INTERNATIONAL BUSINESS

December 2019

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.

Features of this edition include:

German tax measures to achieve climate protection targets by 2030; Working conditions in Hungary in case of Third country nationals and Tax Incentives for Investments in start-up Businesses in Malta.

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

Index

Social responsibility and compliance

Social responsibility plays a fundamental role in each organization. With concrete and voluntary actions, good practices in terms of sustainability and socially responsible management must be implemented. We must work the culture of compliance with standards and actions, in order to build a fair society, with rules, transparency and thus generate new opportunities.

Here Compliance plays an important role. It is about implementing an ethical and CSR culture that collaborates with the possibility of living in a better world. For this, companies must commit to the sustainable development goals of the United Nations Organization, planned for the year 2030. It is necessary that organizations begin to plan and execute concrete actions, not only with ethics and transparency but also with the progress of a sustainable culture.

A socially committed compliance must identify, control and reduce the risks that business activity may generate, not only legal responsibility but also committing not to harm the SDGs. It is necessary to develop integrity policies that minimize such risks and represent the solid commitment of the company in four fundamental axes: In the field of human rights, health, welfare and education for all, the reduction of inequalities, the end of poverty, the goal of zero hunger. In terms of labor, urban and technological development, the goal is to have sustainable cities and communities, with industry, innovation and infrastructure in a context of economic growth and decent work. Regarding the environment, the development of a culture with responsible production and consumption policies that preserve water, energy use, non-pollution, climate protection, terrestrial and marine ecosystems. Finally, in institutional and legal matters, the implementation of an ethical culture of legality and transparency to achieve a global state of peace and justice with strong institutions.

Today it is a necessity that companies include in their mission and values their commitment to the SDGs, planning and executing concrete and transparent actions. Living in a better world is everyone's responsibility.

Fernando de Tezanos Pinto
ftezanospinto@bue.auren.com
Auren Argentina

Bulgaria implements rules for preparation of documentation for Transfer Pricing

In the issue 64/13.08.2019 of The State Gazette, the Law on the Amendment and Supplementation of the Tax and Social Insurance Procedure Code (TSIPC) has been promulgated. A new Chapter 8 A has been created and it specifically introduces rules for the preparation of transfer pricing documentation.

The Transfer Pricing documentation should be prepared to demonstrate the nature of commercial and financial relationships of the taxpayer with related parties. This obligation is in force in the existing TSIPC but there were no clear and specific rules about the means of proof and the necessary content.

As of 01.01.2020, the documentation must provide that the conditions of commercial and financial relationships between related parties are compliant with the arm's length principle. Specifically:

- the conditions that would be established between independent persons in comparable circumstances
- the transactions were carried out at market prices

The transactions that establish a commercial and financial relationship between related parties are called controlled transactions.

The TP documentation consists of a local file that includes activity information, controlled transactions (related party transactions) and market pricing methods used. The local file must be prepared by 31 March of the year following the year to which it relates. This deadline is consistent with the deadline for filing the annual tax return under Art. 92 of the Corporate Income Tax Act.

When individuals are part of a multinational enterprise group, they should also have a summary dossier containing information about the group, including organizational structure, activity, controlled transactions, functions of group entities and the applicable transfer pricing policy.

Entities which have the obligation to prepare TP documentations include:

- As per Art. 71b, par.1, the local legal entities, foreign legal entities carrying out economic activity in the Republic of Bulgaria through a place of business, and sole proprietors who determine their taxable income in accordance with Art. 26 of the PITA, are obliged to prepare a local file when conducting controlled transactions.

The obligation is not applicable to:

1. The persons who are exempt from corporate tax under Part Two, Chapter Twenty Two, Section II of the CITA;
2. The persons carrying out activity subject to an alternative tax under Part Five of the CITA
3. The persons who did not exceed the following indicators as of December 31 of the previous year:
   a) the carrying amount of the assets does not exceed 38 000 000 BGN
   b) the net sales revenue is up to 76 000 000 BGN
   or
   c) the average number of employees over the reporting period does not exceed 250 ees.
4. The entities are conducting controlled transactions only in the country.

The TP local file is not to be prepared for controlled transactions with individuals other than sole traders. Thresholds have been introduced in order to determine the requirement to prepare the TP file. Specifically, transactions involving sale of goods exceeding BGN 400,000 (or BGN 200,000 in other cases) give rise to the requirement to prepare a TP file. Additional thresholds are defined for loan-related transactions.

A taxpayer who fails to prepare a local file under Chapter Eight (a) shall be liable to a pecuniary sanction of up to 0.5 % of the total value of the transactions for which the documentation was to be prepared. Additional sanctions have been prescribed as well, for incorrect or incomplete information.

Nelly Parvanova
nelly.parvanova@eurofast.eu
Bulgaria

Eurofast

Member of Antea Alliance of independent firms

Uncertainty regarding dividend tax

Law 1943 of December 28, 2018, *Financing Law*, introduced a series of amendments to the Tax Statute regarding taxation of dividends, generating as a consequence, a series of questions and concerns in the taxpayers, in relation to the dividends generated charged to profits from years prior to 2018 and not distributed at the date of entry into force of the Law.

Let's start by making a brief synthesis in parallel, of the tax treatment of dividends, before and after Law 1943 of 2018.

Dividends : received by natural persons and illiquid successions of causes that at the time of their death were residents of the country, coming from distribution of profits that would have been considered as income not constituting income or occasional gain.	
Before Law 1943/18 (UVT value year 2019)	**Rate after Law 1943/18 (UVT value year 2019)**
• Dividends between 0 and 600 UVT ($ 19,893,600) = Rate 0% • Dividends between 600 and 1000 UVT ($ 33,156.00) = 5% Rate • Dividends of 1000 UVT onwards = Rate 10%	• Dividends between 0 and 300 UVT ($ 10,281,000) = Rate 0% • Dividends of 300 UVT onwards = 15% marginal rate

Dividends : Received by companies				
	Before Law 1943/18 (UVT value year 2019)	**After Law 1943/18 (UVT value year 2019)**		
Dividends distributed by a Colombian company to a Colombian company	Dividends not taxed	Dividends from distribution of profits which have been considered as constituting rental income or capital gains tax, as provided in the paragraph 3 of Article 49 of the Statute.	Rate 7.5%	Art 242-1 ET.
		Dividends and participations paid or credited to national companies, arising from distributions of taxable profits in accordance with the provisions of paragraph 2 of article 49	2019 = 33% Rates: 2020 = 32% 2021 = 31% 2022 = 30%	Art. 242-1 and 240 ET.
Dividends distributed by a foreign company to a Colombian company	Dividends not taxed	33% rate, unless there is an agreement to avoid double taxation that establishes a special rate		

While Law 1819 of 2016, maintained the tax treatment of untaxed for dividends until 2016, Law 1943 of 2018, enshrined in Art. 121 the following transition regime:

"Dividends decreed as receivables as of December 31, 2018, will maintain the applicable treatment prior to the effective date of this Law"

According to the transition regime in reference, in principle dividends that had not been decreed as enforceable as of December 31, 2018, regardless of the year to which they corresponded, would be taxed under the rates of Law 1943, implying ignorance of the principle of non-retroactivity in tax matters, enshrined in Art. 363 of the Political Constitution.

