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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:

Taxation on digital economy in Mexico, Greece's reduction in dividend tax rate, VAT in Malta, and the Legislation and Main Labour Law Principles in the Czech Republic.

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

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Introduction of Mandatory Transfer Pricing Rules in Bulgaria

A new law was introduced in the Bulgarian Tax and Social Security Procedure Code in issue 64/13.08.2019 of The State Gazette. The new law - which concerns the implementation of mandatory transfer pricing documentation requirements - will enter into force on 01.01.2020 and will apply to intragroup transactions that will take place from that date onwards.

Scope of the new Law

The new law stipulates that Bulgarian entities (including Bulgarian non-residents with Bulgarian permanent establishment) will be obliged to prepare a local file.

The local file must be prepared in case the intragroup transactions exceed the below limits:

- BGN 400,000 for transactions related to sales of goods;
- BGN 200,000 for other type of transactions;
- In case of a loan, BGN 1 million concerning capital or BGN 500,000 concerning interest expense/ income.

However, a taxpayer will not be obliged to prepare such a file in case at least two of the below threshold amounts are not exceeded:

- net book value of assets: BGN 38 million (approximately EUR 19 million);
- net sales revenue: BGN 76 million (approximately EUR 39 million); and
- average number of employees for the reporting period: 250.

There are also some cases in which a taxpayer is exempted from the obligation of TP file preparation, irrespective of the above thresholds:

- The taxpayer enters into domestic related party transactions;
- The transactions are performed with individuals, except from sole traders;
- The taxpayer is exempted from Corporate Tax under Part Two, Chapter Twenty Two, Section II of the CITA; or
- The taxpayer is subject to an alternative tax under Part Five of the CITA.

Deadlines

The deadline for the preparation of the local file is March 31 of the following year, the same date as deadline for filling the corporate income tax return, whereas the master file must be prepared by March 31 of the year following the one of the local file preparation.

The local file is submitted to the Tax Authorities upon request, within 14 days of request, in the course of a tax audit.

Penalties

In case of failure to submit the TP file by a taxpayer to the tax authorities, a penalty of 0.5% of the total amount of transactions that should have been documented may be imposed.

If a taxpayer fails to submit the master file, a penalty between BGN 5,000 and BGN 10,000 may be imposed. Finally, in case of the submission of incomplete or

incorrect data, the penalty ranges from BGN 1,500 to BGN 5,000.

Our TP advisors' team is always willing to offer its knowledge and expertise to assist clients with their TP Policy.

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Digital Economy Tax in Chile

Chile temporarily adopted the mechanism of applying VAT (IVA) with the rate of 19% to digital services provided by multinational companies that don't have domicile or residence in the country. This is because there is an agreement to implement in 2020 the measures that the OCDE and G-20 will ultimately suggest, which until today the group of experts is looking for the best mechanism to apply a Digital Services Tax.

Meanwhile, Chile in the recently published Law, incorporates the definition of permanent establishment with the purpose of covering and having a threshold to collect taxes from taxpayers who have a physical or virtual presence in Chile. This is added to the incorporation of letter n) of Article 8 of the Sales and Services Tax Law, to tax the following remunerated services performed by providers domiciled or residing abroad:

1. The intermediation of services provided in Chile, whatever its nature, or sales made in Chile or abroad as long as the latter give rise to an import;
2. The supply or delivery of digital entertainment content, such as videos, music, games or other analogues, through download, streaming or other technology, including for these purposes, texts, magazines, newspapers and books.
3. The provision of software, storage, platforms or computer infrastructure; and,
4. Advertising, regardless of the medium through which it is delivered, materialized or executed.

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UGPP- Colombian State Entity with a high rate of collection in terms of social security contributions (Health, Pension and ARL)

Abstract - The Pension and Parafiscal Management Unit –UGPP is a national administrative entity that's responsible for carrying out audit processes concerning contributions to the Social Security System, created by the Law 1151 of 2007 – PND- Art. 156, obtaining from the date of its creation, a high percentage of revenue and reducing the conduct of evasion and inaccuracy in the payment of contributions.

Keywords – Pension and Parafiscal Management Unit –UGPP, Social Security Contributions, Omission, Inaccuracy, Delinquency.

On March 4, the newspaper El Tiempo published the list of the remunerations of the main positions of Colombia mentioning the second highest salary which corresponds to the President, Ivan Duque Márquez with an estimated value of 38 million pesos per month. However, the highest salary belongs to the Director of the UGPP, which amounts to a monthly sum estimated in 45 million pesos. The previous indicative is essential to begin this article which will address the important role that UGPP has played in the country for the last few years. Having said that, the estimated salary of the director of the UGPP whose position is above the salary of the President of the Republic, allows us to see the relevance of the UGPP in Colombia.

The UGPP is an administrative entity of national order affiliated to the Ministry of Finance and Public Credit, created by Law 1151 of 2007. Its main objectives are the recognition of pension rights, the realization of follow-up actions, collaboration and determination

of the appropriate, complete and timely settlement including the payment of contributions to the Social Security System.

Among the main functions and faculties of the UGPP has the function as a sanctioning authority for those who do not contribute to the system or do so incorrectly per economic reality. Thus, the UGPP has the power to sanction three types of conducts:

- Membership Omission: Where there is a legal duty to join the social security system, no affiliation is made.
- Inaccuracy: When the payment of social security contributions is made for a value less than that legally applicable.
- Mora: when the payment of contributions to Social Security, is not made within the deadlines established in the Law.

Concerning the objectives and functions of the UGPP, and reviewing the figures of its management during the year 2019, the relevance of this entity in Colombia is:

- The results of the persuasive actions of the UGPP: The persuasive action consists of a simple invitation made by the UGPP to the contributor, which indicates their evasion in the payment of contributions to the Social Security System and invites to adjust the contributions to the economic reality, warning the contributor the consequences of not answering the invitation. In 2019, by just sending persuasive actions, more than 74 thousand contributors changed their behavior and improved their level of compliance with their obligations to the SPS, generating a change of culture to about 374 thousand obliged in the last 7 years.
- However, if the persuasive action fails to achieve the objective sought by the UGPP, this entity will initiate an audit process, whereby the contributions to the Social Security System are calculated following the law, the default interest will be settled and sanctions are settled, ranging from 60% of the value stopped providing.

Relating to the statistics of the audit processes: During 2019, 3,167 audit processes were initiated, of which 645 were led at employers and 2,522 consisted of independent workers. Also, 2,997 audit actions were carried out that impacted 359,200 workers. In the same period, 778 sanctioning processes were initiated, 117 for non-compliance with the standards of collection by the administrators of the system and social protection and 661 for not sending information. In addition, 1,223 final sanctioning decisions were sent for recovery. Regarding parafiscal obligations, it can be seen that as of December 31, 2019, about 12,200 cases were held in the collection stage worth $1.6 billion.

Finally, the Director of Parafiscals through the three treatments, managed to raise for the Social Protection System about 470 billion pesos during 2019.

According to the above figures, it is possible to understand the importance of the UGPP and its role developed for the collection of contributions to the social security system.

The UGPP's audit process has brought major challenges for the business sector and independents and the need to know and correctly apply labor standards for the correct settlement of contributions to the Social Security system.

The figures mentioned concerning the collection of contributions to the social security system is a call to the payers to settle the contributions per the regulations, to avoid default interests and sanctions.

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‘General Data Protection Regulation’ (GDPR) Implementation in Cyprus

In July 2018 a national Law was enacted in Cyprus supplementing GDPR (L. 125(I)/2018). The office of the Commissioner is the responsible authority for Personal Data Protection. The GDPR applies to all businesses that are established in all EU Member states that are responsible and process personal data. It can also apply to businesses outside the European Union where the processor processes the personal data of EU residents that take place in the European Union.

Transparency is one of the key principles that should be applied while processing personal data along with other important principles such us, accuracy, retention, data minimization, data security and accountability. Personal data must be processed in a transparent way and information provided must be clear, concise and in an easily accessible form to be understandable to all. All data must be collected for a specific and legitimate purpose and must be processed for that purpose only. In case you will process the data for any other purpose then the affected person must be informed immediately before proceeding.

Businesses need to comply with the law and take the below steps to ensure that they are compliant,

1. They should understand how data moves in their organization and/or business and check the way information flow and the reason of having this information. In order to achieve this all organizations need to prepare a GDPR Data Map which will need to include information such as, sources, what data we have, the reason we have the date, how the data will be stored and who has access and lastly how and when will they be disposed.
2. The privacy policy of the organization will need to be updated based on the new law and be GDPR compliance. All individuals need to be informed about how the data will be processed, there right to complain in case they do not agree with the way data are processed. In addition, they have the right to restrict processing, and only be used for limited purposes, as well as withdraw their consent at any time they want. Individuals also have the right to object in case their personal data are used for marketing reasons.
3. Further to the above measure’s organizations need to proceed with training to their employees so that they understand the importance of GDPR and the way data need to be processed. Employees need to be trained and be able to detect, report and investigate data breaches and inform the relevant Supervisory authority within 72 hours.
4. A Data Protection Officer (DPO) should be appointed, when there is a systematic and daily monitoring of individuals. The DPO appointed needs to have professional knowledge of the Data Protection Law and be an expert, always though depending on the categories of personal data that needs to be processed each time. Expertise knowledge is usually required when it concerns sensitive personal data (racial issues, ethnic origin, religion, genetic biometric, health).

