INTERNATIONAL BUSINESS

August 2020

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:

The effects of the Covid-19 pandemic on commercial lease in Germany, Dissolution and liquidation, fast track of Mercantile Companies in Mexico and the Impact on company & corporate law in the context of Brexit.

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

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Introduction of a new Companies Code in Belgium

On 1 January 2020 a new Code of Companies and Associations (CCA) entered into force in Belgium.

The goal of the CCA is to modernize Belgian company law by making it more transparent and flexible, and better in line with European law, and as such render Belgium an even more attractive country to invest in and do business.

The CCA is applicable to all Belgian companies, associations and foundations (also those established prior to its entry into force).

Belgian companies and associations have until 1 January 2024 to align their articles of association (bylaws) with the new code. In the meantime, provisions of the company's articles of association that contravene mandatory law provisions of the CCA are set aside and the mandatory law provision shall apply.

Hereunder is an overview of some of the most important features of this new Code.

1. Corporate forms

The new CCA significantly reduces the number of corporate forms one can opt for when setting up a company.

Under the new Code, only the following four corporate forms remain:

1. partnership (unlimited liability);
2. public limited liability company ;
3. private limited liability company;
4. cooperative company (limited liability).

The features of the corporate forms that have been abolished have been scaled into the remaining corporate forms by broadening the latter's flexibility. Thus although the said reduction might seem revolutionary at first sight, it is not.

The largest restyling was made to the private limited liability company, which is expected to become the standard corporate form in Belgium.

2. The private limited liability company

The long established concept of (minimum) capital within the private limited liability company has been abolished in the new code.

Shareholders must now ensure that their company has "adequate financial capacity" at the time of incorporation. To this end, they must submit a detailed financial plan with the notary.

Further, as there are no specific "capital" requirements anymore, creditors and other stakeholders are being protected by the introduction of a double test which the company must fulfil before it can make any distribution of proceeds (e.g. issue dividends, return of contributions, financial assistance, etc.).

The first test is the so-called "net assets test", requiring the shareholders meeting to verify and make sure that the contemplated distribution will not give rise to a negative net assets position.

If the net assets test is satisfied, then it is up to the directors to carry out a second test, i.e. the "liquidity test". This test implies that a distribution can only be made if the company will still be able to pay the debts that become due throughout a period of twelve months following the distribution.

Further, this corporate form has become more flexible as a result of, amongst others:

- freedom in terms of voting rights attached to the shares (e.g. the company can issue non-voting shares, shares with multiple voting rights, shares with conditional voting rights, shares with voting rights for some matters only, etc.);
- freedom in terms of distribution of profit (e.g. shares can be exempted from loss contribution but all shares must be entitled to some form of profit distribution);
- possibility to withdraw as shareholder against payment by the company of the shares' value, which in the past was only possible in a cooperative company;
- possibility to make shares freely transferable to third parties;
- possibility to issue interim dividends (i.e. distribution of profit realised during the current financial year).

3. The public limited liability company

The modifications introduced by the new Code to the public limited liability company are less revolutionary than those of the private limited liability company.

The main change to this corporate form is the introduction of multiple governance models (whereas in the past, this corporate form was obliged to work with a board of directors composed of at least three individuals).

Under the new Code the public limited liability company can opt for one of the following three governance models:

- monistic governance model, entailing the "classic" board of directors;
- dual governance model: the operational and strategic duties are split up between a management board on the one hand and a supervisory board on the other;
- a sole director.

Further, the public limited liability company can issue shares with multiple voting rights.

Finally, directors can benefit from an increased protection against dismissal. Indeed, whereas under the old regime directors could always be dismissed immediately and without cause (i.e. *"ad nutum"*), they can now negotiate beforehand a mandatory notice period and/or compensation in lieu of notice.

4. Conflicts between shareholders

In the event of a persisting conflict between shareholders of a (non-listed) private limited liability company or public limited liability company, the ultimate means of action in Belgium is the so-called dispute settlement system among shareholders, i.e. an injunction judicial procedure before the president of the court in which the one shareholder either forces the other shareholder(s) to purchase its shares ("withdrawal" procedure) or, alternatively, forces the other shareholder(s) to sell its/their shares to the one shareholder ("exclusion" procedure).

Under the new CCA the powers of the president of the court are broadened. Whereas under the old regime the president was only empowered to rule on the claim as to whether the shares had to be transferred to the other shareholder(s) and at what price (and all other issues had to be brought before the ordinary court dealing with the merits), he can now also rule on related disputes concerning the financial relations between the shareholders and the company, e.g. disputes relating to current accounts, loans, non-compete clauses, etc.

This change significantly facilitates and expedites a court-solution at short term between conflicting shareholders.

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Why Due Diligence in China!

Part 1

In Western countries as in China, it is imperative to carry out sufficient due diligence on whom you are going to be doing business with, to reduce the risks. Peeling back the layers though in some countries might be like the skin on an apple, peel one layer and you have found the information that you are looking for. In China, while the access to information has improved, you are still really dealing with an onion, with many layers.

Does your company invest or donate its money? Sensible companies or individuals would no more invest in a company without due diligence than give a blank corporate check to the first person with an extraordinary business proposition, or would they?

China is continuing to grow and is changing rapidly, while the business environment and ease of doing business have been steadily improving. As of April 1, 2019, a great VAT tax reform was implemented, seeing a reduction for Individual Income Tax, aiming to combat the rising costs in China. Meanwhile, in 2017, the State Council issued two "Circular on Several Measures to Promote Further Openness and the Active Utilisation of Foreign Investment" policies to cut down the government's administrative procedures and improve the regulatory environment for foreign businesses in China.

Further benefits come from the new Foreign Investor Law (FIL), which is intended to develop a level playing field for foreign investors. The law aims to eliminate the theft of Intellectual Properties (IP) in Joint Ventures (JV) and prohibit government officials from forcing companies to transfer technology as well as making such actions illegal in China. To make China more accessible, the government released a shortened Negative Lists allowing for opportunities in more sectors for foreign investments. Possible new industries can include the agricultural, mining, manufacturing, and services, and enable Wholly Foreign Owned Enterprises (WFOE) to engage in more sectors.

