(s) of legal entity customers accordingly:

- Identification of any natural person who directly or indirectly owns 20% or more of the capital a legal entity.
- In case of doubt that the natural person(s), specified in paragraph 1 above, item5), is/are beneficial right's owner(s) of the legal entity customer, or in the absence of any natural person with a 20% or more ownership of the customer's capital, then, natural persons should be identified, who controls the legal entity, through different means (holding the majority votes, right of appointment or discharge of the majority of board members..).
- In the absence of any identification of a natural person (as stated in paragraph 1 & 2 above, item 5), necessary procedures should be taken to specify and identify individuals occupying senior positions.

An updated record must be kept with the names of the beneficial right's owners, only when the "customer" and the "beneficial right's owner" are two different entities, and for any "customers" as "legal entity" or "natural person". In this case, the natural person, as the beneficial right's owner should be identified and verified.

According to The Ministry Of Finance Decision No.1472/1 dated 27/09/2018

Article 1:

The Beneficial Owner "is any natural person, regardless of their place of residence, who ultimately effectively owns or controls, directly or indirectly, the activities of any other natural or legal person on The Lebanese territories".

Shall be considered as vases of acquisition and/or indirect control, the cases where ownership and/or control is conducted through sequential acquisitions or other series of indirect means of control.

Article 2:

Every legal person, regardless of their legal form, must take the necessary measures in order to determine the identity of the "Beneficial Right's Owner" in the activity which they are exercising, by reaching a definition of every natural person who is behind:

1. Any natural person who owns, directly or indirectly, a sum equal to or greater than 20% at least of their capital.
2. Any natural person who has the majority of the voting rights or the basic decision-making rights therein, including the appointment and dismissal of the members of the administrative body or the supervisory body.
3. Any person holding a senior management position.

Article 3 :

1. Taxpayers of the category "legal, legal arrangements entities" must take the necessary measures to determine the identity of the economic right holder in accordance with the following:

   As per trustees' activity according to law no 74/2016, the following must be determined:

- Settlor
- Trustee
- Protector
- Beneficiary, and in the event their identity is not identified or revealed, the categories of persons whose legal arrangement was established for their benefit.
- Any other natural person exercising the right of actual control over the trust, through direct or indirect ownerships or through other means.

2. As per other types of legal arrangements, including trust-like structures, persons holding positions similar to those specified in section (1) of this Article must be identified.
3. In the case of legal entity, the required procedures for identifying persons obtaining debt securities or quotas shall be undertaken as stated above.

Article 4:

All taxpayers must keep a daily record of Beneficial Right's owners including: full name, nationality, date of birth, residence address, mailing address, ID number or passport for Lebanese, passport number for foreigners, tax residence, tax number, dividends.

They must declare information concerning the "Beneficial Right's Owners" within the declaration of initiation of work and annual declarations according to Article 38 of the tax procedures law.

All taxpayers must also keep documents that state how the ownership by the legal person is structured and/or controlled, as well as all information and documents relating to the beneficial right's owners for ten years, even after the person has lost the capacity of "beneficial right's owner" or even after they have suspended their work.

Hatem Hatem
gm@hatemcpa.com
Lebanon

HATEM AUDIT FIRM
Certified Auditors & Tax Advisors

Member of Antea
Alliance of independent firms

Highly Qualified Persons Tax Rules

Since joining the EU in 2004, Malta has been modernising its economy. It is becoming recognized as a highly functional, low cost, well regulated jurisdiction with the underlying theme being availability of trained staff through investment in education and training. However, the expansion of the financial services and the gaming services since joining the EU and the aviation services and assisted reproductive technology in recent years, is showing a significant need for additional highly qualified workers. Therefore, the need is being felt for the importation of knowledge particularly in those areas of the financial services sector, the gaming sector, the aviation sector and the assisted reproduction sector where local expertise is lacking.

The objective of the Highly Qualified Persons Rules (SL 123.126), is the creation of a scheme to attract highly qualified persons to occupy "eligible office" with companies licensed and/or recognized by the Competent Authority regulating the specific sector.

"Eligible office" in the **financial services and gaming sectors** (and undertakings holding an air operators certificate) comprises employment in one of the following positions:

- Actuarial Professional
- Aviation Continuing Airworthiness Manager Aviation Flight Operations Manager Aviation Ground Operations Manager Aviation Training Manager
- Chief Executive Officer Chief Financial Officer Chief Commercial Officer
- Chief Insurance Technical Officer Chief Investment Officer
- Chief Operations Officer (including Aviation Accountable Manager) Chief Risk Officer (including Fraud and Investigations Officer) Chief Technology Officer
- Chief Underwriting Officer Head of Investor Relations
- Head of Marketing (including Head of Distribution Channels)
- Head of Research and Development; (including Search Engine Optimisation and Systems Architecture) Portfolio Manager
- Senior Analyst (including Structuring Professional) Senior Trader/Trader
- Odds Compiler Specialist

"Eligible office" in an **aerodrome licensed** undertaking refers to employment in the following position:

- Chief Executive Officer

"Eligible office" in the **assisted reproductive technology sector** comprises employment in one of the following positions:

- Embryologist
- Responsible Person
- Lead Quality Manager

The rules for the scheme came into force with effect from 1 January 2010 and apply to income which is brought to charge in year of assessment 2011 (basis year 2010) and apply to individuals not domiciled in Malta, with the exception to the positions associated with the aviation sector where the rules are effective from 1st January 2012 i.e. year of assessment 2013.

