INTERNATIONAL BUSINESS

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"Auren International Business" is a quarterly publication comprised of contributions from colleagues around the world. The newsletter includes country-focused articles, international tax cases, and technical updates on various topics that impact businesses. The experts at Auren possess the knowledge and experience to assist you on your journey, and this issue can serve as the starting point for your inquiries.

Some of the features of this edition include:

New MICA Regulation, a new legislation adopted in the European Parliament concerning markets in Crypto assets, New Rules for the taxation on shifted profits in Poland and keys to establish a business in Paraguay.

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

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Irish regulator 'un-likes' Facebook and imposes billion-dollar fine

The Irish regulator DPC's investigation into Meta's data-sharing practices since August 2020 was finally settled on 12 May 2023 following the intervention of the European Data Protection Board EPBD under Art 65 GDPR imposing a €1.2 billion fine on Meta. Furthermore, Meta was also banned from further transferring personal data it collects in the European Economic Area (EEA) to the US.

According to the EPDB, Meta had committed serious breaches of the transparency requirements imposed by the GDPR. Marc Zuckerberg's tech giant failed to clearly inform users of Meta's services, like Facebook, about how their data was collected and used, as well as to seek consent for certain forms of data processing. Moreover, Meta failed to implement appropriate security measures to protect users' data from unauthorised access and misuse.

The €1.2 billion fine constitutes the highest fine ever due to a personal data breach, which the EPBD says is justifiable because the breach is very serious being repetitive, systematic and continuous. In doing so, the EDPB marks a major turning point in data privacy enforcement and issues a strong warning to tech giants around the world.

Is there no protection whatsoever as far as the transfer of personal data to the US is concerned?

Data sharing between the EEA and the US remains a complex and controversial issue. To ensure data protection, the EU initially relied on the Safe Harbor Framework as a mechanism to regulate the transfer of personal data to the US. Following an EU Court of Justice ruling in 2015, the Safe Harbor Framework was declared invalid. In response, the EU-US Privacy Shield Framework was developed. However, this framework was also declared invalid in 2020 as Europe had serious concerns about the protection of personal data and US intelligence agencies' access to it (remember Edward Snowden and the controversial US surveillance programmes?).

A new regulation under the name "Data Privacy Framework" is currently in the pipeline. On 11 May 2023, the European Parliament adopted a resolution on this EU-US Data Privacy Framework calling on the European Commission to negotiate further with its US counterparts before the framework could be adopted to ensure effective and equivalent protection like the GDPR. According to the European Parliament, the Data Privacy Framework is not currently sufficiently "future proof".

Pending an adequate regulatory framework, the transfer of data from the EEA to non-EEA countries can still use well-defined legal instruments used for the transfer of personal data to countries outside the EEA, such as the US. These "Standard Contractual Clauses (SCCs)" are standard clauses drafted by the European Commission that set out conditions that parties must adhere to when processing personal data. They provide a mechanism to ensure that personal data transferred to countries outside the EEA maintains an adequate level of data protection, in line with the European GDPR. On the other hand, their validity is still under debate. Indeed, the use of SCCs for transfers to the US has received additional considerations following the European Court of Justice ruling in July 2020 that invalidated the Privacy Shield. In the same decision, the court ruled that personal data transfers to the US based on SCCs may have to be suspended if the recipient country does not provide an adequate level of data protection.

This means that those wishing to transfer personal data to the US through SCCs will need to carefully assess whether the data protection in the US meets the requirements of the GDPR (for example through additional contractual provisions or other appropriate safeguards).

This brings us back to the billion-dollar fine imposed on Meta. Although Meta relied on SCCs to justify the transfer of data to the US, the Irish regulator concluded that the SCCs did not mitigate risks to the fundamental rights and freedoms of EU data subjects,

such as the possibility of US security and intelligence agencies collecting and monitoring extensive personal information of EU users on Facebook.

And now?

Meta has already announced it will appeal the fine and will likely seek to reduce its size. The outcome of this appeal will be important for future GDPR enforcement and for the relationship between tech companies and regulators. This only highlights the need for a solid regulatory framework.

The fine to Meta is not only a milestone in the history of the GDPR as a precedent for stricter enforcement of privacy, which is a fundamental right, but also makes companies aware that if they violate this right they can expect severe consequences.

Indeed, in Belgium too, the number of sanctions continues to rise, from 143 in 2021 to 189 in 2022, which translates into an increase in fines from EUR 301,000 to EUR 740,000. This number will only increase, and it is even expected that thanks to the class action system, claims will follow that are much higher than the current fine. The Dutch Consumers' Association, for example, is currently signing up Dutch Facebook users to file their claims over data transfers between the EU and the US. So wait and see if it also drips in Brussels when it rains in Amsterdam....

Steven De Grave
steven.degrave@degroote-deman.be
Belgium

de groote de man

Member of Antea Alliance of independent firms

Sources

1. *Binding Decision 1/2023 on the dispute submitted by the Irish SA on data transfers by Meta Platforms Ireland Limited for its Facebook service (Art. 65 GDPR); https://edpb.europa.eu/*
2. *Decision of the Data Protection Commission made pursuant to Section 111 of the Data Protection Act, 2018 and Articles 60 and 65 of the General Data Protection Regulation of 12 May 2023;*
3. *ECJ (Grand Chamber) No C-311/18, 16 July 2020 (Data Protection Commissioner v Facebook Ireland Ltd, Maximillian Schrems); OJ C 7 September 2020 (dispositive), paras 297, 4 and http://eur-lex.europa.eu;*
4. *Data protection authority - Annual report 2022; https://www.gegevensbeschermingsautoriteit.be/publications/jaarverslag-2022.pdf*
5. *Website of Dutch Consumers' Association; https://www.claimservice.nl/facebook/*

Donated Food goes VAT-free

At the last session, the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina unanimously adopted the Bill on Amendments to the Law on Value Added Tax. As an explanation to the law states a vast number of companies in BiH involved in the production or trade of food products have been discouraged from donating food in larger quantities, since donating food has been creating an additional financial obligation to pay VAT. Therefore, large amounts of food have been destroyed instead of providing a meal for vulnerable categories of the population. Translated into the amount of food per day, that's more than 700,000 meals thrown away on a daily basis.

Abolishment of VAT on donated food appears beneficial for both socially responsible VAT payers and disadvantaged groups.

The law has been elaborated in full cooperation with the Administration for Indirect Taxation of Bosnia and Herzegovina. It fulfills the UN obligation for sustainable development, which foresees a 50 percent reduction in wasted food by 2030. The Directorate for European Integration gives a positive opinion on the proposed law. Although there is no European directive regulating this area, a significant number of European countries have a similar law.

It is the Regular Assembly of the Parliament to further define the guidelines on the Draft Law on Amendments to the Law on Value Added Tax to avoid abuses. This initiative is part of the project Nobody hungry, nobody alone, which was launched in Bosnia at the beginning of 2023 due to rising prices for basic commodities and high rates of inflation.

Andrea Peulic
andrea.peulic@eurofast.eu
Bosnia

Eurofast
Since 1978

Member of Antea Alliance of independent firms

Labor Books Go Electronic

The labor book is a mandatory official document with the employment history of each employee/worker.