However, underneath the positive changes, many problems are still troubling the Chinese market. For example, there are cases of inconsistent regulatory interpretations or implementational guidelines, unclear laws and enforcement, and ever-growing risks regarding regulatory non-compliance for foreign businesses. Furthermore, foreign companies in recent surveys in China feel unfairly targeted when undergoing tax audits and work permit reviews, compared to their local competitors. To combat these issues, international companies and investors through political advocacy are pushing for the development of a level playing field and improved intellectual property security.

Political pressure and advocacy applied externally and internally in China can be seen with the EU and EU Chamber of Commerce in China. As of 2016, The European Commission adopted a new strategy on China changing the EU's relationship with China for the next five years proposing that the EU should promote reciprocity, a level playing field and fair competition across all areas of cooperation. While the EUCCC applies pressure from within as seen in their yearly Position Paper.

"We do not question the willingness of China's top leadership to continue to open up and reform, but a new approach is needed to implement change. It is not sufficient that the top leadership is committed to reform and opening-all levels of government need to embrace this direction. After all, many of the problems faced by international companies are not necessarily an expression of state policy, but instead result from poor regulations designed by lower-level officials that are inconsistently enforced. While the European Chamber recognises such difficulties, our member companies cannot wait indefinitely for these much-needed reforms." *Mats Harborn, President of the EUCCC, Executive Position Paper 2018/2019*

So, is investing in China, the world's biggest market, something to be avoided?

Not at all, as long as you do your due diligence because taking a calculated risk is what business is all about. Note the word "calculated" is used advisedly, as business decisions inherently should be based on sound information. Any experts can brush off a case of a failed joint ventures or business as a bad investment. However, does anyone look at the quality of due diligence was done before entering in such an endeavour? The truth is, that it is unlikely, as the mother company's board will rationalise everything into corporate history, citing the Chinese as being protectionist. Perhaps they should mention them as the smarter partner, or that they did not do their homework.

What exactly does due diligence take into consideration?

Due diligence is much broader in scope than is generally perceived. Regardless of which country you are doing business in making a substantial investment in getting to know the prospective partner or the proposed market, is not money that should be begrudged. It is imperative to seek answers to vital questions in areas such as:

Management. Who are the management team? Have they worked together before and are their ideas compatible? What experience does each member bring to the table, and is it relevant? What is the focus of each member? Is the team complete?

Legal Issues. Is the investment in the country legal? Are there any restrictions imposed on that particular industry within the country? Is the company operating within the scope of the business (i.e. is the company acting ultra vires?)? Have the local partner's fixed assets, to be used as a capital injection into the new company, actually been pledged to the bank? Have the land rights been granted the appropriate land certificate? Are there any restrictions on the company's land-use rights? Who owns the IP, or will own the IP in the future, and has any IP being brought into China been registered already, and can it be registered?

Concept. What is the overall timetable for the project? Will the product have a competitive advantage in that specific market? Are there Intellectual Property or Patent and Trade Mark issues? What is the local business regulatory issues, and does the plan allow enough time for these to be resolved?

Expanding on the arguments of Concept, considering China's enormous economic growth and numerous reforms that occurred in the past decades, it is recommended for any would-be investor or business to maintain some level of due diligence. Like in any country the Rule-of-Law must be adhered to where ever you are operating in. However, unlike most countries, when reforms are finally enforced in China, the changes come swiftly often catching unsuspecting foreign business and investors by surprise. Staying on top of Government and local regulations is a constant necessity when operating anywhere in the world, in some cases, more so in China.

Given all of that, time must be factored in as well. Westerners used to the speed of business in developed nations are often frustrated by the multiplicity and the seemingly overly bureaucratic state of government departments. With proper due diligence, a project can set realistic timeframes reducing such frustrations from occurring in the first place.

Market. What about those cash flow and production projections? What data are they based upon? What are the estimates of the needs for the company's products or services? What market research has been done, and has it been analysed? What are the competitive advantages of the company's products/services in the Chinese market? What are the future marketing strategies? What is the pricing strategy? What about the competition?

Capital requirements. How much funding will be required presently, and into the future, and how will the financing be structured? Will additional funding be needed and, if so, when, at what stage in the project and from who?

Financial statements. It is essential to have three to five years projections, and for established companies, historical records going back for the same period. It is also imperative to understand the financial position of the Chinese partner, including whether the statements are presented in a "true and fair" manner. Similarly, are they in accordance with Chinese Accounting Standards (which is very close to IFRS)? Or, are their difference between management reporting and local books, and can these be explained.

Investigate. Last, but not least, investigate your proposed partner, using an investigator who can check through different channels. This is in addition to due diligence on the proposed joint venture partner and its owners.

So how do companies sort out this Gordian Knot?

Firstly, by getting the right advisors. With China's complex accounting system, rapidly changing legal and tax system and bureaucratic controls, seeking sound professional advice is paramount in setting up any China operation.

Secondly, by conducting due diligence. The key lesson learned is that in China, especially, it is imperative that an in-depth "Complete Business Due Diligence" be done before any firm begins in the China market.

Otherwise, it could end in tears!

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Colombia's economic reopening, public policies and proposed strategies

Colombia is reaching 205,000 infected and although we have not reached the peak, the National Government has decreed different routes and options for economic reopening, while citizens continue in what has been identified as "the intelligent quarantine." Due to constant pressure from various unions, informal vendors and other sectors, the National Government presented 13 strategies on Wednesday, July 22, seeking to contribute to the economic reactivation of the country. This strategic plan aims to create jobs and is called: "Go ahead with confidence." More specifically, the strategies seek to impact foreign trade, foreign investment, business development and tourism.

