Antea
ALLIANCE OF INDEPENDENT FIRMS

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New Turco German tax treaty

TURKEY

There was a Tax Treaty between Turkey and Germany since 30 December 1989. However, the German authorities unilaterally denounced the Treaty in 2009. The denouncement had taken effect from 01 August 2011. A New Tax Treaty, under the name of "Agreement between Turkey and Germany for the Avoidance of Double Taxation and of Tax Evasion with Respect to Taxes on Income" entered into force on the date of 01 August 2012 and has taken effect since 01 January 2011.

During the period of 01 August 2011 to 01 August 2012 domestic rules were being applied to double taxation issues between the two countries. Therefore, the retrospective application of the New Treaty up to 1 January 2011 gives an opportunity to taxpayers to apply for enjoying more favorable treatment of the New Treaty for the taxable income and gains derived from the other country during that period.

In order to enjoy the favorable treatment of the new Tax Treaty residents of Germany need to acquire a residence document from German authorities and to submit it either to the persons that would withhold the tax or in other cases to the related tax office in Turkey.

SOME IMPORTANT POINTS OF THE NEW TREATY

Taxes Covered

The New Tax Treaty covers the Turkish and German personal and corporate income taxes as well as German trade tax. While the former Treaty was also covering German capital tax (Vermögenstreuer) and business tax (Gewerbesteuer) which is no more the case.

Permanent establishment (PE)

Definition of permanent establishment in general is parallel to the OECD Model Tax Convention.

But a building site, a construction, assembly or installation project or supervisory activities in connection therewith that last more than six months are considered as permanent establishment.

Rendering of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose for a period or periods more than six months are also considered as an indication of the existence of a permanent establishment.

Source country taxation

As a general rule the country of residence has the right to tax. However in certain cases the source country has a limited right of taxation for income and gains derived from there.

In accordance with the New Tax Treaty dividends, interest, and royalty payments made to residents of the other Contraction State may subject to limited source country taxation. The maximum taxation limit for dividend payments is 5% of the gross amount if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends. The related figures in the previous treaty were 15% and 10% respectively. Otherwise the tax charged will not exceed 15% of the gross amount of the dividend.

Interest payments may subject to maximum 10% income tax in the source country. The rate for the same income in the previous Tax Treaty was 15%.

Royalty payments, as in the previous Tax Treaty, may subject to maximum 10% of income tax in the source country. However, definition of royalty has changed in the New Treaty and the sale proceed of intangible assets, which were included in the definition of royalty in the previous Treaty has been excluded from the definition now.

The term of royalty also includes the payments for the use of, or the right to use industrial, commercial or scientific equipment as well as payments of any kind for the use or the right to use a person's name, picture or any other similar personality rights.

Capital gains derived from immovable property, and from the alienation of shares and similar rights deriving more than 50% of their value from immovable property may be taxed in the country that the immovable property situated.

Gains from the alienation of movable property of permanent establishment may be taxed in the country where the permanent establishment is located.

Any other capital gains will be taxable only in the country of residence of the alienator. But if the time period does not exceed one year between acquisition and alienation the source country will also have right to tax the gain. The exceptions to this rule are the alienation of shares that are listed on an approved stock exchange of the countries and the gains derived from the alienation of shares in the course of a corporate reorganization.

Business income

As quite parallel to the OECD Model Tax Convention, business activities conducted in a permanent establishment will be subject to taxation in the country where the PE is located. Otherwise, business income is taxable in the country of residence of the taxpayer.

Independent personal services

With a drastic change from the former Tax Treaty where the independent personal services were also covering enterprises that rendering services, the New Treaty limits the independent personal services with professional services of individuals. Therefore, the service

income of enterprises will be subject to the provisions of business income, and Turkey will not levy a relatively high withholding tax for these services rendered by German enterprises anymore.

In order to be taxed in the source country services are to be provided through a fixed base or the individual is to be present there while providing the service for a period or periods in the aggregate to at least 183 days in any continuous period of 12 months.

Professional services include independent scientific, literary artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Income from employment (dependent personal services)

Remunerations from employment will be taxable only in the source country where the service is rendered if the employee is present in the source country exceeding in aggregate 183 days, and neither the employer is a resident of the source country and nor is the employee working for a PE or a fixed base in the source country.

Elimination of double taxation

Double taxation of the residents of Turkey will be eliminated by using credit method. Therefore, the Turkish tax payers enjoy a tax credit for the income taxes they paid in Germany.

Double taxation of the residents of Germany will be eliminated by using either credit or exemption method as the case might be. Income and some gains that are taxed in a limited scale in Turkey as the source country will be subject to tax credit mechanism for elimination of double taxation in Germany (e.g. dividends, interest, and royalties). However, the dividend income received by a German company from a Turkish company that at least 25% of capital of which is owned directly by the German company and the dividend was not deducted when determining the taxable income of the company in Germany will be exempt from tax there.

