thv
Treuhand | Steuern | Prüfung

Member of Antea Alliance of independent firms

INTERNATIONAL BUSINESS 2024

Newsletter April

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

Some of the features of this edition include:

Everything you need to know about the Beckham Law in Spain in 2024, Croatia's fiscal transformation, and the new law to protect personal information in Tanzania.

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

Index

Republic of Srpska's Economic Transformation: A Dive into Minimum Wage Policies and Worker Benefits

On January 1, 2024, the Government of the Republic of Srpska took a decisive step by increasing the minimum wage to 900.00 BAM net. This decision was driven by the notable impact of inflationary pressure, escalating basic food prices, and rising housing costs on the financial well-being of citizens. Collaborating with the Union of Employers, the government aims to enhance the standard of living for its citizens through this pivotal adjustment.

Employers Concerns

Approximately 20,000 workers are expected to be directly affected by this wage increase. Notably, employers had previously suggested a minimum wage of 750 BAM, expressing concerns about potential job losses with a more substantial increase. In response to these concerns, the Prime Minister of the Republic of Srpska assured support for businesses facing challenges 'who prove that they suffer damage due to the decision regarding the increase of the minimum wage.'

Government – Union of Employers: Coordinated Actions for Salary Enhancement

Over the past three years, the Government of the Republic of Srpska has consistently pursued measures to bolster salaries. This initiative includes an annual investment of 420 million KM in the economy, with a primary focus on retaining young people and improving the demographic structure. In tandem with the minimum wage hike, benefits such as hot meals for workers have been raised to 10.04 BAM net. These combined efforts, complemented by increased tax relief, significantly contribute to the overall improvement of workers' positions.

The observed increase in the average salary in the Republic of Srpska has a broader effect on the overall wage landscape. The push for an increased minimum wage is integral to a strategy endorsed by the Union. The Union advocates for not only raising the minimum wage but also ensuring proportional increases for all employees, particularly those in the real sector.

The goal is to reduce the outflow of labor abroad, addressing the market's prevalent labor deficit.

From the Union's perspective, this strategic move aligns with the imperative of enhancing the standard of living for workers. The Union's consumer basket for 2023, valued at 2,423 BAM (1,242 EUR), serves as a benchmark. Significantly, the average salary presently covers 51.83% of this basket, underlining the immense role of increased wages in meeting essential needs. The consumer basket includes expenses for food, housing, communal services, household maintenance, clothing, footwear, hygiene, health care, transport, education, and culture.

Analyzing spending patterns, families in the Republic of Srpska allocated the highest expenditures in February to food (1,083 BAM or 555 EUR), followed by housing and communal services (619 BAM or 317 EUR), transport (225 BAM or 115 EUR), and current household maintenance (130 BAM or 66 EUR). The Union expresses optimism that this wage increase will positively impact employees' standard of living, offering a tangible improvement in their financial well-being.

Conclusions

To sum it up, the Government of the Republic of Srpska's decision to increase the minimum wage reflects a proactive response to economic challenges, driven by inflationary pressure and rising living costs. This strategic move, in collaboration with the Union of Employers benefits workers and aligns with broader initiatives aimed at improving the overall wage landscape. As the observed increase in the average salary influences various sectors, the Union's advocacy for proportional wage increases seeks to positively impact the standard of living for workers in the Republic of Srpska, fostering a more prosperous and resilient workforce.

Andrea Peulić
andrea.peulic@eurofast.eu
Bosnia and Herzegovina

Eurofast

Unmasking the World of Corporate Shell Companies

Shell companies have always held a mystique for entrepreneurs, offering a legitimate cover for various financial and business maneuvers. The European Union has been diligently working on regulatory measures to monitor the operations of these enigmatic entities.

ATAD 3 and the Dawn of Transparency

The European Union has taken a significant step towards regulating shell companies through the Third Anti-Tax Avoidance Directive (ATAD 3). This directive imposes "minimum substance requirements" on these elusive legal structures.

The implications are profound, potentially jeopardizing the advantages shell companies once enjoyed under double tax treaties and EU directives. Member States will now have the authority to tax shareholders based on a transparent evaluation of the entity's operational activities.

It's essential to note that this directive exclusively targets entities resident in the EU. Non-compliance with ATAD 3 substance reporting requirements or submitting inaccurate substance declarations could result in penalties of at least 2% to 4% of the entity's annual revenue.

Exemptions and Scrutiny Criteria

Certain entities are exempted from the purview of the EU Directive, including regulated financial institutions, companies with transferable securities listed on regulated markets, and domestically domiciled holding corporations. Scrutiny is based on three specific criteria: passive income, cross-border activities, and outsourced management and administration.

1. Passive Income Criterion

This criterion is applicable when an entity's financial operations reveal that over 65% of its revenue in the previous two fiscal years comes from income sources categorized as relevant. These sources include interest, earnings from financial assets (including cryptocurrencies), royalties, dividends, income from the sale of shares, financial leasing, immovable property, and select movable assets. Furthermore, this criterion is met if more than 75% of the entity's asset value consists of real estate or if more than 75% of its assets are in the form of shares.

2. Cross-Border Involvement

When over 55% of the entity's income is derived from international transactions or if more than 55% of its real estate assets are located outside its jurisdiction in the preceding two years, it triggers a closer examination.

3. Outsourced Management and Administration

If the entity has entrusted day-to-day administration and decision-making processes to a third party over the past two years, it falls under scrutiny. However, it's essential to note that the specific delineation of "day-to-day" operations and decision-making functions within the entity remains ambiguous.

Disclosure and Documentation

If an entity satisfies the above criteria, it must disclose relevant information in its annual tax return. Moreover, comprehensive documentary evidence supporting the declaration is required if the minimum substance indicators are met.

The "Magical Three-Criteria" Rulebook

A company meeting all three criteria and providing the necessary documentation is considered to have satisfied the minimum requirements for the tax year.

Consequences of Violating the Three-Criteria Rulebook

Violating these criteria can have significant repercussions. Local tax authorities may withhold certificates of tax residency, leading to the forfeiture of double tax treaty (DTT) privileges and EU directive benefits. Furthermore, EU tax authorities gain the ability to share information about the entity with other EU member states, which may result in local withholding of taxes or taxation of the entity's income at the EU shareholder level.

The Countdown to ATAD 3

ATAD 3 is expected to come into effect on January 1st, 2023, although there is anticipation that it might be postponed until January 1st, 2025. The implementation process involves bureaucratic steps and aligning with the local legislation of EU member states.

What adds to the intrigue are the meticulous examinations of the preceding two fiscal years, which might shed more light on taxation requirements concealed behind cryptic terminology.

Pantelis Papadopoulos
pantelis.papadopoulos@eurofast.eu
Bulgaria

Digital transformation in auditing and business consulting

Nowadays it is essential for companies to adapt and adopt the new technologies that are constantly emerging. In the business world, digitalization has become a very important tool in auditing and business consulting, as it has revolutionized the way activities and tasks are done. However, it has brought a series of challenges for companies and their advisors, who now more than ever, understand that speed and security are fundamental in this business environment.

Thanks to the development of advanced technologies such as artificial intelligence, process automation, data analysis and blockchain, the efficiency, accuracy and scope of accounting services has been strengthened. These new tools not only detect potential opportunities and risks easier, but they also help improve the quality of reports delivered to clients, allowing them to make strategic and informed decisions.

Therefore, it is necessary for companies to incorporate these new technologies into their work in order to remain relevant and competitive in market. Those companies that see digital transformation as an ally in their auditing and consulting processes, increase their effectiveness and at the same time increase their knowledge of how to respond proactively to their clients' needs in an increasingly digital and globalized world.

