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# ÍNDEX





## *A legal checklist for doing business in China*

CHINA

I am often asked what foreign companies doing business in China need to know to stay out of legal trouble. I usually respond with the following:

**Are You Operating Legally?** Generally speaking, if you are doing business in China for more than a few weeks, you need to form a legal entity there (i.e., a Wholly Foreign Owned Entity (WFOE), a joint venture, or a representative office. Assuming, of course, that your business scope is permissible; some businesses that are perfectly legal in the United States or in Europe are proscribed in China.

**Do You Have a Good Contract?** Written contracts are highly advisable and they should be in Chinese. All relevant provisions should be spelled out clearly, as Chinese courts are reluctant to infer terms. If you entertain thoughts of enforcing the contract against your Chinese counter-party, disputes should usually be resolved in China.

**Are You Protecting Your Intellectual Property?** To protect your trademarks, patents, and copyrights in China you should register them in China, notwithstanding ostensibly relevant international conventions. China is relatively good at protecting trade secrets covered by contract.

**Is Your Company Bribing Anyone?** The United States vigorously enforces its Foreign Corrupt Practices Act (FCPA), which penalizes improper payments to foreign officials made by US companies and such companies' Chinese partners. Canada, the UK, and the EU have similar corrupt practices acts. Meanwhile, China has been vigorously enforcing its own anti-bribery laws against foreign companies. At an absolute minimum, be sure that your company is not dealing with any individuals or companies on applicable sanctions lists.

**Are You Complying With Import-Export Laws?** A company recently called me about sales contracts for their technology product. My first question was whether the US would even allow them to export their product. This question had never occurred to them, and it turned out that exporting their product to China was in fact illegal under US law. Some products (particularly high-tech products) can only be exported to China with a validated license. Additionally, many products require special approvals to be imported into China and some cannot be imported at all.

**Are You Violating Any Antitrust/Tax/ Environmental/Labor Laws?** I realize that grouping all of these together is a bit of a fudge, but if I analyzed them separately it would take ten posts. The key point is that doing business with China requires both considering these issues and realizing that Chinese laws may be quite different from the comparable laws in your country.

Dan Harris is a founding member of Harris Moure, an international law firm with lawyers in Seattle, Chicago, Beijing, and Qingdao. He is also a co-editor of the China Law Blog.

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# New tax incentives in Cyprus

CYPRUS

In an attempt to further increase the attractiveness of Cyprus to foreign investors, the Cyprus House of Representatives adopted a package of new tax incentives in July 2015. The new incentives include reductions in various duties and taxes as well as considerable tax exemptions.

Specifically, exemption from capital gains tax has been introduced for sale of properties that have been or will be acquired between the day the Law was enacted and 31 December 2016. As a reminder, the standard capital gains tax rate on the disposal of properties is 20% and the newly-introduced exemption will provide a boost to the Construction industry.

A 50% reduction of land registry duties has been introduced and, as above, relates to transfers of Real Estate which will take place before 31 December 2016. With the amendments, if VAT has been paid on a Real Estate purchase, transfer fees will be waived. In case of transfers from a parent to a child, no fees will be due.

With the introduction of the concept of a non-domiciled individual, the Special Defense Contribution (SDC) tax has also been amended. Per the amendments, a Cypriot tax resident (based on the 183 days rule) may not be liable to SDC payment if there is proof that he/she is not domiciled in Cyprus. This novelty in the Cypriot legislation provides a very interesting incentive to high net worth individuals, who – provided they are able to prove non-domiciliation – will be exempt from SDC on bank deposit interest (otherwise taxed at 30%), rental income (3% tax) and dividends (17% tax).

Yet another change in the tax legislation is the introduction of notional interest deduction on new equity (newly issued share capital and share premiums, paid in full either in cash or in kind).

For the period 1 January 2015 - 31 December 2015 the notional interest deduction can be offset against revenue of the tax year. The amount of the notional interest deduction is equal to the interest yield of a 10 year government bond in the jurisdiction in which the new equity is invested plus 3%. The bond yield to be used in the calculation of the notional interest deduction is the one applicable on 31 December of the fiscal year prior to the year in question. Worth noting is the fact that a ceiling has been imposed on the maximum amount of notional interest deduction; namely, it may not exceed 80% of the taxable income of the company and it cannot be carried forward.

In addition to the above, supplementary incentives are expected to be approved in Cyprus during subsequent months, including – among others - incentives relating to taxes of foreign exchange differences, group loss relief rules and annual allowances for capital expenditures.

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# Latest amendments to the Egyptian Income Tax Law No. 91 for the year 2005

EGYPT

This amendment was issued and effective August 24, 2015. Main points below:

- The annual general exemption for individuals increased from EGP 5,000 to EGP 6,500.
- The 20% payroll tax slice ceiling changed from EGP 250,000 to EGP 200,000.
- The highest payroll tax slice rate changed from 25% to 22.5%.
- The corporate tax rate changed from 25% to 22.5%.
- The "additional temporary tax" of 5% on annual income above EGP 1M changed to be effective for 1 year starting the current tax year.
- The 10% tax imposed on capital gains from Egyptian Stock Market exchanges was postponed for 2 years starting May 17, 2015.

This amendment shall benefit individuals earning less than 200K or more than 300K annually in general. But those within the lower and higher ends of this spectrum will feel much of a difference in their tax deduction.