Thus, according to government members, the first action of the aforementioned plan focuses on business financing, with direct credit through Bancóldex and the National Guarantee Fund (FNG), for the recovery of around 130,000 MSMEs for the year 2022, and resources near 15.8 billion COP.

Likewise, business transformation is sought, the quality of which includes quality seals for biosafety and an accompaniment for 24,000 firms with productivity strategies and digital transformation, among others.

The project counts with resources near $49,000 million COP, and the reactivation of the different regions are accompanied with agendas for each of the 32 departments for the regionalization of the support instruments.

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The Cyprus Russia Double Tax Treaty amendment

On the 25th of March 2020, the president of Russia announced changes that will be implemented on the Double Tax Treaty (DTT) between the two countries if they come to an agreement. The Russian Federation has requested the increase of the withholding tax rates on dividend income from 5% or 10% depending on the situation, to be raised to 15%.

Negotiations have taken place on the 2nd of July 2020 where the Cyprus government has requested exceptions to Russia's demand to place a 15% withholding tax on dividends paid from Russian companies to Cyprus-based accounts by Russian residents or companies. "Dividends" will include as well as payments on shares of mutual investment funds and any other related collective investment vehicles. The Russian government though is not open to negotiations and the dividend Tax will be enforced in 2021.

If the Cyprus authorities do not accept and refuse the amendments to the Double Tax Treaty, the Russian Federation reserves the right to terminate the Double Tax Treaty individually without the consent of the Cyprus authorities.

Since 34% of the foreign investments in the Russian Economy come from Cyprus, the government of the Russian Federation informed the Cyprus Government first from all treaty partners. More countries of the European Union will follow and will be informed concerning this change and what changes will apply in each situation to reflect the unilateral decision taken by the Russian Federation for all treaty partners. If changes were not made to all treaty partners, then there would be a negative impact of all Double Tax Treaties and all countries involved.

A lot of businesses will be affected with this change and will need to restructure there way of business and how they operate.

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More or fewer taxes for COVID?

The world has changed, the taxes need to go in the same way, and this second half of the year is a good time for it. To understand what are the tax reforms that are going to happen in the rest of the planet. For this, we rely on the analysis carried out by Antea, with the latest news in the world of taxes.

We start with Argentina, which works on targeted measures to address the crisis. Thus, companies with a high impact from the pandemic are waiting to receive support policies by the State, particularly in those sectors that demand a significant physical presence, such as industries, construction, transportation, tourism, and entertainment.

Approximately 50% of companies in Argentina are located in a medium impact scenario; that will be determined on each sector and its interrelation with the market. Finally, for firms with a low impact due to the crisis, especially those that have been operating in activities defined as strategic, such as food, agribusiness, and energy, as well as those that do not require physical presence, such as technology, electronic commerce, and remote services, a higher tax contribution would be expected than that of the other sectors that have been affected by the crisis.

For its part, Germany has just approved the temporary VAT reduction applicable from July 1 to December 31, 2020, so the general VAT rate will go from 19% to 16% and the reduced rate of 7% goes to 5%, hoping in this way to increase domestic consumption. Although it may not seem like it, a rate of 16% is competitive when compared to 21% in Spain or the Netherlands, 23% in Portugal, and even 25% in Denmark and Sweden.

The own circumstances and the German economic policy have greatly promoted online shopping, which has maintained a constant growth that has not been affected by the global crisis; and on the contrary, the German companies not only have not been harmed by the crisis, many of them have experienced an increase in sales compared to the subsidiary companies in the rest of the world, and that they will now also benefit from the reduction of the VAT (OR).

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Effects of the COVID-19 pandemic on a commercial lease in Germany

Until 30 June 2020, due to a hastily passed law in Germany, it was not possible for a landlord to terminate a commercial lease agreement if the tenant was unable to pay the rent in April, May and June 2020 due to the effects of the COVID-19 pandemic. However, this law expired on 1 July 2020.

In summary, this means going forward:

Rental debts related to COVID-19 for the months of April 2020 to June 2020 must now be repaid by 30 June 2022 at the latest. According to the current legal situation, rent debts are also subject to interest until repayment in accordance with the statutory provisions of the German Civil Code.

As of 1 July 2020, normal rental payments must be resumed, otherwise measures pursuant to civil law may be taken, up to and including termination.

The right to terminate rental and lease agreements for premises or land due to arrears was limited to cases in which the outstanding rental and lease payments were due in the period from 1 April 2020 to 30 June 2020.

The expiry of the special protection against termination as of 30 June 2020 means that tenants can be terminated due to arrears that arise as of 1 July 2020 - including in combination with any previous arrears from before April 2020 - if they are in arrears totalling **more than one monthly rent.**

Tenants should also note that missed rent payments for the period from 1 April 2020 to 30 June 2020 must be paid by 30 June 2022, otherwise their lease may be terminated for this period.

Nevertheless, it is of course still possible to contractually agree to a deferment or a (partial) waiver of the rent with the landlord of the property or business premises. In such an agreement, however, care should be taken to clearly regulate whether the rent is to be reduced permanently or at least for a certain period or if it is only to be deferred. In the event of a deferral, it should then be specified exactly when the deferred rental payments are to be repaid and whether the payments are subject to interest.

Such regulations are necessary to preclude the landlord from terminating the lease due to payment arrears and, if applicable, to prevent the company from insolvency due to the existing rent debts. Such an arrangement should therefore also be set out in writing for evidence purposes.

Your Auren consultants are always ready to assist you in negotiating with your landlords and concluding corresponding agreements.