According to labor legislation, when an employee/ worker starts work for the first time, it is the employer who is obliged to provide one with a labor book within 5 days from the initiation of the employment. The labor book is supposed to be kept by the employee/ workerand should be handed to the employer upon request for further updates.

Commitment to timingly update and keep this document safe inconveniences both businesses and employees. Once lost, the labor's book recovery may be exceedingly complex and time-consuming.

Recent amendments announced by the Bulgarian Parliament suggest the labor books go electronic and become part of a digital registry maintained by the National Revenue Agency (NRA).

Employers are expected to scan and send their employees' labor books to the NRA.

Yet initially, the e-registry will be refurbished according to the data available at the National Social Security Institute (NSSI).

Ultimately, this will facilitate businesses and grant security and accuracy of the data related to employees' employment history.

The law is expected to be voted on and come into force as of September the 1st 2024, with the complete abolition of paper labor books as of September the 1st 2026.

Ivayla Evtimova
ivayla.evtimova@eurofast.eu
Bulgaria

Eurofast
Since 1978

Member of Intea
Alliance of independent firms

Reduction of weeks for women's pension

Recently, the Constitutional Court published Sentence C-197 of 2023 which declared unenforceable paragraph 2 of numeral 2 of article 9 of Law 797 of 2003, which requires Colombian women to contribute 1.300 weeks to obtain the required pension age in the Average Premium Plan (Régimen de Prima Media-RPM in Spanish)

Among the considerations to declare the unconstitutionality of the norm, the Court highlighted that in order to access the required pension age, women must fulfill the same amount of time as men (1.300 weeks) in a shorter period (men at 62 years old and women at 57 years old), a situation that represents indirect discrimination against women. Likewise, the Court also considered that both, men and women, face different conditions in the workplace and regarding their social security.

Thus, the Constitutional Court ordered that the minimum number of weeks that will be required of women to obtain the pension age in the Average Premium Plan will be reduced by 50 weeks by January 1st, 2026, and a year later on January 1st, 2027, it will be reduced by 25 weeks each year until it reaches 1.000 weeks.

María Camila Villa
aurencolombia@auren.com.co
Colombia

Markets in Crypto assets (MiCA) Regulation

On April 2023 the European Parliament has adopted a new legislation for the first-time, concerning Markets in Crypto assets, called MICA Regulation. The regulation has been proclaimed to govern the issuance and provision of services related to crypto assets and stablecoins.

The European parliament has ratified for the first time a regulatory framework for crypto assets in the world. Since crypto assets nowadays are multi-jurisdictional, MICA regulations should be created and adopted globally to ensure a safe and secure system concerning crypto assets and all crypto markets.

The main objective of MICA is to replace individual regulations found in EU nations and unify it into one regulation. Another objective is to have clear rules to be able to protect consumers and investors in crypto assets, but at the same time ensuring stability and innovation of the financial sector. Lastly to provide certainty and cover all aspects that are not covered in the existing financial regulations.

MICA will apply to the following business, (service providers need to be registered and must implement all anti money laundering measures)

- Exchanges concerning crypto transactions.
- Custodial wallets
- Firms that advice clients on crypto assets and portfolios
- Crypto trading platforms

Crypto assets based on the regulation are classified as follows,

- Asset-referenced tokens (ARTs)
- Electronic money tokens (EMT)
- Other tokens such as utility tokens that are not ARTs and EMTs

The regulation also applies to non-fungible tokens, but only in the situation that they are like the assets that MICA applies. On the other hand, MICA will not apply to dApps and DeFi (Decentralized Finance) since they operate without intermediaries.

MICA can be used by all EU countries and be considered as an authorization system. Service providers that will be registered under this regulation will be able to provide services in all EU countries, since national licenses allow operation only in your nation. This will give the opportunity to businesses to operate in larger markets.

The regulation will be adopted in stages, in June 2022the publication of the official journal was done. The second stage will be in 2024 June where the drafts of the delegated Acts will be drafted and will begin application. The final stage of adoption will be in 2024 December, when all components of the regulation will be active and operational within the EU.

Andri Christodoulou
andri.christodoulou@zathea.com.cy
Cyprus

ZATHEA-ZOE QUALITY SERVICES

Member of Antea Alliance of independent firms

Change to the Individuals income tax rates

Several changes to the Egyptian tax law regarding the individual income taxes during the past Three years. The main reason for changes is to address the balance between governmental budget and justice to the low tax income. Specially, within the global and local recession in FY23.

In October 2023, Egypt has released the Third change in FY23 to the income tax law for individuals by Law No. 175 of 2023 was issued amending some provisions of the Income Tax Law promulgated by Law No. 91 of 2005. The first article included replacing the tax rate on the income of individuals, as well as amending the brackets as stated in the attached law. The latest income tax rates schedule considering Annual Exemption EGP 15,000 is as follows:

If the total annual income:

Rate	less than 600K	600K to 700K	700K to 800K	800K to 900K	900K to 1200 million	more than 1200 million
0%	EGP 1 to EGP 30,000	0	0	0	0	0
10%	EGP 30,000 to EGP 45,000	EGP 1 to EGP 45,000	0	0	0	0
15%	EGP 45,000 to EGP 60,000	EGP 45,000 to EGP 60,000	EGP 1 to EGP 60,000	0	0	0
20%	EGP 60,000 to EGP 200,000	EGP 60,000 to EGP 200,000	EGP 60,000 to EGP 200,000	EGP 1 to EGP 200,000	0	0
22.5%	EGP 200,000 to EGP 400,000	EGP 200,000 to EGP 400,000	EGP 200,000 to EGP 400,000	EGP 200,000 to EGP 400,000	EGP 1 to EGP 400,000	0
25%	Above EGP 400,000	Above EGP 400,000	Above EGP 400,000	Above EGP 400,000	Above EGP 400,000	EGP 1 to EGP 1,200,000
27.5%	0	0	0	0	0	Above EGP 1,200,000

The updated law brackets apply as follows:

- Individuals' Income from salaries and the like, as of October 31, 2023.
- Individuals' income from their business income, revenues from non-commercial professions, and revenues from real estate wealth, starting from the 2023 tax period, which begins on January 1st 2023 and ends after the effective date of the law on October 31, 2023.

Bassem Adel Gaber
bassem.gaber@gaberco.com
Egypt

New labor legislation – information to be provided to the employee

After a period of public consultation, the Greek Parliament has adopted Law 5053/2023, which induces a series of amendments as regards, among other things, the employment contracts, and the function of the online system of “Ergani”.

The employer is now obligated to inform in detail the employee regarding all the vital clauses of the contract, mainly the place of work, the object of their work, their exact role and sector, as well as the potential trainings provided, the work schedule and the duration of the probation period (if any). Additionally, the Employer must provide all necessary information related to the annual leave, the termination alternatives, the Collective Labor Agreements, etc. The Employer bears the same responsibility also in every case of a contract’ amendment.