Those earning above 1M annually will fall within the highest tax rate of 22.5% in addition to the additional 5% (only this year) in comparison to the previous rate of 25% (also in addition to the additional 5%), but noticeably the additional 5% was supposed to last till 2016 as per the amendment issued in 2014 and this amendment stated that it will last for only 1 year starting the current year!

For companies, the decrease in the corporate income tax rate from 25% to 22.5% has relatively very little effect on investors considering the indirect flow of corporate income to individual investors especially with the existence of the 10% tax on dividends imposed by the amendment in 2014 (decreased to 5% for holding companies owning more than 25% for at least 2 fiscal years).

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# Intra-Community transfers

GERMANY

Intra-Community transfers are a particular way of supplies in the EU, which are often overlooked in practice because there is no compensation.

Intra-Community transfers are caused by fiction. It concerns an internal company process whereby an EU-company transports a good from one EU-country (country of departure) to another EU-country (country of destination) to itself and the delivered goods do not only have a temporary but a permanent use. For this "internal" supply, no invoice has to be issued (for the company itself), thus the supply takes place without compensation.

The legislator treats these transfers as though a supply of goods for consideration has taken place. The government determines a minimum taxable basis as replacement for the lack of compensation. (purchase price/manufacturing costs plus additional costs of the transferred good).

Due to the fiction of delivery an Intra-Community supply is caused in that EU country where the good is located before the transaction. This Intra-Community supply is exempt from VAT only if the company declares acquisition tax in the country of destination correctly, so that an Intra-Community acquisition is caused.

The consequences for the company in the country of destination are that he or she has to register for tax purposes in the country of departure as well and thus declare the Intra-Community supply in the advance VAT return and the EC Sales List. In the country of destination an Intra-Community acquisition has to be declared.

The following report obligations have to be considered: Since there is no actual invoice for the transaction, the fiscal authority requires that there has to be issued a "pro-forma invoice" from the company in the country of destination to the company in the departure country. The "pro-forma invoice" serves as a recording paper for the correct determination of the Intra-Community supply in the departure country in the advance VAT return and the EC Sales List as well as for taxation of the Intra-Community acquisition in the country of destination.

The "pro-forma invoice" should include:

- indication of the transferred goods
- indication of the tax bases
- indication of the VAT number in the country of destination
- indication of the tax-identification number in the country of departure

This article is only a short description of Intra-Community transfers. For individual cases a detailed examination is required.

(More information about the treatment of Intra-Community transfers can be found in the German regulations Umsatzsteueranwendungserlass Section 1a.2 UStAE)

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# *Advance Ruling*

INDIA

Globalized markets, new challenges such as digital economy and ongoing actions of European Union and the OECD are increasing uncertainty for the tax payers and tax administrations. Advance Rulings are thus used in many countries to provide both parties in the tax game with certainty about the reaction of their counterpart.

Based on the country's specifics in the local law, definition of advance ruling vary among the states which apply them as part of their tax policy. Advance Ruling is a procedure available under which a tax payer may obtain formal confirmations regarding the tax authorities, in advance of entering into specific transactions, of the related tax consequences. Although the definitions of advance tax ruling in several countries may differ slightly, the principles are basically the same.

The definition of Advance Ruling as given by the Authority for Advance Ruling in India, "written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto."Advance Rulings is internationally recognised as "A more or less binding statement from the revenue authorities upon the voluntary request of a private person, concerning the treatment and consequences of one or a series of contemplated future actions or transactions".

## CONCEPT OF ADVANCE RULING

Disputes between the Income-tax Department and the taxpayers is a never ending phenomenon. Three ways could be perceived to resolve such disputes. Firstly, there could be a consensus between the parties; secondly, there could be an adjudication, which is presently the recognised process. Thirdly, there could be an advance ruling on the question involving substantive issues.

The concept of "Advance Rulings" is meant to assist non-residents who desire to invest funds in our country for the purpose of carrying on business or providing services. Taxation always plays an important role in the context of a business, more so, when a non-resident is involved. Foreign investors, whenever they want to commit funds in an overseas country, would like to know in advance, that too in authoritative terms, as to what shall be their tax obligations if a business is started. An advance ruling being a ruling given by an authority regarding taxability of proposed transactions instils more confidence in the minds of non-residents regarding the taxation aspect of a project.

An application for advance ruling can be made by a NON-RESIDENT as also by a resident in respect of a transaction with a non-resident. Besides, a resident falling within a notified class or category may also make an application. The class or category so notified by the Government till date are:

- Public Sector Company; and
- A resident seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction with a non-resident.

In case of resident applicants, no Income- tax Authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made.

## THE AUTHORITY AND ITS POWERS

The authority is constituted by the Central Government and is known as "Authority for Advance Ruling" (AAR) [Section 245-O (1)].

AAR consist of three member, viz:

(i) Chairman (who is a retired judge of the Supreme Court)
(ii) An IRS officer (who is qualified to be a member of CBDT); and
(iii) An ILS officer (who is qualified to be an additional secretary to the Government of India) [Section 245-O(2)]

The AAR enjoys all powers of a Civil Court under the code of Civil Procedure, 1908, as are referred to in Section 131 of the Income Tax Act, 1961 [Section 245U(1)]

The AAR also enjoys the status of a Civil Court for the purpose of section 195 of the Code of Criminal Procedure, 1973. [Section 245U(2)].

