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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

Some of the features of this edition include:

E-invoicing system to all taxpayers in Egypt, Most common practical options to control the management in Russia and Money laundering and terrorism financing law in Portugal.

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

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Index

Argentina
Simplified Regime of International Operations – RG 5010
Read the article

Bulgaria
Bulgaria: New Rules for E-commerce & VAT
Read the article

Colombia
Youth Recruitment
Read the article

Cyprus
Re-Domiciliation of Companies in Cyprus
Read the article

Czech Republic
Shopping centre lease contracts: A pan european overview
Read the article

Egypt
Egypt extends mandatory e-invoicing to all taxpayers
Read the article

Germany
Changes for B2C distance sales and import consignments as of 1 July 2021
Read the article

Greece
Ten new online services for the free lancers upgrading the level of service to citizens, through the digitization of the infrastructure.
Read the article

India
Taxation of Long Term Capital Gain (LTCG)
Read the article

Israel
The Infrastructure field- great business opportunity in Israel
Read the article

Italy
New on variation notes ex art. 26 of p.d. no 633/72 in the insolvency procedures
Read the article

Italy
Short notes on the retail division manager's agreement /vs/ business lease
Read the article

Luxembourg
Challenges of remote working and lessons for the future
Read the article

Mexico
Intangibles and Transfer Pricing Regulations. Legal Ownership
Read the article

Paraguay
Tax Incentives Regime in Paraguay
Read the article

Portugal
Money laundering and terrorism financing law in Portugal
Read the article

Russia
How to control the management of your Russian business?
Read the article

Serbia
Serbia: Ministry of Finance Adopts VAT Rulebook
Read the article

The Netherlands
"Netherlands: new source tax to affect dividend payments to low tax jurisdictions as from 2024"
Read the article

United Arab Emirates
Non- UAE citizens can fully own businesses in the Country – A law that is going to boost the economy.
Read the article

United Kingdom
Brexit: cross-border insolvency proceedings
Read the article

United Kingdom
Changes afoot in the United Kingdom
Read the article

Vietnam
Some highlights from VNC Consulting for foreign trader to open representative office in Vietnam
Read the article

Simplified Regime of International Operations – RG 5010

On June 16, 2021, the argentinian tax authority ("AFIP") finally issued the General Resolution 5010 (RG 5010) which propose to simplify the compliance that taxpayers have to submit under the Transfer Pricing regime (Local File and / or Form 2.668) through a Simplified Regime of International Operations. On the other hand, they have also the option of submitting the last Master File, when there are no changes in the reporting period.

The effective date of this Simplified Regime corresponds to those fiscal year ended as of December 31, 2020, inclusive

The article 1 indicates that the scope is for those taxpayers who have carried out operations with related parties, or located in jurisdictions with low or no taxation or non-cooperating, or exports or imports with independent third parties for an amount greater than US $ 99.000, always that are in any of the following scenarios, which are independent of each other.

Scenario 1 - Taxpayers, who are, respect to the fiscal year to be reported, in any of the situations listed below:

Refers to taxpayers which annual turnover[1] is lower than the medium-sized companies Section 1 (Resolution 220/2019) and its amendments, saying that *"the total annual turnover is less than the highest amount established for the median category of section 1, whatever the activity to which this amount corresponds*", it is understood that it refers to Commerce Sector (USD 25.631.000)[2].

Therefore, the taxpayer that has a turnover lower than this amount may use the Simplified Regime as long as the following conditions are met:

a. That they do not fill negative results in the last 3 years.

b. That they have not undergone business restructuring processes in the last 3 years.

c. That they do not have royalty operations, license rights or research and development agreements with related parties or third parties located in non-cooperating jurisdictions and/or jurisdictions of low or null taxation, for amounts greater than 1% of the limit mention above.

d. That they have not provided or acquired services from related companies abroad or located in non-cooperating jurisdictions and/or jurisdictions of low or null taxation for an amount greater than 1% of the local taxpayer's turnover.

e. That has not lend or borrowed loans for any amount to/from related companies abroad.

Scenario 2 - Taxpayers who meet the following conditions jointly

It refers to those taxpayers that have international operations with related parties for amounts[3] less than 2.5% of their total turnover, and additionally meet the following requirements jointly

a. That do not have royalties operations, licensing rights or research and development agreements with related parties, or third parties located in non-cooperating jurisdictions and/or jurisdictions of low or null taxation, for amounts greater than 0.50% of the amount of their total turnover.

b. That do not fill negative results in the last 3 years.

c. That have not undergone business restructuring processes in the last 3 years

d. That they have not carried out import and / or export operations with the intervention of an international intermediary in accordance with article 24 of RG 4717[4]

Scenario 3

The Simplified Regime could be submitted by non-profit organizations exempt from income tax, such as entities exempt from taxes by national laws, cooperatives, religious entities, associations, foundations and mutual, among others.

Scenario 4

Finally, taxpayers that operate with independent parties for amounts greater than USD 99.000 may also file the Simplified Regime (those that operate for lower amounts are exempt from reporting) up to USD 594.000.

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[1] Understanding as "annual turnover" to that financial information which are not adjusted by inflation

[2] It is important to consider that the Appendix has been replaced by article 3 of Resolution 19/2021 which effective date is April 1, 2021, implying that for fiscal years beginning on that date the amount established for the median category of section 1 will have modifications.

[3] Understanding that the "amounts" are adjusted by inflation

[4] "An intermediary is considered to be the foreign subject who buys and sells the exported or imported merchandise in order to mediate in its commercialization, without having physical possession of it"

The article 2 excludes from the Simplified Regime of International Operations those taxpayers indicated below:

- Those who are part of Groups of Multinational Companies that must file the "Country by Country Report", regardless of the jurisdiction where they have to comply with the obligation and/or
- Taxpayers who are obligated to file the Master File or the tax return that replace it, according to the article 45 of RG 4717.

The Simplified Regime of International Operations – requires filing form "F.2672" – "International Operations Simplified Regime" and allows not to file the Transfer Pricing Study and / or F.2668. It must be submitted by the sixth month after the end of the fiscal year.

In the F2672, the transfer price adjustments, if any, must be indicated (in addition to other information). That is to say, the functional analysis (description of functions, assets and risks) and the economic analysis must be carried out to figure out whether the prices of the operations were under the arm´s lenght principle and thus determine whether an adjustment to the tax base is required.

Conclusion

The Simplified Regime of International Operations "simplifies" the formal filing of F.4501 according to RG 417, which implies including the digital signature of the taxpayer; of the accountant and / or registered economist and of the certification before the Professional Council of Economic Sciences. However, this regime does not prevent the operations under analysis from being tested.

On the other hand, it requires the taxpayer to provide additional information about their turnover that is not adjusted for inflation when the amounts taxpayer to analysis are adjusted for inflation (non-homogeneous values).

Finally, the simplification corresponds to a single digital form with the relevant information. However, it does not avoid carrying out the analysis of the operations and testing whether they were carried out at market values.

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Argentina

Bulgaria: New Rules for E-commerce & VAT

As of July 1st, new VAT rules enter into force in the European Union, which facilitate the fulfillment of the existing obligations related to the VAT and reduce the administrative burdens for the companies performing cross-border online sales.

For online shopping, an electronic portal (electronic one-stop shop / **OSS**) has been developed, in which the companies performing online sales can register for VAT purposes in one Member State electronically for all intra-community distance sales of goods and supplies of services provided to end customers. So far, these companies have been required to register in any country of the EU, before they can make sales to end customers in the relevant EU country. The one-stop shop (OSS) regime can be used to declare the due VAT on goods and services sold online throughout the EU to end customers.

The important amendment taken into force from July 1 gives the possibility to the Bulgarian companies operating on the European market, to declare and pay electronically VAT for all intra-union sales by submitting one quarterly VAT return to the Bulgarian authorities, even in the case of cross-border sales.

In the meantime, the one-stop-shop (**IOSS**) regime facilitates the collection, declaration and payment of VAT for sellers. This regime covers the distance sales of goods imported from third countries to end customers in the EU valued up to EUR 150. When using the "Import" regime, the supplier charges and collects the VAT applicable to the place of distance selling of goods

and declares and pays this VAT to the Member State of identification through the electronic portal for the "Import" regime. In this case, the goods will benefit from an exemption from VAT on import, which allows a quick exemption at customs. The introduction of the "Import" regime abolishes the current VAT exemption for small consignments of goods up to EUR 22 and the VAT rules for the distance sale of imported goods are amended in accordance with the principle of taxation at destination. When the "Import" mode is not used, a second import facilitation mechanism will be available. VAT on imports will be collected by customers from the customs declarator.

Each EU Member State has an OSS portal where online merchants (including merchants who manage an electronic interface) can register. For Bulgaria, the registrations under the special regimes are integrated in the Portal for electronic services of the National Revenue Agency. Access to electronic services will be possible only with a qualified electronic signature.

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Bulgaria

Youth Recruitment

Currently, unemployment in Latin America affects 10 million young people between the ages of 15 and 24, which represents a waste of talent for a significant proportion of the population. In 2019, youth unemployment in Colombia reached 18.1%, on the other hand, according to the National Administrative Department of Statistics DANE, in the first quarter of 2021 the unemployment rate of the young population increased to 23.9%.

That is why the National Government, in the National Development Plan, established inside your objectives the promotion of the social, economic and political inclusion of young people that contributes to the economic and social development of the country, with the objetive of significantly reducing the youth unemployment rate by mitigating their entry barriers to the labor market and carrying out deeper interventions in the labor sector.

In the framework of youth unemployment exacerbated by the effects of the Covid-19 pandemic, the Decree 688 of 2021 was born through which the Ministry of Labor regulates support for the generation of employment for young people between 18 and 28 years old, which is it will be granted to those who make contracts or connections in the 2021 period.

