

## 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.

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Features of this edition include:

Canadian Tax Rules for Non-Residents, the tax refund system in Malta, Paraguay as a destination for investment and expected changes in transfer pricing regulations in Russia among other topics.

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

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# Organisational transformation with new technological tools

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The digital revolution is creating big changes and transformations in businesses, markets and society.

UBER is expanding without limits, with its mobil-platform-based business model. Amazon is launching the first no-cashier chain of supermarkets, highly reducing shopping time and, thus, making customer experience extremely satisfying. We could also mention Airbnb, Despegar, Expedia, etc. All digital proposals within people's reach.

In this changing, rush, and hiperconnected process companies must compete – and the only option is to consider tranformation to continue growing.

ACCESSIBILITY is the key word in technology for SMEs. Products and services have increasingly a reasonable cost/benefit ratio for the organizations. Regarding market products we can mention:

- IT core: the Cloud is the world's choice.

Big fishes struggle to give the best service at the lowest Price. Microsoft, Google, Amazon, among others. They deal with harware, base software, IT security and communication.

- Horizontal-applcated businesses: ERP (an integrated engine management system) + BI (Control Panels) + Vertical Systems (Software for a specific business)

Many companies have decided to create standardized products to solve business problems: SAP, Microsoft, Oracle as examples of the world's biggest manufacturers. However, there are lots of local or regional

systems very well positioned: Tango, Bejerman, Plataforma, BAS, Softland among others.

In this chapter we can mention SAPB1's arrival to Argentina – SAP's SME product that is already revolutionizing the IT market.

Also, in BI, the Qlik View, Tableau, POver BI (Microsoft), Lumira (SAP)'s solutions provide a great leverage toward the analysis of the information in the decision-making process. These products have evolved technologically so they can intake a big volume of data and be affordable for SMEs.

Regarding bespoke developments, Mobil apps are the weakness. People's habits have changed and the everyday-screen is no longer the computer's but the cellphone's. Nowadays smartphones have everything necessary for us to work as with a computer and connect us socially.

20 years ago we used to have a paper agenda, photo camera, landline, fax machine, a video camera, portable radio, paper dictionary, etc.... Today all of this is in the same place and in a small device.

We ask ourselves, Can we see ourselves in 5 years? Can we not plan the technological impact on our organization? What's our competition doing? What does our client want?

The real organizational transformation in achieved with a thorough work that starts with strategy, process revision, followed by the redefinition of the structure and choosing the best available technology.

The big companies absorbing the small ones myth is broken, because in this changing world flexibility is more important and SMEs are actually who can best readjust to the new scenarios faster and take advantage of the available innovation to grow.

A clear example is the market capitalization of young companies like Facebook, opposite to 100-year-old oil companies, banks, etc.

THE DIGITAL REVOLUTION WE EXPERIENCE IS REAL AND WE MUST BECOME STRONG AND COMPETITIVE IN THE MARKET TO TRANSFORM BUSINESS; THINKING OF A NEW WORLD, DISRUPTIVE, TECHNOLOGICAL, GLOBALISED AND FAST IN THE FACE OF IMMINENT CHANGE.

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## Bulgaria implements CbC reporting into legislation

CbC reporting was implemented in the Bulgarian Legislation via its introduction in the Act to Amend and Supplement the Tax and Social Security Procedure Code (TSSPC), published in issue 63 of the State Gazette on 04.08.2017.

Bulgarian tax authorities are trying to implement stricter rules to combat tax avoidance. Through the introduction of the CbC report in the Bulgarian legislation via the Act to Amend and Supplement the Tax and Social Security Procedure Code adopted on 20 July 2017, the tax authorities are working on further harmonization of the local legislation with the OECD Guidelines.

MNE Groups will be obliged to submit the CbC Report in Bulgaria, in the following cases:

- An ultimate parent entity of the MNE Group is resident in Bulgaria and the total consolidated turnover of the Group is in excess of EUR 51 million (BGN 100 million) OR
- A constituent entity of the MNE Group is resident in Bulgaria whereas the ultimate parent company is not, and the consolidated turnover exceeds EUR 750mil (approximately BGN 1.467mil)

The CbC Report will include information for each entity of the MNE Group including the nature of the main business activities as well as some aggregated financial data.

In case the CbC Report is completed by the ultimate parent company, it shall be submitted to the TA electronically within 12 months of the last day of the Group's reporting fiscal year. Otherwise, it must be

submitted within 15 months of the above mentioned period. If the CbC Report is submitted by the ultimate parent company, it should be prepared for the Group's fiscal year commencing in 2016. If it concerns a constituent entity of the Group, the report is to be prepared for the Group's fiscal year commencing in 2017.

The TA shall be notified:

- By the ultimate parent Bulgarian resident entity of an MNE Group, no later than the last day of the reporting fiscal year of the Group;
- By a Bulgarian resident entity of the MNE Group (excluding the above cases), describing which is the reporting entity to submit the CbC Report and its jurisdiction of residence. The relative deadline is no later than the last day of the Group's reporting fiscal year.

The notification for the first reporting period (2016) shall be provided to the TA no later than 31 December 2017.

The penalties for infringements include:

- In case of failure to fulfill the obligation for the notification of the TA, the penalty ranges from BGN 50,000 to BGN 100,000 for the first violation and from BGN 100,000 to BGN 200,000 for subsequent violations;
- In case of not filing or delayed filing of the CbC Report, penalties range between BGN 100,000 and BGN 200,000. When a repeated infringement is observed, the penalty may reach the amount of BGN 300,000;



- Incomplete or incorrect filing of the CbC Report leads to a penalty ranging between BGN 50,000 and BGN 150,000. For repeated infringement the penalty may range between BGN 100,000 and BGN 200,000.

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# Canadian Tax Rules for Non-Residents

## 1- Exporting to Canada & the GST

When organizations export to Canada, a proper handling of the Good and Services Tax (GST) is a cost reduction measure. The 5% Canadian GST is applicable on the importation of most goods in Canada. Since the GST is a value added tax that, in several instances, it can be recovered by organizations when a series of conditions are met. So several factors have to be taken into consideration in this export process; which incoterm is used for bringing the goods into Canada? Who is the "importer of records" of the goods in Canada? When an organization trades with Canada, reviewing the Canadian custom clearance costs is a starting point in evaluating if the process can be optimized.

## 2- Canadian Income Tax Filing Requirements for Non-Resident Corporations

As a general rule, a non-resident corporation must file a Canadian corporate tax return (form T2) if it is in one of the following situations during the year:

- it carried on a business in Canada
- it disposed of certain taxable Canadian properties

Despite this general rule, there are also some specific circumstances where a non-resident corporation must file a Canadian income tax return. For instance when,

- it has requested an exemption from Canadian tax under a tax treaty on all profits and gains

- it has claimed a corporate tax refund
- it elects to pay Part I tax on the net amount of
  - rental income from real property, or
  - acting services, or
  - timber royalty income

## 3- Provincial Income Tax Filing Requirements in Quebec and Alberta

Solely the provinces of Quebec and Alberta administer their own corporate income tax systems. So in general, corporations that earn income in these provinces have to file separate provincial and federal corporate income tax returns. The Canada Revenue Agency (CRA) administers corporation income tax for all other provinces and territories.