Every proceedings before the AAR is deemed to be a judicial proceedings within the meaning of Sections 193 & 228 and for the purpose of Section 196 of the Indian Penal Code, 1860.

## ISSUES ON WHICH ADVANCE RULING IS GENERALLY SOUGHT

(i) Application of DTAAs entered into by India and their use in tax planning, conflicts between DTAAs and domestic tax legislation, e.g. determination of tax residence on the basis of facts of a particular case.
(ii) Determination of permanent establishment, particularly in relation to cases involving Business Process Outsourcing (BPO), Liaison offices.
(iii) Taxation problems in India of International partnerships.
(iv) Transfer of assets into and out of tax jurisdictions vis-à-vis Indian taxation.
(v) Taxation of services, royalties, technical fees and income from supply of labour, equipments etc.
(vi) Taxation of Foreign Investment Institutions, investment funds, venture capital funds, offshore funds, financial instruments and derivatives, cross-border leasing.
(vii) Taxation of e-commerce.
(viii) Problems relating to withholding of tax.

## ADVANTAGES OF ADVANCED RULING

The principal advantages in seeking advance ruling are as under:

(i) It helps the non-residents and residents having transactions with a non-resident, in planning their income-tax affairs well in advance. It also helps the public sector companies in resolving their disputes relating to computation of total income pending before any income-tax authority or the Income-tax Appellate Tribunal.
(ii) It brings certainty in determination of income-tax liability.
(iii) It helps avoid long-drawn and expensive litigation. In short, the scheme of advance ruling provides inexpensive, expeditious and binding solutions to the income-tax problems.

## BINDING NATURE

The Advance ruling pronounced by the Authority is binding on the applicant in respect of the transaction in relation to which the Ruling had been sought. The Ruling is also binding on the Commissioner, and the Income-tax authorities subordinate to him, in respect of the applicant who had sought it and the transaction in relation to which it had been sought. The advance ruling so pronounced continues to be binding unless there is a change in law or facts on the basis of which the advance ruling was pronounced.

## CONCLUSION

The advance ruling is widely used in many countries as a fairly simple tool for the provision of certainty to tax payers. There are currently no alternatives which would completely replace the advance ruling in all its aspects. Cooperative compliance and multilateral cross-border agreements may provide large tax payers with the missing elements of business orientation and transparency, or cross-border impact as the case may be.

Both advance rulings and its suggested alternatives should undergo further development, to improve their response to the current tax environment, Cross-border cooperation and exchange of information should be promoted, and risk management procedures should be implemented to identify non-compliant tax payers and to avoid misusing advance ruling as a tool for harmful tax practices.

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# Introduction of a Patent Box regime in Italy

ITALY

With law no 190 of December 23, 2014 the Italian Parliament approved the introduction of a Patent Box regime. With the Decree of July 30, 2015 of the Ministry of Econonomic Development and the Act no 144042 of November 10, 2015 of the Italian Tax Authority the details of the Patent Box regime and the form for the option for the regime have been published.

**DEFINITION OF THE PATENT BOX REGIME:**

The Patent Box regime contains a partial exemptions from corporate income tax (IRES) and the Regional tax on productive activities (IRAP) for income from the utilization of intangible assets (e.g. patents, trade mark rights, processes, intellectual property rights, know how).

The income admitted for the Patent Box regime can derive from the direct utilization of the intangible assets by the company or from the concession of the intangible assets to third parties.

Individual, partnerships, corporations and non resident entities (from States with double taxation convention and exchange of information with Italy) with a permanent establishment in Italy can apply for the Patent Box regime.

**AMOUNT OF THE TAX EXEMPTION**

The amount not subject to taxation is equal to 30% of the admitted income from intangible assets in the year 2015, 40% in the year 2016 and 50% in the year 2017.

For the calculation of the admitted income for the Patent Box regime specific calculations have to be performed.

**EXERCISE OF THE OPTION**

For the admission of the Patent Box regime a form has to be filled in and handed in to the Italian Tax Authority. The option has a duration of 5 years. The option for the fiscal year 2015 has to be exercised within December 31, 2015. The option for the fiscal year 2016 can be exercised within December 31, 2016.

For the fiscal year 2015: If the intangible assets are used directly by the company for the production of goods or services, it has request a ruling with the Italian Tax Authority within December 31, 2015 in order to determine the amount which can benefit for the Patent Box regime.

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# The notion of "permanent establishment". A serious challenge for lawyers and CPAS

ITALY

The notion of permanent establishment is probably the most international topic in tax law, perhaps at the same level as transfer price and the concept of residence. Nonetheless, it appears to be unable to adapt to the most recent developments in international commerce.

As it is now, this concept can only be effectively applied only when the foreign company runs its international activities by means of physical tools: in other words, when there is an evident ***"fixed place of business"***. In fact, is only under these circumstances that it is actually possible to appreciate the general features of the notion, particularly to verify the existence of the place of business, and to check its ***"permanence"***.

However, it becomes difficult when the expression ***"to be fixed"*** is not known in its literal meaning.
How to forget the never-ending discussions about the fixedness of a circus, a live show and other similar activities?

