INTERNATIONAL BUSINESS

December 2022

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

Some of the features of this edition include:

- Venture Capital Trusts (VCT's) in Turkish Legislation
- Devaluation on the Egyptian currency: Why Now and What's Next?
- Sustainability and regenerative companies in Argentina

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

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Sustainability and regenerative companies

The regenerative economy proposes a paradigm shift, which goes beyond sustainability and zero impact, and is based on an ecosystemic and collaborative vision, which allows ecosystems and societies to be improved.

The way in which companies relate to society, the economy and the environment has been evolving. Faced with the transformations and challenges presented by the regenerative economy, companies are key players in the idea of development with little support from the government.

First world countries, both the private and public sectors, are psyched up and raising awareness among citizens, carrying out concrete and measurable actions to invest in improving the quality of life of future generations.

Companies in Argentina begin to take the first steps trying to balance the social, environmental and economic balance. Understand that economic growth is not development, that the regenerative economy proposes new productive models such as sustainable economic development, the articulation between wealth, care for the environment and social promotion. It implies transcending the boundaries of sustainability, optimizing the creation of value and modifying the way of producing in a linear way.

The management of a company is the reflection of behaviors and decision making. They begin to place value on social and economic aspects and criteria to measure the success and development of their organization and the focus on environmental issues, such as efficient use of energy, contribution to the circular economy under the concepts of not discarding, recycling and reusing.

Also in social aspects in which they relate to their employees, suppliers, customers and the community, investment in human capital, diversity and equal opportunities, integration.

Adopting the regenerative business model implies promoting a change of mentality in the productive processes and in the business strategy of an organization. For this, it is necessary that we bet on models based on the regenerative and non-extractive economy. That is, let us consider social and environmental factors when designing our economic activities, which as a consequence, in addition to generating income, produce a positive impact on society and the environment.

Achieve a change in culture, a regenerative human culture, where actions and results are related to health, the planet, the economy and the future of society.

The difficult task is to overcome the current and future economic and ecological crisis, to encourage this regenerative economy to avoid further losses and economic, environmental and social costs. Understand that we need comprehensive actions to achieve a restorative relationship between humanity and the ecosystems from which we obtain resources to live.

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The misconception of a Bulgarian company's inactivity

It is common practice that after registering a new company, the company does not start trading activities immediately. Another mass case is existing companies, due to subjective or objective reasons, cease their activities without being liquidated. Usually, the owners and managers of companies are mistaken to think that they have no commitment to the state. Usually, in these cases, the contract with the accountant or accounting firm is terminated and there is no one to warn or remind them of the company's annual obligations.

This common practice, dictated by the corporate intention to cut costs, is often hasty and does not always lead to the desired result. There is a risk of accumulating significant fines and penalties even before the start of real activity or during difficult periods when the company's activity is suspended. Below, we will indicate the main commitments of a company even when inactive for a financial year.

As of 2018, some reliefs were introduced for companies that did not operate during the reporting year:

- The requirement for inactive companies (dormant companies) to submit to the National Revenue Agency an Annual Tax Declaration under Art. 92 of the Corporate Taxation Code is repealed. Before the change, such a declaration was submitted until March 31st.
- The requirement to publish an annual financial report in the Commercial Register is no longer required. However, to benefit from the relief, companies must submit a declaration of lack of activity in the Commercial Register (declaration under Article 38, Paragraph 9 of the Commercial Code) - (for 2022, the deadline was June 30th). Missing this deadline leads to their obligation to publish the annual financial statements in the Commercial under the general rules.

The obligations for companies that did not carry out economic activity during the reporting year, in the sense of the Accounting Law, are the following:

1. Preparation and submission of a Declaration for enterprises without activity (Declaration of inactivity - Appendix No. 11).

Submitted to the National Statistical Institute (NSI). In addition to the basic data of the company, the current economic activity is also filled in, according to the Classification of economic activities, as well as the predominant form of ownership.

Such a declaration is also submitted by companies that carried out activity during the reporting year, but the income and expenses for the activity are below BGN 500 and they cannot draw up an annual report on the activity.

2. Submission of a declaration of lack of activity in the commercial register (declaration under Art. 38, para. 9 of the TR).

All companies that did not perform activities during the accounting year can publish such a declaration in the Commercial Register, which exempts them from the obligation to publish an annual financial report. The publication of this declaration exempts the companies from the state tax due.

If the deadline for submitting such a declaration is missed, the obligation remains for the company to publish an Annual Financial Report in the Commercial Register. Therefore, it is in the interest of every manager to comply with the deadline for submitting such a declaration, which would save him time and costs.

The publication of the reports in the Commercial Register can be done in 2 ways: on site in any territorial division of the Registration Agency or electronically. It is important to know that in order to publish the annual statements electronically, the signature holder must be the trader, the tax preparer -the accountant who prepared and signed the annual financial statement- or a legally competent person expressly authorized to do so. The deadline for publishing the reports is September 30th, with fines for non-compliance starting at BGN 500.

3. Submission of References-declarations on VAT.

Registered for VAT, even if it does not carry out any activity, it is obliged to report monthly for VAT. This means that by the 14th of the following month he must prepare and submit a VAT return, purchase journal and sales journal (albeit with zero values).

The complexity of tax systems presents significant challenges to business owners and managers. Having a competent accountant is paramount to tax planning and avoiding unnecessary fines and penalties costs caused by ignorance and mishandling of the law. Therefore, terminating the contract with the accountant or accounting firm to reduce costs due to lack of activity is not the best strategy one can implement. Regardless of the reason why you have not been active, do not delude yourself that you have no obligations to the state. Contacting your accountant will protect you from the danger of accumulating significant fines and penalties even before the start of real activity or during difficult periods when the company has suspended activity.

Remember the words of Schindler – *"in life one needs three things - a good doctor, a forgiving priest, and a smart accountant."*

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Hard times, certain opportunity

At the end of the year 2022, with the world's economy showing signs of a sustained slowdown and inflation throughout the countries, including those that generate the largest production of goods and services, society finds itself expectant of what the prices will be in 2023.

Europe on the verge of an unpredictable winter, depending on the gas price variation due to the Russian-Ukraine conflict, the USA trying to generate a certain sign of tranquility in this last stage of the year with their monetary policies and Latin America with a change in its political landscape that, together with global uncertainties, have had an effect on investments in the region.

These are moments of uncertainty in which calm must reign from those who make decisions in positions of power such as the government and productive apparatus in company level. The world has been through this at other times in history. Unlike other years, the investment funds and stock exchanges now have cash, they are just waiting for the right moment to look for where to invest by buying assets of all kinds at low prices due to the almost prevailing recession, which once the crisis is over will return to their real values, obtaining them a profit for having bought at low prices. We citizens, despite being shown an uncertain future in the near term, we must have faith and conviction that we will succeed, the capital we have at this time must be work and good energy, to deliver this to what will come after us, our children, just as our parents and ancestors did, we all have difficult stages to go through life, it is our turn now. The important thing is to know how to face them with the determination to know that this bad time will pass, nothing lasts for forever.

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Conversion of share capital to euro

With the euro becoming the national currency from the 1st of January 2023, most of us are focused on the expected changes in the price of products and services, the level of wages and the cost of living. However, a change will be also visible in the share capital of every company.

Namely, the Companies Act prescribes the amounts of share capital and the minimum value of individual shares or business shares for each company, depending on its legal form. With the introduction of the euro, the kuna amounts of the share capital will necessarily have to be converted into euro at the fixed exchange rate of 7.53450, following the guidelines in the new amendments to the Companies Act.

Until now, the Companies Act prescribed the value of the share capital as follows:

- Joint-stock company (d.d.) – the minimum amount of share capital is HRK 200,000, and the minimum nominal amount of a share is HRK 10.00 (larger nominal amounts of shares must be multiples of the amount of HRK 10.00)
- Limited liability company (d.o.o.) – the minimum amount of share capital is HRK 20,000, and the minimum nominal amount of a business share is HRK 200.00 (larger nominal amounts of business shares must be multiples of 100)
- Simple limited liability company (j.d.o.o.) – the minimum amount of share capital is HRK 10.00, and the minimum nominal amount of the business share is HRK 1.00 (the amounts of business shares must be a whole number)

Law on Amendments to the Companies Act Official Gazette 114/2022, on the 3rd of October 2022 determined, the new minimum amounts of share capital, shares and business shares in euros as shown in the table below:

Legal form	Previous minimum amount in HRK	New minimum amount in EUR
Joint-stock company		
Share capital	200.000,00	25.000,00
Share	10,00	1,00
Limited liability company		
Share capital	20.000,00	2.500,00
Business share	200,00	10,00
Simple limited liability company		
Share capital	10,00	1,00
Business share	1,00	1,00

Accordingly, in the case of joint-stock companies and simple companies with limited liability, the larger nominal amounts of shares or business shares must be whole numbers, while in the case of limited liability companies, the larger amounts of minimum business shares must be multiples of 10.