## 4- Canadian Withholding Tax

With growing globalization, it is more and more frequent to encounter all size of companies rendering services in foreign countries. When a Canadian company has to make a payment to a Canadian non-resident person, in part or in whole for services rendered in Canada, in most cases it is required under Regulation 105 of the Canadian Income Tax Act to withhold 15% of such payment and remit that amount to the Canada Revenue Agency (CRA). A similar 9% withholding may also apply in the province of Quebec for provincial tax purposes if a service is rendered in the province of Quebec.



In many cases a waiver of the Regulation 105 withholding tax can be obtained based on tax treaty or based on income and expenses. This waiver is granted by applying in advance to the CRA. Usually, the non-resident corporation is also required to file a Canadian tax return.

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## The Tax Audit and the Colombia's corruption scandals

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The statutory auditor in Colombia are occasionally accused, due to inappropriate or illegal activities perpetrated by company's executives, which have an impact on the economic and social development of the country. This article will develop the dimension in which accountants are part of this type of scandals.

In 1935, it was created the figure of the "*Statutory auditor*" in Colombia, at the beginning it was established that the working range was subject to control actions carried out by the enterprises, which were according of those established in the statutes of each company. In addition, one of the duties was to inform of all irregularities to the general shareholders' meeting, governing board or manager. Since 1956, it was determined that this role could only be carried out by accounting professionals registered in the Central Board of Accountants (JCC).

Over the years the figure of "*Statutory auditor*", hasn't had many modifications, however its functions have increased, and this is essentially because the Colombian Government has used public resources in other activities. For this reason, Tax audit in Colombia has a double purpose; ensure that the internal regulations are fulfill (statutes) and help the Government to control operations according to the law, carried out by them. Besides the above-mentioned responsibilities, there are among others: certify the companies' balance sheets, sign taxes for the companies, ensuring that the documents received are in good conditions, "inspect the goods of the society on a regular basis"; but also in the commercial code, standard to laying down its functions, it was determined that they should

collaborate with entities carrying out supervision and control over the companies, and finally report.

In all Colombia's corruption scandals, investigators have included the *Statutory Auditors* of the companies investigated, like Interbolsa, Estraval, Odebrecht, Reficar, Panama Papers and the recent investigations of the Industry and Commerce Superintendence (SIC) regarding price cartels carried out by well-known companies in different sectors of the economy, and the last case; the blockade carried out by the factoring companies (where it is being investigated why the *Statutory Auditor* did not reported this situation, even though it was not an official policy). In the Interbolsa case the sanction to the firm, which expressed the low quality of the *Statutory Auditor*, was the cancellation of his professional license, that is, that the *Statutory Auditor* cannot continue to provide professional services; in the Reficar and Panama Papers' cases, it was sentenced that the *Statutory Auditors* have imputed crimes relating to criminal activity that the company's executives executed and it has deprived them of their freedom, as they have demands for crimes as false documents to commit a crime, illicit enrichment on behalf of third parties, among others.

A recent case was developed by the Superintendence of companies, which has ruled the liquidation of an accountancy firm, due to an investigation related to one of its customers, even though the investigation was initiated by the firm reports in their acting as Statutory auditors, situation that was subsequently revoked, and which generated huge economic and customer losses and especially bad reputation.



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Now, to establish a reference point on the figure of the Statutory Auditor in Colombia, let's see some figures, according to information from the Chamber of Commerce: 93,55% of Colombia companies are micro-enterprises (2.517.869), 4.9 % are small enterprises (130.697), and there are 22,000 companies which are required to have a Statutory Auditor. The entity which rules accountants in Colombia is the Central Board of Accountants – (JCC), who reported that, in the past 10 years, 1,177 files have been opened, whereof 567 accountants and 604 Statutory Auditors have been sanctioned. It should be taken into account that the total number of graduated accountants in Colombia is about 250,000.

As we can see, the total number of sanctioned accountants is small regarding the total number of accounting professionals, even though this number is not significant, the scandals which have involved this professional area well known, and this causes that people behind a microphone, newspaper or magazine, without real information about the cases, to release judgments about the work of these professionals and put them in the public pillory only by the unfortunate fact of having been working in companies that have committed serious offenses (such as Odebrecht, Estraval, Interbolsa, etc.). In accordance with the above, I'm not trying to excuse my colleagues, but I consider indispensable that a trial must demonstrate the inappropriate behavior of companies, and that the Statutory Auditor had any knowledge or of those who were involved directly on the facts, reason by which we should expect that the facts imputed to them will prove, and this have to be able to launch trials on his professional work.

In some situations, Statutory Auditors can be seen as unethical professionals, in their coverage gap and diligence in the work carried out, ignorance of the rules and outdated of the same, disagreements with shareholders and managers on general direction of companies issues and other cases of complacency in handling inadequate maintenance in office; for all of the above, in Colombia there are appropriate instances, such as the Central Board of accountants (JCC), where the faults committed by accountants and Statutory Auditors in the exercise of their profession can be exposed, and for what was established in the paragraphs above, there has been few people sanctioned until today.

Finally, it's important that Colombia and the world, work with a flawless professional ethics, maintaining constant training in order to develop their work in the expected way, and even go a little further to be able to realize when illegal activities are being carried out. They should be aware of the responsibility in society, generating useful and relevant financial information for decision-making.

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# Cyprus' income tax exemptions: What you need to know!

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On 24 July 2017, the Cyprus Tax Department issued Interpretative Circular 2017/4 in relation to income tax exemptions, sections 8(21) and 8(23) of the Income Tax Law 118 (I)/02.

The specific criteria of sections 8(21) and 8(23) are listed below:

## **Exemption of section 8 (21):**

Employees are exempt from income tax on 20% of their remuneration or €8,550 (whichever amount is lower) for employment exercised in Cyprus. This exemption is applicable to individuals who were not Cyprus tax residents during the year preceding the year of commencing employment in the Republic.

The exemption is applicable from the 1st of January of the year which follows the year in which the employment commenced. It should be noted that:

- For employment which began during any year until 2011, the exemption is granted only for 3 years;
- For employment which began from 2012 onwards, it is granted for 5 years.

The exemption can be claimed until 2020 when the scheme will expire.

## **Example:**

An individual who was not tax resident during 2018 and began his employment during 2019 shall be entitled to the application of the exemption only for the year 2020.

## **Exemption of section 8 (23):**

The second exemption has been in effect since 1 January 2012 (updated in 2015) and relates to a 50% exemption of the remuneration from any employment exercised in Cyprus if such remuneration exceeds €100,000 annually. The exemption is applicable irrespective of whether during one year the income dips below €100,000 provided that at the commencement of working in Cyprus, the income from employment in the Republic exceeded the €100,000 threshold and the Commissioner is satisfied that the fluctuations in the salary are not artificially engineered for the purpose of obtaining the relevant tax exemption.

