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Royalties: The Protection of Holders of IP Rights in Bulgaria Strengthened

At present, Bulgaria is a party to 68 Treaties for Avoidance of Double Taxation distributing the power to tax the income from the use of IP rights (royalties) between the contracting states. In this context, the amendments in the Copyright and Neighboring Rights Act adopted in July 2011 seek to clarify the position of holders of such rights, at the same time offering them an increased level of protection.

First category to benefit from the amendments encompasses architects, construction engineers, exterior designers etc. The law extends the scope of protection not only to realised works of architecture, but also to applied development plans. Once approved, the architectural designs, as well as projects under urban planning are becoming objects of copyright, for the use of which remuneration is due.

The law now addresses expressly the distribution of rights between the artist/photographer of a portrait and the depicted person. In general, a permission of the latter is required. However, this requirement is waived when the image was made in the course of the public activity of the person portrayed or in a public place; the facial image is only a detail in the artwork showing an assembly, procession or a landscape or the displayed person has been paid to pose (unless the author and the person portrayed agreed otherwise).

The regime of compensation due for free use is amended to include in the scope of the eligible recipients of royalties the producers of any type of audiovisual works in addition to film producers. In order to protect better the holders of those IP rights, the law declares any refusal to receive compensatory royalty void.

In an attempt to increase the legal certainty, a special provision regarding the works by unknown authors is introduced. Since in this case the term of the protection cannot be calculated from the death of the author/authors, if the works have not been made public within 70 years after their creation, the legal protection shall be terminated.

When holders of IP rights perform in concerts, an agreement should be concluded with the organiser responsible for the provision of venue, technical resources, participation of performers and disclosure of concerts. As organiser is considered any person whose name, logo or other identifying mark are displayed on event publications.

To render the protection more effective, new penalty provisions are envisaged. When it comes to the organisations for collective management of IP rights, their powers to conclude contracts for the use of objects of copyright, as well as to collect the royalties due will be subject to increased scrutiny by both the state authorities and the general public.

The amendments above coupled with the transposition of the EU Interest and Royalties Directive (2003/49/EC) into national legislation reducing the general 10% withholding tax to 5% for royalties paid by resident companies to associated EU companies will have wide-spread beneficial tax effect on IP rights holders.

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Cyprus Parliament approves new legislation on bank deposits

On April 14 2011, just nearly two weeks after Standard and Poor's, a rating agency, downgraded the debt grade of Cyprus from A to A-, the Cyprus Parliament unanimously passed a new legislation relating to banking institutions. The Tax and Rescue Fund Law approves the imposing of taxes on deposits of banking institutions and aims at creating a financial stability fund that will help support the credibility of the local financial system and safeguard the deposits of investors.

According to the new piece of legislation, the full amount of deposits of local banking institutions will be subject to a 0,095 % tax. In particular, the levy will be imposed on commercial and cooperative bank deposits and it is expected to raise approximately 120 million Euros by 2013. The tax will be imposed both on local as well as cross-border deposits. In particular, the deposits have been defined as:

"an amount of money, expressed in any currency, paid or received on terms under which such amount will be repaid with or without interest, or at a premium, either on demand, or at a fixed date, or under conditions agreed between the payer and the recipient of the amount, but where these terms are not related to the supply of goods, or property, services or to the issuing of shares or debentures".

From that amount, 50 million Euros will be intended for a bank deposits stability fund. Even though Mr. Athanasios Orphanides, Governor of the Central Bank, remarked that "the initial aim was for a fund of 500 million Euros, he stated that this fund is of great importance to the credibility of Cyprus financial system". He further commented that "in the case where the financial sector is in trouble, then, in order to support this sector sufficiently, the fund will need almost 500 million Euros or 3% of the national income. This independent protection fund will be created by the Central Bank of Cyprus, within the next six months, according to its regulations. The deposit fund will be utilised only for the protection of investor's deposits and not to aid any struggling bank".

The other 70 million Euros, from the target of 120 million Euros of the new tax, will be forwarded towards the state's coffers. This particular amount for the state is purposed to be used for the economic deficiency and the public debt of Cyprus, which is aimed to boost the state revenues.

Although, the original intention of the legislators was for the tax to expire after two years, until in 2013, this was not retained. Two of Cyprus political parties passed their motion, according to which the levy should be open-ended and so to become permanent, in order to continue producing money for the bank deposit fund. The rate of the tax will be determined by the Central Bank of Cyprus.

The legislators were eager to protect the customers of banks and to prevent any unfair practices and so an amendment of the new legislation prevents the banks from transferring the levy by charging their customers. In case where a bank is found to be engaged into such practice, a fine of 100,000 Euros will be imposed on the bank.

This new legislation is set to be one of the measures of the Cypriot Government against the recent downgrading and possible new downgrading of its sovereign ratings by a number of rating agencies, basically due to the exposure of Cyprus fiscal system to the Greek debt.

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Global Income and Tax Heavens

Through the years, the International Monetary Fund and the World Bank have done studies listing the items that companies consider when deciding where to invest. Curiously, taxes are one of the less important factors to consider compared to legal and political stability, labor relations, communications and transportation. In fact, any possibility to reduce Tax burdens is interesting for an investor, it doesn't matter how it's done.

Due to the significant increase of electronic transactions, tax authorities around the world are concerned about the increasing amount of income of the taxpayer that is sent to Fiscal Heavens like the Bahamas, Cayman Islands or Monaco. Tax heavens have been used by companies in different sectors as strategy and as an economic engine. Also they have served as instruments for tax avoidance and tax burdens decrease. The Organization for Economic Co-operation and Development (OECD) decided to cutthe list of tax havens. This initiative is generating very positive effects, highlighting thenumber of governments are taking steps to exit the list of tax havens. Unfortunately there is still a huge lack of control. Governments enclosed in these list are simplyconsidered as sloppy, but they don't receive financial penalties.

The concern of the tax authorities over the last decade has increased cooperation. Now they all have acommon goal: a local regulatory system for global growth. In Colombia several tax reforms met the recommendations of the OECD. These are related to transfer pricing, a change in the system of payments abroad when they are made to entities located in tax havens, andsetting limits on the deductibility of payments. These measures are focused to increase the price of transactions done throughtax havens.

Colombian tax law regarding tax havens seeks for the followingscope:

- ✔ Condition the deductibility of payments made to tax havens limited to the withholding tax.
- ✔ Payments to entities located in tax heavens have a withholding effective rate of 39.55% by the nameof income and remittances tax.

