# 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

Some of the features of this edition include:

Belgian tax regime for copyrights, Early recovery of VAT Systems in Peru and Taxation of 'Income from Other Sources' in India.

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

# Index

# Belgian favourable tax regime for copyrights

Professional activities of employees, freelancers and independent contractors contribute to the creation and expansion of the intellectual property within a company. In Belgium a favourable tax regime can be applied when these persons transfer or license their copyrights to the company under the contract in exchange for a remuneration. Among other advantages, this allows the company to gain a competitive advantage by paying out a higher net salary without a raise of the related costs for the company.

In this article we set out the general principles surrounding this favourable Belgian tax regime for copyright related income and explain how an advance tax ruling may be obtained in order to make sure that all requirements for the application of this regime are met.

## Transfering or licensing copyright

The authors of literary and artistic works, software developers, marketeers, architects, designers, create copyrights and neighbouring rights over their creations, productions and performances. These are legal rights that allow these persons to determine how and by whom these creations, productions and performances may be exploited. This is relevant in a lot of employment and cooperation relationships. Within an organisation, the output of for example writers, software developers, marketeers, architects, designers, teachers, and many others will often be copyright protected, as long as their job profile provides enough room for creativity.

Copyrights belong to the natural persons who are responsible for the creation of the work, and neighbouring rights to the producers or performers of it. This also applies for such rights that are established in the context of the performance of an employment contract or cooperation agreement (except for software, for which a transfer in favour of the employer is legally presumed). However, most of the time such contracts explicitly stipulate that the person concerned transfers or licenses to the company all copyrights (or any other IP rights) established in the performance of the contract. In this case, when these persons are actually involved in the establishment of original works, part of the remuneration under the contract can be paid out as a compensation for the transfer or licensing of these copyrights. This remuneration is then subject to a favourable tax regime with advantages for both parties. The favourable regime can also be applied in relation between the company and its managers.

## Favourable tax regime

In 2008 the Belgian legislator introduced a favourable tax regime for the remuneration that natural persons receive in exchange for the transfer or licensing of their copyrights. This remuneration is regarded as "movable income" for a maximum amount of €62.090 for income year 2020. Above this amount the income will however be regarded as "professional income" and will be taxed as such under the usual progressive rates.

The copyright remuneration up to € 62.090 (for the whole income year) is however subject to only 15% witholding tax instead of the usual progressive rates of up to 50%. The company will have to withhold this tax before paying out the remuneration. Moreover, before taxation an attractive amount of expenses can be 'lump sum' deducted resulting in an effective tax burden between 7,5% and 12%. The aforementioned amount is applicable for the income year 2020 and is indexed for each year.

## Conditions & requesting an advance tax ruling

How can companies make use of this favourable regime? First of all the activities of the person under the contract with the company have to fall under the scope of copyright protection. The contracts have to provide in a written transfer of (or license on) copyrights to (for) the company in exchange for a remuneration (e.g. the journalist transfering his copyrights established in performance of the employment contract to the news company). The contract has to provide for a clear distinction between the "normal" salary of the person concerned and the remuneration for this transfer or licensing.

In principle a company can decide on itself to make use of the favourable regime. However, it is advisable to opt for an advance ruling with the tax authorities. This is recommended in particular because the tax authorities have adopted a strict approach and impose additional requirements in practice regarding e.g. the maximum amount of such copyright remunerations in relation to the total salary of the person concerned and the relevant net turnover of the company, which are not explicitly provided for in the law. This method allows a company to obtain legal certainty by neutralising the risk of the tax authorities coming back to levy additional taxes (e.g. in case of exorbitant 'copyright' remunerations).

A request for an advance tax ruling will be examined by the Office for Advance Tax Rulings, which is part of the Belgian Federal Public Service 'Finance' and acts as a ruling commission. For these requests the office has adopted a specific approach. It will ask for the (categories of) job profiles of all the people within the company who are to obtain the remuneration for the transfer or licensing of their copyrights. It will take account of the creativity that is bound to the functions these people fulfill and the actual time that is spent on creative matters falling within the scope of copyright protection (e.g. developing software). Based upon this information, for each job profile a maximum percentage of the salary will be determined that can be paid out as a remuneration for the transfer of copyrights (often between 12,5% and 25% of the total salary). For the company managers, the remuneration will most of the time consist of a percentage of the relevant net turnover.

On average an advance tax ruling procedure takes 6 months and consists of a pre-filing phase, the filing itself and the subsequent decision of the ruling commission. After a positive decision, the tax ruling is then valid for 5 years and can be renewed when timely requested. The ruling has a binding effect upon the tax authorities.

## The role of De Groote – De Man

De Groote – De Man can fully assist your company with the application of the favourable tax regime income resulting from the transfer or licensing of copyrights under the employment or cooperation agreement. This includes giving general advice, adapting the existing agreements where necessary and filing a request for an advance tax ruling with the Belgian Office for Advance Tax Rulings.

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# Why investing in Brazil?

With the election of a new government in October 2018 the economic program was reformulated. It proposes the increase market competition, reduction of state activity and more privatizations.

## Reforms from 2017 to 2020

Already in November 2017, a comprehensive reform of Brazilian labor law came into force. The labor law, which had previously been more employee-friendly was made more flexible with the reform, which includes, among other points, a new regulation of employee contracts, work in home office, working hours, vacation and and assertion of employee claims. With the social security reform which could already concluded in November 2019, among other points, the minimum retirement age was introduced in Brazil for the first time and the minimum contribution period was increased to 40 years for men and to 35 years for women. The reform will save more than USD 200 billion until 2030. The proposal of the administrative reform includes the control of public expenses with new rules for civil servants careers. The savings based on the administrative reform are estimated at USD 85 billion over the next 10 years. Due to a delay caused by Covid 19 the first part of the proposal for a tax reform has now been submitted to the National Congress. Further proposals for other types of taxes are still being submitted.

As a consequence there are other positive impacts, for example, Brazil´s prime interest rate and the inflation are at a historically low level, which will have an impact on investors and loans from Brazilian banks. The Brazilian central bank expects for 2020 an inflation rate of 3,20 %.

## EU and Mercosur Agreement

Besides this after many years of negotiation the trade agreement between the European Union and Mercosur was approved and now depends of his ratification. For investors in Brazilian company´s this agreement will significantly reduce the import costs and Brazilian products will have a lot of new market opportunities. 2019 was the most active year in terms of M&A ever with 782 domestic and 449 cross border transactions, where most of them are investments from foreign companies in Brazil. (Source: capitalinvest-group.com Brazilian M&A guide)

Since Brazil had become interesting for foreign investors with the measures of the new government the impact of Covid-19 at the beginning of the 2nd quarter 2020 and the economic consequences were catastrophic for the country. Since the beginning of the pandemic the national currency, the Brazilian real, has depreciated enormously against the US- Dollar and the Euro. But more difficult than a high exchange rate are their daily fluctuations because of high importation costs for spare parts and for products for resale, which cannot be completely billed to the customers.

## Actual Marked Overview and Foreign Exchange Rate

Some economic sectors as tourism, travel and a part of services have to cope drastic sales losses since the beginning of the pandemic. However other sectors such as agriculture, food delivery, pharmaceutical industry and online trade are benefiting from the pandemic. But nevertheless despite of corona crisis in several economic areas companies are viewing this crisis as an opportunity for acquisition.

(Exchange rate for the US- Dollar 31/12/2019: 1 USD = BRL 4,0168; 16/11/2020 1 USD = BRL 5,4149; Exchange rate for the Euro 31/12/2019: 1 Euro = BRL 4,5033; 16/11/2020 1 Euro = BRL 6,4189)

After the lockdown and a dramatic slump in the first half of the year the economy is looking up again and there are signs for a strong rebound in the 3rd and 4th quarter 2020, which is related to the government´s economic aid program for private households (GDP 2019: 1,1%; 2020: -5,0% estimated).

Main reasons for investing in Brazil is the huge economy, the surface and the big internal market as well as the rich natural resources, the high developed industry and the growth opportunities.

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# Croatia OPTS to extend cross-border reporting deadlines under DAC 6

As a result of COVID-19 pandemic, on 24 June 2020, the European Council reached an agreement on an optional delay to the reporting deadlines regarding cross-border arrangements under EU Directive 2018/822 (DAC 6).

## About DAC 6

Through the DAC 6, the European Council has adopted new reporting obligations in order to promote the automatic exchange of information in relation to reportable cross-border arrangements. The purpose of DAC 6 is to enhance transparency, reduce uncertainty over beneficial ownership and dissuade intermediaries from implementing harmful tax structures.