However , and in good time, the DIAN through Official 412 of February 29, 2019, based on the validity of Art. 246-1 of the Tax Statute , made or the following details:

We currently have, in accordance with the described scenario, three different tax treatments, in terms of tax on dividends.

However, particularly in relation to dividends from 2018, they would be taxed under the parameters of the new law, since it was close impossible financial statements of 2018, on December 31 and that same day realizar the Shareholders (considering the summons requirements), so that dividends will be decreed as enforceable.

In strict compliance with the principle of retroactivity in tax matters, the Law 1943 of 2018, only he must levy new fees, the dividends against profits corresponding to the year 2019 and beyond , leaving dividends from previous years under the previous regime , regardless of the date on which they were decreed.

Raul Menco
rmenco@med.auren.com
Auren Colombia

Croatia introduces legislation allowing a range of non-taxable payments to employees

Croatia has introduced new legislation regarding non-taxable payments which became applicable as of September 1, 2019 (Personal income tax act bylaw, Official gazette 80/19).

The changes introduced are as follows:

Nontaxable domestic daily allowance (per diem)

- The nontaxable amount of per diem has been increased to HRK 200.00 (full daily allowance-lasting for more the 12 hours), HRK 100.00 (half of daily allowance, for duration 8-12 hours)
- Up to August 2019, the nontaxable amounts were HRK 170.00 and HRK 80.00

Nontaxable meal allowance

- Up to 5,000 HRK per calendar year if paid to the employee
- Up to 12,000 HRK per calendar year if the meal allowance is organized directly with a catering service/restaurant and the employer receives and pays the invoice for this expense
- Until now such expenses were considered as part of payroll and taxed as benefit in kind.

Accommodation costs of employees incurred while working for an employer

- The employer can cover accommodation expenses for the employees but needs to have back up documentation (hotel receipt, copy of rent agreement etc)
- The accommodation expense is nontaxable in the amount of the actual expenses

Compensation for costs of regular childcare

- The employer can cover the expenses of regular childcare for employees based on sufficient documentation (receipt, confirmation of payment)
- This expense is nontaxable
- Such non-taxable coverage of expenses does not include extra programs that are separately charged (such as English lessons, dance etc)

Vacation pays for employees

- Employers can provide vouchers in the amount up to HRK 2,500. Details on this benefit are not available at this point but are expected to be clarified by tax authorities at a later stage.

For further information on how the new Croatian legislation impacts you as an employer as well as to explore ways to optimize your payroll and employee benefits, please contact our team in Zagreb.

Afrodita Taci
afrodita.taci@eurofast.eu
Croatia

Eurofast

Member of Antea Alliance of independent firms

Cyprus Investment Programme for 2019

On the 25th of July the Council of Ministers had a meeting where the Cyprus Investment Programme (CIP) has been revised. Important changes have been rendered as of the 22nd of August 2019 and have been published in the Cyprus Gazette.

Investors must meet the following criteria to obtain the Cyprus Citizenship,

- The applicant is required to buy a house or apartment in Cyprus for at least €500.000 (plus VAT if any).
- €2 million (plus VAT if any) Investment in real estate, land development, and infrastructure projects, or €2 million (plus VAT if any) Investment in Alternative Investment Funds or financial assets of Cypriot companies or Cypriot organisations that are licensed by CySec.
- The applicant may purchase special government bonds of the Republic of Cyprus, up to €500.000, in combination with the above criteria.
- In addition to the already existing requirements, the following have been added to the new revised Cyprus Investment Programme (CIP),

a) Investors who apply for Naturalization under the Cyprus Investment Programme must proceed with a donation of at least €75.000 to the Research and Innovation Foundation and a donation of at least €75.000 to the Cyprus Land Development Corporation.

It is important to underline that the donation will be paid following the approval of the Application for Naturalization by the Council of Ministers.

b) further to the above investments that need to be done investments applicant can purchase securities on the secondary market of the Cyprus Stock Exchange (CSE) up to €200.000.

The Council, will not allow the granting of Cypriot citizenship to persons who fall into the categories of high-risk, this includes the following:

a) Politically Exposed Persons (PEP), refers to persons who hold political positions and persons who have held a political position during the last five years.

b) Persons subject to criminal investigation even if they have not been charged

c) Persons who are subject to criminal proceedings and are defendants in a criminal cases

d) Persons sentenced to prison for serious offences (e.g. public bribery, tax evasion, etc.) and the conviction has been removed from the records.

e) Persons affiliated with legal entities which have been restricted by the European Union.

f) Persons who were affiliated with legal entities which have been restricted by the European Union (EU) even though they are not associated any more.

g) Persons who have been sanctioned by non-EU countries.

h) Persons associated with legal entities who have been sanctioned by non-EU countries.

i) Persons being charged for criminal offences by EUROPOL or by INTERPOL.

j) Persons who have been investigated for criminal offenses EUROPOL or by INTERPOL

k) Persons subject to sanctions by the United Nations Security Council

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

ZATHEA-ZOE QUALITY SERVICES

Member of Antea Alliance of independent firms

The Tax Due Diligence

The concept of tax due diligence represents a 360-degree turn in the vision we had, so far, from the relationship between the taxpayer and the tax office, this is hierarchy and obedience. The people satisfy the obligation to pay taxes and the government does not bother them.

In some way, tax due diligence transforms each of the taxpayers into officials of the State, and we go from being recipients of many tax regulations, procedures, declarations, and payments, to fulfill the role of true subjects that help the tax control of all who are around. If someone doesn't do it, we are obliged to report them or stop working with them.

To satisfy with tax due diligence, taxpayers must observe minimum parameters in the processes with their clients, for example, that they are not in the list of a fictitious company and that they do correctly their tax obligations. To achieve this, the staff of the company must have adequate training in tax matters, not just employees in financial areas, but for shareholders and legal representatives, who should know about unusual transactions.

The development and implementation of this process mean time and resources for taxpayers; however, for those who do so, it should represent a release of other obligations, for example, lower retention rates, preferential treatment in administrative procedures, tax consultations, even ex officio tax refunds.

These benefits are granted because the State should not increase the payment of taxes to honest taxpayers. But in several cases in operations with a fictitious company, the obligation of payment of the evader has been unreasonably transferred to the formal taxpayer, which it affects equity and efficiency as principles of the constitutional tax regime.