The exemption has certain restrictions; individuals who were tax residents in Cyprus during any 3 out of 5 years preceding the year of employment (not applicable for individuals with a commencement of employment between 2012 to 2014) as well as during the year preceding the year of employment will not be granted the exemption.

The exemption can be claimed for 10 years.

## **Example:**

An individual was tax resident in Cyprus during the years 2009-2013 but left Cyprus during the years 2014-2015. He returned to the Republic in March 2018 and was employed. The five years preceding the year of employment are 2013-2017 and he was a tax resident for 1 year (2013). Therefore, the individual shall be entitled to the exemption.

The following has been clarified in the Circular published:

- Exemption is applicable to any of the 10 years during which the annual remuneration exceeds €100,000. If during any of these 10 years the income does not exceed €100,000 then the taxable person can claim the first exemption if the 5 year period has not expired.
- Exemption is granted if actual income within one year of assessment does not exceed €100,000 due to commencement or termination of contract in the course of the year but the income from employment exceeds €100,000 on an annual basis.
- The maximum period the exemption applies for is 10 years including the year of commencement of employment.
- Bonuses and any other remuneration taxable according to the Income Tax Law should be considered for the purposes of calculating the annual income of €100,000.
- The remuneration for the provision of services outside the Republic for which the 90 day rule deduction is granted, is not taken into account for the calculation of annual income threshold of €100,000 since this does not relate to income exercised in the Republic.
- Exemption is also granted if a person is employed by two or more employers in Cyprus, with the total remuneration exceeding €100,000 calculated on an annual basis.

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### Example:

An individual who was not a tax resident in Cyprus in 2011, came to Cyprus and was employed on 15 June 2012 with a monthly salary of €8,500. For 2012 he is entitled to the 50% exemption because even though in 2012 his income was €55,250, calculated on an annual basis the income exceeds €100,000.

### Clarifications for both exemptions:

- For fiscal years up to and including 2014, an individual had to choose between the two exemptions available as these cannot be granted simultaneously. From the year 2015 and onwards it is specifically clarified that in the case where the exemption under section 8(23) is claimed then then exemption under section 8(21) cannot be claimed.
- For each tax year a different exemption may be granted.
- Exemption may be granted to individuals who are either tax or not tax residents in Cyprus during their employment in the Republic.
- Exemption may be granted to individuals whose commencement of employment begins later in the year of assessment, when they have already completed more than 183 days in Cyprus, provided that they were not tax residents during the previous year of assessment.
- The exemptions are applicable irrespective of whether the individual carries out the employment in Cyprus with the same employer in which he was employed abroad or not.

- The exemptions may be granted in the case of graduates who complete their studies abroad and return to work in Cyprus, provided that during the previous fiscal year they were residents outside the Republic.
- Exemption may be granted simultaneously with the deduction which relates to the remuneration for the provision of salaried services outside the Republic for a total period of more than 90 days in a tax year.
- Exemption is also granted to a person who is employed in a company established by the same individual (i.e. a director or a shareholder of the company).

It is important to note that any cases not covered by the circular issued shall be forwarded to the Commissioner for a decision.

Our team of professionals can advise you in determining whether you are eligible for these tax exemptions and assist you in calculating your tax exempt income.

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## Municipalities taxes

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As we all know, every State has a taxation system. Every State develops its system according to its needs. In the case of Ecuador, this country has two different institutions which handle with the payment of taxes: 1) Servicio de Rentas Internas (SRI) and 2) Municipalities of every city.

For this article, we will ignore the situation of SRI as the entity that receives taxes and we only should pay our attention in Municipalities. Specifically, we will focus on the tax named "*Impuesto a la patente municipal*" that imposes a tax burden because of the economic activity in every kind of person, legal or natural. We will analyze this tax in relation with holdings, which leads an interesting case of double imposition.

As I said before, the "*Impuesto a la Patente Municipal*" generates a tax for the economic activity which can be financial, commercial, industrial and professional, according to the Ecuadorian law. With this rule, we would think that a holding should be a taxable person in every particular situation.

However, we must consider the main activity of holdings as exception for this tax. Holdings have as feature the inversion of capital in actions of several companies. This mean that the companies, where holdings have actions, also have to pay the "*Impuesto a la Patente Municipal*" for their economic activity. If we check this point, we can realize that the first company and the holding receive incomes by the same source ¿Could be possible that there is a case of double taxation?

To answer the previous question, it is necessary to analyze carefully the nature of the economic sources. We can say that there are two moments when we revise the status of a holding. First, the company, where the holding has actions, earns incomes because of a certain activity. When this company generates capital, this one has the obligation to pay the mentioned tax and then, dividends can be distributed between all the partners.

Second, part of this dividends are paid to the holding, generating "new incomes" to this one and then, the holding has to pay again for the same money that received from the company. If we analyze carefully, the source of the income is exactly the same, the economic activity of the first company.

With these facts, it is our opinion that there is a case of double taxation when we have holdings as taxable people. The law is not considering the particular case of holdings. It is an absence of the main essential components of holdings in law, which leads a totally unfair tax for holdings. This particular situation should be analyzed by a constitutional way to protect de rights of every undertaking.



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# New takeover regulation – stricter regulations and additional documentation requirements for non-EU investors for acquiring certain German businesses

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Germany is not only famous for its beer festivals and cuckoo clocks, but also for its very strong medium-sized companies, which are the backbone and growth drivers of the German economy.

In the recent years, especially, but not only, Chinese investors entered the German M&A market and acquired medium-sized companies with crucial know-how, e.g. the acquisition of Kuka, a world-leading group for intelligent automation solutions based in Augsburg. This and also other successful and failed acquisitions were discussed controversially in the German press and by German politicians as it was feared that the Chinese investors will pull-out technical know-how and reduce the companies' workforce. Until then the access for foreign investors to the German mergers and acquisitions market had not been restricted. Only for companies of the defense industry the German Ministry of Economics had a final veto-right.

Surely as a reaction of the Kuka acquisition, the German Economic Affairs Ministry has amended as of 12 July 2017 the existing German Foreign Trade and Payments Ordinance by introducing better rules of scrutiny of corporate acquisitions by non-EU investors. The purpose of the amendments is to finally ensure Germany's security interests by giving the Economic Affairs Ministry more scrutiny rights for investments of non-EU investors in companies operating in sectors with a critical infrastructure.

The new regulations especially added the sectors energy, IT, cloud computing, telecommunications, telematics, transportation, healthcare, water, nutrition,

finance and insurance as relevant sectors as well as companies developing software for either of these.