The scheme's termination date is 31/12/2025. No determinations shall be issued by the respective Competent Authorities after 31/12/2020.

Scheme Rules

a) Employment Income

Individual income from a qualifying contract of employment in an "eligible office" with a company licensed by the Competent Authority is subject to tax at a flat rate of 15% provided that the income amounts to at least €75,000 (seventy five thousand euro) adjusted annually in line with the Retail Price Index. The 15% flat rate is imposed up to a maximum income of €5,000,000 (five million euro), the excess is exempt from tax.

In practice this means that the minimum income (based on the Retail Price Index published by the National Statistics Office) must exceed the following thresholds:

€75,000 for basis year 2010
€76,136 for basis year 2011
€78,207 for basis year 2012
€80,100 for basis year 2013
€81,205 for basis year 2014
€81,457 for basis year 2015
€82,353 for basis year 2016
€82,881 for basis year 2017
€84,016 for basis year 2018
€84,991 for basis year 2019

The 15% tax rate applies for a consecutive period of five years for European Economic Area (ie EU countries plus Norway, Iceland and Liechtenstein) and Swiss nationals and for a consecutive period of four years for third country nationals. Individuals who already have a qualifying contract of employment in an "eligible office" two years before the entry into force of the scheme may benefit from the 15% tax rate for the remaining years of the scheme. This means that a national of the EEA and Switzerland who has a qualifying contract of employment in an "eligible office" starting in 2008 (basis year) will benefit for three years from the scheme, ie basis years 2010, 2011 and 2012, while a third country national will benefit from one less. This "grandfathering" only applies for eligible offices in the financial services and gaming sectors.

The four or five year period, as the case may be, commences from the year when the individual concerned first becomes taxable in Malta. In cases where the individual was taxable in Malta but not benefiting under this Scheme and subsequently comes to Malta and becomes eligible under the Scheme, he can benefit only if the four or five year period has not elapsed; the benefit is for the years remaining from the date of eligibility under the Scheme until the said four or five year period from the date of first being subject to tax in Malta elapses.

Nationals of the EEA and Switzerland who have availed themselves of the benefit under this scheme may apply for a one-time extension of five years to the qualifying period. Third country nationals of who availed themselves of the benefit under this scheme may apply for a one-time extension of four years to the ualifying period.

b) Qualifying Contract of Employment

An individual may benefit from the 15% tax rate if he satisfies all of the following employment conditions:

1. derives employment income subject to income tax in Malta
2. has an employment contract subject to the laws of Malta and proves to the satisfaction of the Competent Authority that the contract is drawn up for exercising genuine and effective work in Malta (Note: where an individual receives salaries from different companies in the same group and the group relationship of such companies is of 100% ownership, he will still be eligible if the aggregate salaries (excluding fringe benefits) are higher than the minimum thresholds as specified above).
3. proves to the satisfaction of the Competent Authority that he is in possession of professional qualifications and has at least five years professional experience;
4. has not benefitted from deductions available to investment services expatriates with respect to relocation costs and other deductions (under article 6 of the Income Tax Act);
5. fully discloses for tax purposes and declares emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to his employer paying out income from a qualifying contract as chargeable to tax in Malta;
6. proves to the satisfaction of the Competent Authority that he performs activities of an eligible office; and
7. proves that:
   a) he is in receipt of stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta;
   b) he resides in accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta;
   c) he is in possession of a valid travel document;
   d) he is in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family.

Exclusion from the Scheme

The individual income derived from employment in an "eligible office" will not qualify for the 15% reduced rate if it is paid by an employer who receives any benefits under business incentive laws or is paid by a person who is related to the employer who received any benefits under any business incentive laws or if the individual holds more than 25% (directly or indirectly) of the company licensed and/or recognised by the Competent Authority or if the individual is already in employment in Malta before the coming into force of the scheme either with a company not licensed and/or recognised by the Competent Authority.

The individual income derived from employment in an "eligible office" will not qualify for the scheme if a claim is made for any relief, deduction, reduction, credit or set-off of any kind except for any income tax deducted at source.

Anti-abuse provisions in respect of split contracts have been introduced. An arrangement in terms of which a beneficiary receives a payment from a person related to his employer and such payment is not declared for tax purposes in Malta is considered to be an artificial arrangement.

Any rights are withdrawn with retrospective effect if a beneficiary is not an EEA or Swiss national and he either:

- Physically stays in Malta, in the aggregate, for more than four years; or
- Directly or indirectly acquires real rights over immovable property situated in Malta or holds a beneficial interest directly or indirectly consisting in, inter alia, of real rights over immovable property situated in Malta.

