Antea ALLIANCE OF INDEPENDENT FIRMS

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8 variables that guarantee success in consulting

COLOMBIA

Entire consulting process is approved by the client when it is convinced that a consultant actually has experience and expertise. And all process consulting is successful when the client, at the end, recognizes that this process has led to a higher State of *growth*.

There are 4 variable from the perspective of the consultant and 4 variables from the perspective of the client. Adding both, here are the eight variables that guarantee success in consulting:

From Consultant:	From Customer:
Knowledge	Trust
Experience	Credibility
Findings	Continuity
Objectivity	Growth

Commercially speaking, customer we will not purchase (products and services) If you do not wake up trust and credibility. These two variables are correlated directly and proportionately with the *knowledge* and *experience* that we demonstrate to the client, and giving them the total peace of mind to do (close) business. At this point the *trust and credibility* "have taken over" customer and this is when the business is closed.

Once we started to work for our client have seen (show) results so it give us *continuity*. *Continuity* in the contract.

- **Knowledge:** create **Trust**
- **Experience:** awake **Credibility**
- **The results:** guarantee **Continuity**

But, in spite of all the *knowledge, experience and results*, as a result of all the activity and interdisciplinary support we provide to the client, it still waiting for higher *growth. Growth* is not given but as a step to step and close interconnection, interconnectivity and interaction between the variables mentioned starting at the upper end of the left column *(Knowledge)* and ending at the lower end of the right column *(Growth)*.

- **Objectivity:** allows **Growth**

But, where is there a short circuit between the consultant and the client? In the last row. But this blanket to both parts. A consultant without professional *objectivity* decrease *growth*, of himself and of the same client and therefore, can lead to the latter, does not renewed the contract. The same can happen to the consultant: If the client does not have a proper managerial objectivity, there is no mood to continue serving you.

The column on the left, in simple terms, suggests that *knowledge* more *experience* give *results*, but that they do not guarantee *continuity* and *growth* if there are faults in the *objectivity*...

In absolute terms from the column on the right ito learn to apply! That *trust* and *credibility* that we have depends on our continuity and, consequently, our

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Cyprus Immovable Property Tax Reform

CYPRUS

On 1 June 2016, the Cyprus Council of Ministers approved the reduction of immovable property tax rates by 50% from 1 per mille (that had been initially proposed) to 0.5 per mille.

The decision of the reduction of the immovable property tax rate came following the obligation by the EU to charge VAT (at the current rate of 19%) on transactions of properties which constitute a commercial transaction. This VAT will be imposed on commercial transactions and will thus mainly impact land developers. Individuals will only be taxed in cases of purely commercial activity.

The following amendments are included in the proposal:

1. Reduction of immovable property tax rate to a flat rate of 0.5 per mille
2. Immovable property taxes up to €25 will not be collected
3. The existing 20% discount for individuals who repay the immovable property tax on time via the internet or credit institutions and the 17.5% discount for individuals who pay their immovable property tax on time at the tax department counters will be maintained
4. Immovable property taxes collected by municipalities and communities will be abolished
5. 50% reduction in land transfer fees. This was already applicable for transfers that took place between 16 July 2015 and 31 December 2016, but will now become a permanent reduction

6. Imposition of VAT of 19% on trading of land for construction

Our team at Eurofast Taxand is in the best position to advise and assist you concerning the matter and any further enquiries you may have.

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Law on incentives for public-private partnerships and foreign investments

ECUADOR

On the December 18th of 2015, the legislative passed a law on incentives for public – private partnerships and foreign investments. This law has as purpose to establish tax and non-tax incentives for the execution of projects under the figure of public private partnerships. Also, the law establishes benefits in order to promote productive funding, national and international investment.

A public-private partnership is a delegation from the state to a private company to execute a public project. The incentives apply to private corporations when they comply the requisites that the law establishes and also when the corporation celebrates the contract of partnership in line with the law. The benefits that the law confers are valid during the same period of time as the contract.

The law approved the following incentives:

1. Income tax

The law create an income tax exemption for companies that are created to develop public private partnerships, for 10 years. Also, this law declare exempt the following incomes: from revenues of investments, from stocks and shares of public private partnerships and from profit of sale of stocks and shares.

2. Tax for outflow of currency

The taxable event of this tax is the outflow of currency, the law for public-private partnerships create an exemption for all the payments for: importation and acquisition of goods, capital and interest of loans, and dividends distributed to shareholders.

General benefits

1. Amnesty for interests, fines and surcharges in obligations with social security (IESS): This amnesty consists in cancelling the debt of interests in a 99% and fines and surcharges in 100% if the obligation is paid during the first 90 days of published the law. If the obligation was paid between the days 91 and 150 the amnesty was only of the 50% of interests fines and surcharges.
2. Reimbursement of value added tax for mining exports companies starting on 2018.
3. Reduction of the vehicular pollution tax for the fourth, fifth and sixth year to 50%.
4. Remission of loans debts with the "Banco Nacional de Fomento" and remission of interests, fines and surcharges in debts with the "Corporación Financiera Nacional"

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Process of purchasing Property in Egypt

EGYPT

Foreigners can buy property in Egypt, under Law No 230 of 1996.

Foreigners cannot buy more than two pieces of real-estate, which cannot exceed 4,000 square meters (sq. m.), and their purpose must be for a family member to live in the property. The purchase must have the approval of the Council of Ministers, which takes around two months.