Nevertheless, the way the reform was prepared and structured, allows us to conclude that its scope would be different:

- ✔ The law does not specify the jurisdictions considered as tax havens and delegates this to the national government and the OECD. This designation may be tainted as unconstitutional because it may change directly the tax base, which is reserved strictly to the law.
- ✔ According to the tax reform, only the income sent to tax heavens that is liable to be taxed in Colombia, can be charged with the withholding tax effective rate. If it does not possess such nature is not necessary to make the withholding required for any reason.
- ✔ If the payment made to a tax haven corresponds to a foreign source income not subjectto withholding, it shall submit to the general rules for spending abroad. That means, it is entitled tothe deduction, but this one is restricted to not exceed 15%of the taxpayer's net income.

The Colombian contribution to the global initiative has been dedicated to a growing influx of foreign capital into the country. This will ensure that investors have an even stronger legislationregarding the actual economy.

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EUROFISC and OLAF - New Institutions for Fiscal Affairs

The control of taxable persons increases more and more, particularly concerning Value Added Tax (VAT).

At the point of fiscal view this is absolutely necessary, because for instance in Germany VAT accounts for more than 33 % of the total tax revenue of the federal, state and local authorities. Looking at the global impact cross-border trading booms enormously. And it is not easy to know about all the special VAT rules in the different countries which are involved in cross-border trading or offered services.

In Europe the VAT rules are regulated by the European Union, and the European Countries have to adopt these rules or the European rules have to be applied directly in the member states. In the European government it is easier to install a control entity, but concerning third countries the control of taxable issues is much more complicated and interminable. The requests for information between the countries' authorities sometimes last more than half a year, even in the European Union. And this time can extend to more than one year, depending on the country involved.

But this long time may not mislead the traders to handle VAT rules carelessly. Especially in Europe the fiscal authorities try to win a neck and neck race with missing traders. Therefore they enforce several initiatives like EUROFISC, which started operational work this year. "The EUROFISC network, in which all member states will participate, will enable targeted and swift action to be taken in order to combat new and specific types of fraud. It will involve a multilateral early warning mechanism, and the coordination of both data exchange and the work of liaison officials in acting upon warnings received." as the Council of the European Union noted in the press release of 7th October 2010.

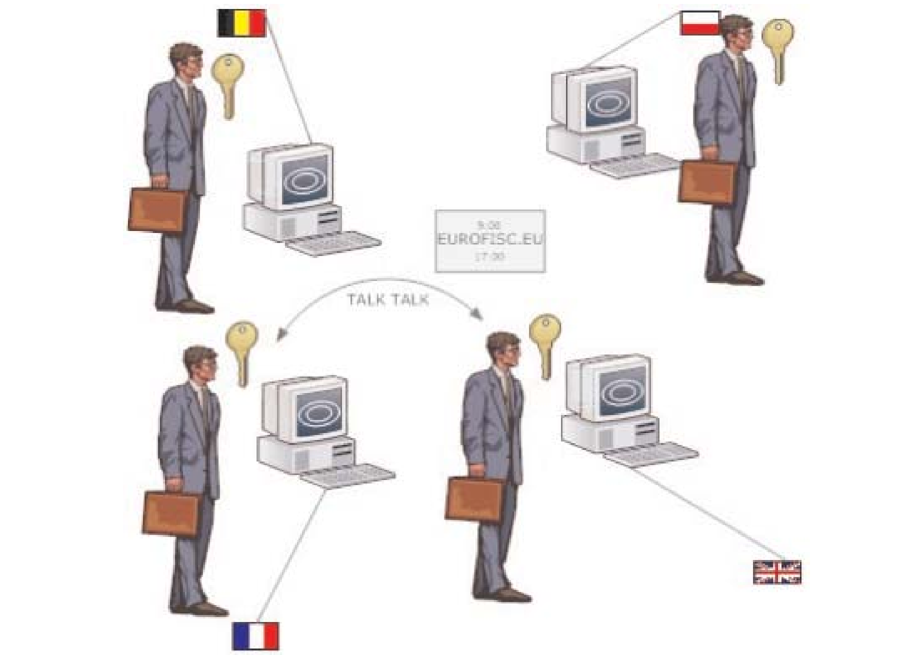
How does EUROFISC work?

EUROFISC is a decentralised network without legal personality. Member states enter the following information into the electronic system without delay:

- data from recapitulative statement;
- data from taxable person's activity statement;
- data from non-established taxable person's activity statement;
- data from VAT return;
- more after 2014.

At least the following details shall be accessible: the total value of the supplies of goods and services from a person to another person holding a VAT identification number issued by another member state.

Each member state shall designate at least one EUROFISC liaison official, who holds a personal user identification for the electronic systems allowing access to the information stored. Access should only be allowed in connection with an investigation into suspected fraud, and the information exchanged should be confidential.



http://www.eurofisc.eu/

In addition the European Union installed OLAF, which is an abbreviation of the French expression “Office Européen de Lutte Anti-Fraude” (European Anti-fraud Office). With OLAF the Europeans want to achieve a better collaboration with strategic partners like organizations and offices of other countries, EUROPOL (European Police Office) and EUROJUST (Office for Judicial Cooperation). OLAF is an administrative and investigative body with more than 500 staff, whose principle task is to protect the financial interests of the European Union by fighting fraud affecting the EU-budget, as well as corruption and any other irregular activity, including misconduct within the European Institutions.

By teaching the member countries in efficient methods of such investigations and giving them the necessary support and technical know-how, the countries will more and more succeed in anti-fraud campaigns.

The international networking on tax fraud is improving. But to my opinion the national methods of tax inspections and investigations are improving even faster, supported by a permanent upgrading of the information technology.

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Tax treatment for distribution of dividends and capital redemption

Income tax for Dividends. How the tax must be paid.

For Mexican tax purposes there is an account named tax net profit account (CUFIN acronym in Spanish) which keep track of the profits that have already paid income tax in Mexico. The concept is similar to the E&P account for US tax purposes. As a general rule there is only a corporate tax on distribution of dividends if they are not paid out of the CUFIN balance, if the dividend payment exceeds the CUFIN balance an equalization tax is imposed on the excess, equal to the general corporate tax rate on the gross amount. The effective rate on distributions paid in excess of the CUFIN balance is approximately 43%.

