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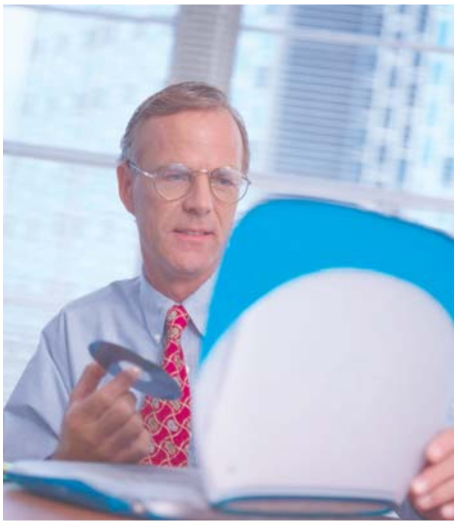
INDEX

Recent amendments to the Tax System for the Promotion of Software Industry

ARGENTINA

At this time we will discuss recent changes to the tax incentive scheme in the software industry and services, introduced by the Law 26.692 published in the Official Bulletin on last 18 of August.Recall that the fiscal promotional scheme by amending this rule is in force since September 2004, created by Law 25.922 which was discussed on a previous note.



Taking into account the experience gathered over seven years of the regime, the Congress through this reform, fixed errors of the previous law and clarifies issues that generated controversy in its interpretation. On the other hand facilitates the conditions for access to those that are interested, making their benefits more attractive by stimulating the competitiveness of exports of software and services, and ultimately improving the definition of the system by sanctions against breaches of the obligations for beneficiaries' subject.

The new law extends the term of the benefits of the scheme until December 31, 2019, initially the benefits that extended to September 2014; its extension is just over 5 years.

For subjects who may be beneficiaries of the scheme eliminates the possibility for natural persons. May only enjoy the benefits legal persons. At the same time now contemplates the possibility that branches in the country of foreign companies are beneficiaries, previously only could apply for companies incorporated in the country.

1) CONDITIONS FOR ACCESS TO THE SYSTEM:

Develop in the country on their own, as any of these core business activities: creation, design, development, production, implementation and development of software systems developed and associated technical documentation, including software that is developed to be incorporated processors used in consoles, switchboards, mobile phones, machines and other devices.

They must also meet at least two (2) of the following conditions:

a) Try to incur expenses in research and development of software;

b) Have obtained a recognized quality standard applicable to the software products or processes, or prove that you are carrying out activities aimed at obtaining them;

c) Implementation of software exports in these cases must be entered in the register of exporters of services the AFIP, created for this purpose.

The condition mentioned in point b) (standard quality), while it may not be met when applying for the registration, it must necessarily be met within 3 years after enrollment, but will cancel the registration of the beneficiary and lose all the benefits of the scheme.

2) TIME SINCE THE BENEFITS ARE ENJOYED

Since the registration of beneficiaries of the "Promotion System Software Industry", considering that the date of publication in the Official Bulletin, the administrative decision that approves the addition to the record of the applicant.

3) BENEFITS

Below we briefly summarize the benefits of the regime, from the reform we are discussing.

3.1 Fiscal Stability

From the moment that is included in the register mentioned above, the beneficiaries of this promotional scheme shall enjoy **fiscal stability** until 12.31.2019 (new term of the regime). Fiscal stability reaches all national taxes, understood as direct taxes, fees and tax contributions that are as passive beneficiaries.Fiscal stability means in practical terms, that the beneficiaries **will not see their total tax burden increased from its national registration of beneficiaries of the Scheme for the Promotion of Software Industry.**

3.2) Tax Credit Voucher

Beneficiaries may have access to a transferable tax credit bonus up to seventy percent (70%) of the actual payments of employer contributions on the total payroll of the company, towards the social security system. If the beneficiary undertakes activities under the scheme and others are not reached by the same, the benefit to only include employer contributions for staff affected the activities promoted by the scheme.
The bonus can be used by the beneficiaries

to settle federal taxes originate from the software industry, including value added tax and other national taxes and advances. In the particular case of income tax only be used at a rate no greater than its exports representing (presumably in relation to total revenue although this aspect does not arise from the law and should be clarified by regulation). In line with this provided that the beneficiaries of this regime may not suffer withholding, or perceptions of VAT.

3.3) Release of Income Tax

It gives beneficiaries a release (decrease) in the amount of income tax generated by the activities promoted 60% in each year and includes the income tax generated by Argentina source and foreign source.

Finally, we note that with the changes, generates the coexistence of two different promotional schemes, the former to this reform, applicable to all subjects who had been enrolled in the registry until the 18th of August this year, that will continue to apply the provisions of Law 25.922 without these modifications, for the rest of the original term (up to September /2014), and new registrants, from 19 August this will be governed by new rules discussed in this paper. But given the former beneficiaries, within 90 days from 19/11/08 to explicitly choose the new regime, now re-registering in the registry that is created.

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Test of Residency and Scope of Income

INDIA

In India, Direct Taxes Code Bill was released in 2009 to replace the existing Income Tax Act, 1961. This Bill went through many changes in response to the suggestions received from various quarters including general public and passed in the Parliament in the year 2010. Direct Taxes Code (DTC), 2010 is expected to replace the existing Income Tax Act, 1961 and shall come into force on April 1, 2012.

As per DTC 2010, test of Residency is as follows.

- An individual shall be resident in India in any financial year, if he is in India—

  (a) for a period, or periods, amounting in all to one hundred and eighty-two days or more in that year; or

  (b) for a period, or periods, amounting in all to—
  (i) sixty days or more in that year; and
  (ii) three hundred and sixty-five days or more within the four years immediately proceeding that year.

- The provisions of clause (b) shall not apply in respect of an individual who is—

  (a) a citizen of India and who leaves India in that year as a member of the crew of an Indian ship; or

  (b) a citizen of India and who leaves India in that year for the purposes of employment outside India.

- A company shall be resident in India in any financial year, if—
  (a) it is an Indian company; or
  (b) its place of effective management, at any time in the year, is in India.

- Every other person shall be resident in India in any financial year, if the place of control and management of its affairs, at any time in the year, is situated wholly, or partly, in India.
  - Under the existing Income Tax Act, 1961; a company is resident in India in any previous year, if the control and management of its affairs is situated 'wholly' in India.

  - As regards determination of residential status of foreign companies, in line with international practice, it is proposed that the residential status of foreign companies will depend on their place of effective management.

  - Foreign Companies (companies incorporated outside India) would be considered as 'resident in India' if its place of effective management is situated in India at anytime during the FY.

"Place of effective management" has been defined to mean:

- the place where the board of directors of the company or its executive directors make their decisions; or
- in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

As per DTC 2010, Scope of Income is as follows.

Taxability of income of an assessee is based on his Residential Status as depicted in table below.