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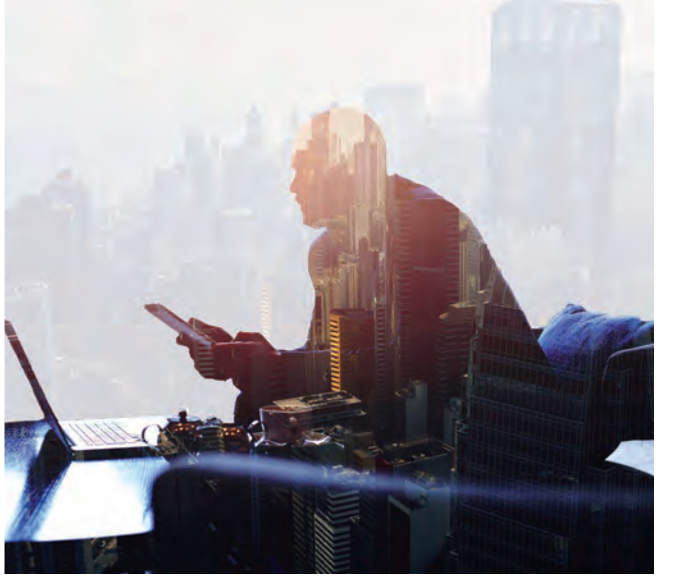

Taxation of Long Term Capital Gain (LTCG)

1. Chargeability of tax on Capital Gain?

Gain arising on transfer of capital asset is charged to tax under the head "Capital Gains". Income from capital gains is classified as "Short Term Capital Gains" and "Long Term Capital Gains".

Capital asset is defined to include:

a. Any kind of property held by an assessee, whether or not connected with business or profession of the assesse.

b. Any securities held by a FII which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.

However, the following items are excluded from the definition of "capital asset":

1. Any stock-in-trade (other than securities referred to in (b) above), consumable stores or raw materials held for the purposes of his business or profession;
2. Personal effects, that is, movable property (including wearing apparel and furniture) held for personal use by the taxpayer or any member of his family dependent on him, but excludes-Jewellery, archaeological collections, drawings, paintings, paintings, sculptures or any work of art.
3. Agricultural Land in India.

2. What is Long term capital asset?

Any capital asset held by the taxpayer for a period of more than 36 months (24 months in case of unlisted shares of a company & immovable property being land or building or both) immediately preceding the date of its transfer will be treated as long-term capital asset.

However, in respect of certain assets like shares (equity or preference) which are listed in a recognised stock exchange in India (listing of shares is not mandatory if transfer of such shares took place on or before July 10, 2014), units of equity oriented mutual funds, listed securities like debentures and Government securities, Units of UTI and Zero Coupon Bonds, the period of holding to be considered is 12 months instead of 36 months.

3. Computation of long-term capital gains?

Long-term capital gain arising on account of transfer of long-term capital asset will be computed as follows:

Full value of consideration (i.e., Sales consideration of asset)	XXX
Less: Expenditure incurred wholly and exclusively in connection with transfer of capital asset (E.g., brokerage, commission, etc.)	XXX
Net sale consideration	(XXX)
Less: Indexed cost of acquisition (*)	(XXX)
Less: Indexed cost of improvement if any (*)	(XXX)
Long-Term Capital Gains	**XXX**

(*) Indexation is a process by which the cost of

acquisition is adjusted against inflationary rise in the value of asset. For this purpose, Central Government has notified cost inflation index. The benefit of indexation is available only to long-term capital assets.

For computation of indexed cost of acquisition following factors are to be considered:

- Year of acquisition/improvement;
- Year of transfer;
- Cost inflation index of the year of acquisition/improvement;
- Cost inflation index of the year of transfer.

4. Tax on long-term capital gain

Generally, long-term capital gains are charged to tax @ 20% (plus surcharge and cess as applicable), but in certain special cases, the gain may be (at the option of the taxpayer) charged to tax @ 10% (plus surcharge and cess as applicable). The benefit of charging long-term capital gain @ 10% is available only in following cases:

a. Long-term capital gains arising from sale of listed securities and it exceeds Rs. 1,00,000 (Section 112A);

b. Long-term capital gains arising from transfer of any of the following asset: i) Any security* which is listed in a recognised stock exchange in India;

ii) Zero coupon bonds.

*Securities for this purpose means "securities" as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.

5. Section 112A of Income tax act, 1961:

As per Section 112A, long-term capital gains arising

from transfer of an equity share, or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10% (without indexation) of such capital gains. The tax on capital gains shall be levied in excess of Rs. 1 lakh.

This concessional rate of 10 per cent will be applicable if:

a. In a case of an equity share in a company, securities transaction tax has been paid on both acquisition and transfer of such capital asset; and

b. In a case a unit of an equity oriented fund or a unit of a business trust, STT has been paid on transfer of such capital asset.

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Infrastructure projects: great business opportunities

The State of Israel's total investment will reach more than 200 billion NIS by the end of 2020, and the set budget for the next five years projects has been approved and doubled. This budget aimed at international companies, Invites them to participate in the implementation of infrastructure projects in a wide range of fields.

Every major and significant infrastructure project involves hundreds and sometimes thousands of companies from different fields. For example, one of the most recent projects that Auren Israel's advisory team is undertaking is to excavate transport tunnels to Jerusalem for the benefit of roads and railways. We professionally accompany dozens of companies ranging from small international companies to large global companies, with each company executing its area of expertise in the project. Starting with electricity, sealing, digging, clean air, communication, a variety of technologies, etc.

In some of the acquaintances, the international companies participating are the direct winners of the state tenders, and in some of these acquaintances, the sub-suppliers.

The experts' team of Auren Israel has extensive experience in accompanying infrastructure projects. Starting with the preparation for the tender, winning, and the ongoing support of the business activity, alongside with the achievement of the ultimate goal: bringing the profit back home. All of these services under one umbrella in one place provided by a personal, professional team.

The major projects in Israel usually offered to the public for participation in the **PPP – "Public-Private Partnership"** method. A method for carrying out public projects through a partnership of the public sector with the private sector. It is a contract between a government office and a private business entity, for a common purpose. The advantage of this method is that the initial cost, which is often very high, is borne by the business entity, which will eventually earn its money back from it, over time, without the extremely high cost of financing being imposed on the public.

The three common models used in Israel are:

PFI – "Private Finance Initiative": The franchisee who sets up and operates the project receives payments mainly from the state, according to pre-defined performance criteria.