César Gabriel Angulo Arrieta
gerencia@auren.com.co
Colombia

auren

From Changes to Challenges: Croatia's Fiscal Transformation in 2024

Croatia is set for a transformative fiscal year with sweeping amendments to its tax and social security systems taking effect on January 1, 2024. These changes bring a nuanced blend of challenges and opportunities for taxpayers across the nation, touching upon personal income tax and social security adjustments.

In the realm of personal income tax, several pivotal changes will redefine the landscape. The basic individual tax allowance sees a significant boost to EUR 560, providing relief for individual taxpayers. Furthermore, the tax allowance for dependent family members and individuals with disabilities is enhanced, recognizing, and addressing diverse family needs.

A notable development is the cancellation of the municipality tax/city surtax, simplifying the tax structure for all types of income. Furthermore, the threshold for the higher tax rate has moved to EUR 50,400, from what the majority of the taxpayers will certainly benefit. Additionally, a groundbreaking municipality-based income tax rate system is established, granting municipalities the authority to set rates. This system aims to accommodate the tax losses of municipalities by incorporating the cancelled municipality tax or city surtax directly into the income tax rate.

On the revenue side, the tax on rental income and capital income has increased to 12% from the previous 10%. Moreover, income derived from incentive shares sees an uptick, and is now taxed at 24%, up from the previous 20%. Shifting focus to social security, changes effective from December 1, 2023, introduce a significant relief measure. The base for the first pillar of mandatory pension insurance is reduced for gross salaries up to EUR 1,300. Individuals earning up to EUR 700 are entitled to a base reduction of EUR 300, while those earning between EUR 700 and EUR 1,300 are eligible for a partial reduction based on their gross salary range.

As Croatia embarks on this new era of taxation, individuals and businesses must carefully navigate these changes.

Strategic planning and a comprehensive understanding of the amended regulations will be crucial to ensuring compliance and optimizing financial outcomes in this evolving fiscal landscape.

Stay informed as Croatia takes bold steps toward shaping its financial future in 2024.

Should you need any guidance in the evolving Croatia's fiscal landscape, do not hesitate to contact Eurofast office in the region at zagreb@eurofast.eu

Gojko Uzelac
gojko.uzelac@eurofast.eu
Croatia

Eurofast

Egypt's recent financing polices to manage the economic hardships

Recent decline in the Egyptian economy has put a pressure on the Government to cut some public spending and managing the increase in interest rates and the inflation.

The Central Bank of Egypt's (CBE) Monetary Policy Committee (MPC) raised interest rates by 2% (or 200 bps) in its first meeting in 2024. The hike aims to curb high inflation rates. A couple of recent polices, was selling a concession of land in the North Coast to UAE's government.

The Egyptian government has just concluded in February 2024 a UAE's investment in the Ras el Hekma Project on Egypt's North Coast. The total initial investment is USD 35billion managed as follows:

- $15bn payment by UAE due within one week after the agreement:
  - $5bn conversion of Egyptian Central Bank "CBE" deposits.
  - $10bn 'fresh' inflow.
- $20bn due within two months:
  - $6bn conversion of CBE deposits
  - $14bn 'fresh' inflow

According to Goldman Sachs, the inflow of FOREX should provide the Central Bank of Egypt "CBE" with sufficient liquidity to clear the FOREX backlog and clear the FX market in the following weeks. This may involve some devaluation of the official exchange rate; the magnitude of any devaluation is likely to be relatively modest compared to current market pricing given the FOREX resources that will be available to the Egyptian monetary system.

Also, there is an expectation of a sharp drop in speculative / hedging demand for FOREX in the Egyptian economy on the back of the announced investment and this shall provide an opportunity for Egypt to restore two-way liquidity in the FOREX market in the coming weeks.

Ras El Hikma project's liquidity to cover Egypt's financing gap for next 4 years according as expected in the bank's analysis of financing needs.

This comes amid negotiations with the International Monetary Fund (IMF) to raise the rescue loan to USD 10 billion as a debt increase. Which positively affects the short-term liquidity of the foreign currency at the Central Bank.

In terms of Individual Taxes, Egypt has changed for the Third time in less a year, the payroll tax brackets trying to reduce the burden of inflation over the individual citizens. The Annual Tax Exemption increased from EGP15,000 to EGP20,000, which was EGP9,000 before last year's changes. There were also changes in the Individual Tax brackets as follows:

Rate	less than 600K	600K to 700K	700K to 800K	800K to 900K	900K to 1200 million	more than 1200 million
0%	EGP 1 to EGP 40,000	0	0	0	0	0
10%	EGP 40,000 to EGP 55,000	EGP 1 to EGP 55,000	0	0	0	0
15%	EGP 55,000 to EGP 70,000	EGP 55,000 to EGP 70,000	EGP 1 to EGP 70,000	0	0	0
20%	EGP 70,000 to EGP 200,000	EGP 70,000 to EGP 200,000	EGP 70,000 to EGP 200,000	EGP 1 to EGP 200,000	0	0
22.5%	EGP 200,000 to EGP 400,000	EGP 200,000 to EGP 400,000	EGP 200,000 to EGP 400,000	EGP 200,000 to EGP 400,000	EGP 1 to EGP 400,000	0
25%	Above EGP 400,000	Above EGP 400,000	Above EGP 400,000	Above EGP 400,000	Above EGP 400,000	EGP 1 to EGP 1,200,000
27.5%	0	0	0	0	0	Above EGP 1,200,000

Bassem Gaber
bassem.gaber@gaberco.com
Egypt

Government attempts to make Finland more pro-business

Finland's new parliament members were elected in April of 2023. The government is headed by the National Coalition party, known for a history of pro-business and liberal policies.

The cabinet published the new government program in July of 2023. The main goals of the program are stated to be creating safe, stable and economically strong Finland. One of the main metrics in the political discussion has been the rising debt-to-GDP ratio.

The main tools to balance the debt and economy have been cutting into social programs and lowering taxes of individuals in an attempt to stimulate the economy. In addition the government is trying to make "local agreement" more prevalent, meaning negotiating working conditions, wages, and other employment terms at a local or company level, rather than through national or industry-wide agreements.

The government's attempts have been criticized, especially by the parties in opposition and workers unions. Unions have organized strikes trying to force the cabinet to cancel or reduce the scope of changes, so far the cabinet has not budged.

Hannes Hyttinen
hannes.hyttinen@tilineloset.fi
Finland

Tilineloset
Yrittäjän tukena

Digital overhaul of business invoicing practices

Germany's transition towards mandatory e-invoicing for Business-to-Business (B2B) transactions by 2028 represents a significant stride in digital transformation within the business sector. Set against the backdrop of the European Commission's directive 2014/55, this initiative underscores a commitment to modernizing business practices, enhancing transparency, and ensuring compliance across industries.

The rollout is structured to commence on January 1, 2025, mandating businesses to be equipped for receiving electronic invoices, with a gradual shift towards full compliance by 2028. This approach underscores a flexible adaptation, allowing businesses to transition at a manageable pace, with the initial phase encouraging voluntary e-invoicing issuance and acceptance of both paper and electronic formats. The electronic formats are to adhere to the EN 16931 standard, with "XRechnung" and "ZUGFeRD" being the primary formats in Germany, ensuring interoperability and ease of data extraction.

By 2027, e-invoicing will become obligatory for companies with an annual turnover exceeding €800,000, with allowances for paper invoicing under specific conditions aimed at easing the transition for smaller businesses. The culmination of this phased approach in 2028 mandates universal adoption among all businesses, signalling a fully digital invoicing ecosystem.

When comparing Germany's timeline with other countries, it becomes evident that Germany's adoption of e-invoicing, particularly in the B2B sector, is more cautious and phased than some of its European counterparts. Countries like Italy, for instance, took a more aggressive stance by introducing mandatory e-invoicing for all B2B transactions as early as 2019. Similarly, countries in Scandinavia have long been pioneers in embracing digital invoicing and electronic transactions within the business sector.