The conversion of share capital to euros will not happen overnight, so the amendments to the Companies Act stipulate the deadlines within which companies must make the conversion from kuna to euro:

- Joint-stock companies - must harmonize the amounts of the share capital and all shares during the first capital change, merger, share split or exchange of shares with a nominal amount for those without this amount by January 1st, 2024 (deadline 1 year from the introduction of the euro)
- (Simple) Company with limited liability - they must harmonize the amounts of share capital and all business shares during the first change of capital, merger, division of business shares by January 1st, 2026 (deadline 3 years from the introduction of the euro)

When harmonizing the amount of share capital in euros, the decision on harmonizing is made by the general assembly or the assembly of the company. In the case of a limited liability company, the decision of the company's assembly must be in the form of a notarial document. If during the adjustment there is an increase in the share capital, legal and statutory reserves, and capital reserves as well as reserves from profit, retained profit and undistributed profit of the business year can be used. If there is a reduction in the share capital during the reconciliation, the difference can be used to cover loss or to be entered into the capital reserves. Of course, when reducing the share capital, care should be taken to ensure that it is not less than the minimum prescribed amounts.

It is important to note that if companies do not act in accordance with the provisions of the law within the legally prescribed period, it will be considered that from the first day after the expiry of the period there is reason for the termination of the company, which will be entered in the court register ex officio.

It can be concluded that it is very important for all companies to prepare in time for the conversion of their share capital into euros in accordance with the law and within the agreed time frame, so that they can continue their operations without hindrance. Likewise, by mathematically recalculating the new minimum amounts in euros at a fixed exchange rate to kunas, it can be seen that the kuna amounts are lower than the previously prescribed amounts, therefore companies will not be put in a situation where they have to pay additional capital.

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Devaluation: Why Now and What Next?

Egypt has experienced the Third wave of devaluation after first devaluation on the Egyptian currency against the US Dollar in 2016 where the official rate before first devaluation was around EGP5.5 for each USD.

End of October the local currency sliding to a record new low of EGP24, falling by more than 14 percent against the latest U.S. dollar rate in September 2022.

The news comes after the Central Bank of Egypt's acting governor, Hassan Abdalla, said during Egypt's Economic Conference on Sunday that Egypt will develop a new currency indicator based on a basket of several currencies as well as, possibly, gold.

The acting director added that Egypt is aiming to change the culture that the Egyptian pound should be solely pegged to the U.S. dollar to reduce the effects of major currency fluctuations on investment performance, as Egypt's current biggest trade partners are China and Saudi Arabia, not the United States.

WHAT HAS HAPPENED SO FAR?

Since the Ukraine-Russia conflict, Egypt has faced financial constraints that have weighed on its currency due to higher commodity prices and a sudden drop in portfolio investments. In early March 2022, it was estimated that portfolio outflows from Egypt were at USD 3.0 billion (EGP 69 billion), signaling a massive reduction in foreign reserves.

In response, the Monetary Policy Committee (MPC) decided to raise the CBE's overnight deposit rate, overnight lending rate, and the rate of the main operation by 200 basis points to 11.25 percent, 12.25 percent, and 11.75 percent, respectively.

As a result, the Egyptian pound dropped to a near all-time low since the 2016 devaluation, trading at EGP 19.27 to the dollar.

Egypt's partnership with its Gulf allies has helped alleviate its funding crisis in light of the Ukraine conflict and the COVID-19 pandemic. In August 2022, the Sovereign Fund of Egypt signed a draft agreement with Saudi Arabia's Public Investment Fund to launch a new company – the Saudi Egyptian Investment Company – in Egypt to attract investments worth USD 10 billion (EGP 194 billion).

HOW WILL THIS AFFECT EGYPTIANS?

One of the clear setbacks of the devaluation of the Egyptian pound is that Egyptians earning in the local currency lose their purchasing power, and due to lack of financial education, an individual's wealth will often be overstated.

Egypt's Prime Minister Mostafa Madbouly announced on Wednesday, 26 of October 2022 an increase in the minimum wage for public employees, from EGP 2,700 to EGP 3,000, and fixing current electricity prices for households through June 2023.

Schooling costs for children studying in international schools or in other countries may also increase, which could put additional pressure on parents and household expenses, and possibly increase the popularity of school loans. Exposure to such exchange rate fluctuations may force private companies to offer compensation through loans, social benefits or a salary raise.

Recently, the International Monetary Fund (IMF) and Egypt have reached an agreement for EGP 68 billion (USD 3 billion), which aims to "safeguard macroeconomic stability and debt sustainability, improve Egypt's resilience to external shocks."

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Obligation to report cross-border tax arrangements

Material scope of application

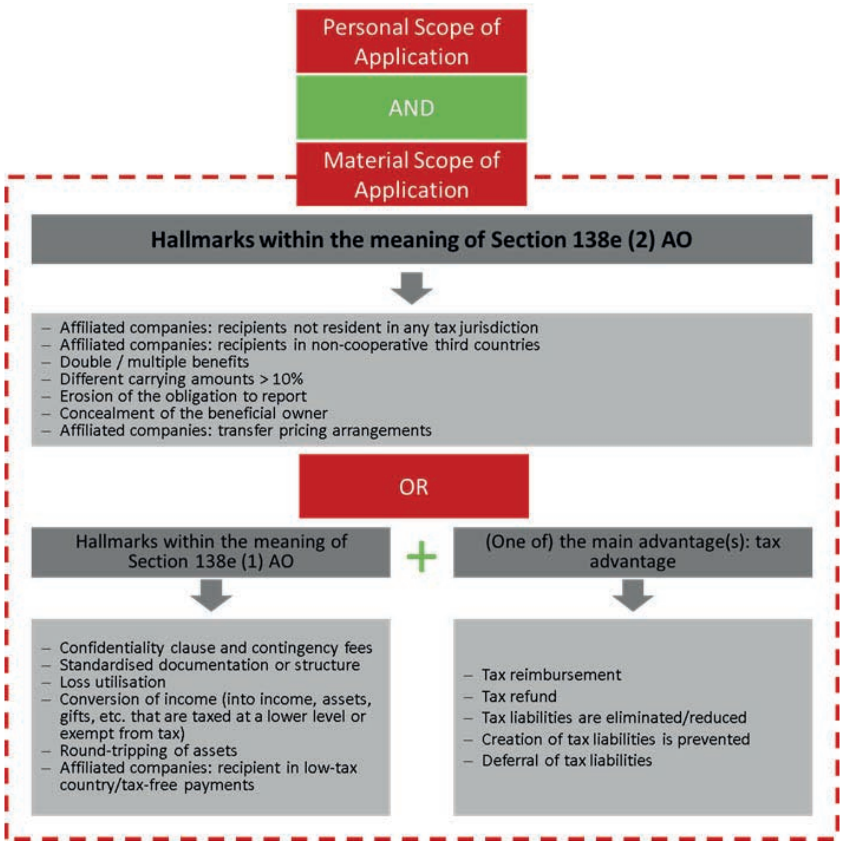
In order to be able to take more effective action against aggressive tax avoidance practices, the EU had already tightened up the Mutual Assistance Directive in 2018: Tax arrangements are to be reported so that avoidance models can be identified at an early stage and prevented. The question for taxpayers as to whether these have to be reported and what exactly has to be actually reported is not easy to answer.

Background:

Given the ever-increasing mobility of people, intangible assets and capital, the EU wants to help Member States protect national tax bases from erosion. Based on information that taxpayers are required to report under the new regime, Member States hope to gather knowledge about evasion schemes. In addition, the reporting obligation is intended to have a deterrent effect. The aim is to discourage taxpayers from becoming at all active in designing tax arrangements.

The personal and material scope of application of the new provision must be comparatively broad in order to be able to catch previously unknown arrangements. This may result in significant uncertainties in individual cases.

The following presentation provides an overview of when a reporting obligation exists in principle.