The right thing would be for the tax system is to be tougher against informal and hidden activities, where economic actors who seek to be more competitive by stopping paying taxes, operating without permits and causing damage to honest taxpayers who comply with the Law and its obligations

Javier Bustos
javier.bustos@abcglobal.tax
Ecuador

ABC ADVICE, BUSINESS, CONSULTING

Member of Antea Alliance of independent firms

Germany: Tax measures to achieve climate protection targets by 2030

A broad package of measures consisting of innovations, promotion, legal standards and requirements as well as pricing of greenhouse gases shall contribute to achieving the specified climate protection targets. For this purpose, there are also tax measures stipulated in tax law via the Act to Implement the Climate Protection Programme 2030. These include, among others:

- Increase of the **distance allowance** from 2021 for long-distance commuters from the 21st km to 0.35 €, limited until December 31, 2026.
- Introduction of a **mobility bonus** of 14% of the increased commuter allowance for taxable persons whose taxable income is below the basic allowance.
- Tax incentives for energy-efficient **building refurbishment measures** from 2020. A deduction from the tax liability is intended to ensure that building owners of all income classes benefit equally from the measure. Support will be provided for individual measures such as the installation of new windows or the insulation of roofs and exterior walls. This means that taxpayers who, for example, replace old windows with modern thermal insulation windows can reduce their tax liability - spread over 3 years - by 20% of the costs.
- Extension of the **company car regulation** for the use of a battery electric vehicle or a plug-in hybrid vehicle until 2030. In addition, the company car tax for purely electric vehicles up to a price of € 40,000 will be reduced from 0.5% to 0.25% in the future. In addition, the motor vehicle tax exemption will be extended to December 31, 2025. The duration of the tax exemption, which is limited to 10 years, will be limited to December 31, 2030.
- Extension of the **purchase bonus** from 2021 for cars with electric, hybrid and hydrogen/fuel cell drive until the end of 2025 and increase of the bonus for cars under 40,000 € from 4,000 € to 6,000 € for purely electrically driven cars, and from 3,000 € to 4,500 € for so-called plag-in hybrids. Pure electric cars with a list price of over €40,000 will receive a subsidy of €5,000 and plug-in hybrids of €4,000. Cars that cost more than € 65,000 will not be subsidized.
- Stronger alignment of the **motor vehicle tax** to CO2 emissions for new car registrations from 1.1.2021.
- Increase in **air traffic tax** on February 1, 2020 and **reduction of VAT on long-distance train tickets** from 19% to 7%.

In addition to the tax measures, a large number of regulations are planned to improve climate protection, such as the introduction of emissions trading, a federal subsidy for efficient buildings, a replacement bonus with a 40% subsidy share for a new, more efficient heating system, a reduction in electricity costs and much more.

Alexander Hradecky
alexander.hradecky@muc-auren.de
Auren Germany

Implications of doing business with non-cooperative jurisdictions: the Greek perspective

The Greek authorities maintain an active list of non-cooperative jurisdictions for tax purposes (including tax heavens). A question we often receive from clients in Greece revolves around the practical implications of doing business with such countries. **For instance, if a Greek company has received an invoice from a country on the list, would this expense be acceptable for the Greek authorities?**

The current tax regime of an expense payable to an off-shore company from Greece is determined by the Tax Law no. 4172/2013. Under this law as well as some additional local directives (P.O.L 's) there is a general rule concerning unacceptable invoices from abroad (regardless of the country of their origin). According to this rule, if the rate of the corporate taxation of the country of origin of the disputed invoice is less than the 50% of the Greek corporate income tax rate . Therefore, invoices from countries that have a corporate income tax rate of less than 14% are not acceptable.

In case that the invoice is from a country included in the non-cooperative jurisdictions list published annually in Greece, there are some additional rules in order for the invoice to be accepted .

1. The goods/services purchased must be essential for the operation of the Greek company and must be within the usual scope of the company's expenses.
2. The transaction must be a real one
3. The goods must be recorded in company's books and accompanied by all legal documents. According to the directive (POL) 1113/15, an expense is acceptable if a) It contributes to the expansion of operations / growth or b) it contributes to the materialization of actions within the frame of the corporate social responsibility.

It must be mentioned here that is not allowed for the tax authority to audit the feasibility of the expense, but only the precautions mentioned above . The burden of proof of whether such an expense is to be accepted or not falls on the tax authority's side.

This is where the list of non-cooperative tax jurisdiction comes into play. As an exception to the above rule, when a local (Greek) company pays an expense to a company located in a country listed in the current catalogue of off-shore companies, there is a reversal of the burden of proof. Consequently, the Greek company must prove that the expense was real and within the range of its usual trade transactions.

An additional important point of the last tax law (4172/13) is the general anti-avoidance rule. A tax audit can ignore any existing artificial arrangement or arrangements resulting in tax avoidance. According to this rule, the tax authority can ignore virtual transactions even if they appear to be valid.

Kostas Sakkas
kostas.sakkas@eurofast.eu
Greece

Eurofast

Member of Antea Alliance of independent firms

Entering, staying and working conditions in Hungary in case of Third country nationals

1. Short term stay (not exceeding the 90 days period)

Nationals of countries listed in the *539/2001 EC council regulation Annex II*. („**Visa-free nationals**") may enter Hungary without a visa, however nationals of countries not listed in the council regulation/countries under visa obligation („**Visa nationals**") - even if they are family members of EU/EEA citizens - will need to apply for a visa or a residence permit before entering Hungary (Visa free nationals and Visa nationals collectively: „**Third country nationals**"). Visa-free nationals and Visa nationals entering Hungary with a visa are entitled to stay in Hungary only for 90 days.

2. Entry for long stay (period exceeding 90 days)

Third country nationals intending to stay in Hungary for more than 90 days shall apply for a residence permit. The type and the validity of the residence permit depends on the purpose of stay. The resident permit may be issued for the following purposes: visitation, gainful activity, education, family reunification, medical treatment, research work, voluntary activity or official purpose. In case the stay does not fall in the categories above, it may be issued for another purpose. To obtain such a residence permit the applicants shall prove not only the purpose of their stay, but also their livelihood, housing and all inclusive health insurance. Usually the residence permit may be issued for a maximum of two years, but after this period it can be renewed for two further years.

Third country nationals are entitled to become a permanent resident of Hungary, after a five-year period of uninterrupted legal residence in the territory of Hungary.

3. Working in Hungary

Third country nationals – except family members of EU/EEA citizens - may only work in Hungary based on a permit. The work permit may be issued if the employer has a valid labor need in relation to the activity to be performed by the applicant. Once issued, the work permit is valid for a maximum of two years, but it can be renewed for an additional two-year period.

Réka Ipacs
reka.ipacs@gfplegal.com
Hungary

GOBERT TAX & LEGAL

Member of Antea Alliance of independent firms

Should foreign companies earning income from India file return of income ('ROI') in India?

Facts of the case

An Indian subsidiary company which is a part of global conglomerate makes the following two payments to its group company abroad. Tax is also deducted at source appropriately at the rates prescribed.

- Interest on moneys borrowed; and
- Royalty/ Fees for technical services ('FTS') for specialized services granted by such foreign company.

Issue under consideration

The question arises is whether this foreign group company (which has received payment from India) is required to file ROI in India?

Comments

Scope of total income as defined under the Income-tax Act in India (hereinafter referred to as "the Act") provides that total income of any person who is a non-resident shall include income which is accrued or deemed to be accrued in India.

Section 115A(5) of the Act specifically provides that if the non-resident earns interest income in India then he shall not be required to furnish return of income (as prescribed) if appropriate tax is deducted at source.