If a foreign non-EU investor or an acquisition vehicle based in Germany but acting on behalf of a non-EU investor intends to acquire a German company falling under the scope of the foreign trade regulations, the investor has to inform the Economic Affairs Ministry about the planned acquisition. The scrutiny period for the Ministry to potentially prohibit a transaction is four months and will not start before all documents are available for review. The decision whether documents and information are complete is thereby under the sole discretion of the Ministry. To have faster legal certainty, investors can apply for a certificate of harmlessness of a transaction. This certificate is deemed to have been issued by the Ministry after two months, unless the Ministry has not kicked-off a scrutiny, about which the Ministry has to inform the investor and the target in writing. The investor has then to provide detailed information in German language to the Ministry, e.g. the purchase agreement, the transaction structure, financial statements or the investor's strategy. Additionally, further information might be requested by the Ministry of Economics in respect of influence of the target company on the market, information about the locations in Germany, the future collaboration between the investor and the target company or e.g. information about the target's R&D position compared to its competitors.

In either case, five years after the signing of a share and purchase agreement, the scrutiny right of the Ministry has finally expired.

Overall it must be waited and seen whether the amended takeover regulations in general will lengthen the M&A deal processes. Nonetheless it can be expected that the number of harmlessness certifications will increase to receive as early as possible legal certainty about a relevant transaction. In case the Economic Affairs Ministry starts a scrutiny, all parties involved must be prepared for a more time-consuming process with exchanging lots of documents and information.

In case you plan an investment in Germany in the near future and you have questions concerning how to approach the transaction, we are pleased to assist you.

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# The Greek treatment of digital platform short-term property rentals

The Greek legislation regulates short-term rentals of real estate property within the so-called framework of "sharing economy" (through digital platforms like Airbnb) in the article 111 of Law 4446/2016, as amended and in force.

## Important definitions

A **sharing economy** is considered to be any model where digital platforms create an open market for the temporary use of goods or services that are often provided by individuals.

**Digital platforms** are electronic, bilateral or multi-lateral markets where two or more user groups communicate via internet with the mediation of a platform manager facilitating a transaction between them.

## Types and terms

Subject to the provisions of the above mentioned law are apartments, houses, any other form of building with structural and functional autonomy, as well as rooms in apartments or houses.

As far as the duration is concerned, a short-term lease of property may be concluded for a specific period not exceeding one year.

## Obligations of the property manager

A short-term lessor (hereinafter "property manager") is an individual or a legal person or any legal entity that undertakes the process of posting immovable property on digital platforms for the purpose of short-term letting and generally arranges for the short-term lease of the property. A property manager may be

either the owner of the property or the possessor or a sub-tenant or even a third party.

Short-term rental of real estate property through digital platforms can be provided under the following conditions:

- The property manager has been registered in the "Short Term Residence Real Estate Registry" maintained by the Independent Public Revenue Authority (AADE).
- The registration number from the Short Term Residence Real Estate Register must be visibly present when the property is posted on the digital platforms, as well as on any promotional tool.
- In case the property managers have an Authorized License from the Hellenic Organization of Tourism, they are not obliged to register with the Short-Term Residence Real Estate Register, but they have the obligation to visibly post the Authorized License Number on digital platforms' posting, as well as on any promotional tool.

A registration with the "Short-Term Residence Real Estate Register" is to be made for each leased property.

## Taxation of income from short-term lease in Greece

The income generated from short term lease of real estate property in the context of sharing economy under the conditions that the real estate property is furnished, without the provision of any other service (except for bedding) is taxed as following:

Income from property (EUR)	Taxation Rate
0-12,000	15%
12,001-35,000	35%
35,001-	45%

In case of any other services (apart from the furnished lodging and bedding) the relevant income is considered as income from business activity and is taxed accordingly.

**VAT:** The income from the short term lease of property is exempted from VAT, provided that the property is leased furnished and no service other than bedding is provided.

## Additional requirements

The owner or the possessor or sub-tenant of a property, when assigning to a third party the property management rights for short-term lease purposes, has the obligation to submit a Real Estate Lease Data Information Declaration (via "TAXISnet") which will include the details of the property manager. In the event of failure to submit such Declaration, the owner/possessor/sub-tenant will be deemed to be the manager of the property itself.

In case of co-ownership of property, when the property manager is one of the co-owners, the other co-owners are not obliged to submit a Real Estate Lease Data Information Declaration.

The owner of the property or the possessor or sub-tenant is also required to submit the Real Estate Lease Data Information Declaration when leasing a sublet property.

Infringement	Fine
Non-compliance with certain obligations	EUR 5,000 (in certain cases may be doubled or even quadrupled)
Outdated "Short Term Residence Declaration"	EUR 100
Failure to submit or submission of an inaccurate "Short Term Residence Statement"	A fine in amount of double the rent as shown on the digital platform shall be imposed on the property manager on the day the audit is executed

For the application of the Law, AADE may conduct audits with the support of the Ministry of Tourism and Financial Police. AADE may ask from every digital platform being active in the sharing economy any information related to the property managers as well as to properties posted on them.

The Tax and Legal Department of Eurofast Global Ltd in Athens remains at your disposal for any further question and/or clarification as well as special advice.

The present article contains general information and in no way covers exhaustively its subject matter. Interested clients should seek specific professional advice.

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## Transfer Pricing Environment in Israel

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Transfer pricing controversy cases being examined at all levels by the Israel Tax Authority ("ITA") have risen over the past several years, while the ITA's ability to settle these cases with multinational companies appears to be an increasingly more difficult and protracted process. One of the bases for the increase in ITA transfer pricing examination cases is the still relatively recent issuance of its transfer pricing regulations and its attendant circular, the obligation to fill in a special tax form for transfer pricing purposes that requires itemization of intercompany transactions (Form 1385), and a circular on business conversions in the high technology sector. Further, with Israel's entry into the OECD in 2010, the ITA's transfer pricing department in particular has relied on the resources provided by the OECD regarding training and audit procedures to enable itself to gain the tools necessary to perform transfer pricing examinations. The OECD's recent Base Erosion and Profit Shifting (BEPS) project has given tax authorities around the world, including the ITA, additional momentum to aggressively conduct tax audits.

The ITA's transfer pricing department has worked internally within the ITA itself to educate tax examiners about the issue. The department is based in Tel Aviv and works with local offices throughout the country on cases which it deems as not being dealt with on arm's length terms. More and more frequently, it is seen that for any Israeli company with cross-border transactions, transfer pricing documentation is requested by the ITA regardless of the size of the transactions.

Two major issues on which the ITA has taken controversial stances were, after a protracted period,

finally ruled upon in the tax courts. The first issue pertains to stock options. The debate centers on the inclusion of stock options in traditional R&D cost-plus agreements where the Israeli entity is the service provider. A special Israeli tax law allows for the entity and its employees to choose for the treatment of these options under a capital gains regime (taxed at around 25 percent). Concurrently, the book cost of the employee's options is not a deductible expense for the employer. The ITA has adopted an approach under which the book cost of the employee stock options needs to be included in the R&D cost base on which an arm's length markup is applied. The result is that the revenue recorded by the Israeli contract R&D services company includes not only the salaries and attendant expenses plus an arm's length markup, but also the stock options' costs plus the arm's length markup. However, as was explained above, the stock options' value/cost is not a deductible expense for tax purposes. This leads to an effective taxable profit in many cases way in excess of what is the arm's length range per the study. Three court cases surrounding this issue were ruled upon within a short period of each other, all in the favor of the ITA.