PARTICULARS	RESIDENT	NON RESIDENT
Income accrues or deemed to accrue to him in India during the year	Taxable	Taxable
Income accrues to him outside India during the year	Taxable	Non Taxable
Income received or is deemed to be received by him or on his behalf in India during the year	Taxable	Taxable
Income received by him or on his behalf outside India during the year	Taxable	Non Taxable
Income accrues outside India during the year, or is received outside India during the year by him or on his behalf (whether or not such income has been charged to tax outside India)	Taxable	Non Taxable

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VAT: Land, property and construction in the UK

UK

Despite, or perhaps due to the economic downturn, there remain plenty of opportunities in the land and property market in the UK. However, for an overseas business looking at entering the industry, there are a number of tax implications to consider, among them Stamp Duty Land Tax; Capital Gains Tax; Income Tax; the Construction Industry Scheme (which deals with tax on payments to sub-contracted labour); and VAT. UK VAT registration is often, but not always, required. This article will discuss the VAT issues which may arise in certain circumstances.

SALE OR LETTING COMMERCIAL PROPERTY

The default position of letting bare land and non-residential property (e.g. offices, factories, warehouses and civil engineering works) and other defined areas of space (e.g. units and stands at trade events and exhibitions) is exempt from VAT. This means that the letting income is not chargeable to VAT, but as a result there is not an automatic entitlement to reclaim any VAT which has been incurred in the course of generating that letting income.

Since irrecoverable VAT might be substantial enough to prevent economic exploitation of the land or property from being economically viable, there is an option to tax available. Once a legal entity has opted to tax its interest in land or property, any supply of that interest (e.g. granting a licence to occupy, a lease, or disposal of freehold) becomes subject to UK VAT at the standard rate (presently 20%), unless specially excluded or dis-applied (see below), or, if certain specified conditions are met, when it comprises the transfer of a business.

Conversely, the freehold sale of a non-residential building will be standard-rated for the first three years following the date construction is completed (once this period has expired, any sale reverts to being VAT exempt, unless the option to tax is exercised). There are also other certain situations where a grant over land will always be subject to standard-rate VAT - provision of car parking, for example.

SALE OR LETTING RESIDENTIAL PROPERTY AND CHARITABLE BUILDINGS

As above, letting of residential property (whether that be houses, flats, student accommodation, nursing homes etc.), along with certain properties to be used for a charitable non-business purpose, is normally exempt from VAT. However, the option to tax is ineffective with respect to property falling under the above classification.

Furthermore, even where the option to tax would otherwise be effective, there are certain circumstances where a recipient may seek to dis-apply a grantor's option to tax due to intended use, examples of this including charities occupying offices, social housing providers purchasing land or buildings, and private individuals purchasing building plots to construct houses for their own occupation.

Conversely, the freehold sale or long lease (more than 21 years) in a new residential or charitable building in the UK is normally zero-rated (i.e. no VAT is chargeable on the transaction but any VAT incurred on associated expenditure is recoverable in full).

CONSTRUCTION SERVICES

The construction of new non-residential property is normally standard-rated, whereas the construction of new residential buildings (and in certain circumstances, those to be used for a non-business charitable purpose) may be zero-rated. Either scenario carries an entitlement to reclaim VAT on goods which qualify under the rules as 'building materials' as well as other associated costs. There are also certain circumstances whereby the lower UK VAT rate of 5% may apply, such as the conversion of non-residential buildings to a residential use (e.g. transforming a warehouse into a block of flats) or urban regeneration (e.g. refurbishment of a house which has been left empty for more than two years). There is also a special VAT refund scheme available for non-VAT registered private individuals constructing their own homes (the 'DIY Builder's Scheme').

APPLYING THE 'REVERSE CHARGE' RULE

Under European Union VAT legislation, the basic rule is that services are deemed to be provided in the country where the recipient of those services belongs (i.e. if they are a business this will be where they have their physical establishment, and if they are a private individual this will be where they are normally treated as being resident). This might normally confer on the supplier a requirement to register and account for local rate VAT in their customer's country. However, for business to business ("B2B") transactions, there exists a mechanism of simplification - the 'reverse charge' - designed to minimise the burden of VAT administration where the supplier and recipient of a service are located in different tax jurisdictions. In circumstances where the reverse charge is deemed to apply, the responsibility to account for VAT in the customer's country transfers to the customer (which may require the customer to register for VAT, if they are not already).

To complicate matters, services which are regarded as directly relating to land or property do not fall within the basic rule. Instead, VAT is deemed to be accountable in the country in which the land or property is situated. Thankfully, the UK operates an extension to the reverse charge provision (although this of course only applies in B2B transactions). Accordingly, where a construction business established outside the UK (be that within or outside the European Union) wins a contract to construct a new office building in the UK for a UK business, the reverse charge can be employed so that the UK business customer is required to account for VAT on the contract value, meaning that the contractor escapes having to become UK VAT registered.

It should be noted that the reverse charge is by no means a universal solution. The rule cannot be used where the services are zero-rated (e.g. it is not an office building, but a block of flats which is being constructed) or where the customer is not in business (i.e. they are a private individual, or, in some cases, a charity or a government department) or otherwise liable to be VAT registered. In these exceptions the overseas contractor is required to register for UK VAT and submit periodic VAT returns and account for UK VAT where necessary on the services which they provide. The UK tax authority HM Revenue & Customs ("HMRC") is also likely to challenge the application of the reverse charge if the contractor has a physical establishment (e.g. a branch office) here. In circumstances where a UK VAT registration is necessary, it is not a legal requirement to have a VAT representative.

SUMMARY

As has been discussed in the brief overview above, the VAT rules applicable to property transactions in the UK are complex and can have varied consequences, in that

- Transactions entered into may be VAT exempt, zero-rated or subject to the standard rate or lower rate of UK VAT;
- It is possible to change the taxable status of the transaction (i.e. it is possible to opt to tax, and for an option to tax to be rendered ineffective);
- The VAT outcomes can vary depending on the status of the receiving party;
- It is sometimes possible for overseas entities to avoid UK VAT registration by application of the reverse charge; and
- HMRC may dispute reverse charging should they regard a supplier of land-related services to have a physical establishment in the UK.

Accordingly, it is recommended that specialist advice is obtained at the earliest possible stage in order to avoid any pitfalls.

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U.S.–Colombia Trade Promotion Agreement and Public Accountants

COLOMBIA

Commercial agreements bring within significant changes to the economies; the new U.S.–Colombia "Trade Promotion Agreement" is not an exception, and providers of legal, accounting, and financial services will have to be on top of new affairs. Colombia has a strong presence of well known international legal and accounting firms, still, medium and small local accounting practitioners and lawyers should absorb the newly created demand. The new customers will encourage those firms to improve and adjust their technical knowledge to the new challenges. One of these challenges is the language barrier to overcome in order to offer their services to American companies willing to settle in Colombia. Also, in the case of accounting firms, they will have to pay close attention to U.S. GAAP and regulations mandatory to US Corporations and individuals (e.g. International Financial Reporting Standards (IFRSs)).

The scope of the agreement will eliminate duties, tariffs and other barriers between both countries; 98% of Colombian exports and 80% of U.S. exports will gradually become duty free. It is also expected an economic growth in both countries, increasing job opportunities and development for it is said that these economies are complementary and not competitive between them.

The benefits for Colombia are very clear, now that the U.S.A is the biggest buyer of Colombian goods around the world. The elimination of tariffs will increase Colombian exports significantly and encourage material economic changes on infrastructure, one of the biggest concerns of the Colombian government prior signature. Regarding professional services, the U.S.A has a high competitive trade around the world and Colombia will need to match those standards through technical knowledge and good practices.

