INTERNATIONAL BUSINESS

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Auren International Business is a quarterly publication, made up of contributions from colleagues all around the world. The newsletter compiles country focus articles, international tax cases as well as technical updates on a variety of topics that impact business.

Experts in Auren have the knowledge and experience to help you on your journey, and this issue should be the starting point for your inquiries.

Features of this edition include, among other topics: United States antidumping and countervailing duty cases and how EU companies can fight back; Malta´s full imputation system; German tax office cracks down on EU wide VAT irregularities.

We hope you find the contents of this newsletter useful and informative. Happy reading!

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Argentina begins to open its doors to the world

During the last 12 years, the government's policies were aimed at closing its international trade. In those times there were times of high uncertainty to make medium / long-term decisions. At present the new government began to establish its policies to implement commercial rules of game with greater openness to international trade.

The current government is proposing to implement a new international image that opens doors to potential investors, in contrast to the previous government. Its international agenda began the year with the visit to Spain with the aim of opening up prospects for trade and bringing Iberian investors to bet in Argentina, in addition to their planned future trips to the Netherlands. Also in Latin America began its visit to Brazil to strengthen Mercosur as a platform to reach a Free Trade Agreement.

Argentina begins to be more predictable, to have a political agreement in the model of country that is wanted to have. Foreign capital is currently closely monitoring the opportunities to invest in the country as it gains greater legal certainty and less social conflict.

On the one hand, since the new government assumed the GDP growth indicators are positive while the sectors most benefited are the agricultural, energy and financial sectors, and on the other hand, poverty indicators still do not find their way to Despite the political promise of "zero poverty" so longed for.
The attraction in Argentina is the low cost of investment compared to the countries of the Region. If the government strategy continues to attract international capital, Argentina will begin to be an attractive country to invest, achieving greater competitiveness at the global level.

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Technology Transfer Agreements in Brazil, a legal tool to keep in mind

Despite the late recession, and the "political roller-coaster" seen in the international news, Brazilian economy continues to expand and remains as a strategic market and investment destination for the International Investors operating in Latin America. Nevertheless, the country is "not for beginners" and is a complex market for investor and entrepreneurs.

A foreign company interested in setting its trade or production operation in the Brazilian market needs to be aware not only of the official procedures, rules, taxes involved in its operation, but also of the Brazilian business mindset. A main issue, for example, has been ways to overcome obstacles in the complex Brazilian tax system in intercompany transactions to keep a foreign business as profitable as possible, and achieve sustainable success.

In this context, a good legal tool to be considered is, definitely, Technology Transfer Agreements. Basically, in order to guarantee that a Company's technology will be correctly applied and the products have the same quality standard when sold to the final client, it will transfer its technology, by granting licenses of its patents, trademarks, software, know how, and others Intellectual Property Rights, to the Brazilian Company, in exchange of royalty payments.

Considering the strategic role Technology Transfer Agreements, especially Patent Licensing Agreements, can have in the context, bellow we remark the main rules and key points that an international company should pay attention when setting its operation in Brazil and grant license of patents to its Brazilian company.

1. First of all, the patents being licensed have to be duly protected, being it granted or at least the application filed before the Brazilian Patent and Trademark Office *(Instituto National de Propriedade Intelectual – INPI)*. Accordingly, to Brazilian Industrial Property Law No. 9.279/96 dispositions the patent application or grant number shall be specifically mentioned in the object session together with conditions related to exclusivity or not and the permit to license granting to third parties. Patent License Agreements will be valid only until the patent is in force, in the moment a patent becomes state of art there will be no more reason for an agreement in this matter.

2. Regarding the payment, Patent License Agreements usually establish royalties calculated in the following ways: (i) a fix value per unit sold and (ii) a percentage of the selling net price. Although, patent applications cannot be object of a payed license, when the patent is granted the owner shall file before INPI an alteration session, and from that moment the payment will retroact to the day of the contract filing before the Brazilian PTO.

3. A Patent License Agreement shall be registered before INPI in order to be valid to third parties[1]. The general rule is that royalty expenses will only be considered to the tax calculation when necessary, recurring and normal to the to the business. The amount of royalties can only be deductible until the maximum limit of 5% of the net income from the products using the technology, considering, as well, the maximum limits fixated to the industry[2].

4. Only the Agreements registered before INPI and before the Brazilian Central Bank can send royalties amounts to a foreign country and deduct from the calculus bases of the taxes. Hence, the main taxes applied to royalties sent to a foreign country are: (i) Income Tax *(Imposto de Renda na Fonte – IRF)* which rate is 15%[3]; (ii) Contribution of Intervention in the Economic Domain *(Contribuição de Intervenção no Domínio Econômico – CIDE)*, which rate is 10%[4]; and Financial Transaction Tax *(Imposto sobre Transações Financeiras – IOF)*, which rate is 0,038%[5].

That all said, independently of sectors, planning the best set-up for business in Brazil demands a high knowledge on how tax aspects influence existing and new business' operations and which tools better fit the strategy. Therefore, Brazil is definitively for those long-term-oriented and advanced investors, who, further than patient, are choosing competent professionals to assist, manage and advise projects, right from the very beginning, pushing the high potential for long term sustainable growth.

[1] *Item 62, Law No. 9.279/96.*
[2] *Law No. 4.131/62; Treasury Ministry Act No. 436/58, accordingly to the item 50 of the Law No. 8.383/91*
[3] *Item 710 of Income Tax Regulation RIR/99*
[4] *Item 2, Law No. 10.168/01*
[5] *Item 15-B, Act No. 6306/07*

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Cyprus: A new circular sheds light on Transfer Pricing adjustments

In the new circular issued on 24 November 2016, Cyprus' Tax Authorities clarify that they will also allow downwards or compensating Transfer Pricing (TP) adjustments.

Circular 2016/15 issued by the Ministry of Finance clarifies the application of article 33 of the Income Tax Law. Article 33 - as amended in 2015 (L.187(I)/2015) - provides the definition of the arm's length principle for controlled transactions between associated enterprises. In particular, according to the above-mentioned article, if a taxpayer is resident in Cyprus or if there is a permanent establishment of a non-resident in the Republic then for any deviation from the arm's length price, downward adjustments are also possible. In other words, for intra-group transactions on terms that deviate from similar transactions between independent parties, the tax base may be adjusted in order to reflect an arm's length price.