The clauses and provisions of the employment contracts, either new or amended, are to be communicated to the employee in writing or electronically, provided that the employee has proper and proven access to the information and that the Employer retains a delivery receipt. In practice, this means that every employee will have to possess their own written employment contract and not merely an Ergani form along with a verbal communication of their duties.

All the aforementioned information is also to be submitted to the online system of “Ergani” within the deadlines set out by law.

It is evident that the payroll departments of the Employers and Companies need to be diligent in both providing and retaining all the necessary, employee-related information, as the compliance obligations are getting increasingly demanding.

Maria Sarantopoulou & Alexandra Theologou
maria.sarantopoulou@eurofast.eu
alexandra.theologou@eurofast.eu
Greece

Eurofast
Since 1978

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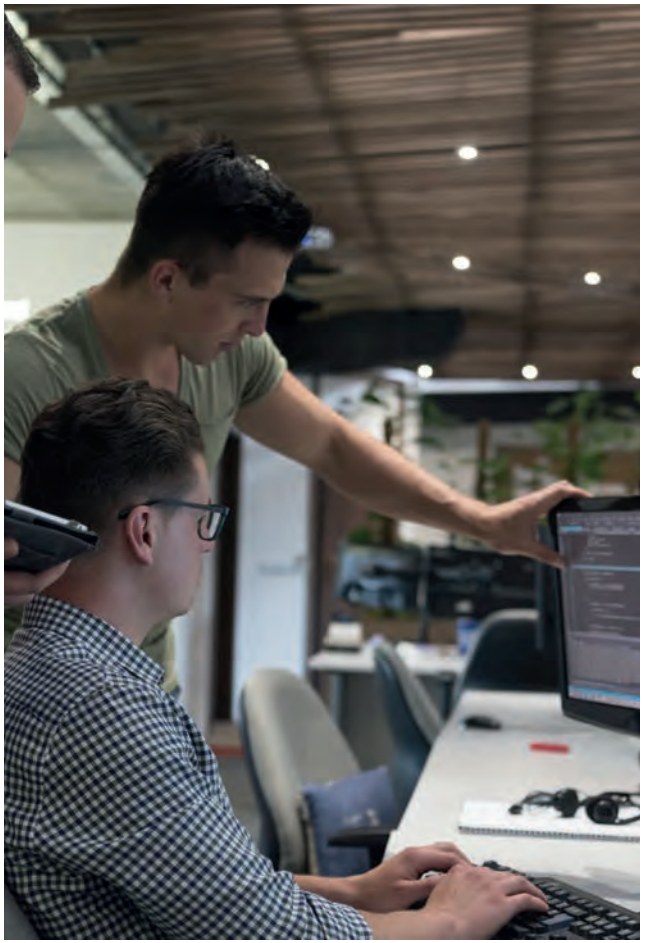
Alliance of independent firms



Navigating between Geopolitics and Geoeconomics: a Strategic Guide for International Companies

Geopolitics and its effect on business decision making. The war in the Ukraine and the war in Israel, how they affect companies' strategic business decision making

Introduction

In today's connected world, the impact *geopolitics* and *geoeconomics* have on businesses cannot be underestimated. Both multi-national and international companies must navigate the intricate weave of political, economic, and social factors in order to make an informed strategic decision. Understanding the implications of ongoing conflicts, economical interest groups and emerging trade routes, is essential to businesses that want to grow and succeed in the global market. This article will investigate the role of geopolitics and geo-economic in shaping corporate strategies and will provide insight and guidance to companies operating in the international arena.

Geopolitics and Geoeconomics: Basic Concepts

Geopolitics and Geoeconomics are two separate concepts that are tied to each other, and shape the global business environment. Geopolitics refers to the study of geographical factors' impact on political decisions and the relationships between countries, while Geoeconomics focuses on employing economic tools to promote and defend national interests and produce efficient geopolitical results. The distinction between the two approaches is not always clear, since often in reality they often overlap. For example, geopolitical factors such as territorial conflicts or military alliances can impact the trade policy and investment decisions, while geoeconomic factors such as trade agreements or economic sanctions can impact the geopolitical dynamics between countries. That said, it is crucial that businesses operating in the international arena are aware of both the geopolitical and geoeconomic factors, as they shape the rules and risks of the international trade and investments.

The Implications of ongoing Conflicts on Corporate Strategies

The fighting in the Ukraine and the current fighting in Israel against Hamas and Hezbollah are two examples of geopolitical conflicts that could directly impact strategic decision making for companies that operate or have business interests in the affected regions.

The Fighting in the Ukraine: Implications for Companies Operating in the Region

The ongoing conflict between the Ukraine and Russia has significant implications on businesses operating in the region. Companies are forced to handle various challenges such as supply chain disruption, damage to infrastructures and a heightened political risk. In addition, sanctions imposed on Russia by various countries may create additional complications for businesses that conduct business with Russian entities. These challenges are forcing companies to make strategic decisions regarding their business activities, investments and partnerships in the region while taking into consideration the possible risks and uncertainties.

Current Fighting in Israel against Hamas and Hezbollah

The war between Israel and militant groups like Hamas and Hezbollah also poses significant challenges for international companies operating in the region. These challenges include threats to the safety and security of employees, damage to infrastructures and disruption to business activity. Moreover, companies may face a risk to their reputation if they are perceived as supporters of one of the parties to the conflict or if their products or services are used during the conflict. In order to navigate these challenges, the companies must develop contingency plans and closely monitor the ever-changing situation. Along side this, there are also obvious *business opportunities* as soon as the war is over, thus companies must prepare the ground for the day after. For example, many infrastructures were damaged in Israel on a mass scale and this will be prioritized by the government by issuing infrastructure bids. Therefore, companies who offer that service or are interested in entering a new market have an opportunity to prepare themselves

in advance. Another example, investors looking to invest in Startup companies and new ventures currently have an opportunity to receive better conditions because of the heightened risk. Israel is known as the Startup nation and one that generates many Exit opportunities (a major part in Israel's revenue) thus here is an excellent opportunity for investors to consider, particularly in light of the situation.

Economic Powers and Main Interest Groups that Influence World Trade and Transportation

Major economic powers such as the United States, China, the European Union, and Japan, have a significant role in shaping world trade and transportation by creating interest groups and alliances. These powerful players often take advantage of their economic influence to promote their geopolitical agenda, while utilizing trade policy, investment agreements and infrastructure projects to solidify their place in the global economy and to underline their control of strategic trade routes and markets.

For example, the United States has for some time now applied the strategy of creating strong trade and investment relations with its allies in Europe and Asia, while erecting powerful economic coalitions that advance mutual interests and encourage stability in the world trade. Similarly, China's "Belt and Road Initiative", which intent is to establish a network of infrastructure projects connecting Asia, Europe, and Africa, reflects its ambition to expand its economic influence and secure access to essential resources and markets. International businesses must be aware of the major economic powers' strategies and the interest groups they create, since these factors may significantly impact the market's access, trade policy and investment opportunities. The companies should also consider how their strategic decisions match the geopolitical and geoeconomic targets of the countries in which they operate, for those can have significant implications on their long-term success and their reputation.