A second issue under controversy pertains to the transfer, or deemed transfer, of intangibles. Whether an Israeli company is acquired, or merely decides to restructure its business, the ITA often asserts that there is a transfer of assets, and, in particular, of intangibles. The ITA's general stance, based on economic work that it performs, argues that the total value of an acquisition represents the value of the intangible transferred less a few distinct local assets. The ITA in its valuation will deduct the value of certain non-IP

assets, though these values themselves are often not material. If there is any "synergy" within the purchase price, it is attributed completely to the Israeli IP, i.e., the transferred intangible. As such, most all of the goodwill in an acquisition pertains, according to the ITA, to the developed Israeli intangible(s). Of the several cases docketed for court on this issue, one ruling came out recently also in favor (on most counts) of the ITA.

In light of the increasing scrutiny of transfer pricing by the ITA, and especially as the BEPS requirements become applicable this year, it is prudent for companies operating in Israel to make sure they comply with the transfer pricing requirements. Our expertise, based on combined experience of more than 50 years (US and Israel), is to assist companies meet the compliance requirements in a tax efficient and cost efficient manner. In light of the recent court losses, we have developed creative ways to overcome some of the most difficult transfer pricing issues.

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# The tax refund system in Malta

## The six-sevenths (6/7) refund

This refund may be claimed when profits are paid by way of dividends out of profits allocated to the Maltese taxed account and/or the foreign income account to shareholders who are registered with the DGIR for this purpose.

The 6/7th refund does not apply to the following distributions:

1. Dividends paid out of passive interest and royalties
2. Dividends paid out of dividends received from a participating holding and the holding does not satisfy the conditions for the participation exemption to apply
3. Dividends paid out of the foreign income account and in respect of which profits the company claimed any form of relief of double taxation.

## The five-sevenths (5/7) refund

This refund is claimed on the following distributions:

1. Dividends paid out of passive interest and royalties
2. Dividends paid out of dividends received from a participating holding and the said holding does not satisfy the conditions for the participation exemption to apply.

## Tax refund where double taxation relief has been claimed

This special rule applies where profits allocated to the foreign income account were subject to tax in the hands of the company in the year of assessment 2008 and later years, and, double taxation relief by way of

Treaty and/or unilateral relief (but not flat rate foreign tax credit) was claimed.

In such cases, the shareholder is entitled to claim a refund of two-thirds (2/3) of the total tax credit (that is including Malta tax relieved by double taxation relief) of the dividend such that the refund is limited to the actual Malta tax paid.

### Illustration

	Example 1	Example 2	Example 3
Profits	100	100	100
Tax – foreign tax	5	10	15
Malta tax	30	25	20
	35	35	35
Max tax refund of 2/3 (i)	23.33	23.33	23.33
Actual refund (ii)	23.33	23.33	20

(i) The maximum tax refund claimable is 2/3rd of the total tax credit of 35

(ii) The actual refund is 23.33 for both examples 1 and 2 as this amount is less than the Malta tax of 30 and 25 respectively. In example 3, the actual refund is reduced to 20 as the Malta tax credit is lower than the maximum allowable refund.

## The two-thirds (2/3) refund – others

The 2/3<sup>rd</sup> refund also applies to tax refunds claimed on dividends distributed from the foreign income account and the company claimed flat rate foreign tax credit on these profits.

In this case, the refund is calculated on the Malta tax only.

This publication has been prepared only as a guide. No responsibility can be accepted by us for loss occasioned to any person acting or refraining from acting as a result of any material in this publication.

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## Challenges and opportunities in Municipal Solid Waste Management in Mexico

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Municipal solid waste, which is mainly generated at home and is a consequence of domestic activities, represents a significant challenge in Mexico due to fast population and global growth in Mexico's main cities. According to the Secretariat of Environment and Natural Resources (SEMARNAT) from 2445 municipalities in Mexico only 5% of them, that is 122, have an appropriate waste management. Moreover, only 88 landfill sites operate under the national regulation (NOM-083) implying that 36% of the total municipal waste generation is being disposed in uncontrolled sites generating environmental and public health issues for most urban cities and population.

Which decisions or activities should be implemented to change and minimize the negative impact that waste generation has? Auren Bajío Office collaborated with local and state authorities of Guanajuato to elaborate a regional diagnosis, strategic planning and a proposal for the development and construction of infrastructure in the short and medium term. This analysis was focused on three main components which influence how municipalities operate its waste management system: organization, operation and normativity.

Despite the political and administrative challenges faced by municipalities in Mexico when implementing large scale projects involving long term contracts, some regions in the country have already proven to be successful in the improvement of waste management. Auren Bajío Office has the expertise and knowledge to make solid waste management projects a reality for regions and municipalities in Mexico.



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## Paraguay destination of investments

"Paraguay is being viewed as a more attractive market, not only because of taxes or human resources"

2017 was called to be the new starting point for all activities to maintain a good rhythm of growth, where the main items are offering a fertile field to innovate, increase and generate a differential value.

### Low Tax Load

The base of the Paraguayan tax system is quite simple, with rates for consumption and income (personal and business) of 10%.

With the lowest tax burden in the region, Paraguay offers various advantages and incentives to invest foreign capital.

"Paraguay has an unbeatable combo of available and cheap electric power, while it has the 10-10-10 fiscal regime that translates into a 10% income tax to companies, 10% to people and 10% of Value Added Tax (VAT), which drives the economy and gives greater competitiveness.

### Growth engine - Agriculture

Increasingly, we seek to move towards the industrialization of agricultural production, so that the country can become a decidedly finished food producer.

Through the investment of important companies that are betting on the generation of added value to obtain better economic income, the volume of shipment of processed products is increasing.

### Dynamic contribution to the productive apparatus- Livestock

Paraguay maintains a constant rate of growth, a mainstay of this is the meat industry, which is the main industrial component of production, the growth of livestock, both in the volume of slaughter and turnover for export of meat has been quite important, accessing increasingly more markets around the world.

### Infrastructure to grow - Industrial sector

In recent years, the Paraguayan industrial sector has shown a new dynamism, favored and fed largely by favorable conditions, such as the macroeconomic stability that the country has experienced for several years, where there is not much volatility and that is recognized to world level, as well as a policy of incentives to investment and production, sustained economic growth and a wide availability of natural resources and that we are the second country in Latin America and tenth in the world with the highest return on foreign investment. Proof of this is the constant reinvestment and development of new products by operating companies, as well as the arrival of multinational firms from different regions of the world. The Government guarantees legal security for those entrepreneurs, both foreign and domestic, who want to install industries.