BOT – "Build, Operate, Transfer": Build, operate, and transfer. In this method, at the end of the period, the property passes to the client, the public sector. The franchisee who runs the project receives payments mainly from the users of the service.

BOO – "Build, Operate, Own": Construction, operation, and ownership - at the end of the agreement period, the property remains owned by the private sector.

The verity and range of projects are wide and its includes projects in these areas of expertise: Roads, Tunnels, Railways, Electricity and Energy, Environmental Health, Recycling, Clean Air, Clean

Energy, Water Purification, Air Purification, Chemical Purification, Communication, Telephony, Internet, Satellite, Agriculture, Real Estate, Green Construction, Hotels, and Tourism Infrastructure.

We are at your disposal!

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New VAT simplifications for direct electronic commerce

In implementation of directive no. 2017/2455 / UE, the Legislative Decree n. 45/2020 has implemented some VAT simplifications in the Italian legal system relating to the direct electronic commerce sector. The territorial rules of B2C services and the operating system of the MOSS are specifically regulated, which allows the supplier to avoid the obligation to identify VAT in the individual EU states of consumption. In particular, the place of taxation of electronic services is no longer identified with the client's Member State, but - exactly the opposite - with the provider's Member State, if the total value, net of VAT, of the digital services performed in the current and previous year does not exceed the limit of 10,000 euros for each year and for each Member State of consumption.

Identification of electronic services

In the electronic commerce so-called "directly", from the VAT point of view, the operations are attributable to the category of "supply services", since the sale - even if it concerns goods - is carried out in digital form and through an electronic network.

First of all, it is necessary to identify what are the services that qualify as "electronic", for which a specific VAT regulation is applicable, in particular when the transaction is B2C (business to consumer), with the consumer established in a country (EU or extra-EU) other than that of the supplier.

Article. 7 of Implementing Regulation no. 2011/282 / EU states that these services "include the services provided through the Internet or an electronic network and whose nature makes the service essentially automated, accompanied by minimal human intervention and impossible to guarantee in the absence of information technology".

The mandatory place of electronic services

The correct identification of the nature of e-commerce operations is essential to determine the place of VAT taxation.

With a view to essentially simplification, the VAT tax area of the services in question, regulated by the new art. 7-octies of the Presidential Decree n. 633/1972, no longer identifies with the client's Member State, but - exactly the opposite - with the supplier's Member State, if the total value, net of VAT, of the digital services supplied in the current year and in the previous one, it does not exceed the limit of 10,000 euros for each year and for each Member State of consumption.

In practice, below this threshold, electronic services supplied to private consumers of other Member States are considered territorially relevant in the Member State of the supplier, however it is possible to opt for VAT taxability in the Member State of the consumer, in which case the choice it is binding for two years and must be communicated in the VAT return relating to the year in which it is exercised. In the event of omission or late communication, the "conclusive behavior" of the supplier should be considered to prevail, therefore the effectiveness of the option remains unaffected.

Borrowing the specific provision dictated by Implementing Regulation no. 2011/282 / EU for intra-community distance sales of goods, in the event of exceeding the threshold during the year, the passage of taxation from the Member State of the supplier to that of the customer takes place from the date on which the exceedance occurs.

The application of the MOSS

In case of exceeding the annual threshold of 10,000 euros or an option for VAT taxability in the client's Member State, the Italian supplier should open a VAT position in the Member State of consumption and the same obligation, aimed at paying the tax and fulfilling the obligations connected to it, would be provided by the non-EU supplier for electronic services rendered to private Italian consumers.

This burden can be avoided if the supplier adheres to the MOSS (Mini One Stop Shop).

Furthermore, the MOSS scheme is extended to taxable persons not established in the EU, but registered for VAT purposes in one or more Member States, thereby overcoming the previous limitation which prohibited these operators from being able to use the special scheme.

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Agency contracts compensations in Italy

1. Because of the pandemic-induced recession, many companies are implementing cost-reduction plans. Some have chosen to reduce, at least temporarily, their sale-agents force. Here is a short note on agency contract compensation in Italy.
2. Generally speaking, in case of termination of the agency contract, the agent is entitled to a notice (or in alternative an indemnity in lieu of notice) plus various end-of-service indemnities according to the rules applied: i) those of the Italian Civil Code (Articles 1742 – 1753) or ii) the ones of the Collective Agreements (*"Accordo Economico Collettivo Commercio"* or *"Accordo Economico Collettivo Industria"*).
3. As regards the rules provided by the Civil Code, pursuant to Article 1751, the end-of-service indemnity shall be paid to the agent that procured new clients to the principal company or developed their business in such a way that his performance are still generating sales and income for the principal.

   The indemnity must be fair with reference to the case and to the commissions the agent will lose because of the termination of the contract. The amount of the indemnity shall not be higher than the average yearly amount of the commissions paid to the agent in the last five years of performance of the contract.

   No indemnity is due in case the contract is terminated because of just cause or in case of application of an express termination clause agreed by the parties.
4. As regards the rules of the Collective Agreements), the *"Accordo Economico Collettivo Commercio"* provides a

   threefold agency contract compensation:

   a. termination indemnity (*"indennità di risoluzione"*), equivalent to the contributions paid by the company and accrued in special fund managed by Enasarco (the national insurance agency for commercial agents);
   b. indemnity for compensation of clients lost (*"indennità suppletiva di clientela"*), equivalent to a percentage of the past commissions (3% of commissions paid/accrued in the first three years of contract; 3,50% on those paid between the fourth and sixth year; and 4% of the commissions paid onwards);
   c. "meritocratic" indemnity (*"indennità meritocratica"*) to be paid in case the amount of a) and b) is lower that the maxim amount of the end-of-service indemnity provided by Article 1751 of the Italian Civil Code (see paragraph 4 above) and on condition that the agent procured new clients to the principal company or developed their business in such a way that his performance are still generating sales and income; it is based on the average commissions paid in a given period of time depending on the duration of the contract (for instance, in case the contract lasted between 3 and 10 years, the indemnity is given by the combined calculation of the average commissions of the first two years and of the last two years).

