INTERNATIONAL BUSINESS

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Antea 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 Antea have the knowledge and experience to help you on your journey, and this issue should be the starting point for your inquiries.

Features of this edition include:

Europe's aim to enhance tax transparency and combat aggressive tax planning, Cryptocurrency taxation in Hungary, Colombia's electronic invoice and Ecuador's investment law among other topics.

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

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The electronic invoice

Beyond a digital document

In the development of our profession it is likely that each of us had heard or had a relationship with the electronic invoice, in some countries more than in others the electronic invoice has had an important development and it can be foreseen that the vast majority of countries will continue advancing towards its overcrowding or mandatory application, the above taking into account inherent benefits to this type of document such as: The savings that its emission implies for the companies, management and filing, environmental benefits, the security that these documents have and of course the advantages that the electronic invoice represents for the tax authorities in the control of income and tax evasion, since they receive the information of the taxpayers in real time.

In Colombia, electronic invoice began to be regulated since 2007, from there some large companies with high volumes of invoices began to implement this model voluntarily, the regulation related to this billing model has continued to advance. In this way, as of this year, all the big companies of the country will have to implement the model, and during the year 2019 all the companies responsible for the sales tax will be obliged to invoice electronically. The law contemplates some exceptions in the implementation schedule, however the implementation project seeks that within a couple of years until the natural (physical / moral) people, use this model.

As it was previously highlighted, it is logical and foreseeable that the implementation of electronic invoicing as the only billing model will be massified worldwide. The statement although it should be based on altruistic purposes such as the environmental impact that implies the replacement of paper as a support element in fact, it is based on absolutely practical elements for tax administrations, such as income control and tax evasion.

Tax evasion in the Latin America and the Caribbean region reaches figures ranging from 20% to 40% in an aspect as important as the sales tax, according to a study carried out by the Economic Commission for Latin America and the Caribbean – ECLAC [1], a clear sample of the effectiveness of electronic invoicing as a means of control are Brazil or Mexico, in the first country, in a very short time the evasion step from 32% to 25%, as for Mexico, the control to the evasion, which has a fundamental element in electronic invoicing, has achieved a reduction from 31.9% in 2011 to 16.4% in 2016.

Beyond the advantages of electronic invoicing as a means of fiscal control and others, this model contains elements that can significantly change the work of accountants and auditors, the technological platforms that support the issuance and receipt of invoices have the possibility that all the information inherent to the invoice can be processed automatically by the ERP or accounting software. This possibility although initially it is foreseen for the information of the invoices issued by the entity, there is no doubt that it can be adapted to process all the information of the invoices that an entity receives from its suppliers, in this way, a large part of the accounting and tax information of a company would have an automatic input, which would substantially reduce the accounting process as a manual element.

This imminent possibility of automating information, which has been a central theme of the latest Auren and Antea conventions, which I have been a part, brings with it an invitation to rethink our work, using these changes as an opportunity for growth through the optimization of the times and processes that can generate being at the forefront in the use of information technologies, or otherwise, could imply, being relegated to these changes.

[1] *Economic study of Latin America and the Caribbean 2016 - ECLAC*

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Cyprus updates DTTs and protocols; signs new ones

During 2017, and the first quarter of 2018, various double tax treaties' (DTTs) developments have taken place in Cyprus, with a number of new DTTs, protocols and amending protocols being signed and coming into force.

The list of countries with which Cyprus maintains DTTs currently stands at 63 which is a significant number for such a small island as Cyprus.

Specifically and most recently, new DTTs have been signed with Saudi Arabia (on January 3, 2018) and the UK (on March 22, 2018). Both treaties are expected to enter into force in 2019. The beginning of 2018 marked the entry into forces of DTTs signed earlier with Barbados, Iran and Jersey.

New double tax treaty with the UK

The new DTT which was signed between the UK and Cyprus will be replacing the existing DTT between the two countries which has been in effect since 1975 (as amended in 1980). The new DTT provides for the following:

- No withholding tax on dividends, with the exception of dividends which are paid out of profits resulting of investment vehicles which distribute most of their income annually and whose income arises from immovable property exempt from tax
- No withholding tax on interest and royalties, provided that such payments are considered to be at arm's length transactions
- Capital gains tax arising on the sale of immovable property (directly or indirectly) is paid in the country where the property is situated.
- Tax on pensions is paid in the country where an individual is considered to be a tax resident (certain exemptions apply)

The new DTT also includes a limitation of benefits provision/principle purpose test in accordance with the minimum standards of the BEPS project.

DTT with Saudi Arabia

The DTT signed between Cyprus and Saudi Arabia entails the following significant provisions:

- No withholding tax on dividends provided that a minimum 25% participation exists. In all other cases a 5% withholding tax will be applied
- No withholding tax on interest
- Withholding tax ranging between 5% and 8% on royalties
- Capital gains tax arising on the alienation of shares is paid in the state where the seller is resident provided that the minimum 25% participation test is met at any time within twelve months prior to the disposal of the shares

Barbados DTT

The DTT between Cyprus and Barbados came into effect on 1 January 2018 and provides for no withholding tax on dividends, interest, and royalties.

San Marino new protocol

The main changes introduced by the signing of the new protocol between Cyprus and San Marino relate to exchange of information procedures between the two counties.

The new and revised double tax treaties concluded by Cyprus enhance the pathway for investments into those countries. New DTTs and changes to existing DTTs can have a significant impact on existing structures in such countries. Our team can assist you in reviewing such structures and advising you on necessary changes.

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The Implementation of Biggest tax Remission of the last 10 years

The *Increase Production and Investment Law*, which aims to increase the **national production and investments**, has been approved by a vast majority of the Ecuadorian congressmen the last June 21. Overall, seeks to bring afloat the devastated Ecuadorian economy with the immediate and direct application fiscal measures in short-term. Moreover, it also contains several tax incentives for the small, medium and big taxpayers.

The new economic law does not evidences intentions to increase tax recaudation, on the other hand with the remission of interest, fines and surcharges, large taxpayers will benefit. **Current taxpayers are able to take in the remissions of VAT, Income tax depending of the company's incomes**. Thus, the term for companies with incomes over 5 million yearly will be three months; and for those under that amount will be two years from the publication of the law. **Conditions:** it is mandatory to pay the totality of the owed capital, submit formal withdrawals of judicial, non-judicial, administrative, constitutional or arbitral actions.