However, it needs to be noted that such a provision is exclusive for interest and not for any payments towards royalty / FTS, even if appropriate tax is deducted at source. Accordingly, one can say that foreign companies earning income from Indian sources is required to file ROI in India.

Historically, foreign companies have always taken a practical stand and have not filed ROI in India on the premise that tax has been withheld and there is no downside of not filing ROI except a meagre penalty for not filing ROI.

Taking cognizance of the above, the government in last couple of years have amended the penalty provisions which provides for penalty for misreporting/ underreporting of income.

Indian companies which have withheld taxes are required to report the party on whose behalf taxes have been deducted and paid. Sourcing information from such withholding tax returns, the tax authorities have been issuing notices to foreign companies and asking them to file return of income in India.

There has been a paradigm shift in penalty provisions as penalty is now levied on income element as against the tax evaded portion earlier. What this means, that earlier since appropriate tax was already deducted at source, there ought to be no tax evaded and hence levying penalty was impossible.

This loophole was noted and the government from Assessment Year 2017-18 started to incur penalty on misreporting/ underreporting of income (rather than tax evaded). Accordingly, if a foreign company receiving income from India does not file ROI in India, the same shall be akin to underreporting of income and hence penalty at 50% of tax payable (irrespective of credit of tax withholding/ advance tax) shall be levied. To add fire to the fuel, the government also introduced prosecution provision (in addition to penalty) in case of non-filing of ROI in India.

Conclusion

It seems that the government believes that foreign companies (earning income from India) should file ROI in India so as for them to analyze whether the said payment is liable to tax and whether the tax is appropriately deducted at the prescribed rate. The recent amendments should not be a cause of worry for foreign companies where tax have been appropriately deducted at source on receipts received. However, as a matter of good compliance it is suggested that such companies obtain Permanent Account Number in India (if not already obtained) (PAN is mandatory for filing ROI) and then file ROI in India disclosing the amount received and the tax deducted on such receipt.

Arati Parmar
aratip@kdg.co.in
India

Kanu Doshi Group
KNOWLEDGE DEDICATION ASSURED

Advance Ruling Under Income Tax act, 1961

1. What is Advance Ruling?

"Advance Ruling" means written opinion or authoritative

decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto.

The scheme of advance rulings was introduced by the Finance Act, 1993. Under the scheme the power of giving advance rulings has been entrusted to an independent adjudicatory body.

2. Binding Effect of Ruling?

Adjudicating authority is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant.

The effect of the ruling is stated to be limited to the parties appearing before the authority and the transaction in relation to which the ruling is given. This is because the ruling is rendered on a set of facts before the Authority and cannot be for general application.

3. Time-limit for advance ruling?

The Authority shall pronounce advance ruling within 6 months of receipt of the application.

4. Who Can obtain the Advance Ruling (Applicants)?

An advance ruling can be obtained by the persons as defined under sections 245N of the income tax act, 1961 which are as follows:

- a non-resident;
- a resident-undertaking proposing to undertake a transaction with a non-resident;
- a resident who has undertaken or propose to undertake one or more transactions of value of Rs.100 crore or more in total;
- a notified public sector company;
- any person, being a resident or non-resident, can obtain an advance ruling to decide whether an arrangement proposed to be undertaken by him is an impermissible avoidance arrangement and may be subjected to General Anti Avoidance Rules or not

5. Procedure of application for advance ruling?

An applicant desirous of obtaining an advance ruling should apply to the Authority in the prescribed form stating the question on which the ruling is sought. The application has to be made in quadruplicate in relevant forms as prescribed.

6. Fees for Filing the application?

The fees payable along with application for advance ruling shall be as follows:

Category of applicant	Category of case	Fee
a) Non-resident applicant b)Resident- undertaking proposing to undertake a transaction with a non-resident c) Resident who has undertaken or propose to undertake one or more transactions of value of Rs.100 crore or more in total	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed Rs. 100 crores	Rs.2,00,000
	Amount of one or more transaction > Rs. 100 crores ≤ Rs. 300 Crore	Rs.5,00,000
	Amount of one or more transaction > Rs. 100 crores ≤ Rs. 300 Crore	Rs.10,00,000
Any other applicant	In all cases	Rs.10,000

7. Can the application be withdrawn?

Application once made by the applicant can be withdrawn within a period of 30 days from the date of application.

8. Restriction on further procedure?

No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made to the AAR by an applicant, being a resident.

9. Advance ruling to be void in which circumstances?

If representation is made by the Principal Commissioner or Commissioner of income tax before the "Authority" that an advance ruling pronounced by it under sub-section (6) of section 245R has been obtained by the applicant by fraud or misrepresentation of facts, then the Authority may declare such ruling to be void ab initio.

Vikas S. Chaturvedi
vikas@valuecent.com
India

Valuecent

Member of Antea Alliance of independent firms

Capital Raising Using Special Shares

New companies and entrepreneurs still look for the best way to raise capital with the help of investors. Recruiting investors and fundraising is also possible in senior companies that are in the midst of their corporate lives, through the issuance of special kinds of shares.

When a company is interested in raising capital in order for it to invest in the development of a new activity or entrepreneurship, it usually asks investors to invest by loan or by issuing common stock capital. However, if you'll receive tailor-made counseling, you'll see that there are a variety of channels of which you'll be able to raise funds for your cause.

In recent years, a trend of issuing several different types of shares in exchange for investment in the company has emerged. The challenge resides in finding the right solution for your company, derives from the need to be familiar with the company and its business plan; its existing shareholders and their intentions; and lastly the potential investors and what motivates them.

Nonetheless, in order to find the proper solution, the impact of numerous laws and statutes that apply in this area must be examined, such as Securities Law, Corporate Law, Banking Law, and other relevant provisions. Furthermore, the accounting standards that will affect a large part of the classification and the decision-making process, up to Tax Laws and regulations that might affect the final result, must be examined as well.

These laws and provisions must be examined and modified individually in each country due to the fact that local laws among states are very different. This deviation can eventually result in a significant impact on the desired outcome.

What Makes Preferred Shares that Unique?

By the issuance of preferred shares, priority rights or special rights may be granted to the shareholders holding them.

With the help of preferred shares, raising capital while avoiding dilution of the ordinary shareholders' voting rights is made possible.

In accordance with the accounting rules applicable to preferred shares, the special kind of stock can be classified in a variety of ways that will subsequently affect the entire strategy of the capital raising plan. Among other things, preferred shares can be classified as equity capital, loan, financial obligation, and other financial instruments.

The classification will be determined according to the special terms & conditions stipulated in the date of issuance.

Preference Stock Types

During the issuance of preferred shares, certain rights may be assigned to it. Below is an example of a number of special provisions that may be integrated with the shares at the date of issuance, based on the shareholder's needs and desires. The first principle is identical to all preferred shareholders, and it determines that they will receive a dividend, in one way or another, before the rest of the shareholders. Hence the definition, "Preferred":

Fixed and Preferred Dividend Rate: A dividend that will be distributed at a fixed percentage of the par value of the preferred share.