According to paragraph 5 of the article 33, in case that a taxpayer's tax base is increased because of TP adjustments a notional expense for the other party in the transaction would be acceptable.

The circular clarifies that the implementation of the article 33 (5) may be initiated by the taxpayer. In such a case of a documented TP adjustment, the tax authorities may accept the relevant adjustment and include not only notional revenue but also the corresponding notional expense for enterprises resident in Cyprus or for PEs of non-residents in Cyprus.

On the basis of TP documentation, taxpayers may request or propose relevant adjustment which will better reflect the arms' length principle. As a result, in the event of underestimating of the tax base cause by intra-group transactions, Cypriot enterprises may receive a compensating adjustment for the other party engaged in the said transaction.

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Law for the application of the referendum held on February 19th 2017 about properties of Public Servants in Tax Havens

On February 19th the elections were held in Ecuador. In this election the population also voted for a referendum, in which the people decided if they agree that public servants can be able to have goods or money located in tax havens.

After the elections, the 6th of March the results were officially proclaimed and the decision was that public servant will not be allowed to have money or properties in tax havens. Because of this, the Presidency has send a bill to enforce this popular decision that has to be approved by the Congress.

The bill sent by the President, is called Law for the application of the referendum held on February 19th 2017, this new regulation will apply starting on 2018. Principally, the bill regulates the following aspects:

1. The subjective scope of the bill applies to: 1) Public servants in general,2) Authorities of popular election and 3) Anyone who provide services to the Government.
2. Any public servant/ authority in office or anyone elected that will join the public service in the following year will have to regularize their properties and money and transfer them to any jurisdiction not considered as tax haven by Ecuador.

   The bill states that the transfer will not be valid if the capital or goods are transferred to a company, trust, nonprofit foundation etc., in which the person is associate, partner, shareholder, beneficiary or constituent of the trust. Also, the transfer is not valid if it is made to a relative until the 4th degree of consanguinity or 2nd degree of affinity (Direct family).
3. If any person has goods or capital located in a tax haven will not be allowed to serve in a public office.
4. Anyone who is a public servant or has any relation with the public office, and still has goods or capital in tax haven will be subject of the following sanction:

   a. Removal from office

      i. For the public servants that are controlled by the Congress, this will be in charge of politic judgment or any other sanction that they consider that applies.

      ii. For the State Ministers, the President will order the removal from their office.

      iii. For Mayors and Local Authorities, the local Council will order the termination as public servants.

      iv. For any other kind of public servant the Public authority that appointed them for office will be in charge of the dismissal.

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E-Commerce in Egypt

According to the government, the number of Internet users increased from 1% of the population in 2000 to 17.2% in 2008, or 13 million people.

Nevertheless, a solid e-commerce culture has yet to develop, despite many of Egypt's Internet users being urban youth from high-income households, whose counterparts in other countries are behind the global e-commerce explosion.

Online transactions are few and far between – only 0.44% of Internet users conduct commercial transactions online. This statistic is consistent with the low number of secure Internet servers in Egypt.

The primary reason for the underdevelopment of e-commerce is a lack of electronic payment options. Credit and debit cards are the lifeblood of e-commerce transactions. Yet in Egypt, only 10% of the population has bank accounts. Many Egyptians instead open savings accounts with the country's post office. This phenomenon – combined with the fact that 45% of the population is younger than 18 and so are not yet eligible for bank-issued cards – means only 4% of Egyptians have debit cards and less than 2% have credit cards, according to market research firm RNCOS and consultants at Oliver Wyman.

The Root of the Matter

Going hand in hand with an embryonic infrastructure is lackluster protection for online transactions. But recent developments indicate that the country is on the right track to address that. Egypt's only law that specifically addresses e-commerce was enacted in 2004. Law No. 15/2004 accorded legal standing to verified electronic documents and added to the ITIDA's vast remit the power to approve agencies that can verify these documents.

Social Networking Meets E-Commerce

As the government pursues changes to the legislative and electronic-payment landscapes to bolster e-commerce, some entrepreneurs have found a way to capitalize on the thirst among high-income urban youth for online distractions. Facebook, with 1.82 million Egyptian users, is leading the charge.

While political-interest Facebook "groups" in Egypt have proliferated, the networking site introduced a feature allowing users to create business-focused groups. This empowers users to showcase merchandise and services online, spread the word about their companies through networks of friends and associates, interact directly with consumers, and join forces with other businesses to advertise their goods on Facebook using links and testimonials. The best part is that it's free – there are none of the rents or fees to pay that hosting and maintaining traditional websites usually require. Essentially, Facebook has become a golden opportunity for many entrepreneurs to set up small online "storefronts," contributing to the rise of new businesses in Egypt.

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News for investors: new possibilities for loss deduction in corporations

Acquiring a firm in Germany can be attractive to start business in Germany. One major aspect for acquiring and running companies are taxes. Keeping taxes as low as possible is one major goal for every investor. However, saving taxes in an unkown market can be very difficult for an investor. Auren Germany gladly assists by finding possible "targets" and analyzing strategies to save taxes for investors.

The German Körperschaftssteuergesetz (German Corporation Tax Act, KStG) deals with the taxation of corporations, in particular enterprises incorporated in the form of a legal person. For an investor the newly introduced Par 8d KStG as a further exception to the rules laid down in Par. 8c KStG is interesting. Yet, to understand the opportunity the whole picture of the rules must be taken into view.

Principle of loss deduction

One fundamental principle of German Corporation tax law is the so called Verlustabzug (loss deduction). Loss deduction means that losses can be used to lower the respective wins in one assessment period. The result is a lower tax dept as the losses are subtracted from the win that is used to determine the tax in the respective assessment period.

There is the possibility that the losses cannot be used completely or are not used in one assessment period. This can be the case e. g. if the losses are higher than the wins or if losses are not claimed in one assessment period. In that case the loss deduction can be taken along in the following assessment period. With this method, companies can top up quite some amounts of losses throughout the years.

Forfeiture of loss deduction

However, these loss deductions cannot be kept forever under any circumstances. Accord-ing to Par. 8c KStG this loss deduction can be forfeit if shares or capital of corporations are transferred. Par. 8c KStG contains 2 boundaries for the amount of shares or capital transferred: 25 % and 50 %. The rules apply only if the respective amount of shares is transferred within a 5 years period.

- If shares worth up to 25 % of the signed capital are transferred, the loss deduction remains in full amount untouched.

Example:
20 % of the signed capital is transferred, non of the loss deduction is forfeit.