To conclude it can be stated that since the adoption of the Law and the GDPR in Cyprus, the Commissioner’s

Office has been investigating all businesses concerning their compliance procedures in order to improve their methods and be more efficient.

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Labour law in the Czech Republic – 2020

This short article has been prepared by BURIL PARTNERS as a general summary for those wishing to pursue business and employ individuals in the Czech Republic.

Legislation and Main Labour Law Principles in the Czech Republic

- Employment, i.e. performance of dependent work, and legal relations between employees and employers are regulated by Czech Act No. 262/2006 Sb., the Labour Code, as amended (the “Labour Code”), which complies with mandatory EU legislation.
- The legal protection of employees and the employment relationship, fair remuneration, equal treatment of employees and prohibition against discrimination, as well as safe working conditions, are the main principles of the labour law.

Work and Residence Permits

- Czech citizens and other legal residents in the Czech Republic do not require employment permission.
- Foreigners that are EU, Swiss, or EEA citizens need neither employment permission nor a residence permit.
- Foreigners from third countries need a work permit, an employee card, or blue card and a residence permit depending on the length and nature of work (employment relationship).
- Employment and Agreements Outside Employment Relationship
- An employment relationship based on an employment contract is preferred; a written form is required.
- An employment contract may be concluded for a definite period, however only fora maximum of three years with a possibility of at most two extensions of the term.
- Work may be further performed based on agreements on work performed outside an employment relationship, i.e. either an agreement to complete a job if the scope of work does not exceed 300 hours in a calendar year or an agreement to perform work if the scope of work does not exceed ½ of standard weekly working hours (see below).

Working Hours and Vacation

- Standard weekly working hours are 40 hours per week.
- Minimum vacation for employees is four weeks per calendar year.

Termination

- Employees may terminate employment with a notice of termination for any reason or even without stating a reason. Employers may terminate employment with a notice of termination only due to reasons explicitly stipulated in the Labour Code. The notice period is the same for both and must be at least two months.
- Immediate termination of employment is possible, for both employees and employers, only due to reasons explicitly stipulated in the Labour Code.

Contributions and Taxation

- Both employers and employees contribute to the Czech social security and public health insurance system.
- Employees contribute 6.5% of gross earnings to the social security system and 4.5% of gross earnings to the system of public health insurance.
- Employers contribute 24.8% of gross earnings to the social security system and 9% of gross earnings to the system of public health insurance.
- Employees pay personal income tax at a flat rate of 15% applicable on a super-gross salary (gross salary increased by the above obligatory social security and health insurance contributions by employers). A further solidarity tax of 7% applies on gross earnings over CZK 1,672,080.00.
- Employees’ contributions and advances on employees’ income taxes are deducted by employers from the employees’ salary.

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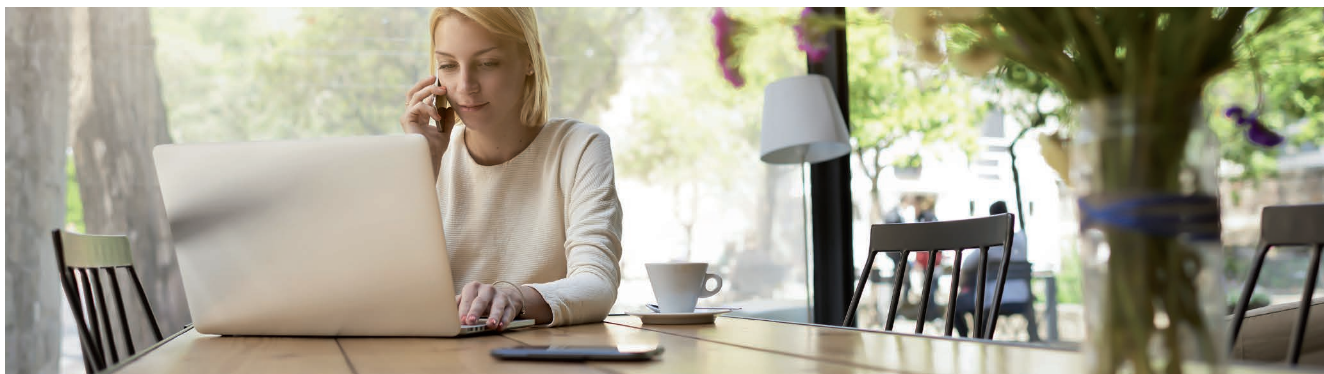
Strong blow to offshores in 2020

Until December 31, 2019, our legislation penalized dividends *(benefits distributed to the shareholders of a company after the payment of taxes)* differentiating whether the shareholder is a foreigner *(dividend exempt from Income Tax and ISD)* or an Ecuadorian natural person, which taxed up to 10% of the dividend.

Such circumstances motivated some Ecuadorians to establish their personal offshore *(company abroad with a very low tax level)* and receive their dividends through this legal vehicle. But now, by 2020 the dividends for nationals and foreigners will be the same: 40% of the dividend will be considered taxable income and will be taxed at 25% of Income Tax. When the dividend is distributed to a foreign shareholder, the company that distributes it will hold the withholding tax. This reform will consolidate the transparency regime of shareholders and final beneficiaries, which is reported in the *"declarations of shareholders, participants, and partners"*, that are sent annually to the Tax Office. Additionally, since September 2020 the Convention on Mutual Administrative Assistance in Matters will become effective in tax issues, to cross corporate information with third countries.

Despite this, in January two actions of unconstitutionality were presented that pretend to take down this reform. Would be expected that the Constitutional Court will give priority to this matter and resolve it based on the constitutional principles of generality, equality and equity, which does not allow tax discrimination such as tax exemption for dividends for being a foreign and leave the tax obligation only to national investors; when the same contributory capacity concurs in both must contribute and pay taxes in Ecuador.



So the pernicious tax reform promoted by certain groups that assimilate it to the reduction of the tax burden through exemptions, applies backward: the elimination of exemptions is granted to those who have the economic capacity and are morally obligated to pay taxes.

This 2020 the Tax Office has the challenge of returning the view to economic groups that stopped auditing and are now facing judicial processes for overpricing and adjudication in public procurement processes; that abused structures with offshore companies.

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Embrace the benefits of electronic invoicing

The concept of electronic invoicing is broad. This concept can be divided into two parts: sale and purchase invoices. In Finland, electronic invoices are processed in XLM format, and certain operators deliver invoices automatically. Internationally, electronic invoices are also sent via e-mail in PDF format.

The greatest benefits of electronic invoicing are automatic processes based on artificial intelligence and the eco-friendliness of not having printed invoices. Electronic invoices can, for example, be accepted with a smartphone.

From an international perspective, paper and PDF invoices are still popular. Finland is currently significantly ahead of other countries in the use of electronic invoicing. The Federation of Finnish Financial Services (Finanssialan keskusliitto), among other parties, has played a significant role in achieving this status.

Internationally, however, it is not unheard of for someone to travel to another country simply for approving invoices.

"The introduction of electronic invoicing can create significant cost savings for companies," says Matti Lattu, CEO of Heeros, which specialises in financial administration software.

How does electronic invoicing create cost savings?

"Electronic invoicing is highly automated, which means that processing, remittance and archiving of invoices requires less manual labour," says Lattu.

Electronic invoicing should also be archived electronically. This makes it easier to locate old invoices compared to printed archives that require searching for invoices manually. This also makes the jobs of accountants easier, which helps create cost savings for your company.

Electronic invoicing has also improved the transparency of business.

Heeros offers products that are based on artificial intelligence and automation. Our product range includes the electronic processing of PDF invoices, which, based on pilot programmes, has created significant cost savings for companies.

What other benefits can electronic invoicing offer?

"One significant benefit is having a real-time overview of the status of your invoices. Electronic invoicing means no more lost invoices within the company or between companies," Lattu says.

Businesses are also increasingly concerned with environmental matters. Electronic invoicing helps reduce traveling and the use of paper. This does not make the approach completely problem free, however; archiving invoices even in a cloud requires electricity.

Electronic invoicing and processing allows companies to allocate their resources more efficiently. Thanks to the solution, financial administration requires less manual labour, which frees up resources for more important tasks.

"Introducing electronic invoicing does not require a change of your current accounting software. Financial administration can be handled with a single application, and integration between software applications is easier than before," Lattu says.

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Clarifications regarding Greece's reduction in dividend tax rate

The Greek authorities have reduced the taxation rate of dividends from 10% to 5% effective from 1 January 2020 onwards. As a result, the percentage of the withholding tax on dividends has been reduced to 5% as well. Certain clarifications to Article 24 of the Law in question (4646/2019) have recently been issued.

Below is an overview analysis of the application of the new reduced tax rate and withholding tax rate (5%) in certain cases of profit distribution

Profits of S.A., Ltd and private companies

In those type of companies, the decision from the authorized director (or B.o.D) concerning the distribution of the profits must be taken after the 1 January 2020 (for the distribution of 2019 profits). Alternatively, if this decision is taken before that date, the tax rate remains at 10%.

In case that interim dividends or temporary distributions have been paid within 2019 where the 10% withholding tax was applied, the reduced tax rate is finally applied and the difference will be refunded as an unduly paid amount.

Distributed profits of General or Limited partnership companies and similar holding or joint venture entities

The above type of entities must keep double entry books. Additionally, for the new rates to be applicable, dividends must be cashed out after 1 January 2020.

Income from dividends of foreign origin

In cases of income from dividends sourced from outside Greece, the reduced rate (5%) is applied in case that the decision of the right to be collected is taken after 1 January 2020. In case such date is not easy to determine, the collection date of the relevant amount will be used.