In addition, the Tax Administration System (Servicio de Rentas Internas) will approximately collect 774 millions from the remission, according to the own Ecuadorian government. Furthermore, the remission **extents to debts contracted with other eleven public institutions** such as GADs (regional administrations), IESS (national insurance system) and all the public services provided by the central administration.

The second pillar of the law implies **exonerations in the income and foreign exchange outflow taxes** as remedy to attract new private investments. Hence, exonerations **may be applied to new investments established outside of Quito and Guayaquil**, this measure attempts to decentralize the productive and industrial sector which lack of strength in the small ecuadorian counties. Furthermore, new investments established in the industrial sector may benefit from a **ten year exoneration** in the income tax. Such measures are aligned with exonerations to the *foreign exchange outflow* tax in importations of raw material and capital goods destined **to start-up new investments.**

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Mandatory disclosure for intermediaries

On 13 March 2018, the EU Economic and Financial Affairs Ministers adopted the European Commission's proposal of June 2017, amending Directive 2011/16/EU. The amendments are in regards to mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements in order to disclose aggressive tax planning arrangements. The aim of the Directive is to enhance tax transparency and combat aggressive tax planning.

Intermediaries or taxpayers will have an obligation to report details of their arrangements if any one of the hallmarks detailed in the Directive are triggered. Member States will need to transpose the Directive into their national legislation by 31st December 2019, while the first reporting is expected in 2020. Penalties for non-compliance will exist. Below we analyse details of the Directive.

Who has an obligation to report?

The obligation of disclosure concerns natural and legal persons who are identified as intermediaries. In the case where an intermediary is not used, or where the intermediary is located outside the EU, the obligation to disclose falls on the taxpayer.

The term intermediary is explicitly defined in the Directive as "any person that carries the responsibility vis-à-vis the taxpayer for designing, marketing, organising or managing the implementation of the tax aspects of a reportable cross-border arrangement, or series of such arrangements, in the course of providing services relating to taxation". The definition goes on to clarify that an intermediary also means any such person that undertakes to provide - directly or by means of other persons to which it is related - material aid, assistance or advice with respect to the above mentioned activities.

When is reporting necessary?

A cross border arrangement is reportable if it meets one of the hallmarks defined in the Directive. The hallmarks are divided into general hallmarks and specific hallmarks, and the ones which fall within category B of the Directive will only be triggered if the main benefit test is met, whereby the main purpose of an arrangement (or a series of arrangements) is to obtain a tax advantage.

The Category B hallmarks include (i) arrangements where the taxpayer uses losses to reduce tax liability, including transfer of those losses to other jurisdictions; (ii) conversion of income into capital, gifts or other types of income which are taxed at lower tax rates; and (iii) the use of interposed entities with no real commercial function through which funds are round tripped and/or cancelled off.

The remaining hallmarks which trigger reporting are split into various categories as listed below:

CATEGORY A - GENERAL HALLMARKS

1. When the involved taxpayer undertakes a confidentiality condition which may require them not

to disclose how the arrangement could secure a tax advantage in relation to other intermediaries or tax authorities

2. When the intermediary is entitled to a fee which is fixed to either the amount of tax saving or to whether a tax advantage is achieved

3. When standardised forms which do not require to be tailor-made are used

CATEGORY C - CROSS-BORDER TRANSACTIONS

4. Deductible payments between related parties when no or low (i.e. half than standard EU tax rate) tax is paid in the country of the receiving party

5. When payment benefits from tax exemption or preferential tax regimes

6. When hybrid mismatches exist

7. When the same asset is allowed to be depreciated in more than one jurisdiction

8. Double taxation relief claimed in more than one jurisdiction

9. There is a transfer of assets with a material difference in the amount treated as payable in consideration for those assets in the jurisdictions involved

CATEGORY D - SPECIFIC HALLMARKS CONCERNING AUTOMATIC EXCHANGE OF INFORMATION AGREEMENTS IN THE UNION

10. Use of jurisdictions which are not bound to automatic exchange of information

11. Reclassification of types of income to avoid automatic exchange of information

12. Use of legal entities or structures which are not captured by automatic exchange of information

13. Use of jurisdictions with weak enforcement rules in relation to anti-money laundering procedures, including jurisdictions with lack of rules for identifying beneficial owners

CATEGORY E - SPECIFIC HALLMARKS CONCERNING TRANSFER PRICING

14. Arrangements which do not conform with arm's length principles or with OECD transfer pricing guidelines

15. Arrangements which fall within the scope of automatic exchange of information on advance cross-border rulings but which are not reported

What information is reportable?

The information will be reportable using a standard format which is to be developed by the Commission (expected by the end of 2019) and will include, amongst others, details on the intermediary, the hallmark met, the taxpayer involved, and the tax sche-

me. The competent authority receiving the reported information will exchange the information with the involved Member States under automatic exchange of information on an annual basis.

When will reporting be due?

Reporting will be due within thirty days from the day after the arrangement (i) was made available for implementation, (ii) was made ready for implementation or (iii) when the first step for implementation took place, whichever occurs first.

Timing and Penalties

Member states have an obligation to transpose the Directive into their local legislation by 31st December 2019, whilst the first reporting should be made between Member States by 31st October 2020.

The proposed legislation leaves it to Member States to lay down the penalties applicable against the violation of the national rules that transpose the Directive into local legislation. Member States are expected to take all measures necessary to ensure that the penalties shall be effective, proportionate and dissuasive.

Conclusion

The Directive is expected to have a significant impact on information exchanged between Member States. As the Directive can be broad in many of its provisions, guidelines are expected to be issued before the entry into force date. We will closely follow any

further developments and will issue further alerts on this subject.

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Establishing a company in Germany (GmbH versus UG)

In Germany, two frequently encountered forms of capital companies are the GmbH, or limited lia-bility company, and the UG, or entrepreneurial company.

In our capacity as tax consultants, we advise, support and accompany our clients seeking to establish a company in Germany. Often, our clients inform us of their plan to found a UG in Germany during our first discussions. However, in most cases, the UG is not the most suitable legal structure for en-tering the German market. Dedicated to preventing our clients from making unsound decisions, we instead recommend that they establish a GmbH rather than a UG.