Other classes of income and gains that may be taxed in Turkey will be exempt from taxation in Germany, except the business income of a permanent establishment in Turkey under certain conditions.

Also in cases of disagreement between the tax authorities of the countries about the applicable provisions of the Treaty or the identity of the tax payer, Germany will apply the credit instead of the exemption method to eliminate the double taxation.

Procedural rules for taxation at source

The countries may directly apply the related tax rates determined in the Treaty for income classes of dividends, interest, and royalties at source. However, the countries may also use the rates that are provided under the domestic tax legislation of the source country. Nonetheless, the tax withheld at source is refundable on application by the taxpayer in four years if and to the extent that the Treaty requires the tax authorities to apply of a lower tax rate for the income.

The New Tax Treaty also gives the competent authorities of the countries to exchange information about all kinds of persons and taxes that are not necessarily in the scope the Treaty.

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Compensation for dismissal. Current situation and its Income Tax treatment

ARGENTINA

The Argentinian employment contract law provides that in cases of dismissal without just cause, must be paid to the worker a month's salary for each year of service worked or fraction greater than three months. The amount of the salary must be the best normal and usual remuneration of the worker.

This compensation may not exceed three times the average wage of all the fees provided for in the Collective Labor Agreement applicable to the worker.

The Justice has opined[1] that this stop violates constitutional principles laid down in the National Constitution; therefore the compensation item antiquity must be equivalent to a 67% of the amount calculated in accordance to what was mentioned in the first paragraph. With regard to the income tax, the employer must carry out a withholding tax at the payment time. The income tax law sets that the compensations for dismissal are exempt from the levy.

However, there are no rules that provide for tax purposes how the compensation is determined under age that should be considered excluded from the withholding of income tax. The Treasury has been pronounced in the same sense of the Court in the caseVizzoti[2], clarifying that if the amount paid to the worker compensation is equal to or less than three times the average wage of all the fees provided for in the collective employment agreement applicable to the worker. The tax exemption will be recognized on the full amount of compensation paid, not corresponding to the employer to withhold income tax.

On the other hand, if the amount paid is greater, the exemption will be granted up to a sum equivalent to the sixty-seven percent (67 %) of the amount calculated.

Therefore, the basis for the determination of the withholding of income tax, shall be given by the amount that exceeds the sixty-seven percent (67 %) of the amount actually paid, in case that this amount is greater than three times the average wage of all the remuneration referred to in the collective labor agreement applicable to the worker.

Finally, it is worth to say that there is case law "Cause Ediciones B Argentina S.A. TFN Room B 29/03/ 07" and ratified by the C. N. A. C. A. F. Room IV 03/23/10, which extends the concept of compensation of the profit tax bill, saying that the amount set out in the first paragraph of this article, is a minimum of public order, nothing prevents the parties agree a greater amount to this concept, which will continue to be the nature of compensation by seniority, and therefore included in the exemption of income tax.

In the same sense we have already heard several rooms of the Chamber of Labor (Pombo, Graciela c/AgroserviciosPampeanos S.A. Room III 3/02/ 2006; Alen, Jose c/ Wyeth S.A. Room I 10/09/2007. At the level of the Supreme Court of Justice of the Nation still lack the definition of that topic.

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[1] Supreme Court of Justice of the Nation "Vizzoti, Carlos A. c/AMSA SA" 14/9/2004
[2] Circular (AFIP) 4/2012, 30/11/12 and in the same sense memorándum 10/2005 DNI (SIP)

Proposed new UK statutory residency tests

UNITED KINGDOM

Following recent tax cases, tax advisors have been unable to determine with any certainty the tax residency of an individual for UK tax purposes.

As a consequence of this, The UK Government is proposing to bring in Statutory Tests from 6 April 2013 to determine the tax residency of an individual. Currently there are no statutory rules and a residency of an individual is based on case law and UK tax authorities practice.

The test will take into consideration the days spent in the UK and connections to the UK and will be structured into three parts. Firstly, the automatic overseas test will determine if an individual is automatically non-resident. Secondly, the automatic UK test will determine if an individual is automatically resident. Thirdly, the sufficient ties test will determine the residency position if an individual meets neither the automatic overseas nor the automatic UK test. The sufficient ties test determines residency based on a combination of the amount of time spent in the UK with the number of ties a person has.