REGISTERING PROPERTY IN EGYPT

If registered, the property cannot be sold or rented for five years. The purchase sum must be brought into Egypt in foreign exchange, through one of the public commercial banks (though this provision of the law is not enforced). Finally, the property must be rented furnished after the 5 years period, which has tax disadvantages (see tax section). If the foreigner is married to a local, the obvious solution is to get his/her spouse to buy the property and then let the property unfurnished, as locals do, usually avoiding tax.

Recently Egypt capped the total payable under the 3% registration fee rule at EGP2,000 (US$345), regardless of the purchase price of the property. So registration is now less expensive than it used to be. But the process still takes a long time.

SIGNATURE VALIDITY COURT VERDICT' OWNERSHIP

Property in Sharm El Sheikh cannot be registered

Property in Sharm El Sheikh follows a different regime, because an administrative decree issued in 2005 abrogated the 1996 law for property in Sharm el Sheikh.

Under the decree, foreign purchasers in Sharm el Sheikh cannot acquire freehold rights, but only 99 year leases. Foreign purchasers must therefore follow a procedure called a 'signature validity court verdict', and various other steps.

The 'signature validity court verdict' method could well become the dominant route for foreigners even outside Sharm, because it allows the foreigner to buy as many properties as he likes, rent them, and sell when he likes.

TAXATION TREATMENT IN EGYPT:

Individuals' income tax is imposed on the total net income of the resident individuals for income earned in Egypt, as well as the income earned outside Egypt for resident individuals whose centre of commercial, industrial, or professional activities is in Egypt. Also, tax is imposed on the income of non-resident individuals for their income earned in Egypt.

Income Tax

Earned income (EGP) Tax rate on bracket (%)

First 6,500 0

6,501 to 30,000 10

30,001 to 45,000 15

45,001 to 200,000 20

More than 200,000* 22.5

VAT

The properties rent not subject to sales tax

Capital Gains Tax:

Since the Capital Gains Tax is charged on gross gains, it is classified as a transaction cost. Capital Gains Tax is imposed on the sale of land and buildings within the boundaries of an Egyptian city at the rate of 2.5% of gross gains of the seller.

Stamp Tax

Not subject to stamp tax

The real estate tax law No 196 for year 2008 stated that the property valuation process will be based on location, construction quality, and utilities and the assessment will be every five year.

The assessment increase up 30% not more from the last assessment

Tax Rate is 10 % of the annual rental value after excluding the 32% representing an assumed maintenance expenses.

The assessment increase up 45% not more from the last assessment.

Tax Rate is 10 % of the annual rental value after excluding the 30% representing an assumed maintenance expenses.

Transfer real property tax

In 31 Jan 2016 is a protocol was signed between the Minister of Industry and Commerce Minister regarding the real estate tax calculation for the industrial Buildings and agreed to be as following steps:-

- Replacement cost = (Land Cost + NBV Buildings).
- Annual rental value = Replacement cost x 5%.
- Real estate tax pool = Annual rental value x 68%.
- Real estate tax due = Real estate tax pool x 10%

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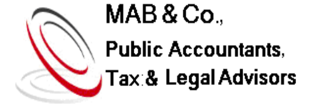

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Taxes in Germany – extremely high or reasonable?

GERMANY

At the ANTEA-Meeting in Munich in May Auren Germany presented the brochure "Setting up a business in Germany". Please find below an excerpt regarding taxation in Germany. Curious to learn more? You can find the complete brochure here.

Generally, all resident companies and entrepreneurs with commercial activities in Germany are liable to pay taxes. They are usually taxed on two levels: On the first level, corporations such as the limited liability company (GmbH) and the stock corporation (AG) are subject to corporate income tax (Körperschaftsteuer), whereas the partners in a partnership or the entrepreneurs of a sole proprietorship are subject to personal income tax (Einkommensteuer). A branch (permanent establishment) is taxed as a corporation. Both taxes are levied by the federal government. On the second level, all business operations are subject to trade tax (Gewerbesteuer), which is imposed by the municipalities, where the company is located. In case of having more than one permanent establishment, each is taxed for trade tax purposes.

CORPORATE TAXATION

Corporate Income Tax

The standard corporate income tax rate is 15 % and is imposed at the level of the company that generated the profit. It applies to all taxable earnings, whether retained or distributed profits earned during tax year. The so-called solidarity surcharge (Solidaritätszuschlag) is added to the corporate or personal income tax. This is set at a rate of 5.5 % of the corporate or income tax rate (and not 5.5 % of income as such). However, once profits are distributed to the shareholders, they must pay personal income tax or compensation tax (Abgeltungssteuer).

Trade Tax

This tax is directed at businesses' real earning capacity. As a non-personal tax, it is charged on the earnings generated by a business, irrespective of the personal circumstances of any of the owners. Therefore, all commercial business operations, except those of freelance professionals, are subject to trade tax. Trade tax is levied by the local communities totalling 7 % at minimum and usually ranging from 14 % to 17 % on average.