Any individual who claims a benefit under the scheme when he is not entitled to do so is liable to a penalty equal to the amount of benefit claimed and if the benefit is paid the individual is liable to repay the benefit received plus additional tax of 7% per month or part thereof.

Application to Benefit from the scheme

An application for a formal determination relating to eligibility under the Highly Qualified Persons Rules must be made to:

- The Chairman, Malta Financial Services Authority using this form (in the case of Financial Services). Persons who already submitted a personal questionnaire to the Malta Financial Services Authority can apply using this form instead.
- The Chairman, Lotteries and Gaming Authority using this form.
- The Chairman, Authority for Transport in Malta using this form (in the case of Aviation Services).
- The Chief Medical Officer to Government using this form (in the case of assisted reproductive technology).

The benefit is exercised for each year of assessment by means of a declaration made on the form RA 17 signed by the beneficiary and endorsed by the Malta Financial Services Authority or the Lotteries and Gaming Authority or the Authority for Transport in Malta or the Office of the Chief Medical Officer to the Government, as the case may be. This form is to be attached to the income tax return and filed with the Office of the Commissioner for Revenue by the tax return date.

Clive Caruana
clive@ccpsmalta.com
Malta

CCPS Malta
Tax | Assurance | Advisory | Corporate

Member of
Antea
Alliance of independent firms

Sanctions in prevention of money laundering in Mexico

Article 52 of the Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin (LPIORIO), establishes that the fines imposed by the Law will have the character of tax credits, which will be set in liquid amount, subject to the administrative procedure of execution that establishes the Fiscal Code of the Federation.

The infractions may be:

1. Failure to identify clients or users in an appropriate manner in accordance with the Law and General Provisions.
2. For not presenting the notices in a timely manner.
3. Notice presented with incorrect or incomplete data.
4. Notice submitted extemporaneously (applicable exception according to the second paragraph of article 53 of the LPIORIO).
5. Not keeping the Administrative file of the Client and / or User (documentation of the client and / or user).
6. For not attending the verification visits and for not meeting the requirements of the authority.
7. For failing to make restrictions on the use of cash and precious metals.

Of the aforementioned infractions, the authority may impose for each of them, a penalty consisting of a minimum fine of two hundred days of the current minimum wage and a maximum of sixty-five thousand days of the current minimum wage (an amount ranging from $ 16,898.00 up to $ 5,491,850.00 MXN), for each breach and / or notice not presented to the authority in a timely manner, or, in an incomplete or incorrect manner, such information.

In addition, the authority responsible to imposing sanctions in an economic manner may also impose administrative sanctions consisting of:

1. Revocation of permits for games and sweepstakes activities.
2. Final cancellation of the qualification as a Public Broker.
3. Cessation of the exercise of the function as a public notary.
4. Cancellation of authorization as agent and customs representative.

It is important to highlight that the breach of obligations could (entail the imposition of various fines by the authority, in addition to that it may revoke, cease or cancel permits, patents and / or authorizations, which could at one time) reach be an unsustainable burden for the obliged subjects, so it is necessary to have a correct application of the Legislation in the matter of Prevention of Money Laundering.

Perla Itzel Juarez Flores
perla.juarez@mex.auren.com
Felipe Ochoa Martínez
felipe.ochoa@mex.auren.com
Auren Mexico

A Brief on the Taxation of Share-based Payments in Nigeria

Introduction

The use of shares options for the payment of goods and services is becoming increasingly common. While some companies use it to manage their cashflow, notably with the use of equity-settled share-based payments, other companies include it as part of the remuneration package of members of staff.

Typical employee share-based remuneration includes some conditions known as "vesting conditions" that must be satisfied for the counterparty to be entitled to either cash, assets or equity in share-based structures. International Financial Reporting Standards (IFRS) 2 - Share-based Payment details two types of vesting conditions which are:

- non-market based vesting conditions such as employees completing a minimum period of service, achieving a minimum sales or earnings target or completing certain projects; and
- market-based vesting conditions which include achieving a minimum increase in the share price of the company, achieving minimum increase in shareholders' return or a specified target share price.

In this brief, we set out the tax consequences or implications of share options

Tax Implication

Capital Allowance: Based on the Companies Income Tax Act (CITA) 2004, companies or taxpayers are entitled to claim capital allowance for incurring cost to acquire qualifying capital expenditure (QCE), and the applicable rates are set out in the second schedule of CITA. This provision of the law is applicable to QCE acquired using share options. Therefore, companies or taxpayers that have or intend to acquire QCE through share options should consider claiming the capital allowance on the asset acquired in their tax returns.

Value Added Tax (VAT): Goods or services supplied and paid for using share options fall within the purview of the Value Added Tax Act (VATA), and are liable to VAT (Input VAT) at 5% except to the extent to which such goods or services are exempted from VAT.

Cost of issuing Share Options: Share options usually come with issurance costs. Based on the extant tax law provisions in Nigeria, and FIRS circular on the adoption of IFRS these are capital costs and as such are not allowable as deductions for income tax purposes.