- If shares worth more than 25 % up to 50 % of the signed capital are transferred, the loss deduction is forfeit in the same proportion the signed capital is transferred.

Example:
37 % of the signed capital is transferred, 37 % of the loss deduction is forfeit.

- If shares worth more than 50 % of the signed capital are transferred, the loss deduc-tion is forfeit in full amount.

Example:
60 % of the signed capital is transferred, 100 % of the loss deduction is forfeit.

Exceptions to the forfeiture of loss deduction

So far, Par. 8c KStG contains 3 exceptions to the forfeiture of loss deduction:

- The first exception applies if shares are transferred within a group the single company is part of and the transfer is part of a reorganization within the group.

- The second exception applies if the company has hidden reserves in its business assets. In that case the loss deduction is preserved if shares of the amount of no more than 50 % are transferred and the respective amount of the at that time in Germany taxa-ble hidden reserves is higher than the loss deduction. If more than 50 % of the shares are transferred, the complete amount of hidden reserves must surpass the complete amount of the loss deduction for the loss deduction to be preserved.

- The third exception is stated in Par. 8c Sec. 1a KStG and concerns rehabilitation. If shares are transferred for rehabilitation purposes, the rules for the forfeiture of loss deduction do not apply.

New Exception: Par. 8d KStG

The new introduced Par. 8d KStG now includes a further possibility to keep the loss deduc-tions even if shares or capital more than 25 % and even 50 % is transferred. The new clause was introduced for companies that gain money for themselves by acquiring new or changing shareholders. These companies suffered forfeiture of loss deduction every time they acquired more than 25 % or even lost all of it when more than 50 % were acquired.

According to the new Par. 8d KStG not been used loss deduction shall not forfeit if

a) the company keeps it's business after the change of the shareholder,

Most important point is keeping the business. That means the services or goods the company offer must not change significantly after the capital is transferred. The same applies if the company finished doing business. In these cases the loss deduction for-feits.

b) the business is kept for the next three assessment periods,

c) the losses cannot be used otherwise and

d) the company applies at it's tax office for the 8d KStG.

Summary

For an investor the new rule is very attractive, as it gives yet another possibility to save loss deduction and keep taxation low. However, caution and thorough planning with good consulting is advised.

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German tax office cracks down on EU wide VAT irregularities

So you do business with companies in other EU countries, they give you their VAT number, which you use in your VAT declaration and then forget about it. But have you checked to see if the number is valid? If it isn't, then you are liable for paying the VAT in Germany.

Since the beginning of 2017, finance authorities in Germany have significantly increased unannounced VAT reviews (Umsatzsteuer-Nachschau).
Compared to a VAT audit, which is basically announced and involves the accountant from the very beginning, a VAT review is a process where auditors make a spontaneous and unannounced on-site visit to the company during official opening hours.

The current increase of VAT reviews is a result of a system of checks and reports between Germany's central tax office (Bundeszentralamt) and local tax authorities (in Germany AND abroad). Companies having business partner abroad (EU AND non-EU) that receive refunds of deductible VAT in Germany are the focus of the current VAT reviews. Finance offices in other countries are proceeding in the same way and there is an active exchange of information in between authorities internationally. The reporting system for VAT has been in place for many years, but it has been only this year where the tax offices in Germany have been active in tracking down irregularities.

Our advice if an auditor shows up in your office:

- Please note that the review is limited to checking VAT issues, but you should be very careful with providing the auditor with any information.
- The auditor needs to prove her/his identity, maybe even check with local finance office.
- Please immediately contact your accountant and ask for assistance. Even though some auditors speak English we realized that technical terms and German phrases unsettle clients. Even worse, with the extensive increase of audits more and more auditors are invoking German as the official language.
- A cooperative and welcoming behaviour will make everything go smoother with the auditor. On the other hand, you should not give any unnecessary information to the auditor.
- Please be aware that during a VAT review auditors are not allowed to physically search for documents or witnesses/respondents. Furthermore, auditors are not authorized to enter private rooms/spaces- apart from rare exceptional cases. This is not true if you use your private space for your office (i.e. home office).
- The auditor is not allowed to take any documents with her/him unless given permission by you or your accountant.
- It is possible to reschedule an audit/review appointment-> e.g.. if director, accountant, bookkeeper, business owner/proprietor is out of office or if the business activities/ operational processes are unreasonably interrupted.

To protect yourself, you need to regularly check whether the VAT numbers you've been given are valid. This includes companies you've been working with for a long time. If you can provide the confirmation (saved from the website https://evatr.bff-online.de/eVatR/index_html and either printed off or saved on your computer), then your liability can be limited.

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Greece relaxes certain Capital Control measures

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Recently, the Greek Finance Minister, Euclid Tsakalotos, announced new modifications to the still-imposed Capital Control Regime introduced nearly eighteen months ago.

Herein below we present a summary of the main capital control lifts, as published in the Hellenic Government Gazette B (684/15.03.2015), and applicable as of November 18, 2016:

- It is now possible for companies which keep their accounting records using the double entry system to open a bank account either on demand or a long term deposit account in a credit institution. They can open a new customer account (ID customer), regardless of the fact that an additional bank account might already exist in their name, something which was previously not allowed.
- The monthly limit for transferring money abroad for individuals has remained the same at €1,000 per ID customer.
- Cash withdrawals from ATMs are allowed up to €840 per two weeks. Effectively, if someone didn’t manage to withdraw the permitted amount of EUR 420 in a given week, the withdrawal can be done during the following week as well.

Greece’s Central Bank chief Stournaras has stated that the comprehensive lifting of capital controls is the ultimate goal. Greece’s second bailout program review is still ongoing.

Virtual Currencies, a new hope for local business or the Authorities´tax trap?

Is Israel encouraging the use of virtual currencies and promoting new legislation or is it in fact trying to suppress the new method of commerce?

The State of Israel is trying to make some order in the virtual currency market which has engrossed the country and the entire world. At the beginning of the year, the Israeli Tax Authority published a professional draft document, "Taxation of Activity in Virtual Currencies (such as Bitcoin)," in an effort to begin developing a clear and uniform policy on this emerging sector. The publication of this draft was apparently intended to elicit responses to the definitions and terms set forth in the document from the public, particularly tax experts and market players, and to encourage them to suggest tools for the Tax Authority to address the challenges presented by the increasingly common practice of commerce in Bitcoin and other virtual currencies.