INDIRECT TAXES

Value Added Tax (VAT)

The normal VAT rate is 19 %, a lower rate of 7 % is charged for convenience goods and services needed on a day-to-day basis, such as food, books and newspapers, or public transport. Some services, including banking, healthcare, and non-profit work, are VAT-exempt. For certain services rendered by a foreign entrepreneur, the reverse-charged-system has to be applied. Each entrepreneur can apply for a VAT-Identification-number that is particularly necessary for intra-EU supplies and services. Import turnover tax (Einfuhrumsatzsteuer) has to be paid for goods imported from non-EU states.

Real Estate Transfer Tax

When domestic real estate changes owner, a one-time real estate transfer tax of about 3.5 % to 6.5 % (depending on the federal state) of the purchase price has to be paid by the buyer.

Real Property Tax

Every property owner in Germany is liable to pay an annual real estate tax. The tax rate depends on the category of real estate, the assessed value of the property and the municipal collection rate (Hebesatz).

INDIVIDUAL TAXATION

All resident individuals (natural persons) are taxed on their worldwide income. A resident is a person who has a home or its habitual abode in Germany. Therefore, they need to be physically present in Germany for more than six months in a calendar year or for a consecutive period of six months over a year-end. Non-resident individuals are taxed (usually by withholding) on their German- source income only. Contrary provisions in double taxation treaties override German national law unless the latter is more favourable (from the German tax point of view only) to the taxpayer. However, German law contains a number of provisions to prevent what the authorities see as treaty-abuse.

However, if a person is a resident in two countries and the tax treaty determines that he or she is a resident or has closer ties to the country other than Germany, then it does not mean that he or she will not lose their status as a German resident in respect to their German source income.

Thus he remains entitled to allowances and reliefs available to residents only (so-called taxpayer with unrestricted liability). Nationality is not of itself a criterion for determining residence or tax liability, although it may give an indication in (unusual) cases of doubt where a taxpayer has ties of equal strength to at least two countries.

All resident taxpayers must file an annual income tax return, unless their only income is employment income from a single employer. The tax year is the calendar year and the return is due by the following May 31 or, if a tax consultant has been appointed, by December 31. For further information on the taxation of individuals and companies please contact our tax consultant.

Personal Income Tax

The rate of personal income tax starts at 14 % for an annual income exceeding the tax-free allowance of EUR 8.652. It rises progressively to a maximum personal income tax rate of 42 %, which is applicable to earnings of EUR 52.882 (EUR 105.762 if married) or more. An increased tax rate of 45 % applies to every Euro in excess of EUR 250.731 per year, except business profits. In case of having a partnership or a sole proprietorship which is paying trade tax, the personal income tax can be reduced by 3.8 times of the trade tax base amount.

Compensation Tax

Since 2009 all dividends, capital investments and speculation gains are subject to the compensation tax with a tax rate of 25 % (plus solidarity surcharge).

Solidarity Surcharge

The solidarity surcharge, introduced to finance the German reunification, is 5.5 % of the assessed amount of both corporate and personal income tax. No solidarity surcharge is levied on trade tax payments.

Church Tax

Individuals who belong to a recognised church and who are subject to unlimited taxation in Germany must pay church tax. Depending on the federal state of residence, the church tax rate is 8 or 9 % of the individual's income tax. The paid Church tax is deductible for income tax purposes.

Non-resident Taxation

Non-resident individuals and companies in Germany receiving income generated in Germany are subject to German limited taxation with their German-sourced income. Double taxation of this income is avoided by double taxation agreements between Germany and other countries. In case of a non-resident company the tax treatment depends on its kind of income.

For individuals the deduction of expenses is only allowed if and to the extent these expenses are economically related to the taxable revenues. These limitations out tax payers with a limited tax liability in Germany in a disadvantageous position compared with individuals who are subject to unlimited German taxation. However, individuals who are subject to limited taxation in Germany can apply for unlimited taxation if at least 90 % of their worldwide income is subject to German taxation in one year.

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Taxation on real property owned by non- residents

INDIA

INVESTMENT IN REAL ESTATE IN INDIA

- The investment in Real Estate in India is governed by automatic route for individuals upto maximum limit of US $ 2,50,000/- in a year. However, the repatriation of sale proceeds and income from real estate may be subject to conditions as prescribed by apex bank Reserve Bank of India

INCOME FROM RENT

- The income from investment in real estate is taxed under the head 'Income from House Property' in hands of the owner of House Property – whether residential or commercial property.
- The chargeability of income as House Property is Section 22 of the Income Tax Act (I.T. Act). As per the section the Annual Rental Value or the actual rent received whichever is higher is taxed.
- In case Person is owning more than one residential house notional rent is to be offered as income even though the property is not leased.
- As against the income very limited statutory deductions for expenses are prescribed under Section 24 of the I. T. Act.
    - The main deduction of expenses is Municipal taxes (taxes payable to Government/Local Authority/Corporation). The said deduction is available on payment basis.
    - In respect of deduction of expenses Standard Deduction @ 30% of the Annual Value – whether actually incurred or not.
    - Interest on funds borrowed for purchase of property:
        - In case of property is let, entire amount of interest.
        - In case of property is not let, deduction upto Rs. 2,00,000/-.
        - Pre-construction/acquisition period cost of interest - the same is to be treated as capital expenditure and deduction is allowed in phase manner after the property is acquired.
- In case of property is let to a person (Lessee) who is subject to tax audit, withholding tax @ 30.9% would be deducted.