Pay-As-You-Earn: In 2017, the Lagos State Internal Revenue Service (LIRS) issued a circular on the taxation of share based payments. The thrust of the circular was to provide guidelines as to the taxation of share based compensation for employees. According to the circular, the intrinsic value which is the difference between the market value of the shares and the exercise price of the share options constitutes a benefit-in-kind (BIK) and is taxable under the Personal Income Tax Act (PITA). Consequently, employers are obligated to deduct the tax and remit to the tax authority. The duty to deduct tax arises on the exercise or payment date.

Conclusion

Many companies are gradually adopting the use of share-based payments given the benefits it has on

the long-term success of a company and the various stakeholders. However, this must be done having fully assessed the tax implications to the company and counterparty.

Oyeyemi Oke
o.oke@taxaide.com.ng
Nigeria

Taxaide

Member of Antea Alliance of independent firms

Let's talk: International Taxation

In an increasingly globalized world, the economy, companies and markets in general terms, are causing international relations between states and these companies, in addition to the presence of both in foreign trade, brings the need to effect a balanced task in the management of tax assessments to which different entities or taxpayers must submit. In this order, the definition or conceptualization of international taxation is born, which is based on the general principles and accepted norms that regulate the linked operation of the different tax systems applied in international economic relations.

Any Finance Manager who directs or is in charge of a company that to a greater or lesser degree develops or is dedicated to the practice of international activities must be careful of the fiscal aspects, which under the tax perspective of different states simultaneously they allow you to reduce, in some cases, evade or avoid certain tax concepts to which companies are subject, especially through the application or collection of corporate tax and very particularly by withholding tax that companies suffer at the time to provide their services, sell the goods or make movements of their capital between different countries.

Among the main issues to be considered that influence this situation in the framework of international economic relations we can mention the following:

- High mobility of production factors, especially capital.
- Increasingly globalized and interconnected economies.
- Presence of supranational organizations such as the EU, OECD, among others, that promote the economic integration of all its members.
- Balance between the fiscal harmonization necessary to support truly effective integration processes and the maintenance of taxation as an instrument of economic policy at national and international level.

On the other hand, the freedom which they reach the circulation of capital and the decrease in costs in both transport and communications, and ultimately globalization, jointly with a set of internal strategies but with fiscal competition, achieve a scenario in which cross-border investments and internal business competitiveness in open economies are persuaded by openly tax elements. These transformations that have developed during the last years in the taxation of capital entities, from the first imputation systems that subsequently migrated to the exemption systems, through those of use of differentiated tax rates, due to the internationalization of economic activity.

In an upcoming edition I will be talking about the criteria that states use in the exercise of their sovereignty when establishing their taxes.

Ramses Malave
ramses.malave@smalatam.com
Panamá

The 7 stepts that inverstors need to position their venture

Font: 5 Días

Paraguay undoubtedly offers competitive advantages that make it an extremely attractive country when making an investment decision.

These competitive advantages are given in principle and above all in the very low tax pressure compared to the rest of the world, by specific regulations on import and export tax incentives or the single tax on the value added in the territory, as a result of the application of maquilas regime to name a few. Basically, the general rate, with some exceptions, is 10% for VAT and Income Tax for Business and Personal Activities.

For example, items such as construction and gastronomy have achieved exponential growth in recent times and have had a direct impact on the generation of sources of work and development at the country level: offer of real estate and quality products for the most demanding palates. , this has generated a direct increase in GDP, placing the country among those with the greatest economic boom of the last decades at the Latin American level.

When considering these advantages, the foreigner who comes to the country with the intention of being able to carry out commercial operations in Paraguay must necessarily follow the steps that are shared below and that must be taken into account from the perspective of a natural or individual person as of a society.

The first step is to obtain, after meeting certain documentary requirements, the Final Admission Card and subsequently the Paraguayan Identity Card. It is clarified that our regulations do not establish as a precondition for definitive admission to have acquired the temporary or a minimum residence time in the country, but that this document can be requested directly.

The aforementioned requirement (Paraguayan identity card) is indispensable to occupy the position of Director or be part of the Board of Directors of the Company (Joint Stock Company) or to be a partner-manager (Limited Liability Company) or legal representation and the use of signature of Both companies Likewise, the realization of any type of commercial or banking activity requires that the foreigner previously have this document.

The second step is to define the service or activity to be developed and if it will be provided by a natural person, a sole proprietorship or a company.

The third step, if it is decided by the corporate type, the Statutes must be notarized before the Public Notary and registered in the Public Registries and Treasury Law.

The fourth step is the registration with the Sub-Secretary of State for Taxation to obtain the Unique Registry of Taxpayers and in this way they may be authorized to issue invoices and / or withholdings to operate in the Paraguayan market.

The fifth step is the opening of bank accounts. Once the company is constituted, said account is necessary for transactions such as payments and income, both national and international, and must comply with the regulations on the justification of the origin of the funds and other rules related to the prevention of money laundering.

The sixth step is the registration of the brand of the product or service to offer whose process can be carried out in parallel if it is in a personal or sole proprietorship, or at the end of the constitution of the company, in the case of having opted for this type of legal entity.