The last two years have seen a significant amount of business activity by companies and individuals being carried out in virtual currencies. Most virtual currencies can be divided into two types: international currencies such as the Bitcoin, the Litecoin and the Ethereum; and local virtual currencies, which are designed to develop local trade within regional or other defined communities.

Among the many virtual currencies appearing nearly daily throughout the world are Ithacash, prevalent in the vicinity of Ithaca, New York, numerous virtual currencies in California and the D-Cent emerging in Europe with the encouragement of the European Union. The most common local currencies in Israel are the Florentin Shekel, used in the Florentin neighborhood of Tel Aviv, the Pishpesh Shekel used in the Jaffa area and the Jerusalem Lira used in central Jerusalem.

After an extended discussion, the Israeli Tax Authority determined, as set forth in their draft document, that the virtual currencies shall not be considered currencies under Israel's tax and banking laws, but shall be treated as assets governed by Israel's accounting and tax laws.

This determination is significant in a number of ways. These include influencing how the currencies are presented in the financial statements of business and companies and seriously affecting their ability to trade and operate easily and quickly in virtual currencies.

An individual or business owner executing a transaction in virtual currency must report the transaction within thirty days of the transaction. Reporting must be made using Form 1399 and must specify the profit or loss stemming from the transaction. If appropriate, a capital gains tax or at least a tax advance shall be paid on the transaction.

This reporting procedure is likely to prove burdensome to those seeking to use virtual currencies to carry out transactions as part of their day-to-day business procedures, and the increased reporting requirements are likely to create higher accounting costs. The result could be a reduction or lack of profitability, thus deterring law-abiding business owners from working

with virtual currencies. Such a reaction could thwart or at least discourage a business evolution which is increasingly gaining momentum around the world.
The Tax Authority's draft document also discusses enterprises engaged in creating ("mining") new cu-rrencies or trading in virtual currencies and addresses how they conduct their activities and report to the tax authorities. However, there appears to be no com-prehensive approach to the issue, possibly because the tax authorities still lack practical experience in dealing with such businesses.

With respect to the Value Added Tax (VAT) law, the draft document refers to virtual currency as an intan-gible asset and considers these assets goods for the purpose of the transaction price, billing date, taxable value and tax rate. If an individual or business uses virtual currency to purchase an asset or service, the transaction will be treated as a barter transaction. There are specific rules applied to determine the price of a barter transaction (see clause 10 of the Israeli VAT Law), and the transaction shall actually be divi-ded into two parts for reporting purposes. The buyer must first report the sale of currency at the currency's market or fair value and then report the purchase of the product or service.

Again, it is apparent that both the income tax and the VAT procedures are likely to create a great deal of inconvenience for business owners or enterprises in-terested in operating and trading in virtual currencies on a regular or day-to-day basis.

We recommend that the tax authorities and legisla-tors consider more flexible solutions in order to en-courage commerce that is both easy and convenient. In addition, it would be beneficial for them to inves-tigate the fundamental differences between interna-tional virtual currencies and local ones, which are de-signed to assist and reinforce local businesses within the surrounding community.

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Donald Trump's tax reform
United States to become a tax haven

The Trump presidency will represent not only radical changes in the business relations between the economic powerhouse that is the United States of America and its primarily economic partners around the world, but apparently will also come with a never-seen before change in Fiscal Policy, not only for American taxpayers but also for many other stakeholders around the world.

Named "A Better Way"[1], the Republican Party driven document is set to deliver a pro-growth agenda and will be the pillar of the upcoming Tax Reform set to arrive to Congress in February. If approved, this Reform will set the new outlook and posture of the United States not only in domestic issues but also in the international scope. This Tax Reform can be seen as a step backwards to everything that has been discussed and approved in relation to the OECD BEPS program.

The main objectives of the reform are as follow:

- Job Creation and better opportunities for all American People (sharp wording shall be North -American people)
- Simplification of the administrative burden derived from the current Tax Code
- Reform the IRS into a service-driven entity (Customer services approach)

In nature, these objectives are not only attractive but should be praised; however, the process to achieve such objectives may give rise to serious doubts.

Without a too in-depth analysis on the origin of each proposed change, we follow to pinpoint those that may have the biggest impact if approved:

- Perhaps the most important change proposed is to modify the country's tax policy based on global income into a territorial tax system. In other words, income obtained from international operations will not be subject to tax impositions in the United States. Income generated from within the United States territory will be subject to taxes. This system today is used by various countries, most of them being in Central or South America and other parts of the World, with the peculiarity of being considered "Tax Havens".
- Corporate Tax Rates are reduced significantly from a 35% to 20%. The document states this to be the largest and boldest reduction in tax rates for corporations in the country's history.
- The document introduces a new write-off allowance. Investments in tangible and intangible assets will be subject to immediate deduction.
- Operating losses will be subject to permanent carry-forwards. This means, operating losses can be amortized for indefinite time.
- Individual Income Tax Rates will also be modified. The current seven brackets will be consolidated into three and will lower the top income tax bracket to 33%. The other two levels will be 0%-12% and 25%.
- The Individual Alternative Minimum Tax is repealed.
- Capital income, interests and dividend tax rates will be reduced.
- Retirement payments, mortgages and education expenses will also undergo significant changes.

This Tax Reform will have global scale repercussions as not only will it impact the United States, but also the rest of the World. Much expected reactions are awaited from the OECD and governments form around the Globe, since the likelihood of this Reform being ratified is strong taking into account that Republicans control the Congress of United States.

[1] *Original Document: "A Better Way. Our Vision for a Confident America" www.better.gop*

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Plausible effects of the new collaboration agreement between IMSS and SAT

In the past few days it has been widely publicized how the heads of both *Instituto Mexicano del Seguro Social* (Mexican Social Security Institute) and *Servicio de Administración Tributaria* (Mexican Internal Revenue Service) signed on February the 20th a Collaboration Agreement in order to enhance the information exchange between them and strengthen joint tax audit actions

The press bulletins regarding the agreement, made known in the official websites of the aforementioned tax authorities, displayed their rhetoric stating the agreement was instituted in views of reinforcing indicators of formal jobs generation, under the quoted premise that a formal worker is granted access to unlimited healthcare.

These official memorandums establish the posture of both authorities clearly: The generation of formal jobs is a direct product of a supposed improvement in revenue collection efficiency and the coarsening of taxation practices, notwithstanding the fact that there is no actual explanation of the causal link between those premises and the conclusion. This situation leads to a question mark among tax advisors, business people and taxpayers in general in regards of the objectives and real operative extents of the aforesaid agreement.