CAPITAL GAINS FROM TRANSFER OF PROPERTY

- Capital Gains tax is chargeable on transfer of immovable property.
- Depending upon the period of holding the property, the capital gains shall be classified into Long Term Capital Gain (LTCG) and Short Term Capital Gain (STCG).
    - LTCG - If the property is held for more than 36 months, then transfer of property would be treated as Long Term Capital Gain (LTCG).
    - Indexed Cost of purchase would be deducted i.e. inflated cost of investment depending upon period for which property is held and Cost Inflation Index declared by the Government.
    - LTCG is taxed at special rate @ 20%.
    - Benefit of deduction in case of Capital Gains being invested in a new residential house or for investment in specific security as prescribed – subject to fulfillment of conditions.
- STCG - If the property is held for 36 months or less than that, the capital gain shall be classified as Short Term Capital Gain (LTCG).

    - STCG is treated as normal income – Slab Rates applicable to non-resident or maximum marginal rate @ 30% in case Net taxable income exceeds 10 Lakhs
    - No other benefits.
- Expenses on purchase / sale of property.
    - Expenses incurred for transfer of property would be allowable expenses like brokerage paid, legal fees for drafting of sale deed, any Government taxes like stamp duty paid by seller on transfer, etc.
    - In same way if the above expenses are incurred at the time of purchase the same would be added to cost of acquisition and would be deductible expenses at the time of sale (in case of LTCG as indexed cost of acquisition).

OTHER PROVISIONS

Valuation of Property at the time of transfer:

- Where the consideration received on transfer of immovable property is less than the stamp duty valuation than value as per Stamp Duty would be adopted for computation of Capital Gain.
- In case the consideration of transfer of property is more than 50 lakhs than the said transaction would be subject to withholding of tax @ 1% of the Consideration. The said Withholding Tax is to be deducted by the Buyer of the property.

Service Tax Compliance

- If the income from lease of property (Commercial in nature) exceeds Rs. 9 Lakhs then the recipient i.e. Lessor is obliged to obtain Registration under Service Tax.
- If the Rent Income exceeds Rs. 10 lakhs then the recipient of the lease rent is liable to pay service tax on the same.
- Consequently, the provisions relating to filing of service tax returns would need to be complied with.
- In India there is no wealth tax payable from FY 2015-16 onwards.
- In India there is no estate duty payable on property getting transferred on the death of a person.
- In India there is no Gift Tax payable on property being gifted. The taxability if any, is in the hands of receiver i.e. Donee.

'Double Taxation Avoidance Agreement' (DTAA)

- If there is a DTAA in force between the country of which non-resident is a resident and India then the tax rates which are more beneficial to the tax payer shall apply.
- For availing the benefit under DTAA the tax payer will have to furnish the Tax Residency Certificate and No Permanent Establishment Certificate.

The above article does not cover the provisions for approvals and limits of investment in immovable property as per Reserve Bank of India and repatriation restrictions as per Rules, notifications and circulars.

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FAQs on Indian Permanent Account Number (PAN)

INDIA

What is PAN?

PAN stands for Permanent Account Number. PAN is a ten-digit unique alphanumeric number issued by the Indian Income Tax Department to all tax payers and act as unique identification number for all tax payers in the country. Its format is like ALWP-C-5809-L

What is the utility of PAN?

PAN enables the Income Tax Department to link all transactions of the assessee with the department. These transactions include tax payments, TDS/TCS credits, returns of income, specified transactions, correspondence and so on. It facilitates easy retrieval of information of assessee and matching of various investments, borrowings and other business activities of assessee. It is also mandatory for numerous other financial transactions such as opening of bank accounts, transaction of immovable properties, dealing in securities, etc.

Who has to obtain PAN?

PAN is to be obtained by following persons:

- Every person if his total income or the total income of any other person in respect of which he is assessable during the previous year exceeds the maximum amount which is not chargeable to tax.
- Every importer/exporter who is required to obtain Import Export code
- Every person who is entitled to receive any sum/ income after deduction of tax at source
- Any person who is liable to pay excise duty or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and an authorized agent of such person
- Persons who issue invoices under Rule 57AE requiring registration under Central Excise Rules, 1944
- A person who is liable to pay the service tax and his agent
- Persons registered under the Central Sales Tax Act or the general sales tax law of the relevant state or union territory
- Every person who intends to enter into specified financial transactions in which quoting of PAN is mandatory

Can I file my return of income without quoting PAN?

It is mandatory to quote PAN on the return of income.

How to apply for PAN?

Application for PAN is to be made in Form 49A (in the case of Indian Citizen/Indian Companies/Entities incorporated in India/Unincorporated entities formed in India) or Form 49AA (in the case of individual not being a citizen of India/Entities incorporated outside India/ Unincorporated entities formed outside India) along with prescribed fee at PAN application centres.

Applicant will receive an acknowledgment containing a unique number on acceptance of the application form which can be used for tracking the status of the application.

What documents will serve as the relevant proofs in case of applicants being entities incorporated outside India/Unincorporated entities formed outside India?

Copy of following will serve as relevant proof in case of applicant being entities incorporated outside India/ Unincorporated entities formed outside India.

Copy of Certificate of Registration issued in the country where the applicant is located, duly attested by "Apostille" (in respect of the countries which are signatories to the Hague Apostille Convention of 1961) or by the Indian Embassy or High Commission or Consulate in the country where the applicant is located or authorised officials of overseas branches of Scheduled Banks registered in India

Is it mandatory to file return of income after getting PAN?