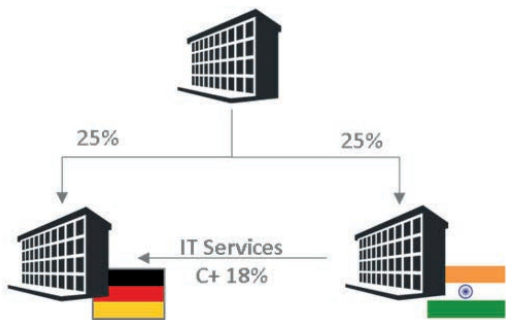


Unconditional hallmarks (Section 138e (2) of the Fiscal Code (Abgabenordnung, AO)

Unconditional hallmarks (Section 138e (2) of the Fiscal Code (Abgabenordnung, AO) give rise to the obligation to report regardless of whether there is a tax advantage. As a definitive explanation of all unconditional hallmarks would go beyond the scope of this blog, we therefore refer to the chart for the complete list, but would like to explain a reportable transfer pricing arrangement by way of example: The use of unilateral safe harbour provisions.

Example: Unilateral safe harbour arrangement

A German company procures IT services from an Indian affiliate. The transfer price is determined correctly under consideration of the cost-plus method. As the company does not wish to conduct a benchmarking study to determine an appropriate mark-up, it instead applies the guidelines of the Indian tax authorities: the latter considers a profit mark-up of 18% to be appropriate.



Whether or not the 18% mark-up is appropriate, this structuring would subject to the reporting obligation in both cases. The requirements of the Indian tax authorities are purely unilateral. If, on the other hand, the German company had carried out a benchmark study and come to the conclusion that 18% is an arm's length mark-up, there would be no reporting requirement. The decisive factor in this example is therefore not the amount of the mark-up per se, but the source to which the taxpayer refers.

Conditional hallmarks (Section 138e (1) AO)

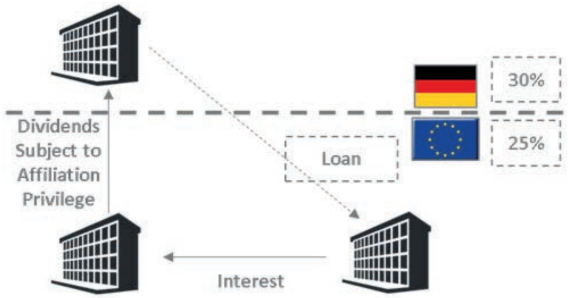
Conditional hallmarks (Section 138e (1) AO) give rise to a reporting obligation if, in addition to a hallmark under Section 138e (1) AO, there is also a tax advantage and this is (one of) the main advantage(s) of the arrangement (so-called relevance test). It is not decisive whether there is an actual tax advantage. It is sufficient that it is expected that a tax advantage will accrue upon implementing the arrangement.

A list of the conditional hallmarks can be found in the chart, but we would like to go into more detail on one conditional arrangement by way of example, namely that of converting income.

In the case of income conversion, the aim of the legislator is to catch arrangements under which income is converted in such a way that it is reclassified as income subject to preferential taxation.

Example:

A German parent company (corporation tax: 30%) places a loan it has extended to another company in a subsidiary (corporation tax: 25%). The interest income then accrues at the level of the subsidiary and is subsequently passed on to the German parent company by way of dividends and taxed in Germany



Tax Rate Subsidiary	25%
Tax Rate Parent	30%
Interest	100,00 €
Prior to placement of loan	
Tax liability parent (interest 100)	30,00 €
Total tax liability	**30,00 €**
After placement of loan	
Tax liability subsidiary (interest 100)	25,00 €
Tax liability parent (Dividend 75, Affiliation Privilege)	1,13 €
Total tax liability	**26,13 €**

on a preferential basis, taking into account the affiliation privilege *(Schachtelprivileg).*

In this case study, this placement of the loan gives rise to a tax advantage when viewed as a whole. This arrangement would be reportable, although it does not appear abusive at first. Against this background, we recommend that taxpayers (even if they do not have ulterior motives) always check transactions with regard to their tax implications and then - if necessary - comply with the reporting obligation.

Our assessment:

The law is comparatively clear in standard cases: cross-border tax arrangements must be reported by the person/entity who/which sets up the

arrangement. However, since the aim is to catch previously unknown arrangements, there are naturally uncertainties in the scope of application, so that "everyday cases" may also have to be reported. The legislator accepts this. In view of the severe sanctions, we recommend that taxpayers critically examine their own transactions, because, at first glance, not everything that is reportable is also a tax arrangement.

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Law 89: Why Multinational Groups should opt for Greece for their shared services centers

Law 89/67 regime, as amended in 2019 and in force today, offers an attractive solution to Multinational Groups to establish their shared services centers in Greece while benefitting from a stable tax environment.

Services

A foreign company established in Greece under Law 89 shall have the sole purpose of providing the head office and/or its affiliated companies (in Greece or abroad) one or more of the following services: consulting services, central accounting support, quality audit on production, products, procedures and services, drafting studies , designs and contracts, advertisement and marketing, data processing, receipt and provision of information, research and development, software development, computer programming and IT systems support, information filing, storage and management, management of supplier, clients and supply chain without executing transfers by own means, human resources management and education, call center activities and provision of information based on computer. However, to fall under Law 89 regime it is important that the services provided should be auxiliary and / or supportive to the final product created abroad.

Likewise, a Greek company can establish a Law 89/67 office in Greece if it provides said services exclusively to the company's branches abroad or to affiliated not established in Greece companies.

From a PE risk perspective the provision of such services does not trigger exercise of effective management by the mother and/or affiliated companies receiving the services abroad, as Law 89 provides for.

Taxation

This regime's main advantage is the specific and simplified taxation method used to calculate the offices' taxable income. The gross revenue deriving from the services provided is determined by adding a certain profit percentage to the total amount of expenses and depreciations, except the tax income (cost-plus method).

The profit percentage (mark-up) is pre-determined by the Ministerial Decision granting permission of establishment to the office. The mark-up cannot be smaller than 5% and is to be re-evaluated at least every five years.

The above simply means that the office's taxable revenue is determined as a standard percentage of its expenses and all expenses used to calculate the mark up are deducted from the taxable revenue with no further prerequisites.

Prerequisites

As per obligations, Law 89/1967 offices or branches are required to have yearly expenses in Greece amounting to at least 100.000,00 euros and to employ at least four employees, one of whom can work part-time.

Aids

It is evident that the aforementioned cost-plus method offers both stability and predictability. However, this is not the only advantage of this regime. Even more importantly, the Greek state grants a series of aids, which are of course subject to certain requirements. Such aids may be granted for employing disabled persons, for professional training programs, for research and development projects, for payroll cost expenses and for establishment costs of IT and Electronic Systems.

License

The establishment of a Law 89 office in Greece requires an elaborate procedure, starting with the submission of a detailed application, accompanied by filled-in questionnaires, benchmarking study, lawyer's and auditors certificates, and financial statements, that will ultimately lead to the issuing of a Ministerial Decision. The Ministerial Decision will eventually grant the establishment permission and define the office's mark-up within 50 days from the submission of the complete file. To accelerate operation of Law 89 office or branch, it is possible to be granted a provisional license within 15 days without the mark-up included. If the office provides a series of different services, a series of (different) mark-ups are to be defined as well.

Considering the above, Law 89 regime undisputedly offers through its incentives to Foreign and Greek Companies business development opportunities in Greece within a tax friendly environment.

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Israel gives a knockout to inflation

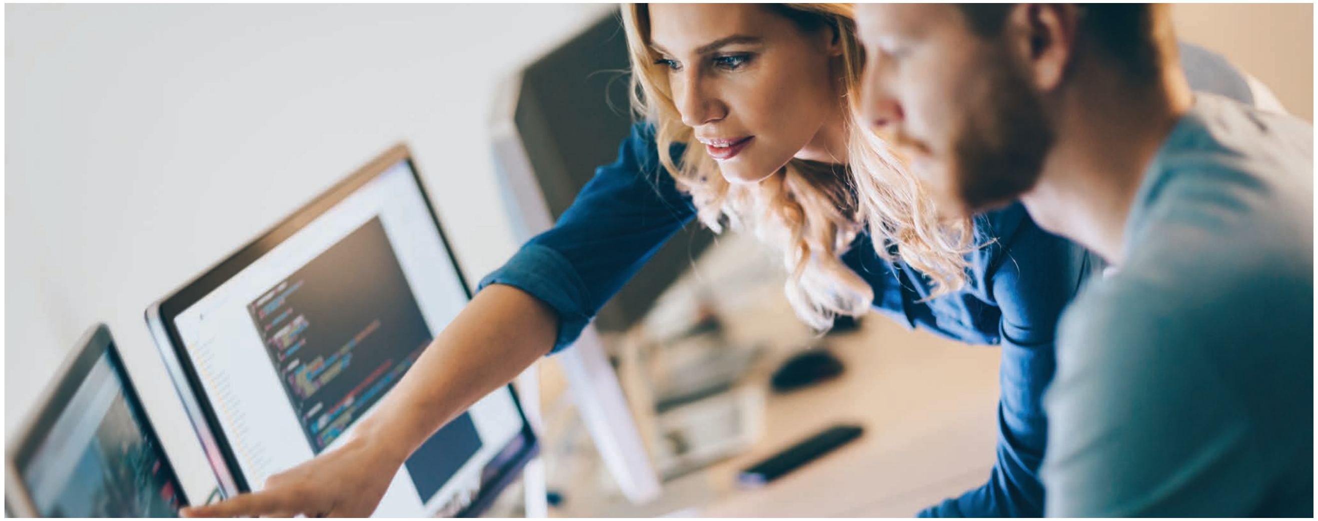
During the last decade, over 960 Israeli start-ups were sold in deals that earned more than 55 billion dollars for their investors. The many successes in the Israeli hi-tech have inspired several nicknames for the local industry, such as 'Startup Nation,' 'Exit Capital of Europe,' and 'Exitvalley.'