In addition, DAC 6 obligates intermediaries or relevant taxpayers to report cross-border arrangements that may be indicative of “potentially aggressive tax planning” to their respective national authorities. Arrangements that must be reported are those that meet one or more of the criteria listed in the annex to the DAC 6.

According to the initial provisions of DAC 6, as of 1 July 2020, arrangements which fall within the scope of DAC 6 must be reported within 30 days of the day after the reportable cross-border arrangement is made available for implementation, or is ready for implementation, or the first step of the implementation has taken place.

Additionally, initial provisions of DAC 6 prescribed that cross-border arrangements for which the first step in the implementation arose between the date of entry into force (25 June 2018) and the date of application of DAC 6 (30 June 2020) must be reported by 31 August 2020.

## Extension of reporting deadlines

The European Council adopted an amendment to the DAC 6 due to the implications caused by the COVID-19 pandemic. According to the adopted amendment, the European Council has agreed to an extension of up to six months to the reporting deadlines. The amendment also provides the possibility of further extension for a maximum of three additional months, if the COVID-19 circumstances persist.

The extension of deadlines is optional; therefore, each member state has an option to decide whether to extend the reporting deadlines. Member states are expected to implement the deferred deadlines into their domestic law as soon as possible if they intend to apply said extension.

Croatia is one of the countries that has opted for extension of deadlines.

The new reporting deadline for reportable cross-border arrangements is 28 February 2021 (instead of 31 August 2020) for filing information on the pre-phase of such arrangements where the first step was implemented between 25 June 2018 and 30 June 2020.

Furthermore, with respect to the arrangements targeted by DAC 6 starting from 1 July 2020, where a reportable cross-border arrangement is made available for implementation, or is ready for implementation, or where the first step in its

implementation has been made between 1 July 2020 and 31 December 2020, the 30-day reporting deadline starts on 1 January 2021. The above applies both to intermediaries and assistant intermediaries.

Intermediaries from member states which applied the optional extension of deadlines are obliged to submit their first periodic report for marketable arrangements to the respective national authorities before 30 April 2021.

## Implications of reporting deadlines

Considering that the extension of reporting deadlines has an optional character, each member state will have to make a decision on whether to apply the extension. Therefore, if a certain member state will not apply extension of reporting deadlines, the initial deadlines will be applied. Consequently, intermediaries or taxpayers potentially will have to honor the initially prescribed deadlines, which may be difficult due to the COVID-19 pandemic implications. On the other hand, member states which will accept extension of reporting deadlines, certainly will be faced with challenging deadlines to implement the deferred deadlines into their domestic law.

For more information on how your Crotian business can remain compliant with EU Directives' requirements in these challenging times, please contact our Zagreb team.

**Eurofast is a regional business advisory organisation employing local advisors in over 23 cities in South East Europe & Middle East (SEEME). The Organisation is uniquely positioned as one stop shop for investors and companies looking for professional services in South East Europe & Middle East.**

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# Instruction No. 4 / 2020_Tax residence and permanent installation within COVID 19

The Covid-19 pandemic has caused a lot of difficulties and raised concerns on the issue of Tax Residence of natural and legal persons in Cyprus as well as the permanent establishment of businesses. Tax Residency cannot be fully effective, since individuals that are always not physically present at their workplace due to restrictions placed.

The Organization for Economic Cooperation and Development (OECD) issued general guidelines for the interpretation of tax issues raised, and the Tax Department of the Republic of Cyprus will follow them.

Due to the temporary ban and entry from areas abroad to the Republic, the period between March 21st, 2020 until the 9th of June 2020, is considered as the period of inability to travel and it will not be taken into account in the application for tax residency and the tax payers will need to provide the relevant supporting documentation proving their inability to travel.

The main problem that may arise concerning the permanent establishment is that the continuous stay and working in a specific country will lead to setting up a permanent establishment that will lead to tax obligations. It was agreed that in case a person remains in the Republic due to work restrictions from the pandemic, then no permanent establishment will be created.

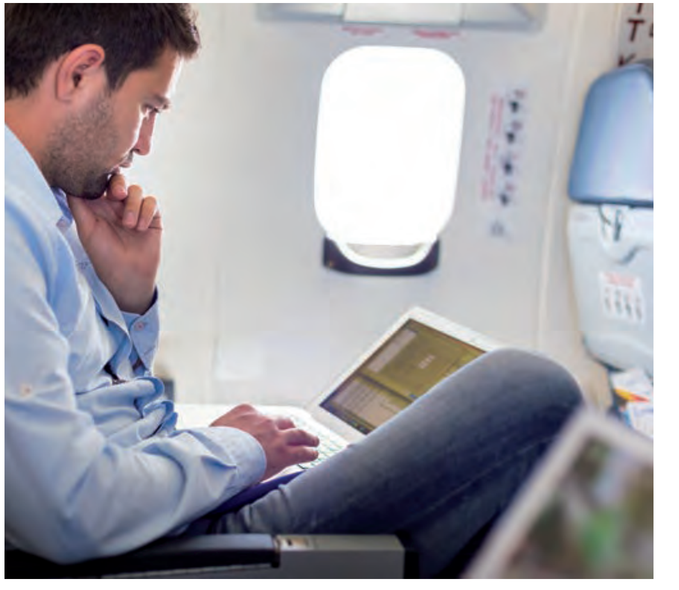
As far as it concerns companies that are not Tax -resident in the Republic, will not be considered as Tax Resident if the personnel and managers stay in the Republic for a long period of time due to pandemic restrictions. Also, it should be noted that in case a Director cannot attend a Board meeting due to traveling restrictions due to pandemic, then the company’s tax residency will not be affected.

Natural persons as per the 183 days rule of Tax Residency who remain in the Democracy for a period of more that 183 days and want to make use of this Directive need to provide evidence to support this and present a tax residency certificate. In addition in case a natural person remains abroad due to pandemic or travel restrictions and under any other circumstances would be in the Republic, then for the purposes of determining its tax residence and for personal tax purposes will be considered in accordance with the law that the natural person was in the Republic.

The above also affects natural persons who are taxable residents according to the 60 day rule and are not considered as tax residents in another state. The person's stay abroad reported period mentioned above will be ignored and will be considered for tax purposes that this person was in the Republic. This applies if the perquisites as per Article Article 2 of the Income Tax Law, are met and each case will be reviewed separately depending on data provided.

If the days of actual stay of a person in the Republic are 30 while the rest of the period that person remained abroad and if during the period of restrictive measures remained entirely abroad, then these days can be included in the rule of 60 days and will be considered as part of the whole to be considered as a tax resident provided that all the conditions regarding the 60-day rule are met.

All the above changes and amendments to the Laws are applicable and can be used by individuals and legal



entities. Each situation though will be reviewed on a case to case basis and depending on the supporting documents submitted to the authorities.

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# Home office in the Czech Republic during COVID-19 pandemic – 2020

This short summary has been prepared by BURIL PARTNERS as general information for employers in the Czech Republic in relation to home office during the COVID-19 pandemic.

## Legislation

- Performance of work outside the employer's workplace ("home office") is regulated by Czech Act No. 262/2006 Sb., the Labour Code, as amended (the "Labour Code").
- The Czech Government has preferred the use of home office since the first (spring) wave of the pandemic in the Czech Republic, however the obligatory use of home office by Czech employers has been introduced for the first time by Governmental Measure No. 1102 dated 26 October 2020. If an employee may perform work in the place of the employee's residence, taking the nature of the work and operational conditions into account, the employer is obliged to use home office.
- The Labour Code has not been specifically amended in relation to the use of home office in connection with the pandemic and/or (possible) obligatory introduction of home office if and where possible.

## Home Office

- The employee must consent to home office. Written agreement regulating terms and conditions of home office (such as the place of performing work, the manner of assignment of work tasks by the employer to the employee or remuneration for the use of the employee's equipment and energy consumption during work performance) must be executed between the employee and the employer. The employer must not order the employee to do home office without such agreement (employee's consent).
- Home office means performance of work by the employee, so provisions of the Labour Code apply to home office accordingly unless the Labour Code stipulates otherwise (e.g. the employee herself / himself schedules the working hours or the employee is not entitled to wage / compensatory wage or compensatory time off for overtime work or work on public holidays ).
- The employee is entitled to the employee's standard wage during home office.

## Leave

- The employer may also order leave taking during home office or instead of using home office, despite the fact that the main purpose of the leave is not to solve lack of work for employers due to the pandemic.
- The employer must order the employee to take leave in writing at least two weeks in advance unless a shorter term is agreed with the employee.
- The employer may even order collective leave taking with the consent of a trade union organization or works council, but only where it is necessary due to operational reasons and such collective leave taking may not last more than two weeks.
- The employee is entitled to compensatory wage in the amount 100 % of average earnings during the leave.