For the USA, the agreement will support more American jobs, increase of exports, and enhance competitiveness. Also the Agreement is crucial to maintain the U.S. share of the Colombian market because some of its products are in disadvantage in light of the recent agreements signed by Colombia with Mercosur (Brazil, Argentina, Paraguay, and Uruguay) in 2009; with Canada in August 2011; the European Union in May 2010 and South Korea being negotiated.

Both countries will also respect the right to introduce new regulations to protect their own interests in particular situations when financial stability or the environment may be affected, or to comply with other key domestic laws.

The agreement also includes a commitment from Colombia to grant access to professional services in the same level as USA does around the world. It covers all modes of service supply depending where and how the service is rendered, and it applies to new services that may develop as markets evolve.

It is clear that this agreement generates significant industrial and infrastructure changes especially in the Colombian market. This type of changes allow countries to grow and evolve giving a Colombia prosper future to the next generations. The agreement is also a mechanism to put pressure on the authorities and businesses to adapt and comply with higher quality standards. For accountants, this means to catch up with remaining tasks such as adapting to the U.S. GAAP and eventually to the International Financial Reporting Standards, a practice that countries like Peru have been doing in the past few years.

The lack of competitiveness in professional services cannot be waived or any longer delayed. Also, the universities will have to do their homework and prepare new accountants to fulfill the challenges the new FTA´s bring.

It is expected that the number of companies that will seek to settle in Colombia will grow in the next years and it is very important that accounting firms supply top quality reports. They also have to pay close attention to due diligence and be very careful in the audit arena. This is the chance for Colombian accounting firms to raise the bar and render higher quality service not only in but also outside the country.

The process of integration takes time, and industries need to take as many actions as possible to adapt and offer the goods and services of quality to other countries. There are great possibilities of working with many new customers, and the demand for professional services will grow.This Trade Promotion Agreement has to be seen with eyes of opportunity and challenge, and if Colombian accounting firms manage to adapt and develop, they will have a prosper future ahead of them.

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Cloud trading taxation - can it be done?

ISRAEL

Basic definitions for the article from "Wikipedia - The Free Encyclopedia":
- Cloud computing: *http://en.wikipedia.org/wiki/Cloud_computing*
- Electronic commerce: *http://en.wikipedia.org/wiki/Electronic_commerce*
- Electronic money: *http://en.wikipedia.org/wiki/Electronic_money*
- Online shopping: *http://en.wikipedia.org/wiki/E-tailer*

OUR FIRST "VIRTUAL" CLIENT

I want to tell you about our first genuine virtual client, a new and interesting client who is currently receiving services from our firm.

The customer, Mr. "John Doe" first contacted us via a mail notice requesting business and taxation advice, and since he is not in Israel, he requested setting up a consultation meeting via the Skype network. We sent an hourly rate proposal to Mr. John Doe, and he transferred to our bank account an advance payment for 5 hours of consultation.

In the course of the virtual meeting, John Doe gave details of his business activity: John has developed a website providing medical advice services provided by specialists in a number of ways. John Doe created a unique database, which provides automatic answers to questions according to a patient questionnaire. An additional option is obtaining the advice of a medical specialist via mail correspondence or via a Skype conversation.

John is the owner and manager of the site, carrying out all of the activities via his computer, the programmers and content staff assisting in the management and maintenance of the site being professionals located in a number of different countries, the specialist doctors being located and working via computer in their city of residence, and the customers being located anywhere in the world. The site is due to be translated into a number of languages (from English into German, Spanish, French and Italian) during the coming year.

The receipts from the patients and the payments to the operating staff are executed by means of digital media such as PayPal, MasterCard.web and others.

TAXATION ISSUES ARISING FROM THE CONVERSATION

Mt John Doe is not an Israel resident pursuant to the tax laws in Israel, and in recent years he has been travelling the world, usually moving from country to country every few months (in the past year, he was in Australia, Hong Kong, England and Germany at different periods). In his words, his center of life is located on his laptop!

Even if we ignore John Doe's unique situation, the answers present us with three challenges:

- Determining the source of income: Is it from a "business" or "occupation" and the tax effect of such a determination in each country.
- Determination of the location of production or derivation of revenue and the execution of the business activity, since the provision of service and the maintenance is spread over an unknown and unclear number of countries.
  Sometimes, John Doe does not know the place of residence or work of the person he is paying for medical services, or programming or content services for the site.
  In addition, in most cases, as a result of client confidentiality, they are not required to provide true details of their identity, residential address or their country of residence.
- Determination of place of storage of the site, the site being stored on two servers in different countries in accordance with the business needs of the site. Mr Doe has the ability to transfer the site within one hour to any server in any country he wishes, whilst continuing to provide the service without any interruption or disturbance, or alternately to split the site over a number of servers according to the site's business needs or in accordance with one kind or another of successful tax planning.

Whilst Mr. John Doe's case is an extreme one, we often come across situations which are no less complex.

For example: freelance journalists, research scientists, business people and internet entrepreneurs, for whom their place of work determines their place of domicile or alternately their place of work is in the cyberspace, and thus their domicile can be anywhere in the world.

E-commerce enables execution of international transactions where the seller is located in one country, the buyer in another country, with the transaction itself being carried out in a third country. The question that arises is which country has the right to tax the profits deriving from these international transactions. The country of residence of the assessee can claim right of taxation by virtue of the personal connection, whilst on the other hand, the country in which the profits were allegedly created, can claim a connection with the profits and the right to tax them.

A fundamental principle in tax law is that a country seeking to tax a particular income needs to have some kind of connection with that income. In the case of international transactions, a situation of double taxation could arise, if more than one country realizes its right to impose tax on the same income, by virtue of the connection with that income. By way of contrast, for transactions carried out via the internet, a situation could certainly arise where countries will have difficulty in claiming a connection with profits created in cyberspace.

The OECD has published guidelines for taxing websites, whereby, inter alia, a company which has a website on a server in a particular country will not be assessed in that country solely as a result of this fact. This approach is subject to subjective interpretations, and the organization expects that each country will enact laws defining when it will be possible to tax a website located on a server in its territory.

Also in cases where a website is defined as a "permanent institution" and it is possible to attribute it to a particular server, a question will arise as to what percentage of the income of a company operating in international markets is to be attributed to the website.

Electronic trading poses a challenge for the international taxation systems. As you can see, technological changes enable businesses to operate with freedom of movement from country to country. A company can relatively easily divert income from one country to another, and direct income to tax shelters, by locating their internet servers within their borders. This situation applies not only to the direct taxation system but also to the VAT authorities that need to defend the tax basis within their countries against importation from countries which do not charge VAT.

We recommend adapting the solution to each situation in a personal manner, in two stages:

- In the first stage, to examine and understand in depth the "life plan" of the business or the business owner, and then consider the effects of the "business plan".
- In the second stage, to start examining the tax implications:
  - Residency and center of life
  - Determination of the source of income (business, occupation, work, annuity, interest, usage fees, dividend etc.)
  - Determination of the place of production or derivation of the income
  - VAT issues and effects
  - Source tax deduction issues in each country
  - The effect of tax treaties
  - The effect of corporate structure

In conclusion, the situation described by Mr. John Doe enables us, as providers of service in the area of business and tax consultation, very extensive and creative room for maneuver and legitimate tax planning.