With that, 2022 was not a good year for start-ups due to the rise in interest rates, rising inflation, the war in Ukraine, and the crash of technology stocks on Wall Street.

And despite what was said above, we identified two distinctions, the first, the movement of investors towards smaller sums and start-ups in earlier rounds, and the second, the amount of funding in Israeli start-ups, which has experienced a slowdown like the entire global market. But still, during 2022's first three quarters, more sums were invested in Israeli companies than in all of 2020: 13 billion dollars in 2022 compared to 10.3 billion dollars in all of 2020.

Beyond the segmentation of the type of investments (based on the company's size and recruitment rounds), we were able to see another proof of the trust that global investors place in the technological arena in Israel. Out of the 5.6 billion dollars in funding received by start-ups in the first quarter of 2022, 4 billion came from foreign investors.

Our focus at Auren M&A Israel towards the year 2023 will be to continue working to establish and strengthen connections and collaborations overseas, to be a bridge between start-up companies with the best ideas and teams to investors in Israel and abroad, whether through mergers and acquisitions or new investments.



Other than the many business opportunities presented to us by dozens of ventures, we are a "man in the middle" for individuals and entities wanting to enter and enjoy the Israeli start-up scene and looking for their connection inside. We invite everyone to be interested and impressed by the great industry we have in Israel and the many opportunities it offers.

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Increase in prices: the contingent situation examined from a legal

Sometimes a lawyer is asked to explain the difference between *Force Majeure, Unforeseeable Event, and Supervening Excessive Onerousness.* Indeed, the question arises as to which event falls under such scenario and what are the legal consequences for ongoing contracts?

The main legal distinction qualifies the *Unforeseeable Event* as a man-made event, while *Force Majeure* as the effect of natural forces, both of which are irresistible, unpredictable and (even if foreseeable) unavoidable events.

Such consequences significantly affect the on-going contracts and/or confirmed orders with deferred delivery (to enable, for example, procurement of the raw materials or execution of the order) and can impact the business relationship no more economically sustainable for one party.

The unforeseeable increase in the costs of execution does not call into question - from a mere legal point of view - the figure of impossibility, but the different case where unforeseeable, irresistible and uncontrollable events (outside the legal domain of one of the parties) substantially alter the economic-balance of the contract.

In Italy, such a situation is governed by article 1467 of the Italian Civil Code, which states: *"In contracts with continuous or periodic performance, or with deferred performance, if the performance of one of the parties has become excessively onerous due to the occurrence of extraordinary and unforeseeable events, the party owing such performance may apply for termination of the contract .... Termination may not be asked if the supervening onerousness is within the normal risk of the contract ..."* or the other party offers to modify the terms of the contract.

Supervening excessive onerousness **does not prevent performance, but makes it more "expensive"**, allowing the harmed party to obtain, as an alternative to reducing or increasing the consideration (depending on the role assumed), termination of the agreement.

Unfortunately, rebalancing of the agreement (bringing it back to fairness) is unlikely to occur since the party who has benefited from such contingency is always reluctant to give up the unexpected advantage, leaving the other party with only the alternative of terminating the contract and interrupting the business relationship. A refusal to renegotiate may expose such party to liability for breach of the general principle of **fairness**, a cornerstone of the Italian civil law system as provided in article 1175 of the Italian Civil Code: *"The debtor and the creditor must behave according to the rules of fairness"*. Evidence of breach of such principle, however, is time-consuming and even expensive, necessarily involving a legal action and an order from a judge.

ON the other side the international principles of **UNIDROIT** (International Institute for the Unification of Private Law) provide that " *Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship"* namely, *"... the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based. The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance. Upon failure to reach agreement within a reasonable time either party may resort to the court. If the court finds hardship it may, if reasonable, (a) terminate the contract at a date and on terms to be fixed; or (b) adapt the contract with a view to restoring its equilibrium."* To have a hardship situation it is necessary that the event (a) occurs after the conclusion of the contract; (b) could not be "reasonably" foreseeable; (c) is behind the control of the disadvantaged party; and (c) the risk of the event had not been assumed by the disadvantaged party. But even in this case it is quite difficult to have concrete applications of these principles.

Therefore, it might be useful, where the negotiation permits, to include clauses in the contract ruling the so-called *"force majeure"*, its effects and foreseeing different agreed solutions.

The **content of a hardship clause could be,** (as per the discipline the ICC - International Chamber of Commerce) the following: *"If a party proves* *that the performance of its contractual obligations has become excessively onerous due to an event beyond its control (i) not foreseeable at the time of the conclusion of the contract and (ii) not avoidable in its effects [insert some specific example: wars, epidemics, earthquakes, insurrections, acts of terrorism, cyber attacks, acts of authority, social conflicts … etc.], the parties are obliged, within [provide a time limit deemed reasonable] to negotiate new contractual terms that reasonably take into account the consequences of such event. If the parties have not reached an agreement, within the above time limit, either party has the right to request the [judge/arbitrator]: (i) to modify the contract so as to restore its balance or (ii) to declare it terminated.*

Undoubtedly, the variables to such " basic " contractual provision are several in adherence to the peculiarity of each case and needs of the parties.

In conclusion, nowadays the drafting and/or negotiation of any contract with deferred effects requires an in-depth evaluation of any hardship eventualities to provide (out of court) solutions agreed between the parties.

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Smartworking permanent establishment

As a premise, pursuant to Article 162 of the TUIR (Presidential Decree no. 917/1986), the expression "Permanent Establishment" designates a fixed place of business through which the non-resident enterprise carries out all or part of its activities in the territory of the State.

According to the Commentary to **Article 5 of the OECD Model,** the home of the employee working remotely in another state may **represent permanent establishment** of the nonresident enterprise if the **following conditions are met:**

1. the employee house must be "at disposal" of the nonresident enterprise;
2. the employee house must be used for the work activity on a continuous basis;
3. the employee must be engaged in activities other than preparatory or auxiliary activities.

1. Regarding the first aspect, the Commentary specifies that the home is considered available to the company to the extent that the company has required the employee to use it for work, for example, by not providing him or her with an office. This is a controversial point, which should be probably revised in the next versions of the Commentary, as it is anachronistic in many business sectors, where basically the need for an office in the technical sense of the term does not exist. In any case, if this provision is applied, it seems possible to avoid disputes with the Offices as the remote working activity derives from an agreement between the parties and not from an imposition by the company.
2. The second aspect to consider, which is much easier to interpret, is the habitual use of the employee house. For example, no objection can be made to a person who works from an employee house in Italy for short periods (e.g., one week twice a year while visiting a parent), since the notion of permanent establishment postulates the character of stability in terms of time as well.
3. More uncertainty, however, concerns the nature of the tasks performed. A permanent establishment, in fact, is such when are performed functions that are part of the company's core business and are not merely auxiliary in nature. The same Commentary to Article 5 of the OECD Model (paragraph 19) drops this principle into the world of remote workers by clarifying that an employee's home is configured as permanent establishment if the employee performs consulting services for the foreign company, which in turn itself performs consulting activities.

This issue was analyzed by the Italian Supreme Court in Order no. 1977/2020, in which it was ascertained the existence of an Italian permanent establishment in the house of the legal representative of a foreign company. In this case the job activity of organizing and managing tourist packages in the Italian region Lombardia in favor of customers of that country was carried out remotely; precisely one of the issues under analysis had been, on that occasion, the assessment of the auxiliary or non-auxiliary nature of the services carried out. The conclusion was that the activity was not deemed as auxiliary and therefore it was confirmed the presence of a permanent establishment in the employee house.