The New Silk Road of the 21st Century: Opportunities and Challenges

The new silk road, often referred to as the "Belt and Road Initiative" (BRI), is China's ambitious plan to build a network of infrastructure projects connecting East Asia, the Middle East, Europe and Africa. The initiative, which was launched in 2013, was meant to promote economic development, improve the connectivity, and promote cultural exchange between the participating countries. The BRI presents both opportunities and challenges for international businesses looking to take advantage of the emerging trade and market routes.

On the one hand, the new silk road offers significant opportunities to businesses of various industries, including construction, logistics, energy, and telecommunications. The infrastructure projects that are the backbone of the BRI, such as ports, railroads, highways, and power stations, create a demand for merchandise and services and are opening new markets for companies in the participating countries. Furthermore, the increased connectivity that the BRI permits can make trade easier, decrease transportation costs and improve the access to resources and markets. On the other hand, the new silk road also presents challenges for international businesses since it has geopolitical and geoeconomic implications that may impact the world dynamics of trade and investments. For example, the BRI awakened concerns in regard to China's increasing impact on the participating countries, which led a few critics to claim that this is in fact a form of economic imperialism. Additionally, the BRI has created tension between major economic powers, such as the United States and China, which may lead to a trade conflict, investment restrictions and even to conflicts that may disrupt world trade and supply chains.

As a response to the increased impact of the new silk road, the United States and its allies, including Europe, Israel, Saudi Arabia, India and Japan, are working together to balance the economic and geopolitical powers of China, Russia and Iran. These rivaling alliances are competing for control over resources, trade routes and global market impact. As a result, the international business landscape has become more and more complex, forcing companies to navigate the weave of colliding interests, shifting alliances, and developing geopolitical challenges.

Building Strategic Plans for International Companies in accordance with Geopolitics and Geoeconomics

When building a strategic plan, international companies must take into consideration the following factors:

- Risk Assessment and geopolitical and geoeconomic opportunities: the companies should evaluate the potential impact of geopolitical and geoeconomic factors on their activity, including trade policy, investment regulations, infrastructure projects and political stability.

- Integrating geopolitical and geoeconomic factors in their strategic planning: the businesses should integrate these factors into their market entry strategies, into managing supply chain and into their investment decisions, while adjusting their approaches to the unique challenges and opportunities that the various geopolitical and geoeconomic contexts provide.
- Following geopolitical and geoeconomic developments: companies should remain up to date regarding changes in the global business landscape, including changes in alliances, trade disputes and emerging markets, and adjust their strategies accordingly.
- Connecting with stakeholders and policymakers: businesses should establish relations with major stakeholders and policymakers in the countries they operate in, as this can assist them in navigating the intricate geopolitical and geoeconomic landscape and ensure their interests are represented in policy discussions and in negotiations.
- Cultivating a culture of geopolitical and geoeconomic awareness: companies should promote a culture of geopolitical and geoeconomic awareness among their employees, while ensuring that the decision makers in all levels of the organization understand the importance of these factors in shaping the business environment and are equipped to make informed strategic decisions.

The Value of Strategic Consultation Customized for International Companies

Navigating the complex world of geopolitics and geoeconomics can be challenging for businesses, especially when it comes to making strategic decisions regarding international activity and expansion. Professional business consultants can provide valuable guidance and insights to assist companies in making informed decisions and to develop efficient strategies to succeed in the global market.

A professional business consultant can offer customized consultation and recommendations based on the company's specific needs, targets, and circumstances. This may include instructions regarding market entry strategies, managing risks, supply chain optimization or partnership opportunities. By working with a consultant who understands the complexities of geopolitics and geoeconomics, companies can gain a competitive advantage in the global market and maximize their success rates.

Summary

Understanding the complex interactions between geopolitics and geoeconomics is essential for international and multi-national companies seeking to prosper in the ever-changing global landscape. By combining geopolitical and geoeconomic factors in their strategic planning, businesses can navigate the challenges and opportunities presented by the changing power balance between the major economic powers, the emergence of trade routes and new markets and the ongoing conflicts that shape the global trade and investment rules. By seeking

the guidance of professional business consultants, companies can navigate these challenges and position themselves for success in the global market.

Ofir Angel
ofir.angel@auren.co.il
Israel

The Italian Airbnb case: is the withholding tax really due?

It is recent news that the “Tax Police – Guardia di Finanza” of Milan seized, as part of an investigation promoted by the Prosecutor, more than 779 million euro from Airbnb Ireland Unlimited Company, owner of the short-stay rental platform.

To understand the reason of this, it is useful to go back to the origins of the issue.

It was 2017 when the Italian legislature introduced (art. 4 of Law Decree n.50/2017) a specific regulation for short rentals which concerns contracts/agreements with a duration not exceeding 30 days, stipulated by individuals who do not carry out business or professional activities, or stipulated by individuals through intermediaries. By “intermediaries”, the Italian regulations mean "entities that carry out real estate intermediation activities, that is, entities that manage telematic portals, connecting people looking for a property with people who have real estate units to rent."

Article 4 of Law Decree n.50/2017 provides for three types of fulfillments for intermediaries:

1. the obligation to collect and report to tax Authorities data on rentals concluded as a result of their intermediation;
2. the obligation, where they collect rents or attends in the payment of the short rent, to apply, as “withholding agents," the 21% withholding tax on the amount of the rents and fees upon payment to the beneficiary, which, then, should have to be paid to the tax office;
3. the obligation to appoint a tax representative in the absence of a permanent establishment in Italy.

From the beginning, Airbnb, although falling perfectly within the legislative definition of "intermediary," refused to operate the withholding tax, challenged the national legislation and opening a dispute that referred the matter to the EU Court of Justice (December 22, 2022) and then to the Council of State (October 24, 2023).

Both the Council of State and the Court of Justice declared the first 1) and the last 3) fulfillments of art.4 incompatible with EU law but stated the legitimacy of the withholding tax and certification obligation on Airbnb.

The “final piece of the puzzle” was the criminal investigation, which led to the preventive seizure of 779 million against Airbnb. The seized sum was calculated precisely in 21% of the short-term rental fees paid by guests of the accommodations.

Moreover, following the tax Office’s position, Airbnb would be entitled in abstract to retaliate against the taxpayers, but where they had already paid the tax it would result in double taxation.

It is still expected to know the development of this complicated issue.

Manuel Baldazzi & Giulia Salin
mbaldazzi@tributarioassociato.it
g.salin@tributarioassociato.it
Italy

STUDIO TRIBUTARIO
BALDAZZI ZATTERA
& ASSOCIATI

Member of
Antea
Alliance of independent firms

15% taxation on Employment outside Malta

Article 56 (17) of the Income Tax Act provides for a special 15% flat tax rate on employment income derived in terms of an employment contract which requires the individual to carry the employment activities wholly and exclusively outside of Malta.

The special tax rate is not available to any service on board a ship, aircraft or road vehicle owned, chartered or leased by a Maltese company and any service for the Government of Malta. Moreover, the article is subject to an onerous anti abuse rule which requires the employee not to be present in Malta for more than 30 days in any particular year, disregarding presences in Malta when the person is on vacation or sick leave.