The seventh step is the application of labor provisions and in this sense the hiring in relation to dependency requires formalization through contracts and registration in social security and the Ministry of Labor.

Luz López
luzangello@gmail.com
Paraguay

cáceres+schneider

Member of
Alliance of independent firms

From IFRS 7 to IFRS 13: How banks are operating in Portugal

Carlos Pinho, Partner at Auren Portugal, was part of the team that developed a national research to study the disclosure of fair value measurement techniques of the financial instruments, required by IFRS 13, of companies operating in the banking sector in Portugal from 2013 to 2015. Its purpose was to understand whether those financial instruments duly applied the accounting standards that define the required disclosures and analyse the fair value measurement techniques used for financial instruments.

IASB has defined in IFRS 7 "Financial Instruments: Disclosures" and in IFRS 13 "Fair Value Measurement" the set of disclosures that a company must make regarding the fair value measurement techniques used. The fair value hierarchy concept, introduced in IFRS 7 in 2009, classifies the data used in the measurement according to three levels, of which two levels introduce some subjectivity in the measurement. IFRS 7 has been amended several times with the clear intention to improve the disclosure requirements about financial instruments. With IFRS 13 we have even more specific definitions for fair value, a single framework for measuring fair value and the requirement of disclosure about fair value measurements. As part of the disclosure requirements for fair value measurements, an entity shall classify fair value measurements using a "fair value hierarchy" that categorises the inputs to valuation techniques used to measure fair value. The fair value hierarchy has three different levels and gives the highest priority to quoted (unadjusted) prices in active markets and the lowest priority to unobservable inputs:

- Level 1: inputs are quoted prices (unadjusted) in active markets for identical assets and liabilities the entity can access at the measurement date;
- Level 2: inputs are inputs other than quoted prices included within Level 1 that are observable for the asset and liability, either directly or indirectly;
- Level 3: inputs are unobservable inputs for the asset or liability.

The results of the study allow us to conclude that companies operating in the banking sector in Portugal have not generally disclosed information on fair value measurement techniques of the financial instruments required by IFRS 13. It was also concluded that **most financial instruments measured at fair value are classified at level 2 of the fair value hierarchy**, which limits the degree of certainty about their values. This reality is similar with US companies and Brazilien and Poland's banks in what concerns to financial liabilities. However, their financial assets are mostly measured on the basis of level 1 data of the fair value hierarchy.

Since 2015 Auren Portugal has a set of specialized consultants in this area and position itself as the natural partner to help companies to improve their measurement techniques.

Adapted from: www.ijbmi.org

Carlos Pinho
carlos.pinho@auren.pt
Auren Portugal

Taxation of income received by a foreign company or foreign individual in Russia

This article is to inform you about the most common taxes in Russia on income received by foreign companies and individuals: corporate income tax and personal income tax. In some cases the income is VAT taxable, which we will also discuss.

Corporate income tax (further - CIT) is paid by legal entities on income received. We have to divide the types of incomes which might be received by foreign company into two groups – active and passive.

Active income is income which is received by foreign company from activity of permanent establishment located in Russia.

It is provided in most double taxation treaties that the term "permanent establishment" specifically includes the following:

a) a place of management
b) a branch
c) an office
d) a factory
e) a workshop
f) a mine, oil or gas well, quarry, or any other place of extraction of natural resources

The term "permanent establishment" is covered in Russian tax legislation.

We can conclude that the main criteria for permanent establishment are the following:

- Presence of representative office or other place of business activity
- Conducting business activity by a foreign legal entity in Russia
- Conducting business activity by a foreign legal entity on a regular basis.

If these conditions are met, permanent establishment exists and the foreign company has to be registered and pay CIT in Russia. The expenses incurred during the activity of permanent establishment may be deducted from income received for tax purposes. The CIT tax rate is 20%.

Passive income is income like dividends, interest on loans, and royalties for different types of intellectual property. The tax rate on dividends is 15 % and on other types of passive income is 20 %. This tax has to be withheld by Russian companies, acting as tax agents. The tax agent calculates the CIT, withholds it from payment to the foreign company, and pays it to the budget. The tax rate for CIT withholding may be decreased by implementation of double taxation treaties if one exists between Russia and the country of residence of the foreign company.

For the implementation of the reduced tax rates in a double taxation treaty, the foreign company has to provide the Russian company two documents: the tax agent residence certificate and confirmation about beneficial ownership on income received. The first document has to be issued by an official fiscal body of the residence country and the second by the foreign company itself.

VAT paid by a foreign company

If a foreign company conducts its business activity through permanent establishment it pays VAT by itself and files the tax declaration.

If a foreign company does not have a permanent establishment but renders VAT-taxable services in Russia, VAT has to be withheld by the Russian buyer and paid to the budget . In both cases the VAT tax rate is 20%.

Personal income tax (further –PIT) is paid by individuals who receive income from sources both inside and outside of Russia. The regulations of PIT payment depend on the residence status of the foreign individual.