The monthly value of the support will be 25% of the minimum wage in Colombia, that is, $227,131 ($60.05 USD), and will be granted for each additional worker to the number of workers reported by the employer in March 2021 and who are between 18 and 28 years. To benefit from this support, the hiring of additional workers must be carried out in the year 2021 and will be granted up to 12 times without exceeding December 31, 2022.

Additionally, in accordance with the provisions of article 108-5 of the Tax Statute, if it is the first job of the young person hired, the employer may deduct in the income tax 120% of the salary paid.

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Colombia

Re-Domiciliation of Companies in Cyprus

As per the Companies Law Cap.113, companies can re-domicile under specific conditions. Companies that are registered in Cyprus can re-domicile abroad and overseas companies can re-domicile in Cyprus.

In order for an overseas company to re-domicile in Cyprus an application should be filed at the registrar of companies in order continue as a legal entity in Cyprus and transfer its registered Office. Two perquisites for this to take place are, the overseas country to allow the transfer and the memorandum of the company should allow this also.

Together with the application all the below documents need to be submitted,

1. Resolution by shareholders authorizing the overseas company to get registered in Cyprus as a legal entity and should be apostilled.
2. Official letter to the Registrar of the overseas company that the company has the intention to re-domicile.
3. A new Memorandum and Articles needs to be prepared and submitted based on Cyprus Law.
4. Certificate of Good Standing duly apostilled by the relevant authorities.
5. Affidavit prepared by the director of the company that should state the following:
    - Current company name
    - Name that will be used in Cyprus
    - Country of registration
    - Date of Registration
    - Notification Letter and Resolution
    - Criminal Record
6. Affidavit as a solvency confirmation that the company will not proceed with solvency in the next 12 months from the transfer.
7. List of Directors and List of Shareholders
8. Legal opinion confirming the jurisdiction of the company and allowance of redomicile as well as the shareholders.

As soon as all the documents are submitted and reviewed by the registrar, the registrar will certify that the overseas company is temporarily registered in Cyprus and will issue a Temporary Certificate of Continuation.

Once the certificate is issued by the registrar the overseas company is considered as a legal entity incorporated under the Laws of Cyprus. The company is eligible to exercise all powers and all statutory obligations of a Cyprus company.

The overseas company has a time limit of 6 months (plus 3 months in case of a reasonable cause) to present to the Cyprus authorities the below,

1. Certificate of Discontinuance – this certificate should be [resented to the authorities as proof that the company does not exist in the overseas registrar. The certificate needs to be duly apostile.
2. Certificate of continuation (temporary) issues by the Republic of Cyprus.
3. Any other document showing that the company ceased to exist.

The overseas company must not be removed of deleted from the foreign registry before the certificate of continuation is issued in Cyprus. Evidence will be

required by the Cyprus authorities concerning the redomicile that the company and the deletion from the overseas registrar. In case this evidence is not submitted then the authorities can delete the company from the registry or give three months extension to receive the relevant evidence. No further extension will be given.

Once the above perquisites are met and all the documents are submitted to the authorities the Cyprus Registrar will issue the final certificate of continuation, which states and certifies that that the company is registered in the Republic.

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Shopping centre lease contracts: A pan european overview

Preliminary Remarks

In the Czech Republic, retail leases including leases of premises located in a Shopping Centre (as well as any other leases) are governed by Act No. 89/2012 Sb., the Civil Code, as amended, (the "**Civil Code**"). Effective from 1 January 2014, the Civil Code replaced original Act No. 106/1990 Sb. governing the lease and sublease of non-residential premises and the original civil code, Act No. 60/1964 Sb. Also leases concluded prior 1 January 2014 are governed by the Civil Code.

The Civil Code includes general provisions on leases and special provisions on leases of business premises (premises serving for business). The Civil Code also governs further rights and obligations of Landlords and Tenants ensuing from lease contracts. Most of the provisions of the Civil Code are not mandatory and the parties may agree otherwise in a lease contract, unless deviation from a certain provision or principle of the Civil Code is explicitly prohibited by the Civil Code or unless such deviation is contrary to general principles of good morals or public order.

The expressions Tenant, Landlord, Shopping Centre, Premises, Rent, Service Charges etc. used in this document have the meaning usually assigned to such expressions by Czech laws and do not refer to any particular tenant, landlord, shopping centre, premises, rent, service charges, etc.

1 TERM

1.1 Contractual Term

Usually, a definite period of 5 years, but there are no statutory limitations as to the length of the lease term. Lease contracts may be concluded even for an indefinite period, but it is not usual for commercial leases.

1.2 Break Rights

It is not a typical provision in lease contracts, but parties may agree a break option, i.e. a premature termination without a breach of a contract. Usually, Anchor Tenants or Tenants with a strong market position may request such break options. Sometimes such break options are conditioned, e.g. by an amount of the Tenant's turnover and/or expiry of a minimum agreed period.

In case of breach of the lease contract by either party, the other party may terminate the contract with a notice of termination (with immediate effects or with a notice period) or withdraw from the contract (i.e. terminate with immediate effects) for reasons stipulated in the Civil Code, unless further or other termination reasons are agreed in the lease contract. Typically, the Landlord may terminate the lease if the Tenant defaults in lease payments, uses the Premises contrary to the lease contract or otherwise breaches the lease contract or its obligations under the lease contract or if the Tenant is bankrupt (bankruptcy is declared over the Tenant's assets) or in case of insolvency proceedings in respect of the Tenant. Typically, the Tenant may terminate the lease if the Premises become unusable or the Landlord breaches its obligations under the lease contract.

1.3 Renewal Rights

It is not a typical provision in lease contracts, but parties may agree a renewal option. If the renewal option is agreed, it is either agreed under the same terms and conditions or the amount of the Rent (other lease payments) is renegotiated.

Even in case the renewal option is not agreed, the lease contract may be renewed by virtue of law if conditions prescribed by the Civil Code are fulfilled: if the Tenant continues to use the Premises for at least 3 months after the day when the lease contract was to end and the Landlord fails to request the Tenant in writing within this period to leave the Premises, the lease is conclusively presumed to have been stipulated again for the same period as before but for no more than 2 years; this does not apply if otherwise stipulated in the lease contract.

1.4 Disputes and Forfeiture

As mentioned above, termination reasons are stipulated in the Civil Code, or the parties may agree them otherwise. Prior warning notice or a remedy period (before serving a termination notice) is not mandatory, but may be agreed in the lease contract (usually 5 / 7 / 10 days / working days depending on the nature of the particular breach).

2 RENT

2.1 Principal Rent

The amount of the Principal Rent may be freely agreed by the parties, usually payable monthly or quarterly in advance.

2.2 Turnover Rent

Turnover Rent is usual in the Czech Shopping Centre lease contracts and is calculated on a monthly or annual basis as a positive difference between a certain percentage of the Tenants' monthly or annual gross sales (VAT excluded) and the Principal Rent due for the same month or year.

It is not usual but following Covid restrictions, Tenants (Anchor Tenants and/or Tenants with a strong market position) even request that they pay only the Turnover

Rent, i.e. all rent is derived from the Tenant's turnover and no Principal Rent is payable.

Usually, monthly and annual turnover declarations are submitted by Tenants.

2.3 Rent Review

There are no mandatory Rent reviews prescribed by the Civil Code, but annual reviews of the Principal Rent based on inflation are usually agreed in lease contracts. Usually, HICP or inflation rate announced by the Czech Statistical Office (the "**CSU**", where the CSU announces different types of the Czech inflation) are used.

In case of contractual lease renewals or contractual lease prolongations, the amount of the Principal Rent and the Turnover percentage rate are also usually subjected to a review and newly agreed by the parties.

2.4 Procedures to Recover unpaid Rent

Default in payment of Rent (and Service Charges) constitutes a statutory termination reason under the Civil Code. Usually, default in lease payments (both Principal Rent and Turnover Rent as well as other lease payments, typically Service Charges and Marketing Contribution) is also agreed as a contractual termination reason.

By virtue of the Civil Code, the Landlord may retain the Tenant's movables in and on the Premises to pay Landlord's claims towards the Tenant.

Payment of Rent and other lease payments is usually secured by a cash Security Deposit, Bank Guarantee or Mother Company Guarantee (usually only in case of *Anchor Tenants* or Tenants with a strong market position). Typically, such guarantees are in the amount of quarterly lease payments plus the applicable VAT.

3 PREMISES

3.1 Extent of Demise

Usually, the whole Premises (i.e. the interior as well as the exterior parts and all structural parts of the premises) are leased to Tenants. Even if the whole Premises (including the exterior and structural parts) are leased to Tenants, maintenance and repairs of such external and structural parts may be regulated so that Tenants cannot interfere with such structural or external parts (see Art. 5.4 below).

3.2 Extent of the Shopping Centre

The Shopping Centre comprises building(s), land(s) where the building is (buildings are) situated and adjacent lands to be used together with and for the purposes of the Shopping Centre. The Shopping Centre includes all premises in the building(s), i.e. premises leased to Tenants (shops, storages and offices), Common Parts (as defined in Art. 3.3 below) and administration offices used by the Landlord for the operation of the Shopping Centre. Shopping Centre usually includes also any extensions to the buildings and lands, as may be made by the Landlord from time to time.

3.3 Common Parts

The Landlord manages the Shopping Centre Common Parts and grants access to the Tenants to the Common Parts. The Common Parts usually comprise indoor and outdoor areas accessible by the public, e.g. the mall, food court, parking areas and sanitary facilities, and indoor and outdoor areas accessible by Tenants, e.g. service areas and passages and loading docks.

The Landlord may lease the Common Parts (parts thereof) e.g. for the purpose of operation of sale stands.

The Landlord is responsible for the maintenance of the Common Parts, recovering the related cost through the Service Charges.