Return is to be filed only if you are liable to file return of income under section 139 of the Income Tax Act 1961. However in case of foreign national and companies if withholding taxes have been deducted it's advisable to file return and claim refund of credit. However, It's not mandatory to file return of income after getting PAN.

Should I intimate my PAN to deductor i.e. person deducting tax?

Yes, you should intimate your PAN to the deductor i.e. person deducting tax. Non-furnishing of PAN to deductor results in TDS at much higher rate of 20% or even more.

If my PAN card is lost then what to do?

If the PAN card is lost then you can apply for duplicate PAN card by submitting the Form for "Request for New PAN Card or/ and Changes or Correction in PAN Data".

What is the validity of PAN?

PAN obtained once is valid for life-time of the PAN-holder throughout India. It is not affected by change of address or change of Assessing Officer etc. However, any change in the PAN database (i.e. details provided at the time of obtaining PAN) should be intimated to the Income Tax Department by furnishing the details in the form for "Request For New PAN Card Or/ And Changes or Correction in PAN Data".

Should I intimate the Income Tax Department if there is any change in the details provided at the time of allotment of PAN?

Any change in the PAN database (i.e. details provided at the time of obtaining PAN) should be intimated to the Income-tax Department by furnishing the details in the form for "Request For New PAN Card Or/ And Changes or Correction in PAN Data".

What is the penalty for not complying with the provisions relating to PAN?

Section 272B of the Income Tax Act provides for penalty in case of default by the taxpayer in complying with the provisions relating to PAN, i.e., not obtaining PAN, even though he is liable to obtain PAN or knowingly quoting incorrect PAN in any prescribed document in which PAN is to be quoted or intimating incorrect PAN to the person deducing tax or person collecting tax. Penalty of INR 10,000 under section 272B can be levied.

Can a person hold more than one PAN?

A person cannot hold more than one PAN. If a PAN is allotted to a person, then he cannot apply for obtaining another PAN. A penalty of INR 10,000/- is liable to be imposed for having more than one PAN. If a person has been allotted more than one PAN then he should immediately surrender the additional PAN card(s).

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Fiscal Representative Office in Israel

ISRAEL

Foreign companies aiming to establish business activities in Israel should take into account reporting and taxation requirements, as well as legal options for a Permanent Establishment in Israel. Companies with extensive and ongoing business activities in Israel are defined as Permanent Establishments and thus may be obligated to make full reports to all Israeli tax authorities. Companies in this situation have two options:

- Register as an Israeli company
- Open a fiscal representative office (referred to as a branch)

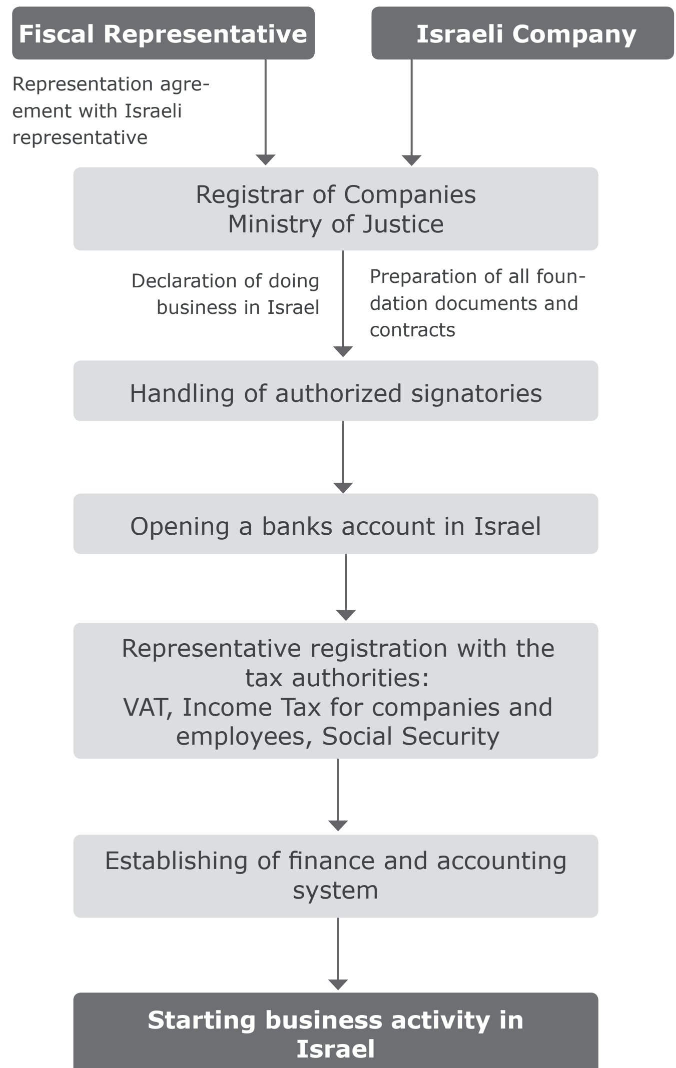
A fiscal representative office can be established and operated by a local representative responsible for managing the company's legal and financial affairs in Israel, including all tax-related issues. Normally, the representation office does not handle the operational or professional aspects of the company's activity in Israel. A fiscal representative office in Israel offers several important advantages. First, the company's business and tax-related activities are managed in a manner similar

to that of other Israeli companies. If the company decides to shut down its activities in Israel, a fiscal representative office can streamline the process so that it requires only completion, closing out and reporting of tax debts, which is far more expeditious than the process for closing a registered company.