The foreign individual is considered a resident of Russia if they spend more than 183 days in Russia during the tax period, which is the calendar year. In this case, the individual pays PIT on income received from sources inside and outside of Russia. On most types of income from within Russia, PIT is withheld by the source of payment, which is considered a tax agent. If the individual receives income from a source outside of Russia, they have to submit a tax declaration to the tax authorities and pay the tax to the Russian budget. The usual tax rate for residents of Russia is 13 %. The tax paid in the other countries can be deducted if there is a double taxation treaty between Russia and the country of origin for the income where tax was paid if special confirmation from the foreign tax authorities is provided.

If a foreign individual spends less than 183 days during the tax period in Russia, this person is not considered a resident of Russia. In this case, the applicable tax rate is 30 %. The exemption from this rule is the taxation of income paid for performance of labor duties to highly qualified specialists. A highly qualified specialist is a foreign individual who receives a salary of more than

RUB 167,000 (approximately EUR 2,300) monthly. All other incomes of this employee are taxed with the usual non-resident tax rate of 30%. This income can be in the form of compensation of apartment rent or flight tickets.

If during the year the status or individual person changes from non-resident to resident, the tax is recalculated.

Ekaterina Lakatosh
LakatoshEA@schneider-group.com
Russia

Member of Antea Alliance of independent firms

Tax compliance in Spain is coming soon...

On 1 March, the Spanish Standards Association (UNE) published the UNE standard "19602: Tax Compliance Management Systems. Requisitos con orientación para su uso", a standard with two objectives. On the one hand, it provides guidelines for organisations to implement a system for complying with their tax and accounting obligations in order to minimise their tax risks and, if this occurs, it facilitates the creation of detection and correction mechanisms, as well as learning fees to avoid them in the future.

The UNE thus establishes a new framework in the relations between the Administration and the citizens, trying to create a cooperative relationship between them, until now practically non-existent, which allows to reduce litigation and, above all, to increase legal security.

In reference to the risk faced by companies, two categories of risk are identified: procedural risk and interpretation risk. Procedural risk is defined as the existence of a tax contingency because of an inadequate management and control procedure of the organization's tax organizations. The risk of interpretation corresponds to the existence of an interpretation of the rule, followed by the organization, that is not shared with the Tax Administration or with the courts of justice.

The Tax Administration must define the system of benefits that will apply to taxpayers who adapt their compliance systems in accordance with UNE 19602. It is presumed that Type 1 taxpayers (those who adapt and certify) will enjoy a presumption of veracity. The mere fact of being certified may be an element of evidence that demonstrates before the Administration and, where appropriate, the courts of justice, the willingness of the organization to comply with its tax obligations.

Although it is still too early to evaluate the effectiveness of the UNE 19602, we anticipate that a great change in Spanish culture is coming.

Lluis Basart
Lluis.basart@bcn.auren.es
Auren Spain

Serbian Ministry of Finance clarifies requirement for valid transportation cost documentation

On 25 April 2019, the tax authorities issued an official notice to the Serbian Chamber of Commerce regarding the issue of employees' transportation cost taking into consideration the Ministry of Finance's opinion no. 011-00-12/2019-4 dated 1 February 2019.

The Labor Law prescribes the employee's entitlement to compensation of costs of transportation to and from work, based on the general corporate regulation and employment contract equal to the amount of the price of a public transportation ticket, unless the employer has organized its own transportation. The compensation - according to the law - is not to be considered as salary.

Article 18 paragraph 1 item 1 of the Personal Income Tax Law specifies that salary tax is not paid on employee's earnings from the employer for compensation of costs of transportation to and from work – up to the amount of the monthly transportation ticket in public transport, or in the amount of actual transportation costs, and at most up to 3,914.00 dinars per month (non-taxable amount of costs of transportation to and from work which is effective in the period from 1 February 2019 to 31 January 2020).

The Ministry of Finance opinion no. 011-00-12/2019-04 dated 1 February 2019, provides - inter alia - that if the employer does not have valid accounting documents as proof of the cost of an employee's transportation to and from work (such as invoice for the purchase of a monthly ticket, a daily ticket or a single ticket for the use of public transport, an invoice for fuel, in case of use of own vehicle, etc.) but has paid out compensation adequately, such costs cannot be recognized as an expense.

Therefore, based on the above provisions of the Labor Law and the Personal Income Tax Law, and the Ministry of Finance opinion no. 011-00-12/2019-04 dated 1 February 2019, employers– taxpayers are required to have valid accounting documents as a basis for payments made to employees for compensation of costs of transportation to and from work.

By way of background, it is worth noting that the details of the entitlement to the payment of transportation costs as well as the amount of such costs' compensation can be regulated via a a general corporate regulation, a collective agreement or employment rulebook, as well as in an individual employment contract. This is done by taking into account the distance from the employee's place of residence to the place of work, and the way in which employees' costs of transportation are to be compensated.

As mentioned above, evidence of the paid transportation expenses of employees may include:

- receipts for the purchase of monthly tickets,
- daily tickets or tickets for a single ride in public transportation,
- fiscal receipts and invoices for fuel in the name of the recipient of compensation, in the event of use of own vehicle, where it is required for fuel in receipts for fuel consumed for transportation of employee, from place of residence to place of work, corresponds to the actual amount of fuel consumed for that distance.