This phased and deliberate approach positions Germany neither as a pioneer nor significantly behind in the global shift towards e-invoicing. It reflects a balanced strategy, aimed at ensuring businesses have ample time to adapt to digital processes, which is particularly crucial given Germany's diverse and robust industrial base. This strategy also aligns with the broader European Union's efforts, under directives such as 2014/55/EU, to foster a digital single market and streamline electronic invoicing across member states.

As Germany embarks on this digital journey, businesses are encouraged to proactively engage with the upcoming changes by updating their invoicing systems, training staff, and staying abreast of the regulatory landscape. This preparation is not merely about compliance but seizing the opportunity to enhance operational efficiencies, reduce costs, and contribute to environmental sustainability through reduced paper usage.

In summary, Germany's measured approach to integrating e-invoicing within the B2B sector, by 2028, mirrors a broader trend towards digital transformation, positioning the country in line with the evolving digital invoicing landscape globally. This initiative is expected to yield significant benefits, from operational efficiencies to environmental conservation, marking a new chapter in Germany's digital business practices.

Ralf Buchhauser
ralf.buchhauser@muc-auren.de
Germany

Greek Legislation: Country by Country (CbC) Reporting

Greece recently enacted legislation introducing public country-by-country reporting as set out in the EU Directive. In accordance with the EU Public CbCR Directive, the Greek law requires certain businesses operating in Greece to disclose publicly – in what is known as a Public Report – the income taxes paid and other tax-related information such as a breakdown of profits, revenues, and employees per country. Specifically, entities that belong to multinational groups or by certain standalone enterprises and branches. The new law aims to enhance financial and corporate transparency.

The Law overall concerns: a) Multinational groups of companies with consolidated net turnover exceeding a total of EUR 750.000.000 for each of the last two (2) consecutive financial years, as per their consolidated financial statements, if the group's ultimate parent company is either based in Greece, or based in a third country and operates in Greece through a Greek subsidiary or branch, as further analyzed below; and b) Certain standalone enterprises , operating in Greece, whose net turnover for each of the last two (2) consecutive financial years exceeds a total of EUR 750.000.000, as per their financial statements.

The entities that have the obligation to report tax information are: 1) Greek subsidiaries and branches. 2) Greek medium-sized and large subsidiaries that are controlled by an ultimate parent company which is not established in an EU Member State (there are certain exceptions subject to conditions). 3) Greek branches of non-EU companies, whose net turnover exceeds a total of EUR 8.000.000 and whose head offices (i.e. the companies that established them) either belong to a group with ultimate parent company located outside the EU and which does not have a medium or large subsidiary in Greece, or are standalone enterprises, taking also into consideration the condition mentioned above referring to the amount of consolidated or, where relevant, total revenue for groups and standalone enterprises (there are certain exceptions subject to conditions).

The information that should be reported are the name of the company, the relevant financial year, the currency, a list of all subsidiaries consolidated in the financial statements, the nature of their business activities, Number of employees, Net turnover , Profit or loss before income tax, Income tax accrued, Income tax paid and Accumulated earnings. The income tax report prepared by the above-mentioned responsible entities shall be published at the General Commercial Registry (GEMI) within twelve (12) months from the end of the financial year for which the report is prepared.

The auditor, or audit firm is designated as responsible for determining in the relevant audit report whether the company should have published a Public Report and whether it has done so in accordance with the relevant provisions.

Noncompliance can result in fines ranging from €10,000 to €100,000 for the management, administrative bodies, and legal representatives of branches.

The above obligations apply to financial years starting after 22 June 2024 and this in fact means the Financial Year 2025 and published at GEMI by end of 2026.

Andreas Andreou
andreas.andreou@eurofast.eu
Greece
Eurofast

AI-generated images and authorial law. A comparative analysis in light of the recent Beijing Internet Court ruling

Generative AI is one of the most popular categories in the field of AI systems. The term "generative AI" refers to any type of artificial intelligence capable of generating new content: images, video, audio, code, and synthetic data. This definition includes both predictive algorithms and those capable of using suggestions from an external operator ("prompts") to produce articles or create images. This evolving field offers a wide range of opportunities varying from artistic creativity to editorial content production and technical process optimization.

Furthermore, Generative AI promises to revolutionize the way we interact with technology and the world around us, opening up new perspectives and challenges in the artificial intelligence landscape.

One of the most relevant issue related to Generative AI is the attribution of legal protection to AI-generated output, with respect to the ownership of rights, algorithmically generated works and copyright infringement by AIs during the learning process, known as "training."

Training generative artificial intelligences (AIs) is a fundamental process that determines their ability to create new content. This process involves the use of machine learning models, where the AI is "trained" through exposure to large volumes of data. During training, the algorithm analyses and learns from the patterns, styles, and structures present in the provided data, thus gaining the ability to generate original outputs.

U.S. law states that copyright protection can only be applied to creative works made by human. In a recent decision dated Feb. 21, 2023, the U.S. Copyright Office denied registration of artificial intelligence (AI)-generated images on the grounds that they are considered unprotectable under U.S. Copyright law. The issue addressed by the court concerns the graphic novel "Zarya of the Dawn", whose author Kristina Kashtanova used AI generated images for her book without declaring it.

Italian Law No. 633 of April 22, 1941, art. 1 (Copyright Law), protects all intellectual works of a creative nature belonging to literature, music, figurative arts, architecture, theatre and cinematography, whatever their mode or form of expression.

The Italian Supreme Court (Cass. civ., sec. I, ord., Jan. 16, 2023, no. 1107) has been involved in a similar case in which RAI (Italian Public service broadcaster) was sued in court by a young artist, who challenged the infringement of her copyright on a work generated through AI. The subject of the dispute was the use, during the 2016 Sanremo Festival, of the work "The scent of the night" without the author's prior consent.

The work was generated by AI software and the prompts used to create the image were entered by the author herself, based on her own creative idea.

RAI argued that the work did not deserve authorship protection because the author would have acted "passively," merely selecting an algorithm and only later approving the computer-generated result. Therefore, the work had not been created by the author, but by artificial intelligence software, which had "processed form, colors and details through mathematical algorithms."

The Supreme Court introduced an innovative principle of law, stating that the recognition of copyright has to be evaluated on a case-by-case basis, considering the "rate of creativity." Hence, if the use of AI has absorbed the creative elaboration of the artist, making the human contribution insignificant, copyright cannot be recognized. However, if the artist is able to consciously direct, instruct, correct and use the AI, this activity has to be considered an integral part of the work, deserving legal protection under copyright law.

In the case at hand, given that the subject image was not a mere reproduction of a flower, but involved a true reworking of it, authorial protection was needed thus recognising that the conception and formulation of prompts constitutes an expression of an artistic concept, a thought and a subjective and personal way of expressing an idea, all of which are worthy of legal protection.

This first Supreme Court ruling is an important step in the evolution of copyright protection for works created through AI in Italy.

Another important decision is that of the Beijing Internet Court or BIC that dealt with the issue of the relationship between generative artificial intelligence and copyright. In the case at hand, the plaintiff (Li), after creating, through the artificial intelligence software Stable Diffusion (owned by the company StabilityAI), the image of a young Asian woman, published it on the Chinese social platform "Xiaohongshu" (Chinese equivalent of Instagram). Shortly after, a blogger posted, on another content sharing platform, the same image without any permission or license.

The Beijing Court upheld the plaintiff's claim by highlighting the active role of the user, Mr. Li, in the creative process. The Court pointed out that his "selection of request texts" and setting of parameters constituted a "certain degree of intellectual investment". Indeed, although the image was materially produced by artificial intelligence software, the creativity and originality of the work is attributable to the aesthetic choices and personalized judgment of the user who guided the generative process.