Countries are always hungry and, in order to feed them, this feature has been widely changed. So now we have to care about whether or not cycling, or driving a car or a truck, in an area representing a *"coherent whole commercially and geographically"* may fall under the notion of permanent establishment. This is, of course, for the lucky ones who really understand what a "coherent whole" really means. Otherwise we are forced to open the discussion to another extremely complicated concept. The situation is even more difficult if we want to have agents abroad.

If in the past the distinction between dependent and independent agents was clear, now it is getting more and more confusing. It is very important to identify the powers and possibilities of the entrepreneur.

If this exceeds a quite evanescent limit, the formally independent agent may become a dependent agent, i.e. a ***"personal permanent establishment"***.

Consequently, the risk is that formal requirements may need increasing attention, while time left for business is lower and lower. However, the most undefined area nowadays is the area of international trade.

Now international commerce is as easy as a simple *"click"*. Shopping online is very familiar for many of us and is likely to be the most popular method for the coming generations.

You can accumulate enormous fortunes working in certain locations, with low or even no taxation, while selling and sending items all over the rest of the tax-paying world.

As the situation currently stands, this entrepreneur has many chances to make tax-free profit and, of course, kill competitors.

In Italy, several decisions of the Supreme Court have referred to a *"centre of permanent activity"* rather than a "permanent establishment", thereby stressing the notion of a single locus of legal relationships, rather than the physical permanence of business activities in the Italian territory.

The notion of permanent establishment is complex and, for sure, a key point in international tax law and in our future professional activities.

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# *Tax incentives in México*

MEXICO

In México, the Federal Revenue Law annually publishes tax incentives applicable to the different activities of taxpayers. These incentives are created to support the most significant activities of Mexico such as transportation, agriculture, livestock, fishing, and others. There are other kind of incentives which are created to encourage investment and savings such as the ones intended for mining companies, companies engaged in real estate development, and individuals who make deposits into their personal savings accounts. There are also other incentives that promote activities such as cinematography or the hiring of disabled personnel.

Most of these tax incentives are based on realized expenses which were registered as a deductible expense for income tax purposes such as the "highway incentive" applicable to companies engaged in land freight transportation, which basically consists to determine a fiscal incentive based on 50% of the cost paid on the toll roads of the national network of highways, or also, "the tax incentive applicable to companies engaged in public or private freight that have purchased diesel for its final consumption" which will be in 2015 of 3.76 pesos per purchased liter.

Some incentives are intended in order to pay taxes, that is to say, it is a mechanism for crediting a tax, which is used to reduce the tax payable (usually income tax), such as the "highway incentive" and the incentive calculated on diesel consumption.

There are other incentives that are used to anticipate the deduction of an expense to reduce the taxable income for the income tax purposes, or also, in order to defer the temporary payments of income tax, as it is applicable to real estate developments.

Other tax incentives are determined based on other taxes, such as the "mining encouragement incentive" which is done based on the duties paid by mining concessions, or the incentive for companies that hire disabled employees which considers as a deductible expense for income tax purposes 100% of the income tax paid for wages resulting from the wages paid to those employees.

Most of the tax incentives do not cause other taxes, however, there are some which do, such as the "highway incentive" that is 100% taxable for income tax purposes.

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# Be careful with Coops!

THE NETHERLANDS

In international tax planning, often a Dutch Coöperatie ('Coop') was used to avoid the withholding of Dutch dividend withholding tax. The idea was that the shares of a Dutch (holding) B.V. would be held by a Coop.

In most cases the B.V. could, as a result of the application of tax treaties, receive its dividends without foreign dividend withholding tax and distribute them tax free to its shareholder, the Coop. Since the Coop was not obliged to withhold dividend withholding tax itself, funds could be distributed to foreign shareholders in a tax efficient manner.

In order to combat abuse of these structures, the Dutch government proposed measures in relation to Coops. On the basis of these measures Coops will have to withhold dividend withholding tax as of 2016, when:

- One of the main purposes of the Coop is to avoid taxation, and
- The structure has not been implemented on the basis of sound reasons that reflect the economical reality.

Economical reality is assumed when the Coop conducts an active trade or business, for instance when it employs personnel and has an office space. But also in other cases sound business reasons can be recognized, such as when the parent company of the Coop conducts an active trade or business itself and the Coop acts as an intermediary holding company.

The new rules regarding Coops can be overruled by tax treaties. In many treaties, such as with most European countries, but also the United States and for instance Hong Kong, the treaty rate on dividends is reduced to 0%. That means that effectively in those cases Coops do still not have to withhold dividend withholding tax.

The conclusion therefore is that in the situation that a Coop is used in an artificial structure with a tax haven, amendments may be required to avoid undesired tax consequences, but that was also exactly the purpose of the new legislation.

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# Portugal - Golden Visa

PORTUGAL

The Law 63/2015, in force since 1 July 2015, introduced changes to the "residence rules" and authorizations for the investment activity. It proceeds to the third modification to the Law 23/2007 of 4 July, approving the legal regime of foreign citizens entering, staying in and leaving Portugal and on their removal from the country.

Therefore, it was considered necessary to proceed to the regulation, amending the Decree 84/2007 of 5 November. In this sense, it was published in last 2 September, the Implementing Decree 15-A/2015.