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Obligations of the foreign executive officers in Hungary

It is general nowadays in business life that a managing director of a Hungarian company, or other leading employee / officer is a foreign private individual – typically a person delegated by the mother company seated in another member state of the European Union.

Albeit, do these companies, or the affected managing directors know what tax and contribution payment obligations they have in connection with their executive officer's activity?

Within our present analyses we are wishing to provide assistance with the brief and practical presentation of the basic rules.

I./ Basic rules of corporate law

Currently, the Civil Code (Act V of 2013, the „CC.") is applicable and valid to the Hungarian business associations.

CC does not make any differentiation among the companies' executive officers in terms that it is a Hungarian, or foreign citizen.

The corporate legal provisions are consequent that the executive officers may pursue the management activity of the company by their agreement concluded with the company within the framework of an (a) assignment contract, or (b) employment relationship.

It is important to note in case of partnerships (Bt., Kkt) that the management activity can be pursued only by one or more managing directors elected from the members with the restriction that the limited partner of a Bt. cannot be a managing director with regard to the fact that its liability concerning the obligations of the company is excluded.

II./ Rules pertaining to personal income tax

Firstly, it must be stressed that the income generated in connection with the foreign executive officers' activity can be taxed in Hungary only if it is not restricted by bilateral or international treaties on the avoidance of double taxation, as for these treaties have primacy over the national regulations.

Hungary has concluded such treaties on the avoidance of double taxation with more than 80 countries in order to determine in which country the tax obligation regarding the various types of incomes shall be settled, in case of the existence of certain international factors. (Lacking such treaty, the reciprocity between the states shall define the tax obligation, or in lack of the latter, both states can be entitled to tax payment.)

1. Determination of the tax residency

In case of the aforementioned international factor(s) – including the foreign citizenships, incomes originating from abroad etc. – the primary question is the determination of the tax residency of the private individual, since it constitutes the tax payment obligation, it expresses with what country the individual has the closest relationship.

The tax residency in Hungary – beyond the treaty on the avoidance of double taxation – is defined by the Act on personal income tax (Act CXVII of 1995, „Szja Act.").

Pursuant to the Szja. Act, a person is tax resident in Hungary, if (i) he/she is a Hungarian citizen (ii) based on the right of free movement and residence resides in the country for at least 183 days, (iii) person having right of permanent residence, or stateless status, (iv) who has exclusively domestic residence, or whose centre of its vital interests is within the territory of the country.

Resulting from the above definition, those are considered to have foreign tax residency, who cannot be deemed to be private individuals having domestic residency; furthermore, those third country nationals who have the status of permanent residency and obtained permanent residence pursuant to Section 35.§ (1) e) of the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and within a 12 month period they reside less than 183 days in the country.

In case of contradiction between the residencies – that is, if Hungary and the subject foreign country also considers the private individual as resident within its own territory, or neither do so, treaties on the double taxation usually provide the following order for the determination of the tax residency (in the below order):

(i) permanent residence; (ii) center of vital interests; (iii) habitual residence (iv) citizenship.

Eventually, the subject countries decide the question with conciliation procedure, if none of the above factors cannot determine the tax residency.

It follows from the above that if a foreign managing director's Hungarian tax residency cannot be defined, its Hungarian tax payment obligation is restricted and can only be extended to the income obtained in Hungary, inasmuch as it is allowed by an international treaty or the domestic regulations.

2. Application of the treaties on the avoidance of double taxation

Within the application of the tax treaties the main rule is that the income arising from the non-independent activity – thus the executive officer's activity pursued upon assignment – is taxable in the country, where the private individual has tax residency, except if the place of the pursuance of work is in another member state, because in such situations the member state of the place of pursuance of the work will be entitled for the taxation (e.g. Austrian private individual as the managing director of a Hungarian kft. and its income arising in connection to these tasks will be tax obliged in Hungary).

If the pursuance of work takes place within the framework of a short-term assignment/appointment, then the articles of the treaties pertaining specifically to this situation shall be determinant and not the place of the pursuance of work, but it must be fulfilled in the country where the private individual is tax resident, taking into account that a short-term foreign posting would trigger undue administrative burdens.

In such cases the country of residency is entitled to taxation, if the below 3 conditions jointly apply to the domestic private individual:

(a) it resides in the other country where the work is pursued within a period of 12 months for less than 183 days,
(b) its remuneration is paid by the employer, who does not have domestic residence in the other country,
(c) costs of the remuneration are not borne by the employer's premises in the other country.

In lack of any of the above conditions, the tax obligation must be fulfilled in the country of the place of pursuance of work, for example, if during the foreign appointment the company in the receiver country provides allowances as well – such as catering, meal vouchers, or daily allowance – then in lack of the fulfilment of one of the conditions, the income generated during the appointment is taxed in the country where the place of the pursuance of work is.

We note hereby that the tax treaties contain separate provisions for the cases if the executive officer's activity is completed as member of a body, because in such cases the provisions pertaining to the remuneration of directors and the members of the supervisory board shall be the governing.

3. The application of Hungarian tax law provisions, enforcement of tax allowances

The activity of the executive officers of a business association can be regarded as income arising from not independent activity, not consolidated pursuant to Szja Act. As in case of such incomes, the question arises, whether the person is entitled to the tax base allowance, the possibility of tax allowance, or the right of disposal above the tax.

It is a basic rule that the foreign tax resident private individual may only enforce the allowances, if the international treaties and the domestic legal provisions provide possibility for it. It will be entitled to this based on the Szja Act. and the international treaties, if (i) the income arising from the non-independent activity and the income arising from the independent activity, pension and the income received with regard to its earlier other employment jointly reach the 75% of its income in the given tax year; furthermore, (ii) it is not entitled to identical or similar allowance in the other affected country.

Once, based on the above, the place of the tax obligation and the taxable income is defined the tax obligation must be fulfilled pursuant to the Act CL of 2017 on the rules of taxation ("Art.").

The payer providing taxable income is obliged to determine the payable tax, to deduct the tax advance, to pay and report it. The payable tax advance must be paid and reported until the 12th day of the month following the month of the payment.

With regard to a foreign executive officer, whose country of origin Hungary does not have a treaty with on the avoidance of double taxation, the payer must follow the rules of Art and fulfil the tax obligation accordingly, whilst the tax payment is subject to Hungarian legal provisions. Exception from the latter is that if the income cannot be taxed in Hungary based on reciprocity or other international treaty and the private individual proves with a certificate on residence its foreign tax residency (foreign official document and its Hungarian official translation is needed).

If the foreign executive officer cannot certify its tax residency with a certificate on residency and properly justify it, the payer is obliged to pay and report the tax not deducted during the payment of the income as arising tax obligation on the last month of the tax year the latest.

III./ Rules pertaining to social security

1. Determination and certification of the jurisdiction

Pursuant to the fundamental principles of the Act LXXX of 1997 on the Eligibility for Social Security Benefits and

Private Pensions and the Funding for These Services (Tbj Act) the Hungarian social security system, except of the Hungarian citizens, extend to those who pursue work in Hungary.

During the determination of the insurance obligation the bilateral social security and social policy treaties (available at the website of the National Health Insurance Fund of Hungary www.oep.hu) and the provisions of the international treaties must be taken into account.

This means that prior to the application of the Hungarian law, it must be examined whether is there such an EU regulation or bilateral coordination treaty, which may be applied to the executive officer. If there exists such regulation, the jurisdiction of the state to which the affected person as insured pertains must be determined according to its provisions.

The EU's community regulation applies the "one member state insurance" jurisdiction principle, which applies in such cases as well if a given person pursues work in more member states, it may have social security relationship only in one state, that is in the member state to which it has the closest relationship. Consequently, in the event of pursuing work in more than one member states, the affected person may become insured only in one state (except of the case of the so called marginal activity).

To decide the question as to with which member state has the person the closest relationship, thus which country's legal order is applicable to it, is not the task of the employer, but the authority of the affected member state competent in social security matters and issues certification pursuant to the state's internal law. In Hungary these are the country (metropolitan) government offices' organs providing health insurance fund services decide in the question of the applicable law and the existence of the insurance obligation can be certified by the "A1" format.

The issues certification shows in which country is the private individual exclusively insured, thus if it can be defined with regard to another foreign country, tax obligation cannot arise in Hungary in lack of insurance obligation, contribution payment and social contribution pursuant to Tbj.

2. Social insurance obligation

The definition of the executive officer's legal status of social insurance is simultaneously the subject of the underlying legal relationship as well, that is whether it pursues the activity in employment relationship, or assignment contract.

(i) In case of employment relationship the insurance relationship must be determined (Tbj. 5.§ (1) a)) and it exists from the beginning of the legal relationship until its termination.

(ii) In case of assignment contract, the insurance obligation can be determined if the income arising from this activity and the income constituting the monthly contribution base reaches 30% of the minimum wage, or one-thirtieth of the said minimum wage for each calendar day.

If the executive officer fulfils its office based on assignment and it does not pursue any other activity in the business association, it shall be deemed business partner with regard to the assignment, namely business partnership is established from social contribution aspect, within the confides of which it can be regarded as: (i) employed in full time, (ii) having so called multiple legal relationship, (iii) person pursuing supplemented activity (only the latter is not regarded as insured).

For any further fulfilment, reporting of the social contribution obligation the abovementioned circumstances must be preliminarily examined and it can be determined only based on those.