The method for measuring the distance from the employee's place of residence to place of work, as well as fuel consumption norm for such distance, shall be specified by the taxpayer in their internal company documents.

Example: Average consumption in kilometers established based on manufacturer's declaration of consumption for a particular vehicle X distance from employee's place of residence to place of work X 2 (for each workday) X number of days in the month in which the employee came to work = amount of documented costs which can be recognized, and up to the maximum amount specified in article 118 paragraph 1 item 1) of the Labor Law.

The Ministry's notice states that further guidelines are currently being prepared which will define in more details how the tax authorities will audit the payment of employees' costs of transportation to and from work.

We advise Serbian companies to seek professional advice in evaluating their current documentation practices' risk of non-compliance.

Martina Lalic
martina.lalic@eurofast.eu
Serbia

Member of
Antea
Alliance of independent firms

The Netherlands: implementation of the Mandatory Disclosure Directive

Introduction

On 12 July 2019, the Dutch government published a legislative proposal implementing the EU Mandatory Disclosure Directive ***(Directive)***. The legislative proposal introduces mandatory disclosure rules based on which qualifying intermediaries and – under certain circumstances – taxpayers need to report certain arrangements to the relevant tax authorities. The Directive is applicable in all EU member states. Hence, the Directive will affect all firms that are based in the EU.

The reportable arrangements concern potentially aggressive tax planning arrangements with a cross-border dimension, and arrangements designed to circumvent reporting requirements like the Common Reporting Standard and Ultimate Beneficial Owner reporting. Implementation of the legislative proposal must be completed by 31 December 2019. The Netherlands should apply it as from 1 July 2020, with retroactive effect to 25 June 2018.

Cross-border arrangement

A cross-border arrangement is reportable if it concerns at least one EU Member State and contains at least one of the hallmarks set out in the Directive. The Netherlands plans to implement the hallmarks in the same way as the Directive.

The term 'arrangement' is not further defined in the legislative proposal. An arrangement can consist of different elements such as a transaction, action, agreement, loan, commitment, or a combination thereof. The Dutch government will issue further administrative guidance on the hallmarks and obligations under the new rules. Some of the hallmarks only apply if the so-called 'main benefit test' is satisfied. The explanatory memorandum to the legislative proposal provides further guidance on this main benefit test.

Intermediaries / taxpayers

The reporting obligation applies in the Netherlands to 'Dutch' intermediaries (natural or legal persons) and in some cases taxpayers. Foreign intermediaries without a link to the Netherlands will have no reporting obligations in the Netherlands under the proposed rules.

Who is considered as intermediary in a specific case depends on all facts and circumstances. If for instance, an engagement letter has been concluded between the 'intermediary' (e.g., a tax advisory firm) and the taxpayer, the tax advisory firm is considered the intermediary and not the individual employees of the tax advisory firm. Furthermore, if an in-house tax adviser is employed by a relevant taxpayer, the taxpayer has the reporting obligation. In cases where no intermediary is involved the obligation to report lies with the taxpayer.

Intermediaries will be exempt from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under Dutch law (e.g. Dutch lawyers and civil-law notaries).

Penalties

Intermediaries and taxpayers who infringe the national provisions may be subject to penalties up

to a maximum of EUR 830,000 or, in certain cases, criminal prosecution.

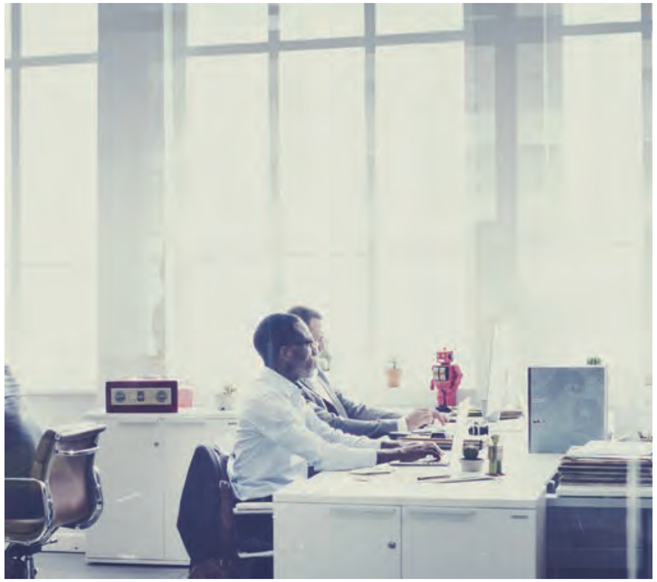
Peter Wurzer
PeterWurzer@auren.nl
Auren The Netherlands

Business acquisitions-factors for consideration

An acquisition is a corporate transaction where a company purchases most or all of other company's shares to gain control over the acquiring company. Acquisition is a good strategic move if proper planning and analysis is done.

