



Global vision, local insight

Global network news

January 2016



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President's welcome

Richard Kleiner, President of i2an ((rkleiner@geraldedelman.com)



First and foremost I would like to wish the principals, colleagues and staff of all member firms a very healthy, happy and prosperous New Year. Let us all hope that 2016 is a good one in many respects. In particular, I would like all of us to be able to reflect back on 2016 in 12 months time in the knowledge, and with the satisfaction, that we have increased activity within the i2AN community.

Following the 2015 conference in Paris, we received some worthwhile feed back and following the recent board meeting earlier this month, we will be talking on board many of the comments made in connection with future conferences. As many of you are aware, the 2016 conference is to take place in Shanghai on 13th and 14th October. One of our new member firms Azure Group, will be hosting the event and plans are already being made by Azure Group with assistance from the i2AN board to ensure that the 2016 conference will be the best to date. I personally am looking forward to the conference immensely having never visited China before (other than a brief business trip to Hong Kong when actually it was still part of the UK!)

For those who were present at the Paris conference, you will recall that we had a very meaningful discussion regarding the i2AN

name, logo and tagline. Whilst most of us are happy with the name and basic logo, there was a feeling amongst the membership that the tagline needed changing if only to be able to attract in non-accountants as future members. Following the Paris conference, Mark Bathgate came up with a tagline which following feedback from the membership, is to be adopted as the official tagline which will be "Global Vision, Local Insight". My personal view is that the tagline sums up the culture and spirit of our alliance and whilst there are some members who feel that it doesn't properly describe our services that the alliance offers, I feel that this is actually a talking point and enables member firms to explain the full story and history of i2AN.

Following the recent board meeting, there are 2 other very positive developments to inform you about. The first is that following an approach, we have agreed for Azure Group to be represented on the board of i2AN and they will, of course, be happy to attend the relevant board meetings albeit frequently by Skype. At this stage I just want to make the point that board meetings are open to all members to attend if they so wish particularly if there are any aspects that they feel requires discussion. It is appreciated that not everyone has the time to give to such

meetings although I will be asking Catherine Pages to email the i2AN membership at least 4 weeks ahead of each board meeting in case an individual firm wants to either attend (in person) or perhaps more practicably, email Catherine/myself with any issues they feel need to be discussed.

The other positive development is that through Michael Probst of BA Tax who is, as you know, our new member firm from Luxembourg, i2AN is to create an expert tax group (XG) whose initial objective would be to centralise a directory of tax expertise across all our member firms' jurisdictions. Work has already started on this and Catherine Pages will be circulating a brief questionnaire to all member firms to complete so that we can put together the directory. The benefits of having a directory is that when any member firm has a client with a cross border tax issue that an approach can be made to XG to direct them to the relevant person who should be able to then provide the appropriate advice including, wherever possible, dealing with local tax compliance matters.

I hope and trust you agree with me that the New Year has started off well for i2AN with some significant positive developments across a range of issues and we should all look forward to 2016 with a degree of confidence.

As indicated in previous leader articles, if any of you do have any matters which you want to bring to the attention of the i2AN board then please do not hesitate to contact either myself (rkleiner@geraldedelman.com) or Mark Bathgate (mark.bathgate@denjeansa.fr). I also look forward to seeing you all in Shanghai in October

Richard Kleiner

President of i2an





Employee share schemes (ESS) and the major changes seen in Australia to ESS rules in 2015



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In January 2015 The Federal Government released draft legislation to fix Australia's much-criticised rules around the taxation of Employee Share Schemes. The draft laws were designed to answer many of Australian business questions around two categories:

1. Rules applying to eligible start-up companies; and
2. Rules applying to all companies

In July 2015 The Federal Government approved the draft changes to the ESS rules and it has seen a very positive flow on effect for local business needing to retain and reward key personnel.

For those international business with subsidiary operations in Australia that have not sought advice on the ESS changes we have a specialist team on standby to assist.

We summarise what you need to know below.

For Start-up business

The start-up conditions are:

1. "Aggregate turnover" of not more than \$50 million;
2. Company is not listed;
3. Company is incorporated for less than 10 years; and

Broadly, the changes for start-ups are as follows:

1. For shares issued at a discount to market value of less than 15%, the employee is not taxed on the discount (Note: there are other extensive requirements that must be met including broad availability to employees, the shares must be ordinary shares, maximum ownership condition and integrity rules)

2. For out-of-the-money options (strike price exceeding market value) issued at a discount to market value, the employee is not taxed on the discount. The discount is effectively taxed upon sale of the underlying shares under the Capital Gains Tax rules.