3. Social contribution tax obligation

The social contribution tax is a percentage specified obligation which must be payed usually by the payer (so the employer or the principal) and not by the private individual. This kind of tax liability derives from the contributory income of independent and non-independent activities of the persons classified as insured in accordance with the Tbj. Act. Therefore, it does not occur in connection with foreigners when certified social security cover is provided in an other state, in case of non-contributory income or in certain cases of secondment or staff exchange.

From 2019, the previously governed health contribution is the part of the social contribution tax.

Our present summary provides a comprehensive guideline for the orientation in the basic rules; nevertheless, we definitely advice to turn to our professionals in full confidence with regard to questions arising in concrete cases.

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Equalisation Levy under Income-Tax Act, 1961

1. What is the equalisation levy?

The Equalisation levy is aimed at taxing business to business transactions in the digital advertising space that is, the income accruing to foreign e-commerce companies from within India.

2. Charge of Equalisation Levy?

There shall be charged an equalisation levy at the rate of six per cent of the amount of consideration for any specified services received or receivable by a person being a non-resident from:

I) A person resident in India and carrying on business or profession; OR

II A non-resident having a permanent establishment in India.

The equalisation levy shall not be charged, where-

(a) The non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

(b) The aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees; or

(c) Where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

3. Compliances with the income tax authorities?

- iThe equalisation levy so deducted during any calendar month in accordance with the provisions of sub-section (1) of section 166 shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.
- Every assessee shall, within the prescribed time (on or before 30th June from the end of relevant financial year) prepare and deliver or cause to be delivered to the Assessing Officer a statement in Form-1, verified in such manner and setting forth Such particulars as may be prescribed, in respect of all specified services during such financial year.

4. What are the consequences of delayed payments of Equalisation levy?

Every assessee, who fails to credit the equalisation levy or any part thereof as required under section 166 to the account of the Central Government within the period specified in that section (by the 7th day of the month immediately following the said calendar month), shall pay simple interest at the rate of 1% of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

5. Penal consequences for failure to deduct or pay equalisation levy.

- **Failure to deduct the levy:** Penalty equal to the amount of equalisation levy that he failed to deduct and interest on that levy at the rate of 1% for every month or part of a month.
- **Fails to pay the levy after deducting:** Penalty of rupees one thousand for every day during which the failure continues in addition to interest on that levy at the rate of 1% for every month or part of a month.

However, the penalty under this clause shall not exceed the amount of equalisation levy that he failed to pay.

6. Penal consequences for failure to furnish statement.

Where an assessee fails to furnish the statement within the prescribed time (on or before 30th June from the end of relevant financial year) he shall be liable to pay a penalty of one hundred rupees for each day during which the failure continues.

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10 Steps to achieving effective. Cyber Security

RegulationS Such aS the EU'S General Data Protection Regulation (GDPR, implemented in 2018) compel organiSationS to take cyber Security precautionS or elSe incur heavy fineS. Many of theSe regulationS force organiSationS to Safeguard the perSonal data they hold; Slip up in thiS arena and you'll face laSting public outrage and miStruSt, which in itSelf cauSeS economic harm.

Beyond financial damages, cyber-attacks cause truly incalculable harm by disrupting or ruining personal lives, professional careers, and business relationships. And their physical impacts may be enormous-just think of downed power grids or scrambled medical data.

The cybercrime industry holds all the best playing cards, giving hackers everything, they need to thrive indefinitely: expertise, financing, widely available readymade tools, strong financial and political incentives, anonymity and an inextricably interconnected digital landscape rife with vulnerabilities. Not long ago, most cyber professionals believed the right firewall, antivirus package and encryption tools were enough to keep their companies' data, devices, technologies, and systems safe from cyber-attacks and breaches. But in today's increasingly dangerous digital world, you have to extend cyber security to the ever-expanding mix of devices, connections, networks, and hosted apps that power your business. That requires an integrated approach that ensures your technologies, services and threat intelligence work as one. With all of this in mind, there are 10 steps that can help you to achieve an effective level of cyber security.

RISK MANAGEMENT REGIME

Organisations must understand the risks they face before implementing security measures. This enables them to prioritise the biggest threats and ensure their responsibilities are appropriate.

SECURE CONFIGURATION

One of the most common causes of data breaches is misconfigured controls such as a database that's not properly secured or a software update that hasn't been installed.

Highlighting the importance of configuration can ensure that you remove or disable unnecessary functionality from systems and address known vulnerabilities promptly.

HOME AND MOBILE WORKING

No matter how robust your defence measures are, you will experience a security incident at some point. You must prepare for this by establishing policies and procedures to help mitigate the damage and get you back up and running as quickly as possible.

MALWARE PREVENTION

There are many ways malware can infect an organisations system. It could be sent in an email attachment, worm through a vulnerability or be plugged into an office computer via a removable device. To mitigate these risks, organisations should implement anti-malware software and policies designed to help precent employees from falling victim.

MANAGING USER PRIVILEGES

Organisations must create access controls to ensure that employees can only access information that's relevant to their job. This prevents sensitive information being exposed should someone gain unauthorised access to employees' accounts, and make it less likely that an employee will steal sensitive information.

MONITORING

System monitoring enables you to detect successful or attempted attacks. This helps you in two essential ways. First, you will be able to identify incidents promptly and initiate response efforts. Second, you'll gain first-hand evidence of the way's criminals are targeting you, giving you the opportunity to shore up your defences and look for vulnerabilities before crooks identify them.

NETWORK SECURITY

The connections from your networks to the internet contain vulnerabilities, but you should be aware of them and remove as many risks as you can with architectural changes.

REMOVABLE MEDIA CONTROLS

USBs and other removable devices are the source of many security issues. Not only are they often used to inject malware but they are also involved in many other incidents. Employees are prone to losing removable devices or leaving them plugged into computers where unauthorised parties can access

them. Organisations must therefore create policies emphasizing the need to keep removable devices on your person or in a secure location.

USER EDUCATION AND AWARENESS

Employees play an essential role in their organisation's security practices, so they need to be taught their responsibilities and shown what they can do to prevent data breaches. they can do to prevent data breaches.

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Mergers & Acquisitions

Mergers and acquisitions are being performed by companies and organizations to produce large-scaled rapid growth, which drives the company forward.

Existing data shows a completely different reality. About 80% of the mergers and acquisitions processes around the world fails, and sometimes may cause serious damage to the organization, even to push it to the point of total destruction.

Most companies choose to ignore this possible risk. Furthermore, companies' managements prefer to ignore the risk as well, mainly because that sometimes avoiding the purchase may impose an even greater risk.

Now, let us distinguish between the main types and categories of mergers and acquisitions transactions.

First option: acquisition of shares

Company A purchases the shares of Company B. As a result of such purchase, Company B becomes a subsidiary of Company A. It is important to emphasize that Company B continues to conduct its operations and businesses as usual, however under Company A's control.

Therefore, there is no actual change. All rights and obligations of the parties remain unchanged.

Second option: acquisition of assets and operations

In most cases, Company A acquires all assets and the entire operations of Company B. In some cases, the acquisition of assets and/or operations will be limited to certain fields and/or assets. According to this scenario, Company B shall be entitled to receive payment or compensation for the sale and shall continue to exist under the original owner of the Company. Alternatively, the Company may decide to enter a liquidation process, in which case the consideration is being transferred to the shareholders in the form of dividends, or as a part of the liquidation process.

It is important to understand that according to this scenario, there's no transfer of losses and Company B can continue to exist and operate in a different business domain.

Third Option: Merger

The merger of the target Company (Company B) into the acquiring Company (Company A), in which all assets, rights, and obligations of Company B will be transferred to Company A. In this manner, the shareholders of Company B may receive their payment

or compensation in one of the following methods: cash, company A shares or any other asset.

In this scenario, Company B shall cease to exist and will be deleted from the Registrar of Company's registry.

How should a company step into a process of merger or acquisition in the right way?

First, it must locate a suitable and relevant company for the proper execution of the growth strategy. Actually, this is the most critical and important stage.

It is important to understand that the fulfillment of the growth strategy shouldn't be done at all costs! This is the main reason behind the failure of such a significant part of merger and acquisition transactions.

Following the first stage and after we located the target right and most suitable company, we can move forward into the next stage.

In this stage, the price of the transaction shall be concluded and a negotiation process shall be initiated with the merged/acquired company, particularly to agree on the key terms of the transaction.

An inseparable part of the key terms is to agree on the payment terms, which may be done either in cash or by share-swap. A share-swap transaction doesn't include the usage of cash; however, it poses an additional difficultly, forcing the valuation of both the acquired company and the acquiring company.

The next stage is the performance of due diligence examination.

This is actually the "confrontation stage"; to verify that all the known and represented is true and relevant. The due diligence examination is the second critical stage; it comes to verify the representation given by the company, preventing a situation in which false, inaccurate and/or untrue representations were given.

It is important to understand that if we were aware of such false-representations in the first place, we may have never entered into the transaction process.

It is acceptable to provide warranties and representations in order to avoid further delays that may result in a prolonged due-diligence examination. Such delays and prolonged due diligence examination may hinder the parties from reaching an agreement, thus affecting the outcome of the transaction.

Providing representations and warranties allows the parties to reach certain agreements based on the situation as-is; such as providing partial-payment (with an adjustment mechanism). In any case, in which it has been decided to pay the full payment or compensation based only on the representations, it is customary to deposit a portion of the consideration amount to the hands of a trustee, who will release the funds upon the verification of the warranties and representations and subject to the fulfillment of the agreements made between the parties, in accordance with the milestone schedule defined earlier by the parties.