In addition, a fiscal representative office in Israel can be the optimal solution in cases where an enterprise prefers not to establish a company in Israel for marketing and public relation reasons, such as to avoid damaging the parent company's relationship with countries which are not on good terms with Israel.

Last but not least, in most cases, when working with a fiscal representative in Israel, there will be **no additional tax on dividends** after paying income tax on profits made in Israel. When a company establishes a fiscal representative office, withdrawing distributed profits obtained from Israeli activities is not considered a dividend. This must be examined in accordance with the double taxation treaties Israel and other countries.

ESTABLISHMENT PROCESS FOR FISCAL REPRESENTATIVE AND ISRAELI COMPANY:



Nevertheless, a fiscal representative office in Israel entails personal liability for all parent company tax debts in Israel, and as a result, it is customary to provide guarantees and deposits in the representative's office's trust accounts for the duration of the business activity in Israel.

In conclusion, before making a decision regarding establishing a business entity in Israel, we strongly recommend that you consult with local experts in order to understand the advantages, disadvantages and consequences of all the existing options. If a decision is made to define business activity as a "fixed presence" in Israel, a fiscal representative office needs to be opened prior to commencing activity. The process of opening and establishing such an office can take from a few days to over one month, depending on a number of factors.

As a result, we recommend making the necessary arrangements as far in advance as possible. Feel free to contact our experts in order to get a professional consultation.

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Israel

Serbia ratifies the agreement on avoidance of double taxation with South Korea

SERBIA

On 24 February 2016, Serbia expanded its double tax treaty network by ratifying the Agreement for the avoidance of double taxation with respect to taxes on income, signed with the Republic of Korea on 22 January 2016.

The treaty closely follows the standard OECD contract model, but differs in terms of the withholding tax rates applicable, which have been defined as follows:

- Dividends
  - 5 % (if the recipient company holds at least 25% of the dividend-paying company)
  - 10% (in all other cases);
- Interest – 10%;
- Royalties
  - 5 % (for the use of, or the right to use, any copyrights of literary, artistic or scientific work including cinematography films, films or tapes for television or radio)
  - 10% (applicable for the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process as well as industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience).

Some other specific details include:
- A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
- Penalty interest rate shall not be regarded as interest for purposes of this Agreement (article 11)

By signing the above-mentioned treaty, South Korea also becomes one of the countries exempt from the withholding tax on service fees paid t non-resident legal entities which was introduced in Serbia as of 1st March 2016.

Following the ratification of the agreement and the publishing of the ratification law in the Official Gazette - International Treaties No. 4/2016, the treaty becomes officially binding and will enter into force as of 1st January 2017.

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Mexican tax on dividends paid

MEXICO

After all Mexican Corporations have closed their 2015 tax years[1] , many of them are mulling over the idea of paying dividends to their shareholders. In this sense, for many years Mexican tax policy had been very attractive to foreign investors because those profits distributed were no subjects of any withholding tax as long as the Mexican entity has paid the income tax over them.

However since 2014 new rules were introduced in our Income Tax Law regarding the payment of dividends[2] but the new wording of the tax provisions have given space for different interpretations and consequently some doubts among taxpayers about the proper application of the Law.

Basically, 2014 tax reform deems that Mexican entities must withheld a 10% rate over dividends paid to foreign shareholders[3] but only when such dividends are coming from profits originated from year 2014 or further years.

At this point a big doubt arises: such profits are "financial profits" or "tax profits"?

It is well known that Mexican tax authorities used to clarify some tax regulations through administrative rules, and in this case they issued two rules aim to clarify this doubt.

Unfortunately in this sense, once again, Rule 3.23.10 of the "Resolución Miscelanea" (RM)[4] seems to talk about "tax profits" in determining the 10% withholding tax because it refers to the CUFIN account (dividends basket) but, on the other hand, Rule 3.22.2 that talks about dividends received for Mexican individuals from foreign entities talks about "accounting profits" because foreign entities do not need to calculate CUFIN account.

Since a possible 10% of withholding tax is involved it is very important that tax authorities clarifies immediately this topic providing avoiding more legal concerns to taxpayers that have paid or are intending to pay dividends to their shareholders.

This reform had a negative impact in terms of new investments and with legal uncertainty on profit refunds some investors may think twice before move ahead.

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[1] Under mexican regulations it is mandatory to have a tax years ending on December 31th.
[2] Reforms in articles 140 (Individuals) and 164 (Foreigners) of Income Tax Law
[3] Mexican individuals are subjects of this 10% as well
[4] Summary of administrative rules that should not generate new duties for taxpayers

Bulgaria – Romania Double Tax Treaty ratified

BULGARIA

Romania and Bulgaria recently ratified a new tax treaty (the "Treaty") which was signed on 24 April 2015. The Treaty will replace the one signed in 1995 and extends the existing relief for cross-border dividend, interest and royalty payments. It also introduces stricter anti-avoidance measures and provides for a new mutual assistance procedure for tax collection.

The Treaty provides for the following withholding tax reliefs:

Dividends

Dividends may be taxed up to 5% of the gross amount paid (current treaty provides for 10% rate on dividends in cases of participations exceeding 25% in the distributing entity; 15% rate in all other cases).