3.4 Rights reserved by Landlord

The Landlord usually has the exclusive right to manage and to execute works related to the Common Parts, including reconstructions of and additions to the Common Parts and the Shopping Centre (but excluding the Premises, i.e. premises leased to individual Tenants; according to the Civil Code, the Landlord may not modify the Premises during the lease term).

In addition, the Landlord usually has the right to:

- access the Premises in order to verify their use and maintenance by the Tenant and the Tenant's compliance with its obligations under the lease contract and the Shopping Centre's rules;
- be provided with accounting data related to the Turnover made in the Premises, and review accounting data and books related to the Premises if it doubts that the Turnover data provided by the Tenant is correct;
- decide to exploit the parking as a paid-parking;
- assign the lease contract.

4 ABILITY TO TRANSFER THE LEASE OR SUBLET

4.1 Assignment

According to the Civil Code, either party may assign its rights and obligations under the lease contract if the other party agrees to such transfer. It is usually agreed in the lease contracts that the Landlord may assign the lease contract up to its discretion, but the

Tenant may assign the lease contract only with the Landlord's prior written and explicit consent.

Usually, only Tenants with a strong market position obtain the right to assign the lease contract directly in the lease contract, and in most of these cases it can be assigned only to companies within the Tenant's group of companies. Otherwise, assignment by the Tenant is usually agreed case by case by the Landlord.

4.2 Underletting

The Tenant may sublet the Premises only with the Landlord's consent. Subletting without the Landlord's consent is a serious breach of the lease contract. The sublease always terminates upon the termination of the lease at the latest.

4.3 Sharing Occupation

According to the Czech law, sharing occupation of the Premises constitutes a sublease and the principles governing sublease apply, i.e. it is possible only with the Landlord's consent and sharing occupation without such consent constitutes a serious breach of the lease contract.

4.3 Change of Control

Change of control is not regulated by the Civil Code with respect to contracts, but transfer of shares or an ownership interest in the Tenant which may result in the change of control may be agreed in the lease contract to constitute an assignment of the lease contract. In such case the same rules and principles as agreed in case of the assignment of the contract shall apply.

5 ALTERATIONS/REPAIR

5.1 Restrictions Affecting Alterations

Any alterations to be made by the Tenants in and to the Premises are paid by the Tenant and require the Landlord's prior approval following submission by the Tenant of a detailed specification. The Tenant may not carry out any alterations outside the Premises (i.e. in the Common Parts). Any alterations (including the initial Tenant's fit out – see below) must usually be removed from the Premises before or upon the termination of the lease at the Tenant's cost, unless the parties agree that any alterations may remain in the Premises and in such case the parties agree a compensation to be paid by the Landlord to the Tenant for the retained alterations.

5.2 Tenant's Fitting out Works

Initial fit out to the Premises is made by the Tenant (Premises are usually handed over to Tenant in the shell & core condition) at its cost, following the Landlord's approval of the Tenant's works, projects and designs.

5.3 Signage

Any business establishment must bear a signage and Tenants are allowed to place their trade name on the Premises by virtue of the Civil Code, but details of placing the Tenant's signage on the Premises are usually agreed in the lease contract (typically, on the façade above Premises' entrance and the signage must comply with the Landlord's / Shopping Centre's standards).

5.4 Repair and Decoration / Maintenance

According to the Civil Code, the Landlord is liable for all maintenance and repairs of the Shopping Centre including the Premises, save for ordinary maintenance of and minor repairs to the Premises to be carried out by the Tenant. But it is usually agreed in the lease contracts that the Landlord is liable only for the maintenance and repairs of the Common Parts of the Shopping Centre (including common distribution systems such as HVAC, electricity, fire-fighting systems, etc.) and common distribution systems forming part of the Premises and the Tenant is liable for and pays costs for all other maintenance of and repairs to the Premises. The above maintenance and repairs by the Landlord are recovered through the Service Charges.

6 TRADING

6.1 Keep Open

The Tenants must comply with the opening hours and have the Premises open for trading and for the public during the opening hours stipulated for the Shopping Centre by the Landlord, unless the Tenants are not allowed to have the Premises open by virtue of legal regulations (e.g. an act prohibiting sale on certain state holidays for premises exceeding certain area).

6.2 Trading Names

The trade name under which the Tenant operates the Premises is usually agreed in the lease contract and any change requires the Landlord's consent. Mono as well as multi brand shops are usual in the Czech Republic. The Landlord usually agrees to the change of the trading name if the whole international or at least the Czech chain of the stores changes its brand name.

7 INSURANCE

7.1 Insured risks

The Landlord maintains insurance of the Shopping Centre, usually including the Premises; costs of such insurance are recovered through the Service Charges.

The Tenants maintain at their cost insurance of their assets placed in the Premises and liability insurance for damage caused to third parties in connection with the Tenants' use of the Premises, including damage caused by the performance of the fitting out works and alterations. Business interruption insurance is not very common among the Tenants in the Czech Republic.

7.2 Uninsured risks

Usually, there are no provisions in the lease contracts regulating uninsured risks.

8 SERVICE CHARGE

8.1 Typical regime

The Landlord is responsible for providing common services necessary for the due operation of the Shopping Centre, including maintenance, repairs and cleaning of the Common Parts and Shopping Centre's common systems and equipment, and including supplies of utilities to the Common Parts and security of the Common Parts, where the costs are recovered through the Service Charges.

The Tenants pay their share of the Service Charges in form of advance payments reconciled annually and usually based on the share of the area of the Premises. Only Anchor Tenants pay the Service Charges as a fixed amount not subjected to the annual reconciliation.

8.2 Promotions and marketing

The Landlord is responsible for the promotion of the Shopping Centre and the Tenants pay their share of the promotion cost, usually as a fixed amount that is not reconciled, but may be subject to the annual review (indexation based on the HICP or the Czech inflation announced by the CSU).

8.3 Tenant's Associations

The Landlord may form a Tenants' association in the Shopping Centre and selected Tenants then must take part in such association.

8.4 OTHER POINTS TO NOTE

Compensation for Acquisition of Customer Base – according to the Civil Code, if a lease terminates by the Landlord's notice of termination, the Tenant is entitled to compensation for the benefit which the Landlord or a new Tenant gained by acquiring the customer base established by the terminated Tenant (in the Premises). The Tenant has no such right if the lease was terminated due to a material breach of its duties. This provision may be excluded by an agreement of the parties in the lease contract.

Change of Circumstances – according to the Civil Code, if there is a substantial change in circumstances creating a gross disproportion in the rights and duties of the parties, the affected party may claim the renegotiation of the contract, but it cannot suspend the performance. Further, according to the Civil Code, the Tenant may terminate a lease for a definite period in case the circumstances have changed to the extent that the Tenant cannot be reasonably required to continue the lease. Both provisions may be excluded by an agreement of the parties in the lease contract.

Both provisions were highly demanded and invoked by the Tenants in connection the closure of stores based on measured adopted by the Czech government in connection with the Covid 19 pandemic.

Destruction of the Premises – according to the Civil Code, if the Premises as the subject of lease cease to exist (e.g. due to their destruction), the lease shall terminate. This provision may be excluded by an agreement of the parties in the lease contract.

Force Majeure (circumstances excluding liability) – according to the Civil Code, a party is not liable for default if the default is caused by an extraordinary unforeseeable and insurmountable obstacle created independently of its will. This provision may be excluded by an agreement of the parties in the lease contract.

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Czech Republic

Egypt extends mandatory e-invoicing to all taxpayers

Background

Egypt has been adopting a robust strategy and strong course of action in transforming the existing government services and community ecosystem to an entirely **digital** and data driven ecosystem, to provide public services in a faster and simpler way.

As part of the strategy, all large **Egyptian companies** need to join the country's e-invoicing system before July 2021. As of 2022 the requirement will be extended to **all taxpayers**.

The digital transformation will also enable the creation of new business models, further fueling economic growth in the region.

The timeliness of Egyptian e-invoicing

Mandatory e-invoicing in Egypt is being introduced in stages. The first phase, from November 2020, covered 134 companies. In February 2021 an additional 347 businesses joined the system. From July 2021 all large **Egyptian taxpayers** will need to start using e-invoicing. By 2022 electronic invoicing will become mandatory for all companies operating in Egypt.

It is also worth underlining that any businesses working with the **government (B2G model)** need to start **using e-invoicing as of July 2021** at the latest, regardless of their size. Otherwise, they will no longer be allowed to trade with public bodies.

The concept of Egyptian e-invoicing

The model that Egyptian e-invoicing is based on is commonly known as the **clearance model**. This means that each invoice must be validated and approved by the tax authorities before it is sent to the customer.

From a technical perspective the Egyptian e-invoice is a structured file in **XML** or **JSON** format. That is quite unusual but very welcome, as other similar developments rely solely either on XML (most often) or JSON.

The transmission of XML/JSON invoices is done via the dedicated Application Programming Interface (API). API is an interface that facilitates communication between different pieces of software. For example, using so-called 'calls' it is possible to integrate taxpayer ERP with the government e-invoicing system.

Particularly noteworthy is a technical aspect of **electronic signature**. Each Egyptian e-invoice has to be electronically signed using either a physical **HSM** (Hardware Security Model) device, or a **USB token**.

The structure of Egyptian e-invoicing

Apart from a standard set of information (such as seller and buyer data), Egyptian e-invoices need to contain the special product classification in line with **Global Product Classification (GPC)**, which follows **Global Standards 1 (GS1)** definitions. While GPC codes are dedicated to goods only, it is also possible to use EGS standards to validate both goods and services.

Taxpayers need to map internal commodity codes used in ERP to GPC. Importantly, tax authorities need to be informed no later than 15 days before a taxpayer uses a new code.