If it is ascertained the presence of the permanent establishment, it arises an additional issue regarding the correct attribution to the permanent establishment of the income produced in Italy, to be determined according to the rules of Art. 7 of the OECD model, translated into Italian law in Art. 152 paragraph 2 of the TUIR (Italian Income Tax Law).

Furthermore, we specify that in case:

1. the employee is configured as an "impatriated worker" by Italian tax law and
2. the employee house is qualified as a permanent establishment

in according with the Circular No. 33/2020 Italian Tax Agency, the employee will not be able to apply the favorable "Impatriated Regime" provided by Article 16 of Legislative Decree 147/2015. Indeed, this special regime for impatriated workers will not be applicable and the income attributable to the permanent establishment will be subject to ordinary taxation (Corporate Income Taxes).

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Internal controls and risk governance

The Board of directors/managers is ultimately accountable for maintaining an effective system of internal controls and overall risk management across an organisation. It is usually supported by Audit and Risk Committee, the Management team, and other delegated Committees. However, the governance of risk, its nature and the risk appetite remain the ultimate responsibility of the Board.

The Board serves as the focal point and custodian of corporate governance in an organisation and the directors/managers recognise that good governance can create shareholder value by enhancing long-term equity performance and achieving the highest level of business integrity.

There is an enhanced guidance on how to assess internal control components, known as, **Committee of Sponsoring Organisation, (COSO)** components for utilization as the foundation of internal controls and compliance environment.

The COSO framework defines internal control as a process effected by an organisation's board of directors/mangers, to provide reasonable assurance regarding the achievement of its objectives in:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws & regulations

The five interrelated components of COSO are:

1. **Control Environment** – its people (integrity, ethical values, and competence) and its environment in which they operate determine the success and failure of the organisation.
2. **Risk Assessment** – Organisation must be aware of the risks they are facing and must set their objectives that integrate key activities so that the whole organisation operates correctly, efficiently and establish mechanism to identify, analyse, manage, and respond to these risks.
3. **Control Activities** – Control policies and procedures should be established to help to ensure that these are effectively carried out (physical controls, BPR, assets security, segregation of duties).
4. **Information and Communication** – Surrounding the control activities and enable the organisation's people to capture and exchange the information needed to conduct, manage, and control its operations.
5. Monitoring – The entire process must be monitored and modified as necessary; thus, the system can react dynamically to changing conditions.

The Board of directors/managers delegates its authority to the **Audit and Risk Committee** for monitoring and reviewing the effectiveness of an organisation internal controls and risk assessment. The Audit and Risk Committee sets the design and implementation of a robust internal control that identifies, manages, and provides reasonable assurance against risks facing the business.

In larger organisations, there is an internal audit function, which is an independent in-house function with a direct reporting line to the Audit and Risk Committee. The internal auditor's results of its internal audit's risk-based reviews of operations provide an independent view of the effectiveness of risks and control management systems.

An organisation is exposed with a variety of risks, which could affect its financial performance and financial conditions. The risks are:

- **Financial risk** –
  1. Credit risk is the risk of loss resulting from the failure of a counterparty to honour its financial obligations and arise with respect to cash and other receivables
  2. Liquidity risk is the risk that an organisation will encounter difficulties in meeting obligations associated with financial liabilities that are settled by delivering cash or other financial assets
  3. Market risk – comprised of foreign currency risk, interest rate risk and other price risk, is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in market prices
- **Operational risk** – Risk of incorrect design and operation of internal control, which may result in damaging the organisation reputation, financial results, and employees

- **Legal & Regulatory Compliance risk** – Non-compliance with statutory obligations (changes in legislation, taxation, and regulation), changes that could have an adverse effect on the result of operations and financial position
- **IT risk** – Risk of loss of data, IT that can cause adverse impact on the organisation 's business processes (IT system being hacked, Cyberattacks)
- Brand & Reputational risk – a threat or danger to the reputation or standing of the business (unable to meet professional obligations towards stakeholders due to unintentional or negligent action)
- Health & Safety risk – risk associated with specific hazards on health, unsafe working environment leading to low morale and high risk of injuries
- Fraud and Corruption risk – Risk of misappropriation of assets, fictitious payment instructions via emails, collusion

For an organisation to mitigate against the above risks, it has to tailor its risk management processes to different management approach by promoting better risk discussion/understanding within its organisation (in terms of compliance, security, reporting, monitoring, inspection – known as detective controls), strengthening certain lines of defence (rigid management controls through leadership and governance, code of conduct, due diligence, internal audit functions – known as preventive controls), and finding cost-effective ways to reduce the likelihood of risks, taking corrective action and mitigate their consequences (investigation, abide to code of ethics, encourage whistleblowing and reporting to authorities concerned – known as respond controls).

EXTERNAL AUDITORS RESPOND TO RISKS AND MATERIAL MISSTATEMENTS

External Auditors are required by *ISA 240* **The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements** and **ISA 315 Understanding the Entity and its Environment and Assessing the Risk of Material Misstatements.**

The auditor should perform test of controls to obtain evidence about the operating effectiveness of controls related to all relevant financial statement's assertions for all significant account's balances.

To understand and evaluate the effectiveness of the design of controls and confirm whether controls have been implemented, the auditor often perform a walkthrough which is extremely useful where the auditor obtains significant comfort from controls for complex business processes, significantly changed systems processes and processes that involve significant accounts balances which are susceptible to fraud.

The auditor should be rigorous and use its professional scepticism to address fraud risk and other complex transactions for higher risk areas as this profession is based on public trust and the public firmly believes that auditors can challenge organisations to detect fraud and material misstatements. The auditor should vary its testing strategies from one year to another **by incorporating an element of unpredictability into its audit plan** to respond to overall fraud risk and to significant changes within an organisation.

Whilst the auditor can still place reliance on prior CAKE (Cumulative Audit Knowledge and Experience), each year's documentation of internal controls and quality of controls approach must show that evidence supporting the effectiveness of controls and processes for all the relevant assertions and significant accounts and balances have been adhered (International Standard on Quality Control)

Glossary

Business risks are risks that could affect an organisation's ability to achieve its objective and execute its strategies

Fraud risk – the use of false representation to gain an unjust advantage (material misstatement)

Key risks are risks which require special audit consideration because of its nature of higher inherent risk, the potential misstatements and the likelihood of the risk occurring

professional scepticism – an attitude of not accepting the explanation of the client without validation or corroboration of evidence

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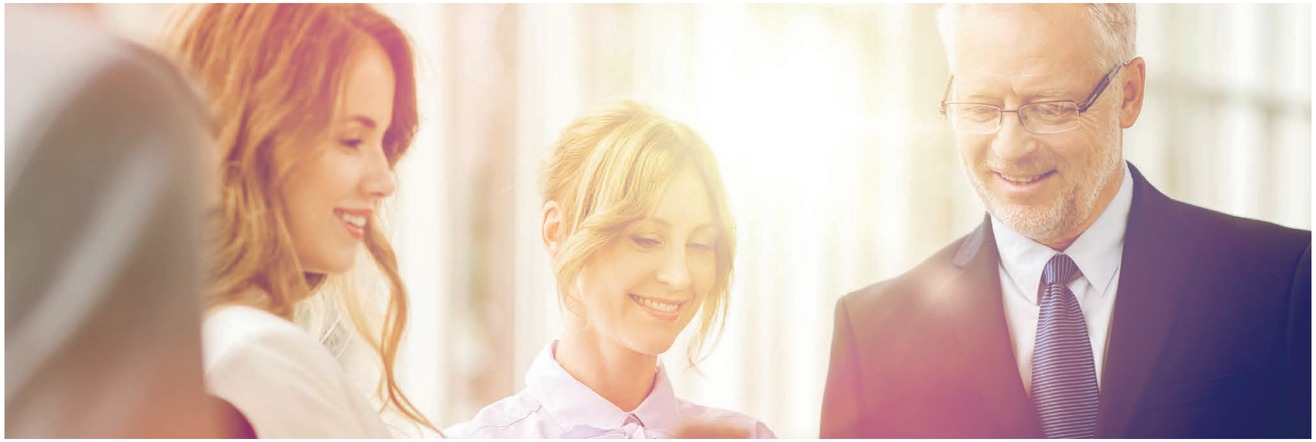
Paraguay as an investment destination



Paraguay, located in the center of South America, has recently become fertile ground for investment. The country's capital exhibits the traces of an accelerated real estate growth, an outstanding sector for investors that also attracts Latin American, European and Asian businessmen.