The importance given by the court to the complexity of the prompt used by Li and the personalisation of parameters underlines that copyright can be recognized if there is an obvious human creative contribution in the conception phase. Thus, the sequence of prompts becomes the key to originality that allows copyright protection to be granted to work created through generative artificial intelligence system.

In light of the above, the Beijing Internet Court recognized that the image created using generative artificial intelligence had the value of a protected work under China's copyright law.

In conclusion, the debate on copyright protection for works generated by AI is evolving rapidly and requires an agile legislation easily adaptable to the challenges posed by new technologies, as the traditional anthropocentric model of copyright has been profoundly challenged by the development of generative artificial intelligence systems.

Enzo Cardone
ecardone@gealex.eu
Italy

Gealex
as lawyers, as family

The "OnlyFans" case: an interesting EU sentence

The European Court of Justice (Case C-695/20/2023) stated that a digital platform offering services by electronic means must always be considered a taxable person for VAT purposes in respect of the full amount received on behalf of the provider and not only on the percentage retained as remuneration. Specifically, the Court considered valid the Article 9-bis of EU Implementing Regulation 282/2011, which the judges found not to be contrary to the EU law.

This article establishes an absolute presumption towards the provider of services made available by electronic means (in this case the OnlyFans platform), when it acts also as an intermediary. In this case, the intermediary, in addition to being considered a taxable person for VAT purposes, must apply VAT on the entire amount received and not only on the percentage withheld as remuneration.

As a premise the OnlyFans platform is dedicated to users worldwide, who are divided into two categories of "Creators" and "Fans". "Creators", can upload and publish content, such as photographs and videos, in their respective profile. They can also broadcast live videos and send private messages to their "Fans". These latter can access the uploaded content by making ad hoc payments or by paying a monthly subscription for each creator whose content they wish to view and/or interact with. The determination of the fee is left to the free appreciation of the individual creator provided that platform sets a minimum amount to be paid.

In addition, the platform performs the necessary financial transactions, receiving payments from the fans and crediting them to the creators, retaining 20% as remuneration for the services provided. In the contract concluded directly between the creator and the fan, it is stipulated that OnlyFans is not a party to the contract, but merely act as an intermediary.

The VAT issue raised because the platform had subject to VAT its remuneration of 20% but, according to the British tax authorities, the company should have subject to VAT the 100% of the amount received by the fans.

Indeed, the UK tax authorities considered that the digital platform should be regarded as an entity acting in its own name within the meaning of Article 9-bis of EU Implementing Regulation 282/2011. In such a case, the intermediary acting in its own name but on behalf of a third party must be considered a taxable person for VAT purposes and therefore, as mentioned, should have applied the VAT not only on the amount corresponding to the intermediary service rendered but on the entire amount collected.

According to the sentence of the EU Court of Justice the article 9-bis, EU Regulation 282/2011 introduces an absolute presumption, whose requirements are verified in the OnlyFans case. Indeed Onlyfans:

- provides the platform (where the creators content is uploaded) and the device that enables the financial transactions to be carried out;
- is responsible for the collection and distribution of payments made by fans;
- sets the general conditions of use of the service.

Therefore, for the Court there seems to be no doubt for the applicability of the absolute presumption set forth in Article 9-bis, with the consequent passive subjectivity for the entire amount received by the platform operator, which must then transfer to the creator its own share.

This EU sentence over the social network world has generated interest also in the Italian scene.

Manuel Baldazzi & Edoardo Galli
mbaldazzi@tributarioassociato.it
e.galli@tributarioassociato.it
Italy

STUDIO TRIBUTARIO
BALDAZZI ZATTERA
& ASSOCIATI

Guide for investors: Constitution of a public limited company in Paraguay

Establishing a company in Paraguay offers a series of advantages that make it an attractive option for both foreign and local investors. With excellent monetary and financial stability in Latin America and solid economic growth, the country is positioned as a favorable destination for investment. Furthermore, the Paraguayan legal framework grants the same rights to foreign investors as to national investors, which fosters an environment of equity and trust.

One of the most prominent sectors in Paraguay is agribusiness, which has experienced notable development and growth. Paraguay offers low tax rates and a simplified tax regime, making it easier to establish and operate businesses.

When considering formalizing a company in Paraguay, the option of establishing a Sociedad Anónima (S.A.) is usually the preferred option for larger companies. This is due to its ease of transferring shares and its greater credibility with banking and credit institutions.

To establish a S.A. Certain legal requirements must be met, which include the formalization of the social contract through a public deed, registration in public registries, publication of an extract from the constitution and registration with the Treasury Attorney's Office.

Those who are evaluating investments in Paraguay will find in Cáceres + Schneider all the professional services required to set up and carry out their operations in the country, with the peace of mind provided by a firm with more than 29 years of experience, and more of 1,300 clients.

Clarisa Saucedo
clarisa@consultoria.com.py
Paraguay

crs+sch
cáceres+schneider

Restrictions related to application of the WHT preferences

As of January 2022, Poland finally implemented new regulations concerning the withholding tax (WHT). The aim of the changes was to impose new restrictions for application of the WHT preferences.

In Poland the WHT applies to selected cross-border payments, including for example:

- some intangible services, e.g. advisory, management, data processing, control and services of a similar nature,
- royalties,
- dividends, and
- interest.

The WHT is collected and transferred to the Polish tax authority by the tax remitter, i.e. a Polish entity that is making such payments to the Polish non-residents. There are two main WHT rates: 19% and 20%, and their application depends on the type of the payment: the 19% rate is usually applied to dividends, while the 20% rate is levied on interest, royalties and certain intangible services.

The WHT remitter may apply for WHT preferences (WHT exemption or a reduced WHT rate) on the basis of the EU Directives or the relevant Double Tax Treaty, only if certain conditions are met. In particular, the WHT remitter is obliged to verify with due diligence that conditions for application of the WHT preferences are fulfilled.

The new "pay and refund" mechanism applies in Poland as of January 1, 2022. By definition, it consists of the obligation to pay the WHT to the Polish tax authority and the possibility of receiving a refund of the WHT overpayment, once the Polish tax authority confirms that the conditions for application of the WHT preferences are met. The pay and refund mechanism is mandatory in case of the so called passive payments (including for example dividend, interest and royalties) made to related non-residents that exceed the threshold of PLN 2 million per annum (summed for a particular recipient). Such payments may still benefit from the WHT preferences, if:

- the management board of the Polish company submits a statement (WH-OSC form) to the tax authority, or
- the Polish tax authority issues an opinion on application of the WHT preferential treatment.

If a payment was subject to the pay and refund mechanism, it is possible to apply for a refund based on the special overpayment procedure. The application can be filed by the taxpayer (if he incurred the economic burden of WHT) or by the tax remitter (if the payment was subject to a gross-up mechanism and the WHT was covered by the tax remitter). The overpaid WHT should be refunded within 6 months provided that the applicant is eligible for the refund.

Ewa Kowalska
office@tias.pl
Poland

tias
there is always a solution

Smart Contracts: Revolutionizing the Real Estate Industry with Legal Implications

The advent of blockchain technology has introduced a transformative tool to numerous sectors, with real estate standing out as a prime beneficiary. At the heart of this revolution are smart contracts—self-executing contracts with the terms of the agreement between buyer and seller being directly written into lines of code. This article segment delves deeper into how smart contracts reshape the real estate landscape, focusing on their practical applications, legal implications, and challenges.

The Mechanism of Smart Contracts

Smart contracts operate on blockchain technology, ensuring transparency, security, and efficiency. They automatically enforce and execute the terms of a contract as soon as predefined conditions are met, without the need for intermediaries. This means automating processes such as property sales, lease agreements, and more in real estate, potentially saving time and reducing costs significantly.