At the same time, we have a professional duty to look into a very wide range of professional issues in the areas of tax, accounting, finance and business planning, whilst strictly adhering to the legal framework in each of the countries in which the activity is being carried out.

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Taxation of foreign artists in Germany

GERMANY

According to the German income tax law foreign artists are subject of taxation for services rendered in Germany. This means that all artists who are resident abroad and who perform their work in Germany, regardless their source of payment, are subject of income (withholding) tax. In this respect, it is important to know that the income consists of not only direct fees from performances but also includes income from licenses, advertising objectives, interviews, autograph sessions, etc.

The following overview accounts for all foreign artists who are resident of the European Union (EU) or European Economic Area (EEA).

By the calculation of the assessment base the artists' income could be divided in two categories gross
and net income.

- The gross income is the income after the deduction of travel allowances (fly-, travel, accommodation expenses) which according to the income tax law are limited up to a certain amount. The gross income is subject of 15 percent withholding tax and 5.5 percent solidarity tax. In other words, the end tax adds up to 15.825 percent of the gross income (gross income taxation).

- The net income is the artists' income after the deduction of travel allowances and income-related expenses (sound-, lights, employee-, stage-, telephone-, advisory, expense, etc.). This income is subject to 30 percent withholding tax and 5.5 percent solidarity tax. This means that the end tax adds up to 31.65 percent of the net income (net income taxation). An important remark in this respect is that if the artist is a corporation or an association the withholding tax is set to 15 percent (excluding the solidarity tax) and travel allowances and income-related expenses are still deductable.

Note: As long as the VAT is included in the invoices of the income-related expenses it should be taken into account by the calculations of the assessment base.

Foreign artists could choose between the above stated types of taxation. However, it is important to calculate the expenses amount before choosing the type of taxation in order to optimize the tax payments. In particular, when the income-related expenses exceed more than 50 percent of the gross income then choosing a tax rate of 31.65 percent is preferable than choosing a tax rate of 15.825 percent. Furthermore, in case that the foreign artist does not have any German partner and organizes and puts on stage the shows alone then he/she is liable him/herself for paying the tax to the fiscal authorities.

An important issue is also the managing of a foreign artist by a foreign artist agency, which has also limited tax liability in Germany. In this case the tax payment should be made solely by:

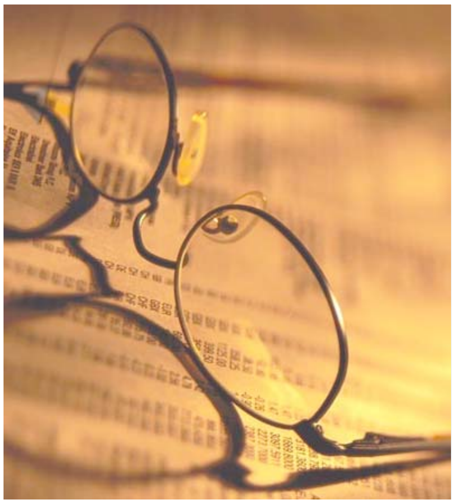
a) the German partner in case of a contract between the foreign agency and a German counter partner.

b) the foreign agency in case of no German counter partner.

Example: A foreign artist is managed by a foreign artist agency that has a contract with a German counter partner in Germany. The fees from the performances are collected by the German partner and paid to the foreign agency (first level). The foreign agency pays the fees to the artist (second level). In this example the tax should be paid only by the German partner (first level). Nevertheless, there are three main exemptions of this rule in which the withholding tax is paid by theforeign agency as well:

i. when the foreign artist agency intends to deduct income-related expenses

ii. when the foreign artist applies for unlimited income tax liability in Germany



iii. when the foreign agency applies for tax exemption

The German tax authorities also provide mitigation rules. For instance, if a single presentation/performance generates less than 250 EUR or is planned as a charity happening or the artist does not have any intention of making profits then the income is considered free of tax. Furthermore, in case of more than one person (performer) the tax payment is calculated individually and per show. That means that if each member receives less than 250 EUR per show then the total income is tax free. The above holds as long as each performer/member confirms by signature that he/she receives an equal portion of the fee.

Finally, it should be stated that based on the double treaty agreements between Germany and others countries, artists could be subject of tax exemption. However, tax exemptions are granted only after the tax has been paid.

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Overview of Incentive Programs in Germany

GERMANY

INCENTIVE PROGRAMS FOR GERMAN SMALL AND MEDIUM-SIZED ENTERPRISES

Investing outside Germany opens in general high-quality alternatives for German small and medium-sized enterprises. Nevertheless, since the international markets are often related to undiversified risk (risk of acceptance, exchange rate, conversion, transfer, bankruptcy, non-payment and political risk), those chances are not completely utilized by the companies. Therefore, Germany, its federal states and even EU offer a wide range of incentive programs and operating guidelines for small and medium-sized enterprises.

The public incentive programs in Germany are summarized in two main categories:

- Export related measures, which should support German export
- Investment related measures, which should support German investments abroad

Within those two categories it could be distinguished between financing programs and measures to hedge against economical and political risks.

The financing programs are usually linked to participation on international trade fairs alone or together with other firms, feasibility studies or company presentations abroad. Additionally, German companies could also take part in incentive programs for financing cross-border investments by entering in research projects with other small and medium-sized enterprises with the intention to strengthen their international competitive positions. In other words, the financing programs of the German government are aimed at the expansion of German small and medium-sized enterprises to the foreign markets.

Regarding the economical and political risks the incentive programs are designed to protect the German small and mid-sized firms abroad. In this context German companies could rely on German public loans regarding the financing of cross-border investments, for example mid and long-term investment or working capital could be financed up to the amount of 10 million EUR by KfW Bank (German government-owned development bank). In addition, German firms can also insure their export businesses in developing countries against political and economical risks by using export financing programs offered by a number of German banks. Export Credit Agency (ECA) backed financing, risk covering services or supplier credits are only some of the offered services in this area.

OTHER RELATED INCENTIVE PROGRAMS (GERMAN SMALL AND MEDIUM-SIZED ENTERPRISES)

Since the range of the incentive programs is vast and often not well enlightened many firms need also advisory assistance in order to apply or manage all requirements. In this context, it is worth knowing that the advisory expenses (tax consultancy, financial advisory, management consultancy) are (partly) deductable through incentive programs.

Besides, the government incentive programs for Germany's small and medium-sized enterprises should also make use of the incentive programs of the federal states. Usually, the range of the incentive programs of the German federal states overlaps with that of the country. However, in case of federal state incentive programs the small and medium-sized enterprises could take advantage of pledging or guarantees on the part of the federal state. For example, the federal state Hesse in Germany offers an incentive program for small and medium-sized enterprises that covers pledging (to all other countries, local authorities everywhere abroad) or guarantees (to foreign business partners) with financing part of 95 percent (5 percent own risk) by political risks and financing of 85 percent (15 percent own risk) by economical risks.