No relief will be available in cases of deemed dividend / hidden profit distributions.

Interest

The standard relief under the new Treaty is limited to 5% of the interest income (15% provided by the previous treaty). Full relief may be available in cases of a government authority beneficiary.

Royalties

The new Treaty defines a 5% withholding tax on royalties (previously 15%).

Capital gains

No relief will be available on capital gains tax from alienation of shares in cases where 50% or more of the value of that company's share is derived from real estate.

Irrespective of the Treaty however, in specific circumstances, there may be other ways to relieve withholding tax under EU rules and domestic rules of both Romania and Bulgaria.

Permanent Establishment

A PE will be deemed to be created if a construction site/ project exists for a period longer than 12 months. The previous agreement defined a duration exceeding nine months as the condition for creation of a PE.

Mutual Assistance and Anti-avoidance measures

The Treaty will facilitate the mutual assistance procedures between the revenue authorities of Bulgaria and Romania. It is expected that the treaty will improve the joint efforts regarding the collection of taxes of all kinds as well as interests, penalties and costs.

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'Brexit', 'Beps' and other concerns for companies

SPAIN

The outcome of the British referendum on 23 June will severely affect companies from such country, as well as large-scale multinationals, and a large number of small-scale and medium-sized enterprises, especially from the European Union.

We live in an interconnected world. Companies and economies have to compete globally in order to achieve synergies of scale and respond to the challenge of permanent innovation by adapting to the requirements of their clients. The homogeneity of markets and the free circulation of goods, people and capital facilitate commercial transactions, avoid bureaucracy and costs, and enable long-term planning within a stable, constant and familiar environment.

The European Union has enables Spanish companies to gain in competitiveness and size. The presence of our companies on the international markets has been constant, both during booms and in crises. Our products and services compete proudly on the international markets, and foreign transactions have contributed significantly to supporting many SMEs which, without such alternative, would probably have disappeared.

The restoring of trade barriers or the fragmentation of the market hinder competitiveness and introduce additional factors of complexity. Therefore, the business world, in particular the British business world, is concerned by the United Kingdom leaving the European Union. The exit has also created uncertainty in respect of who might be next, and opens the door to individual negotiations on the basis of the threat of leaving the Union.

Changes of an unknown scope are also foreseen in relation to the initiative of the OECD and the G-20 known as Beps (Base Erosion and Profit Shifting). The implementation of 15 actions is foreseen, many pending specific development.

One which is already advanced and of great relevance is that relating to the international exchange of information. The basic premise is to fight against aggressive fiscal planning which, in some cases, takes advantage of taxation loopholes in national legislation to avoid double taxation, thus leaving certain revenues untaxed or taxed at very low rates.

National tax legislations do not easily contemplate modern business contexts such as the problem relating to the digital era, or intangibles sold over the Internet. Tax legislation is seen as a matter of national sovereignty, focused on each country's interests, and competing on occasions with that of other states. The regulating and organising of national tax authorities differ greatly from the current globalisation of companies.

The legitimate desired proposal of states to subject company profits to taxation can introduce factors of complexity or distortion into business organisations, the decisions of which are taken based on a fully legitimate regulatory framework.

Actions have been announced, but the very complexity of some measures make their implementation uncertain. The American presidential elections will greatly condition the speed and extent of the measures, as the Democrats are more committed to the project, whereas the Republicans see many of the measures as restrictions on business freedom. Beyond any administrative complexities which might be involved in the adoption of the measures contemplated in the Beps, the establishing of tax systems limiting highly aggressive tax planning may have a beneficial effect on companies, especially SMEs, as regards avoidance or low taxation structures, only accessible to large-scale enterprises. This allows for a more balanced distribution of tax burdens.

Risk management is an integral part of companies, and the flexibility to adapt to different circumstances is a skill of the best executives. Our companies will clearly continue to strive towards economic progress and contribute to job creation. However, there is no doubt that they would have greater opportunities in a more foreseeable and less turbulent environment.

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Can taxation be regarded as stealing?

THE NETHERLANDS

In the last edition I published an article on the question whether taxation can be regarded as stealing. This article was based on a pending court case in which the question came up whether taxation may be in conflict with the European Convention on Human Rights. The Dutch Supreme Court recently ruled in favour of the tax authorities. However, is there still room for discussion?

Box 3 income tax

In the Netherlands annually a capital tax is levied from individuals. This so-called Box 3 tax is based on the economic value of one's worldwide assets and amounts to 1.2% of this value, regardless of the actual income stemming from the assets.

Background on the 1.2%

In 2001 the Box 3 tax was introduced as the new method of taxing assets assuming a 4% interest rate to be taxed at 30%. At that time nobody could have predicted how low the interest would be today. The Dutch Government has however never amended the 4% rate to the market rate, based on budget motives. The resulting situation now is that taxpayers are taxed on income that they did not receive. As a result, several taxpayers went to court to protest against this tax. They stated that the tax is in conflict with the European Convention on Human Rights.

Supreme Court

The Dutch Supreme Court recently ruled that the legislator, when implementing the law, intended to impose a tax that would result in a tax that would be in accordance with the actual return on investment. Therefore, the Supreme Court ruled that the law is only in conflict with the European Convention on Human Rights if the 4% rate can not be achieved for a large number of years, as a result of which individuals are confronted with an excessive burden. In the case at hand this was not the case.