There is, however, an indication of the actions' nature that the authorities may take jointly to strengthen the pre-existing coordination schemes amongst both institutions, as they mention amongst the measures to be fortified the next ones: Exchange of information, which already existed since the signing of a similar collaboration agreement in June the 7th, 1995; exploiting technological systems to share and benefit from the existing information, which the Mexican Internal Revenue Service had already done with the *Instituto Nacional de Acceso a la Información* or *INAI* (Mexican FOIA Institute) by providing annual tax statements so the *INAI* could determine the financial status of offenders; the design of strategies against tax fraud and evasion; and the joint, simultaneous, or successive implementation of audits to verify compliance with tax and social security obligations.

This last subject matter must be observed carefully by tax advisors, since it opens the possibility of simultaneous or successive audits against a taxpayer conducted by different tax authorities, and notwithstanding the fact this situation already happened as isolated events, it may as well become the new rule of thumb. Another issue prompted by this is that the agreement could function as an argument –at least a debatable one at that- that audits conducted in this fashion are not a misuse of powers but a joint coordinated revenue collection practice.

Our firm has already petitioned the public version of the agreement in order to preemptively detect plausible acts of authority, so that our clients and friends may have the reassurance that we will keep them updated of the developments of taxation procedures.

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Determination of materiality in planning and tolerable error in the audit financial statements

Based on the planning performed, the auditor determines the amounts from which he will consider that the Financial Statements (FS) are significantly wrong, this is, they contain errors that by their amount (monetary amount) significantly affect the reasonableness of the presented balances.

The ISA 320 Materiality in planning and performing an audit, in paragraph 9, states *"the performance materiality means the amount or amounts set by the auditor at less than materiality for the financial statements as a whole to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements exceeds materiality for the financial statements as a whole"*.

This shows that the statements, assertions or disclosures of the Administration or Management of the Entity that have been identified as erroneous, as well as the risk of non-detection by the auditor should be adequately evaluated in this first stage of the audit (Planning), in order to fulfill with the requirements of the Auditing Standards: i) Materiality of the FS as a whole; ii) The materiality of classes, elements, item balances, group of transactions and iii) Amounts below the materiality level (tolerable error). In this way, the Auditor, under his "professional judgment", defines the nature, extent, timing and scope of the audit procedures to be conducted in the second stage of the audit (Execution).

The materiality in planning then will be used to guide the scope of the audit procedures conducted.

For its part, paragraph 5 of ISA 320 requires: *"The concept of materiality is applied by the auditor both in planning and performing the audit and in evaluating the effect of identified misstatements on the audit and of uncorrected misstatements, if any, on the financial statements and in forming the opinion in the auditor's report"*. This means that if the effects of the facts or issues observed (uncertainties and/or limitations on scope) in the audit are "material", it may lead to issue a Disclaimer of Opinion (ISA 700).

Determination of planning materiality (PM) and tolerable error (TE)

Company Name	**"ABC"**	**"YNGH"**
Assets	40,000,035	217,064,791
Revenues	21,122,559	195,148,862
Percentage	0.50% (*)	0.25%
Planned Materiality	105,612.80	542,662
Tolerable Error (50% materiality)	52,806.40	271,331

(*) The higher the risk, it will be applied the lower percentage, which could be from 0.25% to 3% of the selected base. For example, the fact that in the prior audit to the Financial Statements has been issued a disclaimer of opinion should be considered a high risk and consequently a lower percentage to determine the Planning Materiality.

It can have other bases of measurement, this will depend on the information gathering, control tests and knowledge of the business, ie, according to particular circumstances to determine the relative importance (materiality).

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Serbia adopts amendments to VAT Law

On December 28th, 2016, the Serbian Parliament adopted the Law on Amendments to the Law on VAT (Official Gazette of RS, No. 108/2016). The Law came into force on January 1st, 2017, and the greatest impact of this law will be felt by companies trading across borders.

The most significant change is the amendment of the criteria for determining the supply of services, as result of further harmonization to EU regulations and the avoidance of double taxation or non-taxation of certain services between resident and non-resident legal entities. Essentially, with the changes, the rules will differ depending on whether the service is provided to VAT payers or to entities which are not VAT payers and this provision will be applied as of April 1st, 2017.

Another very important change is the postponement of the obligation to submit overviews of calculation along with VAT tax return until January 1st, 2018. This has been deemed to be the most optimal solution, considering that the solution offered by the new Rulebook (Official Gazette of RS, No. 80/2016) caused a stormy reaction from the professionals due to the overwhelming reporting requirements.

The Law also amended provisions related to the determination of the tax debtor for turnover carried out by foreign entities, and their obligation to determine the VAT representative and register in the VAT system. The new provisions stipulate that the tax debtor with obligation to calculate VAT for such supply is the recipient of goods and services provided in Serbia by a foreign entity which is not registered for VAT.

If a foreign entity is performing taxable supply of goods and services in Serbia, it must appoint tax representative and register in the VAT system, irrespective of the amount of turnover. This obligation is waived if the turnover is performed exclusively to VAT taxpayers, public administration entities, or entities that provide services of passenger transport by bus. The implementation of the provisions on representatives and registration for VAT for foreigners is now supported with amendment of the Law on Tax Procedure and Tax Administration, which provides for penalties ranging from 100,000 to 2,000,000 RSD for non-compliance.

The definition of permanent establishment, in sense of the Law on VAT, is specified as being any organizational unit of a legal entity which can perform commercial activity, meaning that the foreign entity and its permanent establishment may be treated as two separate tax payers.

There has also been a change regarding the requirements for deducting input tax, in the sense that the recipient does not need to have an invoice to exercise the right to deduct input tax in the following cases: supply of goods and services in the construction industry, supply of electricity and natural gas through networks for further selling, supply of secondary raw materials and related services, and supply of buildings.

Finally, the time of supply of electricity, natural gas, and energy for heating through networks to other entities for further selling is determined to be the date of the reading / measurement for calculation purposes, and the application of a special rate of 10% for firewood is extended to wood briquettes, pellets, and other similar products from biomass.