## MINIMUM QUANTITATIVE REQUIREMENTS CONCERNING INVESTMENT ACTIVITIES

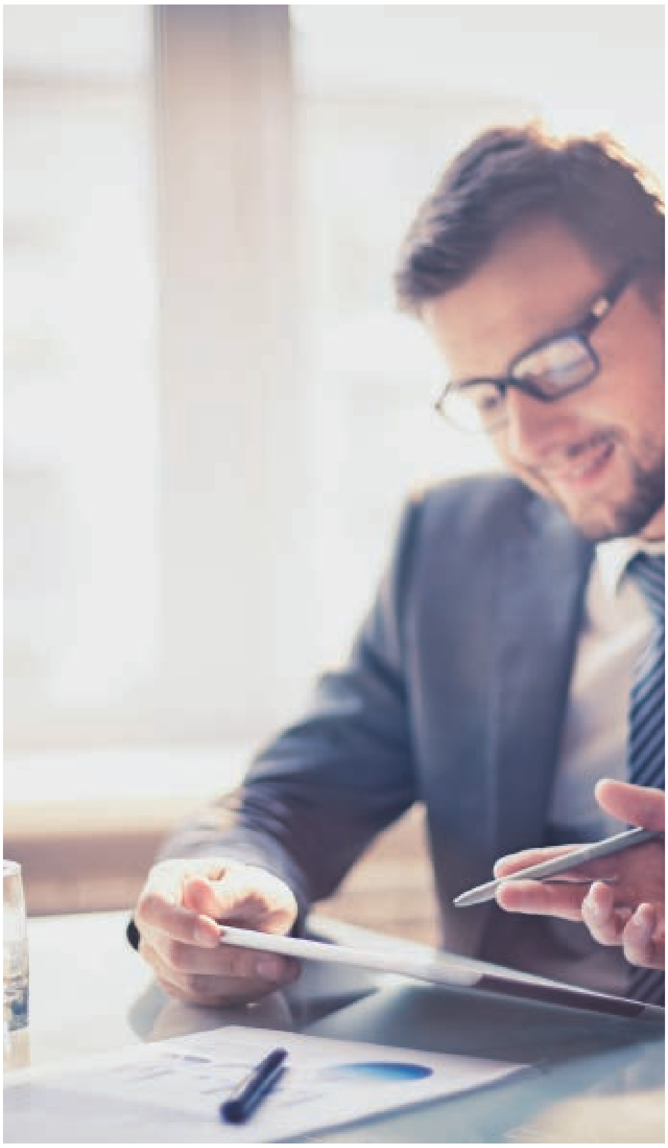
The main aspect of diploma to highlight consists in amendment of a new article 65.º to the Implementing Decree 84/2007, which defines the minimum quantitative requirements concerning investment activity.

For the purposes of residence authorizations to investment activities, it was considered minimum quantitative requirements to check, at least, one of the following situations in national territory:

a) Transfer of capital of at least EUR 1.000.000;
b) Creation of at least 10 Jobs;
c) Acquisition of real estate with a value of ate least EUR 500.000;
d) Acquisition of real estate with construction completed at least 30 years ago or located in an urban rehabilitation area, with execution of rehabilitation works;
e) Transfer of capital of at least EUR 350.000, invested in research carried out by public or private scientific research institutions that are part of the national scientific and technological system;
f) Transfer capital of least EUR 250.000, as investment or support for artistic production, or recovery or maintenance of national cultural heritage;
g) Transfer capital of at least EUR 500.000, destined to acquire units in investment or venture capital funds aimed at providing capital to small and medium-sized companies that meet certain requirements.

In the cases referred in points b) to f), the minimum quantitative requirement of investment activities can be lower in 20%, when the activities are carried out in "Areas of Low Population Density". For this purpose, it was considered "Areas of Low Population Density" the level III of Nomenclatures of Territorial Units for Statistical Purposes (NUTS III) with less 100 inhabitants per km2 or a gross domestic product lower than 75% of the national average.

The minimum quantitative requirement can be realized individually or through of one private limited company with head offices in Portugal or in one EU Member State, and with permanent establishment in Portugal and shall



be filled at the moment of the presentation of residence authorization's application.

It is required a temporal minimum requirement of 5 years to the maintenance of investment activities, counted from the date of residence authorization's concession.

Thus, the addition of these new investments activities (seven instead the previous three) enable foreign citizens to qualify for an investment residence permit, known as a Gold Visa.

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# Corporate Income Tax changes in Romania

ROMANIA

The new Romanian Fiscal Code introduces a number of amendments which impact companies in a wide range of tax aspects. Below we discuss some of the introduced changes.

The categories of entities exempted from corporate income tax is amended, with religious cults, accredited private educational institutions and homeowners' associations no longer considered exempted. Such entities are now included in the Tax Code under the "special tax regimes" chapter.

A change has been introduced in regards to a company's legal reserve. The reserve is calculated by applying a 5% on the accounting profits plus the corporate income tax expenses until a maximum limit of 20% of the subscribed share capital or patrimony.

A new limit is set for deductible sponsorship expenses and is defined as 0.5% instead of the previously applicable 0.3%. Additionally, a 50% limitation is introduced in regards to expenses for transportation vehicles (3,500 kg and 9 seats).

Losses incurred during the write-off of receivables will be considered deductible if covered through insurance contracts.

Interest and penalties for late payments, fines and penalties due to authorities are considered deductible if related to contracts concluded with such authorities.

The deductible interest rate for loans in a foreign currency is reduced to 4% (from a previously valid 6%).