Acquisition is a big-budget process than starting from scratch. Even though the acquisition is costly, there are many benefits like getting financial assistance, acquiring valuable legal rights, accessing a wider customer base, obtaining human resources etc. The following are the summary of due diligence factors which are to be considered by the acquiring company before taking over the target company:

- **Financial matters:** A proper analysis to be done regarding the historical financial results & metrics as well as the reasonableness of the future projections. Also the financial aspects like capital requirements, current capital commitments, indebtedness, ageing of accounts receivables etc. to be thoroughly verified.
- **Cost of running the target company:** A study should be done regarding the cost required for running the business, its impact on the cash flow of the acquiring company to be done.
- **Value creation:** It should be analysed whether the acquisition adds any value to the existing business company by combining the target company.
- **Price of acquisition:** An independent assessment or business evaluation to be carried out to establish the worth of business of the target company. Factors like client retention, recurring revenues etc have significant influence in the business evaluation. All relevant factors must be considered to arrive at a reasonable price.
- **Customer base:** The acquiring company should fully understand the target company's customer base including the level of concentration of the largest customers as well as the sales pipeline. A focus should be given regarding the customer relationships, warranty issues if any.
- **Marketability & reach:** The impact on extension of the brand message through the acquisition could be traced so that the benefit if any emerges out of the decision can be analysed.
- **Litigation:** An overview of any litigation, arbitration or regulatory proceedings involving the target company is to be undertaken.
- **Employee/Management issues:** The matters like labour disputes, summary of employee benefits, incentive/bonus plan, plans relating to severance pay, actuarial reports or past years etc. to be analysed.
- **Related party transactions:** The extent of related party transactions, the relevant agreements and its impact on the financial results to be verified.
- **Integration and managing the change:** The acquisition would become a success only if there is effective integration and management of change. There may be a resistance to change or towards the new owner from the existing of the target company. Hence a proper communication should be maintained to overcome such challenges.



Acquisition would become a great success if a due diligence analysis is carried out before taking the decision.

Shaji C Madathil B Com, FCA
shaji@afsauditing.com
United Arab Emirates

ايه اف اس للحسابات
AFS Auditing

Member of
Antea
Alliance of independent firms

Free Zone Users - FZA Affidavit

According to the requirements established by **art. 16 third of Law 15,921** (Free Zone Law) and **art. 36 and 59 of Decree 309/018** the Free Zone Area of the General Directorate of Commerce issued a Resolution establishing the corresponding deadlines for the presentation of the **Affidavit of contract compliance.**

Contract date	Deadline for Affidavit presentation
Authorized between years 1987 and 1996 inclusive	March, April and May 2019 trimester
Authorized between years 1997 and 2006 inclusive	June, July and August 2019 trimester
Authorized between years 2007 and March 8 2018 inclusive	September, October and November 2019 trimester

On the other hand, it was established that companies with authorized contracts that have submitted any modification or communicated the will to extend the term, in the last two years, they will have to submit the corresponding Affidavit within two years from the date of the authorization of the modification or of the presentation of the extension of the contract.

Those Users whose contracts have been authorized from March 9 2018 on, will have to submit the Affidavit for the first time, two years counted from the beginning of the following exercise to the respective authorization.

It is important to have into account that the FZU will have to submit the Affidavit every two years to the Free Zones Area of the General Directorate of Commerce, counting from the date of the Resolution of the Free Zone Direction that validates the last Declaration presented.

The **Affidavit of Contract Compliance** must contain the following information for the last **two fiscal years:**

1. Level and quality of the human resources employed in the Free Zone (Detail of the amount, academic level and staff positions).
2. Investment in fixed assets.
3. Income received.

Additionally, direct or indirect Free Zone Users with a contract in progress that lacked established deadlines or whose terms exceeded the one established in **art. 16 of Law 15,921** or automatic extensions have been established, will have until **October 5, 2019** to present documentation and updated information of the company, including the following information for the last five exercises:

1. background of the company that makes the request;
2. income from sales of goods or services provided in last five exercises;
3. number of employees, as well as level and quality of employment;
4. investments in fixed assets in the last five years;
5. any other information that proves the financial and economic viability of its business plan, as well as its contribution to the compliance with the objectives established by Law N ° 15,921.

Documentation and updated information of the company required to the Users detailed in the previous paragraph will be considered as submitted when **the Affidavit of contract compliance** is presented, as long as it is presented to the Free Zones Area of the General Directorate of Commerce before October 5, 2019. For these purposes, these Users will have to adapt the content of the Affidavit of Contract Compliance with the information of the last five years detailed in the previous paragraph.

In the case of direct and indirect users, who fail to present information for the last five years (required by **Article 16 bis of Law 15,921**), will have the current authorization suspended for a period of ninety days. Once that term has expired without the user having submitted the required information and documentation, the Free Zones Area of the General Commerce Department shall revoke the authorization of the user contract.

Failure to submit the **Affidavit of contract compliance** will result in the following sanction during the term of the breach:

- the prohibition of income and expenses of goods or merchandise and of the performance of any operation as a user.

Raúl Giacomini
raul.giacomini@mvd.auren.com
Auren Uruguay

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