Each issued and **accepted invoice** has a special **UUID (Unique ID)** number, which is assigned by the tax authorities and different from the internal invoice number. Reference to the UUID of the original invoice needs to be made in case of credit or debit note issuance.

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Changes for B2C distance sales and import consignments as of 1 July 2021

In order to secure VAT revenue in the EU, the 2nd stage of the VAT e-commerce package will come into force in all EU Member States on 1 July 2021. These are the new rules:

- In principle, distance sales are subject to VAT in the country of destination.
- Import consignments with a value of up to € 150 are only exempt from import VAT if special reporting requirements are satisfied.
- Supplies via electronic interfaces (marketplaces, platforms, etc.) are regarded as fictitious chain transactions.

Who is affected?

The changes mainly affect online retailers in the B2C business with so-called distance sales, which are defined as follows:

- supply of goods to a non-taxable person;
- the transport of goods crosses borders within the EU (intra-Community distance sales); or
- goods are imported from a third country into an EU Member State (distance sales of imported goods); and
- the transport of goods is organised by the supplier.

B2B sales or sales where the customer arranges the transport are not subject to the new rules.

Value added tax in the country of destination

Intra-Community distance sales are subject to VAT in the country where the transport of the goods ends if the supplier exceeds the threshold of € 10,000 (net) per year. Alternatively, the retailer may choose not to apply this threshold from the outset. The threshold includes not only distance sales but also all electronic services provided to other EU Member States. The previous national sales thresholds of mostly € 35,000 and in some countries € 100,000 are no longer applicable.

MOSS becomes OSS (One Stop Shop)

In order to avoid registration for VAT purposes in each EU country of destination, the Mini One Stop Shop procedure (MOSS), previously only used for electronic services, will be extended to become a One-Stop-Shop (OSS), i.e. it will also be used for distance sales. Registration for OSS is voluntary, but offers advantages.

- Suppliers can report VAT online for their B2C distance sales to other EU countries in their country of residence. In Germany, the BZSt (in Germany, Federal Central Tax Office) is responsible for this.
- Taxable persons from third countries may choose an EU Member State for OSS registration.

The reporting of VAT on distance sales to be paid to the individual EU countries of destination is carried out centrally via the portal in the country of residence or identification, within 30 days of the end of the respective quarter (reporting period).

ATTENTION! The OSS procedure is not applicable in case of intra-Community shipments (e.g. in a fulfilment service structure). This requires VAT registrations in each country of storage.

Import consignments (imports) up to € 150

The VAT exemption for import consignments with a value of up to € 22 will cease to apply from 1 July 2021. Then every import must be declared to customs so that import VAT can be levied. However, import VAT for consignments with a value of up to € 150 is not charged if the VAT from this consignment is reported in the IOSS.

Import One Stop Shop - IOSS

With the registration in the Import One Stop Shop (IOSS) the retailer receives an individual VAT number, which has to be stated on the import customs clearance. In these cases, no import VAT is charged on consignments with a value of up to € 150 sent to an EU end consumer. When reporting and paying VAT on this supply in the IOSS, this VAT number must also be provided so that a data reconciliation can be carried out to satisfy the VAT obligations. The IOSS provides for monthly reporting.

Imports not declared under the IOSS procedure are subject to import VAT, which is payable by the distance seller, the courier or the consignee, depending on the agreement.

VAT liability for electronic interfaces (online marketplaces, platforms, online portals and others)

In order to tackle the problem of non-declaration of VAT on imports from third countries, electronic interface providers are now included in the supply chain, so that a fictitious chain transaction with two separate consignments is assumed.

This fiction applies whenever consignments of goods with a value of up to € 150 are imported into the EU from a third country and sold via an online marketplace to an end consumer in the EU. It is irrelevant whether the importing online retailer is based in a third country or in the EU.

If the electronic interface is registered in the IOSS to report the VAT on the outgoing transactions with the imported goods with a value of up to € 150 to the end customer (whereby the online retailer must state the IOSS VAT number for this transaction), then no import VAT is due for this import.

This means that the electronic interface is obliged to pay VAT on the goods or services supplied to the end customer to the tax authorities. The preceding fictitious supply of the online retailer to the electronic interface is tax-free.

It will be a challenge to identify all cases in which a so-called chain transaction must be considered for VAT compliance.

From 1 July 2021 new rule for distance sales to private individuals

- For cross-border distance sales to private individuals, VAT must be paid in the country of destination if such sales, together with certain electronic services, exceed € 10,000 per year. The previous national sales thresholds (mostly€ 35,000 and in some countries € 100,000) no longer apply.
- Consequence: Obligation to register and pay VAT in each country of destination
- One Stop Shop (OSS): Option to register for the new One Stop Shop procedure in the state of residence with central reporting and clearing of the VAT payment.

This rule does not apply to B2B transactions, nor does it apply when online marketplaces with fulfilment services are used.

New regime for distance sales of imported goods

- For imports with a value of less than € 22 the exemption from import VAT does not apply.
- Import One Stop Shop - IOSS: In the case of sales to private individuals up to € 150 from a third country territory, no import VAT is due at the time of import if the VAT on the sale is reported in the Import One Stop Shop.

For imports with a value of over € 150 € per consignment, import VAT will be levied as before.

New obligations for electronic interfaces

A chain transaction with two separate supplies is fictitious if consignments of goods up to a value of € 150 are imported into the EU and sold to an end consumer in the EU via an electronic interface.

The electronic platform must pay the VAT from the sale to the end customer via the IOSS to the tax authorities in the country of destination. The preceding fictitious supply of the retailer to the electronic interface is tax-free.

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Ten new online services for the free lancers upgrading the level of service to citizens, through the digitization of the infrastructure.

Greek ministry of health , in the effort to battle the existing bureaucracy is introducing 10 modern and directly accessible electronic services for the self-employed, free lancers , and company employers in the platform named (e – EFKA) . Those services are just some of the 50 total electronic services provided by the website of the institution .

The strategy has as a goal the minimization of the personal visits to EFKA , the elimination of unnecessary hassle and uninterrupted 24-hour service of citizens, through digital channels. The goal of e-EFKA is all transactions with citizens to be able to take place electronically.

Consequently, "for 2021, more than 5 million electronic transactions are expected to take place, saving thousands of man-hours .

A few days ago, the EFKA electronic interface was completed with the trade registry (GEMI) for the establishment of new companies. Now, the registration of the legal representative / founder of the company in the e-EFKA is completed in a few seconds from about 4 days, which were needed, until recently, as the obligation for personal appearance to EFKA, as well as all the supporting documents that were required to be submitted for its registration were abolished ".

In detail, e-EFKA presents the services, which are the following:

1. Selection of insurance category of main insurance, auxiliary insurance and one-time benefits.
2. Start / Change / Termination of self-employed insurance.
3. Service for the acceptance of contracts par. 9 of article 39 of Law 4387/2016 (DPY). It is aimed at free lancer professionals .
4. Medical services. Every self-employed person, through this electronic service, can check in real time the right of access to medical care (health providers, pharmacies, doctors , etc).
5. Granting medical services to an indirect member and inventory in the register of e-EFKA.
6. Social security clearance certificates. This service allows natural and legal persons, including the self-employed insured . Over 560,000 (employed and not employees) and legal entities utilized this electronic service in the two months March-April 2021.
7. Certificate of paid social security contributions for the tax year.
8. Registration certificate.
9. Electronic Services of the Insurance Debt Collection Center (K.E.A.O.).
10. Online service request / appointment. For those transactions that can not be done electronically, it is possible to arrange an appointment at the carrier's physical branches.

Interconnection of e-EFKA with GEMI

A few days ago, the EFKA electronic interface was completed with the trade registry (GEMI) for the establishment of new companies. Now, the registration of the legal representative / founder of the company in the e-EFKA is completed in a few seconds from about 4 days, which were needed, until recently, as the obligation to attend the branches of e-EFKA, as well as all the supporting documents that were required to be submitted for its registration were abolished ".

For a month now, since April 2021, more than 2,000 Registration Number cases have already

been processed by setting up new companies in an automatic, fast and electronic way.

By using the Employer Registration Number provided from the trade registry , e-EFKA grants electronic credentials and the Company , or free lancer can proceed with recruitment of personnel and has access to all other electronic services provided from the above mentioned platform , "points out e-EFKA.

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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.

c. Any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof

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, sculptures or any work of art;
3. Agricultural Land in India (except certain Agriculture land as specified in act);
4. Specified Gold Bonds and Special Bearer Bonds issued by the Central Government;
5. Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government

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 (*) Less: Indexed cost of improvement if any (*)	(XXX) (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 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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The Infrastructure field- great business opportunity in Israel

The Israeli government's total investment in the infrastructure industry will reach more than 200 billion NIS by the end of 2021 and 400 billion NIS for the next 4 years. At the last lockdown that took place due the COVID-19 pandemic, the infrastructure field in Israel continued its activity as usual because of its high importance to the Israelis economy. This serves as a gate for international companies in a wide range of infrastructure fields to participate in state tenders and implement large-scale infrastructure projects in Israel. The state of Israel has set a plan for the next twenty years to carry out various projects in the fields of railways, wind farms, roads and tunnels, electricity, green energy. The projects will have a tender approached by Israeli companies together with international companies.

Joint ventures in the Israeli Infrastructure field

Over the decades Israeli government has invested billions of dollars in important infrastructure projects in purpose to develop country's railways, seaports, airports and high-ways. Most of the project are tended for local sub-contractors and international engineering companies. Usually both found a Joint Venture for 3-6 years, whereas a local Israeli company supplies employees, local contacts and acquaintance with local industry and a foreign company brings innovative technology and know-how. The Netivei Israel – transport plan for the development of the Negev and the Galilee, the light railway in Tel Aviv, high-speed rail train of 260 km to Eilat, Israeli toll road, the Carmel Tunnels, power station in Ashdod and Ashkelon and many more projects are still in execution or planned to be executed in a few years.