The deductible social expenses, on the other hand, increase from 2% to 5% of the total gross salaries.

The changes include provisions for expenses on behalf of employees for voluntary pension schemes and voluntary health insurance premiums. Such expenses will be fully deductible regardless of the amount; however, in case they exceed EUR 400 per participant, the amounts over this threshold will be considered as taxable income for each individual.

Furthermore, if an expense is booked and then later proven to be related to corruption offenses, such an expense will be considered as non-deductible.

The new Tax Code introduces the concept of "cross-border transaction" and that of "artificial cross-border transactions". Those transactions qualified as not having economic content will be considered as artificial and will not be part of the scope of double tax treaties.

As of 1 January 2017 the tax rate on dividends will decrease from 16% to 5%. Health contribution payment will be due in cases dividend income is obtained by an individual.

In terms of thin capitalization, borrowed capital is also included even when no interest is applicable.

Companies wanting to modify their fiscal year need to submit the Form 014 within 15 days of the beginning of the modified fiscal year (previously 30 days before the beginning of the modified fiscal year).

The above-discussed changes are only some of the introduced amendments. We urge companies to seek professional advice to ensure compliance.

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# Serbian VAT Act amended

SERBIA

The Serbian Parliament has adopted the amendments to the Serbian VAT Act on 28 September 2015. The introduced amendments have been published in the Official Gazette of the Republic of Serbia No. 83/2015 on 3 October 2015.

The main reasons for the amendments of the VAT Act are:

- further adjustment of the Serbian laws to EU laws
- creation of a more favourable business environment
- prevention of the abuse of law, and
- improvement of VAT audits.

The amendments to the VAT Act enable the Serbian Tax Administration to register foreign taxable persons (who have not established their business in Serbia) who supply goods and services on the territory of Serbia. Such persons will have to appoint a Serbian tax representative, who shall calculate and pay VAT in the name and on behalf of the foreign taxable persons. In this way, all persons who operate on the territory of Serbia will have equal rights and obligations and the non-taxation of supplies between foreign persons in Serbia will be prevented.

With the amendments, the taxation in the energy sector is also regulated in more details. Specifically, the supply of cooling energy is defined as supply of goods, and changes concerning the place and time of supply of electrical, heating, cooling energy gas have been introduced, depending on whether the energy is purchased for final consumption or further sale. Amendments to the VAT exemptions for the import of energy and gas are also included.

The changes eliminate the restriction for the deduction of input VAT charged on home appliances, TV and radio devices, pieces of art and applied art and other decorations used in an administrative space.

The amendments will also affect the real estate industry. With the changes, VAT will be paid by the recipient of goods and services when the construction goods and services are supplied among taxable persons or to the Republic or state authority, irrespective of the fact whether or not the supplier is a construction company and the recipient an investor on record.

The changes that will affect the energy sector include an application of a reverse charge mechanism to the supply of electrical energy and gas for further sale.

Pursuant to the changes, reverse charge shall also apply on the transfer of real estate in the course of a mortgage activation, on the transfer of goods in the course of a pledge activation and on the transfer of goods and services subject to an enforcement procedure. Reverse charge shall also apply to acquirers of a going concern in a business transfer in case conditions under which the going concern was transferred cease to exist.

Additionally, the reduced 10% VAT rate will apply to accommodation in all types of touristic venues (not only in hotels, motels, camps etc), and to all types of transportation of persons and luggage in Serbia, and not only on city and suburban transportation as was the case until now.

As a means of abuse prevention, the amendments provide for the obligation of the taxable persons to submit an overview of the calculated VAT with the VAT return.

Some of the changes are aimed at more precise definitions of already applicable rules. Specifically:

- VAT on acquisition of food and transport by an employer for its employees is not deductible. Moreover, the employer has no obligation to calculate VAT on supply of food and transportation services to its employees,
- Entertainment expenses are more precisely defined.

Other changes are aimed at the adjustment of the taxable base, input VAT deduction, definition of the total turnover, VAT period and VAT refund to foreign companies.

The amendments imply that most of the new solutions will be applicable as of 15 October 2015.

In summary, the most notable novelty of the new VAT Act is the fact that all foreign taxable persons who supply goods and services on the territory of Serbia will have to register for VAT and appoint a tax representative. Accordingly, every transaction of multinational corporations involving Serbia will have to be reviewed and an assessment made regarding whether the foreign taxable person requires a VAT registration and tax representative in Serbia.

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# VAT and VAT Registration in Turkey

TURKEY

The most important indirect tax; Value Added Tax (VAT) was first effectively enforced in Turkey by Law #3065 in January 01, 1985. Liability of VAT emerges when an individual or an organization performs industrial, commercial, agricultural or independent activities in Turkey, or when goods and services are imported to Turkey.

VAT is collected at each stage of the production and the distribution processes in Turkey. "At each of these stages, the amount of tax payable is the difference between the total amount of tax charged on the invoices issued by the taxpayer and the total amount of tax charged on invoices issued to the taxpayer during the same period. Thus the VAT is initially computed by applying the appropriate rate of taxation to the taxable base for goods and services supplied by the taxpayer during a taxable period. This amount is then reduced by a credit for VAT previously paid on importation and on goods and services supplied to the taxpayer." 1 Labyrinthine but in brief, the amount charged as VAT is actually charged by the final consumer. The standard rate is 18%, the special rate for raw materials such as; raw cotton, bread and bakery products is 1% and for basic food, clothing and similar publications is 8%.