Applications in Real Estate

1. Automated Property Sales

Smart contracts can automate the entire property sales process, from the initial offer to the final transfer of title. Once both parties agree to the terms and the buyer transfers payment, the smart contract automatically ensures the transfer of ownership. It updates the property records, significantly speeding up the transaction process.

2. Lease Agreements

Rental agreements can be encoded into smart contracts, automating monthly rent payments and enforcing lease terms. For instance, if a tenant fails to pay rent on time, the smart contract could automatically impose late fees or even initiate eviction processes based on the coded terms.

3. Escrow Services

Traditionally, real estate transactions involve escrow services to hold funds securely until all aspects of the deal are fulfilled. Smart contracts can take over this role, securely holding the buyer's payment until predefined conditions are met, at this point, the funds are automatically released to the seller.

Legal Implications and Challenges

Despite the efficiency and security benefits, integrating smart contracts into real estate transactions presents several legal challenges and considerations. The potential applications, particularly in the context of transactions in the real estate sector, have also made smart contracts a hot topic in the legal sphere. With the cornerstone of the system based on legal certainty, many questions arise about their validity and feasibility.

1. Legal Recognition

The legal status of smart contracts varies by jurisdiction. For instance, the U.S. state of Arizona passed legislation in 2017 recognising the enforceability of smart contracts under state law. Similarly, the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (ESIGN) in the United States provide a legal framework for electronic signatures and records, potentially encompassing smart contracts. However, not all jurisdictions have clear regulations, creating uncertainty about their legal enforceability.

Under Portuguese law, if we consider smart contracts in the strict sense of a smart legal contract, they would already be regarded as contracts since we would have two essential characteristics: an offer and an acceptance, even if expressed in an innovative form. However, on the other hand, if we consider them in the sense of a smart contract code, we would already be considering them as "mere" computer codes, which would only execute the order generated by the conclusion of the smart legal contract. In this context, those essential characteristics would not be observable because they were issued at an earlier and "unverifiable" stage.

2. Dispute Resolution

While smart contracts can reduce disputes by ensuring strict adherence to contract terms, they cannot eliminate them entirely. The immutable nature of blockchain means that once a smart contract is executed, it cannot be easily altered, even if there are legitimate grounds for dispute. This raises questions about how to resolve conflicts arising from errors in the contract code or unforeseen circumstances. In this

context, its automatic and immutable nature becomes an obstacle and a massive challenge due to the obvious risks and costs associated, such as renegotiating the contract or even verifying its breach, which is simpler under traditional contracts.

3. Regulatory Compliance

Smart contracts in real estate must comply with existing property laws, including those related to property rights, transfers, and registrations. Ensuring smart contracts adhere to these complex and varied regulations is a significant challenge, requiring legal expertise and possibly new regulatory frameworks.

In other words, we're not just talking about the validity of the contractual form but also about the need for all related activities to be adequate, such as obtaining documentation, administrative procedures, contractual guarantees or provisions for breach of contract. The chain will only be complete and can be considered a viable path if all the links fit together and are aligned.

4. Privacy Concerns

Blockchain's transparency is a double-edged sword. While it can increase trust and efficiency, it also raises privacy concerns, especially in sensitive transactions. Balancing the benefits of blockchain with the need to protect personal and financial information is a crucial legal and technical challenge.

Conclusion

Smart contracts can potentially revolutionise the real estate industry by automating transactions, reducing costs, and increasing information security and transparency. However, their integration into the industry requires careful consideration of legal implications, including their enforceability, compliance with existing laws, and privacy concerns. As legal frameworks evolve to accommodate these new technologies, smart contracts could become a standard feature of real estate transactions, offering a more efficient, secure, and transparent way to conduct business. The future of real estate, powered by smart contracts, promises a landscape where transactions are smoother and more accessible. Still, it will necessitate a collaborative effort among technologists, legal professionals, and regulators to realise this potential fully. The legislative impetus in digital law to frame and address these new realities is crucial, but it cannot be confined to the technological or dogmatic sphere. A truly holistic and transversal legislative approach is needed to adapt all related services.

Rui Ribeiro
rui.ribeiro@auren.pt
Auren Portugal
Auditoria, Assesoria, Consultoria

Gonçalo Cerejeira Namora
gcn@cnmf.pt
Cerejeira Namora Marinho Falcão
Portugal

Romania Citizenship by Investment Programme

Why Romania

Romania is situated on the western shores of the Black Sea, Romania became one of the most preferable countries for settling down. Over the last decade Romania had undergone a significant development and it is one of the recent members of the European Union. From an economic perspective, Romania became one of the fastest developing countries in the region, and offers the opportunity of Visa free travel to more than 134 countries.

Ways to obtain Citizenship & Residency

- Naturalization (residing in Romania for at least 8 years)
- Marriage or residing with a Romanian citizen for at least 5 years
- By birth
- Citizenship by investment program
- Temporary residence permit
- Permanent residence permit

Citizenship by investment program

Investment

if the applicant is already an EU citizen, has the status of refugee, or has invested an amount exceeding 1,000,000 EUR in the country, then the years stated above for naturalization or marriage can be reduced to half).

Requirements for application

- 18 years of age or older
- Hold no criminal record
- Fulfill the language requirement
- Has a work permit or owns a company/property

Temporary Residence Permit

Processing time

30-45 days

Requirements for application

- A foreign citizen must enter Romania with a long stay visa.
- Possession of a valid passport
- Proof of a residential address
- Possession of health insurance

Upon issue, the permit can be extended for a period of 1 – 5 years.

Permanent residency permit

Investment

50,000 EUR not as a permanent investment, but as share capital of a Romanian company

Requirements for application

- Possession of a temporary residence permit
- Proof of interrupted stay in Romania for more than 5 years
- Health insurance
- Proof of sufficient financial resources
- Fulfillment of the language requirement

bucharest@eurofast.eu
Romania

Eurofast

Serbian Ministry of Finance Offers Tax Relief for Real Estate Reinvestment

The Serbian Ministry of Finance has issued a recent official opinion that holds potential advantages for individuals interested in reinvesting the proceeds from the sale of real estate. This positive development provides the opportunity to be exempt from paying capital gains tax when selling a property, if the funds are used to acquire another property for one's own housing needs or those of their family.

Conditions for Tax Relief

While the tax relief is not automatic, it offers a viable option for taxpayers under certain conditions.

To qualify for this exemption, individuals in Serbia must obtain an official decision from the relevant tax authority. It's important to note that this relief exclusively applies to capital gains resulting from the sale of real estate and does not extend to gains from other financial transactions, such as selling shares in a company.

Submission of Tax Return

To initiate the process, taxpayers are required to submit a tax return using Form PPDG-3R, accompanied by documentation that substantiates the resolution of their housing matter. The tax exemption is conditional and necessitates a thorough understanding of the specifics outlined by the Law on Personal Income Tax.

Exclusions from Tax Exemption

Crucially, the Law on Personal Income Tax does not grant the right to tax exemption if the funds obtained from real estate sales are directed towards the basic capital of a legal entity or invested in an investment fund. This underscores the need for individuals to be well-informed about the conditions attached to tax-free solutions for housing to make sound decisions regarding their investments and potential tax liabilities.

Deadline for Real Estate Reinvestment

One key aspect to consider is the stipulated deadline within the Law. Taxpayers must reinvest in another property within 90 days from the date of the sale of the initial real estate to qualify for this relief. Adhering to this timeline is essential for maximizing the benefits of the tax exemption.