The boost for investors in the Paraguayan real estate market is the low cost of energy, higher projected economic growth in South America between 2020 and 2024 (according to the FMI), lower indirect tax rate in the region, lower corporate rate in the region, lower energy costs in the region, economic resilience to external shocks (crisis in Argentina and Brazil), increasing economic diversification, macroeconomic discipline, younger population in the region and laws, regimes that promote benefits to investors consisting of:

Law No. 60/1990 (the "Law 60/90"), which has the purpose of promoting capital investments in Paraguay, whether capital of foreign or national origin, **through the granting of a series of tax benefits.**

Law No. 5542 / **guarantees for investments** and promotion of employment generation and economic and social development.

It should be noted that Paraguay is only one step away from investment grade, a position that it has managed to maintain despite the crisis.

The most important rating agencies in the world maintained Paraguay in this status thanks to:

- Solid growth in recent years
- The economic resilience it has demonstrated, despite external shocks (including the current one)
- Paraguay, being a Mediterranean country, has the possibility of exporting through the Paraná and Paraguay River waterway
- The credibility of its macroeconomic policy, which includes a solid inflation targeting scheme

Paraguay still has a lot to develop. Not only in the capital, where very profitable communities are already appreciated, but also in the surrounding cities. This situation gives investors a range of opportunities to make their investment profitable.

https://www.ip.gov.py
https://www.bacn.gov.py
http://www.ccpb.org.py/plataforma_pais.php
Source: MIC/REDIEX

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Romania overhauls micro-companies tax regime via GO no. 16/2022

A series of amendments and additions to the Romanian Fiscal Code were made by way of GO no. 16/2022 in Romania impacting a wide range of entities. With the changes, which will come into force on January 1st, 2023, micro-companies' income tax will become optional.

Additionally, significant changes include the following:

1. A Romanian legal entity will now be able to opt for the application of the micro-company income tax if it cumulatively meets the following conditions on December 31 of the previous year:
    - The income achieved did not exceed the lei equivalent of 500,000 euro (previously the limit was 1,000,000 euro);
    - The social capital is owned by entities other than the state and administrative-territorial units, according to the fiscal Code;
    - The entity is not in dissolution, followed by liquidation, registered in the commercial register or in the courts of law (this criterion was applicable previously as well);
    - At least 80% of its total revenues are generated from services other than consulting and management (newly introduced condition)
    - The entity has at least one employee (newly introduced condition)
    - The entity has associates/shareholders that hold more than 25% of the value/number of participation titles or voting rights in no more than three Romanian micro-companies (newly introduced condition)
2. Law no. 170/2016 regarding the specific tax will be repealed/revoked as of January 1, 2023.
3. Romanian legal entities that carry out activities corresponding to the CAEN codes for HORECA (5510, 5520, 5530, 5590, 5610, 5621, 5629, 5630) can opt for the payment of micro-company tax (without having to fulfil the above conditions) or for the payment of CIT.
4. Romanian legal entities, apart from those that carry out activities corresponding to the above CAEN HORECA codes, can opt to apply micro-company tax as of the fiscal year following that in which they meet the conditions.
5. New categories of Romanian legal entities that cannot apply the micro-companies' regime have been introduced, including Romanian legal entities carrying out activities in the:
    - banking field;
    - fields of insurance, reinsurance, of the capital market, including the one that carries out intermediation activities in these fields;
    - field of gambling;
    - exploration, development, exploitation of oil and natural gas deposits sector.

    Romanian legal entities that meet the conditions for applying the tax on the income of micro-companies can opt for the payment of the profit tax only starting from the following fiscal year.
6. If a micro-company derives revenues exceeding EUR 500,000 or its revenues from consulting and management exceed 20% or more of the total revenues during a fiscal year, it owes CIT as of the quarter in which it exceeded those limits.
7. The dividend income received from a subsidiary located in another member state of the European Union can be deducted when calculating the micro-company tax, to the extent that both the micro-company and the subsidiary meet the EU Parent-Subsidiary Directive conditions.
8. The tax rate on the income of micro-companies is 1% (the 3% rate previously applicable to entities without employees has been revoked).

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Approval of the start-up law

On 3rd November 2022 the Spanish Congress approved the Law on the promotion of the start-up ecosystem (also known as Start-up Law), which introduces several tax and legal benefits for companies that qualify as start-up.

The aim of this Law is to help the creation of this type of companies, give visibility to the Spanish start-up system, attract investment and talent to our country and stop the flight of talent abroad.

This Law shall be applicable to companies that meet the following requirements:

- The company shall have an innovative nature, which will occur when its purpose is to solve a problem or improve an existing situation through the development of products, services or processes which are new or substantially new or improved compared to the state of the technic and involving a risk of technological or industrial failure.
- The company shall be of new incorporation or have been incorporated in the last 5 years. Companies incorporated during the last 7 years will also be admitted when their activity is regarding biotechnology, energy, industry or other strategic sectors, or when they have developed their own technology in Spain.
- The company can not to be listed on the stock market, distribute dividends nor exceed an annual turnover of 10 million euros. Furthermore, it cannot arise from restructuring processes.
- Must have its registered office or permanent establishment in Spain.
- 60% of its workforce must have an employment contract in Spain.

Regarding its benefits, from a legal point of view, the procedures for setting up a company are streamlined in a single step and by telematic means, with no notary or registry costs. A one-stop shop is also established for the declaration of the innovative nature of the company and access to the benefits provided for in the Law. Furthermore, it erases the obligation to obtain a NIE (Identification Number for Foreigners) for non-residents investors and directors. Finally, the necessary capital share to incorporate the company is reduced to 1 euro.

From a tax perspective, the main benefits established by the Law are the following:

1. **Corporate Income Tax of the start-up company:**
    - The CIT rate is reduced from 25% to 15% for the first four years in which the tax base is positive.
    - Possibility to defer the payment of the CIT, without interests not warranties, during 12 months for the first year with positive tax base and during 6 months for the second year.
2. **Benefits for the investors:**
    - The maximum deduction base for investment in new or recently created companies is raised (from 60,000 to 100,000 euros per year).
    - The deduction rate is increased from 30% to 50%.
    - The period for considering a company to be recently created is extended up to 7 years.
3. **Benefits for employees:**
    - Stock-options plans for employees:
        - Increase of the maximum exempt to 50.000 euros per year (before 12.000 euros).
        - The plan shall not be offered to all the employees of the company.
        - Flexibilization in the creation of treasury stock.
    - Special regime for impatriates (Beckham Law):
        - Reduction of the years in which the taxpayer has not been resident in Spain from 10 years to 5.
        - The special regime will also be applicable to the spouse and children under 25 years of the employee.
        - The special regime will also be applicable to the start-up company's directors.

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Venture capital trusts in turkish legislation

I. WHAT ARE VENTURE CAPITAL TRUSTS? (VCT)

VCT is a tool used to effectuate capital investments. The main purpose of a VCT is to sell its shares to operate a portfolio consisting of venture capital (VC) investments, capital market instruments and other assets and rights. VCTs are deemed institutional investors and a capital market corporation, hence its activities must comply with the capital market legislation.

VCTs are required to invest at least 50% of their portfolio value in VC investments. VCTs can invest in VCs established or to be established in Turkey, which have growth potential and which seek funds. Within the scope of this investment, a VCT can:

- directly become a shareholder or founder of a VC via capital transfer or share transfer,
- indirectly become a shareholder or founder of a VC via capital transfer or share transfer, through special purpose companies established in Turkey or collective investment organizations established abroad,
- invest in debt instruments issued by VCs,
- invest in institutions established abroad, solely for the purpose of collective investment to make capital investments in VCs, provided that the investment risk is limited to the capital amount,
- invest in capital market instruments issued by other VCTs (established in Turkey) and participation shares of VC funds (established in Turkey),
- invest in the shares of companies listed in Istanbul Stock Exchange Emerging Companies Market,
- invest in unlisted shares of publicly traded VCs,
- provide structured finance to VCs as a mix of debt and equity financing, and
- become a shareholder in special purpose Turkish joint stock companies whose field of activity is limited to investing in VCs.

If the VCT profits from the VC investments in its portfolio, it can distribute such profit to its shareholders as dividends at the end of the year. The earnings of VCTs are excluded from corporate tax. The withholding tax on earnings exempted from corporate tax (appx. 15%) is also determined as 0%.

VCTs can also:

- invest in capital market instruments traded or to be traded in the stock market, reverse repo transactions, mutual fund participation shares, deposits, and participation accounts,
- participate in the management of VC in their portfolio or provide consultancy services to such companies.
- become a shareholder in consultancy companies which provide consultancy services (established in Turkey or abroad) for VC activities in Turkey,
- become a shareholder in (i) portfolio management companies (PMC) established in Turkey and (ii) PMCs established abroad but whose scope of activity is only VCs.
- give market advice in the Istanbul Stock Exchange Emerging Companies Market.