   As above, no indemnity is due in case the contract is terminated because of just cause or in case of application of an express termination clause agreed by the parties.
5. The provisions of *"Accordo Economico Collettivo Industria"* are quite similar: the main difference being in the way the "meritocratic" indemnity is calculated. The first step is to measure the increase in clients or turnover generated by the agent, the second is to assess the so called "period of prognosis" (between 2,25 and 3 years) in which the principal company is supposed to go on benefiting from the agent's activity even after termination of the contract. Finally, having applied some corrective factor (such as the predictable yearly "migration" of clients towards different providers) and subtracted the amount of the termination and compensation indemnities, the meritocratic indemnity is settled. It cannot, in any case, exceed the amount of the indemnity provided by Article 1751 of the Civil Code.

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Global Residence Scheme

(such scheme also integrates the e-Residence Maltese card, the Maltese ID Card and Visa)

The Global Residence scheme is applicable to non-EU, non-EEA and no Swiss nationals only. Hence this scheme will enable non-EU, non-EEA and no Swiss nationals to obtain a Maltese e-residence card together with Visa.

Taxation under the Global resident scheme:

- Flat rate of 15% on income remitted to Malta
- Flat rate of 35% on income arising in Malta

The minimum tax shall be €15,000 and shall include all dependents (the definition of dependent is widened, also including dependent brothers and sisters and direct relatives in an ascending line. Employees are also provided for, i.e. carers/butlers and other persons that may have been in the employ of the applicant for the preceding two years.

Conditions to be satisfied:

- Applicant must either acquire or rent a property in Malta or Gozo
    1. Property Purchase requirements : Purchase price of property in Malta €275,000 Purchase price of property in Gozo and the South €220,000
    2. Rent : Annual minimum rental of property in Malta €9,600 Annual minimum rental of property in Gozo and the South €8,750
- Applicant and dependents are to be covered by an all-risks medical insurance in Malta.
- The renewal of the Uniform Residence Permit shall only be given on condition that the applicant and dependents not only satisfied the minimum conditions for the past year but shall also satisfy the conditions for the forthcoming period for which the Uniform Residence Permit is given. This includes the payment of the minimum tax.
- The immovable property on which the applicant has declared as his residence in Malta cannot be used by any other person other than dependents or those in his employ. The applicant may not rent out the property that he is declaring to be his residence in the application for whatever period and in whichever location.
- The applicant may not be resident for more than 183 days in any other single jurisdiction. Application fee is €4,000 at application stage. From the date that the person actually takes up residence in Malta, a further amount of €2,000 shall be payable. Persons who take up residence in Gozo or in the South of Malta can benefit from a reduction of €500 from the latter €2,000.

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Dissolution and liquidation, fast track, of Mercantile Companies in México

In order to guide our clients in making decisions regarding mercantile companies, we allow ourselves to make some comments on the subject that, we believe, may be useful to you.

DISSOLUTION AND LIQUIDATION FAST TRACK OF MERCANTILE COMPANIES IN MÉXICO

In Mexico, there is currently a procedure for the dissolution and liquidation of mercantile companies known as Fast Track, which has its origin and foundation in the reform to the General Law of Mercantile Companies, published in the Official Gazette of the Federation (DOF for its acronym in spanish) on January 24, 2018 and entered into force on July 25 of the same year.

In summary, the reform adds a new cause for dissolution for companies in section VI of article 229 of the reference legal system, which gives powers to the judicial and administrative authorities to resolve in competent courts, the continuity of operations of mercantile companies in accordance with the causes provided for in the Law, but without establishing a clear procedure and leaving said determination at the discretion of these authorities.

This reform also contemplates the incorporation of articles 249 Bis and 249 Bis 1. The first one describes the requirements that companies that wish to abide by this expedited procedure must comply with, stressing that they must be made up only of partners or shareholders who are natural persons and have not carried out operations or issued electronic invoices in the last two years.

For its part, article 249 Bis 1, details the dissolution and liquidation procedure, in which it is relevant to point out that it would be enough to hold a shareholders' meeting where the liquidation is agreed and this is published in the mercantile company publication system administered by the Ministry of Economy and wait for its resolution.

In this process of dissolution and liquidation the intervention of a notary public will not be necessary, assuming the Ministry of Economy, the following obligations:

- Approve the origin of the dissolution;
- Make the notice to the Public Registry of Property and Commerce, to register the dissolution;
- When the distribution of remnants is made and the final balance is published by the liquidator, make the notice to the Public Registry of Property and Commerce in order to cancel the folio of the company; and
- Notify the Tax Administration Services (SAT for its acronym in spanish), for the cancellation of the Federal Taxpayer Registry (RFC for its acronym in spanish).

It is not omitted to point out that, prior to holding the dissolution and liquidation assembly, companies must:

- Cancel their employer registration with the social security authorities, and
- Obtain a favorable opinion of compliance by the Tax Administration Service.

Advantages and Disadvantages

ADVANTAGES	DISADVANTAGES
1. Notaries do not intervene 2. The procedure is before a single authority (Ministry of Economy) 3. The registration of dissolution and the cancellation of the commercial folio before the Public Registry of Property and Commerce, is done by the Ministry of Economy through the System of Publications of Mercantile Societies 4. The liquidator´s obligation to keep the company documentation decreases to 5 years.	1. Comply with the requirements of the 249 BIS of the General Law of Mercantile Companies. 2. Only a natural person, partner or active shareholder of the company may be appointed as liquidator, the other partners or shareholders being jointly and severally liable 3. The figure of the liquidator will be indistinct, since it will only proceed to distribute the remnants of the company 4. Any company belonging to a business group, will not be able to access the new form of liquidation

Conclusions

- From a legal point of view, the Fast Track reforms are superficially approved, without carrying out the traditional legislative review process, since they are created from political agreements, that is, Fast Track reforms, which can be resolved in a few months or even hours.
- There are legal loopholes that remain for interpretation by the authorities, responsible for their application.