Fiscal representation in Israel

Before starting and conducting any business activity in Israel, it is advisable, either to register a fiscal representative office that functions as a local representative of the foreign business entity or to establish an Israeli company.

A foreign business entity that decides not to establish a local company in Israel must meet the requirements of section 60 of the Value Added Tax (VAT) Law, 1975, which requires the appointment of a fiscal representative for a foreign company that conducts its business in Israel.

Don't hesitate to contact us for your next business opportunity in Israel.

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New on variation notes ex art. 26 of p.d. no 633/72 in the insolvency procedures

The article 26 of the P.D. 633/1972 provides that the creditor may issue a variation note in decrease of VAT in case of total or partial non-payment of the sale invoice due to insolvency procedures (bankruptcy, bankruptcy agreement, composition with creditors, compulsory liquidation, receivership).

In order to harmonize the domestic legislation with EU law concerning the variation notes in the insolvency procedures, the Decree "Sostegni-bis" (L.D. no. 73/2021), with article 18 introduced the new paragraph 3-bis rewriting the paragraph 2 of the article 26 of DPR 633/72. The new law provides that:

- **for all insolvency proceeding started following the entry into force of Legislative Decree no. 73/2021 (May, 26th, 2021)**, the decrease in the taxable amount and in the VAT is applied in the event of total or partial non-payment of the amount due by the buyer (debtor) from the date in which the latter is put through an insolvency procedure or from the date of the decree approving a debt restructuring agreement or the date of publication in the Commercial Chamber of a confirmed recovery plan;
- **for all insolvency proceeding started before the entry into force of Legislative Decree no.73/2021 (May, 26th 2021)**, the decrease in the taxable amount and in the VAT is applied in case of total or partial non-payment of the invoice caused by an unprofitable insolvency procedure or in case of the decree approving a debt restructuring agreement or in case of the publication in the Commercial Chamber of a confirmed recovery plan.

The new rules establish a clear divergence from the past concerning the moment of the issuance of the variation note, which in the previous wording was the fruitlessness of the insolvency procedure where the creditor had to wait a long time before it could recover the VAT unduly paid.

Pursuant to the new rules, for the issuance of the variation note is not necessary to verify the fruitlessness of the insolvency procedure, but it is sufficient that the insolvency procedure is simply started. This last rule concern all the insolvency procedures began from the May 26th 2021.

In fact with the new paragraph 10-bis of article 26 of Presidential Decree no. 633/72, the debtor is considered put through an insolvency proceedings **from the date of:**

- the judgment of bankruptcy;
- the provision ordering the compulsory liquidation;
- the decree for admission to the composition with creditors;
- the decree for the receivership for the large companies in crisis.

On the other cases is relevant the date of the approving decree for a debt restructuring agreement and the date of publication in the Commercial Chamber for the confirmed recovery plan.

The reform also introduced the possibility for the debtor put through an insolvency procedure, outside the hypothesis of debt restructuring agreement and confirmed recovery plan, not to record the variation note in the VAT register. Furthermore, in the event that the amount due is paid after the submission of the variation note, the creditor has to issue a new increase credit note, while the debtor has the right to deduct the purchase VAT increased, if it had recorded the previous variation note in decrease.

In the end, it is advisable to pay attention to the new deadline which to issue the variation note, since in the absence of official confirmation on this point, it is to be considered that for the insolvency proceedings started from May 26th 2021, the note variation must be issued within the deadline for the submission of the Annual VAT return referred to the period in which the procedure is started.

While with the "old" rules of the article 26 of P.D. no. 633/72, for the insolvency proceedings started before May 26th 2021, the VAT recover it was possible at the latest with the annual VAT return referred to the tax period where is verify the fruitlessness of the insolvency procedure.

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Short notes on the retail division manager's agreement /vs/ business lease

In recent years the so-called ***"retail division manager's agreement"*** or ***"outsourcing of a department"*** agreement has been gaining diffusion especially in large sales structures. The scheme is still controversial as it has not yet been regulated by the Italian National Legislator but is only mentioned by some Italian Regional (administrative) rule regulating the organization of large commercial businesses, such as department stores, hypermarkets, malls, shopping centers, etc. (Italian Regions have a residual competence in such commerce related matters).

Besides being debated the scheme also has *"blurred"* contours. As a matter of fact, Italian Regional rules vary widely in introducing differing provisions on a number of different issues such as the minimum annual duration, the need to notify the competent offices, the requirement of the existence of a structural link with the business in which the department is set up or, even, the need for a shared access with the main business rather than an independent one.

However, based on the assumption that Italian Regional competence should be confined to administrative aspects (e.g.: licensing) with no intrusion in the civil-law ones, some believes that most of the Italian Regional limitations are illegitimate. In support to this theory also lay the consideration that these limits set an unlawful restriction to the free contractual autonomy of the parties.

At present, it is possible to refer to the *outsourcing of a department agreement* as **an atypical and non-regulated contractual form which has developed from everyday practice.** The parties, operating inside a large sales-structure, normally agree the concession of a space or spot (normally a small one, such as a ***"corner shop"***) separated and diversified from the rest of the commercial entity by means of special features or furniture and dedicated to a specific type of products (normally characterized by a specific brand).

Ultimately the parties be free to regulate their reciprocal relationships on the basis of contractual autonomy, within the necessary compliance with the mandatory rules of Italian law.

The main feature of the retail division manager's agreement (in addition to the ancillary character to another business located in a large structure), can be considered to be the discipline of the administrative authorization. In fact, unlike the common scenario of transfer of a business branch, the license remains in the hands of the grantor (see Resolution no. 122063 of May 3, 2016 of the Ministry of Economic Development: *"The management of department differs from the sub-entry for transfer in management of the company because, in the first case, the owner remains the holder of the company and of the related authorization while in the second case, the entering party must make the "SCIA" (Certified noticed of commencement of work) in order to become the pro tempore holder of the title legitimizing the exercise of the activity"*). Therefore, in the event of the lease of a company branch / business, the owner of the business is obliged to transfer its administrative authorization to the concessionaire, whilst in the outsourcing of a department this is not necessary (see the decision of the Puglia Administrative Court, Section II, no. 4372/2001).

Finally, although the matter is quite similar (but not identical) to the leasing of a company branch / business, it seems conceivable to exclude the need for a notary's deed, (see, in this regard, the Resolution of the Ministry of Economic Development No. 133831 of 2017, pursuant to which: "(...) *the entrusting of department it is not be covered by the provision of Article 2556 of the Civil Code, which establishes the registration in the Companies register "of the contracts that have as their object the transfer of ownership or the enjoyment of the company" and imposes to them the form of the public deed or the authenticated private agreement."*).

Debate is still open on the matter, given that the issues taken into consideration are many and not insignificant depending on whether this kind of contract is treated as a lease of business (see the applicability of the provisions of art. 2112 Civil Code, which is excluded by most), as a commercial lease (see the obligation to pay compensation for loss of goodwill, on which opinions are divided) or as other figures such as service contracts.

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Challenges of remote working and lessons for the future

The COVID-19 crisis faced many companies and their employees with unprecedented challenges. It was necessary adapting the processes and IT-structure so that business operations could continue even though the employees were working from home. Most companies' employees were not used to communicating with their colleagues through Microsoft Teams or Zoom. The adaption phase getting used to the new working environment took some time. Even if so far many employees have still done something from home in the evening, such as reading emails etc., the situation changed considerably. Due to the lockdown, they have been only working from home for a long period of time.

There have been advantages and disadvantages. On the one hand, employees could organize their working hours more flexibly and cross-border commuters saved driving time. On the other hand, many, especially young employees had the challenge of limiting their working hours and creating a balance between private life and work. At the beginning of the COVID-19 crisis, predominantly the companies and their employees from the services and financial sector who, with great effort and personal commitment, managed to continue taking care of their clients.

Which lessons should be learned from now one and a half years in COVID-19 mode?

Numerous studies have found that many employees at home are unable to switch off, as there are no clear times between working hours and breaks. Furthermore, they are tired from the workload and the permanent level of stress. For example, an employee returning from a sickness leave or vacation will have to process hundreds of emails. As the barrage of emails is increasing, it is important to jointly find procedures for the company and employees increasing efficiency of workflows - both for internal communication and with the client. The tools are available. However, it will take some time to implement these and gain experience with them. By supporting employees, they will be able delivering high quality work and finding time to recover. It should also be monitored, that the tasks are allocated equally between the team members.

In times of working from home in particular, (virtual-) team activities can help motivating employees and maintaining the contact between colleagues.

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Intangibles and Transfer Pricing Regulations. Legal Ownership

Every year many Mexican entities are charged with some kind of royalty or licensee fee derived for the use of marketing intangibles, and such payments used to be supported under the Legal Ownership status of the intangible without any other analysis. Moreover, this practice can be found in many other tax jurisdictions as well.

From the OECD Transfer Pricing Guidelines perspective, "Legal Ownership" is not the unique characteristic that we must consider when we intend to prove that a transaction involving intangibles (royalty rate or a licensee fee) have been set up according with market forces (arms´s length).

Indeed, legal rights and contractual arrangements are the starting point of our assessment, however all this transactions shall also consider which party of the agreement is performing some other functions that add value to such intangibles and, more important, how they are rewarded.

In this sense, nowadays a properly done transfer pricing analysis must pay special attention on DEMPE functions that more of the times are performed by a related party other than the legal owner, in fact, sometimes one of such function is carried out for a third party. DEMPE process comprises functions such as (D) Development (E) Enhancement (M) Maintenance

(P) Protection and (E) Exploitation.