The following are the seven leading reasons for not establishing a UG:

1. Negative Image

The minimum capital need for establishing a GmbH is 25,000EUR, while the minimum capital needed for establishing a UG is a mere one EUR. Founding a UG creates the risk of signally to po-tential business partners that that you do not have sufficient liquid funds to found a GmbH. This can undermine the trust in your company that you need from clients and customers. In effect, form-ing a UG is the worst form of negative advertising.

2. Individual Provisions in the Articles of Association

For financial reasons, the founding of a UG usually takes place using a simplified process provided for by statute. It should always be born in mind that whenever there are two or more shareholders in a company, provisions for individual protections are imperative. Such provisions include voting rights, compensation and succession arrangements in the event that a shareholder leaves the compa-ny and policies in the case that a shareholder passes away.

However, individual provisions cannot be included in a UG's articles of association when the statu-tory simplified process for founding a UG is used. By creating individual articles of association for the UG, which are usually necessary, the owners lose the cost advantages of establishing a UG ra-ther than a GmbH.

3. High Risk of Insolvency

Establishing a company and launching business operations involves numerous costs, such as adver-tising, acquisitions of technical systems and/or inventory, and additional start-up expenses.

If the share capital of the UG amounts to merely the minimum one EUR, the company will not be able to bear these start-up costs. The UG will already be over-indebted by the expenses incurred from its initial formal founding costs and accompanying notary fees. To avoid personal financial or legal liability in the event of excess debt or insolvency, the managing director must immediately declare legal insolvency.

However, when a UG is over-indebted, the shareholders will usually grant it a loan and declare sub-ordination. These loans could have been better invested directly into the share capital of a GmbH.

4. The UG is Merely a Transitional Form

The UG is designed to be transformed into a GmbH at a later point in time. Every year, 25% of its profits must be deposited into revenue reserves. As soon as the revenue reserves, together with the original share capital, have reached the amount of 25,000EUR, the UG can be converted into a GmbH. If, however, the UG is not converted into a GmbH, the UG must continue to deposit 25% of its profits into revenue reserves every year. The revenue reserves may not be used to distribute profits, something which, in the long run, will lead to an undesired capital accumulation and stagna-tion within the UG.

5. Notary Fees and Setup Costs are Not Lower in the Long Run

At first glance, the notary and registration fees for establishing a UG appear lower than those for a GmbH. However, this impression reflects a very short-term perspective. Eventually, the UG will be converted into a GmbH. Upon conversion, an auditor must review the annual financial statements, which entails additional auditing costs. Moreover, there will be additional notary fees for certifica-tion as well as expenses for the registration of the GmbH in the German Commercial Register.

6. Problems With Subsidies

In our experience with our clients, we have found that some funding bodies are not willing to work with a UG. If the company does not want forgo its access to subsidies, the UG must be converted into a GmbH before applying for subsidies.

7. No relief in the taxation procedure

Often, our clients believe that a UG would enjoy facilitations in the taxation procedure or financial reporting relief. However, this is not the case. There are no special regulations providing for simpli-fied or expedited management of a UG, which must adhere to the same standards as a Gmbh re-garding preparing annual financial statements for publication in the Federal Gazette and filing tax returns for corporate, commercial and value added taxes. In addition, liquidation is neither faster nor easier for a UG, as the same rules for liquidation apply to both a UG and a GmbH.

Conclusion:

In most cases, and after discussing the issue with us in detail, our clients decides to establish as a GmbH. Furthermore, registering as a GmbH in the Commercial Register costs a minimum of at least half of the share capital, or 12,500EUR. Our clients that have decided to establish as a GmbH are very sat-isfied with their decision.

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Separate taxation of married individuals with different residency

Following the decision of the Greek court, it is now possible for spouses to submit separate individual annual tax returns depending on their tax residency. This decision comes as a solution to the problem of married couples who live separately due to various reasons, such as when one of them lives abroad due to professional engagements.

Until now, it was mandatory for the couple to submit one tax return (typically in Greece) and to report the family's global income. If one member of the family was living in Greece, it made it mandatory for both to submit a tax return in Greece, as having a family member there was consider to mean having a vital interest in the country.

In order for a married person to transfer the personal tax residency abroad, he/she has to present to the tax authorities documents concerning the relocation until the 10th of the March of the year following the one during which the relocation took place.

Such documents include, among others, the proof of a bank account, employer's certificate, rent or purchase agreement for a home, as well as TIN (or V.A.T. number) in the foreign country. Once the documents are submitted, the tax authority is obliged to respond within 2 months. If the response is affirmative, the individual's tax file is transferred to the relevant tax authority for residents abroad. In cases when the decision is negative, the individual has the right to appeal to the Administrative Court of Greece.

We advise individuals with tax residency abroad to examine the new opportunity and take the necessary steps to ensure compliance. Eurofast's Athens office is at your disposal and is ready to provide assistance in regards to this matter.

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Virtual currency taxation in Hungary

Like many other tax authorities, the Hungarian National Tax and Customs Authority ("NAV") does not have a clear and settled regulation to handle the taxation of cryptocurrency transactions. One clear consensus is sure: if you spend or invest in bitcoin or any other cryptocurrency, it is important to understand how such transactions are treated for tax purposes in Hungary.

First of all, to this day we do not have a legal definition or category for Bitcoin and cryptocurrency in the Hungarian legislation. The only thing that we surely know, that cryptocurrency is not

- official money
- security (proof of ownership)
- stock exchange product (share)
- physical movable property
- Intangible asset.

In Hungary, due to the fact that there is no express legislation regarding cryptocurrency, neither is it acknowledged as an official currency, the current topic is subject to heated debates up to date. Bitcoin can be a 'payment instrument', or at least that was the conclusion reached by the European Court of Justice, when it examined the nature of the cryptocurrency from a VAT perspective and decided that transactions carried out with bitcoin are VAT-exempt. This applies in Hungary, too.