Please this corporate tax is on the Mexican legal entity not the shareholders. Please note there is an exception to the above mentioned rule in the event the taxpayer has a CUFINRE balance (acronym for tax reinvested net profit account). When the taxpayer decided during 1999-2001 period to exercise the option to reinvest profits and defer a portion of payment of the income tax (5% on the taxable income) until a dividend payment is made in further years, the CUFINRE account was created. In the event of a taxpayer declares a dividend payment and this latter has CUFINRE balance, the taxpayer must use first the CUFINRE balance until is gone paying the defer income tax associated with the CUFINRE account, and then the taxpayer can use the CUFIN balance accordingly with its rules. (CUFINRE balance has precedence over CUFIN balance)

Capital redemption. Income Tax treatment.

For Mexican tax purposes, there are two tests (some cases three depends on specifics facts) to determine whether or not a capital redemption is taxable at the level of the legal entity. One important element in this computation is the equity contribution account (CUCA acronym in Spanish) which is an account formed on the all the equity contributions made by the shareholders during the existence of the company. The computation of two tests entails some detail work, however there are two important drivers to determine whether or not there is a gain on the capital redemption:

1) When the reimbursement per share is higher than the CUCA per share there will be a gain. The CUCA per share is determining dividing all the existent shares by the CUCA total amount to the date of the capital contribution.

2)When the equity of the legal entity according to MXGAAP is higher than the CUCA, there will be a gain.

If whichever (or both) of these two scenarios results in a gain and additional analysis must be addressed to determine if that gain comes from the CUFIN account. If so, generally there is not a taxable gain, however it is recommended a detail analysis case by case due to there are some exceptions to the general rule.

In the event there is a taxable gain the effective rate of 43% will apply.

Dividends and Capital Redepmtion. Is there any withholding tax for thos transactions? How the Tax Treaties apply?

In case of dividends payments or capital redemptions the withholding income tax does not apply according to the domestic law regardless the country in which the shareholders are residents for tax purposes. In this case the domestic rule (no withholding) overrides the withholding rates on dividends established in the Mexico tax treaties."

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DE MINIMIS AID in Member States

The Treaty establishing the European Community requires State aid to be notified to the European Commission, so that it can assess whether the aid is compatible with the common market in the light of article 87, n. ° 1.

The ***De minimis* aid** regulation (EC regulation n.º 1998/2006, of 15 December) was introduced in order to exempt small aids amounts. The European Commission considers that state aid to a single company of up to EUR 200.000 (EUR 100.000 in the case of the transport industry) over three years fiscal period has a negligible impact on trade and competition, and does not require notification.

Due to the world's economic and financial crises, Portugal was allowed by the EU Commission to increase that limit to EUR 500.000. The new temporary cap was applied to applications filed until December 31, 2010, including also grants awarded before December 31, 2011. The *De minimis aid* grants to businesses, awarded from January 1, 2011 onwards, are again capped at general limits.

These thresholds are applies whatever the form of *de minimis* aid or the objective pursued and regardless of aid granted by a Member State, is financed, in whole or in part, by Community resources. The period is determined based on fiscal years used by companies in the Member State concerned.

The *De minimis* aid regulation applies to aid granted to companies in all sectors, with the exception of fishery and aquaculture, primary production of agricultural products as listed, export-related activities towards, the coal sector, the acquisition of road freight transport vehicles or companies in difficulty.

We identified the following forms of possible aid:

- State grants;
- interest rate relief;
- tax relief;
- tax credits;
- State guarantees or holdings;
- State provision of goods or services on preferential terms;
- direct subsidies;
- tax exemptions;
- preferential interest rates;
- guarantees of loans on especially favorable terms;
- acquisition of land or buildings either gratuitously or on favorable terms;
- provision of goods and services on preferential terms;
- indemnities against operating losses;
- reimbursement of costs in the event of success;
- State guarantees, whether direct or indirect, to credit operations preferential re-discount rates;
- dividend guarantees;
- preferential public ordering;
- reduction of, or exemption from, charges or taxes, including accelerated depreciation and the reduction of social contributions;
- deferred collection of fiscal or social contributions;
- assistance financed by special levies;
- capital transfers;
- certain State holdings in the capital of undertakings.

When a Member State grants *De minimis* aid, the State must inform the company concerned of the amount of aid and of its *De minimis* character, making express reference to EC Regulation n. ° 1998/2006, of 15 December.

To avoid the risk of *De minimis aid* granted to a company come to exceed the threshold set, each Member State must check the total amount of the *minimis* aid granted over a period of 3 financial years, by consulting the central register of the country. *De minimis* aid does not affect the level of State aid that a company can receive under any other schemes approved by commission. However, it cannot be cumulated with State aid in respect of the same eligible costs if cumulation would result in an aid intensity exceeding the threshold set. In these circumstances, the company has a possibility to make an option for the more favorable aid.

Indeed, *De minimis aid* may have a significant impact on the business of the companies.

Therefore, under the laws of each Member State, it is desirable that companies be informed about all the benefits of which they can take advantage.

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The prevention of Money-Laundering in Spain

The persecution of the so-called "laundering" of money coming from illicit activities constitutes a political and economical challenge of undoubted complexity and swamped by all the court orders of the current globalized world. The Spanish legal framework is the product of rules of a repressive nature with penal implications, as well as preventive rules, which affect certain organizations and bodies.

Since December 1993 until now in our country laws have been enacted which, in accordance with the Directive 2001/97 of the European Community, have introduced important modifications in our legislation, both penal and administrative, so that the fight against money-laundering and goods and products coming from criminal activities is becoming ever more efficacious.

These changes have been the result of a greater social mindfulness of the struggle, not only against crime, but also against the profit or product which it generates and whose insertion in the economy produces serious damage to the economy and to society in general.

What is Money-laundering?

Section 2 of article 1 of the law 19/1993, of 28th December, about certain preventive measures of money-laundering, states: *"For the purposes of the present Law the acquisition, money-laundering will be understood as the use, conversion or transmission of goods which derive from any of the criminal activities enumerated in the previous section or from participation in the same, in order to hide or cover up its origin or to help the person that has participated in the criminal activity to elude legal consequence of his or her acts, such as the hiding or covering up of its true nature, origin, localization, regulation, movements or of the ownership or rights regarding the same, even when the activities that generate them are developed in the territory of another State".*

Section 1 of said article states: "This law regulates the obligations, the acts and the procedures in order to prevent and impede the use of the financial system, as well as of other sectors of economic activity, for the laundering of money deriving from any type of participation in crime in the commission of a crime punishable by a prison sentence greater than three years".