Accumulated Dividend: If the dividend is not paid to the preferred shareholders at the end of the ex-dividend date (for example, at the end of each year), then it will accrue every year until a new dividend distribution date will be decided. Even then, preferred shareholders will be entitled to receive the first dividend prior to the common shareholders, and cumulatively for the years before.

Participating Preferred: Another priority that is being given to the preferred shareholders, for them to be eligible to participate in the dividend distribution balance or the company's profits. This priority right comes as an addition to the preferred dividend priority, which has been handed down to them immediately after they have acquired the preferred shares.

Right to Redeem the Shares: The relevant shareholders' holding the preferred shares and/or the issuing company has the right to redeem the preferred shares for their par value price.

Ordinary Shares Conversion: A right granted to the preferred shareholders of the issuing company, to convert the preferred shares to ordinary company shares, in accordance with a conversion rate that was pre-determined at the date of issuance. This right constitutes the ability to convert the preferred shares into ordinary or any other kind of shares, according to the company's strategy.

The Accounting Treatment

Preferred shares are considered to be a "Financial Tool", according to the Israeli and the International Accounting Standards.

The standards determine that the preferred shares issuing company (the "**Financial Instrument**") will classify the preferred shares as a financial liability or as an equity instrument. There is also the possibility of classification as an instrument that integrates equity components with characteristics of a financial liability, known also as the "Complex Instrument". The classification will be made in accordance with the nature of the contractual arrangement set for the preferred shares.

The uniqueness of these standards is its determination that the legal form won't be the one determining the classification, but the nature of the Financial Instrument and its characteristics set in the financial standards.

The importance of the accounting classification derives from the fact that it will subsequently be used by all other legal systems and in particular the taxation that will apply to the preferred shares because of it.

Corporate Law

The Corporate Law concludes that some advantages and priority rights can be set to the preferred shares, but at the same time a mechanism that will limit their power must be included.

One of the common practices is to limit the voting rights of preferred shares, as opposed to, for example, management shares, which usually has the critical advantage of being able to participate in the decision-making process. This practice allows capital raising from investors; ensuring the investors that they will be recompensated and receive priority dividends; all while at the same time they won't be able to interfere with the company's decision-making process.

Taxation and Classification of Preferred Shares for Tax Purposes

As you can understand, the accounting classification described above is critical for tax planning and strategic planning based on the use of preferred shares.

Will the preferred shares be classified as a capital asset that grants dividends and then the taxation of these dividends will apply; or as a Financial Instrument (for example, a loan) that provides income that will be classified as interest income for tax purposes?

Will the preferred shares be classified as a complex instrument as we described above, what will cause the taxation on the income or the conversion into ordinary shares to apply as capital gain tax?

These issues and many more will be determined on the basis of the accounting classification and the essence of the business activity. This classification will affect taxation when the shares will be distributed, claimed, held and even while drawing the ongoing advantages and priorities that they offer. Such benefits may affect taxation at times the shares will be converted or sold.

Making the Right Decision

As you may see, the proper way of raising capital and choosing the right tool kit for that matter is based on a significant decision that might affect the company immediately with regard to the fundraising process, and it will also affect the company in the following years, whether if on the decision-making aspect or on the company's activity.

In order for you to integrate and find the preferred solution in every situation for every company, we recommend conducting strategic planning that combines professional knowledge in taxation, accounting, legal and financial fields, alongside the decision-makers, owners, and entrepreneurs of the company.

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

Tax Incentives for Investments in start-up Businesses

Seed Investment Scheme (Income Tax) Rules, 2019

By means of Legal Notice 170 of 2019, the Government of Malta has adopted the Seed Investment Scheme (income tax) rules for the purpose of granting tax relief to natural persons residing or operating in Malta investing in start-ups.

The rules shall be applicable to qualifying investors who subscribe to fully paid up equity shares at par in a qualifying company on their own behalf, provided that the investment in qualifying companies reached an established threshold of EUR 5,000,000.

Qualifying investors shall be any natural persons residing in Malta who bear the full risk in respect of their investment. The investment made in a qualifying company shall, in aggregate, not exceed EUR 750,000 per qualifying company.

For the investment to benefit from these rules, the qualifying investor shall hold the investment in the qualifying company for a period of not less than three years and shall not be connected to the qualifying company prior to the subscription of the equity shares.

The rules also provide the criteria, under which investors and companies shall be considered as qualifying and can obtain such status respectively, in order to implement the Seed Investment Scheme; and define the certain conditions precluding such status to be granted.

Furthermore, the rules set the procedure whereby qualifying investors will be able to benefit from a tax credit amounting to 35% of the aggregate value of the investments made by the qualifying investor.

The Seed Investment Scheme (income tax) rules are deemed to have come into force on the 1st January 2019 in respect of investments made as from basis year 2019 and shall have effect until the 31st day of December 2021.

Clive Caruana
clive@ccpsmalta.com
Malta

CCPS Malta
Tax | Assurance | Advisory | Corporate

Member of
Antea
Alliance of independent firms

“Psychosocial risk factors in work-identification, analysis and prevention” entered into force in Mexico

On 23 October 2019, NOM-035-STPS “Psychosocial risk factors in work-identification, analysis and prevention” entered into force in Mexico. This standard will be mandatory for all companies in the Mexican territory. The standard mentions the importance of the working climate and conditions of workers to ensure their mental health. Addresses psychosocial risks that can be caused by workloads exceeding people’s ability, stress, unsuitable schedules and balance in the work-family relationship, these factors can lead to anxiety and sleep disorders that directly affect workers’ health.

One of the general obligations imposed by the rule is to establish a policy of prevention of psychosocial risks, however, in order to comply with this standard, it is necessary for both employers and workers to comply with their obligations, which are mentioned below:

Employer obligations:

- Commitment to the prevention of psychosocial risk factors.
- Prevention of workplace violence.
- Promoting a favorable organizational environment.

Workers obligations:

- Participate in the identification of psychosocial risk factors and in the assessment of the organizational environment.
- Observe all prevention and control measures set by the employee to control psychosocial risk factors and collaborate to promote the organizational environment.
- Refrain from performing practices contrary to the favorable organizational environment and acts of labor violence.

However, the application of this standard has caused irregularities within organizations due to a lack of knowledge about the factors, so training is needed to get these new methods to understand and apply the right way.

Alvaro Frasco
alvaro.frasco@bjx.auren.com
Auren Mexico

Starbucks: no selective tax advantage granted by the Netherlands, according to the European General Court

Background

On 21 October 2015, the European Commission rendered its decision in the State aid investigation case regarding an Advance Pricing Agreement (**APA**) concluded between the Dutch company Starbucks Manufacturing EMEA BV (**SMBV**) and the Dutch tax authorities in 2008. In its decision, the European Commission held that the royalty payment by SMBV to Alki (a UK based Starbucks group company) should not have been tax deductible for SMBV. As a consequence, a selective tax advantage had been granted to SMBV, constituting forbidden state aid. Specifically, the European Commission held that the so-called Transactional Net Margin Method (**TNMM**) that was applied to determine the at arm's length profit level of SMBV, was not allowed since instead the at Comparable Uncontrolled Price (**CUP**) method should have been applied.