For each one of this functions it is important to identify the economic indicator that may trigger profitability. For example, when a member develops a new version of the intangible and such updating turns to speed sales up, a rise on turnover may be a good indicator of the additional profitability that requires an economic reward.

Then, now we must be able to support that all the members of the international Group are reasonably compensated but keeping in mind that maybe other Group members are contributing with some important assets -as physical assets or funding-, or in a more complicated case, that a different member is bearing risks associated with functions performed by the whole Group (for instance research and developments risks).

So, it is a risky tax position to assume that a simple fact of being the legal ownership entitles the entity to all or most of the benefits (real or expected) that comes from the exploitation of the intangible.

The aforementioned are just a few of the technical issues that are present and need to be addressed when as a complement of a Transfer Pricing Analysis involving the transfer of rights or rights to use and exploit an intangible. Other key elements include: Exclusivity, Geographic Scope, Useful Life, Sub-licensing rights, according with OECD Guidelines Chapter VI.

Finally, there are many transactions involving intangibles that completely fail in proving the actual or potential economic benefits attributable to the transfer of the intangible or some rights related with such intangibles.

Transfer pricing on Intangibles is a very complex topic on its own and there are multiple circumstances where we can find them, but in practice, unfortunately, we find out that many written agreements between related parties fall short on duly comply with transfer pricing rules because of the tendency Multinationals have to set up transactions solely based on legal ownership, therefore, pricing the transaction with a fix price rather than assessing all other key issues previously pointed out in this document.

This would explain why tax jurisdictions have become keener on rejecting or challenging in court transactions involving royalties and licensee fees, and present very little opportunity to interpose a strong tax defense.

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Tax Incentives Regime in Paraguay

The purpose of Law 60/90 "Tax Incentives for the Investment of Capital Goods of national and foreign origin" is to promote and increase investments of both national and foreign capital, by means of tax benefits granted to those who make investments in accordance with the economic and social policy of the Government.

The purpose of this law is to increase the production of goods and services, create sources of permanent employment, promote exports and substitute imports.

Among some of its benefits are: total exemption from fiscal and municipal taxes, remittance and transfer of dividends, on customs duties and the equivalent on the import of capital goods.

It should be noted that the benefits of Law 60/90 are available when the investment is at least USD 5 million, and does not come from a territory of low or no taxation or when the tax on such dividends and profits is not a tax credit for the investor.

Who can be beneficiaries?

All persons (physical and legal persons) who make investments in any of the following forms are beneficiaries:

- In money, financing, supplier credits or other financial instruments;
- In trademarks, designs, models and industrial processes and other forms of technology transfer susceptible to licensing;
- In leasing of capital goods
- Raw materials and inputs destined to local industry, for the manufacture of capital goods;
- In specialized technical assistance services

Tax benefits and exemptions

Investment projects that are approved may enjoy, according to the characteristics of each investment project, the following tax exemptions:

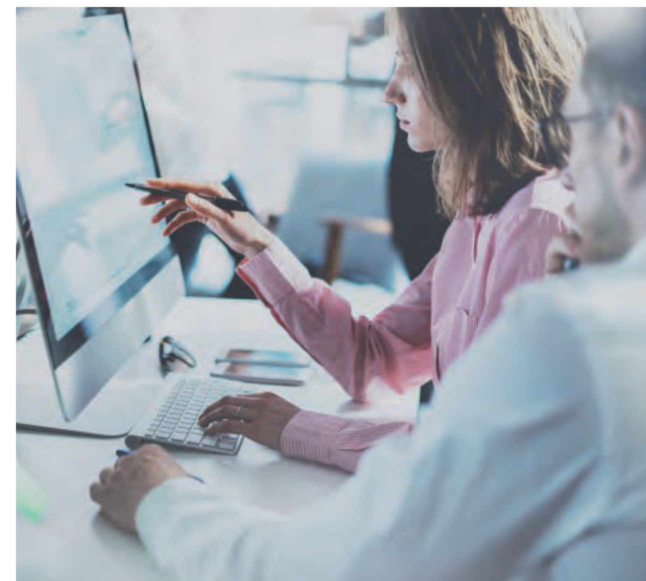
- Value Added Tax on the acquisition of imported capital goods used in the installation for industrial or agricultural production and capital goods produced in Paraguay.
- All taxes levied on the incorporation, inscription or registration of companies and enterprises.
- Tariffs and internal taxes on imports of capital goods, raw materials and inputs to be used in investment projects for the manufacture of capital goods.
- Taxes and other levies on remittances and payments abroad for interest, commissions and capital thereof when the investment is financed from abroad and is at least US$ 5,000,000 (Five million dollars).

What is the approval period?

Approval is granted by means of a biministerial resolution (Industry and Commerce-Finance) within a period of 75 days, counted from the presentation of all the required documents.

Authority in charge of granting the benefits.

The Ministry of Industry and Commerce and the Ministry of Finance, in a joint resolution, grant the benefits provided by Law No. 60/90, subject to the approval of the Investment Council.



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Money laundering and terrorism financing law in Portugal

The 83/2017 Law transposes several European norms for the combat against money laundering and the financing of terrorism, and establishes the rules to be applied, in this scope, in the national territory. In a summarized and simplified way, we share what we think are the most important aspects that your company should consider, regarding this law.

To which companies or organizations does this Law apply to?

- Credit institutions,
- Payment institutions,
- Electronic money institutions,
- Investment companies and other financial companies,
- Securities investment companies and self-managed real estate investment companies,
- Venture capital companies,
- Venture capital investors,
- Social entrepreneurship societies,
- Venture capital fund management companies,
- Venture capital investment companies,
- Specialized alternative investment companies, self-managed,
- Credit securitization companies,
- Companies that market, to the public, contracts relating to investment in tangible assets,
- Consultants for investment in securities,
- Pension fund management companies,
- Insurance companies and intermediaries that carry out activities in the scope of the Life branch.

Practical implications for companies to which Law n. 83/2017 applies:

- The management board is responsible for implementing the policies and procedures regarding the prevention of money laundering and the financing of terrorism,
- It is mandatory to implement internal control and risk prevention systems, of which we highlight:
- Identify, assess and mitigate the specific risks of money laundering and terrorist financing existing in the context of their specific operational reality,
- Putting in writing the money laundering policies and procedures, as well as keeping a written record of the initiatives carried out in this area,
- Monitor, test and periodically review, through internal or external audits, the quality, adequacy and effectiveness of implemented policies and procedures,
- Possess formal systems and processes for capturing, processing and archiving information related to analysis and decision-making;
- Train, evaluate and control, on an ongoing basis, all employees with responsibilities in this area;
- Periodically consult the information published in the central register of the beneficial owner, informing the Institute of Registries and Notaries of any irregularities identified.

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Portugal

How to control the management of your Russian business?

When a foreign investor considers expanding business onto new markets, one of the main issues to face is how to ensure the bona fide actions of the local management. By entering the Russian market the investors most often have to hire a new director, who knows the local business environments, but whom the investors may not know very well so far. Therefore, it is essential to ensure that the shareholders and the director have common views on what serves the interest of the Russian company.

Let us take a look at the most common practical options used to effectively control the management in Russia.

A. The second signature in the "bank signature card" and the limits in the charter

You may arrange for adding the additional signature to the "bank signature card" – i.e. the bank document with the authorization of bank signatories. The second signature (handwritten or online) in this case may be an obligatory pre-condition for bank payments. The obligation of the bank manager to ensure that all payments are pre-approved by two persons may be added to the agreement with the bank. It would be also good to open the accounts in the same bank you use for parent and the group – this may help to effectively communicate with the Russian branch of the bank.

1. The signature of an officer of the headquarters

From the first glance the best option seems to be empowering an employee of the headquarters to check and authorize the payments of the Russian subsidiary via the second signature in the "bank signature card".

The legal problem is that such option may be applied only to the online banking systems, but not to the hard copy of the bank specimen card which can be signed only by employees of the Russian subsidiary. This means that the employee from the headquarters will be able to authorize online payments via online banking, but will not be able to put his handwritten signature to authorize the payment orders in paper.

Therefore, there is a risk that the director can bypass the second signature rule by sending the paper payment orders to the bank for execution. Nowadays the paper payment orders became rather exceptional, so this may be subject to scrutiny by the bank, especially if the company previously used only online bank orders. However, there is no guarantee that the bank will inform you about such unusual situation, because formally the director will have the right to solely authorize the payment in paper. Therefore, it will be prudent to ask the bank to add a condition to the initial service agreement, that upon receipt of any payment order in paper the bank shall at least inform the parent company about this before execution.

2. The signature of the second director of the Russian subsidiary

This option can be used in case you have a reliable person in Russia, who is ready to keep an eye on transactions, but for some reason cannot (or is reluctant to) perform the corporate function of the director (mostly under personal liability aspects).

In Russia a multiple directors option is available, which means several persons may be appointed as directors. The charter may provide for the directors act independently or jointly, as well as for more complex options, including acting independently, but having different scope of powers. Therefore, you may appoint a second director, whose powers will be reduced the control of bank payments. In this case the appointment of the second director can be considered a workable instrument for payment control of the company. It is also more and more often used in practice.

Each of the mentioned options can be implemented with regard to all payments made by the company or only to payments starting from a certain amount. The latter will enable you not to overload the "controller" with operating costs approval, but the disadvantage of controlling the payments starting from a certain amount is that every big payment may be mala fide split into several parts, which may bypass the bank control.

B. The budget process

Medium and large businesses often use the budget process option. The budget of the company for a certain period is developed by a CFO / Chief economist / Director(s) ("Budget developer") on the basis of the parameters provided to him / her by every unit / department of the company. After consolidation of all the parameters provided, the Budget developer prepares a draft of the budget for a certain period, comparing parameters with the business development plan, previous budgets, etc. After that the Budget developer provides the draft of the budget to a Budget Committee of the Board of Directors ("BoD"). Such Committee usually consists of the Director(s), one or more BoD members and the Budget developer (if it is not the Director). The Budget Committee considers

the draft of the budget, requests clarifications (if necessary) from the Budget developer and other units of the company, and approves the draft of the budget. After that finally the BoD considers the budget and approves it. It is important to note that foreigners from the parent company can be the members of the BoD of the Russian company, and no work permit is required for them.