## Assignment to another Employer

If an employer does not have work for its employees and cannot assign work tasks to them even using home office, the employer may wish to "lend" its employees to other employers.

Such "lending" of employees in the form of assignment to another employer is possible, however the employee must consent with such assignment. The assignment cannot be forced upon the employee.

The assigning employer may only invoice expenses related to the assignment (i.e. the employee's wage, travel expenses and statutory levies) to the receiving employer. However, the assigning employer must not invoice any margin to the accepting employer (i.e. to act as an employment agency).

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# 1.5%, magic number for a tax audit

The question that every taxpayer asks is: Am I a risk subject for the tax office to knock on my door and perform a tax audit? When talking with some colleagues in the Administration, they point out that there are around 100 variables that indicate risk factors, and the combination of several of them determines that a subject should be audited.

Those who have undergone a tax audit process know that it is a long process (8 to 10 months), expensive for the advisors and consultants that must be involved in the process; and, finally, due to the glosses and differences that arise from the review, plus interest and the tax surcharge (20%).

Today we are going to reveal one of these risk variables and it is the percentage of tax paid concerning gross income in Ecuador. Thus, for the 2019 income tax (IR) that companies have just paid in April of this year, the tax office identifies 66 economic groups (large companies by invoicing linked to each other) whose tax is 3% on income. In such a way that for every million billed they pay $ 30,000 in IR, these companies are unlikely to be subject to an in-depth audit by the tax office; Therefore, we can conclude that a 3% IR on income is considered, in the eyes of the administration, as a good taxpayer. However, the companies that are in this group, sadly, are not the majority.

On the other side, there is a red number that is 1.5% in which there are 133 economic groups (49%) whose income tax is less than this percentage, that is, for every million billed they pay 15,000 dollars and even pay nothing; For example, in the list, you can see several companies with a turnover of over 100 million dollars and their tax caused is zero.

My advice with the figures presented here is to compare the results of your company and if you pay taxes on 3% of your turnover, you may have to review and analyze if the tax burden of your business is very high and you can optimize it by taking advantage of the tax benefits that are have passed in the latest renovations. If the IR generated is less than 1.5%, know that the tax office is likely to include you in its verification processes, and as they say: the house never loses.

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# German Annual Tax Act 2020: New regulations for distance sales and imports of consignments

Due to the digital package originally planned for 01.01.2021, but now postponed due to the Corona pandemic, legal changes for the VAT in the area of cross-border B2C deliveries are expected. Already on December 5, 2017, the second part of the e-commerce package was passed within the framework of EU Directive 2017/2455. Now the transformation into national law is pending. This means a further step towards the prevention of VAT fraud and the reaction of VAT law to the sharp increase in electronic business transactions. The following important changes will affect electronic commerce:

- Nearly all distance sales taxable in the country of destination.
- Imports of consignments with a maximum value of EUR 150 tax free under certain conditions.
- Supplies via electronic interfaces (marketplaces, platforms, etc.) as fictitious chain transactions with VAT liability.

## Revised regulations for distance sales will come into force from 01.07.2021

A distance sale is deemed to exist, if

- an item is supplied to a non-taxable person,
- the goods cross borders within the EU (intra-community distance sales) or
- the goods are transported from a third country to an EU Member State (distance sales of imported goods), and
- the transport is arranged by the supplier.

B2B-sales or sales with transport arranged by the client are not subject to the VAT regulations of distance sales which are considered here.

Intra-Community distance sales are VAT-taxable in the country where the transport of the goods ends, if the supplier has exceeded the threshold of EUR 10,000 per year or if he waives its application. This threshold includes all distance sales and all electronically supplied services into other EU Member States, not only to a specific Member State. The previous country-specific thresholds will be deleted and replaced by this uniform EU threshold of EUR 10,000.

**MOSS becomes OSS**

To avoid VAT registration in each EU Member State of destination the Mini-One-Stop-Shop procedure (MOSS), up to now only used for reporting electronically supplied services, will also be used for distance sales, then called One-Stop-Shop (OSS). This new regulation will also come into force on 01.07.2021. With OSS the suppliers can file their VAT reports of B2C distance sales into other EU Member States in their own country of residence. Third country taxable persons could choose a Member State for their VAT registration, reporting and declaration obligations. Participation in OSS is voluntary.

> But be aware, that OSS is not applicable, if intra-Community transfers of goods take place, e.g. in a fulfilment service structure. In those cases, VAT registration in the country of storage is unavoidable.

The new regulations are accompanied by procedural simplifications of the OSS procedure such as:

- Submission of the declaration via the online portal of the BZSt (Federal Central Tax Office) in future by the 30th of the month following the reporting period, instead of by the 20th as previously.
- Consideration of any errors in previous declarations by making a corresponding adjustment within three years in the next declaration (instead of correcting the declarations already submitted).

It is still not possible to declare local input tax amounts via the OSS procedure.

## Special regulations for import of consignments of up to EUR 150

With the implementation of the e-commerce package, the special regulation for import VAT exemptions for consignments with a value up to EUR 22 is no longer applicable. Without this regulation, import VAT would have to be levied on every import. However, the exemption from import duty for consignments with a value of up to EUR 150 will continue to apply. Thus, in future each consignment must be cleared for import.

But a special regulation for consignments with a value of up to EUR 150 will come into force for distance sales of goods imported from third countries, which are sent directly to a purchaser in the customs territory of the European Union. In future, the supplier or his representative (e.g. the parcel service provider) will be able to report these imports in the OSS procedure (so-called "Import-One-Stop-Shop" – in short IOSS). If they do so, the import of the goods is VAT exempt. Therefore, the competent customs office has to issue an additional identification number for the taxable person or his representative, which makes it possible to link the customs clearance and the report in the IOSS procedure. Please note, that service providers offering this service are subject to comprehensive recording and reporting obligations. And they are liable for import VAT to be levied on consignments that they have delivered without collecting the VAT from the recipient.

If the import is not reported via the IOSS procedure, tax-exemption for the import does not apply. In this case, import duties have to be paid by the distance seller, by the courier or by the recipient, which results in differences regarding the obligation to register for VAT.

## VAT liability for electronic interfaces – especially online marketplaces

Where supplies are made by online traders to non-taxable persons by using an electronic interface, the operators of these interfaces will be fictitiously included in the VAT supply chain under certain conditions. They themselves become suppliers and sellers, which means that for VAT purposes, a chain transaction is deemed to exist between online trader, electronic interface and end consumer. “Electronic interface” is to be understood very broadly: electronic marketplaces, platforms, portals and all other comparable electronic interfaces.

There are two cases of application:

- Supply of goods, the transport or dispatch of goods, which begins and ends within the EU, carried out by a taxable person not established within the EU to a non-taxable person.
- Example: dispatch of goods by a Chinese taxable person from a warehouse in the EU to a private person in Germany.
- Distance sales of goods imported from a third country in consignments with an intrinsic value not exceeding EUR 150.

Example: dispatch of goods with a value of EUR 120 from a taxable person in China to a private person in Germany.

The delivery of the third country seller to the electronic interface is always to be considered as the dormant delivery in the deemed chain transaction. If the transport ends within the EU, the delivery from the distance seller to the electronic interface is exempt from VAT. The delivery of the electronic interface to the end consumer therefore always constitutes the supply the transport is ascribed to within the deemed chain transaction. This applies regardless of whether the online trader or the electronic interface (e.g. online marketplace) orders the transport of the goods. The electronic interface (e.g. online marketplace) can declare this transaction in the OSS procedure.

Despite the new supply chain fiction, the liability of electronic marketplaces as of 1 January 2019 remains. Online marketplaces will again face the duty to adjust their IT-processes due to the new regulations. It will be a challenge to identify all cases in which a deemed chain transaction has to be considered in VAT compliance.

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# The non-dom regime in the greek tax bill 4646/2019

Law 4646/2019, as in force, from 12.12.2019, introduced significant changes in the Greek Income Tax Code, amongst others, the long-anticipated **non-dom regime for high net-worth individuals (HNWIs).**

According to this new Law and the Ministerial Decision which further regulates in detail the implementation of the non-dom regime for high net-worth individuals (HNWIs) who now have worth-considering incentives for transferring their tax residency to Greece. The alternative tax regime (non-dom) dictates that the investor will pay a fixed tax of one hundred thousand (100,000) euro per fiscal year, irrespective of the total income earned abroad. This favourable regime can apply for a maximum duration of 15 years. HNWIs who choose to transfer their tax residence to Greece will enjoy the privileges of special tax treatment provided the below conditions are met:

1. the taxpayer hasn't been a tax resident of Greece for the past seven (7) out of (8) eight years prior to the transfer of his/her tax residence to Greece and
2. the taxpayer has to prove that either (s)he or a relative have invested at least five hundred thousand (500,000) euro in real estate or business or transferable securities or shares in legal entities seated in Greece; the investment may have been made through a legal entity in which the taxpayer holds the majority of the shares.