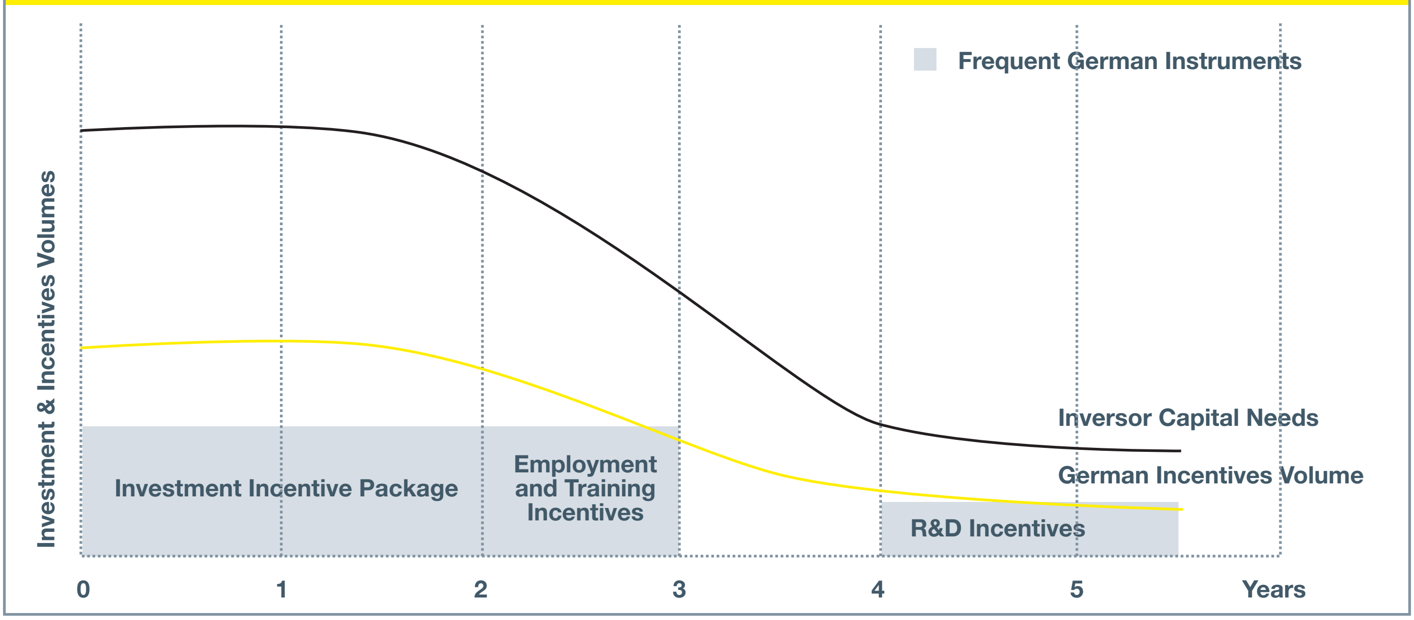
Finally, incentive programs of the EU should also be taken into account as they can finance large international projects, for instance, in environmental projects, advisory services, the energy industry etc.

INCENTIVE PROGRAMS FOR FOREIGN INVESTORS

Germany supports foreign investment projects with numerous incentives for foreign investors such as cash incentives, employment and training incentives, and R&D incentives. Furthermore, the EU also provides individual funding for different regions in order to reduce inequalities. In other words, Germany not only supports its small and medium-sized enterprises but also welcomes every foreign investment project.

Providing cash incentives at the beginning of an investment project when capital expenditures are high compared to later investment phases is sometimes crucial for investors. Therefore, incentive programs in Germany are designed to assist and meet the immediate capital needs of foreign investors. Moreover, interest-reduced loans and public guarantees complement the initial investment support so that Germany can assure a smooth start to the foreign companies. Depending on factors such as

CAPITAL NEEDS AND MOST IMPORTANT INCENTIVE IN GERMANY



Source: Germany Trade & Invest GmbH (2010)

investment project location, company size, core activities and investment volume etc, cash incentives could reach up to:

- 50 percent for small enterprises
- 40 percent for medium-sized enterprises
- 30 percent for large enterprises

In addition, referring to the cash incentives foreign companies could rely on labor-related incentive programs for recruitment and training support or wage subsidies. R&D projects are usually in the last part of the incentive programs yet they receive financial assistance from a number of different programs - usually in the form of R&D grants.

What is more, cash incentives, labor-related incentives and incentives for R&D can be combined. Putting it differently, Germany offers its foreign investors continuous support at all investment process stages and beyond - suiting the financial needs of each individual project phase.

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Tax planning oportunities for foreigners moved to Spain due to work-related reasons

SPAIN

One of the tax measures introduced in Spain in the last years in order to attract qualified personnel to work for Spanish Companies is the **regimen of in-patriates or workers moved to Spanish territories.**

The application of this special regimen provides high tax advantages to foreigner taxpayers, and it has been one of the main appeals of the Spanish tax legislation. Several sportsmen, scientists, executives, qualified managers, among others, have been the main beneficiaries.

The regimen consists on the foreigners obtaining the tax residence in Spain, as a consequence of them moving to the Spanish territory, could opt for Non-Resident Income Tax (IRNR), instead of Personal Income Tax (IRPF).

The option for the special tax regimen taxation implies the following tax benefits:

- Taxation only for the incomes obtained in Spain.
- Reduction of the tax rate applied to the working incomes: **fixed tax rate of 24%.** Consequently, they are not liable to marginal rate taxation, general for residents, which can reach 49%.

These privileges granted to non-residents, generally non-residents with high incomes, caused a discriminatory situation against residents, which are subject to a higher taxation. Precisely in order to avoid this situation, from the 1st of January 2010 onwards certain limits to tax benefits were established not allowing its application to those subjects whose salaries were higher than 600.000 euros per year. Nevertheless, opting for the special regimen is still favourable.

With the application of this regimen the main income source obtained by this collective will normally be that coming from their work performance and it will be subject to the fixed rate of 24%, without the possibility of applying the deductions or reductions applicable to residents.

On the other side, the exercise of the IRNR taxation option will subject by means of real obligation to the Inheritance Tax. In this case, the exempted minimum applicable to residents will be applicable.

The exercise of the option allows the moved worker tax as resident and it links him during the tax period in which the change of residence is carried out and also during the next five tax periods.

In order to apply the special regimen, the following requirements must be fulfilled:

a) Not having resided in Spain during the 10 years previous to his new move to the Spanish territory. According with the Spanish legislation, they are considered residents to tax effects in Spain during more than 183 days in the same natural year.
b) The move must be carried out as a consequence of an employment contract. Therefore it could not be applied in case of rendering of professional services.
c) In effect, the works must be performed in Spain, although certain percentage in foreigner countries is allowed.
d) Works must be performed for a company or entity resident in Spain, or for an establishment permanent located in Spain of an entity non-resident in the Spanish territory.
e) The work performances derived from the employment relationship should not be exempt of taxation in the IRNR.
f) The predictable incomes derived from the employment contract in each tax period must not be higher than the amount of 600.000 annual euros (from the 1st of January onwards.)