All companies

The changes applicable to all companies are broadly as follows:

1. Taxing point on discount on certain options pushed back from grant date to exercise date
2. Discount received by employees on certain shares and options can be deferred for up to 15 years (up from 7 years)
3. ATO introduced "safe harbour" valuation methodologies which should reduce the need for costly external independent valuations
4. Maximum shareholding limit (necessary for some concessions) increased from 5% to 10%
5. Employees choosing not to exercise an option because it is out of the money no longer prevented from obtaining a refund of prior year tax paid on those options
6. Changes to valuation methodologies
7. Standardised share scheme documents to reduce compliance costs

Comments from Azure Group's ESS Specialists

As a firm with a strong focus on the hi-tech and emerging growth entrepreneurial business sector, it is a welcome relief to



see the new rules come into full force in Australia, with the technology sector in particular actively utilising the changes.

Australia was at a competitive disadvantage to the rest of the developed world in terms of attracting, retaining, and rewarding talented employees using equity arrangements, but now sees itself being able to compete on the world stage.

Azure Group's financial experts within the technology sector, considered these changes to be a major step forward in being able to engage high quality staff in start-up businesses and away from the big remuneration from established players, making it an exciting time for the sector.

It is hoped that the changes will "resurrect" the use of options in Australia, where the tax rules have caused their use to plummet and gave rise to limited recourse loan arrangements which are designed to mimic options (but introduce complex, often unworkable problems of their own).

If you have any clients with operations in Australia that have not sought advice on the ESS changes our ESS specialists are on standby to assist.



Toshiba scandal

Japan's Securities and Exchange Surveillance Commission on 7 Dec. recommended Toshiba Corp be fined a record 7.37 billion yen (\$59.8 million) for a massive accounting fraud.

Toshiba has written down past earnings by 224.8 billion yen (\$1.84 billion) as a result of the scandal.

Also, Japan's Financial Services Agency will be punishing Ernst & Young ShinNihon with a

three-month suspension on new business and an unprecedented fine for signing off on years of dodgy accounting at Toshiba.

The 2 billion yen (\$16.4 million) fine against EYSN -- the biggest accounting firm in Japan, with 1,000 or so listed-company clients -- would mark the FSA's first fine against a firm in the industry.

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Teaching accountancy firm: a marriage between academia and practice

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Moving towards its vision of becoming the preferred national accountancy firm in Malaysia and beyond, SALIHIN has introduced Teaching Accountancy Firm (TAF), a collaborative arrangement with universities in Malaysia to attract, nurture and produce industry relevant university graduates. Notwithstanding the huge demand for quality talents to meet the human resource needs of various economic sectors as Malaysia gets closer to achieving a developed nation status, university graduates with the right skillset are in short supply.

The industry has over the years been awashed with inexperienced graduates and both local and multinational employers find it difficult getting graduates with the necessary skills and knowledge to fill up vacancies. Skills mismatch has largely been blamed due poor quality teaching, industry-irrelevant curriculum and inadequate practical training. As in most countries around the globe, the skills mismatch is believed to be aggravated by the disconnection between universities and the industry, i.e. lack of concrete engagement between universities and firms on how to develop employable graduates. Thus, university-industry collaboration is inevitable.

The 2012-2017 National Graduate Employability Blueprint (NGEB 2012-2017) is emphatic that "universities cannot produce graduates who are ready for the workforce unless they develop a clear, accurate understanding of what firms are looking for in entry-level employees and incorporate these requirements into the course curricula, teaching and assessment methods, or other means. In order to align the skills imparted in universities with those required by employers, there must be greater collaboration between universities and firms to improve the quality and content of university education". That is the genesis of TAF.

The TAF aims at providing a unique and advanced learning and training environment for both accounting lecturers and students of universities. It is a marriage between academia and the professional practice with the objective of producing "thinking and enterprising accountants" relevant to industrial and national needs. It goes with bringing the industry to the door steps of the universities through setting-up of TAF, a fully-functioning branch of SALIHIN, at the premises of the universities. It is jointly managed and controlled by SALIHIN and the university. Both students and lecturers are

exposed to real industry case studies and experience while handling actual service engagements. The services engagement covers the entire practice areas of SALIHIN, namely, audit and assurance, taxation, financial accounting and reporting, secretarial and governance services, shariah audit and advisory, business advisory, and corporate finance and transaction services.

In addition, the TAF aims to generate revenues through secured projects in the various services for the sustenance of the universities. This is essential since universities are moving towards financial self-reliance. In addition, other commercial activities in the form of public sector consultancy, market research and case studies, entrepreneurship, creation of spin-off ventures and licensing of research outputs are indispensable.