Going forward

The court case related to the year 2011. In the years after 2011 the interest rates have gone down considerably. As a result, in those years it has become impossible to receive an interest of4% on savings accounts. For those years, it is therefore still possible that the Supreme Court will rule in favour of the taxpayers. We will have to await a final answer.

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Property and VAT

UNITED KINGDOM

The subject of land and property transactions and VAT can cause headaches because of the complexities involved but are particularly important to get right. By speaking to a VAT expert, however, solutions can be found for each individual case.

Under UK VAT legislation,

- The grant, assignment or surrender of a major interest in land is a supply of goods.
  Grant - the sale of a freehold or other interest, or the creation of a lease or a letting of land
  Assignment - the transfer of a lease by an existing tenant to a new tenant
  Surrender - giving up an interest in land to the person who granted it to you
  Major interest – freehold or a lease exceeding 21 years
- Any other supplies of land are treated as supplies of services.

Please note that for VAT purposes, 'land' includes any immovable structures on the land.

Generally, the supplies of land are exempt from VAT and only become taxable in the following cases:

- First sale of a new build dwelling is taxable at zero rate of VAT. Subsequent sales and residential lettings are exempt from VAT.
- Certain supplies of land/property, such as car park facilities, pitches for tents and caravans etc., are always liable to standard rate VAT.
- Sale of a new commercial property, i.e. within 3 years of construction being completed, is taxable at standard rate of VAT. After 3 years, any supplies will be exempt from VAT.
- Sale or lease of commercial property that is not new becomes taxable if the owner/supplier 'opts to tax' the property. In such cases, standard rate VAT becomes chargeable.

It's fair to say that people's eyes tend to glaze over when the procedures of the 'option to tax' regulations are delved into! 'Option to tax' is only relevant in the case of commercial properties and there are some supplies which aren't affected (too detailed to go into here but do ask about it).

Where a supplier has a choice of whether to opt in to charge VAT or not, the pros and cons should be considered. The benefits of opting in include being able to recover the VAT on costs(input tax) in respect of the general maintenance and management of the property from HMRC. The downside is that once opted, the 'option to tax' remains in force for 20 years and is difficult to revoke. Any lease or sale of property with 'option to

tax' becomes liable to VAT, which can be substantial amounts. It also increases the SDLT payable on such transactions.

In addition to above, there are the anti-avoidance measures to consider as well. You are probably wondering what the anti-avoidance measures are. The anti-avoidance measures are there to deter partly exempt businesses from entering into arrangements that are designed to either increase the recovery of input tax or spread the cost of the purchase/construction over a number of years.

Then there is the possible impact of Capital Goods Scheme on partially exempt businesses. In brief, this may limit the input tax recovery on property(capital item) purchases.

While the rules must be considered carefully, don't be dissuaded from opting to tax because of the complexities involved. Speak to a VAT expert to explore the opportunities in full.

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Getting to know my customer's customer

URUGUAY

Last 14 December, the Superintendence of Financial Services of the Central Bank of Uruguay issued the Circular N ° 2238, giving a new wording to article 302 of the Compilation of Standards for the Regulation and Control of the Financial System, Book III; in relation to the policies for the protection of the financial system against illicit activities. With this setting in the regulations, the international trend is being followed, showing the need of the appropriate knowledge of the customer. In general terms, it is established that the institutions regulated by the BCU must have effective procedures that allow them to take cognizance of transactions made by both individuals and companies that handle third-party funds as usual practice.

The first step is to distinguish between two types of customers, those that are not subject to regulation and financial supervision, and those that are.

For customers that are not subject to regulation that handle third-party funds as usual practice, article 302 provides a list of activities considered to be of higher risk, for which the institution must apply enhanced due diligence procedures:

- Customers making transactions for higher amounts than USD 600,000 in a calendar year, the monitoring should allow identification of the final beneficiary for all transactions exceeding USD 10,000. It is clarified that the identification should include as a minimum, the basic data of the person.
- Customers making transactions for amounts higher than USD 50,000, even though the cumulative does not exceed the amount of USD 600.000, final beneficiaries must be identified.

In practice, it is necessary for the customer to report in a correct and proper way the composition of the final beneficiaries for operations that reach the indicated amounts, and the institution should also keep a control register of these beneficiaries, as a way of accumulating operations. Depending on the amounts related to each final beneficiary and the risk that has been associated with the operation, the institution shall request the additional information deemed relevant for the determination of the legality of the funds.

The article specifically establishes that for those who manage funds from the sale of their own property (built or not) must carry out the same procedures as for customers who manage funds of third parties; having to be applied to the buyers of the properties the same enhanced due diligence procedures.

In the case of customers subject to regulation and financial supervision, it shall be applied the same procedures listed above, with the exception of the transactions with financial institutions with foreign correspondents; or in the case of operations related to institutions that have been evaluated favorably in regards to their policies of prevention and control of money laundering and financing of terrorism. Likewise, information of the customers and the origin of their funds must be obtained when the operation, by understanding of the institution, presents such a risk that requires it.

If the customer, subject to regulation or not, refuses to provide the information of the final beneficiaries to the institution, this one should evaluate the fact of reporting the transaction as unusual or suspicious to the authorities.

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