European General Court Judgement

In its ruling of 24 September 2019, the General Court held that in the case of tax measures, an advantage can only be present if the position of the relevant taxpayer is more beneficial compared to the regular application of the underlying tax measure. Although the General Court ruled that the arm's-length principle can be used to identify existing State aid, it rejected the European Commission's argumentation that Starbucks received a selective advantage. Most importantly, the General Court held that the European Commission did not substantiate that the use of the TNMM instead of the CUP method led to a result that was too low. The mere use of the TNMM to determine the arm's-length remuneration of SMBV therefore did not necessarily confer an advantage on SMBV. Furthermore, based on the functions performed by SMBV, the European Commission failed to demonstrate that the deductibility of the royalty payment constituted a selective tax advantage for SMBV.

In conclusion, the General Court ruled that the European Commission failed to demonstrate that a selective advantage constituting illegal State aid had been granted to SMBV. Therefore, the General Court annulled the State aid decision of the European Commission against SMBV.

The judgement of the European General court in Starbucks case could be appealed by the European Commission with the European Court of Justice.

Peter Wurzer
peterwurzer@auren.nl
Auren The Netherlands

Nigeria's CRS Regulations: 12 Things your Financial Institution Should Know + Do

On July 1, 2019, Nigeria's Federal Inland Revenue Service (FIRS) made the Income Tax (Common Reporting Standard) Regulations 2019 (the Regulations) to regulate how financial institutions are to report on the accounts maintained by persons that are not tax-resident in Nigeria or the United States of America. In this brief, we itemize 12 things your financial institution should know and do under the Regulations:

1. Your financial institution has an obligation to know the tax residence of all persons who maintain an account with it. Accordingly, put in place a due diligence framework that elicits this information from all your customers.
2. Maintain a register, schedule or enterprise resource planning tool (ERP) that identifies all the accounts (Reportable Accounts) maintained by your customers or persons that are not tax-resident in Nigeria or the United States of America (Reportable Persons).
3. Persons who have dual tax residency, for example, being tax resident in both Nigeria and Canada, are Reportable Persons.
4. Your register, schedule or ERP must contain information such as the following on the Reportable Person: tax identification number; income (including interest, dividends and other income) earned; and account balance as at period end.
5. Prepare and submit an annual Reportable Accounts information (Information Returns) not later than May 31 of every year to FIRS.
6. Information Returns on all Reportable Accounts maintained in your Financial Institution in 2019 is due to be submitted to FIRS on May 31, 2020.
7. You are still required to submit Information Returns even though you have no Reportable Accounts.
8. FIRS will shall share your Information Returns with its counterparties further to Nigeria's obligation under the multilateral agreement on the automatic exchange of financial account information.
9. Similar to your accounting records, your Information Returns are required to be kept for minimum of 6 years thereafter.
10. FIRS may, by a notice in writing, require your financial institution to furnish it, within a minimum of 14days, with any document or information on compliance with the Regulations.
11. Failure to comply with any of these obligations will expose your financial institution to a maximum flat fine of [)10million plus [)1million for every month of breach. For emphasis, your obligations include: keeping record of Reportable Persons and Reportable Accounts; filing your Information Returns correctly and accurately; and being ready at any time to supply FIRS with any lawful document or information required.
12. You can employ the services of a service provider like Taxaide to assist with your due diligence and reporting obligation under the Regulations. Taxaide can also assist with the automation of your CRS compliance process including deploying a CRS-focused ERP.

Emenike Ugwuanyi
e.ugwuanyi@taxaide.com.ng
Bidemi Olumide
b.olumide@taxaide.com.ng
Nigeria

Taxaide

Member of Antea Alliance of independent firms

Auren Portugal partners with Explorer Growth II Venture Capital Fund, in order to allow tax benefits up to 82,5% of the IRC to portuguese companies

There is a new relevant tax opportunity in the context of SIFIDE II - Tax Incentive System for Business Research and Development, the new Explorer Growth II Venture Capital Fund.

The Explorer Growth II Venture Capital Fund, approved by the CMVM (Portuguese Securities Market Commission) is an investment fund intended to finance research and development expenditures, previously approved by ANI (National Agency for Innovation). The Fund qualifies as a relevant application for SIFIDE II, allowing companies to access the tax benefits just by acquiring investments tickets and leaving the control of the I&D expenses to the team managing the Fund. This way, companies that are still gaining traction on I&D projects and have limited financial resources will be able to access all the tax benefits of the SIFIDE II system and the recognized experience of the Venture Capital experts to enhance the investment made.

In short, just by subscribing to the Explorer Growth II Venture Capital Fund companies will directly access to SIFIDE II double percentage deduction of IRC (tax income collection for companies):

a) Basic rate - 32.5% of expenses incurred during that period;

b) Incremental rate - 50% of the increase in expenditure incurred in that period in relation to the simple arithmetic average of the previous two years, up to a limit of 1,500,000.00 €.

This is a relevant tax opportunity in Portugal because companies that invest in I&D via the Explorer Growth II Venture Capital Fund will be allowed to reduce or suspend the IRC third payment, due in the 15th of December.

In order to facilitate this process, Auren Portugal as created a partnership with the Explorer Venture Capital Fund and has launch an information campaign via newsletter and Social Media, communicating the advantages of using Explorer Growth II Venture Capital Fund to access the SIFIDE II benefits.

Rosário Líbano-Monteiro
rosario.monteiro@auren.pt
Auren Portugal

auren

Favourable tax regime for companies in Romania

Romania is a place where you should focus on next, be it for your business or for expanding your client base. The recently adopted legislation and the amendments that are to come are encouraging investment funds and big companies to establish their base here.

In Romania, micro companies have the same legal status as a standard limited liability company, but with a different tax regime.

The tax regime applicable to micro-enterprises was significantly modified in 2018 compared to the one applicable in previous years, and the novelties in this respect were introduced through GEO no. 79/2017.

First of all, the revenue threshold used to classify a company as a micro-enterprise has been revised to EUR 1 million, which is double the threshold applicable between February-December 2017 (EUR 500,000).

What does this mean? Effectively, companies with 2017 revenues ranging between half a million and one million euros, which paid a 16% tax on profit, have since 2018 been transferred to the tax category for microenterprises, where they apply either a tax rate of 1% (in the case of having at least one employee), or a 3% (for companies with no employees).

Additionally, the micro category will also be applicable to companies generating income from consultancy or management services (even if the share of revenue from these activities is over 20%), as long as they don't exceed the EUR 1 million revenue threshold. Moreover, companies operating in the banking, insurance and reinsurance, capital markets or gambling sectors are also included in the scope of micro-enterprise income tax.

Romania is, at this moment, one of the EU countries that has a legislation allowing us to consider it almost a tax haven for holdings as well as a generally attractive investment destination. Following the list with Monaco, but also Netherlands, Cyprus or Luxembourg, Romania has implemented different tax measures to allow different investments to develop and to register their tax base on the Romanian territory.