For undertakings and individuals, however, other taxation aspects are equally crucial when dealing with this new, trendy payment instrument. In Hungary, NAV issued public statement guidelines, as there is no directly applicable definitive legislation as regards to the taxation matters. Cryptocurrency is not handled as traditional currency under the current national legislation, on one hand, because it has no official issuer, on the other, cryptocurrencies exchange rates are influenced by the users real deposited payments and do not have an official exchange rate confirmed by MNB (the Hungarian National Bank).

Taxation after „Bitcoin Mining": if a natural person obtains cryptocurrency on the internet through a mining software, the standpoint of NAV is that this activity is an independent activity resulting in profit, subject to taxation. This profit consists of the market value of the mined Bitcoin (calculated based on the exchange rate expressed in lawful official currency) at the time of mining. This counts as an income from independent activity according to the Income Tax Act. The location of the profitable activity is the country where the individual is tax resident. According the Income Tax Act, expenses (e.g. value of the software) which are generated in relation with the activity, can be accounted.
As regards to the tax rates after „Bitcoin Mining", the individual is obliged to pay 22% for health care contribution according to act LXVT of 1998 on Health Contribution and 15% as personal income tax according to the Income Tax Act.

What are the differences when the bitcoin mining is made by a registered individual entrepreneur? In this case, the income resulting from bitcoin mining constitutes as contractor's proceeds, which can be accounted for as the contractor's personal income (taxed with 9% personal income tax) and according to the valid tax regulations it is possible to deduct from the turnover taxes all the expenditure invested. However, the gains are also subject to tax payable after dividend (15 %) and health care contribution (14%).

Taxation of Bitcoin profit resulting from exchange to official currency: under Hungarian Law, the profit realized from the exchange of purchased Bitcoin to official currency is taxable as „other income", due to the fact that other tax forms (e.g tax after shares) cannot be applied to cryptocurrencies. The so obtained income is charged with 15 % Personal Income Tax and 22% Health Contribution payable by private individuals.

Bitcoin can be exchanged at any time to another traditional currency (e.g.: Euro, US dollar), furthermore, as a remarkably rising trend it can be used for payment (for a taxi, in the restaurant, etc.) in several places in the US and countries welcoming the crypto world, which is another advantage of exchanging Bitcoin. As result, an individual is likely to generate more official currency than at the time the Bitcoin was purchased. It shall be pointed out – bitcoin and other cryptocurrency cannot be handled as a 'real' currency to this day under Hungarian legislation.

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Welcome to Israel - Tax Benefits for New Immigrants and Returning Citizens

Israel is renowned throughout the world for the generous benefits it offers new immigrants. However, the vast quantity and variety of these benefits can prove overwhelming and confusing once a prospective immigrant begins studying all the brochures and guides to their new lives in Israel.

Even Israelis returning to Israel after living abroad for a number of years are unable to obtain a clear picture of the benefits and subsidies to which they are entitled. This article will present the issues of immediate importance to *olim* and returning citizens.

Those entitled to tax benefits are:

1. *Oleh*: A new immigrant to Israel;
2. Returning Israeli Citizen: An individual who returns to Israel after having lived outside of Israel continuously for at least 10 years, thus having ceased to be an Israeli resident. Such individuals are entitled to the same benefits as an *Oleh Chadash.*
3. Special Category: Individuals who returned to Israel during the years 2007–2009 are treated as Returning Israeli Citizens even if they lived outside of Israel continuously for at least 5 years rather than 10 years.

The main benefits for new immigrants and returning citizens are as follows:

Private and Business:

10 years exemption from paying tax on incomes drived outside of Israel including passive income, such as: dividends, interest, rent, royalties and pensions generated by assets held overseas, and capital gains from the sale of assets located abroad;

10 years exemption from declaring on foreign sources: Income entitled to tax benefits for new Israeli residents includes business incomes generated by assets held overseas and vocational and labor income, such as: salaries and income from activities of an independent nature generated abroad.

Company:

Companies established abroad and owned by an Oleh or a Returning Israeli Citizen there are also 10 years exemption from being defined as a resident Israeli company. The meaning is that their company will not be considered as an Israeli company for taxation purposes for that period of time.

Also:

An Option to be considered a foreign resident for taxation purposes for one year after arrival.

Three and a half years of tax credits, with an option for an extension.

These credits are broken down as follows:

First 18 months after immigrating to Israel (making *aliyah*): three additional tax credit points, amounting to a tax reduction of 645₪ per month or 11,610 ₪ for those first 18 months.

For the following 12 months: two additional tax credit points, amounting to a tax reduction of 430₪ per month or 5,160₪ for the year.

Another 12 months: one additional credit point, amounting to a tax reduction of 215₪ per month or 2,580₪ for the year.

In Addition: additional reductions are available for parents of young children, working mothers, discharged soldiers and others under specified circumstances.

Other benefits provided to new Israeli citizens by the Israeli government:

Absorption Basket *(Sal Klita)*: Financial assistance provided by the Israel Ministry of Immigrant Absorption *(Misrad Haklita)*.

Rental Assistance: The Ministry of Housing *(Misrad Hashikun)* offers new immigrants *(olim chadashim)* rental assistance starting from the eight month after making *aliyah* to Israel.

Health Coverage: The National Insurance Institute *(Bituach Leumi)* provides free basic coverage in any health fund *(Kupat Cholim)* of an individual's choice for the first year after making *Aliyah*.

Municipal Property Tax *(Arnona)* **Discount:** all cities and towns in Israel charge municipal property taxes *(arnona)* to renters and property owners. *Olim* are customarily granted a discount of 70–90% on *arnona* payments for up to 100 Sq. meters of a property.

Hebrew *Ulpan*: Free Hebrew language *Ulpan* courses, available in many locations throughout Israel. A standard subsidized *Ulpan* course meets five days a week, five hours each day and lasts for five months.

Subsidized University Tuition: *Olim* and other qualified candidates up to the age of 23 can receive assistance for a one year university preparatory course *(mechina)*.

Customs Benefits: *Olim* are allowed to bring appliances and household goods from any country tax free.

Mortgage Discount: *Olim* are entitled to interest rates lower than the market rate for up to approximately 150,000₪.

Free Flight to Israel: New *Olim* arriving from North American are eligible for a free flight to Israel on an El Al flight from any El Al North American hub when making *Aliyah*.