Simplifying, we could understand money-laundering as the methods or procedures by means of which the illicit profits obtained from criminal acts are introduced in the legal financial circuit.

The process of laundering in three stages: a) Placement, b) Layering and c) Integration.

■ **Placement** consists of materially getting rid of substantial sums of money in cash, without yet hiding the identity of the principals. For that great sums of money are placed by means of financial establishments, resorting to the retail economy or moving it abroad. Generally it is done by depositing the money into bank accounts, changing it into another currency or into larger bills, acquiring objects of great value that are easily transferable (gold, jewellery, etc.) or transporting it in cash to another country.

■ **Layering** consists of hiding the origin of the illicit products by means of carrying out numerous financial transactions which pile up, making it difficult to discover the origin of the goods. The most important method is electronic transfers of the funds, a system which mobilizes daily thousands of millions of dollars and which, by its instantaneous character, is difficult to control. Also, financial instruments are converted, acquired in the first stage, in other instruments such as traveller's cheques, payment orders, bonds and shares with the aim of moving them out of the country without being detected, or depositing them in other bank accounts.

■ **Integration** consists of the introduction of the goods coming from illegal activities into the legal economy, granting them the appearance of legality. The methods employed range from real-estate transactions to the constitution of "front" companies in tax havens and the granting of credits simulated to these.

Obligated Entities

The regulations distinguish between the obligated of two separate regimens: the General Regimen and the Special Regimen, with certain distinctions between their obligations.

General Regimen:

- ✔ Credit Entities.
- ✔ Insurance Entities authorized to operate in the branch of life assurance.
- ✔ Insurance Agents
- ✔ Securities Brokers and Brokering Companies.
- ✔ Collective Investment Institutions.
- ✔ Companies which represent Collective Investment Institutions and Pension Funds.
- ✔ Companies of Representatives of Portfolios.
- ✔ Companies which issue Credit Cards.
- ✔ Individuals or legal entities that perform activity of exchanging currencies, whether or not it is as a principal activity.

Special Regimen

- ✔ Gambling casinos.
- ✔ Activities of real-estate promotion, agency, commission or intermediation in the buying and selling of properties.

- Individuals or legal entities which act in the performance of their profession as auditors, external accountants or tax advisors.
- Notaries, lawyers and solicitors.
- Activities related with the commerce of jewellery, precious stones and metals.
- Activities related to the commerce of works of art and antiques.
- Activities of philatelic and numismatic investment.
- Activities of professional transport of funds or means of payment.
- Activities of direct debit or international transference carried out by postal services.
- The commercialization of lotteries or other games of random chance in respect of operations of payment of prizes.

Obligations

The Spanish legislation currently in force imposes a series of obligations with the aim of preventing money-laundering, which are, among others:

a) Identification of the client:

The presentation of certifying documents is required of the identity of the clients, whether habitual or not, in the moment of setting up business relations.

b) Collaboration with the Executive Service:

Any operation will be examined with special attention, independently of its amount, which could be particularly linked to money-laundering, communicating immediately to the Executive Service of the Prevention of Money-laundering (*in Spanish: "SEPBLAC"*) those in respect of which, after said examination, there exist indications of certainty that they are related to money-laundering.

c) No operation will be performed in respect of that which there exist indications of certainty of having been related to money-laundering, without having previously carried out the communication about the same to SEPBLAC.

d) Communication of operations:

Individual communication: By means of the Body of Internal Control (*"Órgano de Control Interno"*) individual communication will be carried out, containing information about the individuals or legal entities that participate in the operation and the concept of their participation in it, the known activity of the individuals or legal entities, in relation de the operations, dates to which they refer, etc.

Systematic Communication: The subjects obligated in the General Regimen will communicate monthly to SEPBLAC:

- The operations which go hand-in-hand with the physical movement of metal money, bank bills, traveller's cheques, cheques or other documents of the bearer drawn on credit entities, with the exception of those which object of credit or debit in the account of a client, for amounts greater than €30,000 or the equivalent value in foreign currency.

- Operations with or of individuals or legal entities resident in territories or countries which are considered to be tax havens or uncooperative territories.

All in all, should there not exist operations susceptible to communication, the obligated subjects will communicate half-yearly this circumstance to the Executive Service.

e) The obligated subjects will establish an express policy of admission of clients.

f) Constitution of a Body of Internal Control and Communication (*"Órgano de Control Interno y Comunicación"*) which will have as its mission analyzing, controlling and communicating to SEPBLAC all the information relative to the operations or facts susceptible of being related to money-laundering, in accordance with the established procedures. At the head of each of said bodies there will exist a representative of the obligated subject with regard to the Executive Service.

g) The procedures and bodies of internal control and of communication will be the object of an annual examination by an external expert (General Regimen) or each three years by and external expert or if it is carried out internally, annually (Special Regimen).

Sanctioning Regimen

The sanctioning regimen by the non-compliance with the said obligations grades the infractions from serious to very serious and can give rise to sanctions which range from private reprimand up to fines which could reach the greatest of these amounts: 5% of the entity's own resources, double the economic content of the operation or €1,500,000 euros.

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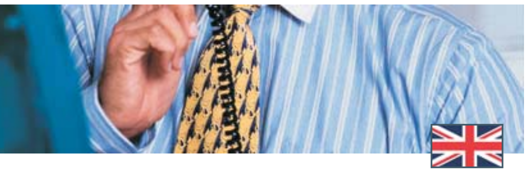
Corporation tax implications of setting up a UK subsidiary



There are many factors that a foreign company would have to take into account before considering setting up a subsidiary in the United Kingdom (UK) and tax would be one of these factors.

Normally a company incorporated in the United Kingdom (UK) will automatically be tax resident in the UK. However, if the place of effective management is in another country i.e. the place where central management and control is exercised, then the company may also be tax resident in that other country. In such a case where a company is tax resident in two jurisdictions it is necessary to look at the UK Double Tax Agreement (DTA) with that other country to determine in which country the company is tax resident. Usually there is a tie breaker clause in the DTA which awards tax residence to the country in which its place of effective management is situated. If there is no DTA with that country or a tie breaker clause, then the company will be treated as UK tax resident.

If the company is deemed tax resident in another country because its place of effective management is in that country, then that company's profits could only be subject to UK corporation tax if it trades through a permanent establishment (PE) in the UK.

There are two broad circumstances within which a non-UK resident company could have a UK PE. These are:

- Where there is a fixed place of business through which the business of the company is wholly or partly carried on in the UK e.g. an office.