A Romanian company can be used for international tax planning purposes mainly due to:

- The tax incentives and extensive Double Tax Treaties (DTT) network Romania has secured with other countries (86 DTTs currently in place);
- Low corporate tax rate of 16 %, one of the lowest in the E.U.;
- Low flat personal income tax of 10%;
- The ability to pull profits from the country of the subsidiary with no or very low withholding tax, provided a DTT is in existence;
- The fact that it can benefit from the application of the provisions of the EU Parent-Subsidiary Directive, the EU Interest and Royalties Directive, and the EU Merger Directive;
- Local tax on dividends is 5%;
- Currently, with good chances to be adopted, the Parliament is discussing about fiscal consolidation, meaning that in case of a group of companies where one company exhibits a profit and another has financial losses, these amounts can be offset so that the group doesn't suffer a supplementary burden with the tax on profit. The tax consolidation system for corporate tax is valid for 5 years of tax and the system is optional;
- A bank account can easily be opened for the company, provided that the UBO is known and that is not a PEP person or has no restrictions in having an account opened (a clear Due Diligence must be performed)

The corporate tax has been at the same level (16%) since 2005 and it looks like the Romanian government will keep it stable for the next period. This actually contributes a great deal to the stability of the Romanian corporate taxation environment and, consequently, is one of the factors that will certainly attract long-term investments in the country.

Also, it is worth noting that dividends distributed by a Romanian company to a non-resident company established in a state that has concluded a DTT with the country are tax-exempt if this non-resident company (either EU or non-EU member) holds a minimum of 10% of the Romanian company's share capital for a period of more than one year.

These provisions are actually more favourable than those of the Parent- Subsidiary Directive for dividend beneficiaries resident in EU Member States, while for those from non-EU countries with which Romania has concluded a DTT, this exemption is very often more advantageous than the dividend tax rate stated in the respective DTT.

Similarly, capital gains obtained following the sale of shares held in a company resident in Romania or in a country with which the country has concluded a DTT are tax-exempt if the beneficiary of these gains holds a minimum of 10% of that company's share capital for a period of more than one year.

The recent implementation of a new Tax Code and new Tax Procedure Code has brought various changes meant to encourage not just holdings but any type of investment in Romania.

Even though from a political perspective Romania has been relatively unstable due to high-level changes in the government as well as a popular anti-corruption movement, the general direction seems to be towards a more efficient tax system, accompanied by a general reduction in taxation rates.

The most important tax developments are the reduction of the standard VAT rate from 24% to a final rate of 19% in 2017, but with lower rate applicable for food and beverages (including draft beer) 9 % and even lower for hotels and restaurants at 5%. The implementation of the reverse-charge mechanism was a real benefit for real estate transactions, as it provides a much needed simplification in this area, as well as a change regarding the taxation of buildings - which was previously differentiated based on the type of owner (giving rise to significant differences in taxation between corporate entities and individuals) - to a more equitable system based on the type of usage (i.e. business or residential).

Almost all banks are able to open bank accounts for holding and micro companies provided that the UBOs are known and that they have no interdictions of any kind in having an account in a European country. Internet banking is widely used and offers direct connection to the business account which can be easily managed from outside Romania.

In addition to banks, professionals like consultants, lawyers, accountants, and tax advisors are continuously developing and increasing their skills to be able to offer professional support, especially for holding structures, with services such as management, accounting, payroll, and registered offices.

We believe that all of the above present significant reasons to invest in Romania!

Oana Dinulescu
oana.dinulescu@eurofast.eu
Romania

Eurofast

Member of Antea Alliance of independent firms

Changing the management in Russia: Can it be smooth?

When you intend to change the general manager and appoint a foreigner in an operating company, it might be more difficult than you imagine.

Thus, you have appointed the foreign citizen as the director of the company. Only after that you can submit the documents for receipt of a work permit and in parallel - submit the package for registration of the new director in the Companies Register ("EGRUL"). Formally the director is empowered to act on behalf of the company without a power of attorney from the date indicated in the resolution regarding the appointment. But on the other hand migration legislation envisages that a foreign citizen does not have the right to carry out labor activities without a work permit on the territory of the Russian Federation.

From this we can conclude that if a foreign citizen is appointed as the director of the Russian company, but at the same time he/she is outside the territory of the Russian Federation, he/she is able to act as the director. Nevertheless, practice shows that migration authority strictly prohibits to act like that and obliges to issue a work permit for this foreign citizen, due to the fact that he/she is a director and shall be located at the official address of the company in Russia in accordance with the Russian corporate legislation.

A kind of paradox occurs here: the director has powers to act from the corporate law standpoint, but the migration legislation forbids him/her to act without a work permit. If this prohibition is violated, the director and the company may be held liable. The administrative fines vary for companies from 250 000 to 1 000 000 rubles, for officials from 25 000 to 70 000 rubles and for foreign national from 2000 to 7000

rubles. The only way to avoid this for the director is to refrain from signing any documents and from exercising any other actions on behalf of the company before obtaining of a work permit to exclude the risks.

Alina Kozmina
KozminaAP@schneider-group.com
Nazar Takmenev
TakmenevNG@schneider-group.com
Russia

SCHNEIDER GROUP

Member of Antea Alliance of independent firms

EU VAT reform: The so called 4 quick fixes

Starting January 1st 2020, as a part of the European Commission's Action Plan on VAT, four "VAT quick fixes" approved at the end of 2018 will finally take effect, which means there will be new rules for EU cross-border supplies of goods that will simplify international trade within the EU borders. The changes will apply on:

- Call off-stock
- Chain transactions
- New formal requirements in VAT number in order to apply the zero VAT rate
- Evidence of intra-Community supplies required to apply the zero VAT rate

Quick fix 1: Simplified treatment for call-off stock

New regulation establishes that the transfer, by a taxable person, of goods to a warehouse or other location of a regular customer located within the EU limits, if the goods remain the property of the supplier, will no longer be treated as a deemed intra-Community supply and interior acquisition, by which the supplier had to register in the EU Member State.

Instead, the supplier will perform an intra-Community supply to the customer when the customer takes the goods out of the stock within a year from the delivery.

In the meantime, both parties shall keep a goods register that complies with specific conditions and mention the operation in its VIES statement.

Quick fix 2: Chain transactions

When there are chain transactions with consecutive supplies of goods among more than two taxable persons in several EU Member States, the zero VAT rate only applies to one link in the chain.

This quick fix establishes that the intra-Community supply of goods occurs where the goods are supplied to the taxable person that arranges the transportation, that is, the intermediary operator.

Quick fix 3: VAT number

Historically, the customer's valid VAT number was a formal requirement in order to apply the zero VAT rate to intra-Community supplies of goods, which made suppliers apply the zero VAT rate even though the client was not correctly identified.

Under the new rules, the previous communication by the customer of a valid VAT number is a **material** requirement in order to apply zero VAT rate for all supplies of goods. Said VAT number must be stated in the invoice issued by the supplier.

Additionally, the taxable person must file a recapitulative statement.

Quick fix 4: Documentary proof

Until now, there was no harmonized rules on how to prove transport on intra-Community supplies of goods in order to apply zero VAT rate.