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# ISA 600 AUDIT OF GROUPS, Instructions from the Principal Auditor, full audit for significant components and determination of accounts to be examined in non-significant components

**Introductory Aspects:** In audits of a group with branches, the following aspects can necessarily be presented:

1. A Principal Auditor and collaborating firms from the Network or another firm (from another country) to review the other components.
2. In order to do so, the Principal Auditor must issue instructions to the auditors of the other components (significant and non-significant), in which must be mentioned the specific assignments (NIA 210) to be carried out, annexes or reports, deadlines.
3. Auditors must report their working papers to the principal auditor and when finishing their work, make their working papers available on request.
4. Perform initial checks to determine that the components considered for the financial audit are sufficient or, failing that, determine which more components should be reviewed.
5. Knowledge and understanding of the business (regulations, environment, systems, financial reference framework – accounting policies, review of previous audit reports, test of controls).
6. Review of opening balances (ISA 510) due that other were the predecessor auditors.
7. Identify, evaluate and respond to risks (ISA 330 – The auditor's responses to assessed risks and ISA 315 – Identifying the risks of material misstatement through understanding the entity and its environment).

8. Process of Consolidation of Financial Statements (Homogenization, reconciliation of transactions, integration and adjustments).
9. Coordinate the determination of planning materiality and tolerable error in accordance with ISA 320 "Materiality in planning and performing an audit", in which benchmarks or measurement bases can be seen.
10. Determination of significant components for performing full audit and non-significant components for auditing significant items based on analytical procedures.

**Work aspects:** Some instructions to be given by the Principal Auditor:

1. Confirmation and acceptance of instructions (if interpretation problems arise, they should be clarified with the principal auditor, it is stated that all working papers will be provided for review and returned immediately upon completion of the review).
2. Planning memorandum (1.- Basic information, 2.- Accounting policies, 3.- Identification, evaluation and response to risks, 4.- Materiality, 5.- Internal control and cycles of significant transactions, 6.- Fraud and established controls, 7.- Audit strategy, and 8.- Other issues – Use of experts).
3. Tax memorandum (1.- Calculation of current tax, 2.- Deferred taxes, 3.- Tax credits, 4.- Outstanding tax audits, 5.- Claims to the tax authority, and 6.- Other significant contingencies).

4. Summary of Adjustments and Reclassifications (Pointing out the effect on: Current assets, Non-current assets, Current liabilities, Non-current liabilities, Profit and Loss, and Other equity items).
5. Representation Letter (According to ISA 580).
6. Subsequent Events (Facts or disclosures that require and do not require adjustments to the financial statements).

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# General Data Protection Regulation (GDPR)

## Dead line arriving in the 25 th of may, 2018

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### General Information

The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) is a regulation by which the European Parliament, the Council of the European Union and the European Commission intend to strengthen and unify data protection for all individuals within the European Union (EU). It also addresses the export of personal data outside the EU. The GDPR is directly applicable to all EU Member States and does not need to be transposed into Portuguese law to have effect on the national legal order.

### Main transformations for the market

The most significant changes are, in general terms, the following:

- clarification of the personal data concept;
- broadening of sensitive data categories;
- increasing the quality of the information to be provided to data owners;
- recognition of new rights for data owners;
- introducing new rules in order to obtain consent of the data owners;
- extension of the rules to outsourced entities;
- appointment, in certain cases, of a Data Protection Officer;
- prohibition of personal data transfers outside the EU;
- elimination of notification / prior authorization for

the processing of personal data, transforming the National Data Protection Commission into a supervisory body;

- demonstration of compliance with obligations;
- documentation and reporting of violations;
- heavy penalties for infractions.

### The need for clients awareness

The General Data Protection Regulation (GDPR) applies to all individuals, companies, foundations, associations, institutes, schools, clinics and other organizations that registers or processes personal data of residents in the European Union (EU).

For this purpose, we consider personal data to be all the information that directly or indirectly allows the identification of a person. Examples of personal data are the name, address, identification social security, taxpayer, identity card, telephone number or e-mail address), as well as fingerprints, recording or recording of voice and / or image, school classifications, clinical data and records, credits, debts, purchases, records of means of payment and the like.

For this reason, all our clients are in need to comply with the GDPR and to be properly informed about the sanctions. Note that offenders may be fined up to € 20,000,000 or 4% of your organization's overall billing (depending on the highest value).

### The need for a multidisciplinary approach

The fulfillment of the GDPR's obligations involves the participation of specialists with diverse competences, namely in the areas of consultancy, legal and information technology (IT). Having noticed that a very significant number of entities are not yet sufficiently aware of the GDPR regarding (i) the importance of implementing the New Legal Framework and (ii) the consequences that non-compliance may have on their activity, AUREN Portugal has set up a specialized team in this area in order to analyze and deepen the new legal framework and adapt its IT systems, organizational models and processes, as well as the revision of diverse documentation (labor and subcontracting contracts, forms, mailing lists).

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## Expected changes in transfer pricing regulations in Russia

According to commitments made to the OECD, the Russian state institutions are currently working on the development of a transfer pricing system with three stages. The new regulations are expected to enter into force on January 1, 2018. The bill foresees the introduction of additional forms of tax reporting:

- Trans-national report on statistical data of companies and their business results, for companies with a total turnover of at least 50 billion rubles per fiscal year.
- Global transfer pricing documentation ("Masterfile") to be submitted to the tax authorities on request, just like the national documentation.
- Notification of company's participation in an international group of companies.

It is still necessary to prepare a national documentation; the scope of the information to be provided there is widened.

The bill also provides for a significant increase in penalties:

- up to 50,000 rubles for failure to notify of participation in a group of companies or misstatements
- up to 100,000 rubles for non-submission of transnational report or wrong statements there
- up to 100,000 rubles for non-submission of global documentation
- up to 100,000 rubles for non-submission of national documentation

Given the fact that insufficient tax payments since 2017 are subject to an increased penalty of up to 40% of the underpayment, we consider it important to pay close attention to the documentation of intragroup prices within the Russian Federation.

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## Comprehensive view from the locals: Singaporean Markets

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**What have been the highlights/trends in your market last year? (this can include important mergers, regulatory changes, economic situation etc....)**

Many analysts and experts are predicting a recession in the worldwide economy due to Asia's economic slowdown specially in China and uncertain economic behaviours of the world's major markets. Despite the gloomy economic outlook, the trend in Singapore in 2016 is largely steered towards promoting the growth in Information Technology (IT). The Singapore government has been exploring ways to increase productivity through IT which can be seen from the extended and increasing budget put into it. This is such as the Productivity Innovation Credit (PIC) scheme and SPRING's Capability Development (SCD) Grant, where the government will be seen to increase its budget by approximately \$600 million across the next three years from 2015. We can also expect to see increasing numbers of FinTech firms starting up in Singapore as the Monetary Authority of Singapore (MAS) has been said to commit \$225 million over the next five years to grow FinTech through FinTech schemes. The successes of IT in the market can be seen from how the smaller players in the market such as Uber and Airbnb which managed to flip the market of taxi services and the hoteling industry. This is a very significant move for Singapore as small and medium enterprises (SMEs) makes up 99% of the country's enterprises and hires 70% of the Singapore's workforce. The Singapore government is hoping to promote the use of IT to help grow these enterprises, increase their productivity and ability to provide greater value-added services. The trend will be expected to follow through

the next few years in order to promote growth in the Singapore economy, as well as to manage the fall in economic performance across other sectors such as the oil and gas industry worldwide.