Moreover, the individual has the right to request the extension of this regime to a family member. In that case, they will pay an additional tax of 20,000€ per relative while provisions on gifts, inheritance and parental gifts do not apply.

With the payment of this fixed tax, the individual bears no further tax obligation for income earned abroad and (s)he is also exempted from inheritance or gift tax on properties located abroad.

Eurofast's team in Athens can provide assistance to interested individuals looking to benefit from the non-dom regime in Greece.

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# Taxation of 'Income from Other Sources' under Income tax act, 1961

## 1. Income from other sources?

Any income which is not chargeable to tax under any other heads of income and which is not to be excluded from the total income shall be chargeable to tax as residuary income under the head "Income from Other Sources".

## 2. Basis of Charge of Income from Other Sources?

i. Income from other sources chargeable to tax under section 56 of the act shall include followings: Dividend;

ii. Income by way of winnings from lotteries, crossword puzzles, races including horse races, card games, gambling or betting of any form or nature whatsoever;

iii. Any sum received by an employer from his employees as contribution towards PF/ESI/ Superannuation Fund etc., if same is not deposited in the relevant fund and it is not taxable under the head 'Profits and Gains from Business or Profession';

iv. Interest on securities, if not taxable under the head 'Profits and Gains of Business or Profession';

v. Income from machinery, plant or furniture belonging to taxpayer and let on hire, if income is not chargeable to tax under the head 'Profits and Gains of Business or Profession';

vi. Composite rental income from letting of plant, machinery or furniture with buildings, where such letting is inseparable and such income is not taxable under the head 'Profits and Gains of Business or Profession';

vii. Any sum received under Keyman Insurance Policy (including bonus), if not taxable under the head 'Profits and Gains of Business or Profession' or under the head 'Salaries';

viii. In the following cases, any sum of money or property received by an individual or HUF from any person **(except from relatives or member of HUF or in given circumstances)** shall be taxable under the head 'Income from other sources':

a. If any sum is received without consideration in excess of Rs. 50,000 during the previous year, the whole amount shall be chargeable to tax;

b. If an immovable property is received without consideration and the stamp duty value exceeds Rs. 50,000, the stamp duty value of such property shall be chargeable to tax;

c. If immovable property is received for consideration which is less than the stamp duty value of property by higher of following amount the difference is chargeable to tax:

- the amount of Rs. 50,000
- the amount equal to 10% of consideration;

d. If movable property is received without consideration and the aggregate fair market value of such properties exceeds Rs. 50,000, the whole of aggregate fair market value of such properties shall be chargeable to tax;

e. If movable property is received for consideration which is less than the aggregate fair market value of properties by an amount exceeding Rs. 50,000, the difference between the aggregate fair market value and the consideration is chargeable to tax.

ix. If shares in a closely held company are received by a firm or another closely held company from any person without consideration or for inadequate consideration, the aggregate fair market value of such shares as reduced by the consideration paid, if any, shall be chargeable to tax.

**Note: Nothing would be chargeable to tax if taxable amount doesn't exceed Rs. 50,000.**

x. If a closely held public company receives any consideration for issue of shares which exceed the fair market value of such shares, the aggregate consideration received for such shares as reduced by its fair market value shall be chargeable to tax.

**Note: This provision is not applicable in the following cases:**

a. Where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or venture capital fund.

b. Where the consideration for issue of shares is received by company from class or classes of person as notified by the Government.

xa. Any compensation received by a person in connection with the termination of his employment or modification of terms and conditions relating thereto.

xi. Interest received on compensation or enhanced compensation.

xii. Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset shall be charged to tax under this head, if:

a. Such sum is forfeited; and

b. The negotiations do not result in transfer of such capital asset.

## 3. Deduction of expenditures from Income?

The following expenditures are allowed as deductions under section 57 of the act, from income chargeable to tax under the head 'Income from Other Sources':

| Section | Nature of Income | Deductions allowed |
|---|---|---|
| 57(i) | Dividend or Interest on securities | Any reasonable sum paid by way of commission or remuneration to banker or any other person for purpose of realizing dividend or interest on securities |
| 57(ia) | Employee's contribution towards Provident Fund, Superannuation Fund, ESI Fund or any other fund setup for the welfare of such employees | If employees' contribution is credited to their account in relevant fund on or before the due date |
| 57(ii) | Rental income letting of plant, machinery, furniture or building | Rent, rates, taxes, repairs, insurance and depreciation etc. |
| 57(iia) | Family Pension | 1/3rd of family pension subject to maximum of Rs. 15,000. |
| 57(iii) | Any other income | Any other expenditure (not being capital expenditure) expended wholly and exclusively for earning such income |
| 57(iv) | Interest on compensation or enhanced compensation | 50% of such interest (subject to certain conditions) |
| 58(4) Proviso | Income from activity of owning and maintaining race horses | All expenditure relating to such activity |

## 4. Expenses not allowed as deduction from Income?

Following expenses are not allowed as deduction under section 58 of the act:

- Personal expenses;
- Interest chargeable to tax which is payable outside India on which tax has not been paid or deducted at source;
- Salaries' payable outside India on which no tax is paid or deducted at source;
- Wealth-tax;
- Expenditure of the nature specified in section 40A;
- Expenditure in connection with winnings from lotteries, crossword puzzles, races, games, gambling or betting.

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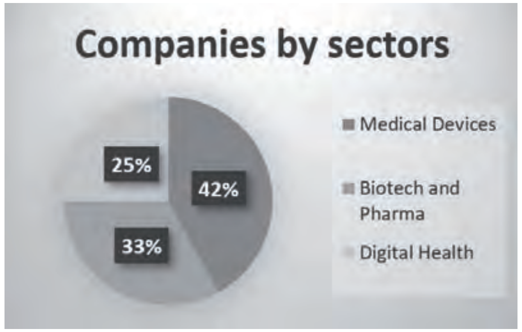
# Life science industry in Israel- investment fund perspective

*The life science industry is a growing field in Israel. Innovations and technologies are existing in 1600 companies operating in this field.*

*Dr. Laurent Choppe from the Cukierman group (One of the largest investment funds in the world of life sciences) has 15 years of experience in the pharmaceutical industry. Recently he shared his knowledge about the life science industry in Israel on the Science& Business podcast of Auren Israel.*

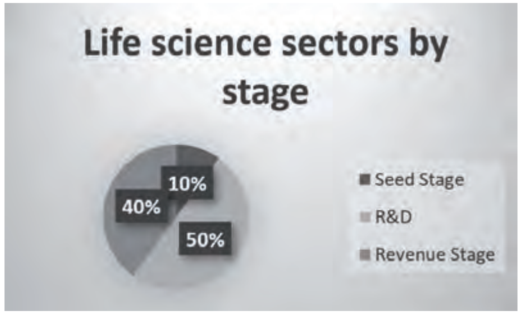
## Breakdown of life science companies by sectors in the Israeli Market

About 1600 companies are operating in the field of life science in Israel. Most of them are considered a startup; the next diagram is the description of Israeli companies by the primary sector:




- Most companies in the medical device sector are at the stage of development.
- Biotech and Pharma are growing sectors.
- Digital Health sector had more than 50% growth in the last year.

## Breakdown of life science companies by stage




- Companies in the R&D stage are operating clinical trials on animals and testing the product's clinical meaning on humans.
- The life science field in Israel is a young ecosystem due to the startups operating on it.

## The next most profitable sector in the life science field

As seen in the previous year in the exhibitions, the medical devices sector leads with a large number of presenters. The digital Health field applies to different sectors and sub-sectors. The technology coming from the high-tech industry that integrates into the life science industry can have some rising stars this year.

The life science field wide and more than 40 different sectors are operating under this industry; biotechnology, Pharma, Food-Tech, Agro-Tech, Genetics are just a small part of the field.

We are here at your aid.

This article was written following the 6th episode of the Science & Business podcast

*https://auren.com/il/news/pharmaceutical-industry-in-israel-part-1/*

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# Covid-19 versus Lebanese Economy

*Over the past months Lebanon has faced many challenges: an economic crisis, widespread protests and political upheaval. And now, the country is grappling with the coronavirus disease (COVID-19).*

## *Deepening economic crisis

COVID-19 struck a country already in financial difficulties, given the role of economic grievances in the 2019 protests, rebuilding the post-COVID-19 economy and addressing the structural problems of Lebanon's financial system will be crucial in restoring faith in financial and government institutions.