When the company has the approved budget for a certain period, the director is entitled to act only within such a pre-approved budget – this is an additional restriction for the director, which may be used also together with the limits provided for by the charter.

The approved budget may be further corrected, the corrections are initiated by the Budget developer and shall be considered by the Budget Committee and approved by the BoD.

The budget is usually developed for every calendar year (if not a huge amount of corrections is expected within a year) or for every quarter (if a huge amount of corrections is expected within a year). It may be time and effort consuming to go through this procedure for the first time, but for subsequent periods it is usually rather easy, because every new budget is developed on the basis of the previous one.

When a company uses the budget process option, it usually has the additional internal regulations (Regulations of the budget, Regulations of the Budget Committee, Regulations of the BoD and often Regulations of the Director(s).

The disadvantage of this option is that it reduces, but does not completely exclude the risk that the Director goes beyond the budget. Therefore, it is advisable to use this option in combination with two signatures in the "bank signature card" and the limits indicated in the charter.

C. Additional internal regulations

It should be pointed out that the previous options may prevent you from making payments beyond the limit, but not from conclusion of agreements or incurring debts and liabilities (provision of a guarantee or other security) beyond the approved limits. And if the director concludes the agreement providing for obligations of the company exceeding the limits / the budget, the company / participants / other interested party will hardly achieve recognition of such agreement invalid in court. In such cases Russian courts mostly protect the interests of third business partners, leaving only the option to claim damages from the director, who concluded the agreement (which is not a substantial guarantee of compensation for all damages, because they may be rather hard to be proven). A solution here may be implementation of the corporate policy regarding the procedure for informing the company's counterparties about the limits imposed by the charter and internal regulations. If a counterparty becomes aware of such limits, it is much easier to challenge a transaction made by the director beyond his given powers.

D. Appointment of a Director from a trusted external provider

Such option implies appointment of a director which obeys the instructions of the headquarters. All the limits and the names of the approving persons are indicated in the agreement between the client and the external consultant, who provides its employee to be the director of the Russian subsidiary of the client. The appointed Director in this case is not personally interested in going beyond the powers. On the contrary, he / she is interested in acting in accordance with the instructions to reduce his / her risks of personal liability for the potential damages done to the Russian subsidiary. The external provider also additionally controls its employee checking his / her compliance with the agreement with the client as well as with the internal rules of the service provider.

Appointment of a director from a trusted external provider can be supplemented also with the budget process, internal Regulations, the second signature in the "bank signature card", the limits in the Charter and the corporate policies regarding the procedure for informing the company's counterparties about the restrictions of the management powers.

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Russia

Serbia: Ministry of Finance Adopts VAT Rulebook

On 14 April 2021 the Official gazette of the Republic of Serbia No.37 published that the Ministry of Finance of Serbia adopted a Rulebook on the Value Added Tax.

The new rulebook replaces 27 individual rulebooks in the field of VAT, which are now in force and it comprises 282 articles, 19 forms and 33 chapters. On the day of the VAT Rulebook application all individual rulebooks cease to be valid with the remark that this does not refer to the three decrees passed based on the Law on VAT.

The Rulebook enters into force on the eighth day from the day of its publication, i.e. June 22 will be applied from July 1, 2021.

As of July 1st, 2021, the VAT regulations will consist of:

- Law on Value Added Tax;
- Rulebook on value added tax;
- Decree on quantity of waste;
- Decree on the criteria on the basis of which it is determined what, in terms of the Law on Value Added Tax, is considered the predominant trade of goods abroad;
- Decree on the implementation of the Law on Value Added Tax on the territory of the Autonomous Province of Kosovo and Metohija for the duration of the UN Security Council Resolution No. 1244.

The Rulebook on VAT is based on individual provisions of the existing rulebooks, but provides a number of

significant changes such as turnover in the construction field, invoice issuance, VAT base, tax exemptions and other.

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"Netherlands: new source tax to affect dividend payments to low tax jurisdictions as from 2024"

On 25 March 2021, the Dutch government submitted a draft bill to Dutch Parliament, introducing a 25% conditional source tax on dividends as from 1 January 2024. The purpose of the draft bill is to prevent that the Netherlands is used as a flow-through jurisdiction to for intra group dividends to low-tax jurisdictions. A low-tax jurisdiction is (i) a jurisdiction with a statutory profit tax rate of less than 9% and (ii) a jurisdiction that is mentioned in the EU list of non-cooperative jurisdictions.

Main characteristics of the conditional dividend source tax

The dividend source tax only applies if the dividend distributing entity and the recipient of the dividend belong to the same group. A group is deemed present if one entity directly or indirectly owns a qualifying interest in another entity. "Qualifying" means that one entity must have decision making influence on the other entity. A qualifying interest is, by definition, deemed present if an entity has more than 50% of the statutory voting rights in the other entity.

In addition, the source tax will also be levied in cases of abuse. "Abuse" is determined on a case-by-case basis. A corporate structure is considered abusive, if the recipient of the dividend is interposed with the main purpose or one of the main purposes to avoid the dividend source tax, and the structure or transaction is furthermore considered artificial. Therefore, the dividend source tax may also impact profits distributed to group companies in jurisdictions that are not considered low-tax. The concept of abuse for conduit situations in the source tax, is similar to the current anti-abuse concept with regard to the Dutch dividend withholding tax exemption.

The tax base for the dividend source tax will be similar to the current Dutch dividend withholding tax base. However, the dividend source tax rate will be equal to the highest Dutch corporate income tax rate (25% in 2021,) and must be withheld upon the distribution of dividends.

Impact on low-tax treaty jurisdictions

Profits distributed by a Dutch resident company are subject to 15% dividend withholding tax, unless an exemption or a lower tax treaty rate applies. An exemption may apply to a corporate shareholder resident in a jurisdiction (including low-tax jurisdictions) with which the Netherlands has concluded a bilateral tax treaty that contains a dividend article, as well as to a corporate shareholder resident in an EU/EEA member state, if the shareholder owns 5% or more of the shares in the Dutch company.

Because all EU/EEA member states have a profit tax of 9% or more, the dividend source tax will not apply with regard to EU/EEA member states. However, the Netherlands has concluded tax treaties with 4 low-tax jurisdictions: Bahrain, Barbados, Panama and the United Arab Emirates (UAE). These tax treaties provide for a reduction or exemption of source taxes on dividends if certain criteria are met. Therefore, the Netherlands cannot (fully) effectuate the source tax if these treaties are not renegotiated prior to 1 January 2024. The Dutch government announced that it intends to renegotiate these tax treaties.

Our observations

Groups that will be affected by the draft bill, have until the end of 2023 to amend their corporate structures, which generally offers sufficient time to avoid adverse tax consequences of the draft bill.

The tax treaty negotiations with Bahrein, Barbados, Panama and the United Arab Emirates (UAE) should be closely monitored by groups that have parent companies in these jurisdictions.

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The Netherlands

Non- UAE citizens can fully own businesses in the Country – A law that is going to boost the economy.

The UAE has announced changes to laws surrounding business ownership and commerce in the country. This has been implemented this year to make the UAE more expat-friendly and to open up the country to business and foreign investment to boost the local economy. President HH Sheikh Khalifa bin Zayed Al Nahyan has issued a decree overruling foreign ownership rules for commercial companies and will enter into force on June 1, 2021.

This might be called the new dawn for the country's business community, the implementation of the amendments now allows ex-pats to have 100% ownership of the business in UAE.

Free Zone entities in the UAE remain unaffected by this change since foreign ownership has been the norm there since their inception.

A big move for the UAE

The strategic decision for full ownership for foreign investors enhances the investment attractiveness of the UAE and its advanced position on the global business outlook. The decision will accelerate the UAE's economic recovery and add to the gains the country has made so far. It will also help further enhance UAE's already high rankings in international investment indicators and leading global indices related to ease of doing business and business expansion.

What is new?

The revised laws highlight the regulation of provisions for establishing commercial companies with limited liability structures. A Limited Liability Company (LLC) can have a single owner or have multiple shareholders.

What has changed?

Earlier, expat business owners were limited to owning a maximum of 49% of their companies. The remaining 51% would mandatorily belong to a UAE national or an Emirati sponsor or partner. Only a few activities in the professional services sectors and certain free zones allowed expats to have 100% ownership of business in UAE.

Now, however, the amendments exempt expat investors from the minimum percentage ownership of UAE nationals. Thus, allowing natural and legal persons to establish companies in the UAE mainland without the need for a local partner.

Who is eligible for 100% ownership of business in UAE?

In UAE, the revised laws will apply to nearly half of the total economic activities on the list released by the Department of Economic Development. Therefore, about half the business activities across sectors, including trading and manufacturing, qualify for 100% ownership of the business. For professional service activities, 100% ownership of business continues to benefit the entrepreneurs. However, they require a local service agent and strictly follow the sole establishment legal structure instead of an LLC. The implementation of the 100% ownership of business varies from one Emirate to another.

The latest guidelines issued by Dubai Economy also state there are no additional fees, guarantees or capital requirements for full foreign ownership. In addition to that, a reduction of the percentage share of the Emirati partner from 51 per cent or his /her withdrawal from the partnership is possible according to the legal procedures followed. However, the status of existing business licenses that include an Emirati partner remains unchanged. This is as per the Memorandum of Association (MOA) and the partners' decision.