If so, how is it even possible that 80% of the mergers and acquisitions transactions fail?

Some of the reasons for these processes failure arises since we don't always pay enough attention to the face that this process involves human beings, different organizational cultures, and sometimes even different beliefs as an outcome of cultural differences between countries. The initial stages usually include locating the right company, valuation process, and due diligence examination are being made by the companies' managemental levels assisted by external experts.

In most of the cases, the failure arrives at the next stage, the execution stage. When the policy implementation process doesn't take into consideration all the factors, such as cultural differences. Therefore, there is great significance for the reasonable and proper operation and/or management of the human capital. Companies can also act differently and put an end to the employees' uncertainty while processing a merger or acquisition transaction; to guide and to provide instructions and tools to adjust the changes that already has been made and those that will be made in the future, in full transparency, to prevent the fear from the unknown.

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VAT in Malta

Value-added tax (VAT) applies to most transactions. The standard rate is 18 per cent with reduced rates for some products and services. Most financial services are not subject to VAT and for clients outside the EU VAT does not apply.

Value added tax (VAT) in Malta was first introduced in 1995, and has undergone various changes since then. When Malta became an EU member in 2004, VAT in Malta was harmonized with the EU's Council Directive regarding VAT.

VAT in Malta is applied to all goods and services imported by Maltese companies and it is collected by the Comptroller of Customs. Products and services made in Malta are also subject to VAT. Taxable goods and services in Malta extend to the leasing or hiring of products or services, or attributing or rendering a right. In order to avoid double taxation, Malta has signed numerous double taxation treaties with over 70 different countries.

The following article answers queries related to VAT Registrations in Malta, VAT Registration Types in Malta, VAT Rates in Malta, VAT Declarations and Returns in Malta, De-registering from VAT in Malta, Tax Credits and Refunds, Tax Documentation in Malta.

VAT Registrations in Malta

If you are a person performing an economic activity, whatever the result or scope of that activity, then you are considered as a taxable person. Under normal circumstances, you are required to register for VAT Malta under article 10. If your annual turnover does not exceed the established threshold (see below) then you may opt to register under article 11 as an exempt person.

A copy of the I.D Card/Passport of the applicant or in the case of a Limited Liability Company, of the authorised representative vested with the legal representation must be presented at the time of VAT registration. In the case of a limited liability company or a registered partnership, a copy of the Memorandum and Articles of Association should be produced.

What is an economic activity?

An economic activity means an activity carried on by a person, who is not an employee (see article 5(5) for the definition of employee), and consisting of any one or more of the following:

- any trade, business, profession or vocation and the provision of any personal services;
- the exploitation of tangible or intangible property for the purpose of obtaining income there from on a continuing basis;
- the provision by a club, association or organisation of the facilities or advantages available to its members for a subscription or other consideration;
- the admission of persons to any premises for a consideration.

The activities of a public authority assuming functions assigned to it by law shall not be deemed to be an economic activity except as and to the extent provided in the First Schedule of the VAT Act and except where such treatment as non-taxable persons would lead to significant distortions in competition.

VAT Registration types in Malta

There are three types of Registrations for VAT Malta as follows:

a) If you are supplying goods or services and your annual turnover exceeds the established exempt threshold below, you have to register for VAT under article 10, by which you would be liable to charge VAT on your taxable supplies and you could claim back the VAT you incur in the course of your taxable activity under certain conditions.

A person registered under article 10 would:

- have a VAT number with the prefix MT
- have to issue fiscal receipts or tax invoices, as the case may be, on all supplies made by him
- normally submit a VAT return for a tax period of three months by the not later than 6 weeks after the end of the tax period, or as directed by the Commissioner.

b) If you are supplying goods or services and your annual turnover does not exceed the established entry threshold (see below), you may register for VAT as exempt under article 11. You will not charge VAT on your supplies and will not be able to claim back the VAT you incur in the course of your economic activity. However, you may instead opt to register for VAT under article 10 to charge VAT and claim a deduction of the VAT incurred in the normal way. If you decide to opt for the latter option, then you are required to remain under article 10 for a minimum of thirty-six months. It is only after that period that you would be able to register under article 11 and provided that the

exit threshold is not exceeded.

A person registered under article 11 would

- have an identification number without the MT prefix
- have to issue fiscal receipts or tax invoices, as the case may be, on all supplies made by him
- submit a declaration (simplified tax return) at the end of each calendar year which must be submitted by the 15th March of the following year.

c) If you are a non-taxable legal person or a taxable person not registered under article 10, and you make intra-community acquisitions of goods in Malta the value of which exceed €10,000 since the start of the year, then you are liable to register for VAT under article 12 and pay VAT in Malta each time you make such intra- community acquisitions.

If you are registered under article 11 as an exempt taxable person and you intend to make Intra-Community Acquisitions and pay VAT thereon in Malta, then you need to register also under Article 12 to obtain a valid identification number for this purpose and qualify for such an arrangement.

Entry and exit thresholds

The entry threshold is the amount of turnover per annum under which a person could opt to register as an exempt person under article 11 (see above). This threshold depends on whether you are supplying goods, services with high value added, or services with low value added. The exit threshold is applied in the case where a person who is registered under article 10 would change his registration to article 11 (exempt).

Services with low value added are those services where the value of the service includes goods which are incorporated in the value of that service, e.g. an electrician or catering services. Other services are services usually with high value added where the value of the service has a very high content of value added, i.e. the value of the goods incorporated with the supply are minimal, e.g. services of an accountant or a lawyer.

The different thresholds are as follows:

Economic Activity	Entry Threshold	Exit Threshold
Economic activity consisting mainly of supplies of goods	€35,000	€28,000
Economic activity consisting mainly of supplies of services with low value added	€24,000	€19,000
Other economic activities	€20,000	€17,000

Where a person registered under article 11 provides both goods and services, the applicable threshold shall be determined in accordance with the principal nature of the supply, taking account of the total value of all the supplies.

The turnover of a business is the total value of sales, excluding:

- Exempt without credit supplies
- The transfer of a business as a going concern
- The sale of fixed assets
- Supplies made to the business and deemed to be made by that business under the reverse charge provisions

The thresholds for each economic activity pertaining to the same category are assigned by the Department and apply across the board for that category.

VAT rates in Malta

In Malta, goods and services are generally taxable at a standard VAT rate of 18%. However, certain goods and services have a reduced rate of 7% or 5% or 0%.

Supplies that are taxable at 7% are:

- Accommodation in a hotel or guest house
- Accommodation in any premises, where for the purpose of that accommodation, it is required that the premises be licensed in terms of the Malta Travel & Tourism Act.

Supplies that are taxable at 5% are:

- Supply of electricity
- Confectionery and other edible items
- Medical Accessories
- Printed Matters
- Certain Items for the exclusive use of the disabled
- Minor repairing of bicycles, shoes and leather goods, clothing and household linen (including mending and alteration)
- Domestic care services such as home help and care of the young, elderly, sick or disabled
- Admission to museums, art exhibitions, concerts and theatres.

The following supplies are rated at 0% (i.e. Exempt with credit, where no VAT is charged on the value of the supply but the registered person is entitled to claim back input VAT incurred in the provision of that supply)

- Food for human consumption
- Pharmaceutical products
- Scheduled bus service (tal-linja)
- Domestic inter-island sea passenger transport
- International passenger transport
- Exports
- Intra-community supplies of goods

(Please note that this information does not replace the provisions of VAT legislation. This list is not exhaustive and reference to VAT legislation would be appropriate)

The following supplies are exempt without credit, where no VAT is charged on the value of the supply but the supplier is not entitled to claim back input VAT incurred in the provision of that supply. In this case the supplier is not required to register with the Department.

- Supply of water by a Public Authority
- Supply of buildings and building land
- Supply of Health and Welfare services
- Supply of insurance and financial services
- Letting of immovable property is exempt without credit except in the following situations:
- Letting for the purposes of accommodation in any hotel or guest house or similar establishment or in any holiday camp or camping site (at 7%)
- Letting of accommodation in holiday flats required to be licensed in virtue of the Malta Travel and Tourism Act (at 7%)
- The letting of immovable property by a limited liability company to a registered person for the economic activity of that registered person (at 18%)

(Please note that this information does not replace the provisions of VAT legislation. This list is not exhaustive and reference to VAT legislation would be appropriate)

VAT Declarations and Returns in Malta

- The electronic process for VAT Declaration / Return takes approximately 15 minutes to complete.
- The process of vetting and processing of the submission takes a maximum period of 90 working days. If a refund due to you is not paid to you in time, you will be paid interest of 0.75% per month
- The electronic process for VAT Refund (8th Directive) takes approximately 20 minutes to complete.
- The process of vetting and processing of the submission VAT Refund (8th Directive) takes a maximum period of 4 months. If a refund due to you is not paid to you in time, you will be paid interest of 0.75% per month

Tax Returns

The fiscal year is the calendar year. Malta operates a self-assessment tax system. Taxpayers are required to declare their income and calculate their tax, taking into account payments in advance and any other tax credits. The tax payable must be settled at the time that the self-assessment is filed. For individuals, the deadline is 30 June each year. For companies, the tax return date is nine months after the financial year-end (ten months if the return is filed electronically), but not earlier than 31 March of each year. Companies' tax returns must be accompanied by an auditor's certificate. Revenue assessments may be raised when a return is not filed or where the Commissioner of Revenue disagrees with the self-assessment.