II. SELLING THE VCT SHARES

VCTs can sell their shares in two ways; (i) VCTs, whose shares are traded on the stock exchange adopt the public offering system and (ii) VCTs can issue their shares to qualified investors only. Qualified investors are professional clients, including those defined as professionals in the Capital Markets Board's regulations on investment institutions.

III. CONCLUSION

VCTs have become a rising trend in the Turkish venture and investment ecosystem. As such they merit close attention as they pave way for new investment opportunities.

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Amendment of vat laws in UAE

Federal Decree-Law No. 18 of 2022 – Issued 26 Sep 2022 (Effective from 1 Jan 2023)

January 1, 2023, will mark a significant date for the UAE's Value-Added Tax (VAT). During this time, the country will have completed five years under its tax regime, and the first major changes to VAT laws will take effect.

Listed below are the major changes that all business owners should be aware of:

- **Article 1 – Definitions**

  New definitions are added for Relevant Charitable Activity, Pure Hydrocarbons, Tax Evasion, Tax Audit, Tax Assessment, and Voluntary Disclosure.

- **Article 5 – Supply of Goods**

  Entry into a contract between two or more parties entailing the transfer of Goods at a later time, under the conditions specified in the Executive Regulation of this Decree-Law.

- **Article 7 – Supply in Special Cases**

  As an exception to what is stated in Articles 5 and 6 of this Decree-Law, any other supply specified in the Executive Regulation of this Decree-Law, shall not be considered a supply.

- **Article 15 - Registration Exception**

  The Authority may except a Taxable Person from Tax Registration whether a Registrant or not, upon his request if his supplies are only subject to the zero rate.

- **Article 21 - Tax Deregistration Cases**

  The Authority may, following the controls and conditions specified in the Executive Regulation of this Decree-Law, issue a Tax deregistration decision, if the Authority finds that continuity of such Tax Registration may prejudice the integrity of the Tax system.

- **Article 26 - Date of Supply in Special Cases**

  The date of expiration of one year from the date the Goods or Services were provided.

- **Article 27 - Place of Supply of Goods**

  The place of supply of Goods that includes Export or Import shall be inside the state if Clause 1 of Article 26 of this Decree-Law applies, and the ownership of Goods is transferred in the State.

- **Article 30 - Place of Supply in Special Cases**

  For the supply of transportation Services or Transport-related Services, the place of supply shall be where the transportation starts.

- **Article 33 - The Agent**

  The Place of Residence of the principal shall be considered as being the Place of Residence of the agent.

- **Article 36 - Value of Supply and Deemed Supply for Related Parties**

  As an exception to Articles 34, 35, and 37 of this Decree-Law, the value of the supply or Import of Goods or Services between Related Parties shall be considered equal to the market value.

- **Article 45 - Goods and Services Subject to Zero Rate**

  - International transport of passengers and Goods which starts or ends in the State, or passes through its territory, including Transport-related Services.
  - Supply or Import of air or sea rescue and assistance aircraft or vessels.
  - The supply or Import of investment precious metals. The Executive Regulation of this Decree-Law shall specify the precious metals and the standards based on which they are classified as being for investment purposes.
  - The supply or Import of crude oil and natural gas.
  - The supply of preventive and basic healthcare Services and related Goods.

- **Article 48 - Reverse Charge**

  The reverse charge will apply to pure hydrocarbons instead of any form of hydrocarbons.

- **Article 55 - Recovery of Recoverable Input Tax in the Tax Period**

  The first condition in Article of Recovery of the input tax as per reverse charge mechanism is amended with the addition to keep the invoices and important documentation that is for goods only for the importation of goods and services.

- **Article 57 - Recovery of Tax by Government Entities and Charities**

  Without prejudice to the general provisions of Input Tax recovery, Government Entities and Charities entitled to recover the full amount of Input Tax shall be determined in a Cabinet Decision issued upon the recommendation of the Minister, according to the following:

  - Input Tax paid by the Government Entity for its Sovereign Activities.
  - Input Tax paid by the Charity for its Relevant Charitable Activity.

- **Article 61 - Instances and Conditions for Output Tax Adjustments**

  A Registrant shall adjust Output Tax after the date of supply if the Tax was charged or Tax treatment was applied in error.

- **Article 62 - Mechanism for Output Tax Adjustment**

  If the Output Tax calculated by the Registrant exceeds the Output Tax which should have been charged on the supply, the Registrant shall issue a Tax Credit Note according to the provisions of this Decree-Law within 14 days from the date in which any of the situations provided for in Clause 1 of Article 61 of this Decree-Law took place.

- **Article 65 - Conditions and Requirements for Issuing Tax Invoices**

  Any Person receiving an amount as Tax or issuing a Tax Invoice in respect of an amount must pay such amount to the Authority, and this amount shall be regarded as being similar to Due Tax under the provisions of this Decree-Law.

- **Article 67 – Date of issuance of Tax Invoice**

  The Registrant shall issue a Tax Invoice within 14 days from the date of supply as stated in Article 25 or Article 26 of this Decree-Law.

- **Article 79 (bis) – Statute of Limitation**

  Except in cases under Clauses 2, 3, 6, and 7 of this Article, the Authority may not conduct a Tax Audit or issue a Tax Assessment to the Taxable Person after the expiration of 5 years from the end of the relevant Tax Period.

  The Authority may conduct a Tax Audit or issue a Tax Assessment to the Taxable Person after 5 years from the end of the relevant Tax Period if he has been notified of the commencement of such Tax Audit's procedures before the expiration of the 5-year period, provided that the Tax Audit is completed or the Tax Assessment is issued, as the case may be, within 4 years from the date of notification of the Tax Audit.

  The Authority may conduct a Tax Audit or issue a Tax Assessment after the expiration of 5 years from the end of the relevant Tax Period if such Tax Audit or Tax Assessment issuance relates to a Voluntary Disclosure submitted in the fifth year from the end of the Tax Period, provided that the Tax Audit is completed or the Tax Assessment is issued, as the case may be, within one year from the date of submission of the Voluntary Disclosure.

  No voluntary disclosure may be submitted after the expiration of 5 years from the end of the relevant Tax Period.

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Capacity Development - The Engine Towards Talent Development

Capacity Development has become one of the recurring themes in institutional literature and in the agenda of public administrations, international agencies, governmental and non-governmental organizations. There is now emerging agreement in the development community that capacity development is the engine of human development.

However, despite its increasing importance from the point of view of dialogue and the activities of organisations, there is not, at this point in time, a single, unequivocal definition of the concept of "capacity building".

But what exactly is meant by capacity development? Confusion around the term seems to have grown along with its popularity. For some, capacity development can be any effort to teach someone to do something or to do it better. For others, it may be about creating new institutions or strengthening old ones. Some see capacity development as a focus on education and training, while others take a broad view of it as improving individual rights, access, or freedoms.

Wikipedia defines capacity development to mean the process by which individuals and organizations obtain, improve, and retain the skills, knowledge, tools, equipment, and other resources needed to do their jobs competently or to a greater capacity (larger scale, larger audience, larger impact, etc). Capacity building and capacity development are often used interchangeably.

The United Nations Development Programme (UNDP) perceives capacity development as the process through which individuals, organizations, and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time.

A primer on capacity development by UNDP identified three points where capacity is grown and nurtured: in an enabling environment, in organizations, and within individuals. These three levels influence each other in a fluid way – the strength of each depends on, and determines, the strength of the others:

1. The enabling environment is the broad social system within which people and organizations function. It includes all the rules, laws, policies, power relations, and social norms that govern civic engagement. It is the enabling environment that sets the overall scope for capacity development.
2. The organizational level refers to the internal structure, policies, and procedures that determine an organization's effectiveness. It is here that the benefits of the enabling environment are put into action and a collection of individuals come together. The better resourced and aligned these elements are, the greater the potential for growing capacity.
3. At the individual level: these are the skills, experience, and knowledge that allow each person to perform. Some of these are acquired formally, through education and training, while others come informally, through doing and observing. Access to resources and experiences that can develop individual capacity are largely shaped by the organizational and environmental factors described above, which in turn are influenced by the degree of capacity development in each individual.

It further identifies four core issues that seem to have the greatest influence on capacity development at the different levels described above to include; institutional arrangements, leadership, knowledge, and accountability.

In the accountancy profession, capacity development is vital to enable individuals to execute their duties and tasks as per the requirements of the profession. Accountancy firms invest sums of money in capacity development to facilitate improvement in the quality of work, efficiency, and effectiveness of the employees.