One of the conditions for the applicability of the special provisions of article 56(17) (Employment outside Malta) is that during the relevant year the employee is not present in Malta for a period or periods that in aggregate exceed 30 days. In calculating the 30-day period for the purpose of this provision, presence in Malta on vacation leave or sick leave is to be disregarded. Presence in Malta in the following scenarios will be treated as if the employee were in Malta on vacation leave and will therefore also be disregarded:

- an employee works abroad on a shift basis and stays in Malta in between shifts
- an employee works abroad on a time-on / time-off basis and stays in Malta during the time-off periods

- an employee works regularly abroad and stays in Malta during weekends and public holidays

Clive Caruana
clive@ccpsmalta.com
Malta

CCPS Malta
Tax | Assurance | Advisory | Corporate

Member of Antea Alliance of independent firms

Termination of the employment contract

The termination of the employment contract according to the legal and reglamentary dispositions in application in Morocco.

I. Fixed-term contract

The fixed-term contract expires upon expiration or attainment of the objective.

The early termination of a fixed-term contract not motivated by the misconduct of the other party or by a case of force majeure gives rise to damages. The amount of the compensation is equivalent to the amount of the salaries corresponding to the period up to the date of the term fixed by the contract, unless the parties terminate the contract by mutual agreement.

II. Contract of indefinite duration

According to the law, an employee may only be dismissed if he/she commits a gross fault. In the event of a decision to dismiss an employee in the absence of gross fault, the law considers this type of dismissal to be abusive and entitles the employee to an indemnity. These indemnities are: notice indemnity, dismissal indemnity, indemnity for damages and indemnity for unused vacation time.

The notice period

Decree n°2-04-469 du 16 Kaada 1425 (December 29, 2004) concerning the length of notice period, must be respected in cases of unilateral termination of the indefinite-term employment contract.

Managers and similar:

- less than one year's seniority: 1 month
- between 1 and 5 years of seniority: 2 month
- more than 5 years of seniority: 3 months

Employee and workers:

- less than one year's seniority: 8 days
- between 1 and 5 years of seniority: 1 month
- more than 5 years of seniority: 2 months

Dismissal indemnity

An employee with a permanent contract is entitled to a severance payment in the event of dismissal after 6 months of employment and without having committed a gross fault. The amount of the indemnity per year or fraction of a year of effective work is as follows:

- 96 hours of salary for the first five years of seniority;
- 144 hours of salary for the period of seniority from 6 to 10 years;
- 192 hours of salary for the seniority period from 11 to 15 years;
- 240 hours of salary for the seniority period exceeding 15 years.

Damages

The amount is based on the salary of one month and a half per year or fraction of a year of work, without exceeding the limit of 36 months.

III. Dismissal for gross fault

In case of gross fault, the employee may be dismissed without notice or compensation and without payment of damages. Article 39 of the Labor Code lists the cases of dismissal for gross fault.

Before dismissing an employee, the latter must be able to defend himself and be heard by his employer or his representative in the presence of a delegate of the employees or the union representative chosen by the employee within a period not exceeding 8 days from the time when the act attributed to him is ascertained.

In the event of a dismissal decision, the letter of dismissal must be accompanied by the minutes of the hearing; a copy must be submitted to the Labor Inspectorate. Failure to send this documentation is considered a procedural defect. Failure to comply with the dismissal procedure will result in the dismissal being considered unfair by the courts, which would entitle the employee to severance pay.

IV. Case of resignation

Among the ways of unilateral termination of the employment contract, the law provides for resignation. For the resignation to be valid, the

termination of the employment contract must be initiated by the employee. It is materialized by the sending of the letter of resignation signed and legalized by the employee to the official in charge of the labor inspection (Article 64 of the Labor Code).

The letter of resignation must be delivered to the company by hand against acknowledgment of receipt or by registered letter with acknowledgment of receipt. The notice period begins on the day following notification of the resignation decision (Article 44 of the Labor Code).

Fatima Azzahra Naciri
fnaciri@fidupartner.com
Morocco

FIDUPARTNER

Member of Antea Alliance of independent firms

Start a business in Paraguay

Starting a business in Paraguay can be a highly beneficial decision due to the country's macroeconomic stability and a simplified tax system that fosters a favorable business climate.

WHAT ARE THE TAXES IN FORCE IN 2023?

According to Law No. 6380, the taxes in force in Paraguay are the following: Income taxes:

Corporate Income Tax (IRE)

- General IRE (10% Rate)
- Simple IRE (Up to Gs. 2,000,000,000 Rate of 10%)
- RESIMPLE IRE (Up to Gs. 80,000,000).

Dividends and Profits Tax (IDU)

- 8% for Residents.
- 15% for non-residents

Personal Income Tax (IRP)

- Capital and Gains (8% Rate)
- Service-related Income (Progressive rate: 8%, 9% and 10% on net income)

Non-Resident Income Tax (INR)

- 15% rate.

Value Added Tax (IVA)

- 5% for basic family basket, medicines, agricultural products.
- 10% for other cases.

Selective Consumption Taxc (ISC)

- Tobacco: (20% and 24%)
- Alcoholic and sugary beverages (9% to 12%)
- Other godos (1% to 6%)

WHAT IS THE IDEAL COMPANY FOR YOUR BUSINESS?

To help you determine the most appropriate type of company according to your particular situation, we share with you a snapshot of the three main legal forms of organizations in the Paraguayan territory.

1. E.A.S. – Simplified Shares Companies
2. S.A. – Corporation
3. S.R.L. – Limited Liability Company

STAGES TO FORMALIZE YOUR BUSINESS IN PARAGUAYAN TERRITORY:

LEGAL

1. For non-residents: Obtain residency and/or Paraguayan ID.
2. Establish the company: Individual or legal entity (E.A.S, S.R.L, S.A).
3. Open a bank account.
4. Register trademarks.

FISCAL

Tax Formalization: Obtain R.U.C.

LABOR

Labor Formalization: Social Security and Labor Records

MUNICIPAL

Consult Local Municipality: Commercial license, Municipal License, signage; etc.

The strategic factors making Paraguay attractive for investments include economic stability, relatively low social and labor burdens, and government-offered fiscal benefits. The country's favorable climate for agriculture contributes to the potential of the agribusiness and food production sector.

Paraguay's strategic geographical location serves as a platform for industrial production with access to regional and global markets at competitive costs. The extensive road and river transport network positions it as a significant logistics center in the region. We understand that establishing a business in a foreign country can be overwhelming, and our passion is to provide guidance for taking the first step toward success in Paraguay.

Clarisa Saucedo
clarisa@consultoria.com.py
Paraguay

crs+sch
cáceres+schneider

Member of Antea Alliance of independent firms

Sources:
mipymes.gov.py
set.gov.py

New rules for the taxation on shifted profits

The tax on shifted profits was introduced into the Polish legal system on January 1, 2022. It is a new concept that is intended to prevent income transfers to countries applying more favorable income taxation rules. The original regulations raised many doubts, which is why the legislator decided to introduce significant amendments as of January 1, 2023. The new regulations apply to the CIT settlements for 2023. It will therefore be necessary to re-verify whether a given entity is subject to the tax on shifted profits - it may turn out that an entity to which the tax on shifted profits did not apply in 2022 will be subject to this tax in 2023.