Change in Tax Status

If you are operating below the threshold and you have opted to be classified as an exempt person, you are duty bound to inform the Department that you no longer qualify to be classified as exempt as soon as it becomes evident that you will exceed the applicable threshold.

This can be arrived at by calculating the annual turnover for the previous twelve months at the end of each calendar quarter. When it results that the applicable threshold is exceeded, you should inform the Department within thirty days of occurrence, and VAT has to be collected immediately after the lapse of this period.

Passing on/selling a business together with the VAT registration number – is this possible?

If you are a sole trader then you are required to de-register your business while a new application for VAT registration shall be drawn up by your son or any person who takes over your business, unless that person is already registered for VAT.

However, if the business is a limited liability Company, then the transfer has to be carried out through the Malta Business Registry (MBR), and the VAT Department must be advised as to the change in the Directors and Shareholders of the Company, by means of a certified copy of the memorandums supplied by the same MBR.

De-registering from VAT in Malta

In order to de-register from VAT you are required to call at the Customer Care Unit of the Department to complete the appropriate form. An application for de-registration cannot be processed unless you have all VAT returns and payments up to date, and any pending matters settled with the Department.

It is pertinent to point out that if you are registered as non-exempt (under article 10) you shall be deemed to have supplied to yourself all remaining business assets belonging to your business, immediately before the cancellation of your registration. In this regard you must therefore account for the VAT due thereon in your last VAT return.

Input and Output Tax in Malta

Input tax is the VAT that is paid by the business operator for goods and services he receives in the course of his economic activity. Output tax is the VAT that is charged by the business operator when he himself supplies goods or services to his customers.

VAT Return – Services made outside Malta

In order to determine whether input tax incurred on supplies made outside Malta may be claimed back or not, one must establish whether they would, had they been made in Malta, be treated as taxable supplies or exempt with credit supplies. In the affirmative, the value of these supplies is to be included in the VAT return as exempt with credit supplies.

If no right to claim back input tax exists, their value is to be included in the VAT return as exempt without credit supplies.

Credit/refund of Input VAT in Malta

Persons who are registered with the Department under article 10 (i.e. they have not opted to be classified as exempt persons) are entitled to claim back so much of the input tax as is attributable to taxable supplies, exempt with credit supplies and supplies made outside Malta which, had these been made in Malta, would have been classified as taxable supplies or exempt with credit supplies.

Where the economic activity of a registered person consists in a mixture of taxable/exempt with credit supplies and exempt without credit supplies, input VAT would have to be apportioned by using either the direct method of attribution or the partial attribution method.Where the above methods do not give a fair and reasonable result, the Commissioner is empowered to decide on the percentage of attribution.

However, under the provisions of legislation, certain input VAT incurred on certain supplies is blocked and cannot be claimed back even when incurred on expenses relating to the economic activity.

Blocking of Input VAT

Persons who provide exempt without credit supplies (e.g. insurance companies and education and health and welfare services), and persons who are classified as exempt persons cannot claim back input VAT incurred on purchases relating to their business.

No input VAT can be claimed on the following supplies even when such supplies are purchased in connection with the economic activity of a registered person, namely input VAT incurred on:

- Tobacco or tobacco products, unless purchased for resale
- Alcoholic beverages, unless purchased for resale
- Works of art and antiques, i.e. paintings, drawings and pastels executed by hand, other than hand-painted or hand-decorated manufactured articles; original engravings, prints and lithographs; original sculptures and statuary, in any material; antiques of an age exceeding one hundred years; collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological and ethnographic interest, unless purchased for resale
- Motor vehicles, vessels or aircraft, excluding vessels and aircraft acquired for the purpose of being provided under a charter or hire agreement, unless purchased for resale or unless acquired and used for the purpose of the carriage of goods or passengers for a consideration.
- Goods and services for the purpose of repairing, maintaining and keeping motor vehicles, vessels or aircraft and fuel used therein.
- Car leasing by a lessee, including VAT incurred on fuel

- The supply of any goods and services used in the provision of receptions, entertainment or hospitality except where that supply is made in the normal course of an economic activity
- The supply of goods and services used in the provision by a person to his employees of transport or entertainment, except where the transport is provided on vehicles with a seating capacity of not less than seven.

Tax Documentation and Records in Malta

You need to keep the following records and documents:

- Copies of Fiscal Receipts issued Fiscal cash register FCR Z Readings
- All Customs import/export documentation
- Purchases and Sales Invoices
- Debit and Credit Notes
- Cash Books and Petty Cash Books
- Day Purchases and Sales Ledger
- Value Added Tax Account and Annual VAT Account
- Bank Account connected with the business
- Any other records and documents relevant to your economic activity

You are obliged to retain these records and documents for six years as the Department may request them for inspection.

However, in cases where the provisions for adjustment of input tax on capital goods and on immovable property applies, the six years shall start to run from the end of the five year period or twenty years period respectively as the case may be.

VAT Department Inspections in Malta

Inspections by the VAT Department are intended to:

- Educate registered persons about their rights and obligations vis-a-vis VAT;
- Check the tax liability of a registered person to ensure that the right amount of tax is being collected and submitted to the Department;
- Examine and verify claims for refunds made by registered persons;
- Exercise control on the business activity of registered persons by examining their business records and books of account to ensure that no records and books of account to ensure that no under-declaration of output tax and/or over-declaration of input tax is being made;
- Spot-check registered person's establishments to ensure that fiscal receipts are being issued to clients on sale of a product/service.
- VAT and Non-profit Making Organisations

Services made to members of non-profit making organisations are exempt without credit and the organisation is not required to register for VAT.

However, where the organisation provides other services against payment, each supply will have to be considered in the context of VAT legislation.

The following are some examples where a non-profit organisation will be required to register with the Department, and subject to its right and option to be classified as an exempt person, charge and collect VAT:

- operating a bar for its members
- renting of space to third parties to be used as a bar
- selling of advertising space in its magazine

Fund raising activities, except were the beneficiary of such activities will be a health, welfare or education institution. In such cases the Department's prior permission for the exemption will be required.

If a non-profit making organisation is required to register with the Department and does not opt to be classified as an exempt person, its right to claim input tax is limited to the supplies on which VAT is collected, either by directly attributing its inputs or by partially attributing such inputs.

For further details about VAT please contact Clive Caruana – Managing Partner at CCPS Malta.

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Taxation on digital economy (DE:2) globe proposal – Pillar two

BACKGROUND

On October 9th, 2019 the Secretariat released a public consultation of the proposed "Unified Approach" under Pillar One[1]. Following this release, the Secretariat issued another public consultation document focused on comments on the Pillar Two of the Programme of Work[2]. That document focuses specifically on the technical issues of the GLoBE proposal, primarily on three technical aspects of it:

1. The use of financial accounts to determine the tax base
2. The extent of blending low and high-tax income
3. Views on carve-outs and thresholds considered for the GLoBE proposal

For purposes of this summary, first a review of Pillar Two is be provided.

Pillar Two, also referred to as the GLoBE proposal, seeks to develop a co-ordinated set of rules to address ongoing concerns arising from multinational structures that allow profit shifting to jurisdictions where income is not taxed or is taxed at a very low level.

The proposed set of rules are intended to modify at a certain level domestic laws and tax treaties, with the objective of implementing a minimum rate of tax on all income and therefore deterring MNE's from engaging in profit shifting. The components of the GLoBE proposal are:

1. The Income Inclusion Rule: operates as a minimum tax rate MNE's on their global income. The aim is to establish a floor for tax rates without regards of where the MNE is headquartered. In other words, this rule acts as a top up on that income which was taxed at a rate below the minimum rate established.
2. Undertaxed Payment Rule: this rule would deny a deduction or imposed a source-based taxation on payments made to related parties if such payments are not subject to a tax at the minimum rate established.
3. Switch-Over Rule: this rule would be introduced into tax treaties and would allow resident jurisdictions to impose a credit method on profits attributable to PE's or other types of profits that are subject to a tax rate below the minimum rate established.
4. Subject to Tax Rule: this rule would act as a complement to the undertaxed payment rule and would modify certain tax treaty's articles to limit their benefits on certain items of income, primarily focused on interest and royalty payments.

As a whole, the GLoBE proposal suggests that with the absence of low taxing rates and the standardization of a minimum rate, the playing field is leveled for both, taxpayers and tax jurisdictions.

CONSIDERATIONS FOR PILLAR TWO

However, just like for Pillar One, the Secretariat calls for comments and suggestions from the public on several design issues that need to be dealt with in order to achieve a co-ordinated effort that is based on simplicity, minimum administrative burden, and eliminates the risk of double taxation.

There are several technical and design aspects of the GLoBE that depend on policy choices and these include:

a. Determination of the tax base
b. Blending
c. Carve-Outs

Determination of the Tax Base

The PoW starts from the idea that the tax base should be determined according to the CFC rules that jurisdictions already apply or Corporate Income Tax rules of the shareholder's residence jurisdiction. However, this would imply that all subsidiaries of an MNE would have to recalculate their income using the rules of the parent jurisdiction, causing not only significant administrative costs but also leading to potential risks that a highly taxed subsidiary is treated as a low taxed entity.

In order to avoid such complications, the PoW explores simplifications like setting financial accounting rules subject to certain specified adjustments when calculating the tax base. This would eliminate the risk of mis-calculating the tax base and therefore mis-calculating the rate at which that income was taxed merely because different accounting standards are employed.