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Spanish companies operating in the United Kingdom (UK) through a Permanent Establishment (PE)

Despite Brexit the UK and particularly the city of London remain business friendly to foreign companies operating through PE.

What is a PE?

Pursuant to Article 5 of the UK & Spain Double Tax Treaty agreement, a Spanish company has a PE in UK, when it has, within the British's territory, a fixed place of business or an operational site through which habitually performs a business activity.

PE also exists when a dependant agent executes a contract on behalf of the company. If the agent however works independently from the company, for example, with a self-employed status, a PE will not exist.

Accordingly, a PE includes, but is not limited to:

- Places of management;
- Offices and workshops;
- Natural resources exploitation: petroleum or gas wells mines or quarries;
- Factories;
- Construction or installation sites;
- Branches.

It is important to note that a PE does not include the use of installations for the only purpose of storing goods belonging to the company.

What are the requirements that a Spanish company must meet to operate in the UK through a PE?

Within the first month operating in the UK through a PE, the Spanish company must register the PE at Companies House providing, among other, the following information:

- copy of the company's deed of incorporation
- name and information of the directors and
- a copy of the latest annual accounts submitted at the Spanish Mercantile Registry.

Filing annual accounts of the PE

A Spanish company operating with EP in the UK must send to Companies House the same documents, duly translated, that, under Spanish law, they must file at the Spanish Mercantile Registry regarding their annual accounts.

The deadline for submitting these documents to Companies House will be three months from the date from which the documentation must be submitted by the Spanish company at the Spanish Mercantile Registry.

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Bill - Foreign income considered as Uruguayan source income for IRAE purposes

In 2021, the European Union Code of Conduct for Business Taxation (COCG) requested Uruguay to commit to amending aspects identified as potentially harmful in our tax system. Said amendment shall take effect as of 1 January 2023.

To comply with said commitment, a Bill was drafted to establish regulatory changes regarding certain foreign income obtained by IRAE taxpayers that are part of a multinational group. If the Bill is approved, the amendments shall come into force for fiscal years starting on or after 1 January 2023.

Given the proximity of the deadline for fulfilling the commitment undertaken, it is to be expected that the Bill shall be approved without any modification.

The Bill seeks to consider certain income obtained abroad by a taxpayer who is a member of a multinational group as a Uruguayan source and, therefore, subject to IRAE. In other words, if the taxpayer is not part of a multinational group, it shall not be affected by the proposed changes.

As set out in the Bill, a multinational group comprises a set of two or more related entities located in different jurisdictions, as well as the headquarters and their permanent establishments.

The relationship shall be established when:

The entity is a member of a multinational group, and one of the following conditions is met:

a. It is included in the consolidated financial statements of the group for presentation in accordance with the accounting principles generally applied in the jurisdiction of the ultimate controlling entity of the group, or would have been included if the entity were required to prepare such statements or would be included if the equity interests in that entity were traded on a public stock exchange; (b) is included in the consolidated financial statements of the group for presentation in accordance with the accounting principles generally applied in the jurisdiction of the ultimate controlling entity of the group, or would be included in such statements if the equity interests in that entity were traded on a public stock exchange.

b. That, if the hypotheses for inclusion set out in the preceding paragraph are met, it is excluded from the consolidated financial statements of the group solely for reasons of size or relevance.

The income obtained by an entity that is a member of a multinational group, which the Bill foresees to be considered as Uruguayan source income, is as follows:

- Income derived from intellectual property rights relating to patents or registered software, sold, or used economically outside the Uruguayan territory, in the part that does not correspond to qualified income. When such income is exempted by other provisions, it shall be considered entirely of Uruguayan source.

  Qualifying income refers to the amount resulting from applying the following quotient to the revenue from the exploitation of intellectual property rights relating to patents or registered software:

  a. In the numerator, the direct costs and expenses incurred to develop each asset increased by 30% (this figure may not exceed the denominator in any case).

     It shall only consider direct costs and expenses incurred by the developer and services contracted with non-related parties or resident-related parties. In other words, services contracted with non-resident-related parties shall not be considered.

  b. In the denominator, the total costs and expenses incurred to develop each asset, which comprise those included in the numerator without considering the 30% increase, as well as costs and expenditures corresponding to the granting of use or acquisition of intellectual property rights, and services contracted with non-resident related parties.

To calculate this ratio, all costs and expenses accrued up to the recording of the resulting asset shall be considered.

The Executive Branch is hereby empowered to establish the terms and conditions under which the aforementioned shall apply.

The following income, which derives from assets located or rights economically used outside the Uruguayan territory, insofar as it is obtained by an entity which is a member of a multinational group considered as non-qualified:

a. Income from real estate capital.

b. Dividends.

c. Interest.

d. Royalties, not included in the previous paragraph.

e. Other income from movable capital.

f. Increases in assets deriving from the transfer of assets arising from any legal transaction involving the transfer of ownership and the dismemberment thereof, of assets capable of generating the above-mentioned income.

g. Any other increase in assets deriving from the assets liable to generate the income included in a. to e. above.

Income derived from the alienation or economic use of trademarks outside the national territory shall be considered to be of Uruguayan source in all cases.

An entity is considered to be qualified if it has adequate economic substance during the tax year. The determination of a qualifying entity shall be made for each income-producing asset, which involves meeting the following conditions simultaneously:

a. It employs human resources commensurate with the number, qualifications and remuneration required to manage investment assets and has adequate facilities for the development of this activity on Uruguayan territory.

b. It takes the necessary strategic decisions and bears the risks on Uruguayan territory.

c. It incurs the appropriate expenses and costs in connection with the acquisition, holding or disposal, as the case may be.

For subparagraphs a) and b), adequate economic substance shall be deemed to be present even if the activity is carried out by third parties in the Uruguayan territory and under adequate supervision by the institution.

Entities whose main activity is the holding of equity interests in other entities or acquiring and holding real estate shall not be subject to the conditions included in subparagraphs b) and c).

The Executive Branch is vested with the power to establish the terms and conditions under which the aforementioned shall be applied and is also entitled to establish objective indicators or parameters such as the nature of the activity, the human resources employed, the level of income, and the percentage of assets generating the income covered.

Therefore, if an IRAE taxpayer entity belonging to a multinational group obtains abroad qualified income (from patents and software) or capital income with due substance, it shall not be considered a Uruguayan source and therefore shall not be subject to IRAE.

Taxpayers who have been subject to taxation abroad on such income may credit, under the conditions established by the regulations, the analogous income tax paid abroad. Such credit may not exceed the part of the said tax calculated before such deduction.

To the extent that this income is subject to IRAE, its distribution shall be taxed by IRPF/IRNR at the rate of 7%.

The Bill proposes an anti-abuse regulation that allows the Internal Tax Revenue Office, employing a well-founded resolution, to disregard forms, mechanisms or series of mechanisms that are improper and whose purpose is to ensure that said income is not covered by the amendments. A form, mechanism or series of mechanisms shall be considered improper when there are no valid commercial reasons for their adoption or implementation that reflect the economic reality.

In such cases, the Internal Tax Revenue Office may reclassify the income or the quality of the entity as non-qualified and therefore consider the income as Uruguayan source income.

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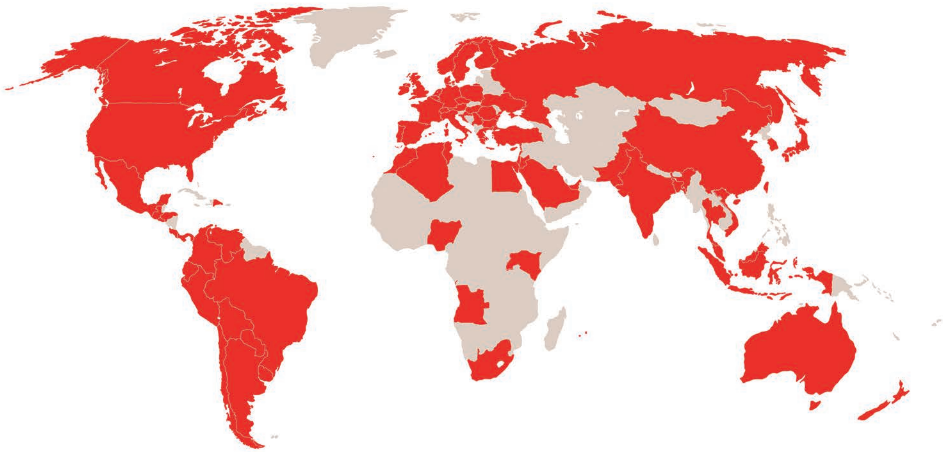

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