Or,

- Where an agent, other than an agent of independent status, acting on behalf of the company has, and habitually exercises in the UK an authority to conclude contracts in the name of that company.

The implications of a company being tax resident or trading through a PE in the UK are that the company will be liable to UK corporation tax on its worldwide profits and gains or if it is a PE, only the profits and gains arising from the PE. If the company or the PE makes trading losses, these can generally be relieved against its other income of the same accounting period, carried back against total income of the preceding year or carried forward against future profits of the same trade.

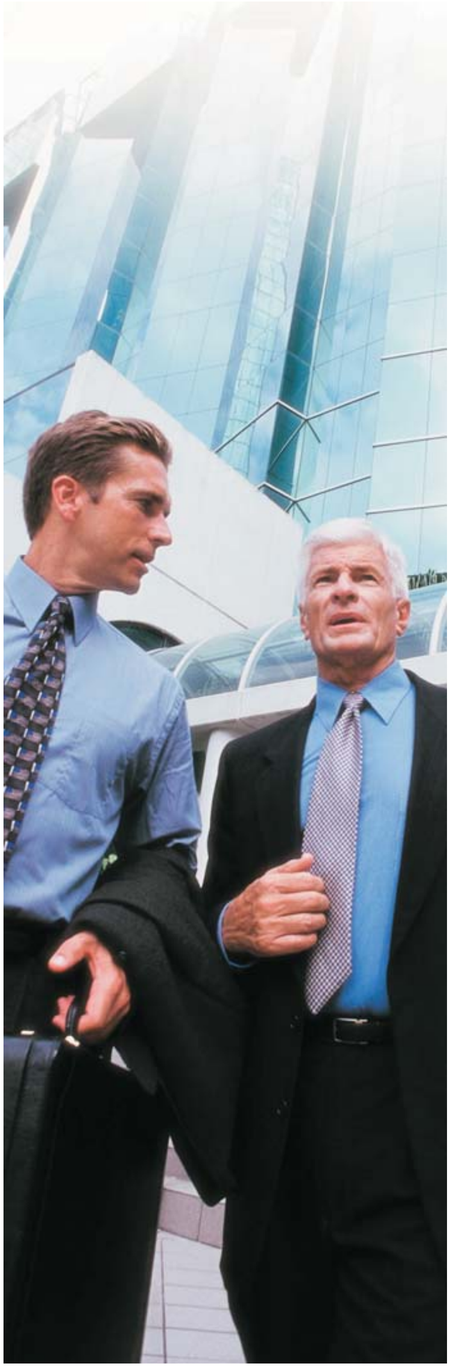
The corporation tax rate depends on the level of taxable profits. The current limits and rates are as follows.

- If taxable profits do not exceed £300,000 then the corporation tax rate will be 20%.
- If taxable profits exceed £1,500,000 then the corporation tax rate will be 26%.
- If taxable profits are more than £300,000 but less than £1,500,000 then the corporation tax rate will be 20% on £300,000 plus 27.5% on the balance.

However, the above limits are divided by the total number of active associated companies (inclusive of the concerned company). Broadly speaking, for tax purposes associated companies are those under common control, wherever they might be situated.

A PE is liable to the full rate of 26% on its profits, unless the UK DTA with the country of the company's tax residence has a relevant non-discrimination clause.

The company may also be subject to the UK transfer pricing provisions regarding transactions with the parent and other group companies, including any inward financing. Normally the UK transfer pricing provisions do not apply to small enterprises and



medium sized enterprises, unless the UK does not have a DTA with a relevant non-discrimination clause with the country of tax residence of the other company. In the case of the medium sized enterprises HMRC may give a direction that the provisions are to apply. The definition of small or medium sized enterprises is as recommended by the European Commission paper on 6 May 2003 as follows:

Small businesses	fewer than 50 employees and either turnover or gross assets less than 10m Euros.
Medium sized	fewer than 250 employees and either turnover less than 50m Euros or gross assets less than 43m Euros

The Commission recommended that the staff and financial data of associated enterprises are included with the data of the enterprise concerned.

If the company is to be financed by a loan from the non-UK resident parent, it will normally have to deduct tax at 20% on any interest payable to the parent, unless there is a relevant clause in the DTA with the country of tax residence of the parent, which prescribes a lower or zero rate and a claim is made to HMRC for those provisions to apply.

DIVIDENDS

There is no withholding tax on dividends payable by the company to the parent. On the other hand the dividends will not be tax deductible against the company's taxable profits.

In conclusion, the setting up of a subsidiary in the UK has many pitfalls, as described above and it is highly recommended that if a foreign company is considering such a proposal it should seek advice from a competent tax professional in the UK.

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Exports to tax heavens and tax implications

In the last years, the Argentinean tax Authorities have been taking a special emphasis and interest on foreign trade operations (specially on exports) with countries with low taxes or no taxes at all, known as “tax-heaven” countries, or with foreign companies with which there are economic bonds. This is not happening in Argentina only, but in other tax administrations from all around the word with which Argentina has signed tax information exchange agreements.

These operations are carefully observed because in both cases it is possible to use transfer pricing to avoid tak costs. This is why the Argentinean regulation demands a demonstration through a study of transfering prices, that the prices the companies set are the same as the market prices; as if the transaction was performed between companies with no economic ties.

Of course, not all of these operations pursue a fiscal benefit. For certain companies, such as small and medium industries, this is a good possibility to improve their business operations in a new trade market. What they ignore, is that they are included under the transfer pricing regime. Many exporters don’t know that Panama, Puerto Rico, Uruguay or Hong Kong are indeed tax-heaven countries.

Meanwhile, it is noteworthy that the premeditated and deliberate use of organisms in these tax havens is mainly based on the so-called "bank secrecy" and / or no agreements signed tax information exchange with Argentina. As a result from this activity, sometimes funds are deviated and illegal operations take place, such as money laundering.

Today, several measures are being taken in Argentina in order to monitor, regulate and enforce laws that guarantee the transparency of international operations. One of these actions consists on not returning exporters' “VAT recoveries” until they meet the informational regimes established in the regulations. On the other hand, with the information provided by the Central Bank of Argentina, the Treasury has also "invited" the companies to comply with the regime, for example, having and providing information on money incomes, or currency from these countries. Finally, it should also be added that there is a strong sanctions regime.

A Transfer Price study implies analizing the prices, the interest rates and the fees agreed on the international operations considered suspicious for the tax authorities. Operations between economic taxes partners and tax heaven countries are included on this.