Automatic Overseas Test

An individual will be automatically not resident in the UK for a relevant tax year if that person satisfies any of the following conditions:

- they have been not resident in all of the three preceding tax years and in the relevant tax year spend less than 46 days in the UK or
- they have been resident in one of the preceding three years but spend less than 16 days in the UK in the relevant tax year
- they work full-time overseas for the tax year without any significant breaks from that overseas work, and:
  i. they spend fewer than 91 days in the UK in the tax year, and
  ii. the number of days in the tax year on which they work for more than three hours in the UK is fewer than 31.

Automatic Residence Test

Provided that the individual does not meet any of the Automatic Overseas Test, then that person will be automatically UK resident if any one of the following three conditions is met:

- they spend more than 183 days in the UK or
- they work full time for a period of twelve months in the UK whether employed or self-employed or
- their only home(s) is/are in the UK.

Sufficient Ties Test

Where an individual has been not resident in the UK in each of the three previous tax years then the combination of ties and days is as follows:

Days in UK	Number of Ties
up to 45 days	Always not resident
46 - 90	4 ties to be resident
91 - 120	3 ties to be resident
121 - 182	2 ties to be resident
183 or more	Always resident

The proposed ties are as follows:

1. where the individual's spouse or children under 18 are resident in the UK
2. residential accommodation is available for use in the UK which is actually used in the year
3. you undertake substantive employment or self-employment in the UK covering at least 40 working days
4. there are at least 90 days of presence in the UK in either of the two preceding tax years.

In conclusion it will be important for individuals coming to the UK to obtain advice to determine their tax residency position, as not doing so could lead to potential unforeseen tax liabilities.

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Legal and tax residency
Fiscal / tax consequences

URUGUAY

In our last week's issue we dealt with the main requirements to obtain the legal and/or tax residency in our country. In this current issue we will refer to the main tax consequences of obtaining the tax and/or legal residency entitlement regarding tax income (always referring to natural persons).

IRPF (Personal Income Tax)

This tax is applied on some incomes of natural persons who are tax residents in Uruguayan territory, being legal residents or not.

In general terms, the tax applies to the following incomes:

1. Incomes from Uruguayan source:

- **Earned income:** It includes incomes obtained **in the country** for the provision of personal services, inside or outside the dependency relationship.

  The concept of Uruguayan source includes the compensations in dependency relationships and technical services provided **abroad** outside the dependency relationship, to IRAE (Income tax on trade and industry) or IRPF (Personal Income Tax) taxpayers.

  The tax in this category is calculated over the amount that exceeds the non-taxable minimum (MNI), applying (10% to 30%) progressive rates to the surplus.

- **Capital tax:** It includes return on movable capital (interests, dividends, etc.) and real-estate ones (renting of properties in the country).

- **Assets increase: It** includes incomes derived from transfer and use of fixed and intangible assets located in the country, among others.

2. Incomes from foreign sources, among them you can find:

- **Capital tax:** It includes return on movable capital coming from abroad (interests and dividends).

  IRPF (Personal Income Tax) taxpayers have the option of paying real or presumptive IRAE (Income tax on trade and industry) for the incomes obtained (apart from those obtained in a dependency relationship, local dividends, and return on movable capital coming from abroad). In some cases this can be less burdensome. For services provided outside the dependency relationship that annually exceed USD490.000 real IRAE should be settled.

IRNR (NON-RESIDENTS INCOME TAX)

This tax applies to incomes obtained by natural persons and other entities who are **not fiscal residents** in national territory; though they may be legal residents.

In general terms, it applies to the same incomes that the IRPF applies. However, we will mention the main differences between these two taxes:

- In the IRNR there is no MNI (non-taxable minimum) or progressive rates in none of the taxed incomes categories.
- In the IRNR the option of settle IRAE does not exist in any case.
- In case of obtaining business incomes, the IRNR is calculated applying a 12% rate over the incomes of Uruguayan source, free of charge. On the other hand, a fiscal resident who obtains this kind of income will pay IRAE under a real or presumptive regime.
- The **IRNR in any case applies to foreign source's incomes** obtained by fiscal residents in our country **(though they may be legal residents).**

Regarding this last point, it should be mentioned that the recent **Law Number 18.910,** granted all natural persons who gain their fiscal residency in the Republic, the possibility to start taxing these incomes from the fifth **fiscal** year beyond which it is verified the change of residency to national territory. This deferral is granted giving them the possibility of paying the IRNR for five fiscal years, once only and only for this kind of income. This tax does not apply to returns obtained outside the country.

This is to say that, in order to identify the taxed incomes as well as the applicable income tax, it is fundamental to analyse the fiscal residency of the natural persons according to the definition given by our legislation.

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The legislation on the Regulation of the Fiduciary Services passes in Cyprus

CYPRUS

In December 2012, the Cyprus legislation on the regulation of businesses offering management services and related subjects was finally published. The legislation was welcomed by the majority of the service providers, who see the regulations as a step forward in enhancing even more the level of quality in the provision of management services to private companies.