1. The tax on shifted profits – what is it?

Unlike the "classic" corporate income tax, the tax on shifted profits is not imposed on income, but on specific payments (so-called passive payments) that are incurred for the benefit of related entities and constitute tax costs. Passive payments include among others:

- costs of intangible services,
- fees for IP rights,
- debt financing costs,
- fees and remuneration for the transfer of functions, assets or risks.

The tax on shifted profits is calculated separately from the "classic" corporate income tax and amounts to 19% of the total passive payments. This means that the obligation to pay the tax on shifted profits may also arise when, for example, the taxpayer reports a loss.

2. Determining whether the tax on shifted profits applies

The tax on shifted profits applies to:

- companies that are Polish tax residents, among others: to Polish capital companies,
- tax capital groups, and
- non-residents conducting business in Poland through a permanent establishment, among others: to branches of foreign entrepreneurs that settle corporate income tax in Poland.

As a rule, there is no possibility to avoid the tax on shifted profits, if the passive payments are incurred for:

- a related entity with its registered office or management board in the so-called tax haven, and
- a related entity with its registered office or management board in a country with which Poland or the EU has not ratified an international agreement constituting the basis for obtaining tax information from the tax authorities of that country, in particular an agreement for the avoidance of double taxation.

Still, in the case of passive payments for other foreign related entities, the obligation to pay the tax on shifted profits may not arise if certain conditions are met, e.g. when:

- the sum of passive payments incurred for foreign related entities is less than 3% of the total costs of obtaining revenue, or
- the income (revenue) of a foreign related entity obtained from passive payments is subject to taxation at an income tax rate higher than 14.25%.

Doubts regarding the application of new regulations may arise in particular at the stage of verification whether a given entity is subject to the tax on shifted profits. Calculating this tax itself may also prove problematic.

At the same time, from January 1, 2023, a significant change was introduced with respect to the need to prove that the obligation to pay the tax on shifted profits did not arise - a Polish entity that incurs passive payments for a foreign related entity must prove that the passive payments do not meet the definition of shifted profits. In practice, this means that the entity incurring this type of payments might be forced to obtain a number of information from the foreign related entity.

Tax Department
office@tias.pl
Poland

tias
there is always a solution

Member of Antea Alliance of independent firms

Flexible Work System Underway

A four-day working week growing viral suggests advantages for the employees. It's a new work system, through which they are entitled to choose to work extra hours within working days to benefit from a day off.

The principal idea behind a shorter working week is that the staff feel happier with more free time to spend at their own discretion. This work model has been tested at the country level by several employers. Certain companies give people the opportunity to choose how they may arrange their work schedule, so that at the end of the week they have extended time off.

KMG Romania is a vivid illustration of the successful implementation of the concept of "short Friday" in the company.

This working method suggests a flexible working schedule where employees can choose whether they want to work nine hours from Monday to Thursday in order to have part of Friday off.

According to the conclusions of a conference on labor market flexibility, there are many challenges that employers need to overcome to keep employees motivated.

Apparently, each company needs to come up with its own flexibility system in terms of elaborating a unique schedule for employees to increase overall efficiency. A four-day working week might be a good option. According to HR specialists, the main objective for launching flexible work framework is to retain or attract talents and the staff members vital for a company, as well as to keep up with market changes and maintain total efficiency of business.

As a prerequisite of successful implementation of a flexible working environment, the employers are supposed to clarify the strategic mission, what they want to achieve with this change and elaborate a fixed plan. Its implantation suggests a dialogue with employees as for pros and cons and the revision of the work schedule to meet the needs of the personnel and grant business sustainability.

The proof of the pudding is in the eating. Therefore, an important step is to apply testing at the level of several departments so as to analyze advantages and disadvantages and act accordingly. Finally, if the results are positive, the working hours model can be applied at the company level.

Cristina Radu
cristina.radu@eurofast.eu
Romania

Money matters: Serbia's jazzed-up edition of personal tax and social security laws

The Republic of Serbia's National Assembly recently gave the green light to stirring amendments in both the Personal Income Tax Law and the Law on Social Security Contributions. These changes are slated to take effect on the eighth day following their publication in the Official Gazette of the Republic of Serbia and will be applicable as of January 1, 2024. This marks a significant milestone in the ongoing evolution of Serbia's fiscal and social welfare frameworks, emphasizing the commitment to fostering a more robust and equitable financial landscape. Citizens and stakeholders are encouraged to familiarize themselves with these modifications as they come into force, ensuring a seamless transition into the updated regulatory landscape.

Key changes and amendments to these laws include:

- Increase in the non-taxable income threshold to 25,000 dinars (approx. EUR 210) per month, up from the previous 21,712 dinars (approx. EUR 185) per month. This change reduces the tax base for income tax, resulting in a lower tax obligation for individuals earning income through employment or personal business.
- Extension of the application period for the 'old' incentives for newly employed individuals until December 31, 2024. These incentives aim to stimulate employment by granting tax and social security contribution refunds for certain conditions related to the hiring of unemployed individuals for a specific duration.

These changes offer individuals tax relief through a reduction in their tax burden, concurrently fostering employment by extending incentives to employers who bring new workers on board. The extension of this incentive period caters to both existing employers who meet the stipulated conditions and those opting to hire fresh talent in 2024. The rate of the refund is contingent on the number of newly hired individuals, providing a compelling incentive for employers to expand their workforce.

The 'old' incentives apply to a diverse array of employers, encompassing legal entities, entrepreneurs, and agricultural entrepreneurs. The overarching aim is to particularly benefit micro and small legal entities. The following are the relief rates associated with these incentives:

- Hiring up to 9 new employees grants a tax relief of 65%.
- Hiring from 10 up to 99 employees results in a tax relief of 70%.
- For those employing more than 100 new individuals, the tax relief is set at 75%.

In conclusion, recent legislative amendments signify a transformative shift in the fiscal landscape. Enhancing financial flexibility for citizens and emphasizing government commitment to individual economic relief, these changes coincide with an extended incentive period for employers. This strategic maneuver aims to stimulate job creation and workforce expansion, fostering a conducive environment for businesses to thrive. The effective implementation, starting January 1, 2024, highlights a nuanced economic policy approach designed for individual financial benefits and positive shifts in national employment dynamics.

Aleksandar Maljkovic
aleksandar.maljkovic@eurofast.eu
Serbia

Tax benefits applicable in the case of employees' mobility

The internationalisation of companies and the development of technology has led to an increasing need for mobility on the part of employees. Therefore, in order to encourage worker mobility, the internationalisation of Spanish companies and the retention of talent, Spanish legislation provides interesting tax benefits for workers who are posted abroad.

1. Employment income received for work carried out abroad:

Income from work received for work effectively carried out abroad is exempt when the following requirements are met:

a. That the work is carried out for a company or entity not resident in Spain or a permanent establishment based abroad.