To sum it up, the Serbian Ministry of Finance's decision to provide tax relief for individuals reinvesting in real estate demonstrates a commitment to supporting housing needs. As taxpayers explore this opportunity, understanding the conditions, adhering to deadlines, and seeking professional assistance will be crucial in making informed decisions that optimize the potential benefits of this tax exemption.

Aleksandar Maljkovic
aleksandar.maljkovic@eurofast.eu
Serbia

Eurofast

The impact of telework in the existance of a permanent establishment

In recent years, the development of telematic means has contributed to the delocalisation of workers. This trend reached its peak with COVID, which has led to teleworking becoming a reality in the vast majority of companies. This context has contributed to the fact that many companies have workers located in different countries, carrying out their work through teleworking.

As a result, the question arises whether the presence in a country of one or more employees that telework can constitute a permanent establishment. Thus, can a worker's home be considered to constitute a fixed place of business for the purposes of permanent establishment?

The existence of a fixed place of business has traditionally been linked to the holding of an office, industrial plants or similar spaces where employees develop their tasks. However, the concept of home-office has broadened this concept and, consequently, the juridical insecurity has increased.

Although there is no jurisprudence or administrative doctrine that has specifically addressed this matter, the Spanish General Directorate of Taxation has indirectly referred to this question in its Binding Consultation number V0066-22.

The General Directorate of Taxation mentions the Commentaries to Article 5 of the OECD Model Convention, whose paragraphs 18 and 19 state that, whether or not, the enterprise requires the employee to work from home is an important factor in determining the existence of a permanent establishment. Paragraph 18 explains that where the home is used on an ongoing basis to carry out an activity for an enterprise and it is clear from the facts and circumstances of the case that the enterprise has compelled that person to use that location (for example, by not providing an office to an employee when the circumstances of his or her work clearly require it), the home office may be considered to be at the disposal of the enterprise. By way of example, paragraph 19 notes that where a cross-border worker carries out most of his work from his home in one jurisdiction, rather than from the office made available to him in the other jurisdiction, the home office should not be considered to be at the disposal of the company as this has not required such employee to use his home for the conduct of the business.

It has been abundantly concluded that teleworking from home by a natural person (i.e. home office) on a temporary basis does not constitute a fixed place of business for the employer. However, the key element to determine if telework constitutes a permanent establishment consists in whether the employee's home office is at the disposal of the company on a continuous and permanent basis.

In conclusion, the telework of the employees could constitute a “fixed place of business” if the following facts are met:

- That the company does not provide a place of work in another country that allows employees to develop their tasks and, therefore, has required the employee to work from home.
- That the company bears expenses or pays specific remuneration to employees for the use of their home to carry out their work.
- That telework has been imposed by the employer. This is, that telework is not a prerogative of the employee.

Isabel Pi
isabel.pi@auren.es
Spain

Guardians of your data: Unveiling the power of privacy

Tanzania has enacted a new law to protect personal information officially. It establishes rules for collecting and using data by public and private entities, emphasizing creation of a Personal Data Protection Commission to enhance data security.

Data protection refers to the set of practices, measures and regulations designed to safeguard sensitive information from unauthorized access, use, disclosure, or destruction. It ensures data is collected, processed, and stored securely and ethically in compliance with laws, preserving privacy, and preventing breaches or misuse, crucial in today's digital world.

Privacy, concerning data protection and personal information, pertains to an indi-vidual's entitlement to manage, control and shield their personal data from unauthorized access, utilization, exposure or disclosure. It includes the right to maintain certain information confidential and determine when and how it's shared.

Every individual has the right to safeguard their personal information, enabling them to exercise control over their data and prevent discriminatory practices. This is crucial for reasons such as preventing security breaches and protecting sensitive in formation like financial and medical reco rds from falling into the wrong hands. It also combats identity theft, a prevalent form of fraud, by securing data used for identity verification.

Additionally, safeguarding personal information enhances financial security and shields against severe consequences resulting from data breaches. Data protection promotes trust, security, compliance with aws, and ethical responsibility across diverse sectors includin businesses, government agencies, and online platforms in our digital era.

This law aligns with Tanzania's constitution, affirming the right to privacy. Individuals can report privacy violations to the commission, which can levy fines of up to TZS 100 million. Dissatisfied parties can appeal to the High Court. This legislation marks a significant stride in safeguarding personal information and privacy in Tanzania.

Dennis Mwesiga
dennis@situslaw.co.tz
Tanzania

Cross-Border Transferring of Personal Data

Pursuant to our previous articles on the PDPC Notification on Criteria for Protection of Personal Data Sends or Transfers to a Foreign Country According to Section 28 of the PDPA (Draft Notification on Section 28) and the PDPC Notification on Criteria for Protection of Personal Data Sends or Transfers to a Foreign Country According to Section 29 of the PDPA (Draft Notification on Section 29) (collectively referred to as the Draft Notifications), whereby at the time were drafts for public hearing. Now, the Personal Data Protection Committee (PDPC) in Thailand has announced the official version of Draft Notifications, the effective date of which shall be on 24 March 2024. This article herein then intends to outline the essential differences between the Draft Notifications and their respective official versions.

Subordinate regulation pursuant to Section 28 of the PDPA:

As we have discussed in length regarding the provision of Section 28 of the Personal Data Protection Act B.E. 2562 (2019) (PDPA) prescribing a condition under which the data controller may cross-border transfer personal data, that is, if the destination country or international organization is deemed to have an adequate personal data protection standard, otherwise, other exemption would have to be relied upon (e.g., consent form the data subjects), and that what was deemed as adequate personal data protection standard, more information can be studied at *the Draft Notification on Section 28*. The official version and the draft version are substantially the same, except for the defined terms, which were added to exclude the sending or transferring of personal data of the following nature: (1) the sending or transferring of personal data by an intermediary as a data transit; (2) the sending or transferring of personal data that was done between the computer systems or data storages, provided that no third-party has access to such personal data. Examples of the exempted activities include the sending or transferring of personal data by the cloud computing service provider. By this exclusion, it releases intermediary and cloud computing service providers, as well as controllers or processors, burden compliance burdens.

Subordinate regulation pursuant to Section 29 of the PDPA:

In continuation to our previous article on *the Draft Notification on Section 29*, where we discussed that the PDPA provides two additional mechanisms for the cross-border transferring of personal data, that is (1) cross-border transfer of personal data within inter-affiliate companies, provided that the personal data protection policy (Binding Corporate Rules or BCR) is reviewed and certified; and (2) where in absence of whitelist country (i.e., per Section 28) and the BCR has not been reviewed or certified, a data controller may cross-border transfer personal data provided that an appropriate safeguard that ensure the enforceability of personal data subject's rights and a legally remedial measures has been put in place.

We have also discussed that the appropriate safeguard could be achieved through the use of the Model Contractual Clause, namely (1) ASEAN Model Contractual Clauses for Cross-Border Data Flows; or (2) Standard Contractual Clauses for the Transfer of Personal Data to Third Countries issued pursuant to Articles 46 (1), (2) (c), and 28 (7) of Regulation (EU) 2016/679 or the European Union General Data Protection Regulation, commonly known as GDPR. The official version of subordinate regulation pursuant to Section 29 of the PDPA entails the required elements to be in such Model Contractual Clause. Notable elements required to be in the Model Contractual Clause include but not limited to the (1) measures for notifying the sending or transferring of personal data to the data subject; (2) measures for limiting the sending or transferring of personal data; (3) measures for specifying responsibility for the sending or transferring of personal data to be included in the contract; (4) measures to maintain security in the sending or transferring of personal data; (5) measures for ensuring effective remedial measures; and others. Moreover, revisions/amendments to the Model Contractual Clause are possible, provided that such revision/amendment is not contrary to the required elements as samples. Please be reminded that the Model Contractual Clause may be used as an alternative to the reviewed and certified BCR. Data controllers and processors have the choice to adopt the method deemed appropriate to their normal business operation.