Free Transportation from Ben Gurion Airport: *Olim* receive a free taxi from Ben Gurion Airport to their first destination after making *aliyah*.

Customs Benefit for a Car Purchased or Imported: *Olim* pay a reduced tax rate on the purchase of a new car in Israel or on the import of a car from abroad.

Maximum Sum of Money *Olim* can Bring to Israel: The maximum amount of cash that an *Oleh* can bring into Israel is 1,250,000₪ (the total sum in the reporting person's possession). Sums of 50,000₪ and above need to be reported.

Immigration and repatriation involve a thorough preparatory process and our team of experts will be pleased to help with your first steps in Israel.

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GDPR in Italy, a long journey just started

Since 25 May 2018, the Regulation (EU) no. 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the so called "GDPR") has become applicable across all the EU Member States and all national legislations should comply with it.

Despite its main purpose is clearly to ensure *"a consistent and homogenous application of the rules"* in data protection, however, it seems that there is still a long way to go before reaching a certain consistency, within not just the EU but even each Member State. Just look at Italy.

On the end of October 2017, the Italian Parliament demanded the Government to adopt a proper decree amending the Italian Privacy Law (so called "Privacy Code") in accordance with the GDPR; and indeed, the Italian legislation – that was a successful implementation of the Directive no. 95/46/EC on data protection – needed substantial revisions to be compliant with the new European law. The given term elapsed on 21 May 2018.

The first months passed away without any update, while the end of March brought, though informally, a first draft of the legal text. And despite the Parliament required just amendments to the Privacy Law (and to abrogate exclusively those parts that were conflicting with the GDPR), the text proposed the abrogation of the whole Privacy Code.

Obviously, two main fronts immediately arose – one favourable and the other contrary to such approach –; but, quite surprisingly, both grounded their reasoning *"according to the GDPR"*. Each party knew that Italian legislation shall comply with the GDPR but again each party had its (most effective) solution to meet the provisions of the Regulation.

Basically, the GDPR was – and probably is still – perceived more like an abstract idea on which speculate rather than a body of law whose scope is to enhance people's lives strengthening the rights and freedoms of natural persons about the processing of personal data as well as removing obstacles to flows of such data in Member States.

After almost one month of discussion, then, on 10 May a new – and official – draft came out, totally changing the perspective: the Italian Privacy Code was eventually intended so survey despite the requests of major changes.

Following Parliament instruction, then, the Government immediately transmitted its formal proposal to the Parliamentary Commissions and to the Italian Supervisory Authority (so called Garante Privacy) for their opinion.

To complete the procedure, an extension of the term was agreed until 21 August 2018.

The procedure is now going further and hopefully the new term won't elapse unsuccessfully; but it is still unclear which will be the framework at its end. Substantial revisions have been requested by the Garante Privacy and the Parliamentary Commissions. Further-

more, the latter requested to consider the possibility to set a period of at least eight months in which the Supervisory Authority should not combine fines in case of violation of the law but just warn the infringers.

So far, two months after 25 May 2018, in Italy there are: the GDPR which is fully applicable; the Italian Privacy Code though it is unclear which part are applicable; a draft concerning the implementation of the law; the request to set a considerable grace period. A mix that does not properly match with the intent of the European legislator to ensure a consistent and homogenous application of the rules.

That has been told, in the next future data subjects, companies, lawyers and consultants will have to face – even more than today – an uncertain framework and (un)expected challenges to be compliant with the legislation. But this could be just an opportunity for everyone to go to the heart of the matter and find the efficient way to meet the requirements set by the law rather than adopt standard solutions. As told, a long journey just started.

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Intra Group Services. OECD guidelines and Mexican framework

Basic Framework

General speaking, Mexican Regulations keep the pace to OECD´s Transfer pricing guidelines in most of the basic issues regarding services provided by one or more entities within a Multinational Group (MNG)[1].

There are two main issues regulated by transfer pricing provisions regarding services provided:

- That services have in fact been provided
- That price charged for such intra-group services should be in accordance with the market (arm´s length principle)

The first category must be able to go through the Benefits Test that claims that the services rendered must add economic or commercial value. This can be determined by considering whether an independent entity would have been willing to pay for it or would have performed such activities by itself. If the answer is negative in both positions, no intra-group services should be considered.

The second issue focus on the assumption that the amount charged for the services
are similar to the amount charged for independent providers under similar circumstances.

There are a wide scope of services provided for members of a MNG: Administrative, Technical, Financial, Commercial, etc., however, many of those services are available externally from independent entities so it is possible to the tax authorities to get enough external information to compare either type of services and pricing.

Transfer pricing guidelines issued on July 2017 [2] aims to offer a more detailed technical argument describing some different types of services and then the best procedure for pricing them. Above we discuss about this topic.

Low Value Services (LVS)

For the first time, OECD Guidelines provide us with a framework about a "low value services" category for applying the "simplified approach".

LVS are defined as services performed by one or two MNG members which the following characteristics:

1. Are of supportive nature
2. Are not part of the core business of the MNG
3. Do not require the use of unique or valuable intangible
4. Do not involve the assumption of substantial or significant risk for the service provider

In this sense, the following drop list gives us examples of services that likely meet the definition of LVS3:

- Accounting and auditing
- Processing and management of accounts receivable and accounts payable

[1] *Mexican Income Tax Law is not abundant on regarding the transfer pricing regulations. Supportive material is contained on Articles 179 and 180. Article 179 refers to the OECD Transfer Guidelines as a main source for proper interpretations.*

[2] *Services is the most audited topic for tax jurisdictions for transfer pricing matters.*

- Human resources activities (staffing, recruitment, training, remuneration services
- IT services

On the other hand, from OECD perspective, the following activities would not qualify for the simplified approach outlined in this section:

- Services constituting the core business of the MNG
- R&D Services
- Manufacturing and Production services
- Purchasing activities related to raw materials or others used in manufacturing
- Sales, marketing and distribution activities
- Financial transactions
- Extraction, exploration or processing natural resources
- Corporate senior management

This simplified approach of pricing LVS ends up with a 5% mark-up applied over the relevant costs. This methodology is quite similar to that used on Mexican Maquiladoras and it is well known as a “Safe Harbor”.