The legislation does not apply on CIF and credit institutions who exercise administrative services in the framework of their business which are regulated by their respective Competent Authorities and management companies and variable capital investment companies who provide administrative services during the course of their business under the Open Ended Undertakings in Collective Investments Law, and only the persons who are eligible will be able to provide management services.

The application of the legislation will cover, in general, the following services and activities:

- Trustee Services
- Provision of services, such as nominee services, opening of bank accounts etc., to private and public companies, partnerships or other organisations whether legal or physical persons, wherever they have been incorporated or established

The legislation will not apply to physical persons providing services as:

- a consultant in a company in which its securities are listed on a regulated market, which is under a supervisory authority and is obliged to have non-executive independent consultants, in governmental or semi-governmental majority owned by the Republic of Cyprus;
- a consultant or secretary in a company in which he owns physically or through company at least 25% by his/her spouse and/or members of his/her family up to forth degree of relation or in a trust in which relatives up to fourth degree are beneficiaries;
- a consultant or secretary in the company which is his exclusive employer or company belonging to a group that the employer is a member;
- a consultant or secretary of a subsidiary company as described on the above three paragraphs;
- a Trustee where the person is a settlor or where all the beneficiaries are himself or relatives up to fourth degree of relation;
- a Trustee in a trust created in the will of a physical person; and
- a consultant providing services for less than 10 companies, not including companies mentioned in the first three paragraphs and provided that the person is not controlling the Board of Directors of a company.

Persons, whether legal or physical, providing fiduciary services in Cyprus, other than the services provided above, shall be obliged to apply to be licensed by the relevant authority.

Requirements for acquiring the license:

1. Head offices of the licensee is situated in the Republic
2. Persons that are in fact directing the applicant or licensee must:
   - have the characteristics of honesty, expertise or/and professional qualifications
   - the licensee is directed by at least two persons that fulfil the above qualifications
   - the Committee will have the power to oppose the appointment of a person or to ask further information or to request modifications.

3. The license will be provided only after the direct or indirect and real beneficial owners of the applicant are disclosed.
4. The licensee must ensure the employment of persons with ethos, honesty, ability, knowledge and expertise required for that position.

It is required to employ internal lawyer or to have regular professional contact with external lawyer on an annual basis.

It is required to appoint a compliance officer, after the said person is approved by the Committee.

Procedure for acquiring the license:

An application is completed and forwarded to the Commission (Cyprus Securities & Exchange Commission), which can be found on its website. The application is signed by the directors and is accompanied by:

1. Special questionnaire signed by the directors or the persons that are in fact directing the company, if not the directors, the shareholders, the beneficial owners, if any and the compliance officer.

2. Confirmation of the Directors that the details provided are correct and truthful.
3. Criminal record certificate and certificate of non-bankruptcy for the directors, the persons that are in fact directing the company, the shareholders, the beneficial owners, if any and the compliance officer.
4. The Memorandum and Articles of Association of the Company, as well as certificates showing the directors, shareholders, beneficial owners, registered office and good standing of the Company.
5. Payment of the levy, as provided by the Commission.

The Commission may request additional documents.

Persons providing management services before the introduction of the legislation

1. Within two months from the introduction of the legislation the person notifies the Commission regarding its details and its intention to submit or not to submit an application.
2. Within four months from the notification, the application is submitted to the Commission, with the Financial Statements of the previous two years.
3. Comply completely with the provisions of the legislation.

Persons, who do not comply with the above, may continue to provide such services for six months after the date of entry into force of the legislation. After the six months they will not be allowed to provide such services.

In cases an application is rejected by the Commission, then the said person shall cease to provide such services within six months from the notification date of the rejection.

The Commission shall respond to each application of newly established service providers within four months.

The Commission shall respond to already existing service providers within twenty four months.

Intention of a person for an extension of its license to additional services or amendment of a license must be accompanied by a notification in advance to the Commission, which its approval is not required but can be opposed or asked for more information.

A license can be suspended or revoked by the Commission, while there are cases where the license is automatically terminated.

Licensed persons are held in a Register, which can be freely accessible by the public.

Persons, who do not comply with the provisions of the legislation, can face criminal and civil liability, administrative sanctions and regulatory competency of the Securities and Exchange Commission.

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Which non-residents' earnings are exempt from IRNR (non-resident income tax) when these are not permanently established in Spain?

SPAIN

- Income earned by individuals which is exempt from income tax according to income tax regulations (such as for example lottery winnings, permanent total disability or severe disability benefit, or public grants and scholarships). With the exception of that contained in letter y) of Article 7 of the Personal Income Tax Law.