The development of these subordinate regulations will not only change the course of normal business operations but also the paradigm of personal data protection in the digital era. Unifying the cross-border transferring of personal data's requirements with those of international standards will not only ease Thai data controllers or data processors' compliance with the PDPA and other personal data protection regulations internationally but also, allow the foreign data controller or data processor to easily comply with the Thai requirements, indirectly promoting the investment in Thailand.

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

Critical Changes in Turkish Personal Data Legislation

The Law on the Protection of Personal Data (Law), which came into force in 2016, marked a critical, and perhaps the most significant breakthrough for personal data protection in Turkey. The long-awaited amendments to the Law were submitted to the Justice Commission on 16 February 2024 as part of the "Bill of Law on Amendments to the Code of Criminal Procedure, Certain Laws, and Decree Law No. 659" and published in the Official Gazette on 12 March 2024 . The significant amendments to the Law are as follows:

Changes in the Conditions for Processing of Special Categories of Personal Data

The Law identifies special categories of personal data, including health, sexual life, union and foundation membership information, and biometric data. These categories are further divided into (i) health and sexual life data and (ii) other special categories of personal data. Previously, processing of special categories of personal data, excluding health and sexual life data, required explicit consent of the data subject or as stipulated by law.

Law significantly modifies this distinction and expands the legal grounds for processing special categories of personal data. This revision is particularly crucial for data processing activities in areas such as employment, occupational health and safety, social security, social services, and social assistance, which are frequently encountered in practice. Consequently, even without explicit consent from the data subject, special categories of personal data can be processed to fulfill legal obligations in these fields, provided that certain conditions are met.

Radical Changes in the Transfer of Personal Data Abroad

The Law introduces a comprehensive framework for the transfer of personal data abroad, departing from the current regulatory approach. This new regulation establishes a three-tiered and alternative transfer regime: (i) Transfer based on an adequacy decision, (ii) transfer based on appropriate safeguards and (iii) transfer based on occasional (not repetitive) circumstances.

With the new amendments, the explicit consent of the data subject will no longer directly enable the permanent transfer of data abroad. In addition, with the new amendments, in line with the GDPR systematics, data processors are counted together with the data controller as the main subject of the transfer process. However, the first situation in which personal data may be transferred abroad, provided that it is occasional, is the explicit consent of the data subject to the transfer, provided that the data subject is informed about the possible risks. In this context, with the new amendments, the transfer of data abroad based on explicit consent has been restricted in line with the GDPR.

However, unlike the GDPR, it is regulated that "standard contracts", which are one of the appropriate assurance methods for data transfer abroad, must be notified to the Personal Data Protection Authority within 5 business days by the data controller or data processor.

Effective Date

A two-stage transition is envisaged for the amendments. Accordingly, the regulations on data transfer abroad based on explicit consent will enter into force on September 1, 2024, while the remaining amendments will enter into force on June 1, 2024.

Although these amendments have sparked significant public attention and affect only a few articles, they necessitate substantial changes in personal data processing procedures. One of the main practical issues in the implementation of the Law was the transfer of data abroad. With the amendments to the Law, regulations on data transfer abroad are stipulated from scratch. Consequently, data controllers and processors must internalize these fundamental changes and undertake compliance processes.

You can access the full text of the Law Amending the Code of Criminal Procedure and Certain Laws 7499, which includes amendments to the Law, from here (only available in Turkish).

Gokce Attorney Partnership
Turkey

Significant Features of the New Maritime Law in the U.A.E.

The Federal Decree-Law No. 43 of 2023 Concerning the Maritime Law, which will take e ect on 29 March

2024, introduces significant changes and updates to the existing maritime legal framework in the UAE. Here is a summary of the key points regarding the revisions to ship arrest provisions and other related aspects:

1. **Expansion of Maritime Debts:** The definition of "maritime debts" has been broadened under the New Maritime Law, allowing for a wider range of claims that can lead to a vessel's arrest. This includes damage to the environment, costs related to salvaging or moving ships, port fees, insurance premiums, commissions, disputes arising from ship sale contracts, and more.
2. **Sister-Ship Arrests:** There is a notable change in sister-ship arrest provisions. Under the Existing Maritime Law, a sister ship could be arrested if it was owned by the debtor at the time the debt arose. However, under the New Maritime Law, the sister ship must be owned by the debtor at the time of applying for its arrest.
3. **Bareboat Charter Arrests:** Vessels chartered under a bareboat charter can now be subject to arrest during the charter period for debts incurred by the bareboat charterer. This is a change from the Existing Maritime Law, where the timing of arrest was not restricted to the charter period.
4. **Counter-Security:** The New Maritime Law introduces uniformity in counter-security provisions across di erent emirates. Claimants can provide financial guarantees for the security and safety of the ship and its crew during the arrest period. The method of determining the level of counter security and its uniform application across courts are aspects yet to be clarified.
5. **Acceptance of LOUs:** Letters of undertaking (LOUs) issued by P&I Clubs or acceptable financial institutions can now be accepted as security for releasing vessels from arrest.
6. **Time Limits for Filing Cases:** Claimants have specific time limits under the New Maritime Law. They must file a case for the validity of the arrest within five working days of the arrest date. Additionally, substantive claims must be commenced within eight days of the arrest order, as per the Civil Procedure Code (Federal Decree-Law 42 of 2023).

These changes represent a significant modernization and enhancement of the maritime legal framework

in the UAE, providing more clarity and procedural guidelines for shipowners, charterers, P&I Clubs, shipping lawyers, and other stakeholders involved in maritime activities.

Shaji C Madathil
shaji@afsauditing.com
United Arab Emirates

Corporate Fraud: A peril to ethical business practices

Corporate scandals loom ominously over the business horizon, casting a pall of mistrust in their wake. These disturbing episodes not only affect individual companies but also reverberate throughout the corporate ecosystem, impacting shareholders, employees, and the broader economy. Fueled by unethical behavior, fraud, and other illicit activities, such scandals chip away the bedrock of public faith in corporate integrity.

Recently, Equity Bank Uganda captured headlines amid allegations of fraudulent activities involving its staff. The revelations shed light on a scenario where the bank reportedly disbursed an astounding UGX 62 billion in unsecured loans to unqualified individuals, orchestrated by a network of complicit employees. This egregious breach of trust underscores the dire consequences of corporate malfeasance and serves as a stark reminder of the importance of robust governance and oversight mechanisms in safeguarding the interests of stakeholders and preserving the integrity of the financial system.

The Fraud-Money Laundering Nexus.

What really connects corporate fraud to money laundering?

The nexus between corporate fraud and money laundering is fundamentally one of cause and effect. Corporate fraud, by its very nature, yields a reservoir of illicit funds. The architects of such schemes must then navigate the murky waters of money laundering to obscure the origins of their tainted wealth, thereby sidestepping scrutiny.

In such a landscape, vigilance becomes paramount for companies. The usual suspects precipitating these scandals are often found within; lapses in corporate governance, risk management deficiencies, compliance oversights, faltering internal controls, and the failings of assurance providers. These elements conspire to create an environment ripe for scandal, underscoring the critical need for robust, proactive measures to safeguard against such transgressions.

Therefore, to preemptively address these risks, companies have to adopt proactive measures, such as conducting pre-mortem analyses supported by audit to anticipate potential hazards and strengthen resilience. The 2008 financial crisis, epitomized by Lehman Brothers' collapse, serves as a sobering reminder of the catastrophic consequences of unethical practices and governance failures. It underscores the imperative for responsible corporate behavior and robust risk management practices in identifying vulnerabilities.

The Auditor's Role: Recent corporate failures worldwide have underscored the critical role of auditors in combatting fraud and suspected fraudulent activities. As custodians of financial reporting integrity, auditors play a pivotal role in enhancing public trust.