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Highly positive outlook for midmarket M&A transactions in Spain

The outlook for middle market corporate transactions (mid-size M&A transactions) in Spain has improved substantially in recent years, with an increasing number of transactions taking place compared to the preceding years. Several reasons have contributed to this reality:

If we focus on the country's macroeconomic environment, a substantial number of macroeconomic variables which directly impact companies' performance have improved recently. There has been a substantial GDP growth (+3.2% both in 2015 and 2016), which has benefited from good performance of incoming tourism -mostly due to foreign tourists- and the improvement of internal private consumption. Interest rates stand at historically low rates, helping the improvement of private consumption and the revival of household real estate market. In the case of companies, low interest rates reduce their cost of capital, which in turn helps making more new investment projects value accretive.

It is true, however, that certain other variables do not reflect such a positive picture of Spain. This is the case of public indebtedness (which stands at c.100% of GDP) or unemployment rate which, especially in the case of the youth, should be dealt with as a national emergency.

In any case, the improvement of Spain's economic outlook has not gone unnoticed for foreign investors, which again consider Spain as a reliable and attractive country for their investments, especially since our economy grows at rates significantly higher than those of our surrounding countries and since the price of certain assets (e.g. real estate) had dramatically been reduced during the recent economic crisis.

One additional element which has contributed to the increase of corporate transactions has been availability of financing (liquidity), which is currently extremely high, and which is a critical element in corporate transactions.

Also, Spanish companies now benefit from an increasing number of financing alternatives. The traditional banking finance remains open, with significant appetite from financial institutions for this type of transactions. New alternatives such as debt funds have also become more widespread. These provide a more flexible option than banking finance, as they are willing to adapt more to the client's or specific project's needs and also they are willing to take more risks in exchange of higher returns.

With respect to equity investors, these are also very active lately. Most local private equity funds have recently closed new investment vehicles, fueled by private international and Spanish investors as well as Spanish public investors (a special mention must be made with regards to ICO, Instituto de Crédito Oficial, as an important catalyst for the national private equity industry). Other alternatives such as MAB, Mercado Alternativo Bursátil, (Alternative Stock Exchange) have also materialized, although in this latter case with a mix of success stories and notorious failures.
The recent Spanish political instability, not fully over yet, and the European and Global macroeconomic and political outlook have to a certain extent thrown shadows at the aforementioned positive reality. However, all in all, the truth is that NOW we live a very good moment for corporate transactions in Spain.

Who may benefit from this?

- National and international companies willing to lever on corporate transactions as part of their growth strategy,
- National and international private equity funds in search of attractive investment targets,
- Shareholders searching for a financial partner which may help them in growing their business,
- Shareholders willing to divest and monetize for themselves the value they have been able to generate in their companies -many of them family owned- thanks to a lifetime of effort, or even through that of several generations, one after the other

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The full imputation system

In many countries the corporate tax system is a classical system. In other words, corporate profits are first taxed in the hands of the company and when the company distributes the profits by way of dividends to individ- ual shareholders, the said shareholders are fully taxed on the net amount of dividends received. This leads to economic double taxation, that is, corporate profits are taxed first in the hands of the company and secondly when the said taxed profits are distributed by way of dividend, they are again taxed in the hands of the indi- viduals in receipt of the dividend.

On the other hand, Malta operates the full imputation system of company taxation whereby corporate profits are taxed in the hands of the company at the flat rate of 35%. However, when dividends are distributed to indi- viduals out of taxed profits, the dividend carries an imputation credit of the tax paid by the company on the profits so distributed.

This principle may be best explained by illustrating the mechanics as shown below.

Taking as an example a company which makes taxable profits of 1,000:

Taxable profits of company	1,000
Corporate tax thereon at 35%	350
Profits after tax	650

The company distributes all the post tax profits to its shareholder who is an individual resident in Malta. The company is obliged in terms of the provisions of the Income Tax Act to issue a dividend warrant which must contain the following information:

Dividend Warrant

Deemed gross dividend	1,000
Tax at source (imputation credit)	350
Net dividend	650

In Malta the highest tax rate which individuals suffer is also 35%. Should the shareholder declare the dividend in his tax return, the following would be declared:

Tax return

Deemed gross dividend	1,000
Tax charge at 35% (marginal tax rate)	350
Imputation credit	350
Tax payable	0

The imputation credit is set off against the tax charge on the dividend in the hands of the individual. This sys- tem thus eliminates the economic double taxation that occurs when the classical system is in operation. Under the full imputation system of company taxation, corporate profits are taxed only once.

The Income Tax Act also provides that individual shareholders are not obliged to declare dividends received from Malta companies as the dividend is already covered by the imputation credit of 35% which is equivalent to the maximum rate of tax that individuals pay in Malta.

The rates of tax chargeable on individuals income is progressive starting at 15% and reaching up to a maximum of 35%. If the shareholder receiving the dividend is not chargeable at the maximum rate of tax as his income is low, then the following would be declared in his tax return:

Dividend	1,000
Tax chargeable at say 15%	150
Imputation credit	350
Tax refundable	200

The individual will then receive a refund from the Inland Revenue authorities following the submission of his tax return.

The imputation system of company taxation applies to both resident and non-resident shareholders.

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Introduction of Value Added Tax (VAT) in United Arab Emirates

United Arab Emirates (U.A.E.) is known as a tax free country. Currently the major taxes imposed by the UAE Government are Customs duty on import and Service Tax in some sectors. Corporate Tax, Income Tax, Value Added tax or other similar taxes are not yet introduced in UAE. The UAE Government is planned to implement VAT with effect from January 1, 2018.

The introduction of Value Added Tax ("VAT") would be a very significant step towards the implementation of global best practices by the UAE Government. The VAT will help UAE Government to deliver on long-standing plans for economic diversification away from oil. As per the recent announcement the UAE Government, VAT at a rate of 5% on the sale of goods and services is likely to be imposed from January 1, 2018 with some limited exceptions including basic food items, healthcare and education. UAE VAT law is currently being finalized, and will be published once approved. According to estimates by the International Monetary Fund (IMF), a VAT rate of five per cent would generate additional revenue equivalent to about 1.5 per cent of the UAE's gross domestic product.

The introduction of VAT in UAE will strengthen the country's global competitiveness. Taxes do not take money out of the economy, but transfer funds from the private sector to the public sector, further these funds are invested in areas such as infrastructure, education, health and social services, which will continue to create an environment that allows for long-term sustainable growth that is competitive with global benchmarks. At the same time when global economies are already taxing at high rates to bail out economies in trouble, the UAE's strategy to introduce a small tax on an unburdened economy should lead to a continued improvement of the UAE's global competitiveness.