The option for this special regimen will be exercised by means of completing and submitting Model 149 before the Spanish Authorities. It must be communicated in a maximum term of six months since the worker registration in the Social Security. In this document it must appear the identification of the contracting party and the worker, and the start date of the employment relationship.

Also one certificate of the contracting company recognizing the start of the employment relationship or a letter ordering the move must be attached.

On the worker's part, he is bind to complete and submit Tax declaration by means of Model 150 (the term of submitting and payment will generally be until the 30th of June.)

Definitively, the regimen allows offering the foreigner moved to the Spanish territory for working reasons a customized taxation that, generally speaking, is very favourable.

However, in every particular case should be analyzed the convenience or not of exercising the option, according to the features and income amount, as well as the personal and familiar situation of each worker.

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Tax Incentives for Foreign Pensioners and Annuitants

DOMINICAN REPUBLIC

Purpose of the Act

The purpose of the Act is to provide facilities for foreign retirees for them to come and reside into the country, and since Dominican Republic has natural, cultural and technological and human resources that make it a place suitable for the pensioner's retirees, then taking advantage of investment opportunities

Application Conditions

- First, it is necessary to invoke the Residence Pensioners Law 171-07.
- Becoming a Dominican Resident.
- It is also necessary to have a minimum monthly net income pension (1500 dollars U.S.) and the annuitant should receive an equivalent monthly sum of two thousand dollars (2,000.00 dollars U.S.) or local currency equivalent. This condition gives the resident a preferential benefit.
- To be eligible for this program, minimum age is not required to the applicant, it only must meet the aforementioned requirements.

Benefits of the Act

1. Foreign investors will be allowed to obtain permanent residence in a term of 45 days.
2. It exonerates them from taxes on home furnishing and Personal Property.
3. It partially exonerates them from Partial Motor Vehicle Tax.
4. Additionally, pensioners and annuitants previously authorized will enjoy the following benefits:

a. Taxes exemptions on transfers regarding first property acquired.
b. Exemption of 50% on Taxes on Mortgages.
c. Exemption of 50% on Real Property Tax.
d. Taxes exemptions on dividends and interest payments.
e. Exemption of 50% on Capital Gains Tax.

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Migration of Companies to Cyprus for tax and business reasons

CYPRUS

There are many reasons that may motivate a company to change its place of residency and migrate from one country to another, a trend that is becoming more and more common. A corporate migration could possibly result in the reduction of the company's effective tax rate by taking advantage of available tax treaties in the new place of residency. Other companies may wish to break away from their homelands' burdensome tax system and replace a complex and strict tax regime with a more beneficial one. The prospect of having the right to use a wide treaty network as well as the European Union's directives is tempting, as these treaties and directives offer a variety of exemptions and in addition to the fact that some countries have no controlled foreign companies or thin capitalization rules, the combination is more than attractive.

In order to determine the residency of a company there are two well -established theories, the 'real seat' approach and the incorporation approach. The 'real seat' theory determines the residency of a company according to where the company's head office and principal business headquarters are situated. Conversely, the incorporation theory claims that a company is resident for tax purposes in the country which that company was incorporated and registered. Whether a company should migrate or not is subject to serious scrutinize of the tax regulations of both the home country and the new country of arrival and depends on the facts and circumstances of each case. Prior to a migration taking place, it is crucial to consider the possibility of generating a realization incident for the shareholders resulting in a direct tax loss. Furthermore, the possibility of exit charges must be examined, as well as the potential termination of the company's net operating losses.

HOW TO MIGRATE TO CYPRUS

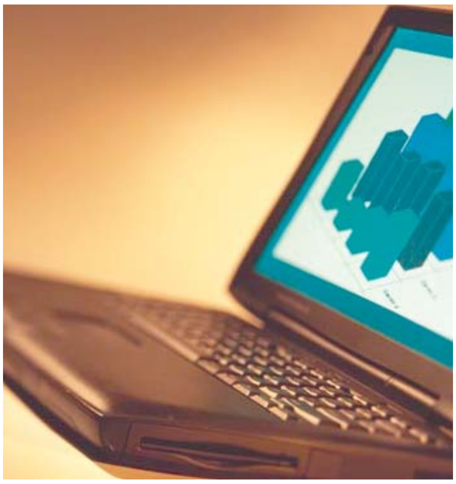
The most straightforward method in order to change a company's place of residency is by winding up the company and re-registering the company in the country of arrival. Nonetheless, this is the most tax inefficient method as it results in the instant taxing of all profits realized and there may also be a triggering event for the shareholders as a deemed distribution of all profits will occur. It is also required that the company constructs new legal documents, such as a memorandum and articles of association which can be costly and time consuming.

Another method of company migration, the simpler and most frequently used method under double tax treaties, is the transfer of the place of effective management of the company. Such a transfer involves the move of the company's management and control from one jurisdiction to another. The place of effective management is usually deemed to be the place where all the important decisions are made, where the directors manage the company and where the general meetings are normally conducted. This type of migration is rather easy to perform and the transfer normally does not trigger a taxable event at the shareholder level. In addition, the company is not obliged to produce new legal documents but there is rather a continuance in the operation of the company. It must be noted however that this method is subject to substance requirements as an anti- tax avoidance technique which have to be met and which are frequently very rigid.

A company could also migrate by transferring its legal domicile, a method not universally acknowledged yet. Transferring the legal domicile entails the move of the legal seat of the company, while in using this method liquidation of the company is not commonly needed. The transfer of legal domicile must be approved by both the country of arrival and the country of departure. This type of transfer does not result in any real estate transfer tax and does not affect the company's loss carryforward as there is no interruption of the company's legal form and establishes a legal continuation. Nevertheless, in the majority of situations, such a transfer will demand that the company registers at the company registrar of the new jurisdiction and that the company corresponds to the new jurisdiction's company laws.

Law 124 (I) of 2006 implemented legislation enabling the transfer of companies in and out of Cyprus. Transferring the legal domicile entails the move of the legal seat of the company, while in using this method liquidation of the company is not commonly needed The company wishing to migrate should de-register from the country of incorporation and acquire a Certificate of Continuation in Cyprus, given that laws of the country of incorporation allow such a transfer. This type of transfer does not result in any real estate transfer tax and does not affect the company's loss carry forward as there is no interruption of the company's legal form and establishes a legal continuation.

A share-for-share exchange is a method that requires that the shareholders of two different companies in two different jurisdictions exchange their shares so that the shareholders of the company situated



in the departure jurisdiction own shares in the new parent company in the arrival jurisdiction, and the new parent company owns the whole of the shares of the company situated in the departure jurisdiction. A benefit of the share-for-share method is that a new legal entity is formed lacking any legal history account, and a step- up in basis applies. Nonetheless, the exchange could possibly trigger a tax event for the shareholders.

A ' Societas Europea' is a new European corporate vehicle. It is a standardized public limited company which can effectively migrate from an EU jurisdiction to another as a result of the freedom of establishment principle as preserved by the EC treaty. The greatest advantage of the SE is the ability to easily transfer an SE to another EU country in the quest of finding a simpler, more beneficial tax regime and a less rigid, more flexible legal system. There is no need of winding up and re-registering as the company's seat can be moved freely inside the EU territory. In addition, the transfer does not trigger a taxable event either for the company, neither for the shareholders.