   In particular, when the entity receiving the work is connected to the employer or to the entity in which the employee provides services, the work will be deemed to have been carried out for the non-resident entity when it can be considered that an intra-group service has been provided to the non-resident entity, because the said service produces or may produce an advantage or profit for the recipient entity.

b. In the territory in which the work is carried out, a tax of an identical or similar nature to personal income tax is applied and it is not a country or territory classified as a tax haven.

   This requirement is met when this country or territory has signed an agreement with Spain to avoid international double taxation that contains an exchange of information clause. For other countries (with which there is no agreement), it will be necessary to consider the existence of an identical or similar tax.

c. The tax benefit requires that the employee has effectively travelled abroad to carry out the work or tasks.

The exemption will have a maximum limit of 60,100 euros per year.

For the calculation of the remuneration corresponding to work carried out abroad, the days that the worker has actually been abroad must be taken into consideration, as well as the specific remuneration corresponding to the services rendered abroad.

For the calculation of the amount of income earned each day for work performed abroad, apart from the specific remuneration corresponding to the said work, a proportional distribution criterion shall be applied, taking into account the total number of days in the year.

In this sense, the case-law has confirmed that days of travel, as well as non-working days on which the worker has been abroad (i.e., weekends) shall be counted as days spent abroad.

Additionally, both ordinary employees and directors of the company ("administradores") may benefit from this tax exemption.

In the event of a tax verification proceeding, the Tax Authorities may request the evidence of fulfillment of the previous requirements, such as plane tickets, proof of accommodation, description of the work carried out abroad and intra-group invoices.

2. Excess regime:

Employees posted abroad, provided that they remain tax residents in Spain and taxpayers of the Personal Income Tax, are considered to receive an allowance exempt from taxation in excess of the total remuneration that they would receive if they were posted in Spain.

In the case of company employees posted abroad, the exempt amount will be the "excess" they receive over the total remuneration they would have received for salaries, wages, seniority, special payments, including benefits, family allowance or any other concept, by reason of their position, employment, category or profession if they have remained in Spain.

It must be highlighted that the application of the two regimes simultaneously is incompatible. Therefore, it must be analysed, in each case, which option is more beneficial for the employee according to the specific circumstances.

Isabel Pi
isabel.pi@auren.es
Spain

Proposed Rehabilitation Processes for Small and Medium Enterprises (SMEs)

In 2016, the regulation concerning small and medium enterprises (“SMEs”) was initially introduced to aid SME owners in managing their debts through rehabilitation processes that safeguard the interests of both debtors and creditors.

However, as of 2023, there are over 3 million SMEs in Thailand, playing a critical role in driving the country's economy. Recognizing this, the Legal Execution Department has expressed a keen interest in ensuring the well-being of SMEs. To this end, they have conducted a public hearing on the draft amendment of the Bankruptcy Act B.E. 2483 (1940), specifically focusing on the business rehabilitation processes for SMEs. Consequently, active efforts are underway to formulate regulations.

In the past, debtors seeking to manage their debts through rehabilitation processes were required to adhere to the provisions outlined in the Bankruptcy Act B.E. 2483 (1940). These requirements included being insolvent and indebted to one or multiple creditors. However, the recent introduction of business rehabilitation proceedings for SMEs has brought about a new rule by eliminating the requirement of being an insolvent person. This means that anyone, regardless of their solvency status, can now initiate the rehabilitation processes.

The recent amendment to the Bankruptcy Act B.E. 2483 (1940) aims to simplify the business rehabilitation processes, making it more accessible for small debtors. This simplification is driven by the current economic and social conditions, and it offers several benefits for debtors. Notably, it introduces a new section that includes an accelerated business rehabilitation processes.

The key summary of the amendments is as follows:

1. Broadening the definition of debtors in Section 90/91: Previously, the term "debtor" was limited to those specifically prescribed by the Office of SMEs Promotion (OSMEP). The amendment expands the definition to include any juristic person, regardless of the legal classification of SMEs. This change provides SMEs business owners with the opportunity to participate in business rehabilitation, enabling them to restructure their debts and maintain the continuity of their businesses.

2. Revision of the debt threshold in Section 90/92: When a debtor is unable to pay one or several creditors in aggregate, they may file a petition with the court for business reorganization. For individual debtors, the debt threshold has been lowered from 2 million baht to 1 million baht. For juristic persons, the threshold has been revised from not less than 3 million baht to not less than 2 million baht, with an upper limit of 50 million baht. These changes apply regardless of the debtor's financial status or the number of creditors involved. However, both types of debtors must demonstrate a reasonable cause and prospects for the reorganization of their businesses.

3. Extension of the Business Reorganization Plan ("Plan") period in Section 90/96(9): Recognizing that a 3-year plan may be insufficient, the amendment extends the Plan period from 3 years to 5 years. This extension aims to enhance efficiency and provide debtors with more opportunities to effectively proceed with their reorganization efforts while ensuring that creditors receive full payment of their debts.

4. Removal of certain rehabilitation processes in Section 90/95: Prior to the draft amendment, individuals seeking business reorganization has to wait for a court order granting absolute control over their property and approval of the Plan before filing a petition for reorganization. This process involved strict legal requirements, such as providing reasons for business reorganization, detailed asset information, and principles and methods, as per Section 90/96 of the Bankruptcy Act B.E. 2483 (1940). These requirements often proved time-consuming and costly. The draft amendment has eliminated some of these processes, allowing debtors or legally authorized

individuals to initiate the plan. This change allows both debtors and one or several creditors of the debts arising from a business operation to take the necessary steps toward rehabilitation.

However, the recent amendment to the Bankruptcy Law B.E. 2483 (1940) is currently pending approval from the Council of Ministers. After this, the next stage will involve the draft amendment proceedings to the Members of the Parliament for consideration and approval before proceedings to the King's endorsement and publish in the Royal Gazette.

Panisa Suwanmatajarn
panisa.s@thelegal.co.th
Thailand

THE LEGAL

Member of Antea Alliance of independent firms

Dubai’s Virtual Asset Regulatory Authority

Dubai's Virtual Asset Regulatory Authority (VARA), established in March 2022, oversees virtual asset activities in all zones across the Emirate of Dubai, including Special Development Zones and Free Zones (excluding the Dubai International Financial Centre). VARA is committed to creating a robust framework for virtual assets and welcomes applications for its Virtual Asset Service Provider (VASP) License from firms sharing its principles.

VARA License for New Firms:

The process for obtaining a VARA License involves two stages: first, an application for initial approval to establish a legal entity and commence operational setup, followed by an application for the VASP license.

VARA License for Existing Firms:

For existing firms conducting virtual asset activities in or from Dubai (excluding DIFC) before February 7, 2023, the requirement was to contact their commercial licensor (DET or the relevant FZA) by April 30, 2023, to submit an Initial Disclosure Questionnaire (IDQ). Firms that missed this deadline should contact their commercial licensor urgently to arrange for submission.

Once an IDQ has been completed, VARA will issue Application Acknowledgement Notices (AAN).

Firms receiving an AAN must submit a VASP License application by August 31, 2023.