- Interest and capital gains from personal property and goods obtained by residents of another EU member State, with three exceptions:

  - When the interest and/or capital gains are obtained through a tax haven.
  - In the case of capital gains derived from the transfer of shares, holdings or other rights in an organisation in which real estate located in Spain make up its main asset.
  - When the capital gains are derived from the transfer of shares, holdings or other rights in an organisation and the taxpayer, at some point during the twelve-month period prior to the transfer, has directly or indirectly held a stake of at least 25% of the capital or assets of said organisation.

- Earnings derived from Public Debt.

- Earnings derived from securities issued in Spain by non-residents.

- Earnings from non-resident accounts.

- Income from the leasing, cession or assignment of containers or bareboat ships and aircraft, used in maritime navigation or international flights.

- Profit distributed by the subsidiaries resident in Spain to their parent companies in another EU Member State or to permanent establishments of the latter located in other Member States, provided that they fulfil certain conditions.

  A parent company is one that has a holding in another company, in general, as of 1 January 2011, of at least 5%; the holding may be reduced to a minimum of 3% as the result of the subsidiary company having carried out the operations referred to in article 14.1.h.) of the revised text of the Non-resident Income Tax Law. The company in which the parent company has the holding is the subsidiary. In order to apply this exemption, the parent company cannot be resident nor the permanent establishment based in a country or territory classified as a tax haven.

- The income derived from the assignment of securities or the reimbursement of shares in investment funds set up in official secondary markets of Spanish securities, obtained by individuals or organisations resident in a country with which Spain has signed an Agreement with a clause for information exchange, except when it is obtained through a tax haven.

- National welfare old age pensions recognised under Royal Decree 728/1993 of 14 May. This decree establishes the welfare old age pensions for Spanish emigrants (effective from 1 January 2001).

- Scholarships, grants and other amounts received by individuals, paid by Public Administrations by virtue of international cultural, educational and scientific co-operation agreements or treaties, or by virtue of the annual international co-operation plan approved by the Council of Ministers (effective from 1 January 2001).

- The dividends and shares in profits obtained by individuals resident in another Member State of the European Union or in countries or territories with which there exists an effective exchange of tax information, with a limit of 1,500 euro, and applicable to the totality of the earnings obtained during the calendar year. This exemption is not applicable if the dividends are obtained through countries or territories classified as tax havens, (effective from 1 January 2007).

- Dividends and profit sharing obtained by pension funds equivalent to those regulated in the revised text of the Pension Plans and Funds Act (Legislative Royal Decree 1/2002, of 29 November), which are resident in another European Union Member State or by permanent establishments of said institutions in another European Union Member State (effective from 1 January 2010).

- Dividends and profit sharing obtained by unit trust institutions regulated by Directive 2009/65/EC of the European Parliament and of the Commission; under no circumstances, however, can the application of this exemption result in tax being paid at a lower rate than would have resulted from levying the same tax rate on said income as would have been levied on unit trust institutions domiciled in Spanish territory as corporation tax (effective from 1 January 2010).

- Royalties between associate companies, paid to a company resident in a European Union Member State or to permanent establishment of said company in another EU Member State, provided that certain requirements are fulfilled (effective from 1 July 2011).

- An exemption applies to 50 percent of the capital gains resulting from the sale of urban real estate in Spain which has been purchased between 12 May 2012 and 31 December 2012. This partial exemption is not applicable:

    - In the case of natural persons, when the real estate has been purchased by or transferred to their spouse, to any person related to the taxpayer either via the direct line or collateral lines, by blood or by affinity, up to and including the second degree, to an entity which falls under any of the conditions set forth in article 42 of the Code of Commerce, either in relation to the taxpayer or any of the other persons mentioned above, regardless of their place of residence and the obligation to formulate consolidated annual accounts.
    - In the case of entities, when the real estate has been purchased by or transferred to a person or entity that falls under any of the conditions set forth in article 42 of the Code of Commerce, regardless of their place of residence and the obligation to formulate consolidated annual accounts, or to the spouse of the above mentioned person or any other person related to said person via the direct line or collateral lines, by blood or by affinity, up to and including the second degree.

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Recent Changes to Serbian Tax Legislation

SERBIA

The recent changes in Serbian tax legislation have raised quite an interest of both Serbian businessman and foreign investors. Some of the changes will come into force as of January 1 2013, and a couple, listed below, already in force.

- As of October 1 2012, the VAT rate is increased from 18% to 20% for all goods and services except for the ones that the lower tax rate of 8% applies have remained the same.

- As of October 6 2012, the tax rate for the capital gains of physical persons has been increased from 10% to 15%. According to the Article 7 of the respective Law, the tax payer is defined as the resident of the Republic of Serbia for the gain achieved in the territory of Serbia, and for the gain achieved abroad. The non-resident who has achieved gains in the territory of Serbia is also considered a taxpayer and liable to tax, unless there is an international Double Tax Treaty in place that provides otherwise.