Although many regulations do not contain a specific ruling about the 5% discussed before, references made by local regulations to such OECD Guidelines and the wide open acceptance of this position by tax authorities may provide us with enforceable legal support in case of its application.

[3] We must bear in mind that a proper analysis must be made on case by case situation

In this regard, services that do not fall within the scope of LVS may be charged with a bigger mark-up and, therefore, a deeper functional analysis has to be done to be able to find the best comparable available (internal or external).

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How to apply the concept of the actual right to receive income?

WE VIEW IN DETAIL THE OPINION OF THE FTS OF THE RUSSIAN FEDERATION IN OUR REVIEW. The RF Federal Tax Service summarized the practice of disputes on the application of the concept of the actual right to receive income and issued Letter N CA-4-9/8285@ of 28.04.2018 to orient the lower-level tax authorities, how it should be applied in practice.

We should start with the fact that the Federal Tax Service generalizes the arbitration practice on this issue not for the first time. Previous Letter N CA-4-7/9270@ was issued on May 17, 2017, that is exactly almost a year ago. What has changed over the past year, and have the FTS changed their approach?

Mostly the criteria and methods written in the new Letter are already familiar to taxpayers. Like in the previous Letter, the matter is that if a foreign company using the benefits of a double taxation treaty is not the actual recipient of this income but participates in the operation purely technically, the benefit will be deemed applied without justification.

The application of benefits without grounds is evidenced by the following criteria:

- relations with the participation of a foreign company are not connected with the attraction of capital to Russia;
- lack of a business objective in the conducted transaction;
- absence of a foreign company's business activities;
- the foreign company has no other sources of income, except for loans and interest to interdependent and affiliated entities;
- insignificant expenses for salaries and social contributions from a foreign company;
- "transit character" of payments;
- the activities of a foreign company are not subject to financial and other risks;
- a foreign company has no authority to dispose of income;
- lack of independence in the decision-making by directors of a foreign company.

It is noteworthy that the FTS provides more detailed explanations as to what is meant by the entrepreneurial activity of a foreign company. There were no such explanations in the previous review.

For example, it is explained that activities in the form of investments and financing of companies of a group (holding) or interdependent, affiliated companies, are not considered entrepreneurial. At the same time, the use of such a business model is very popular. Often a group of companies appoints one company that finances all other group of companies. Such companies accumulate monetary funds either by attracting third-party financing, or by obtaining all temporarily free funds of the group of companies on their accounts. Since such activities are not recognized by the tax authorities as entrepreneurial, interest payments to such companies should not use tax preferences, ac-

cording to the tax authorities. Thus, in fact, discrimination of some business models is introduced in comparison with others. Thus, payments to the companies, which by the main type of activity finance the companies belonging to the group, fall into the risk zone.

Also, the FTS do not recognize as business activity providing information and consulting services, performing operations to acquire shares of various companies, if the company owns them formally and does not participate in their activities independently and/or these companies do not conduct real business activity. Moreover, payments for information, consulting and other similar services provided by the parent company to a subsidiary company can be recognized as a payment of dividends.

In practice, we often see situations when a subsidiary company in the Russian Federation does not have employees in all competencies that the company needs, for example, many functions are outsourced to the parent company, which determines how the business of all the group of companies will be built and actually operates subsidiaries. There are also cases when the management of a group of companies is allocated to a separate business and this company does not produce anything except for consulting and its main clients are the companies of the group. If you read the Letter of the Federal Tax Service literally, it turns out that such schemes of building a business are also not acceptable. To be exact, they are permissible, but tax benefits under double taxation treaties to payments to such foreign companies are not applicable. Speaking about this, the FTS obviously forget that they do not have the right to discriminate certain schemes of doing business and cannot arbitrarily decide in which cases the business is conducted in such a way that the benefit is applicable and in which it is not. Thus, the position of the RF FTS does not agree with the position expressed by the Plenum of the Supreme Arbitration Court of the Russian Federation in Resolution No. 53 of October 12, 2006 "On Evaluation by Arbitration Courts of the Justification of Receiving a Tax Benefit by the Taxpayer", according to which it should be taken into account that the possibility of achieving the same economic result with a lower tax benefit received by the taxpayer through the commission of other transactions that are or may not be prohibited by law, is not grounds for recognizing the tax benefits unreasonable. As a criterion for determining the possibility of applying benefits, the FTS proposes to test the deals involving foreign companies for a business purpose. Thus, the tax authorities apply this criterion, developed within the framework of the concept of unreasonable tax benefit.

SCHNEIDER GROUP consultants, who are familiar with judicial and law enforcement practice, will help you test the risks before conclusion of a deal, and also verify the correctness of the primary documents preparation. We will analyze the planned deal(s) and supporting documents for legal and tax risks, help to build a competent structure for owning and managing the business and cash flows, taking into account the latest requirements of the tax authorities.

If you have any questions, please contact us. We will help you find the way out of the situation.

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Creation of a single VAT area in the EU

The VAT Action Plan is an important step towards the creation of a single European Union VAT area for an effective fight against fraud, support for businesses, in particular SMEs, and support for the digital economy and e-commerce.

On 7 April 2016, the European Commission adopted the VAT Action Plan which sets the stage for the creation of a single VAT area in the European Union. It also sets out measures to close the VAT gap, reduce barriers to e-commerce and simplify burdens for SMEs. Finally, the Action Plan proposes to give Member States greater freedom in setting VAT rates.

1. Single space – e-commerce

In general, compliance with VAT rules entails higher costs for SMEs than for large companies, partly due to the complexity and fragmentation of the VAT system in the European Union. In this context, the Commission is preparing a VAT **simplification package for small and medium-sized enterprises** to ensure their growth and promote cross-border trade. The proposal to create an **EU-wide standardised VAT declaration** to alleviate the burdens and costs of SMEs in this respect will also be considered.

The Commission has also drawn up a proposal to simplify and modernise VAT on cross-border e-commerce, for SMEs, including:

a) Extend the Single Window to online sales of tangible goods to end consumers.

b) Introduce an EU-wide simplification measure to support small e-commerce start-ups (VAT threshold).

c) Allow VAT checks in the country of residence, including a unified inspection of cross-border businesses.

d) Eliminate the VAT exemption for small imports from suppliers outside the EU.