**What are the opportunities and challenges for accountancy firms in the market? (Generally speaking in the market, as well as in terms of service lines – assurance, tax, advisory).**

Singapore's move to promote IT and FinTech has made accounting much more accessible for new start-ups and existing businesses. It is a double-edge sword for accountancy firms. Lesser business needs advisory and accounting services as information are available at their fingertips and there are Apps that readily provide them with easy-to-use accounting solutions. However, the information is not as easily understood as they seem like. There is overwhelming information for businesses and accountants to digest. In addition, the accounting standards are getting increasingly demanding. With the upcoming application of IFRS 15 (FRS 115), more time and effort is needed to understand how to comply with these new standards. Hence, we might be able to see more specialised services in the market giving advises for businesses due to the increasing complexity for accounting.

The increase in complexity for accounting is coupled with stricter Singapore Standards of Auditing (SSAs) and the regulations in Singapore for anti money laundry and terrorism financing called EP200. This will need more corporate control for compliances related services which the accountancy firms will require more time and effort to provide the same assurance



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service than before. With this, the accountancy firms will have to consider new ways to increase productivity by exploring new innovative methods to survive the increasingly demanding standards.

On the other hand, tax compliance and company laws are also changing every year. There are always new definitions for companies and audit requirements which will require continuous learning. One of such examples would be the initial introduction of Productivity & Innovation Credit (PIC) and the changes made to the PIC scheme. We need to act and learn fast in order to provide comprehensive tax advisory on such matters. Moreover, the recent changes and addition to the Singapore's Companies Act such as the inclusion of the Thirteenth Schedule has changed the pre-requisites for audit requirement. We might be able to see more specialised services in the market giving advises for specific parts of tax and other compliance matters.

The going forward out there are more and more challenges. But challenges and opportunities are the two sides of the same coin. More challenges will result in more opportunities for the professional firms and if they can adapt at speed to the changes taking place and position themselves in timely manner to serve the new needs of the businesses.

### **What are your expectations for the future short/medium/long term?**

Change is the name of game. Changes are taking place rapidly and it will continue so. It is not possible to stop the change and wise thing to adapt to the changed economy. As the proverb goes that you can stop

a strong "army" from proceeding further, but you can never stop a good "idea" from spreading. Internet has revolutionised the way business is carried on.

We feel that it will take some time for the market to get used to these changes and adapt to them. Singapore has a fast paced economy where changes and evolutions are always taking place. In the short term, we may see more FinTech firms sprouting. However, it is all working on the idea of survival of the fittest in this economy in the long run. Accountancy firms in Singapore will need to keep changing, adapt and adopt these FinTech to move further ahead with time. We also have to rethink the old business model and be flexible to changes. We should consider collaborations between small and medium accountancy firms by sharing information, programmes, feedbacks and improvements. Basically, we should move together towards where the world is going tomorrow to survive and grow. As stated above challenges will result in more opportunities for the professional as they are the two sides of the same coin.



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Source: IAB Magazine

## Technology brings opportunities to attract young talent

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Technology has a very wide ranging impact on our everyday activities as well as our work environment. For this reason, an increasing number of professional accountancy organizations (PAOs), as well as IFAC and the Small and Medium Practices (SMP) Committee, are determined to help professional accountants adapt to the challenges technological change brings to continue serving their clients and the public interest.

Technology affects the auditor's work environment, both on the methodology applied in performing an audit as well as our relationships with clients and employees. Today, the firm's visibility in the marketplace, our own internal management processes, internal and external communication, and many other aspects of our professional activities depend and even thrive on technology.

Specifically, information technologies is increasingly core to recording financial transactions of our clients. On one hand, confidence in the financial statements depends on the ability of the information technology systems to ensure the completeness and accuracy of the data being captured. On another hand, internal control in any medium-sized or large organization involves reliance on their information as well as communication systems operating under a proper technological framework. After all, the strength of established controls are essential for auditors to be able to rely on the underlying economic and financial data obtained through an information technology system.

For example, thanks to the development of cloud applications, which allow access from any location, updating accounting data can now be performed ins-

tantly and remotely. Once again, a detailed analysis of the strength and weaknesses of such systems, procedures, and communications security is essential for our work as an auditor when it comes to the issue of data integrity.

Currently, information systems have enabled us to access a huge amount of data like never before. Using data analytics helps us detect abnormalities (both in time and volume) that may then allow us to drill down on "exceptional" transactions requiring more detailed analysis. This includes, for example, exceptional transactions such as repeated payments to the same client or for the same product, adjustments or exceptional accrual at certain specific dates, etc. All this allows us to focus our audit efforts on the potential risks of irregular transactions not being detected during the audit process.

When our work is based on the analysis of significant risks (and exceptional reporting) and on the reliance in the internal control systems of our client, does annual audit as we conceive it today continue to make sense? Certainly, our role as auditors is still relevant, as we are the independent experts who can verify the appropriate presentation involving complex financial transactions (based on some applied criteria or reporting framework) and conclude that it is being presented in a true and fair manner. But probably, society and the client will appreciate a more continuous information flow than just our audit opinion delivered once a year.

Certainly, we must analyze and continue to emphasize, from the perspective of our code of ethics and

independence, the main risks of the company we are auditing, how it is responding to them, and our opinion with regard to the appropriateness of these responses. However, it makes far less sense for our opinion to be expressed in a single annual report that merely reflects historical situations a few months after the fiscal-year end when we are talking about the real value of an audit to our clients.

Market operators require periodic information that is more dynamic and, in many ways, more focused, including financial and non-financial information. If we can have access to data in real time, and the internal control systems are functioning reliably, we only have to evaluate whether the criteria applied to certain abnormal transaction or some new situations (that the current system may not be able to adequately deal with) are the appropriate ones pursuant to the applicable financial reporting framework. This is where the power of exceptional reporting can be most beneficial. The quarterly information required by stock markets is a sign of the trend of what market might appreciates—short, brief, and very focused.

And what can we say about our work environment? Values of our society, and especially those of the younger people, are changing. The long hours and characteristic of auditing is hardly appealing to the new generations. This certainly make our profession less attractive, although our profession is sometimes treated as a training ground for other careers as there is still unquestionable value in the experience obtained in an auditing firm. But, beyond this, we start to lose talent. If we don't adapt our procedures and change our work environment, we are running a serious risk

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of losing the greatest talent among the younger generation.