Licensed Activities

VARA licenses various virtual asset activities, such as:

- Advisory Services
- Broker-Dealer Services
- Custody Services
- Exchange Services
- Lending and Borrowing Services
- VA Management and Investment Services
- Transfer and Settlement Services

Other Virtual Asset Activities

Proprietary Trading: VA Proprietary Trading necessitates obtaining a no-objection certificate (NOC) from VARA to confirm that the activity can be conducted under regulatory oversight without a VA License. Furthermore, proprietary trading activities exceeding certain trading volumes must be registered with VARA.

Virtual Asset Issuance Activities: Entities engaged in Virtual Asset Issuance activities are required to obtain approval for their whitepaper from VARA, as outlined in the "VA Issuance Rulebook," prior to commencing such activities.

Shaji C Madathil
shaji@afsauditing.com
United Arab Emirates

The IFRS and ITS geographical limits

International!! The thought that comes to anyone's mind first-time is that the IFRS are internationally applied, actually by all countries across the globe. You should be right to a larger extent, but let's focus on the exception in this writing.

The IFRS foundation was established in 2001, replacing the defunct IASC (International Accounting Standards Committee) which was founded in 1973. Its major role is to harmonize accounting needs and treatments for countries in its area of Jurisdiction, the need to have comparable, consistent, and reliable books of accounts.

Over 132 jurisdictions use IFRSs including East Africa, Australia, Brazil, Canada, Chile, the European Union, GCC countries, Hong Kong, India, Israel, Malaysia, Pakistan, Philippines, Russia, Singapore, South Africa, South Korea, Taiwan among others. It should puzzle you when you don't see economies like the US, it uses the US – GAAP for the private sector and GAGAS (Generally Accepted Government Accounting Standards) for the Government. Other countries like Algeria, Egypt, and Iran (I implementation by only financial institutions) among others haven't adopted the stated reporting. These use local GAAP.

Most of these countries have maintained the use of their local GAAP (Generally Accepted Accounting Principles) citing challenges like; high adoption/ transition costs from local GAAP to the use of standards, absence of significant differences between local GAAP and the IFRS, limitation of the IFRS and stringent measures in tailoring them to the entity and sector-specific needs due to their generic nature, the judgment that local GAAP are stronger than IFRS. Other countries have partially adopted to use of the standards in companies that do not have public accountability, listed institutions, only financial institutions. It should surprise you when you don't hear of IFRS in Korea but rather hear K-IFRS (Korean International Financial Reporting Standards), it's only but an adjustment in the nomenclature which literally means IFRS in Korea.

Given the slow and non-adoption of the standards, countries continue to face accounting challenges while dealing with those that have fully or partially adopted their use. Alignment of local GAAP gets tough due to varying interpretations of given aspects in accounts, and variation in languages and meaning of key terms.

Over time, you realize that the cost of aligning GAAP to IFRS could exceed the cost of adoption and implementation of the standards much as the standards may not adequately address the local accounting needs for some countries.

Food for thought, should companies fully or partially adopt IFRS? Or use local GAAP and keep aligning them to IFRSs when dealing with international entities that have fully adopted them?

Eugene Mulinzi
emulinzi@dativaassociates.com
Uganda

Using trusts to protect your assets

What is a Trust?

A trust is a legal fiduciary relationship created by a party known as the ''settlor'' or ''grantor'' of the trust, by transferring assets to another party, known as ''trustee'', but for the benefit of third party, known as "beneficiary".

A settlor can also be a beneficiary of the assets put into the trust.

The origin of the Trust

The origin of the trust goes back to the Romans with the institution of the fiducia but was then developed in the 12th century in England when English lords went on crusade for long periods of time, sometimes forever as would die, leaving their assets on "trust" to another person, under the mandate to take care of such assets for the benefit of his family members in his absence or himself upon his return. Property law would not accept the distinction between the legal ownership of property - held by the trustee - and the beneficial ownership of property - held by the beneficiaries - and conflict arose when the lord would return to England, only to find out that the trustee would not accept returning the legal ownership of the assets entrusted to him. The principle of Equity created by the Chancellor would then arise to correct the position, recognising that as it would be unjust for the lord or his family not to regain ownership of the assets entrusted, sanctioned the distinction between legal ownership and beneficial ownership.

It then developed on common law jurisdictions and mainly for the purposes of wealth protection, succession planning and tax mitigation.

During the 20th century, offshore trusts gained popularity due to the additional layer of privacy or protection provided to assets from creditors or former spouses.

Basics of a Trust

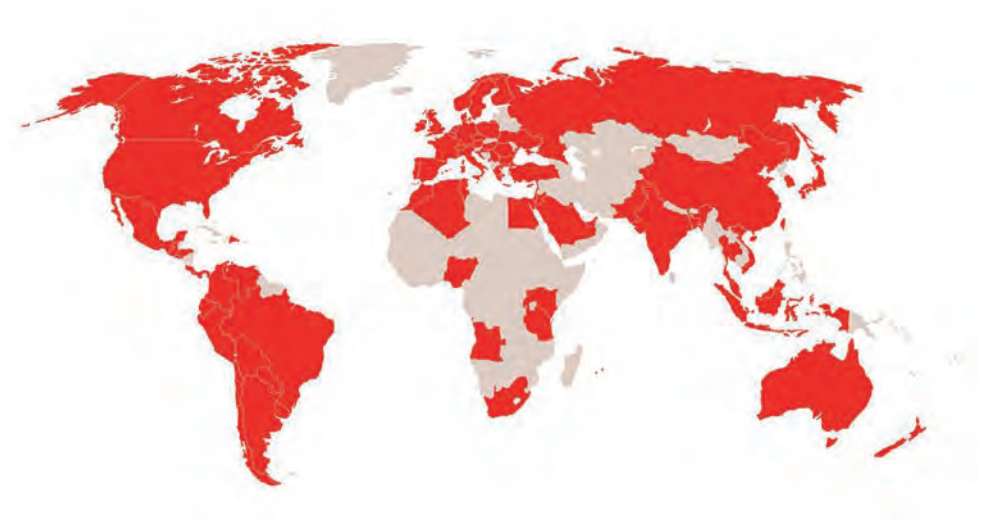
- It creates a legal fiction consisting in distinguishing legal ownership from beneficial ownership.
- The trustee participates and manages the assets entrusted to him on behalf of the trust and for the benefit of the beneficiaries.
- Trust's assets are not part of the trustee's own property.
- Trust's assets may include any type of asset, including cash, securities, real estate, or life insurance policies.
- A trust can be created either for an individual or a company.
- A trust must have beneficiaries who are identifiable individuals, except a charitable trust, which can have a general purpose such us alleviating poverty.

Main aim of a Trust

As above indicated, the main aim of setting up a trust is to protect assets and ensure financial security, it is a useful tool to facilitate planning succession and provide tax efficiency.

The United Kingdom jurisdiction provides a legal framework that allows individuals and companies to set up a wide variety of different trusts, which can be tailored to the settlor's particular circumstances to maximize the advantages they provide.

Antonio Arenas López & Laura Gallego Herráez
antonio.arenas@scornik.com
laura.gallego@scornik.com
United Kingdom
SCORNIK GERSTEIN LLP



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