In our firm it will always be our commitment to advise all those involved in a company, always have their company books in order, keep their obligations up to date and duly documented, regularly generate compliance opinions on tax and social security matters to effect of not giving cause for the judicial or administrative authority to determine and resolve the dissolution and liquidation of the company that in its opinion does not comply with its obligations.

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International tax planning through spanish holding companies (ETVE's regime)

The current globalised economy and the existence of emerging markets are leading to a greater presence of companies abroad.

Spanish legislation contains mechanisms to avoid international double taxation, which are complemented by the special regime for Foreign Securities Holding Entities, called "ETVE regime", a Spanish holding company regime that holds subsidiary companies which are not resident in Spain and that carry out business activities abroad.

ETVE regime provides important tax benefits for foreign companies who organizes its economic activities in other countries through this Spanish holding regime, considered one of the best holding regimes in Europe.

Scope of application

A special scheme is provided for foreign-securities holding companies or **ETVE's** *(Entidades de Tenencia de Valores Extranjeros)* in the Corporate Income Tax ("CIT") Act 27/2014.

ETVEs are protected by Double Taxation Treaties to which Spain is a signatory and by EU Directives (such as the EU Parent-Subsidiary Directive and the Merger Directive). Spain has an excellent Tax Treaty network (especially with LATAM countries).

These are holding entities whose primary corporate purpose is the management and administration of shares representing the equity of not resident companies in Spain, through the organization of material and personal means.

To meet this requirement, the ETVE must have human and material means to manage the shareholdings in subsidiaries. According to the Spanish Tax Authorities' interpretation, this requisite is met if a member of the ETVE's Board of Directors performs the task of managing the shareholdings in subsidiaries. Generally, a Spanish resident director is highly advisable, not only to meet this requisite, but also to show that the effective place of management of the ETVE is located in Spain.

Formal requirements

- Minimum 5% shareholding -either direct or indirect- (or 20 million euro investment) in the foreign company held during at least one year (in case of dividends, the holding period can be completed subsequently). In the event of holding an interest in intermediary (holding) companies whose income consists, in more than 70%, of dividends and capital gains, the mentioned 5% interest has to be indirectly met by the Spanish company in the lower subsidiaries or, otherwise, certain other requirements should be met.
- The subsidiary cannot be a resident in a Spanish-listed tax haven unless this jurisdiction is within the EU and the taxpayer proves that it has been incorporated for sound business reasons and it carries out active business.
- Foreign subsidiaries held by the Spanish holding company must have been subject to a tax identical or analogous to the Spanish CIT at a statutory rate of, at least, 10% (the effective tax rate may be lower on account of the application of any reductions or allowances in the subsidiary). This test is deemed met by subsidiaries resident in a country which has concluded a double tax treaty with Spain. For capital gain purposes, the test has to be met during all years of the holding period.
- The option for this regime must be communicated to the Ministry of Economy and Finance -Tax Administration-, which will be able to verify the fulfillment of the requirements, demanded by the law for its application and will apply to the tax period ending after such communication.

Main tax benefits in Spanish tax law

As we shall see briefly below, the tax regime applicable to such holding entities entails, provided that the requirements for eligibility are met, exemption of incomes from their subsidiaries abroad, specifically:

- **Dividends received from its subsidiaries** abroad generated by their business profits.
- **Income generated on the transfer of shares** in non-resident subsidiary companies.

In the other hand,

- **0% Spanish withholding tax on dividends distributed to foreign shareholders** if paid out of foreign exempt capital gains/dividends (except if paid to shareholders resident in blacklisted jurisdictions).

ETVE structure example

Foreign shareholders

Dividends 0% withholding tax

ETVE (Spain)

Received dividends and capital gains 0% CIT

Subsidiary companies

Dividends reduced withholding applying DTT

Conclusion

These entities are considered to be one of the most competitive European holding companies in terms of taxation, which makes them a valid and effective instrument for international tax planning since they:

- It allows their access to the network of treaties to avoid double taxation signed by Spain.
- They exempt dividends of foreign origin and capital gains in these companies.
- Dividend payments to the foreign shareholder company not resident in Spain are free of Spanish withholding tax, unless that company is domiciled in a country that does not pay corporate income tax or is resident in a tax haven.

Therefore, the ETVE regime is an interesting instrument for international tax planning in the process of internationalization of national companies and foreign companies that want to locate the strategic and operational management of their business abroad though Spanish holding regime, in order to take advantage of the tax benefits that this special regime provides.

The information contained in this article should not be considered in itself as specific advice on the subject under discussion, but only as a first approximation to the topic at hand, and it is therefore advisable for the recipients of this note to obtain professional advice on their specific case before adopting specific measures or actions.

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Withholding Tax in Thailand

Most foreign businesspeople are familiar with withholding tax (aka PAYE or Pay as You Earn) as it relates to income tax. A certain percentage is withheld and paid on behalf of an individual, usually from salaries, royalties, etc. In Thailand, income tax withholding for employees does occur, but normally, "withholding tax" as a term refers to taxes related to third party vendors and suppliers.

What is withholding tax in Thailand?

If you operate a business in Thailand, Thailand's Revenue Code requires you to pay tax on certain goods and services that you acquire for your business. This includes:

Service – WHT Rate

Rent – 5%

Parking – 3%

Telephone – 3%

Advertising – 2%

Professional Fees – 3%

Royalties – 3%

____

It is your responsibility to withhold this from the invoiced amount, before VAT, and remit that withholding tax (WHT) to the Revenue Department.

The invoice lists VAT, where's the withholding tax?

By law, you must remit WHT with Form PND 53 by the 7th of the following month (currently an additional 8 days is given if filing online). Regardless of whether you withhold this amount from your payment, you will still be liable for paying WHT. However, unlike VAT an invoice does not have to show the amount of tax to be withheld so care must be given when calculating how much should be deducted from an invoice before paying it.