The COVID-19 outbreak and related containment measures have pushed nearly one out of every three Lebanese into unemployment so far, while one in five respondents saw their salary being reduced.

Economic sectors that have been the most impacted are construction as well as services and sales (incl. accommodation and tourism, restaurants and food services). Across all three population groups assessed, the main reason for disruption of work activities was that employers had to close businesses or were forced to reduce staff.

## *Economic Environment

Credit ratings have witnessed a series of downgrades by all major rating agencies and reached the level of default when the Lebanese Republic announced that it will withhold payment on the bonds due on 9 March 2020, which was followed by another announcement for the discontinuation of payments on all of its US Dollars denominated Eurobonds.

The ability of the Lebanese Government and the banking sector in Lebanon to borrow funds from international markets was significantly affected. Banks have imposed unofficial capital controls, restricted transfers of foreign currencies outside Lebanon and significantly reduced credit lines to companies and withdrawal of cash to private depositors, all of which added to the disruption the country's economic activity, as the economic model of Lebanon relies mainly on imports and consumption.

The outbreak of coronavirus (COVID 19) affecting Lebanon and the whole world, is contributing to further deterioration of the economic environment, disruption of businesses, rise of unemployment, and rise in poverty lines.

## *Ambition for a better future

To manage the crisis, an overall financial stabilization plan is needed. The authorities have yet to sketch such a plan which must set ambitious objectives, adopt credible execution modalities and yield early tangible results to generate a virtuous circle of trust. The core fundamental problem is that the public sector is dysfunctional and hinders the economy that should be set on a growth trajectory compatible with the reduction of deficits.

A strong ambition for recovery and development is needed to meet aspirations and to restore confidence.

Forced expatriation of the Lebanese has been a loss to the nation, which may be mitigated by their participation in future domestic investments.

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# COVID-19 impact on corporate governance for Luxembourg entities

To prevent the spread of COVID-19 virus, a series of measures were taken in relation with the corporate governance of Luxembourg entities.

In addition to extended delays to file annual accounts, Luxembourg companies have the possibility to hold their meetings without any physical presence in Luxembourg regardless any existing provision in the byelaws.

These measures apply to the following meetings:

- Meetings of the board of directors/managers
- Ordinary general meetings
- Extraordinary general meetings.

## Meetings of the board of directors/managers

Even if the articles of association of a company require a physical presence to deliberate on a provided agenda, the board of directors/managers can hold their meetings without physical presence by:

- Visio conference or any other way of communication allowing to identify the participants
- Written or circular resolutions.

Even though participants are not physically present, they will be considered as present for the purpose of deliberating and take resolutions.

## Ordinary general meetings

In the framework of the annual accounts approval process, the companies are allowed to extraordinary convene their shareholders at a date that falls within the 6 months after the end of their financial period, despite of any provisions stated in the articles of association.

Additional delays for the publication of the annual accounts were also granted replacing the deadline of 31 July 2020 to 30 November 2020.

## Extraordinary general meetings

Even if the articles of association of a company require a physical presence to deliberate on a provided agenda, the meetings can be held without physical presence by:

- Visio conference or any other way of communication allowing to identify the shareholders
- Granting a proxy
- Voting remotely either in writing or electronically.

Even though the shareholders are not physically present, they will be considered as present for the purpose of deliberating and taking resolutions.

The Luxembourg authorities implemented these new mesures to ensure a continuity of the activities of the Luxembourg companies being compliant with the law and protecting the directors/managers' and the shareholders' health.

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# Malta VAT treatment of Directors' fees

## Change to local Interpretation concerning the 'supply' of directors

*Summary*

*In terms of article 5 of the VAT Act, the activities of an 'employee' which, by definition includes the 'holder of an office', are not regarded as an economic activity for VAT purposes. In effect, where an individual is appointed to the post of Director of a Company, the fees paid by the company to the Director by way of remuneration for his/her activities or 'services' would typically fall outside the scope of Maltese VAT.*

*Article 5 has historically been interpreted to extend in practice also to scenarios in which the Director's fee/ remuneration is not paid directly to the Director, but is instead paid to another company (for example, a corporate services provider) which has 'supplied' the Director for its client. Historically, local practice has been to consider the fees paid to companies who refer Directors to fall outside the scope of Malta VAT, on the basis that the said fees paid constitute remuneration for an activity which is not to be considered to be an economic activity for VAT purposes i.e. that of the 'holder of an office'.*

## The VAT treatment of Directors' services – the Legislation

It is a fundamental principle of VAT that VAT is chargeable on supplies of goods or services when certain conditions are satisfied, inter alia, when the supply is made by a "Taxable Person" acting as such. It follows that activities carried out by a person who is not acting in the capacity of a Taxable Person fall outside the scope of VAT. In terms of Article 5 of the Value Added Tax Act (CAP 406 of the Laws of Malta), a Taxable Person is any person carrying on an economic activity, which by definition excludes the activities of 'employees', as defined to include the holder of an office. As a result, the activities of the holder of an office, which includes an individual appointed to the post of Director or Company Secretary of a Limited Liability Company, in principle fall outside the scope of VAT.

## The VAT treatment of Directors' services – implications

On the basis of the above, where an individual is appointed to the role of Director of a Company, the fees paid by the Company to the Director by way of remuneration for their activities or 'services' qua Director would typically fall outside the scope of VAT. In other words, since these activities are not regarded as economic activities for VAT purposes, the fees do not in principle constitute consideration for a service falling within the scope of VAT, and therefore no VAT is chargeable thereon. In practice, this would refer to the emoluments/fees paid directly to the Director in their own name, whether the said Director is registered as an employee of the Company for the purposes of the Final Settlement System (FSS), or whether they retain self-employed status for income tax purposes.

## The VAT treatment of supply Directors

In practice, there may be scenarios in which the individual holding office (i.e. the Director) is not remunerated directly, and in his/her own name, for the said activities – for example:

- Where a Corporate Services Provider or other service provider makes available, to its Client Company, an individual to sit on the Board of Directors of the Client Company; or
- Where a Director's remuneration is paid to another company of which the Director is a shareholder. It is understood that past local practice has been to consider the fees paid in both the above-mentioned scenarios to fall outside the scope of Malta VAT, on the basis that the said fees constitute remuneration for an activity which is not to be considered to be an economic activity for VAT purposes i.e. that of the 'holder of an office'.

However, in particular pursuant to the decision of the CJEU in case C-94/19 (San Domenico Vetraria SpA vs Agenzia delle Entrate), it is our understanding that the aforementioned interpretation shall no longer apply. Accordingly, in the above-described scenarios, the activity in question, for which a Company is being remunerated for making available to another Company the services of a Director, would in fact constitute an economic activity, which falls within the scope of VAT. In other words, where Malta Company A makes available to Malta Company B an individual to sit on the board of Directors of Malta Company B, for a fee, Malta Company A should be regarded as supplying a service to Malta Company B, which service is in principle subject to VAT at 18%. Where the individual in question is an employee of Malta Company A, the service would constitute a (taxable) supply of staff.

The CJEU, in its judgement in case C-94/19, reaffirmed that the lending or secondment of staff by one company to another constitutes a (taxable) supply of services for consideration falling within the scope of

VAT. This case was brought before the CJEU in view of a provision of Italy's VAT legislation (Article 8(35) of Law No 67/88) in terms of which, the secondment of staff by one company to another for a fee corresponding to the costs incurred for the seconded staff, fell outside the scope of VAT. The case concerned the secondment of an employee (a Director) by one company, Avir, to a subsidiary, San Domenico Vetraria, for which Avir invoiced San Domenico Vetraria for amounts corresponding to the costs incurred for the seconded employee. San Domenico Vetraria applied VAT to the amount reimbursed and then exercised its right to deduct that VAT. The tax authorities took the view that those reimbursements fell outside the scope of VAT since they did not concern supplies of services between the parent and its subsidiary, and denied San Domenico Vetraria's input tax claim.

The Italian Court acknowledged the specific provision of Italian legislation which excluded such reimbursements from VAT; however, it expressed doubt as to whether the secondment of staff should fall outside the scope of VAT and referred the matter to the CJEU. The CJEU found that the secondment was carried out on the basis of a legal relationship of a contractual nature between Avir and San Domenico Vetraria, in the context of which there was reciprocal performance, namely the secondment of a director from Avir to San Domenico Vetraria, on the one hand, and the payment by San Domenico Vetraria to Avir of the amounts invoiced to it, on the other. It furthermore maintained that if it were to be established (which it held was for the referring court to ascertain) that the payment by San Domenico Vetraria of the amounts invoiced to it by its parent company was a condition for the latter to second the director, and that the subsidiary paid those amounts only in return for the secondment, it would have to be held that there is a direct link between the two.