This study is aimed at showing that the pacted prices, interest rates or fees are coherent with the normal market, as if were been agreed between independent companies; or between non-tax-heaven countries. The outcome of the study has to be presented to the authorities with the affidavit and an independent public accountant certification.

Finally, is important to take into account that all the doubtful operations and transactions need to present the study, despite of not pursuing fiscal benefits.

The Argentinean tax law requires the compulsory presentation of the studies of transfering prices to all the companies responsible for goods and services' transactions with foreigners with an economic linkage of tax-heaven countries. Examples:

- ✔ Trading goods (export and imports).
- ✔ Provision and services prestations (International transport, logistic, etc).
- ✔ Transfering intangible goods, marks, patents.
- ✔ Loans (obtained in tax-heavens country or celebrated between economic ties)
- ✔ Any other operation that affect the determination of the tax on profits.

TRANSFER PRICING AND INTERNATIONAL OPERATIONS		
CONCEPT		SHOULD BE REPORTED IN AN AFFIDAVIT
Export and import operations of goods between independent companies (not located in tax-heaven countries)	With international prices, set through trading stocks or similar transparent markets.	Operations during the 1st semester of tax year or normal year. Operations during the 2nd semester of tax year or normal year.
	Which price is not known and it overcomes U$S 250.000	Total operations of the normal or fiscal year (FY).
Transactions reached through the disposition of the transfer prices. (celebrated with linked companies and/or tax-heaven countries)		Operations during the 1st semester of normal year or FY. Total operations of the normal or FY. Presentation of transfer pricing study.

According to fiscal authorities, during 2009, the 80% of the exportations to Uruguay has been triangulated, which means that the exported goods have a 3th final destination, using Uruguay to deviate funds and avoid taxes.

The existence of these operations is translated on the growing international concern on fiscal collecting administrations. In Argentina, there is a strong sanctions regime for breaching the obligations mentioned above.

In an environment of global Business, the correct definition of transfer prices for the transactions between linked companies or tax-heaven companies reaches a particular relevance.

This is why Auren considers using tecniques and transfering prices methods is very helpful for companies to identify and structure their transactions with economic ties and links, with the objective of optimizing fiscal charges, avoiding contingences and penalties provided by law that could be generated by breaches.

Fines and penalties for breaches of the regime
Under the Tax Procedure Law (Law No. 11 683)
Fines for formal and substancial breaches
Automatic fines for non presentation. According to the case, U$S 2.500 or U$S5.000
Prescription after the 5th year.

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Criteria established for registration of VAT

The Order no. 1984/2011 (Order no. 1984), which establishes criteria used to condition the registration for VAT purposes of companies set up under Law no. 31/1990 that are subject to registration with the Trade Registry and which require VAT registration according to article 153 paragraph (1) letter a) and c) of the Fiscal Code was published in the Official Gazette no. 361 on May 24 2011.

According to Order no. 1984 taxpayers who request the registration for VAT purposes and which are subjected to registration with the Trade Registry, must submit an annex to the statement of particulars to relevant tax authorities.

Criteria according to which the conditions of registration for VAT purposes to taxable persons are:

a) The taxpayer is not in the position not to undertake economic activities at their headquarters or at secondary locations.

b) None of the administrators and / or shareholders of the taxable person which requests registration for VAT purposes according to article 153 paragraph (1) letter c) of the Tax Code, or the taxable person itself have recorded tax crimes and / or deeds that draw the joint responsibility with the debtor declared bankrupt or insolvent, or deeds that draw fiscal inactivity, declared according to the law;

c) The factual verification, regarding the existence of the space used for headquarters / fiscal domicile and, depending on the case, for the declared secondary locations, which corresponds to the object of activity that the taxable person is planning to carry out / is carrying out.

d) The evaluation criteria stipulated in annex no. 2.

Competent fiscal authorities perform the *documents verification* based on the documents provided by the taxable person or by their legal representative, as the case may be, or based on the own records of the fiscal authority, within three working days.

The taxable persons whose applications for VAT registration have not been denied, can send a written request to the fiscal authorities, within maximum 24 hours from the date of finalising the documents verification, to verify the actual existence of the space for headquarters and, as the case may be, of the declared secondary locations, which has to correspond to the object of activity the taxable person is planning to carry out / is carrying out.

Within four working days from the date of receiving the request, the fiscal authorities responsible of the factual control have to perform an on-site verification.

In the event of the taxable person has met the criteria specified in article 3 letters a) - c), relevant authorities verify within 15 working days from the date of submission of annex no.1 to the statement of particulars and annex no. 2 – evaluation criteria.

Upon analysing the evaluation criteria established in annex no. 2, the specialised department prepares a report that will determine the score obtained by the taxable person. In order to register for VAT purposes the taxable person has to score above 45 points.

The fiscal authority responsible with the factual verification is the Financial Guard, as part of the National Tax Administration Agency.

The decision for the approval or rejection of the registration for VAT purposes (including the motivation of the rejection) must be issued within 15 working days from the date the declaration of specifications has been submitted and the applicant is notified in accordance with the article 44 of the Tax Procedure Code.

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International tax in India

In the last few years, Indian organizations have been reportedly adapting the International Accounting Standards (IAS) like US/UK GAAP (Generally Accepted Accounting Principles) and IFRS (International Financial Reporting Standards) into their business processes which enables them to compete more effectively and conduct smoother financial transactions across the globe.

DOUBLE TAXATION IN INDIA

Double taxation occurs when an individual is required to pay two or more taxes for the same income, asset, or financial transaction in different countries. **Double taxation** occurs mainly due to overlapping tax laws and regulations of the countries where an individual operates his business. When an Indian businessman makes a profit or some other type of taxable gain in another country, there may be in a situation where he/she will be required to pay a tax on that income in India, as well as in the country in which the income was made. To protect Indian tax payers from being taxed twice, the Indian government has entered into tax treaties, known as **Double Taxation Avoidance Agreement (DTAA)** with 65 countries, including U.S.A, Canada, U.K, Japan, Germany, Australia, Singapore, U.A.E, and Switzerland. DTAA ensures that India's trade and services with other countries; as well the movements of capital are not adversely affected.

The payee is entitled to avail benefit as per provisions of relevant DTAA i.e. lower rate or exclusion of service from scope of definition. A typical case is withholding tax on services. Since no surcharge is applicable on DTAA rates, these are generally beneficial.