With all the changes to the laws of Serbia, the government is expecting to decrease the budget deficit from current 7,1% to 4% of the GDP. The application of the measures should result with RSD 26 billion savings in the last quarter of 2012, and over RSD120 billion savings in 2013, the fact that should significantly contribute to the stabilisation of the public finances.

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Transfer pricing

INDIA

The increasing participation of multinational groups in economic activities of a country, has given rise to new and complex issues. Transaction entered into between the enterprises in different companies belonging to same group, it is important that fair pricing practices are adopted to not adversely affect profits of either entity. This would otherwise lead to evasion of tax revenue of the country and narrows the tax base of the economy. In order to avoid this situation and with a view to provide legislation with a tool to ensure fair and equitable distribution of profits, the concept of transfer pricing was designed.

India is becoming more prominent in the global landscape. With a huge consumption driven domestic economy, untapped areas of exponential growth and opening up of economy, India has attracted global majors in past 2 decades. This has prompted Tax authorities in India to look closely at transfer pricing. It was introduced in India, in the year 2001 which is being governed by section 92 to 92F under the Income
Tax Act, 1961.

Scope:

Transfer Pricing Regulations ("TPR") are applicable to the all enterprises that enter into an 'International Transaction' with an 'Associated Enterprise'. Therefore, generally it applies to all cross border transactions entered into between associated enterprises. It even applies to transactions involving a mere book entry having no apparent financial impact. The aim is to arrive at the comparable price as available to any unrelated party in open market conditions and is known as the Arm's Length Price ('ALP').

Applicability:

The trigger point for attracting transfer pricing provisions is the occurrence of an *international transaction* between two or more *associated enterprises.*

International Transaction:

An international transaction is essentially a cross border transaction between associated enterprises (AEs) in any sort of property, whether tangible or intangible, or in the provision of services, lending of money etc. At least one of the parties to the transaction must be a non-resident entering into one or more of the following transactions:

(a) Purchase, sale or lease of Tangible or Intangible Property
(b) Provision of services
(c) Lending or borrowing of money
(d) Any transaction having a bearing on profits, income, losses or assets
(e) Mutual agreement between AEs for allocation/apportionment of any cost, contribution or expense.

Associated Enterprises:

The basic criterion to determine an associated enterprise (AE) is the participation in management, control or capital (ownership) of one enterprise by another enterprise. The participation may be direct or indirect or through one or more intermediaries. The concept of control adopted in the legislation extends not only to control through holding shares or voting power or the power to appoint the management of an enterprise, but also through debt, blood relationships, and control over various components of the business activity performed by the taxpayer such as control over raw materials, sales and intangibles.

Arms Length Price:

In accordance with internationally accepted principles, the Transfer Pricing Regulations (TPR) have provided that any income arising from an international transaction between AEs shall be computed having regard to the Arms Length Price (ALP), which is the price that would be charged in the transaction if it had been entered into by unrelated parties in similar conditions. With a view to allow a degree of flexibility in adopting the ALP, a variance allowance of 5 percent has been provided under the TPR.

Onus to Prove:

The primary onus is on the taxpayer to determine an ALP in accordance with the TPR and to substantiate the same with the prescribed documentation. Where such onus is discharged by the taxpayer and the data used for determining the ALP is reliable and correct there can be no intervention by the tax officer.

Recent Developments:

In India, advance pricing agreement (APA) programme was introduced by the Finance Act of 2012, effective from 1 July 2012. As per the proposal, an APA will be valid for a period not exceeding five consecutive financial years from the date of signing. It will be binding on the assessee and the tax authorities in respect of the specified transaction that has been agreed to.

APA allows parties to use any method to determine pricing. However, the government is yet to roll out APA rules, forms and procedures. Bilateral APAs are likely to be led by the office of the Competent Authority, whereas unilateral APAs would be handled under the supervision of the Director General of Income Tax (International).

Across the world, APA is the preferred mechanism for bringing certainty in and resolving disputes relating to transfer pricing. The revenue authorities are keen to make this programme a success and provide a much needed breather to the taxpayer community. Therefore, the process is likely to be more efficient at the onset and should be driven by quicker as well as pragmatic decision-making.

The APA process is expected to be cooperative thereby offering an environment conducive to resolve transfer pricing issues. Clearly, the biggest benefit of an APA is establishing certainty. Moreover, in a bilateral APA, one would also eliminate any potential double taxation.

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Legal qualification of the transactions carried out by a taxable person who have moved to Italy and who has not been registered in the VIES database yet. [Resolution number 42/E/2012]

ITALY

Revenue Agency has provided with some clarifications regarding VAT on intra-Community purchases of services made by a VAT taxable payer, who is an Italian resident and not registered in the VIES database yet.