On this basis, the court held that the transaction should be regarded as having been carried out for consideration and subject to VAT, maintaining that the amount of the consideration - in particular the fact that it is equal to, greater or less than, the costs which the taxable person incurred in providing his service - is irrelevant.

### Services of Corporate Directors

Where a Director of a company is a body corporate, it is our understanding that the activities carried out by the said corporate Director are regarded as activities falling within the scope of VAT. A corporate Director, in the exercise of its functions, would in our view, be regarded as carrying out an economic activity and would therefore classify as a taxable person for VAT purposes. The exclusion of the activities of the holder of an office in Article 5 of the VAT Act specifically refers to an 'individual', and therefore a corporate director cannot be regarded as an 'employee' for the purposes of the said Article 5. This reflects the unanimous view of the VAT Committee that "services supplied by a legal person as a member of a company's board of directors should be regarded as economic activities carried out independently within the meaning of Article 4(1) and

(2) [now Article 9 of Directive 2006/112] and that they should therefore be subject to VAT" (Guidelines from the 53rd Meeting of 4-5 November 1997).

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# EMMA LAW: new panamanian special regime

The Government of the Republic of Panama has promulgated Law 159 of August 31, 2020 published in Official Gazette No. 29103-A of September 1, 2020, the new Special Regime for the Establishment and Operation of Multinational Entities for the Provision of Services Related to Manufacturing (hereinafter "EMMA" or "EMMA License"), which arises from the actions of the economic recovery plan designed by the government, in order to promote investments in the productive sector, generate new jobs and technology transfer.

In this sense, EMMA is a license granted by the Ministry of Commerce and Industry, through the Technical Secretariat of the Commission of Multinational Enterprises, for entities that perform services related to manufacturing in their group and not to final customers.

To apply for the EMMA regime, the companies or branches in Panama are allowed to perform only services related to manufacturing of products, machinery and equipment, assembly, maintenance and repair, remanufacturing and conditioning of products, investigation or innovation, analysis, lab work, tests or other activities related to manufacturing services and logistics, such as storage, deployment, and distribution of components or parts, required for the provision of manufacturing services.

In order to grant the License of this special regime, the Commission will evaluate certain aspects, such as: (i) assets of the multinational group, (ii) locations of the affiliated companies, headquarters or operating subsidiaries of multinational companies, (iii) the commercial or industrial activities or operations carried out by the entity, (iv) listing of shares on the stock or international stock market, (v) the minimum number of full-time employees and the annual operating expenses appropriate to the nature of the business carried out by the companies and (vi) any other element or information that the Commission considers convenient to establish and evaluate as a pertinent and necessary requirement, in order to promote an adequate use of the regime.

The tax benefits of this special regime are summarized below:

- Reduced income tax rate of 5% on net taxable income. The withheld tax paid abroad for the service provided to the related companies may be credited; however, the entity must pay a minimum of 2% on the net taxable income and comply with the obligations regarding transfer pricing.
- Exemption from paying dividend tax, complementary tax and branch tax.
- Does not require the use of fiscal equipment and operation licenses.
- The export of services will not cause Value Added Tax. The importation of goods or services will also be exempt from VAT.
- Exoneration of all types of taxes, fees, charges, import duties on any kind of merchandise, products, equipment, and goods in general.

Finally, the Multinational Entity with an EMMA license will automatically enjoy, from the moment of registration, the guarantees in matters of legal stability of the investments, for which company shall

enjoy the same tax and legal system as it did at the time of obtaining the EMMA license for a term of 10 years.

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# Early recovery of vat systems in Peru

In Peru, as in many other countries, the method employed to VAT means that businesses are taxed by deducting from the tax debit (tax on sales or the provision of services, among others) the tax credit (tax on purchases and acquisitions), this is called credit – invoice method.

Due to this formula, taxpayers can only use their tax credit when they have made sales taxed and not immediately, which can be very expensive for those taxpayers who are just starting their economic activities or whose projects require long pre-operational periods.

In this situation, in favor of encouraging and protecting the national and foreign investments in the country, the Peruvian government has create laws for some economic sectors, that exceptionally, may apply for an early recovery of the VAT tax credit, for the purpose of not affect their financial status or take this alternative as an instrument for optimizing their economic flows.

Thus, we can mention some Early Recovery of VAT Systems implemented in the Peruvian Legislation, such as:

1. **In the acquisitions of capital goods of Small Businesses (Law No. 30296)**

   The refund corresponds to the IVA paid in imports and local acquisitions of new capital goods, made by taxpayers whose annual net income is up to US $ 350,000.00 approx.

2. **In activities that generate business income (Legislative Decree No. 973)**

   This Regime includes projects in any sector of economic activity that generates business income, for which, the investment commitment for the execution of the project may not be less than US $ 5,000,000.00 and the pre-productive stage must be equal to or greater than two years.

3. **In mining activity (Law 27623)**

   For holders of mining concessions, who must sign an Exploration Investment Contract with the government. The refund reaches the VAT paid in the execution of its activities during the exploration phase.

4. **In hydrocarbon exploration activities (Law 27624)**

   For companies that sign contracts with the government. The Refund includes the Tax transferred or paid for the execution of exploration activities during the exploration phase.

It is important to mention that, regardless the current context because of COVID-19, the Peruvian government protects foreign investment through legal stability agreements, when the investment is not less than US $ 10,000,000.00 for mining and hydrocarbon sectors, and not less than US $ 5,000,000.00 for the other economic sectors (Law of Legal Stability Agreements - Law 27342).

Finally, the Peruvian government guarantees the right of foreign investors to transfer abroad, in freely convertible currencies, without prior authorization from any state authority, prior payment of legal taxes, the full amount of their capital from their investments and the full amount of dividends or net profits from said investments (Regime of Legal Stability to Foreign Investments - Legislative Decree No. 662).

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# QR CODES and ATCUD: new rules for invoice information

With the objective of minimizing fraud and tax evasion, the portuguese government as issued the Order N.º 412 / 2020.XXII, of the 23rd. October, where it is determined that companies and taxable persons must introduce a two-dimensional bar code (QR code) in all invoices and other relevant tax documents, as from 1 January 2021. The QR code will include basic information of each document issued by the Tax Authority certified billing programs, namely the identification of the stakeholders, the type of document, date, the ATCUD (when it comes into force), the taxable bases, VAT rates and VAT paid , certificate number, and others.

ATCUD is a code consisting of 8 characters, separated by the character "-", followed by the serial number of the document in question, which serves to identify the documents issued by each billing system (means of processing), series of documents and equipment and / or establishment used and communicated to the Tax Authority. For each communication of the billing series (and for each billing establishment), a series validation code is created to be validated by the Tax Authority, which will be part of the ATCUD. All invoices and other relevant tax documents issued in Portugal must have the ATCUD code as of January 1, 2022.

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# Amendments to Romanian Labour Code - ( Law 213 / 30.09.2020)

The most important specifications of the law that came into force on October 3rd, amending and completing the Labour Code, are the following:

- Any Romanian who is interested in being employed, can be assisted at the time of negotiating or signing his/her employment contract, by a person specializing in labour matters. This also applies to cases where contractual clauses may be modified. Accordingly, the employee may even be accompanied, by a representative of the union of which the employee is a member of.
- The parties may conclude a confidentiality agreement at any time during the performance of the employment contract, not only before concluding it, as provided by the Labor Code so far.
- With the introduction of a new article in the Labor Code, each employer will be able to organize its own human resources and payroll. This can be put into effect by the employer undertaking specific responsibilities, by appointing one or more employees (must be written in the job description attribution of HR and payroll) or by contracting external services specialized in HR and payroll (services to be coordinated by an expert in labour legislation).

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# Issues of employment of foreign citizens in Russia during the pandemic

The 2019-2020 pandemic not only affected economic activity in Russia, but also had a very strong impact on the Russian labour market. For the most part, there were problems in recruiting foreign nationals wishing to work in Russia.

The already difficult process of recruiting foreign personnel into Russian companies has been complicated by the restrictive measures against the new coronavirus which have been in place in Russia since March 2020.

At the outset, when the Russian Government published the first regulations restricting hiring foreign personnel, employers could not take any action in respect to their current foreign employees or foreign nationals with whom they wished to enter into employment relations.

Such restrictions caused employers problems renewing permits for employees who were already employed by the company and were in Russia. In some cases this led to termination of employment contracts with foreign employees as the expiration of a work permit is the basis for such termination under Russian labour law.