The changes are part of a series of measures introduced to make the UAE a more investment- friendly destination. It also improve the ease of doing business and give a huge push to the country's attractiveness to expat investors, businesses and even startups. Moreover, by taking away the legal imperative of allocating the controlling interest in a mainland entity to the local partner, the recent relaxation of foreign ownership has the potential to place the foreign investor-local partner relationship on a more sound economic footing. When the partnership is based on an arms-length agreement as to the relative value each partner brings to the table, the venture is more likely to succeed in a competitive market.

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Brexit: cross-border insolvency proceedings

On 31 December 2020, the European Regulation on Insolvency Proceedings (EIR) ceased to apply in the United Kingdom (UK), and the UK-European Union (EU) Trade and Cooperation Agreement (TCA) came into effect.

The TCA made no provisions for cooperation and recognition in cross-border insolvency proceedings. Thus, albeit technically there is no "No Deal Brexit", we could say that the TCA means "No Deal" in all issues relating to insolvency proceedings.

Below, we analyse the landscape after Brexit.

The Recast Insolvency Regulation (EU) 2015/848 allocates jurisdiction to hearing Insolvency Proceedings where a debtor's centre of main interests is, as the appropriate forum to open main Insolvency proceedings within an EU Member State, and once concluded, provides for its automatic recognition and subsequently displays its full effect before the courts of any other EU Member State where the debtor may have it assets located.

Proceedings started before 31 December 2020

Pursuant to the Insolvency Amendment Regulations 2019[1], the EIR continues to apply to insolvency proceedings opened before 31 December 2020. This means that the UK will continue to recognise insolvency proceedings commenced in any EU Member State before that date, and it will receive reciprocal recognition in UK soil as above explained.

Proceedings started after 1 January 2021

The recognition process of insolvency proceedings opened after 1 January 2021 will depend on the national law of such EU Member State where recognition is sought. This represents accordingly a significant change in the way that proceedings with cross border interests are governed since there would be no automatic recognition for UK Insolvency Proceedings in EU countries and vice versa.

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[1] https://www.legislation.gov.uk/uksi/2019/146/contents

Changes afoot in the United Kingdom

During the Budget in March 2021, Boris Johnson's Conservative Government announced that from April 2023 the UK corporation tax rate for companies will rise from 19% to 25%. Whilst this will be the first increase in the corporation tax rate since the 1970s and at first glance, quite a significant increase in the headline tax rate, it transpires that the new rate of tax will only apply to companies which have taxable profits of more than £250,000, whereas very small companies which have taxable profits of less than £50,000 will continue to be taxed at 19%, and companies which have profits between these thresholds will be subject to a tapered rate of tax.

The UK Chancellor said that they expect only 10% of UK companies to pay tax at the full 25% rate, and that approximately 70% of businesses would continue to pay tax at the lower 19%. He also pointed out that the UK's looming tax rate of 25% would still be lower than many of the UK's fellow G7 member's corporation tax rates, however as we know, a country's headline corporation tax rate is not the only consideration when appraising a country's tax regime.

In the lead up to the Budget, many commentators and journalists were expecting some tax increases as an attempt to bring in more tax receipts to partly fund the immense financial support the Government was providing to the UK economy during the pandemic. However the question was where and when would the Government make these increases. Now that we have the detail we can see that the new rates will hit the medium and large companies the hardest and the smaller businesses will be protected, however it remains to be seen what the true impact of the rate change will be on the UK economy's long term growth and investment.

History

According to the OECD, the world's average corporation tax rate has reduced from 40-45% in the 1970s and early 1980s to 23.5% in 2020 and the UK has followed this trend with its corporation tax rates, cumulating with its lowest rate so far of 19% in 2017. Despite the reduction in the rates over this period, the UK Government has still generated significant corporation tax receipts and the percentage of corporation tax receipts to GDP has actually increased in recent years so it is a little surprising and against the overall trend for the rate to go up again.

However, it would seem that in light of the Covid-19 pandemic in 2020 and 2021 and the drain this has had on the UK treasury's finances, the UK Government feels as though 2023 is the right time to reverse this downward trend of tax rates. Furthermore with Joe Biden pledging to increase the US tax rate up from 21% to 28% could we be seeing a reversal of the "Race to the Bottom" whether that be a permanent or temporary one?

Interaction with the "super deduction"

If you've been in business long enough you will know that when Government's make significant changes such as increasing the tax rate, it can sometimes have unusual implications in the market. With this in mind, it would appear as though the UK Government were concerned that there may be a slow down in investment with companies deferring capital expenditure until after April 2023 to obtain tax relief at a higher rate and hence the UK Government also announced during the Budget 2021 a "super-deduction" as a means to incentivise UK businesses to invest in new plant and machinery in the lead up to April 2023. This new "super deduction" applies from April 2021 until March 2023 and allows companies to claim a 130% deduction of the cost of qualifying plant and machinery. Hence whilst the "super deduction" may be designed to ensure capital investment is sustained in the lead up to April 2023, it is still an additional welcome tax relief which UK businesses should ensure they are making use of whilst it exists.

Complexities

Since 2015 the UK's corporation tax system has become relatively straight forward with a unified tax rate of 19%, no matter the size of a company's profits. However from April 2023 the regime will return to having a tiered approach albeit with lower thresholds than in the pre 2015 era, and this will create additional complexities for companies. For example the new approach sees a return of the 'Associated Company' rules which will require the thresholds of £250,000 and £50,000 to be diluted by the number of 'Associated Companies', broadly related companies. It essentially means that a company's rate of tax is directly impacted by the number of other related companies which can lead to higher rates of tax than if the trades were operating through just one company. Furthermore after April 2023 when a group company makes a loss, the decision about which company to surrender the loss to is made even more complicated due to the tiered approach and multiple rates.

As you may appreciate, there is also a catch when it comes to the "super deduction" since it is clear that a potential loophole might be to claim the 130% super deduction and then immediately sell or lease the asset. As a result, the legislation contains rules on claw backs of the super deduction where assets have later been sold, with the worst case scenario resulting in a potential balancing charge at the new rate of 25% which would mean the company was worse off from a tax perspective than if they'd not claimed the "super deduction" in the first place. Hence companies need to be careful when deciding whether to claim the new "super deduction" or not.

Tax planning

The increase in the corporation tax rate and the "super deduction" for capital investment in the lead up to the rate change are two of the most significant changes to UK corporation tax in the last few years. As such, UK businesses should start planning now to mitigate any negative outcomes of the changes and to maximise their opportunities.

For instance, UK companies should carefully consider whether or not to claim the "super deduction" before doing so, especially as other reliefs such as the Annual Investment Allowance are still available and the company may or not be paying corporation tax at the higher rate of 25% after April 2023, so the best option will depend on a case by case basis.

Also UK companies need to understand how the new tier approach applies to them and if they have related companies, how the 'Associated Company' rules will affect the tax rate they will need to pay after April 2023. In recent years there has not been much of a drawback to setting up multiple companies since their profits would all be taxed at 19% however, these structures may find themselves incurring a significantly higher tax rate on average and it may be time to have a think about consolidating businesses into fewer companies to reduce the number 'Associated Companies' and hence potentially reduce the overall tax rate. Again this will depend on the situation and the facts as they are.

And as we get nearer to April 2023, companies may also look to defer non-essential expenditure with the plan to receive tax relief at 25% instead of 19%. The critical thing for companies will be to understand what their potential tax liability looks like for YE2023 and to then consider whether the tax saving is worth the commercial reasons for deferring or not deferring.

As is often the case, the best course of action may not be the most obvious and we at Haines Watts are keen to help our clients make the best decisions based on the facts at hand.

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Member of

Some highlights from VNC Consulting for foreign trader to open representative office in Vietnam

I) General Conditions which should be noticed:

1. The parent company (hereby maybe called the foreign trader) is incorporated and registered for doing business in accordance with provisions of laws of countries or territories being parties to treaties to which Vietnam is a signatory or is recognized by the aforesaid countries or territories;
2. The foreign trader has come into operation for at least 01 year from the date of establishment or registration;
3. The Representative Office Establishment License in Vietnam of foreign traders shall be valid for 05 years but not exceeding the remaining effective period of the Certificate of Business Registration or the equivalent of foreign traders in case those documents have expiry date;
4. The head of a representative office shall not concurrently hold the following titles:
    - The head of a branch of the same foreign traders;
    - The head of a branch of another foreign trader;
    - The legal representative of the same foreign trader or others;
    - The legal representative of an other business organization incorporated in accordance with Laws of Vietnam.

II) Required Documents and Information for VNC Consulting's action:

1. Copy of Business Registration Certificate or equivalent documents of foreign trader (scanned copy and 05 photocopies);
2. Appointment on the head of Representative Office (bilingual in English and Vietnamese) issued by foreign trader and stamp by parent company (scanned copy and 05 original copies);
3. Copy of audited financial statement or equivalent documents issued by competent agencies/ organizations where the foreign trader was established or confirm the existence and operation of foreign trader in the nearest fiscal year (scanned copy and 05 photocopies);
4. A notarized copy of passport the head of the representative office (scanned copy and 05 photocopies);
5. Documents about intended location of the Representative Office, including:
    - Copy of office lease agreement in Vietnam (scanned copy and 05 notarized photocopies);
    - Copy of documents about the location of the office, including notarized copy of the land use right certificate of the lessor (if renting from an enterprise, it is necessary to provide their business registration certificate with the function of real estate business) (scanned copy and 05 notarized photocopies).
6. Statutory registration forms prepared by VNC Consulting.

III) Timeline & Deliverables from VNC Consulting:

(a) Representative Office Establishment License (10 – 15 working days from the date we get sufficient dossiers from parent company);

(b) Representative Office Seal with Seal Certificate (05 – 07 working days); and

(c) Tax Code Certificate (05 – 07 working days).

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