Once the tax base is determined, that tax base would have to be analyzed in order to determine if it was taxed above the minimum tax rate (according to the income inclusion rule)[3]. Once again, a consensus must be reached to determine whether to use a fix

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[1] Public Consultation Document, Addressing the Tax Challenges of the Digitalization of the Economy, 13 February – 6 March 2019.
[2] Public Consultation Document, Global Anti-Base Erosion Proposal GLoBE, 8 Novemeber 2019 – 2 December 2019.
[3] Consideration is placed in terms of replacing CFC rules with the Income Inclusion Rule.

rate or a minimum tax based on a percentage of the jurisdiction CIT rate.

Blending

Blending is the mixing of income that is taxed at high and low rates within the same entity.

Because the GLoBE proposal is surrounded by the idea of a minimum tax rate, determining how to calculate such rate is crucial. The PoW, under the public consultation, seeks to gather opinions on the best way to calculate the minimum rate, including the level of blending income that MNE should be allowed to use. This public consultation names three types of blending, each with its own pros and cons. The three types of blending are:

a. Worldwide blending: this type of approach would require MNE's to aggregate its total foreign income and the tax on such income and compare the rate paid to the minimum rate established.

   The difference between the tax effectively paid and the minimum rate would the MNE's tax liability under the GLoBE proposal.

b. Jurisdictional blending: the approach would require MNE's to distinguish income between the different jurisdictions where they have presence or where they are taxed. If in a certain jurisdiction the total amount of income attributable to such jurisdiction is taxed below the minimum rate, then the MNE's liability would be that amount necessary to bring the total amount of tax up to the minimum rate.

c. Entity blending: such approach would require each entity within an MNE to determine its income and tax. If the effective tax rate of a foreign branch or foreign entity was below the established minimum rate, then the MNE would be subject to tax.

Each approach represents a unique policy and while some are more specific than others, they also represent more challenging and burdensome approaches. Choosing the appropriate blending will also require to consider the challenges that arise from other design aspects, like determining the proper tax base. Issues like the use of financial accounting principles or the effects of timing issues can have effects on the calculation of the effective tax rate in any of the three approaches.

Carve-Outs

The PoW also considers the possible application of carve-outs and thresholds to restrict the application of the GLoBE proposal to only scenarios where it is deemed to be best applicable.

As a start, the mentioned carve-outs include:

a. Regimes complaint with BEPS Action 5.

b. Return on tangible assets

c. Controlled corporations with a level of related part transactions below a specific threshold.

The public discussion also addresses the exploration of thresholds for the application of the GLoBE proposal:

a. A threshold based on turnover or other financial indicator of the size of the group

b. A threshold to exclude entities with a minimum amount of profit or intercompany transactions.

c. Specific industry or sector carve-outs.

It is emphasized that carve-outs and thresholds would undermine the policy intent and impact compliance and administration costs. The design or implementation of carve-outs and thresholds can be circumstance-based or objective (based of certain measurable criteria).

Conclusions

As part of the BEPS project, both Pillar One and Pillar Two seek to close gaps in the international tax spectrum. However, despite the consensus reached and the work done by members of the Inclusive Framework, there are still several topics that need to be discussed and polish further. From the allocation of taxing rights to the development of a co-ordinated strategy to regulate and tax international profits, these challenges and issues make the path to reach a consensus agreement a challenging one. It is important to remember that a solution much be reached by the end of 2020. As such, it is expected that numerous more documents will come to light in the near future, as the stakeholder in the matter, including G20 Finance Ministe, world leaders and the OCDE work jointly to develop a solution that tackles effectively the challenges arising from the Digitalization of the Economy and the Erosion of Profits.

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Main incentives for investment

Investment laws offer the same treatment to foreign investments as to local investments. The new tax laws considerably reduced the income tax rate (from 30% to 10%). There are many incentives, such as the maquila program, free trade zones, Investment Incentive Law (60/90), etc.

1. Free Zone Regime

A relevant stimulus for business constitutes these areas where all kinds of commercial, industrial and service activities can be developed.

The legal regime offers several advantages in terms of tax exemptions; it also has a special tax regime that determines the payment of a 0.5% income tax.

Free zone operations are focused mainly on the development of activities abroad, although operations are permitted within Paraguayan territory.

Law No. 523/95 - "Which authorizes and establishes the Free Zone Regime" and its regulatory decree No. 15,554/96 - "Which regulates the Free Zone Law" among others, establish the guidelines related to the activities in free zones.

In the mentioned legislation, there are two main figures, the LICENSEE, responsible for installing the infrastructure for the operational management of cargo and the USER responsible for the exercise of commercial, industrial or services. Thus, the regulations establish the administrative measures that enable the operation of free zones, their control, monitoring and development.

Currently there are two free zones installed in the area of the Upper Paraná (northeast of the country, near the border with Brazil and Argentina), in which national and multinational companies are constituted and actively operating.

2. Maquila regime

The maquila regime is a reliable and effective alternative for business from Paraguay to the world. With the Maquiladora Industry Law, the payment of the common external tariff for MERCOSUR is exempted for the temporary import of capital goods, inputs, parts and components.

Through the Maquila, investors can introduce goods or products into the country for the purpose of being assembled, repaired, improved, worked or processed for subsequent export, once the added value or "Paraguayan element" has been incorporated. It is subject to a special tax regime, paying a 1% tax on the amount of value added in national territory.

Recently, innovative provisions have been regulated allowing virtual commerce between maquiladoras that allow for better use of the goods introduced under the temporary regime (known as "virtual maquila").

Likewise, a service maquila has been established, which enjoys the same tax benefits and is mainly aimed at assisting foreign entities (there are currently call centers that benefit from this regime).

Paraguayan legislation does not impose restrictions on the types of products or services covered by the maquiladora industry. National policy on maquiladora activity in Paraguay is regulated and controlled by the *Consejo Nacional de la Industria Maquiladora de la Exportación* [National Council of the Maquiladora Export Industry] (CNIME). Both natural and legal persons, national or foreign, domiciled in the country, may avail themselves of the regulatory benefits.

This industry is widely supported by the Government, as it considers it to be an element of social interest in combating unemployment. There are currently more than 40 maquiladora companies in the country.

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Double Tax Convention between Serbia and Israel enters into force

The Convention between the Government of the Republic of Serbia and the Government of the State of Israel on the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income has entered into force on 25 October 2019.

According to the Convention, the maximum withholding tax rates on dividends, interest and royalties are:

Dividends:

1. 5% of the gross amount of the dividend if the beneficial owner is a company (excluding a partnership) which directly holds at least 25% of the capital of the dividend-paying company during the year which includes the dividend payout date, and
2. 15% of the gross amount of the dividend in all other cases.

Interest:

10% of gross interest

Royalties:

1. 5% of the gross amount of royalties (for use or for the right to use copyright for a literary, artistic or scientific work, including cinematograph films and films or tapes used for television or radio broadcasting), and
2. 10% of the gross amount of royalties (for the use or right of use of a patent, trademark, design or model, plan, secret formula, process, industrial, commercial, or scientific equipment, information / know-how concerning industrial, commercial or scientific experience).

The Convention was signed in Belgrade on November 22, 2018. The Law on Confirmation, as well as the text of the Convention, was published in the Official Gazette of the RS - International Agreements, no. 2 of February 18, 2019. The Convention shall apply as of 1 January 2020.

Contact our Belgrade office for more information on how the treaty may impact or benefit you if your Serbian company is doing business with Israel.

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Concept of permanent establishment (VAT&CIT)

REQUIREMENTS	VAT	CIT
Regulation		
Definition according internal regulation	Any person or entity who regularly supplies goods or provides services in Thailand and has an annual turnover exceeding 1.8 million baht is subject to VAT in Thailand. Service is deemed to be provided in Thailand if the service is performed in Thailand regardless where it is utilized elsewhere or in Thailand. An importer is also subject to VAT in Thailand no matter whether one is a registered person or not.	A company or juristic partnership incorporated under foreign laws which has an employee, an agent or a go-between for carrying on business in Thailand and as a result receives income or profits in Thailand, such company or juristic partnership shall be deemed to be carrying on business in Thailand *1*
Legal stipulation	Section 77/2, 81/1 and 82 of Revenue Code and Royal Decree NO 432 Issued under the Revenue Code Governing Determination of the Value of Tax Base of Small Businesses Exempted from Value Added Tax	Section 76 Bis of Revenue Code
Main examples		a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a farm or plantation, a warehouse in relation to a person providing storage facilities for others, rented offices, dependent agent.
Formal requirements	• Register with the Revenue Department for corporate income tax purposes and obtain a tax number and ID card • Value Added Tax (VAT) registration”	• Register with the Revenue Department for corporate income tax purposes • Obtain a tax number and ID card
Legal personality	yes	yes (deemed as having legal personality only tax purpose)
Cost	Less costly than subsidiaries, as less formal requirements are needed	
Main requirements	**VAT**	**CIT**
Existence of place of business	No	No *2*
Fixation of the place of business	No	No
Carrying of an economic activity	Yes	Yes