At present, the employment situation has become a little simpler, but only for foreign nationals with the status of highly qualified specialists. Indulgences have made it possible to extend the validity of permit documents for existing foreign workers who are in Russia without restrictions. Employers also have the opportunity to invite new foreign workers from abroad, subject to certain procedures established by the Russian Government.

Thus, if an employer wants to hire a new highly qualified specialist, he must agree to this with the relevant ministry, which oversees the economic activities of this employer. This procedure covers the process of hiring a foreign citizen, regardless of whether Russia's borders with the prospective employee's country of origin are open or not.

What problems does the employer face when coordinating the prospective employee with the relevant ministry? It is not always clear which ministry to contact in the first place. While for a construction company it is clear which ministry to apply to (the Ministry of Construction), for a company that provides consulting services it is not clear which ministry to apply to at all.

Several factors further complicate the whole process. First of all, it is almost impossible to reach many ministries by phone, and even if somebody answered, most of the employees of these ministries do not know how to work with the current rules covering prospective foreign employees who wants to come to Russia.

During normal times it takes approximately 2-2.5 months to hire a foreign highly qualified specialist. During the pandemic, this period has increased to 3-4 months, provided there are no errors on the part of the relevant ministry.

Despite the fact that Russia has now been hit by the second wave of the pandemic, the Russian Government has not indicated any tightening of the current restrictions for hiring of foreign nationals.

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# New regulations for foreigners who work online from Serbia

The Serbian Labor Minister, Zoran Đorđević, recently announced amendments to the Law on Employment of Foreigners and the Law on Foreigners. The amendments aim at securing higher state revenues from the increasing number of foreigners working online remotely from Serbia for companies based in other countries.

Mr. Đorđević, via Radio Television of Serbia, discussed that the changes are based on the idea that Serbia would be the first country in Europe to make it possible for those who work for foreign companies, and are not Serbian citizens ,to keep doing their job while still living in Serbia.

The new regulations, he added, should start being implemented on January 1. He explained that everyone who wants to live in Serbia and work for companies abroad should prove that:

- they have a gross salary of more than EUR 3,500
- they are employed by a foreign company
- they are not residents of Serbia
- they are foreigners in order to obtain residence and a work permit for a year in Serbia.

*"Thus, they will be able to work and spend money here in Serbia, which is much cheaper than other countries. Our country is safe, there is no racism and we also have a very good social life," Đorđević has said.*

The Minister cited the example of Bali, Indonesia, where 50,000 foreigners work among four million islanders, of which the island has EUR 65 million in revenue per month, or EUR 780 million per year from VAT.

*"I think we can be very similar to them. The forecasts are that by 2035, approximately one billion people will work remotely. With the promotion of our country and tourism, I believe that we will attract foreign citizens to work and live in our country, and thus contribute to the income of Serbia," Đorđević added.*

Team Eurofast Serbia will monitor the start of the above mentioned implementation of the new regulations and will be in position to offer professional advice and assistance to its clients as requested.

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# Spanish new prevention and fight against tax fraud Bill

Last month the Spanish Government announced a draft Bill (which is yet to be presented to the Parliament for its approval) that incorporates measures to fully align Spanish domestic law with the EU ATAD, among other measures. The draft has already been criticized by tax experts, as it includes quite a few alterations to both direct and indirect taxes that have nothing to do with anti-tax evasion.

Here are three of the changes that might take place on 2021:

## Exit Tax

Companies and PE that lose their status as tax residents in Spain must be taxed for the difference between the market value and the tax value of its assets and liabilities. Until now, said payment could be deferred until the date of transfer to third parties when the transfer was to an EU or EEA State with which there is an effective exchange of information.

New measures include that in transfers to the EU or the EEA such tax liability may not be deferred, but paid in equal annual instalments for five years.

## International Tax Transparency (ITT)

In relation to holding companies, two relevant measures are included aimed at the inclusion of dividends obtained through such companies:

Until now dividends and capital gains were not attributed when they derived from a holding of at least 5%, held for at least one year; provided that there were sufficient material and human resources for the management and administration of the holding and the investee was not an asset. This exception is now eliminated, i.e. dividends and income derived from the transfer must be attributed in any case.

The current regime requires the allocation of all income of the non-resident entity when it does not have an organization with material and human resources to carry out its activity. However, in the case of dividends, shares in profits and income deriving from the transfer, the above-mentioned requirements were met. This exception is now also eliminated, so that if the investee entity does not have an adequate organization of material and human means, all its income, including dividends and income derived from the transfer, must be attributed.

## Non-cooperative jurisdictions

The concept of tax havens is replaced by that of non-cooperative jurisdictions. The concept of non-cooperative jurisdiction is expressly provided for as being compatible with the existence of a double taxation agreement between Spain and that jurisdiction, insofar as the resulting tax treatment in Spain is not contrary to the provisions of the double taxation agreement.

The list of non-cooperative jurisdictions shall include or exclude jurisdictions, either according to the criteria of the respective EU or OECD working groups (the OECD Code of Conduct for Business Taxation and the OECD Forum on Harmful Tax Regimes, respectively), or according to the following three criteria:

- The tax transparency of the jurisdiction: the existence of regulations on mutual assistance in the exchange of tax information; effective compliance with the exchange of information; the result of the peer reviews of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes; and effective exchange of information regarding the beneficial owner, defined in the terms of Spanish regulations on the prevention of money laundering and the financing of terrorism.
- If such countries facilitate the conclusion or existence of offshore instruments or companies that attract profits that do not reflect a real economic activity in such countries ("offshore" regimes).
- Low or no taxation in such jurisdictions.

We will see which measures are finally approved...

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# Restricted employee stock - benefit or tax burden for thai employees

Employee stock is now becoming another tool for business entities to use as a means to provide flexibility in terms of decreasing cash flow spending. In areas such as employee wages, especially following the tumultuous year of economic uncertainty due to the pandemic, the ability to increase cash flow flexibility is essential. As a number of companies have tried to continue following their normal routines regarding the financial systems they have used previously, a number of businesses and wider areas of industry have chosen different avenues to remain financially healthy. Despite using funds where they are they needed most, businesses are now choosing to give the stock to the employees in return for the services rendered. One of the forms of stock chosen is the restricted stock. This form of stock creates the awareness of ownership to the employee with the capability to engage the employee and provide long term stability in the core of the business.

While some business owners believe the restricted stock is the solution for cashflow problems, the answer to this dilemma may include more challenges to the cash stream. In these situations, there are some limitations under the applicable Thai tax laws that may make the employer reconsider giving employees access to the restricted stock. In the eyes of Thai law, those granted stock shall be recognized as the employees taxable income and calculated by its par value. This will then be considered as the income gained in the same tax year in which the employees had received those specific stock. The challenge in this kind of stock usually comes with the restrictions being that the employee(s) need to remain in his/her employment and/or suspend its transferability until the timeframe given is lapsed, in which the stock will then be vested. In such a case, where the employee fails to do so, the stock shall then be forfeited back to the company. Unfortunately, unlike other jurisdictions especially OECD's taxation system, the decision guidelines and previous decisions namely the Thailand Commission of Taxation decision No. 28/2538 as well as Thai Revenue Department ruling No. KorKhor 0706/6667 and KorKhor 0706/7560 have directed the tax assessment officer to impose such income tax from the taxpayer based upon the stock par value once it is received by the employee even if the stock may be forfeited in the future. Also, once it is forfeited, the taxpayer will still not be entitled to refund the tax paid previously.

Therefore, the employer should bear in mind that the above decision by taxing such benefits may not prove to serve as an incentive the employee would regularly consider fair. Conversely, the financial impact to the employee negatively effects them as they need to pay for the stock offered to the tax authority for the stock which they are then not allowed to transfer. This action may prove to be one of the factors that will negatively change the employee(s) interest in any employee stock plan offer from the employer. Without widening incentives to make this plan more enticing to employees, the company will then be forced to revert back to the traditional manner of payment to the employees salary. As a result of the tax penalty targeting employees to pay tax on the restricted stock, the business owner shall also consider the alternative incentives such as stock options and other monetary benefits that are able to reward the employee while not putting the burden of being under the tax liability as well as to convince the employee into long term consideration with the company during the crisis and beyond.

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# Corporate tax rate and discount expectations

Many countries try to reduce their tax rates in order to attract foreign capital to their country and implement remarkable incentives in this context.

In a world where competition is so intense, it has become extremely important for them to attract more foreign investors to their countries with tax cuts or changes in tax rates.

Turkey entered into New Corporation Tax Act in2007 with past corporate tax rate which at 33% level, after that date Tax Rate fell to 20% and new tax rate has been applied in a long time as 20%.