The taxable payer aiming to carry out intra-Community transactions must ask for the authorization of the Revenue Agency and, subsequently, he shall ask for the submission into the VIES database.

Those who already have a VAT number must apply specifically the Revenue Agency declaring their intention of carry out Community transactions.

Those who don't have a VAT number yet must apply for the authorization together with the 'declaration of starting activity', which is a procedure that allow the entrepreneur to start a new activity without having to wait for the public authorities to authorize in advance.
Thirty days after this application, whether the Revenue Agency have not expressed its refusal, the applicant can be inserted in the VIES database.

By said resolution, the Revenue Agency confirmed that transactions carried out in the period starting from the application and ending 30 days later, cannot be considered as a "intra-Community" transaction.

The purchaser resident in Italy must not apply the reverse-charge mechanism on the purchase and, consequently, he must not include an invoice number, nor record it twice in the invoices' register and in the purchases' register. In fact, acting otherwise, VAT would be illegally deducted, and penalties would be applied.

Nevertheless, the Revenue Agency also specified that, the VAT person not registered in the VIES who had erroneously considered as intra-Community a transactions, will not be subject to penalties if they have committed this infringement before the issue of the circular number 39/E dated 1st August 2011.

Tax advantage for employees returning to Italy
With circular n. 14/E/2012, Revenue Agency provides clarifications on tax advantage applicable in case of employees returning to Italy, (tax advantage has be issued by Law number 238/2010).

The benefit consists in a reduction of income tax base in favour of EU citizens that decide to come back to Italy to be employed, self-employed or work as entrepreneurs. In order to be entitled with the reduction, they have to meet all the requirement provided by the law and have been living in Italy for at least 24 months in the past.

The law provides that the requirements requested for tax advantage must be held from January 20th, 2009 and that the benefit will ends on December 31st, 2015.

The circular specifies that only those who have been employed in Italy or that have carried out corporate activities or self-employment activities starting from 20th January 2009, are allowed to tax advantage, without prejudice to the fact that he benefit will start on the 28th January 2011 date of the law enforcement).

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Failure to register the company's financial statements in Portugal

PORTUGAL

On 23 November, the Decree-Law 250/2012 was published, introducing changes to the Commercial Registry Code (Código do Registo Comercial, in portuguese) and in the Legal Framework on Administrative Procedures for the Winding-up and Liquidation of Businesses (Decree-Law 76-A/2006, dated 29 March). These changes aim to ensure the compliance of the companies' legal obligation to register the accounts in Portugal.

The approval of accounts is an essential company's act and its register essential for the security in legal trading.

The tax and judicial authorities noticed that, although companies comply with their duty to submit their Simplified Corporate Information (IES, in Portuguese), in order to meet the tax obligation, in practice a large number of companies neglect the duty to report the approval of the annual financial statements and pay the respective registration fee. At the end, their obligation to register the annual accounts remains unfulfilled.

Those authorities recognize that, in certain cases, this situation is deliberately created by the companies themselves, whom don't want their accounts to be revealed to third parties, meaning that creditors and other interested parties are unable to accede to the company's financial situation.

In this context, to reinforce the importance of these register, according with 4.ª and 7.ª directives from the European Council (78/660/CEE and 83/349/CEE) and its absolute necessity in the society's life, the Decree-Law that is now published, creates measures that, in one first moment, prevent a company to proceed to new other registers (like a statutory contract change), unless it acts according with this new legislation. At a second moment, the omission of the annual financial statements register for two consecutive years is considered a cause for autonomous dissolution of the company.

Therefore, we highlight for the two main points of the legislation now published in Portugal:

1. Failure to register the company´s annual financial statements within the deadline (changes to article 17.º of the Commercial Registry Code):
   - **a.** Company will **be prevented from registering other acts**, with some exceptions.
   - b. It is applicable to the facts whose time limit for compliance is after 3 December 2012, date when the Decree-Law 250/2012 came into force.
2. Changes to the Legal Framework on Administrative Procedures for the Winding-up and Liquidation of Businesses (Decree-Law 76-A/2006):
   - **a. Omission for two consecutive years is considered a cause for autonomous dissolution** of the company for the purposes of filling an ex officio administrative dissolution procedure;
   - **b.** Applicable to failure to register the accounts since year of 2012.

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Mexican Tax Amnesty 2013

MEXICO

It is well known that tax collection in Mexico is on a very low rating among OECD countries and the Finance Minister must conceive new tools in order to pick up fresh funds.

In this environment, last december Mexican Congress, through the Federal Revenue Law (Ley de Ingresos) approved, and issued, an interesting type of Tax Amnesty.