The fourth quick fix establishes a presumption of transport to another EU Member State as long as the supplier can provide, at least, two non-contradictory

and independent documents that evidence the transport, such as signed CMR documents, copy of payment for transport, bill of lading, airfreight invoice...

Companies must review their current arrangements and analyze if any changes must be made.

Cristina Batlle
Cristina.batlle@bcn.auren.es
Auren Spain

The Patent Box in the United Kingdom

The United Kingdom government remains committed to increasing investment in R&D across the board in the UK, and creating a tax environment that actively promotes innovation.

In line with this goal, the UK has a number of innovation incentive schemes, including R&D tax relief (up to 43.7p tax relief on every £1 spent) and the RDEC (up to 28.7p as a combined tax credit and relief). The Patent Box scheme, originally introduced in April 2013, remains perhaps the least well understood of the options available to innovative companies.

At a high level, the Patent Box allows any company that owns, or has the exclusive right to, certain patents (UKIPO, EPO, and selected other EU country patent offices) to benefit from a 10% rate of tax on any profits attributable to them. This is clearly very advantageous in comparison with the current prevailing rate of corporation tax (19%).

The relief is obtained by way of an additional deduction to taxable profits, so a company that is loss-making or has substantial losses brought forward may not see an immediate benefit, however a Patent Box claim would extend the life of any losses, and also has potential to interact positively with R&D reliefs to allow a greater surrender for a cash credit in year.

There was an initial phasing in of the benefit from Patent Box, and a further change to the rules in light of BEPS regulations (during 2016). This made the calculations complex while adding both an additional administrative burden and uncertainty to the potential long term benefits. As such, many companies chose not to invest the time and expense to take advantage of the scheme.

From 1 July 2016, however, only the new rules apply and they are fully implemented. As such any new entrants (who will now be outside the election window for the old scheme) will have a more simple “in-or-out” decision if they have qualifying patents.

So now that the uncertainty around the regime has been reduced, it is the perfect time for companies to consider (or reconsider) entrance to the scheme. To put things in context, more than 48,000 companies in the UK claim for R&D tax relief in some form, while the number claiming under the Patent Box is closer to 1,000.

The new Patent Box regime operates by splitting all income and expenses into streams of either IP income (split between the relevant products or IP held) or non-IP income (a single stream for all other income and expenses). Calculations are then made to deduct amounts for “routine returns” and marketing income from the IP income streams.

For each stream, an R&D or “nexus” fraction is then calculated, and applied to the profit figure. This fraction, which is a key difference between the new and old schemes, is intended to match the benefit of the patent box with the effort of development.

The R&D fraction is based on the proportion of R&D spend that is carried out in-house or subcontracted to unconnected third parties.1 Where companies subcontract work to connected parties (even UK group companies), or pay costs to acquire IP, the claim might be restricted.

While this adds complexity to the calculation, and requires that relevant R&D is tracked and traced by IP income stream, it should be noted that companies that have developed IP entirely in-house or made use of only third party subcontractors will see no restriction to their claims.

The Patent Box may not be a reason in and of itself for your clients to obtain patents on relevant IP, but it should certainly be part of their decision process. Similarly, where clients already have patents in place, now might be the time to look into what preparations need to be in place to take advantage of this generous relief as soon as they are generating profits.

Richard Hill
RHill@hwca.com
United Kingdom

Haines Watts
Local Matters, National Strength

Member of Antea
Alliance of independent firms

Simplified stock corporations (Uruguay: SAS)

Law 19.820 promotes the development of entrepreneurial culture, by regulating different topics of interest and especially with the creation of a new social type called ´Simplified Stock Corporations´ better known in Spanish as ´Societies for Simplified Actions´ (SAS).

The legislation seeks to minimize costs, expedite the time of constitution and optimize the use of technological tools.

This new social type can be formed by one or more natural or legal persons (except for a single limited liability company, in Uruguay S.A.).

Constitution:

The constitution and amendment of statutes does not require certain approvals or publication of notices (Does not require intervention by AIN in Uruguay).

The statute will be registered in the Uruguayan Public Registry of Commerce and in case of the use of digital means, it is anticipated that the Registry will be required to perform the qualification within 24 hours. Reiterating, no publications required. Also, it does not establish the term of the company.

SAS may have as a social object any commercial or civil activity provided that it is not prohibited, or is legally established that, in order to carry out a certain activity, they must adopt a certain social type of those governed by General Corporation Law (16.060), such as: Insurance or Financial Activity.

In accordance with capital, a minimum of 10% should be integrated.

The total integration of the shares must take action within 24 months of the constitution. The actions may be registered shares or the ones that are not represented by negotiable securities.

Bylaws may restrict and even prohibit the trading of shares (period: 10 years).

The law gives flexibility for partners to establish the way in which society operates and organizes.

With this flexibility given to SAS you can adopt the figure of an administrator, that of a directory or any other form of action that the partners determine.

It is envisaged that representation may be exercised by one or more natural or legal persons and its designation may be statutory or resolved at a shareholders' meeting.

Social entities are allowed to hold meetings in person or by any other reliable means of simultaneous communication such as video calling.

TRANSFORMATION IN S.A.S.:

Any trading company (except for S.A.) may be transformed into SAS. The law provides for a one-person company to become SAS.

Tax regime:

SAS is given the same treatment as partnerships and in the event of a disposal of shares, will be taxed just like a limited liability company.

As related to Economic Activities Income Tax (IRAE) given similar treatment to partnerships companies, the stipulated taxation system bases settlements in a presumptive income, with rates reduced according to the legal nature of the entity as well as the income level (may be applied up to the maximum amount of IU 4,000,000.taxation)

The administrator, directors or members of the administrative entity (and other than the legal representative), shall be jointly and severally liable to the company for the payment of the IRAE, a rule similar to that for limited liability companies and partnerships.

In reference to social security contributions, the administrator or those who are part of the administrative entity or the legal representative shall pay for social security.

Shareholders shall be liable only until the amount of the respective contributions corresponding to the integration of the shares they subscribe to or acquire.

Partners shall not be liable for the obligations of work, taxes or any other nature incurred by the company.

Fernando Salazar
Fernando.salazar@mvd.auren.com
Auren Uruguay

auren
TOGETHER FOR YOUR SUCCESS

EUROPE
Andorra
Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Luxembourg
Malta
Montenegro
Norway
Poland
Portugal
Romania
Russia
Serbia
Spain
Sweden
Switzerland
The Netherlands
Ukraine
United Kingdom

AMERICA
Argentina
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Dominican Republic
Ecuador
El Salvador
Guatemala
Honduras
Mexico
Panama
Paraguay
Peru
Uruguay
USA
Venezuela

MIDDLE EAST AND AFRICA
Algeria
Angola
Egypt
Israel
Jordan
Kenya
Kuwait
Lebanon
Mauricio
Morocco
Nigeria
Saudi Arabia
South Africa
Tunisia
Turkey
UAE

ASIA-PACIFIC
Australia
Bangladesh
China
India
Indonesia
Japan
Malaysia
New Zealand
Pakistan
Singapore
South Korea
Thailand

auren
Antea Alliance of independent firms
ASSOCIATES