Furthermore, if we do not have a team that is better trained and better prepared than our clients, we will not be able to add much value for clients. Technology can help us in this sense. A continuous analysis regarding clients' operations, tracking the myriad risks any company faces using and responding to technology, and the completeness and accuracy of transactions being captured and reported make it possible to distribute work more homogeneously with technology over time.

In addition, technology obviously also allows us to work remotely and our staff are able to access clients' systems from anywhere. This also is a better fit to the younger generations' values.

There is no doubt that a technologically advanced auditing firm will be more attractive to young talent than another with a more traditional approach, which can be seen as obsolete and irrelevant. The newer generations are digital natives and easily recognize a forward-looking firm that fits in with their professional aspirations.

Being prepared for changes is essential in order to continue responding to the general interest of our profession. And this has to do with a forward thinking management within our practice. Of course, mere technological adaptation is not sufficient. We can ask for advice from PAOs and other experts but we will need to change how our firms face the future in the technological age.

Many organizations, are sensitive to the need to support members facing these technological issues. The IFAC SMP Committee is finalizing a new edition of the Guide to Practice Management for SMPs, which will include a new chapter devoted to technology and its possible impact. The challenges and opportunities that technology offers SMPs can be extraordinary, and the Guide shares reflections and advice for the efficient use of technology from the perspective of a forward-looking SMP.

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## Royalties to a non-resident received in Ukraine

A license agreement is one of the types of agreements that are used both in the world, and in Ukraine with the purpose of further usage of R&D «results».

**Under a license** agreement one party (the licensor) grants the other party (the licensee) a permission to use the intellectual property (license) under the conditions determined by mutual agreement of the parties. Fees for the use of the intellectual property are usually paid as a royalty.

Ukrainian legislation has certain subtle aspects of the relationship under license agreements with payments in the form of royalties.

Pursuant to the Tax Code of Ukraine, royalty is any payment received as remuneration for the use of or for granting the right to use the intellectual property.

Also, tax legislation of Ukraine has certain limitations on payments in the form of royalties. For example, the following payments shall not be deemed to be royalties:

"payments for the transfer of rights to intellectual property, if the terms of such transfer entitle the person who acquires the rights to sell or otherwise alienate such intellectual property or make public (disclose) secret drawings, models, formulas, processes, intellectual property rights on the information concerning industrial, commercial or scientific experience (know-how)."

Provided the royalties are paid for the benefit of a non-resident, one must consider the requirements of the Tax Code of Ukraine, according to which the ro-

yalty is qualified as income derived from by the non-resident from sources within Ukraine.

The Tax Code defines that in the case of payment of royalties to a non-resident, the resident must withhold a tax from such income (royalty) at the rate of 15% from its amount and at its expense, and pay this tax to the budget at the time such payment is made.

If tax rules during payment of royalty to a non-resident are stipulated by the provisions of the international agreements of Ukraine with the countries of residence of the persons in which favour the payments are made, such payments shall be taxed in accordance with the requirements of such international agreements.

Payments in the form of royalties are not subject to taxation with VAT in Ukraine.

For those who pay the fees in the form of royalties to a non-resident, the financial result for the purpose of taxation with income tax, will increase:

1. For the amount of the expenses incurred due to payment of royalty to a non-resident that exceeds the amount of income from royalties, increased by 4 percent of net income from the sales of products (goods, work, services) according to the financial statements for the year preceding the reporting one.
2. For the amount of the expenses incurred due to payment of royalty in full if the royalties accrued in favour of:

- a non-resident who is not an eligible beneficiary (de facto) of the royalty, except in cases where the beneficiary (the beneficial owner) granted the right to receive royalties to other persons;
- a non-resident in relation to intellectual property, which rights were accrued first by the resident of Ukraine.
- a non-resident that is not subject to taxation in respect of royalty in the State to which he/she is a resident,
- etc.

By entering into a licensing agreement with payments in the form of royalties it is necessary to carefully study the tax legislation of Ukraine in order to avoid misunderstandings in the future.

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## Law N° 19.535 of Accountability: major tax changes

On 25 September, the Executive Power (E.P.) approved the **Law N° 19.535 of Accountability and Balance of Budget Execution** of 2016.

On the occasion of the submission to the Parliament of the project of applicable Law, we have discussed in several articles the main tax changes that were being considered. Since some of them have changed, we consider appropriate to mention those which were finally adopted.

### Income from international source

- **Production, distribution or brokering of cinematographic films and tapes, and direct television broadcasts:** the taxable incomes, when activities are performed partially in Uruguay, may be determined in a presumptive way until December 31 (25% on the 30% of the income if it is EAIT –Economic Activities Income Tax-; 12% on 62.5% if it is ITNR –Income Tax for Non-Residents). From January 1st 2018, they will be considered entirely as Uruguayan source, and taxed in full.
- **Provision of services via the internet, technological platforms and applications programs:** from January 1st 2018, it shall be taxed by EAIT or ITNR, the income obtained by the non-resident entities that provide these services to individuals that are in national territory, which shall be presumed when it is paid with electronic means of payment managed from Uruguay. They will be covered by the VAT, when they are destined, consumed or used economically in the country.

- **Mediation and brokerage in services through internet, technology platforms and applications programs:** the taxable income will be 100% when supplier and claimant of the service are in Uruguay, and 50% when one of them is abroad. They will be covered by the VAT, when both parties are in national territory.

### Research and development in the areas of Biotechnology and Bioinformatics, and software production

They are maintained as exempt rents for EAIT, but adjusting the benefits to the activities actually generated in Uruguay. They are distinguished:

- Those resulting in assets covered by the rights of intellectual property Law. When they are fully used abroad, they will no longer be exempt in their entirety, but rather the ratio between the direct development costs increased by 30%, and the total expenses incurred to develop them.
- The rest of activities not included in the foregoing (not linked to property rights), as well as the services linked to these software.



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## Games of chance

The Law introduces several rules in this regard:

- It declares illegal the provision of services via the Internet, technological platforms and applications, relating to games of chance or betting online. It is maintained the faculty of the E.P. to organize competitions of forecasts of international sporting results, and the specific authorizations already granted. It is forbidden the mode distance for the games in casinos and rooms (online, virtual or similar).
- It creates a tax of 0.75% on bets through electronic gaming machines or automatic bets installed in casinos or entertainment rooms authorized by Law. Since this tax is additional to the EAIT, the E.P. will be able to exonerate from the latter.
- It includes into the income taxed by EAIT and ITNR (rate 12%), the differences between the prizes of games of chance and horse races and the corresponding bets. Those of the National Lottery are exempt, and those that do not exceed the limit established the E.P., which may not be less than 71 times the amount wagered.

## Tax fraud

Sanctions are aggravated for criminal offenses of tax fraud, when the used invoices or documents are ideologically or materially false.

## Consular fee for imports

The Rate is increased from 2% to 5% on the customs value of the imported items, except for those of Mercosur origin, to which 3% will be applied. Some goods are exempted.

Finally, we must mention that this Law did not include the proposed changes to the **Law No 15.921**, which regulates the regime of Free Trade Zones.

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