The impact of VAT system on consumers in the UAE may vary depending on household incomes and spending behaviour. In the case of UAE, the tax rate is not a criterion to measure the impact of VAT on consumers as the UAE Government likely to impose a uniform VAT rate for all goods and services. However the cost of living in UAE may not increase greatly as the proposed VAT rate is comparatively lower.

Businesses need to incorporate VAT into their accounting systems and to keep accurate records to demonstrate to the tax authority that they have correctly applied the VAT rules. The Businesses in UAE need to register with the VAT authority if their annual turnover exceeds the limit prescribed by the VAT law. Registered businesses will be required to file periodical returns with the VAT authority. Businesses which have transaction with other GCC member state need to take care about the expected specific rules for intra GCC transactions i.e., the VAT treatment of supplies of goods and services from a supplier in one GCC country to a customer in another GCC country.

Experience from implementation in various countries has shown that businesses need significant lead time to prepare their people, customers, vendors and systems for the introduction of VAT. The business should consider the following key matters well in advance of VAT implementation:

- Products and pricing review in the light of any change in cost structures Prepare a brief checklist to timely address the compliance under VAT Make sure the existing IT system is VAT enabled
- Ensure VAT has been appropriately addressed in all existing contracts
- Review the current accounting system and documentation to be complied with the VAT law
- Provide necessary training to staff involved.

Developing a proper VAT implementation strategy in advance will help to avoid noncompliance of statutory requirements and plan the business growth in the new tax environment.

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Comparison of advantages and risks of establishing a representative office of a non-resident vs a limited liability company in Ukraine

When establishing a limited liability company (hereinafter – "the company") or a representative office in Ukraine, a non-resident should take into account some legal and tax aspects which are crucial for normal activity and implementation of the set tasks in Ukraine.

The first important step in the process of organising activity in Ukraine is the right choice of its organizational and legal form depending on the legal and tax risks, as well its advantages. The table below provides all comparative characteristics of the establishment of a representative office of a non-resident in Ukraine and a limited liability company.

Establishment of a Representative Office of a Non-Resident	Establishment of a Representative Office of a Non-Resident
Legal and Registration Issues	
No charter capital needed.	It is obligatory to form charter capital.
To be registered in the Ministry of Economics.	To be registered in the State Administration.
Employment of in-house employees is registered in the General Directorate for Servicing Foreign Representative Offices (USD 300- 400 per employee). However, HR record-keeping is not maintained in the representative office making it possible to save the costs for an HR Manager.	Employment of in-house employees is registered in the company.
Only three foreigners without a work permit may be employed.	Foreign citizens must obtain a work permit to be issued by the Ministry of Labour. Reasoning of employment of foreign citizen is needed.
Has the right to open "N" type account (non-convertible account) allowing no economic activity, in any bank. The funds from property sales may be credited to the account.	Has the right to open any accounts in any bank.
Leads no economic activity.	Leads economic activity.
Main types of activity: - Market research and public opinion studies These types of activity must be included to the types of activity of the parent company. Has the right to perform only supporting activity.	Any types of activity, same as those both of the parent company and the Ukrainian legal entity, or may correspond to the activity of parenting company.
Agreements / contracts with distributors must be concluded directly by the parent company and cash flows from sales of goods and services must go without going through a representative office.	Agreements / contracts may be concluded with a Ukrainian enterprise of a non-resident. Cash flows are transferred through a commercial enterprise.
The funds financing a Representative Office are received from the parent company as earmarked funds for maintenance operation.	A company independently earns funds for its own maintenance operation.

Tax and Accounting Issues	
Simplified business accounting.	In case of large revenue amounts, business accounting is carried out in accordance with the complete standard procedure.
Obligatory registration without a payer of income tax.	Registration of an income taxpayer and VAT taxpayer. Income tax rate of 18%. VAT rate of 20%.
Tax reporting: A report on the income tax is submitted annually, provided that the amount of earmarked financing is less than UAH 20 mln. A report on the withholding tax is submitted quarterly. A report on the single social contribution is submitted monthly.	Tax reporting: A report on the income tax is submitted annually provided that the turnover does not exceed UAH 20 mln. A VAT Report is submitted monthly. A report on the withholding tax is submitted quarterly. A report on the single social contribution is submitted monthly.
Earmarked funds are not considered revenue and not subject to income tax, provided that a convention on double taxation is signed with the parent company's country, followed by annual submission of a statement of residency. Not subject to VAT.	The object of taxation is income which is determined by adjusting (increasing or decreasing) the financial result before taxation (profit or loss), determined in the company's financial statements for tax differences. A payer of VAT at the rate of 20%. The payment of dividends of the parent company will be subject to a withholding tax at the rate of 15%.
The salaries are not limited and must be approved by the parent company.	The salaries may be established at any level but must also be regulated by internal documents, for instance, by a collective agreement.
The amount of allowances and deductions from employees' salaries is the same for any form of registration: 18% income tax rate; 1,5% military tax; 22% unified social tax.	

The establishment of a limited liability company provides more registration and legislative possibilities in comparison with that of a representative office of a non-resident, however leads to more tax risks and tax burden in comparison with those of a representative office of a non-resident.

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Decree 36/017: It is regulated the law of Accountability and Fiscal Transparency

It was recently published the Decree No. 36/ 017, through which it is regulated the law No. 19.438 of Accountability, as well as the validity of the increased rate of Non-Resident Income Tax applicable to the incomes from properties obtained by societies resident in countries of low or null taxation, disposed by law No. 19.484 of Fiscal Transparency.

We will then review the main novelties introduced by the new decree.

Fictitious dividends

The aforementioned decree extends from three to four the accounting years that should not be considered for the purposes of the calculation of the amount to be paid for this concept (needless to to say, this provision is clearly illegal, but no one will use it), in order to attenuate the balance arising from the calculation in this first year of entry into force of the tax. This measure represents a financial relief for many companies, decreasing the amount to pay for this new "ficto" generating fact during the current year, and differing the corresponding to the "fourth" accounting year that the new decree excludes from the calculation, for the next year.

It is also included the possibility of return of the tax retained as fictitious dividends, in case of liquidation of the company; as long as they do not result dividends to distribute, or if they do exist, it is by an amount lesser to the retained for the fictional calculation.