The main idea consists in offering very important reductions on taxes owed for Mexican taxpayers before 2007; in fact, such reductions are including not only tax itself, but additionally, interests, penalties and inflation adjustments. Next we describe some important aspects of this tax amnesty:

- For amounts due on federal taxes and non compliance fines generated before 2007, the reductions will be 80% of the total tax owed and 100% of surcharges.

- For amounts generated from 2007 to 2012 the reduction of 100% of surcharges and fines charged for any reason excepting for tax payments (non compliance fines).

Whether a taxpayer decides to apply for the benefits offered, among other requirements, we underline two very important to bear in mind: a) the total payment must be done in just one installment and b) taxpayer must drop any legal defense in process.

Finally, next March the Mexican Tax Administration Service (SAT) must issue the complete administrative rules that must be followed to be eligible to this Program.

At first sight it seems that the 2013 tax amnesty would offer important advantages, however, there are some other topics (for instance: legal prescription terms) that should be analyzed case by case.

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The Pharmaceutical Industry in Malta

Malta Offers great opportunities to the generic pharmaceutical industry for several reasons. Its attractiveness can be seen from the International brands which are setting up shop in Malta.

MALTA

Names such as activis, Amino Chemicals, Combino Pharm, Watson, PharmaCare, Baxter, CardinalHealth and many others. The main reason for Malta's attractiveness are the following.

Firstly Malta's Patents and Designs legislation incorporate within them the "Bolar" Provisions which allows a company to develop and stockpile a particular generic prior to its patent expiration.

Secondly because of its size, Malta has seen very few patents being registered as most international firms do no bother to register locally thus giving other companies the time to develop, license and stockpile a particular product prior to patent expiry enabling the flooding of the market as soon as a particular patent expires.

Malta's entry into the EU has further strengthened Malta's position by enabling companies to market their generics in North Africa and beyond especially to the rest of the African continent, as well as to South America, thanks to the authorisation of the Maltese regulatory body as an EU member state.

Thirdly Malta embraces the inward processing relief (IPR) mechanism on imports. This mechanism provides an exemption or reduction in import duties of raw materials utilised for the export out of the EU of the final product.

Fourthly this Industry benefits from very attractive investment incentives such as investment tax credits amounting from anything from 30% to 50% of

- The amount invested in qualifying expenditure
- The cost of wages.

The percentage of tax credits being dependent on the size of the company.

There are also very attractive additional tax credits on / or Grants on R&D varying from 35% to as much as 80%.

Another advantage is a tax exemption in income from patents registered in Malta. Moreover patents moved to Malta can benefit from a top up provision;

- A step up provision upon migration of foreign IP companies to Malta allow the intellectual property (which can remain situated outside Malta) to be raised from historical cost to fair market value at the date of the migration.
- IP rights can then be amortized using the new fair market value over a three year period.
- Research and development taking place outside Malta and which leads to inventions: Income and royalties arising from such patented inventions are tax exempt in Malta. Moreover the patent can be registered anywhere in the world

Finally Malta's extremely attractive general tax refund system, which gives a general net tax of 5% , coupled with a wide double tax treaty network, a ready pool of professional English Speaking Graduates, a stable democratic Government , and sound economy makes the package complete and hard to beat for pharmaceutical generics industry.

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Bulgaria and Switzerland sign new double tax treaty agreement

BULGARIA

On September 19 2012, the Republic of Bulgaria and the Swiss Confederation signed an updated double tax treaty (DTT) that replaces the agreement signed on October 28 1991 in the areas of taxes on income, capital and property.

The new DDT text now is consistent with the OECD Model Tax Convention and with all the relevant EU Directives.

The new text fills in an important gap in the previous DTT by including clauses regarding the information exchange between both countries with regards to the applicable international standard. The included text on banking secrecy, which is the most important amendment, will allow the exchange of banking information. The amended treaty will provide the necessary transparency and allow the Bulgarian and Swiss authorities to receive information, including confidential banking data that will help fight money laundering, tax fraud and tax avoidance.

According to the announcement of Simeon Dyankov, the Bulgarian Minister of Finance, both countries will exchange quarterly reports, where the first ones will be covering the fourth quarter of this year and will be exchanged at the beginning of 2013. Annual reports will also be exchanged.

With the new DTT, the withholding tax on dividends will be 10% on gross amounts of dividends. In the cases where a company holds at least a 10% share in the capital of the distributing company for not less than a year, the dividends will be free from withholding tax.

Regarding interest, the withholding tax rate at 5% will apply. Again, for example, in cases of associated enterprises (10% shares for not less than one year), there will be no withholding tax. There will be no withholding tax also on the royalty payments either.

The new DTT will enter into force after it is being ratified by the parliaments of both countries.

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