Further requirements per country	No	No
Short analysis of the main examples	**VAT**	**CIT**
Dependent agent	• a person that habitually has the authority to negotiate and conclude sales contracts on behalf of the foreign company in Thailand • a person that does not have such authority, but habitually maintains a stock of goods or merchandise from which he regularly fills orders or makes deliveries on behalf of the foreign company • a person habitually securing orders in Thailand wholly or almost wholly for the foreign company or other enterprises which are controlled by it or have a controlling interest in it.	• a person that act as a broker or an agent for selling goods specifically for one company or • a person that has contract with a foreign company. Such contract has the effect of limiting the right of a dependent agent to act as a broker or an agent for selling the same type of product • a person that do not receive any other benefits from companies p abroad except commission for each transaction of goods only • a person that sell the product while the purchaser has to pay for the product directly to the foreign company *3*
Real estate operated under lease or under any other title	The mere ownership of a property, does not constitute a permanent establishment	The mere ownership of a property, does not constitute a permanent establishment *4*
Construction, installation or assembly works	Construction exist for more than 6 months in Thailand.	Construction exist for more than 6 months in Thailand.
Warehouse	a warehouse in relation to a person providing storage facilities for others.	a warehouse in relation to a person providing storage facilities for others.
Consequences	**VAT**	**CIT**
Tax returns	• Mountly filed for VAT returns • Other informative declarations	• Annual Corporate Tax return • Withholding Tax needed to be submitted monthly • There is half-year tax return which the company need estimate the net profit that it may make throughout the current financial year, in which half of the estimated amount should be calculated into the half-year CIT to be paid to RD • Other informative declarations *5*
Tax rates	7% General rate	20 % General rate however, the rates vary depending on types of taxpayers

Tax issues		the tax withholding of dividends, royalties, interests, advertising fees, service and professional fess and Prizes will be credited against final tax liability
Responsability	Services utilized in Thailand supplied by service providers in other countries are also subject to VAT in Thailand. In such a case, service recipient in Thailand is obliged to file VAT return and pay tax, if any, on behalf of the service providers.	No liabilitythe for parent company
Annual accounts and other commercial obligations	No (and neither of the parent-company)	No (and neither of the parent-company)

[1] *There is only one internal regulation in Thailand which is specifically pertinent on the permanent establishment which is in Section 76 Bis of the Revenue Code. Foreign entities can be taxable in Thailand on one condition which is the "carrying on of business in Thailand". The term of permanent establishment only pertains in the Double Taxation Agreement (DTA) which is not included in this summary due to flexible nature of each DTA.*

[2] *Since the regulation of the permanent estabishment has no enforcement in Thailand as seen in the example above which has been considered from the DTA.*

[3] *Subject to the decisions made by the Commission of Taxation No. 2/2526*

[4] *Since the regulation of the permanent estabishment has no bearing in thailand as such as the example above has been considered from the DTA.*

[5] *Consequences as per the regulations stated*

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COT and VAT reform

On January 29, 2020, three Constitutional Decrees enacted by the Constituent National Assembly were published in the Official Gazette of the Bolivarian Republic of Venezuela Special No. 6570. Two of those Constitutional Decrees draw special interest: (i) Constitutional Decree enacting the Organic Tax Code and (ii) Constitutional Decree enacting a Partial Amendment to the Decree with status, validity and force of Law of Value Added Tax.

Below, please find our comments on the most relevant amendments in each Constitutional Decree.

(i) Constitutional Decree enacting the Organic Tax Code

The Constitutional Decree enacting the Organic Tax Code (hereinafter, COT 2020) amends several legal provisions, the most relevant of which are:

a. COT 2020 amends the assessment basis of penalties. It establishes that penalties will be assessed by using the official foreign exchange rate of the highest valued currency at the time penalty is due. The aforementioned official foreign exchange rate is the one published by the Central Bank of Venezuela. Under the former COT 2014, the assessment basis of penalties was the tax unit (U.T.), a measurement unit created to assess taxes, penalties and default interests.

b. COT 2020 states that the National Tax Authorities are entitled to adjust the value of the U.T. However, the provision requires prior authorization from the President of the Republic. Under COT 2014, the National Tax Authorities was entitled to change the value of the U.T. *"within the first fifteen days of the month of February of each year. Favorable opinion is required from the Finance Permanent Commission of the National Assembly. Basis of adjustment is the variation of the National Consumer Pricing Index for the immediate prior year (…)."* [1]

c. COT 2020 establishes that taxes due on a 12-month period shall be assessed applying the U.T.'s value effective by the end of the corresponding tax period. Under COT 2014, taxes due on a 12-month period applied the U.T.'s value effective for a period of no less than 183 continuous days within the corresponding tax period.[2]

d. COT 2020 establishes that U.T. will only be used to assess national taxes controlled by the National Tax Authorities. Other government offices are excluded from using the U.T. in order to assess labor benefits, charges or other special contributions arising from the services rendered. The temporary provisions of COT 2020 order government offices, other than the National Tax Authorities, to substitute the U.T. with a different measurement unit to assess labor benefits, charges or special contributions arising from services, if such labor benefits, charges or special contributions are fixed in U.T. Substitution should take place within one year from the date of publication of the Constitutional Decree in the Official Gazette.

e. COT 2020 establishes that the statute of limitation will be suspended where taxpayers fail to inform the Tax Authorities of changes in tax residence. Suspension of the statute of limitation will start from the date in which taxpayer failed to inform tax residence or changes in tax residence. Suspension will end once taxpayer informed of new tax residence.

f. COT 2020 expressly states that provisions of COT 2014 shall apply to offenses perpetrated before the effective date of this Constitutional Decree.

The Constitutional Decree abolishes the Decree with status, validity and force of Law of the Organic Tax Code published in the Official Gazette of the Bolivarian Republic of Venezuela Special No. 6.152 of November 18, 2014, as well as all other provisions that conflict with any of the matters set forth in the Constitutional Decree.

This Decree will enter into force 30 calendar days following publication in the Official Gazette of the Bolivarian Republic of Venezuela.

(ii) Constitutional Decree enacting a Partial Amendment to the Decree with the status, validity and force of Law of Value Added Tax

The Constitutional Decree amends several provisions of the former Constitutional Decree enacting an Amendment to the Law establishing the Value Added Tax of August 21, 2018. Below please find the most relevant amendments:

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[1] *Article 131 (15) of Decree N° 1.434 enacting the Decree with status, validity and force of Law of the Organic Tax Code, published in Official Gazette of the Bolivarian Republic of Venezuela Special No. 6.152 of November 18, 2014 (COT 2014).*

[2] *Paragraph 3, article 3 COT 2014*

a. The Constitutional Decree enacting a Partial Amendment to the Decree with status, validity and force of Law that establishes the Value Added Tax (hereinafter, LVAT 2020) adds a new paragraph to article 27. This new paragraph creates an additional VAT rate, established between a minimum of 5% and a maximum of 25% of goods and services paid in foreign currency or cryptocurrency other than the cryptocurrency issued and backed by the Bolivarian Republic of Venezuela. According to LVAT 2020, an Executive Decree is required to establish the applicable tax rate.

b. LVAT 2020 includes as a tax event of the additional VAT rate, all sale of immovable property paid in foreign currency or in cryptocurrency other than the cryptocurrency issued and backed by the Bolivarian Republic of Venezuela. Registrars must require, prior to recording the sales document, proof that sale was paid in Bolivars or cryptocurrency issued and backed by the Bolivarian Republic of Venezuela. Where no proof of such payment is produced, registrars must require proof that tax due was paid, as provided in article 27 of the Law.

c. Invoices issued for payments made in foreign currency or cryptocurrency other than cryptocurrency issued and backed by the Bolivarian Republic of Venezuela, should include the amount in foreign currency or cryptocurrency other than cryptocurrency issued and backed by the Bolivarian Republic of Venezuela, and the equivalent amount in Bolivars. Invoice must include both amounts, applicable exchange rate, tax base, tax and total amount of invoice.

d. The additional VAT rate shall enter into force 30 calendar days following publication in the Official Gazette of the Bolivarian Republic of Venezuela of the Executive Decree establishing the applicable additional VAT rate.

LVAT 2020 abolishes the aforementioned Constitutional Decree enacting Partial Amendment of the Law that establishes the Value Added Tax of August 21, 2018.

The Constitutional Decree shall enter into force 60 calendar days following publication in the Official Gazette of the Bolivarian Republic of Venezuela.

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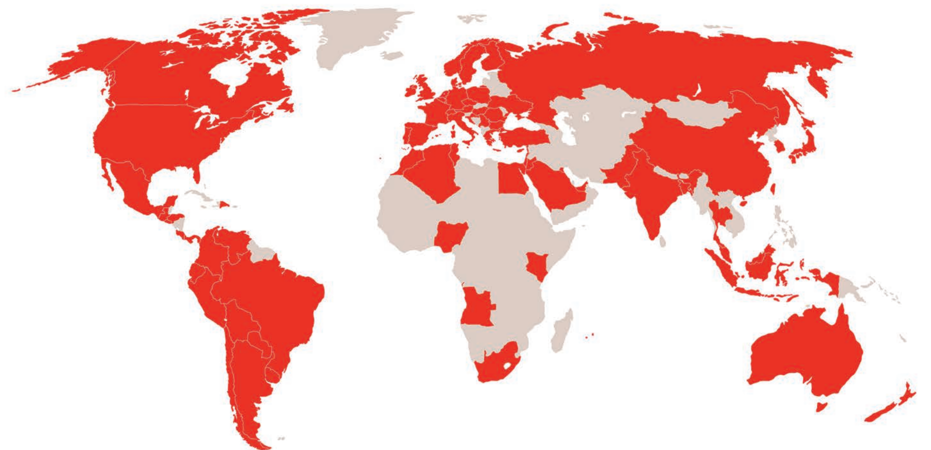

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