For example, you received an invoice due the 1st of July for 10,700 THB for legal services – 10,000 THB plus 700 THB VAT. Rather than paying 10,700 THB, you would pay 10,400 THB and send a WHT tax certificate for 300 THB to the law firm. Then, you would remit 300 THB with Form PND 53 to the *Revenue Department* before the 7Th of August (or 15th August if submitting online).

If PND 53 is for withholding tax, what about PND 1 or PND 3?

While PND 53 is for withholding tax related to vendors and suppliers, PND 1 is for withholding income tax for employees. PND 3 is similar to PND53 as it is for third party vendors and suppliers, but those who are individuals, not juristic entities. (In case you're wondering, PND 2 is for remitting withholding tax on corporate dividends and interest.)

Can The Team at RWT assist me with these Thai withholding tax requirements?

The RWT Accounting Team is on hand and ready to provide you with numerous services including assistance with any withholding tax requirements. We can work with your finance team or arrange to handle the payments and filings on your behalf. Our English Speaking Accounting Division provides our clients years of practical tax experience as well as a constant understanding of all updates in tax law and how it affects our clients bottom line. Our team Are happy to consult on all matters and assist any foreign businesses operating in Thailand to provide further understanding of the differences between PND 1, PND 2, PND 53, and any of the other requirements to ensure a smooth operation of business in the Kingdom of Thailand.

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No deal brexit: Impact on company & corporate law

A no deal scenario is one where on 01.01.2021 the Unitd Kingdom (UK) leaves the European Union (EU) becoming a third country, without a Withdrawal Agreement and framework for a future relationship in place between the UK and the EU.

The purpose of EU rules in company law framework is to enable businesses setting up anywhere in the EU enjoying the freedom of movement of capital, persons and services, to provide protection for shareholders and other parties with a particular interest in companies, to make businesses more competitive, and to encourage businesses to cooperate over borders.

Below we mention the main changes to be aware of in the event of Brexit in a No Deal scenario.

- European entities formed under EU law.
- European economic interest groupings (EEIGs)
- European public limited liability companies, known as ‘societas Europaea’ (SEs)

Following the UK Government guidance, SEs and EEIGs registered in the UK can make alternative configurations before 1 January 2021.

For instance, an SE can convert to a UK public limited company (PLC) if it has:

- had 2 sets of annual accounts approved. (*)
- been registered for at least 2 years
- EEIGs and SEs and can also move their seat of registration from the UK to another EU member state.

Any entities that have not completed the conversion process before the exit day, will automatically converted to a new UK corporate entity.

(*)We understand the last two annual accounts

Cross-border mergers

From 1 January 2021, UK companies will no longer be able to make use of the EU cross-border merger rules. Therefore, any cross-border merger involving a UK and EU company (or partnership) that has not been completed before exit day may fall.

Uk companies who would like to merge with another company outside of the UK will need to transfer liabilities and assets through contractual arrangements. This means following the same process that the UK has currently with non- EEA companies.

EEA companies: Filing and disclosure changes

After exit day, the UK will no longer be part of the EU.

The main changes relating to filing requirements will impact on EU-registered companies which have registered a UK establishment and UK companies who have appointed services from an EU corporate officer. In both cases, those companies will need to provide additional information to Companies House.

The Govern ment is in the process to laying all necessary Statutory Instruments that will ensure the UK´s company law regulations is up to date with the UK´s status outside the EU.

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New promotional regime for real estate investments

Decree No. 138 of 2020 recently published introduces a new promotional regime for **real estate investments**, under **Law No. 16.906 of 1998**, Investment Law.

Promoted activities

- Construction of **office buildings**, for sale or rental.
- Construction of **residential buildings**, for sale or rental.
- Urban development projects (private initiative), of suburban or rural area, including:
  - infrastructure development and subdivision,
  - subdivision and construction of housing units over this land.

Conditions for applying to benefits

Projects without registration before the publication of this Decree:

- projects with an investment of **USD 6,5 million** or more, in civil works and equipment of common areas, registered as of this Decree,
- common areas should be at least 10% of the project,
- promoted investment should be executed in a period of **up to 60 months**, since the approval of the building permit, maximum 30th April of 2025.

Projects previously registered (initiated or not):

- projects with pending investments for at least USD 6,5 million (civil works and equipment of common areas),
- common areas should be at least 10% of the project,
- promoted investment should be executed in a period of up to **48 months**, since the submission of the project among COMAP, maximum 30th April of 2025.

Investment projects should be submitted before the 31st of December of 2021 in COMAP.

Fiscal benefits

Income Tax exemption, considering:

Income Tax exemption	Investment range			
15% of investment	USD	6.500.000	-	9.700.000
20% of investment	USD	9.700.001	-	22.000.000
25% of investment	USD	22.000.001	-	30.800.000
30% of investment	USD	30.800.001	-	61.600.000
40% of investment	More than		USD	61.600.000

The maximum period for using this exemption is **10 years**, counted since the first year with positive taxable income (up to 4 fiscal years since the promotional declaration).

In every fiscal year, the exemption must not exceed:

- 90% of Income Tax,
- total investment to date of presentation of Income Tax affidavit,
- maximum exemption considering project's investment range.

In case investment is not accomplished in the maximum granted period (60 or 48 moths, maximum 30/04/2025), when the percentage of completion is at least 50% Income Tax exemptions would be apportioned considering execution progress.

Net Worth Tax exemption for the project promoter:

- land and improvements: 8 years for projects in Montevideo and 10 years in outside de capital city,
- equipment of common areas: for all its useful life.

Value Added Tax refund: associated to civil Works and equipment of common areas.

Exemption of customs duties and other taxes: on imports of equipment, machines and materials for civil works and equipment of common areas, to be imported directly by the promoted company. Provided they are not competitive with the national industry.

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