In a nutshell, the TAF is expected to yield the optimum expectation of the marriage between academic and the practical components of the accountancy profession. A successful marriage between academia and practice would produce the desired quantity and quality of accounting graduates for the industry and the nation as a whole.



Flexibility on fund-raising for start-ups



Amendment to Taiwan Company Act Establishes New Section of “Close Company” to Provide Flexibility on Fund-Raising for Start-ups

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On Sep. 4, 2015, an amendment (“**Amendment**”) to the Company Act of Taiwan took effect to establish a new category of company under Section 13 of Chapter 5-Company Limited by Shares, called “closely-held company limited by shares” (閉鎖性股份有限公司, hereinafter, a “**Close Company**”), aiming to provide start-up companies and small and medium sized businesses with more flexibility when dealing with equity arrangement and in business operation.

Features – “Non-Public” and “Close”

A Close Company is defined as a non-public company with no more than 50 shareholders, the articles of incorporation of which stipulate restrictions on transfers of its shares (Article 356-1). To maintain its “non-public” status, a Close Company must be a company that has not attained “public company status” and the number of its shareholders must be kept below 50, though the number of Close Company’s shareholders may be adjusted by the Ministry of Economic Affairs in the future pursuant to social and economic status of the country and practical needs.

Taiwan’s government statistics reveals there are about 150,000 companies in Taiwan satisfying the above shareholder requirement. These small and medium sized companies can convert its company structure into a Close Company according to the Amendment (Article 356-14). On the other hand, the maximum number of shareholders applies throughout the life of a Close Company. Once the number of shareholders exceeds the limit, the company is required to amend its status to that of a normal company limited by shares (Article 356-13).

Capitalization – New Type of Contributions and Abolishment of Par Value Requirement

Before the Amendment, shares of a company limited by shares could only be paid for by

cash, a monetary claim against the company, proprietary technology, intellectual property, or assets needed by the company, depending on the characteristic of that shareholder. For a start-up company, there will often be a founder who renders services or an angel investor who extends credit line to the company. However, such contributions could not be recognized as “payments” for shares of a company limited by shares. The Amendment provides that for a Close Company, shares can also be paid for by providing properties or technologies that a Close Company needs or by rendering services or extending credit line needed by the company, provided that the shares paid for by rendering services or extending credit shall not exceed a specific percentage of the total issued shares (Article 356-3). Thus, under the Amendment, a founder who renders services or an angel investor who extends credit line needed by the company can become a shareholder of a Close Company.

The Amendment also abolishes the par value requirement. That is to say, a Close Company can now issue no par value shares and, therefore, the compulsory capital reserve account is not applicable (Article 356-6). The abolishment of par value requirement can provide a Close Company with flexibility regarding equity schemes by having a lower subscription price or strike price for shares.

More Flexibility on Corporate Governance and Financing to Attract Investments

To draw interest from potential investors to provide financing to a start-up company, a company would normally provide potential investors with certain incentives from an economic and/or controlling perspective. However, a company limited by shares has little or no flexibility to tailor these terms for potential investors.

The Amendment, on the other hand, would allow a certain level of flexibility for a Close Company to draw interest from potential investors. For instance, the Amendment allows a Close Company to issue preferred shares that may have multiple votes or may be entitled to a veto right against certain matters as stipulated in the articles of incorporation (Article 356-7). Also, considering that shareholders of a Close Company is limited in a small number, the Amendment relaxes restriction by permitting that shareholders’ meeting of a Close Company can be held by video conference and that shareholders appearing at the video conference meeting would be regarded as participating in person (Article 356-8). In addition, a Close Company may distribute dividends to its shareholders every six months if the articles of incorporation so provide (Article 356-10).

The New “Close Company” Encourages the Development of Startups in Taiwan

Unlike traditional corporate governance emphasizing the separation of management and ownership, high-tech startups are often run by their founders. The Amendment offers greater flexibility in the critical business areas of fund raising, operations and ownership structure.

According to the latest Global Entrepreneurship Index by Washington-based Global Entrepreneurship and Development Institute, Taiwan ranks No. 2 in Asia-Pacific region and No. 6 in the world as a haven for startup companies. The new “Close Company” further encourages the development of startup companies and provides a more flexible option for entrepreneurs and thus may play a key role in further strengthening Taiwan’s already impressive reputation on investment environment. “Close Company” should be an exciting new option for setting up a new company in Taiwan.