The IIA Global Internal Auditing Standards, effective from January 9, 2025, significantly elevate the focus on fraud detection within internal audit practices. Notably, the term fraud appears more frequently in these standards, signaling a heightened emphasis on vigilance and prevention with an emphasis on including coverage of fraud risk in the audit plan especially for internal audits.

However, a critical question surfaces: "Do our audit procedures possess the efficacy to uncover illicit behaviors effectively?" Take, for example, the Equity Bank Uganda case above, where a co- accused relationship manager, handling telecom, accrued a debt of UGX 6.55 billion and through misrepresenting the loan as legitimate, she asserted the client met all requirements. I mean, look at the nature of control bypass. As an auditor, verifying documents approved by this authorizing party becomes intricate since the delicate balance between trust and skepticism is at play. Isn't this what actually leads to control deficiencies, -where a control is in place but not good enough to prevent a risk from occurring?

Therefore, in this landscape of corporate fragility, auditors serve as sentinels, hence the need to appreciate that, proficiency extends beyond routine tasks—it involves staying attuned to current activities, trends, and emerging issues to provide relevant advice and recommendation such that we are well aware and alert on these inherent issues.

All in all, ethical business practices matter, corporate scandals serve as stark reminders that Companies that prioritize ethics, transparency, and accountability build trust. They navigate the treacherous waters, emerging stronger, and remain steadfast in their commitment to responsible corporate governance.

Abigaba Chrispus
cabigaba@dativaassociates.com
Uganda

Everything you need to know about the beckham law in Spain in 2024

What is the "Beckham Law"?

Similar to the UK's non-Dom regime, the "Beckham Law" enable foreigners moving to Spain to elect being treated as non-Spanish tax residents, despite becoming de facto tax residents, and up for 6 years, becoming liable only for any income gained and assets held in Spain, leaving any other income and assets gained and held elsewhere non-taxed in Spain.

What are the benefits of the Beckham Law?

Spanish Tax Residents pay taxes at a progressive tax rate from 19% to 47% on their worldwide income. In contrast, Non-Spanish Tax Residents - and therefore those having gained Non-Spanish Tax Resident status under the Beckham Law - pay taxes at a flat rate of 24 % up to the amount of 600,000 Euros and of 45% thereafter on their Spanish income, leaving any income gained outside Spain to be levied at the corresponding foreign jurisdiction.

Employment or work-related income is deemed to be obtained in Spain when working remotely from Spain, despite the employer or paying party being located outside Spain.

What are the enhancements that the Spanish Start-Up Law introduces to the Beckham Law?

1. Tax exemption for remuneration in kind.

   Under the former redaction of the Beckham Law, only taxpayers paying taxes as Spanish tax residents, were able to exempt tax on certain income received as remuneration in kind. However, under the new redaction of the Beckham Law pursuant to the amendments introduced by the START-UP LAW, such exemption is extended to non-Spanish tax residents and, therefore, to those within the scope of the Beckham Law.

   An example of work in kind that is exempt is the provision of education services for employees' children.

2. Extending the scope of its application.

   The START-UP LAW extends the scope of the application of the Beckham Law, allowing Digital Nomads, Highly Qualified Professionals, and those who provide services in the fields of research an innovation, paying taxes under the Beckham Law regime, provided they meet certain requirements.

   In addition, the START-UP LAW also extends the scope of the application of the Beckham Law regime to the taxpayer's family members.

3. The requirement of not having been Spanish resident prior to applying for the Beckham Law tax regime is reduced from 10 to 5 years.

Who is eligible to apply for the Beckham Law Tax Regime?

1. Professionals relocated to Spain because of an employment contract.

2. Company's director.

   This special tax regime continues to apply to those who relocate to Spain because of being appointed Director of a company. However, whereas under the former redaction of the Beckham law the director was required not to participate in the company (nor to hold shares), or if they were could not be deemed to be connected to that company, according to the criteria established in Article 18 of the Spanish Corporate Tax Act, under the new redaction this limitation is now removed unless the company is a real estate holding company.

3. Those who have obtained the Spanish Digital Nomad Visa.

4. Professionals relocated to Spain to carry out an activity qualified as an entrepreneurial activity according to Article 70 of the Supporting of Entrepreneurs and their Internationalization Law.

5. Highly qualified professionals relocated to Spain to provide services to Start Ups that has been certified as innovative by *ENISA*.

6. Professionals relocated to Spain to provide services in the fields of research development and innovation, provided the income they receive from those activities exceeds 40 % of their total income.

7. Taxpayer's family members.

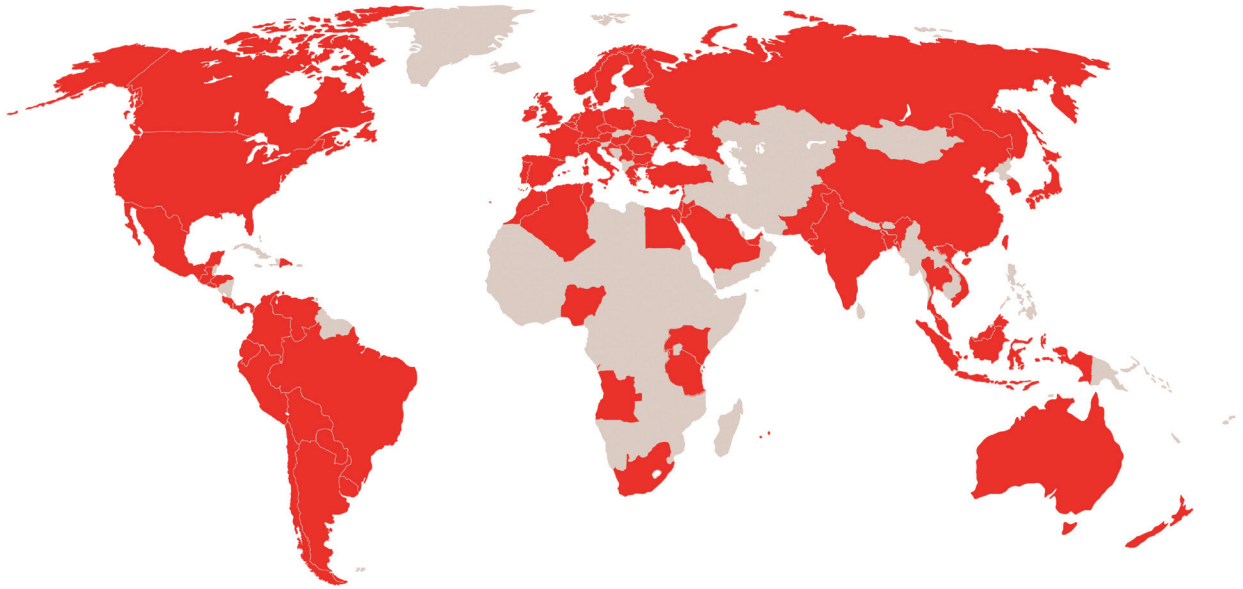
   Under the former redaction of the Beckham Law, family members of the main taxpayer who pay taxes benefitting from the Beckham Law regime, could not benefit from it. Under its new redaction introduced by the Start-Up Law, the spouse and the children (under 25) of the said main taxpayer, as well as any disabled dependants regardless of age, can pay taxes under the Beckham Law regimen, so long they meet certain requirements.

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

thv
Treuhand | Steuern | Prüfung

Member of
Antea
Alliance of independent firms

Mallorca, 260 àtic
08008 – Barcelona
Tel.: + 34 93 215 59 89
Fax: + 34 93 487 28 76
Email: info@antea-int.com
www.antea-int.com



INTERNATIONAL **BUSINESS**

Newsletter April

2024