However, with a Provisional Article introduced for 2018, 2019 and 2020 and the Corporate Tax Rate was increased to 22 percent which exceeded the expectations of reduction. The Tax Rate increase which was a surprise at that time and negatively affected the business life.

Since the Provisional Article only covers the years of 2018, 2019 and 2020 and 20% corporate tax rate will be applied again according to the current legal regulations for the periods of 2021 and beyond. However, there are reports in the press that the government is working on a new rate in Corporate Tax to be implemented in 2021 and beyond.

In the news that the tax rate will vary between 15 and 18 percent based on turnover criteria; Finally, it is also claimed that a limit of 10 million TL will be imposed on the rates to be applied in this context.

In this context, with the Law Proposal submitted to the Parliament on October 16 and the proposal for a regulation on rate reduction, the President should be authorized to reduce the corporate tax rate from 20 percent to 5 points (ie 15 percent).

We would like to state that the change proposal is welcomed in our country, especially in an economic environment where the effects of Covid-19 are felt extremely.

It is already foreseen that the expected Tax Rate reduction will have positive effects on Foreign Capital Inflow and Tax Competition.

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# Ultimate Beneficial Owners (UBO)

A UBO or 'Ultimate Beneficial Owner' is the person or entity that is the ultimate beneficiary of an Entity. A UBO of a registered company is a person who holds a minimum 25% of the company's wealth, or at least a similar-sized voting power or ownership stake among other shareholders and benefits from receiving minimum 25% of said firm's money.

If no one meets the condition above, then any natural person who has the power to control the company using any other means may be termed as the UBO. In cases where UBO cannot be identified through the two conditions above, then a natural person who holds the highest management position in the company may be deemed as the UBO.

UAE Cabinet Decision No. 58 / 2020 is to be implemented to regulate the minimum obligations of the corporate entities incorporated in the UAE mainland and in the non-financial free zones (each an "Entity") by requiring disclosure at the initial incorporation/ registration stage, and maintenance thereafter, of a "Register of Real Beneficiaries" and "Register of Partners or Shareholders" (the "Registers").

The Registers will be required to be filed (and updated to reflect changes as and when necessary) with the relevant registrar and licensing authorities responsible for supervising the register of commercial trade names registered in the UAE (the "Registrant").

The filing deadline of the Registers is sixty (60) days from the date of publication of the Decision i.e. 27 October 2020 or at the time of incorporation/ registration of a new Entity. Any changes to the information contained therein must be updated within fifteen (15) days.

For the purposes of the Registers of Real Beneficiaries a Real Beneficiary shall be:

1. Whoever owns or ultimately controls an Entity through direct, or indirect ownership, at least 25% of the Entity's share capital, whoever holds 25% or more of the voting rights, or whoever has ownership powers through any other means (i.e. the right of appointment or dismissal of most of the Managers).
2. If no Real Beneficiary fits the criteria above, or there is any doubt over who has final controlling say, the physical person who exercises control over the Entity through other means shall be the Real Beneficiary.
3. If no physical person is determined, the Real Beneficiary shall be the physical person who holds the position of the person in charge of Senior Management.

A Real Beneficiary can be made up of more than one person i.e. where more than one person participates in the ownership or control they shall all be dealt with as owners and controllers.

Every Entity must take reasonable measures to obtain appropriate, accurate and up-to-date data for the Registers and preserve its records from damage, loss or destruction. They must also appoint an individual point of contact (resident in the UAE) and provide the details of that contact to the Registrant.

The Decision details the data to be collected and entered on each respective Register. Any additional data requested by the Registrant shall need to be provided by the deadline specified in the data request.

Entities in a regulated market, in a state of dissolution or liquidation are subject to adjusted filing requirements under the Decision.

Any case of a violation to the provisions of this Decision can result in the Minister of Economy or the Licensing Authority imposing one or more sanctions.

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# Commercial contracts: Brexit checklist

The United Kingdom (UK) left the European Union (EU) on 31st January 2020. However, although the UK is no longer a member state of the EU, European legislation continues to apply in the UK until 31 December 2020 (the Transition Period). Therefore, the question is what will happen when the transition period comes to an end, i.e. after the 31.12.2020 or effective exit date (EED).

We set out below key issues which should be considered when the parties to a commercial contract negotiate its terms in light of the potential impact of Brexit.

- TERRITORIAL SCOPE: frequently, a key right in a contract is limited by reference to a specified territory. For instance, a licensing contract, in which an industrial property owner allows another party to use that industrial property within limited geographical region. If that geographical limitation is described in the contract as the European Union, would the rights to operate in UK fall away after the transition period?

  To avoid the uncertainty, it is advisable to reflect on the contract whether upon the exit of UK from EU that license is to continue to operate in the UK and under which conditions.

- CURRENCY FLUCTUATIONS: evaluating the impact of Brexit on the foreign exchange rate between Sterling and other currencies is one of the challenges to be managed, especially for business involved with exports, imports or that make deals in foreign currency. A price adjustment clause, could mitigate the exchange rate risk.

- TRANSFER OF PERSONNEL: free movement of workers is a fundamental principle of the Treaty enshrined in Article 45 of the Treaty on the Functioning of the European Union and developed by EU secondary legislation and the Case law of the Court of Justice. The parties to a contract should consider the impact of the end of freedom of movement after the EED.

- INCREASED TRADE BARRIERS: it is advisable for the parties to a contract to calculate the business increased costs as a result of the implementation of new trade barriers which may be incorporated after the EED, and negotiate the position under the contract accordingly.

- ENFORCEMENT OF FOREIGN JUDGMENTS: pursuant to current European regulations, decisions made by a court of a EU member state are automatically enforceable and recognised in other EU member states. After the EED, the decisions made by UK courts will no longer benefit from automatic recognition and enforcement and would trigger uncertainty and to incur in costly & prolonged enforcement proceedings. This risk must therefore be factored by the parties when negotiating a contract.

## DRAFTING FOR BREXIT: BREXIT CLAUSES (BC)

Brexit is already affecting ongoing commercial relations. However, its true impact is still uncertain. One way to minimise such impact when drafting a commercial contract is to establish consequence clauses to the specific impact that Brexit might bring.

The party who invokes a BC will have to demonstrate that the adverse impact was a consequence of the specific event of Brexit. Proving an increase cost as a result of imposition of tariffs in the movement of goods would be easy. However, demonstrating that a change in emigration legislation has increased labour cost may be more challenging.

The parties should decide whether the BC could be alleged whenever a party suffers the negative impact, before or after the EED and specify an end date after which the clause cannot be invoked given that Brexit effects can expand for a considerable long period.

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# The CGT Gamble

The British government has provided a lot of support for businesses and individuals during the pandemic, but potential measures around Capital Gains Tax to recoup some of the money, may impact you. So what can you do to limit your losses with prudent Capital Gains Tax planning.

They say forewarned is forearmed, and that is most definitely true in the world of tax. For example, if you complete your self-assessment tax return on the 6th April, you at least know what you'll need to stump up, even if you don't pay it until the 31st January the following year. Hands up, anyone, who does their return on 6th April!

## Seeing the potential

With the way Covid has shown itself to be 2020's most unwelcome visitor, and all the support the government has put out there, there's a lot of rumours around the fact that Capital Gains Tax ("CGT") may be one of the areas the government is looking at, to claw a bit of capital back from the taxpayer.

It's an area that doesn't always impact too much on the general wider public and this is why it may be seen as an "easy win" for the Government. But, in the same way as doing that tax return on the 6th April is actually a good idea, so is sitting down and looking at your Capital Gains Tax situation to see whether there is anything you can do now to mitigate potential future changes.

At the moment, the Capital Gains Tax-Free Allowance is £12,300, which means any reported gains are not taxable up to this threshold. Above this level however, tax rates are considerable. If you are a higher rate tax payer, the tax rate for non-residential property and most other assets (excluding cars) over £6,000 is 20% and for residential property the rate is 28%.

## High impact

We are dealing with unknowns here, but if the government were to increase Capital Gains Tax for residential properties from 28% to, say, 40% – and I do believe it could be a double-digit increase – it's going to have quite an impact. If you run the numbers on, for instance, a £100,000 gain on a second property, this could result in another £12,000 of tax to pay.

I would always advise that individuals sit down with their accountant or advisor and look at what their financial position is now and how exposed they could be to any changes in the future, before it becomes too late. It may drive your decision to sell a particular asset sooner rather than later.

It's not a question of panicking, but of preparing. By mapping out your financial position and determining what assets you own, including properties, investment portfolios and shares – you may be able to mitigate the risk of any hikes in Capital Gains Tax by better structuring your future plans.

Although there is no concrete evidence that Capital Gains Tax will go up as a result of this pandemic it's always sensible to think ahead and begin planning now.

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