Legislation	Basic (%)	Surcharge (%)	Cess (%)	Total (%)	Remarks
Domestic Law	10	2	3	**10.506**	*note 1*
DTAA	10	Nil	Nil	**10**	*note 2*

Note 1 -Surcharge of 2% is applicable when payment exceed INR 10,000,000
Note 2 -Surcharge and Cess is not applicable on rates prescribed under DTAA

CAPITAL GAIN TAX RATES

Under Section 90 and 91 of the Income Tax Act, relief against double taxation is provided in two ways:

Unilateral Relief

Under Section 91, the Indian government can relieve an individual from **double taxation** irrespective of whether there is a **DTAA** between India and the other country concerned. Unilateral relief may be offered to a tax payer if:

1. The person or company has been a resident of India in the previous year.
2. The same income must be accrued to and received by the tax payer outside India in the previous year.
3. The income should have been taxed in India and in another country with which there is no tax treaty.
4. The person or company has paid tax under the laws of the foreign country in question.

Bilateral Relief

Under Section 90, the Indian government offers protection against **double taxation** by entering into a **DTAA** with another country, based on mutually acceptable terms. Such relief may be offered under two methods:

1. Exemption method . This ensures complete avoidance of tax overlapping.
2. Tax credit method . This provides relief by giving the tax payer a deduction from the tax payable in India.

Kanu Doshi Group
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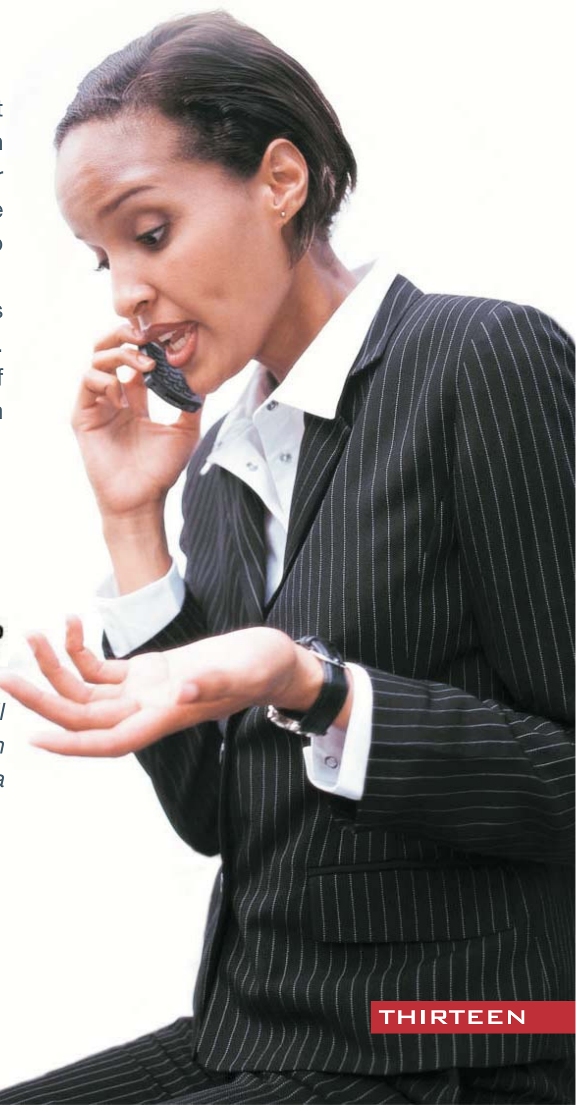


Malta - The New Place to be for Hedge Funds

If one were to summarize the main reasons for the latest interest in Malta as a destination for funds this could be mostly summarized as follows: overall flexibility, efficiency, general lower set-up costs when compared to other EU jurisdictions, a low onshore tax regime, and a skilled English speaking workforce.

This attractive combination of factors has seen over 400 funds being registered or re-domiciled to Malta in recent years. Malta is the smallest member in the EU and Euro Zone member since 2007. Baked by the Mediterranean sun, situated right in the middle of the Mediterranean, the Maltese enjoy a good quality of life typical of the region. However over 200 years of British colonial rule have left their mark on the Island's population and nowhere is this felt more than in the business community with a "go get it" approach, an English Speaking professional workforce (English is one of two official languages and all laws and regulations are found in both English and Maltese) .

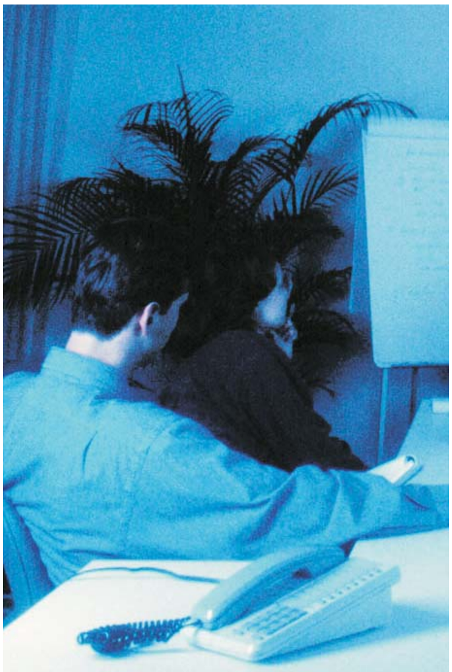
With a stable Government and banking system (totally unaffected by the recent crisis due to the lack of bank's exposure to international credit) and with no natural resources except its human resources , Malta has looked towards its sound legal framework to delve into the financial services.

Already a well established financial centre within the EU Malta has in recent years targeted the funds industry with a comprehensive legislation.

All financial services are regulated by a single regulator, the Malta Financial Services Authority. Investors have found this to cut down on bureaucracy significantly, a step in the right direction. Moreover the regulator is very approachable and open to discussions with all parties concerned, and lets itself be guided by the principles and spirit of the law, allowing a rather more pragmatic approach without compromising on key areas such as investor protection.

Besides the regulator the legislation itself is very accommodating to fund promoters. For example it is possible to have only one underlying instrument, as long as the regulator is satisfied that sufficient diversification is reached.

Multiple custodians are possible, and service providers need not be based in Malta at all. Malta allows for passporting of fund managers, administrators and Custodians. This is a great advantage over many other jurisdictions which generally require that these be based in their country. Moreover, Malta recognizes such players within a fund scenario set-up in countries with which Malta has concluded Memoranda of Understanding or similar agreements.



Directors of Professional Investor Funds need not be resident in Malta except for self managed funds where in such a case Funds can be self managed either through an investment committee or by appointment of a professional manager. Possibility of being structured as unit trust or limited partnership also exists.