The EU Directive 2005/56/EC regarding cross-border mergers gives the opportunity to EU companies to form a merger with another EU company while reducing administrative, legislative and fiscal obstacles. These obstacles are mainly removed as a result of the general rule that underlines the directive which is that the national law of the company resulting from the cross-border merger governs. The Directive presents three ways of merger: merger by acquisition, merger by a way of a newly constructed company and merger as a specific case. These three types of merger have in common the important detail that no winding up and formation of a new company is needed. However, since a merger involves the transfer of assets of the disappearing company to the surviving company, this could trigger capital gains tax and in some cases real estate transfer tax. To avoid such a result, the national law of each EU member state, should be carefully examined.

What would your business gain in regards to tax?

Cyprus is considered to be one of the most promising business forums of the European Union and this is mainly because of its astonishingly beneficial tax regime. Cyprus is now regarded as a premium finance and trading jurisdiction.

- Cyprus has a standard corporate tax rate of 10%, the lowest in the European Union.
- No Capital Gains Tax with the exception of real estate located in Cyprus.
- Tax losses can be carried forward indefinitely and can also be surrendered as group relief. Mergers, takeovers and other re-organizations can take place within groups with no tax consequences.
- Added commercial value and monetary benefits due to the ability to register for EU VAT in Cyprus.
- Unilateral tax-relief for foreign tax suffered is given to all Cypriot companies.
- Interest deduction is provided for borrowing costs.
- A wide Double Tax Treaty Network as well as the EU Directives for advantageous tax planning.
- No withholding taxes, in most cases.
- No thin capitalization rules, in most cases.
- Absence of strict Controlled Foreign Company Legislation.
- Limited anti-avoidance provisions.
- Friendly Tax Authorities.
- Foreign dividends are tax exempt.

Do I also need to move my residency in Cyprus?

Moving an individual's residency in Cyprus is not necessary. If someone successfully manages to move his company to Cyprus, his company will be able to take advantage of all the beneficial tax regulations irrespective of where he is resident. As it was established in the case of Salomon v Salomon, a company has a separate legal personality from its shareholders and as a result a company resident in Cyprus can benefit from the Cypriot advantageous tax law, no matter where its shareholders are resident.

What would be your personal gain in regards to my annual salary?

Besides the low corporate tax rate, personal annual salary tax rates are considerably low depending on your income with the highest tax rate being 35% for income above €60, 000. Moreover, apart from the low individual taxation there are also many exemptions available. The key exemptions on income tax include:

- Interest (the whole amount)
- Dividends (the whole amount)
- Remuneration from any office or employment exercised in Cyprus by an individual who was not a resident of Cyprus before the commencement of his employment, for a period of 3 years commencing from 1st January following the year of commencement of the employment (tax exemption for 20% of their remuneration, or EUR8,000 (at the time of writing) whichever is the lower).
- Profits from the sale of securities (the whole amount.)
- Capital sums accruing to individuals from any payments to approved funds (the whole amount)

Another issue to consider is the income tax deductions provided. There are a number of tax deductions on income including:

- Contributions to Trade Unions or professional bodies. (The whole amount)
- 20% deductions on Gross Rental Income
- Donations to approved charities but subject to conditions).
- Social Insurance, provided fund, medical fund, pension fund contributions and life insurance premiums. (Up to 1/6 of the chargeable income)

What is more, in the pursue of promoting the transfer of company seats to Cyprus, 50% of the income of employees moving to Cyprus with income exceeding €100,000 , will be exempt from tax for the first five years following the transfer.

Would your company in your current country of residence need to remain active?

Once the company moves its seat to Cyprus, the company will no longer be considered a foreign company. The company will be considered as resident in Cyprus and although your company is not liquated, the company is deemed as liquated and re-registered in Cyprus. Therefore, your company will no longer be active once it establishes residency in Cyprus. The company will be subject to tax in the country of residence, in this case Cyprus, and it will be allowed to take advantage of all the tax benefits of its country of residency.

How easy is to work with the Cyprus tax Authorities?

Another aspect of being resident in Cyprus which should be taken into consideration is the investor- friendly tax authorities which have established themselves as always being keen in helping and serving foreign investors. The tax authorities provide for an uncomplicated and clear system as well as immediate and straightforward information on all the necessary topics. Government tax services are not only amongst the most investors' friendly but also amongst the most efficient and professional tax services.

What is your annual accounting and auditing cost going to be?

All companies resident in Cyprus are obliged by law to have an annual audit and they are also required to prepare a statutory audit of financial statements and submit it to the tax authorities. What is more, they have to prepare, submit, and maintain VAT records and returns. Auditing and accounting fees vary according to how many transactions the company has conducted each month or year. The auditing and accounting fees extent approximately from €1,200 to €3,000 per year for a fairly small company with a low level of activity. In Cyprus there are a number of exceptional auditing and accounting firms providing expert and specialized services.

Can all professions be exercised in Cyprus? In case of a special profession do you need a special clearance from the legal authorities?

The freedom of establishment and the freedom of free movement are two of the fundamental principles of the European Union. For this purpose Directives have been implemented, the Sectorals Directives and the three Directives of the General System, which cover all regulated professions. Under these Directives, the competent authority needs to examine whether a foreign professional corresponds to the Cypriot requirements and on the grounds of inadequate qualifications may refuse a national of a member state to pursue a specific profession. What is more, in relation to the recognition of academic qualifications the competent authority (KY.S.A.T.S.) may grant recognition of equivalence once it is satisfied that the academic title is awarded by an accredited education establishment recognized in the country it operates.

Are there any supporting EU programs for new businesses that I could benefit from?

The European Union in cooperation with the Government of Cyprus, provide finance for a number of projects for a number of different sectors.

- Business and Industry: provision of grants to SMEs in certain sectors.
- Competition, Health, Fisheries, and Marine Affairs: provision of state aid for the implementation of HACCP for food and drinks.
- Education: provision of training to companies with 1-4 employees.
- Employment and Social Affairs: subsidization of companies for the creation of new working positions with more flexible working times.
- Environment: technical support for farmers.
- Regional policy: Agricultural areas development.
- Rural Development: subsidization for goats and sheep, training of farmers.

Are there any supporting EU programs for employing personnel?

The EU supports the advance of education by providing grants to companies employing trainees and young people. In general, the EU is aiming at overcoming the economic crisis by offering its Member States a variety of programs which focus on enterprises and their growth. There are programs relating to Science and Technology, Regions and local development, Business, Energy and Natural Resources as well as Agriculture, Fisheries and Food. The EU is determined more than ever to help businesses across the European Union.

Migration of companies, by tradition a drastic measure, is increasingly becoming a rather attractive option. Companies, in the era of the economic crisis, are more prepared to try new structures through migration if this going to result in residency in an advantageous tax regime. Nonetheless, even if migration is now a reachable alternative, all the tax implications of such a course of action should be cautiously analysed for both short -term as well as long-term consequences.

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Capital gains in the Western Balkans

SERBIA

All countries of the Western Balkans tend to harmonise their tax legislations with the legislations of the EU and implement necessary measures aiming to attract foreign investors to the local financial market by creating preferential tax regimes. Capital gains legislations are no exception to this.