2. "VAT gap"

To tackle the "VAT gap", action is urgently needed in three different areas:

a) Improving administrative cooperation between EU countries and with countries outside the EU. It is intended to move from the current model of information exchange to a new system of joint information sharing and analysis.

b) To achieve a more efficient tax administration. Among other measures, it is proposed to strengthen the tax administrations of the member states, as well as to lighten the bureaucratic burdens on companies, all with the aim of generating confidence and combating fraud.

c) The European Commission considers it important to improve voluntary compliance between companies and tax authorities. In this line, the Commission would promote projects such as dispute prevention and resolution mechanisms under the EU VAT Forum.

d) Tax collection. Member States must adapt to the new realities imposed by e-commerce, the collaborative economy and other business models that present a challenge and an opportunity in terms of revenue collection.

e) Measures to tackle national and structural fraud. Some Member States are more affected by VAT fraud than others and have sometimes requested permission to introduce temporary reverse charge measures in departure from the general principles of the VAT Directive. In this respect the Commission recognises the need to find practical and short-term solutions to deal with VAT fraud, provided that the proper functioning of the single market is not disproportionately distorted.

3. Tax rates

The current rules of the VAT Directive do not take account of new technical and economic developments, such as e-books and electronic newspapers, which cannot benefit from reduced rates available for publications in physical form. This issue will be addressed in the context of the Digital Single Market strategy.

The Commission is aware that the EU can only act on the VAT Directive when certain objectives cannot be sufficiently met by the Member States. The changes are therefore being implemented very slowly and the Directive is becoming obsolete in relation to some products subject to technological progress.

Many Member States therefore end up in situations of non-compliance with Community legislation. At the date of submission of the Plan, the Commission has more than 40 infringement procedures open against more than two thirds of the Member States. Reform by giving more freedom to states could allow them to make tax policy decisions more quickly while reducing unnecessary litigation with the Union.

However, giving Member States full freedom to set tax rates could distort the functioning of the single market, leading to an erosion of VAT collection. In the long term, the tax base could be reduced, contrary to the EU's economic policy recommendations. More decentralisation would also lead to increased complexity, creating additional costs for businesses. It is therefore necessary for each set of national rules to be simple and, as far as possible, based on harmonised product categories.

Thus, two options are proposed, which are not contradictory to each other, and represent the different levels of flexibility that could be granted to Member States:

a) Extension and regular review of the list of goods and services eligible for reduced rates

The general minimum VAT rate of 15% would be maintained. The list of goods and services that could be subject to reduced rates would be reviewed in the context of the transition to the definitive system and at regular intervals. Member States may wish to submit to the Commission their views on the need for adjustments.

The Commission, with the support of the Member States, would analyse whether the changes pose a threat to the functioning of the single market or distort competition, reporting its findings before any changes are made.

Under this option, all current reduced rates would be maintained and could be included in the list of reduced rates options for all Member States, ensuring equal treatment.

b) Abolition of the list

This is a more ambitious approach, abolishing the list and allowing Member States greater freedom in the number and levels of reduced rates.

This measure would require security measures to prevent unfair tax competition within the common market, while ensuring legal certainty and reducing compliance costs. The freedom to set VAT rates should therefore be accompanied by several basic rules setting out the cases in which reduced rates could be applied.

Member States should inform the Commission and other Member States of each new measure and assess any impact it may have on the common market. The application of reduced rates could be limited to high-value goods and services to avoid tax competition and cross-border shopping. To ensure the overall consistency and simplicity of the system of rates, the total number of reduced rates allowed could be limited.

Under this option, the general minimum VAT rate at Community level would disappear.

This is undoubtedly a very important issue for European tax harmonisation, and we must therefore be very attentive to future changes at European level and to the reception that will be given to the internal regulations of each country... a challenge that will not be easy to achieve, but at least we are on the right track, hopefully within a reasonable period of time.

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Dutch government publishes letter outlining envisaged changes to Dutch international tax policy

On February 23th 2018, the Dutch State Secretary of Finance published a letter outlining the Dutch government's policy on international taxation for the years to come. The government stresses its commitment to enhance the investment climate for groups with active operations in the Netherlands. On the other hand, the letter also stresses the Dutch government's commitment to introducing anti abuse rules targeted against tax driven and artificial structures. Below we elaborate on these measures.

ENHANCEMENT OF THE INVESTMENT CLIMATE FOR ACTIVE GROUPS IN THE NETHERLANDS

In order to enhance the investment climate for active groups in the Netherlands, the Dutch government aims to lower the corporate tax rate to 21% (from the current 25%). Also, the Dutch government will abolish the Dutch dividend withholding tax (except in abusive situations, please see below).

INTRODUCTION OF ANTI ABUSE RULES TO ABOLISH TAX DRIVEN AND ARTIFICIAL STRUCTURES

In order to abolish tax driven and artificial structures, the Dutch government aims to unilaterally introduce the following measures:

1. The introduction of a new withholding tax on intra-group payments to low-tax jurisdictions of interest and royalties

The Dutch government aims to introduce a withholding tax on intra-group payments of dividends, interest and royalties by Dutch resident companies to entities that are resident in either:

(i) A jurisdiction with no or a low statutory tax rate; or

(ii) A jurisdiction that appears on the EU list of non-cooperative jurisdictions (the so-called EU black list).

The letter does not state the rate of this new withholding tax. The current Dutch dividend withholding tax rate is 15%, while the Netherlands has no withholding tax on interest and royalties. The letter provides no guidance as to the minimum statutory tax rate that is considered acceptable. The EU black list currently contains only few jurisdictions. The new withholding tax will only apply to intra-group payments. The new withholding tax on dividends to low-taxed jurisdictions is expected to be introduced as of 1 January 2020, coinciding with the abolition of the current dividend withholding tax. The new withholding tax on interest and royalties will be introduced as of 1 January 2021.

2. Increased substance requirements for Dutch holding companies as well as Dutch group financing and licensing companies

The Dutch government aims to introduce stricter substance requirements for Dutch resident intra-group financing and licensing companies, as well as for Dutch resident holding companies. The Dutch government intends to enact these changes swiftly, but does not mention a specific date.