Funds are tax neutral in Malta at fund level, except in cases where less than 85% of the fund assets are invested in Malta, in which case a withholding tax rate of between 10% to 15% applies. In all other cases there is no tax on income or capital nor stamp duty (except for funds holding immovable property situated in Malta)

The ever increasing number of funds being set up is beginning to attract also fund management companies , who are setting up shop here attracted also by the every attractive tax regime which is the most attractive for an onshore EU jurisdiction.

Should you be interested in receiving more information on the possibility of setting up a fund or fund management company in Malta please feel free to contact us.

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Client briefing - Guidance on transfer pricing issued by the Luxembourg Tax Authorities

On 28 January 2011, the Luxembourg Tax Authorities issued a transfer pricing circular clarifying the tax treatment of intra-group financing transactions at the level of the affiliated undertakings ("Circulaire du directeur des contributions L.I.R. n°164/2 du 28 janvier 2011"). Mainly, the Circular provides assistance to the tax administration and the companies carrying out intra-group financing in terms of valuation of transfer pricing in accordance with the international principles and documentation of the valuation method.

Increasing the transparency of the intra-group financial transactions shall strengthen the credibility of Luxembourg in the worldwide tax environment.

Transfer pricing

Transfer pricing relates to inter-company pricing arrangements concluded between related parties. The arm's length standard is generally applicable to determine applicable transfer pricing. This means that the amount charged by one related party to another for a given product or service must be the same as if the parties were not related. An arm's-length price for a transaction is therefore what the price of that transaction would be on an open market.

Luxembourg income tax law 56 and 164 (3) refer to the arm's length principle yet do not contain any specific guidelines or regulations. The Circular, by outlining a process for setting and reviewing the pricing used in international financial transactions between related parties, sets up the expected framework.

Scope

The Circular is aimed at entities the main activity of which consists in granting loans or cash advances to related entities refinanced by, inter alia, public offerings, private loans, cash advances and bank loans. The shareholding activities are out of the scope.

Two enterprises are related if one of them participates directly or indirectly in the management, control or capital of each other.

Guidance to determine the arm's length pricing of intra-group financing activities

The Circular complies with article 9 of the OECD Model Convention and the OECD Transfer Pricing Guidelines by referring to the comparison method without specifying one of them particularly.

Nevertheless, the Circular refers to the remuneration practices and methods in force in the banking sector to determine the transfer pricing of financial transactions carried out between two related parties. Thus, the financing entity will have to perform a "risk analysis" towards its debtor and take into account the following points:

- ✔ Structure of the group;
- ✔ Existence of guarantees in relation to the transaction;
- ✔ Economic background and solvability of the debtor;
- ✔ Contractual conditions of the financing;
- ✔ Financing costs.

In addition, the Circular provides that the financing entity should have a sufficient capital available to assume the risks related to the financing. In that respect, equity financing is deemed sufficient if it exceeds 1% of the financing or EUR 2 million.

Advance Pricing Arrangement by the Tax authorities

The Circular provides that the Tax authorities may hence grant a binding written confirmation regarding the transfer pricing established between the related entities. This confirmation should correspond to an Advance Pricing Agreement ("**APA**"), which entails providing advance certainty on the fiscal acceptability of the transfer pricing.

The applicant for an APA has to provide the tax authorities with (i) the information related to the taxpayer filing the request, (ii) a description of the contemplated transactions, (iii) a presentation of the legal structure of the group, (iv) the fiscal years for which the confirmation is requested, (v) the transfer pricing study with the description of the chosen methodology.

Once the provided documentation audited, the Luxembourg tax authorities may agree upon the applicable methodology. The APA would be binding on the parties for 5 years (renewable for another 5 years) provided that the documentation filed is correct and complete. In case of changes of facts or circumstances as described initially, the tax authorities have to be informed and the APA should be amended accordingly.

Substance requirements of the financing company

The entity applying for an APA must have a real substance in Luxembourg, and thus, meet the following conditions:

- The majority of its directors/managers should be Luxembourg resident or should have more than 50% of their professional income taxable in Luxembourg;
- The local directors/managers should have the adequate skills and the capacity to bind the company;
- The key decisions should be taken in Luxembourg;
- The staff must have the capacity to handle the activity performed in Luxembourg;
- The entity must be tax compliant and should not be considered as tax resident in another State;
- A bank account should be opened with a Luxembourg resident bank or a Luxembourg branch of a resident bank.

Conclusion

The issuance of the Circular represents a significant step in the Luxembourg quest for tax transparency. No doubt that the application of these guidelines will make safer the Luxembourg financial structures.

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Change s in the resident personal income tax

Last December, laws 18.718 (tax reform) and 18.719 (budget) were passed, which introduced important changes to the origin of the taxable income of the IRPF (Resident Personal Income Tax).

When the IRPF was created, only income generated in Uruguay was subject to the tax (with the exception of wages paid by the state to its workers abroad).

With the introduced modifications, income generated by deposits, loans and any allocation of capital which comes from non-resident entities are now reached by the tax. For example interests and dividends from abroad will have to pay IRPF.

Also included in IRPF from now on are wages received for work carried out away from Uruguay to taxpayers of IRAE (Income Tax) and IRPF and freelance technical services (which includes services such as management, consulting, and administration) served abroad to taxpayers of IRAE.

When the Government exposed the reasons for the law's bill, it justified the addition of the previously described incomes to the effect of contemplating the application of the equality principle in taxation, and to stimulate investments. With reference to the equality principle, according to what was said by the government, they seek to design the tax system taking into consideration the taxpayers' ability to pay.

In order to reach incomes from capital generated abroad, the government will have to rely on information exchange treaties and double taxation agreements it is signing with various countries. As to income from work obtained abroad, control will be carried out through the companies paying for these services.

Now, according to the Government, an equalitarian tax on personal income is that which considers the taxpayers ability to pay. However, not all income generated abroad is taxable: income generated by real estate located abroad, including rent and sale, and services lent by residents abroad to a foreign company.

So, why hasn't the Government included those foreign incomes in the new law?

For what was previously exposed, it wasn't due to the philosophic standing of reaching the taxpayers ability to contribute. A possible answer is that it considers it does not have the appropriate tools to carry out proper fiscalization. However that same difficulty appears when it has to fiscalize the income generated by capital abroad (which is reduced by the signing of agreements).

The other plausible answer is that the change will happen through time, and it is only a matter of time before all income obtained abroad by residents will be reached by the tax.

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