There is no turnover threshold for VAT registration in Turkey. When an individual or an entity involves in an activity within the scope of VAT Law, they are required to notify such an activity to the local tax office of the place of the business. In the case there are more than one places of the business; registration is performed by the authorized tax office depending on the particular characteristic of the income tax; individual or corporate. If the taxpayer is a non-resident of Turkey or does not have a place for business in Turkey; a legal head office in Turkey, or also in other cases deemed necessary, the Ministry of Finance is authorized to hold any individual involved in a taxable transaction responsible for the payment of the tax.

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# VAT grouping in UK

UNITED KINGDOM

Most readers are likely to be aware of the Court of Justice of the European Union(CJEU) judgement in the case of the Skandia America Corporation, filial Sverige (C-7/13). Here's a little background to this case:

*Skandia America Corporation was a company incorporated in the United States, with a fixed establishment (a branch) in Sweden. The Swedish branch became part of a Swedish VAT group. The Swedish tax authority viewed services provided by Skandia America Corporation to its Swedish branch as taxable transactions. Skandia disagreed on the grounds that these were intra-company transactions and consequently not supplies for VAT purposes, following the decision in FCE Bank (C-210/04). The matter was referred to the CJEU.*

*The CJEU stated that under the Swedish grouping provisions only the branch that was physically located in Sweden could belong to a Swedish VAT group. The CJEU ruled that consequently the branch in Sweden became part of single taxable person (the group) different to the taxable person of the US head office. So the provision of IT services by the head office to its branch was a supply between 2 separate taxable persons and so liable to VAT. The Swedish VAT group had to account for VAT on those services under the reverse charge.*

Historically, under the UK's VAT grouping provisions, a body corporate such as a company must have an establishment in the UK to join a UK VAT group. However, unlike in Sweden, the whole body corporate is part of the VAT group, not just the establishment (branch or head office) in the UK. Therefore services provided between an overseas establishment and a UK establishment of the body are not normally supplies for UK VAT purposes, as they are transactions within the same taxable person

Following the Skandia judgement, the existing grouping rules relating to UK VAT-grouped companies with overseas establishments have not been changed. If an overseas company with a fixed establishment in the UK joins a VAT group, the whole legal entity (the company and its branches) becomes part of that taxable person.

However, after a careful consideration of the judgement, UK has concluded that VAT treatment of intra-entity supplies will change for UK VAT-registered traders who are members of a VAT group in the UK or another EU member state, and have establishments (branches or head offices) in other member states.

The changes will apply:

- to supplies treated as made in the UK under place of supply rules and input tax recovery by UK VAT registered businesses, and
- where the member state of the VAT-grouped overseas establishment has implemented the Skandia judgement and requires the intra-entity transactions between the 'overseas establishment' and the 'UK establishment' to be treated as supplies for VAT purposes.
  (The overseas establishment should take steps to establish with its member state tax authorities if this is the case)

The changes will not apply if the only VAT grouping is of the UK establishment. In this case, the UK VAT group will apply to the whole entity and not just the UK establishment. The overseas establishments(not VAT grouped in member states) will be part of the UK entity and will not be treated as separate taxable person.

The impact of the Skandia judgement is that an overseas establishment of a UK-established entity is part of a separate taxable person - if the overseas establishment is VAT-grouped in a member state that operates similar grouping provisions as Sweden i.e. 'establishment only'. This will apply regardless if the entity in UK is part of a VAT group or not. As a result, the businesses must treat intra-entity services provided to or by such establishments as supplies made to/by any of their other customers/suppliers. VAT treatment of such transactions will be as follows:

- services received by the UK establishment from the overseas VAT-grouped establishment will be treated as supplied in UK under the place of rules, and will be liable to reverse charges
- services supplied by the UK establishment to the overseas VAT-grouped establishment will be treated as supplied in the country where the overseas entity is VAT-grouped. Such supplies will need to be taken into account in determining the input tax recovery by the UK establishment. Furthermore, if the supplies are reverse charge services, they should be declared on the EC Sales List

## CONCLUSION

The changes will become effective from 1 January 2016. The businesses that are VAT-grouped in member states and have establishments in UK must be made aware of the changes mentioned above to ensure compliance under the new rules.

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# National budget bill: modifications related to the investment law

URUGUAY

In this opportunity we consider important to comment the provided modifications regarding tax matters related to law Nº 16,906 of Investment and regulatory Decree No. 2/012.

## PRESCRIPTION OF TAXES

As it is known, in accordance with article 38 of the Tax Code, taxes prescribe after five years, as long as there is no defrauding and it is complied with the submission of the affidavits (in these cases the period of prescription extends to ten calendar years).

On the other hand, and as it is also known, through the presentation of Investment Projects (IP) on the basis of Decree No. 2/012, companies can get tax exemptions subject to the generation of positive externalities and the execution of investments, and can these benefits be availed by taxpayers prior to the fulfilment of the just mentioned objectives (investment and positive externalities).

Broadly speaking, it is important to remember that the IP involve the analysis of three different and independent terms together:

I) taking advantage of the benefit of IRAE.
II) schedule of implementation of investments.
III) compliance of indicators -generation of positive externalities -.

The schedule of implementation of investments is defined by each company at the time of the presentation of its IP, being often extended for more than five years.