Tax legislations of the Western Balkans countries generally treat capital gains in a similar way.

ALBANIA

Albania classifies capital gains from the sale of immovable property as part of the taxable income of the entity and levies the tax at the rate of 10%. The capital gains from the sale of immovable property by individuals are also subject to 10% personal income tax while it is 0.5% of the sale price in case agricultural lands are sold. Capital gains are taxed in Albania when a foreign entity or a foreign individual transfers the direct ownership of a real estate situated in Albania to third parties. The right to tax capital gains is given to the state of residence of the seller.

BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina (B&H), regulated separately by its entities B&H Federation and Republika Srpska (RS), capital gains from the sale of financial instruments includes: sale of securities such as company's bonds, options, futures, and shares. Capital gains from the sale or exchange or other transfer of the capital and investments assets are treated as profit included in the ordinary taxable income, taxed at a rate of 10%. According to the Corporate Income Tax Law (CIT) of B&H Federation, the tax base includes income from all sources in cash or in kind. This effectively means that capital gains from the financial instruments that increase the balance sheet will be accumulated within the total taxable base. More precisely, the capital gains in Federation are not taxable separately.

Personal Income Tax Law (PIT) in RS provides that capital gains originating from the immovable assets and the sale of property rights, authorship, license and franchise rights are taxed at 8%.

Non-resident legal entities engaged in activities through a permanent establishment in B&H are taxed only for incomes, including the capital gains, which are attributable to that permanent establishment. Foreign investors can export, tax-free, their profit derived from the sale of shares in resident companies.

BULGARIA

Under the Bulgarian Individual Income Tax Law, capital gains realised as a result of the disposal of financial instruments carried out on regulated stock markets in Bulgaria, in an EU member state or a state that is party to the EEA, are excluded from the taxable income. Capital gains on financial assets which are unrealised are taxable only in the case of financial institutions.

According to Bulgarian Corporate Tax Law, no withholding tax shall be due on the income from disposal of financial instruments of foreign investors. This means that the tax exemption will be applicable when shares of public companies and traded rights to shares of public companies are on sale on a regulated Bulgarian stock exchange.

However, the transactions executed on a non-regulated stock exchange are not considered tax-free. Therefore, the income or profit from transactions with shares of private companies, which have not been executed on a regulated stock exchange in Bulgaria, will be taxed with corporate income tax or a tax over the income of individuals, unless the provisions of a double taxation treaty apply.

Capital gains received from the transfer of a property located in Bulgaria, or rental income, is levied pursuant to the Bulgarian laws, i.e. with 10% corporate tax on the capital gains and rentals. Apart from corporate tax, no other direct taxes are levied on the transfer of real property. Capital gains generated from the disposal of real estate treated and recorded as a fixed asset or investment property, are equivalent to the difference between the selling price and the acquisition cost of the real estate. The transferee shall be obliged to pay a corporate tax on the received gain, i.e. a 10% flat rate will apply.

FYR MACEDONIA

The tax legislation of FYR Macedonia treats capital gains as income included in the taxable base and are subject to a flat income tax rate of 10% which is levied on 70% of the capital gains amount.

There is no capital gains tax for gains realised by non-resident entities in cases when they were not derived through a PE. Capital gains arising from property that has been owned for three or more years are tax exempt.

The capital gains from financial instruments are considered to be the positive incomes realised from the sale of: company shares, bonds, stocks and shares in investment funds, derivative financial instruments, foreign securities and other financial instruments that the Commission of Securities considers as financial instruments.

An individual who has traded with the instruments and performed the sale has tax obligations. A tax return submission is required both in cases of capital gains and capital losses within 15 days of the day that the gain or loss was incurred. Loss amounts can be offset against other capital gains in the same tax year or in the next three years.

KOSOVO

Kosovan tax legislation defines capital gains as incomes that are realised from the sale or other disposition of capital assets including securities and real-estate.

In Kosovo, capital gains are taxed as business income at 10%. The gross income of capital gains does not include the gains from the sale of the Kosovo Pension Savings, Trust or other pension fund.

Determined as a capital gain, is the positive difference between the sales price of the capital asset and the cost of the capital asset. In line with this, the cost of the capital asset is the amount that the taxpayer paid for the acquisition of the asset, including expenses incurred in acquiring the asset that have not been previously expensed, increased by the cost of improvements and reduced by the depreciation and other expenditures allowable under the Corporate Income Tax Law of Kosovo (LAW Nr.03/L-162).

SERBIA AND MONTENEGRO

As per Montenegro's tax legislation, capital gains comprises incomes from the sale or other transfer of assets such as land, buildings, property rights, equity in the capital or securities against consideration.

Montenegrin tax legislation stipulates that legal entities are obligated to pay withholding tax at a rate of 9% on capital gains paid to the non-resident legal entities. Permanent establishment of non-resident legal entities in Montenegro are to withhold 9% tax on the gross amount of the income paid as capital gains. If capital gains are considered as income attributable to that PE, there is no withholding tax due.

Other provisions regarding capital gains taxation in Montenegro are actually the same as those of Serbia (except capital gains tax rate is 10%).The capital gains for non-residents are taxed at 20% in Serbia based on tax assessment.

Thus, capital gain represents the positive difference between sale and purchase price.

For the purpose of determining the capital gains, the sales price is contracted price or market price determined by the tax authority if the agreed price is lower than the market value.

For contribution-in-kind in the capital of the company, in the form of ownership of real estate or other property rights against shares in the capital of the recipient company, if there is positive difference between the value of the contribution-in-kind and the that of the shares received in exchange, the contributor will be liable to pay tax on the capital gain.

Capital gains from the sale or other transfer against consideration of any equity or securities, an acquisition price will be considered as follows:

- The documented purchase price - for securities listed on a stock exchange;
- The documented purchase price - for securities that are not listed. If not, the nominal value will apply.

Tax liability is delayed on the basis of the capital derived from merger, acquisition or company divisions. The tax liability, regarding the capital gains, will arise when a newly-formed legal entity decides to dispose of its assets acquired in the process of corporate restructuring. Any excess can be rolled over to the next five years on account of future capital gains.

According to Serbian tax regulations, capital gains are considered as incomes gained from the sale or other transfer for consideration, including the sales from: real-estate rights, permanent right of use and building on city construction land, rights of industrial property, the share of the corporate assets and shares and other securities (except bonds from the loans for economic development and foreign currency citizens' savings), equipment, and fixed assets.

IN LINE WITH THE OECD

Most of the recent double tax treaties (DTTs) that the Western Balkans countries (WBC) have signed are generally based on the OECD Model Convention.

The OECD Model Convention provisions regarding capital gains are as follows:

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (income from immovable property) and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

Deviations from the OECD model can be noted in treaties signed with the Former Yugoslav Republic and former Serbia & Montenegro.

Again, most of these treaties WBCs have recently signed apply a credit method to avoid double taxation. Accordingly, where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State, the first mentioned State shall allow:

a) As a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;
b) As a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

For the DTT's provisions to be applicable on income and capital gains, the non-resident legal person has to prove that he is the beneficial owner of such income and a resident of the country with which the WBC have concluded DTTs.

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