The increased substance requirements will include, in addition to the current minimum substance requirements (e.g., at least 50% Dutch resident directors and the bookkeeping being performed in the Netherlands), the requirement that:

1. The relevant Dutch company incurs annual salary costs of at least € 100,000 in relation to its holding or group financing and licensing functions; and
2. The relevant Dutch company has (for at least 24 months) office space at its disposal in the Netherlands which is in fact used to carry out its holding, financing or licensing functions.

In summary, as a consequence of the proposed changes the investment climate will improve for active businesses, while artificial structures will suffer from the envisaged anti abuse rules.

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Investing in Research & Development in the UK Construction Industry

The construction sector is not traditionally an area which one would ever associate with people in white coats undertaking Research & Development ('R&D') activities, which is probably why so few UK companies in the sector have previously taken advantage of the tax reliefs that are available. However Haines Watts ('HW') are currently having significant success in making R&D claims on behalf of construction sector companies in addition to the more traditional types of R&D claims.

The UK tax relief under the R&D Small and Medium Enterprises ('SMEs') scheme is a valuable relief as every £100,000 of eligible employment costs can generate a tax saving of £25,000 in addition to the standard tax relief. However to claim the tax relief, a company must be able to demonstrate they meet the UK Government's definition of what is R&D. The issue for companies is that much of the legislation and guidance is open to interpretation and hence lots of UK companies are missing out on making a claim.

This is why it is important for companies to get help from a R&D specialist such as HW. HW works closely with companies to guide them through the R&D claim process; to ensure the company is within the correct interpretation of the legislation; and to add value by ensuring the company is claiming for all the eligible costs which are available.

When working on construction sector R&D claims, HW usually focuses on the one-off projects which had unique challenges attached to them. Some examples of projects which we've included in recent Construction sector R&D claims include:

- The electrical fit out of a laboratory
- The heating, ventilation and control system in a listed building in a conservation area in London
- The electrical fit out of a brewery
- The joinery work in a well renowned theatre
- The office refurbishment of a regional office of one of the 'Big Four' accountancy firms!

To ensure the R&D claim has the best chance of being accepted by the UK tax authorities, HW draft a report to convey the pertinent information to the tax inspector, who will ultimately accept or reject the claim. The UK tax authorities R&D unit is one of the few remaining units which you can contact an inspector directly and as such HW are able to get feedback from the inspectors to the extent that over the years our R&D reports have evolved to meet the inspectors' needs. This has resulted in HW having a 100% success record when it comes to its R&D claims.

The number and size of R&D claims in the UK looks to continue on an upward trajectory as the UK Government have recently pledged a further £2.3bn (to a total £12.5bn) to R&D spending by 2021/22 and to increase the R&D investment by 50% by 2027! R&D is a big part of the UK Government's "Industrial Strategy" to create more skilled, higher paying jobs in the UK.

HW plan to continue to be a major provider for companies looking for R&D claim assistance and will continue to meet and discuss the opportunity to make R&D tax relief claims with companies from any sector.

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Registration of final holders and beneficiaries before the CBU - Final stage

Since we are close to a new deadline for companies to fulfill their obligation to identify and communicate their holders and Final Beneficiaries (FB) to the Central Bank of Uruguay (CBU), as determined by Law 19.484 and its respective regulations, Decree 166/017, we think it is convenient to review the main provisions in this regard.

Background

Law 18,930 of 07/17/2012 established the obligation for issuing entities of bearer securities to report on the final holders of such equity participations, creating a registry for these purposes, within the scope of the CBU.

This obligation falls, from that moment, on resident entities and on some non-resident entities determined by the Law.

From the enactment of **Law 19,484 of January 5, 2017**, it was established, for these entities (with some exceptions), the obligation to identify and report, in addition, their FB, for which they had until September 29 of 2017.

Now: Entities issuers of nominative equity shares

This last norm also obliges the entities with nominative patrimonial shares to **identify and inform the CBU about their holders and FB.**

All resident and some non-resident entities detailed in the standard are obliged to identify their FB, except for, among a few others, those directly or indirectly listed on stock exchanges, trusts and investment funds supervised by the CBU and to civil associations with a certain income cap.

The Sworn Statement (SS) must be submitted within a period of 60 calendar days as of 05/1/2018, so this **deadline** is met on **06/29/2018**. The new companies will have 30 days to comply with the mentioned SS.

Who are the FB?

The law defines as FB, the physical person (PP) that either has, directly or indirectly and at least **15%** of the capital (or its equivalent) or of the voting rights of an entity, or that exercises final control over it through other means. The same definition is established in Decree 166/017.

What and how is it reported?

The entities must inform the CBU of the data of their FB and holders of equity participations through an SS. The decree determines which data to include, detailing, among others: name, marital status, address, nationality, identity document, tax registration number, whether it is or not Uruguayan resident, participation percentage, etc.

In the cases of FB that indirectly control the entity, it must also be informed all the data of the legal entities, etc. that make up the ownership chain.

Any modification of the data contained in the declaration, except for the variation of the nominal value that does not alter the participation percentage, must be reported within 30 days, or 90 days in case the holders are non-residents.

It is exempt from presenting the SS to the personal or agricultural companies whose social quotas belong in their entirety to the PP, to the de facto and civil companies and to the cooperatives integrated solely by PP, as long as that these are their FB and effective holders.

Obligation to keep records

All obligated entities must keep the supporting documentation for a minimum period of 5 years. This documentation may be requested by the agencies that have access to the registry of the CBU and by the Internal Audit of the Nation (IAN) in its role of controller.

Sanctions

The fines established by the Law will be graduated according to the economic size of the entities (based on the assets and accounting income of the last fiscal year) and the period of non-compliance, ranging from a minimum of 2 to a maximum of 100 times the value of the maximum fine for contravention. This is **between USD 5,000 and USD 25,000** (figures equivalent to those defined in pesos by the standard).

In addition to the fines, such non-compliance will be sanctioned with the prohibition of distributing profits, dividends, capital rescues, etc. to those holders or final beneficiaries with respect to whom the obligation to inform has not been fulfilled and with the suspension of the GDT's (General Direction of Tax) Unique Certificate.

From here on

As of 07/01/2018, the same regime applies to issuers of nominative titles as to those that issue them to the bearer.

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