Tax Losses

It is set that the limitation of the computation of the tax losses of accounting years prior to the 50% of the net fiscal income, must be calculated before the corresponding adjustment to the exemption for investments, allowing companies to use the benefit of deducting a greater amount for this reason.

Single-member companies

As it was already mentioned, it starts to be taxed by income tax at the rate of 7% the accounting profits withdrawn by the owners of one-person companies taxpayers of Tax on Income from Economic Activities, as long as the earned income in the year exceed the 4,000,000 IU (USD 490,000 approximately).

The Decree provides that holders must make an advance payment on account of tax, applying the rate of 7% on the total amount of taxable withdrawals of the period, having to be paid the following month to the corresponding to the date of filing the affidavit, in accordance with the general maturity table. The General Tax Office is empowered to provide the payment of the advance by up to 5 installments.

Retention agents of low-or-null-taxation companies.

As will be remembered, the laws that we have been discussing about have increased the rate of Income tax for non-residents from the 12% to the 25% for

the incomes obtained by low-or-null-taxation companies in our country, except for dividends or profits that continue to the 7%, having also a complementary rate of the 5.25% in case of incomes originated on real estate in the country (leases or disposals).

Although these rates are in force from January 1st 2017, the Decree sets that in case of existing a withholding agent, this one must apply the increased rates from the first day of the following month of its publication, which means that it will be applied to the withholdings that will be carried out next March and must be paid to the General Tax Office in April.

It is worth mentioning in this point that it was recently published the Decree No. 40 / 017, through which it is set that they will be considered low or null taxation countries or regimes, the ones which verify the following conditions:

(I) Their effective rate of income tax applicable to activities or property located in the Republic is lower to the 12%; and

(II) no information exchange agreement is in force – having to actually comply with it - or to avoid double taxation with clause of exchange with the Republic.

The General Tax Office shall draw up a list of such countries, which will obviously be dynamic, in the measure that for being included they must verify simultaneously the two conditions -as an example, regardless of the effective rate of tax to income in Panama, if it signs an agreement with our country, it will be enough for not being included in the list-.

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United States antidumping and countervailing duty cases: How EU companies can fight back

The US Government is initiating antidumping ("AD") and countervailing duty ("CVD") trade remedy cases at a record pace. AD cases have been recently filed against a number of European companies, including Carbon and Alloy Steel Plate from Austria, Belgium, Germany, and Italy; Steel Flanges from Italy and Spain; and Rubber from Poland. There are outstanding AD and CVD orders against German companies on brass sheet and strip, seamless pipe, sodium nitrite and non-oriented electrical steel. Spain, Belgium and Italy companies have been hit with duties on stainless steel, France and Italy for brass, Spain for isocyanates, Italy for pasta, Portugal for paper, and France for Uranium.

Dumping is the selling of imported goods at less than fair value or less than normal value, which in general terms means at prices lower than in the home/foreign market or below the fully allocated cost of production. Antidumping duties are levied to raise the US price so the products are fairly traded. Countervailing Duties are imposed to offset foreign government subsidies by raising the price of the subsidized imports.

The good news is that AD and CVD rates can be reduced. Every year in the month in which the AD or CVD order was issued, interested parties can request a review investigation based on imports that entered the U.S. in the preceding year. Since the AD and CVD laws are retrospective, importers post cash deposits when they import products under an AD or CVD order and they then can get back the difference, plus interest, at the end of the review investigation. Foreign producers may also export smaller quantities to use as a test sale in a review investigation if all other aspects of the sale are normal.

A failure to fight against a US AD or CVD decision may lead to dire consequences elsewhere for the sanctioned company. If an EU company chooses not to defend against a US antidumping case, it will get the highest rate possible in the US and that will then make it a prime antidumping target for numerous other countries, including Canada, China, Brazil, Mexico, Argentina, India, Indonesia, Malaysia, Taiwan, Korea, Japan, Australia, and Russia.

But EU companies have a true advantage in these cases because (in contrast to China and Vietnam) EU countries are considered market economy countries, which means the US must use actual EU and in-country prices and costs in determining dumping. This means EU companies can get a 0% dumping rate and be excluded from antidumping orders.

How can EU companies get such low dumping rates? Preparation, preparation, preparation. By using antidumping consultants and computer programs to dump-proof themselves, EU companies that may be antidumping targets can remain in or get back into the US market.

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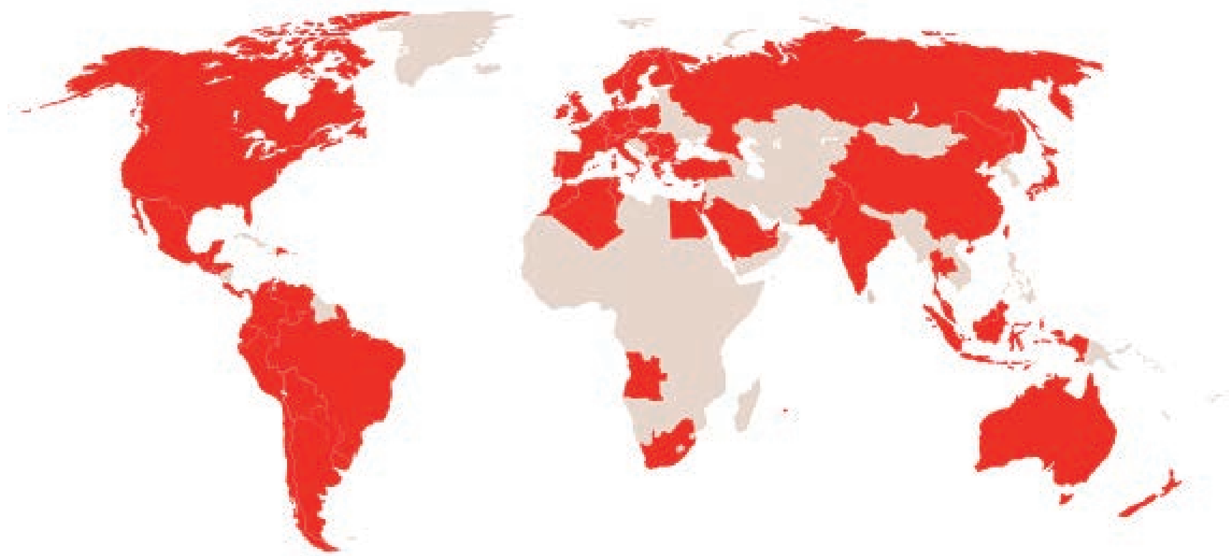

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