On the other hand, while the fulfillment of some indicators is shown within five financial years, there are others indicators which are related to the execution of the investment and therefore, the deadline could be extended to ten years.

The Bill gives powers to the Administration for reassessing taxes improperly exonerated by taxpayers with IP approved by the Executive Power (EP), in case of verified breaches, even when they are verified once the period of limitation of taxes is finished.

For this purpose, article 671 provides for the suspension of the term of limitation for taxes subject to the application of tax benefits, until compliance with the major of the deadlines related to the fulfilment of objectives and investments of the project; from that moment, it would be computed the limitation period provided by the Tax Code.

In the cases when it is formally revoked - totally or partially - the EP resolution that granted the benefits, the Project provides the interruption of the prescription.

What it is achieved by this means is the extension of the period of prescription for five additional years to those already granted through suspension, now counted from the date of revocation by which the breach is declared configured.

## EXCHANGE OF INFORMATION

The Project proposes the exchange of information from DGI and BPS to the COMAP, releasing the secret of the performances provided by the Tax Code for these organisms, but extending it to the members and officials of the COMAP.

Although the exchange of information can be fruitful for COMAP, it is important to highlight that from 2011, for the purposes of the control and monitoring of investment projects, companies annually provide to COMAP and to the evaluator Ministry, information regularly provided to DGI or BPS which allows evaluating the situation of each project. Therefore, even though the way of obtaining the information may differ, there should be no developments of consideration resulting from this modification.

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# Check the Box – Impact on US and Foreign Entities

USA

## Check the box

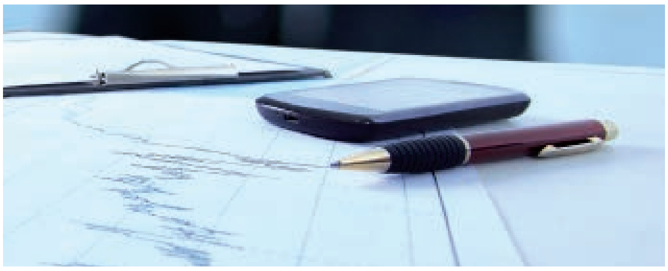
In 1996, with an innocent desire to simplify the entity classification process, the Internal Revenue Service issued "check-the-box" regulations. While the desired goal was achieved and the classification process was simplified, the new regulations also generated a number of unintended ramifications. These regulations ultimately became a driving force for effective tax planning and avoidance both internationally and in the US.

The new law allowed foreign or US based eligible entities, which were not otherwise required to be classified as a corporation, to choose their entity classification by simply making a check-the-box election. These regulations also provided default classification rules for these eligible entities, in the event that an election was not initially selected. A foreign eligible entity is considered an association that will be taxed as a corporation if all of its members/owners have limited liability. A foreign eligible entity is considered to be a partnership if it has two or more members/owners and at least one member/owner does not have limited liability. The foreign eligible entity is considered to be a disregarded entity (Schedule C filer) if it has a single owner that does not have limited liability.

An eligible entity may make a check-the-box election and elect out of its default classification by filing IRS Form 8832, Entity Classification Election. The initial entity classification for a newly formed US eligible entity must generally be made within 75 days of the date of formation. However, for a foreign eligible entity, the initial classification is determined as of the date the entity becomes "relevant" for US tax purposes. Specifically, this is the date when the foreign eligible entity's classification affects the tax liability of the entity or the person (member/owner or disregarded entity) for US federal tax or information purposes.

An entity with an initial classification determined by default generally retains that classification until the entity makes an election to change its classification, or in the case of a foreign eligible entity becomes relevant. A change in the classification of an entity can result in tax consequences to the entity and/or its shareholders. However, the change from a default classification for a foreign eligible entity that has not been previously relevant does not result in a recognition event for US tax purposes. As a result, a classification change that would cause a tax liability for a US entity may not have any impact on a foreign entity.

In a simple example, imagine a foreign eligible entity defaulted to a corporation classification and began to earn revenue, making it relevant. The foreign eligible entity then decided, after the date of relevancy, that it preferred to be classified as a partnership. This election



would be considered a change in classification and would result in a deemed liquidation, with the partnership owning the assets with a stepped up basis and the corporation potentially owing taxes from the liquidation. In the same example, if the foreign eligible entity filed the partnership classification election prior to the date of relevancy, this request would simply be considered the initial classification and not a deemed liquidation.

In addition, check-the-box regulations make it possible for a US based or foreign entity to elect to be classified as one type of entity in one jurisdiction and classified as a different type of entity in another jurisdiction. Depending on local laws and tax rates, this unusual hybrid arrangement can be the most tax advantageous for an entity. Many large US multinationals have used these types of hybrid structures to reduce their effective tax rates. These structures include creating disregarded entities in tax haven countries and shelter income through the use of a complex series of loans and/or dividends between these entities.

Many European countries are concerned and have complained about the use of the check-the-box rules by US corporations to reduce taxable revenues in their countries. Both the OECD (Organization of Economic Co-operation and Development) and the European Commission are reviewing options and strategies to reverse or mitigate the effects of US check-the-box regulations on the tax revenue of their member nations.

The bottom line is that proper tax planning regarding the use of the "simple" check-the-box rules can be used to ensure that a foreign or US entity and/or its owners can achieve the best tax result.

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