The basis of the assets of a partnership

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The basis of the assets of a partnership (or LLC electing partnership treatment) may not always reflect the basis of the interest in the hands of the partners. This is because they are two different concepts to value the partnership interest.

Specifically a partner has both an "outside basis" measuring the adjusted basis of his interest, and an "inside basis" measuring the basis of the assets of the partnership.

Some partners can reconcile these differences by using section 754 which allows the partnership in certain situations to "step-up" the basis of its assets.

Therefore, the section 754 election presents an opportunity for a new partner acquiring a partnership interest to receive a "step-up" for the difference between the purchase price of the interest and the inside basis of the assets of the partnership. This usually allows the

new partner to claim a tax deduction for the depreciation or amortization of the "step-up", including goodwill.



Cash Registers become mandatory for most businesses in 2016

Change of Austrian Finance Act, valid Jan 2016

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The Tax Reform Act of 2015 introduced rules for accounting of cash transactions that take effect from Jan 1st 2016. All transactions need to be processed with a "cash register", which means not only hardware cash registers but any electronic system which is capable of recording cash transactions. There is also an obligation to produce a receipt for each cash transaction.

In a second step beginning with the year 2017 the cash recording system needs to have also a digital signature unit. The combined system needs to upload and sign aggregated key data of the cash recordings.

For existing cash registers, the companies must take care of updating the technical functions before 2017.

For all other businesses that begin to use a cash register in 2016, it is necessary to take a close look on the choice of the hardware. When installing a new system in 2016 it is necessary to make sure that it matches also the technical requirement for 2017.

Exemptions:

- cash transaction of a business not above EUR 7.500,- per annum
- sales not above EUR 15.000,- per annum
- There is an easing for outdoor sales, certain subsidiaries of the government and automated facilities

For standard business transactions that are paid with bank transfer, it is sufficient if they are covered by the standard accounting

procedures. For example if a company issues sales invoices that are paid later on with bank transfer, there is no obligation to use a cash register protocol. But if such an invoice is paid in cash, the payment must be recorded.



Exemption from Special Defence Contribution on investment income



On 16 July 2015, the Cyprus House of Representatives voted a number of laws in order to attract foreign high wealth individuals to change their tax residency to Cyprus.

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On 16 July 2015, the Cyprus House of Representatives voted a number of laws in order to attract foreign high wealth individuals to change their tax residency to Cyprus. A very important and interesting law is the exemption of special defence contribution (SDC) on investment income of persons who do not have their domicile of origin in Cyprus.

WHAT IS SDC

SDC is applicable on rental, dividend and interest (from investing activities) income.

The SDC rates are:

Dividends 17% and no further tax

Rental 3% on 75% of the rents

Interest 30% and no further tax

WHO IS A CYPRUS TAX RESIDENT

In order for a person to be considered a Cyprus tax resident, he/she must stay for more than 183 days in a year in Cyprus. By doing so, his/hers worldwide income will be subject to Cyprus income tax and Special Defence Contribution.

EXEMPTION OF DEFENCE CONTRIBUTION

By introducing the domicile condition in the law, it means that if a person lives in Cyprus for more than 183 days, but does not have domicile of origin in Cyprus (he was not born in Cyprus), is subject to income tax but is exempt from SDC.

This means that he/she is not obliged to pay SDC on dividends i.e. no taxes will be paid on dividends, is not obliged to pay SDC on interest income i.e. no taxes are paid on interest received.

On rental income, although SDC will not be paid, the rental income after deducting a number of allowances will be added on the other income.

Let's see the example below:

A Cyprus private limited company has net profits from its operations of €100,000 and dividends received of €50,000. Total profits €150,000.

Income tax calculation

Profit for the year: €150,000

Less: Dividends received: €50,000 (Dividends received are exempt from income tax)

Taxable income: €100,000

Corporation tax at 12.5%: €12,500

Net distributable profit for the year:
€137,500 (€150,000 – €12,500)

Let's assume that the directors of the

company wish to distribute all the profit for the year as dividends to the sole shareholder of the company, which is a person who was living abroad, and became a Cyprus tax resident.

The individual also has a fixed bank deposit in Cyprus earning €30,000 interest per year.

His/hers personal tax computation will be as follows:

Dividend income €137,500 Taxation –nil

Interest income €30,000 Taxation –nil

CONDITIONS FOR THE EXEMPTION FROM SDC

Certain conditions apply in order for an individual to be exempted from SDC, for individuals with Cyprus origin (domicile) who became Cyprus tax residents in recent years and individuals with foreign domicile of origin but are already Cyprus Tax Residents.





Major tax changes for corporations and individuals in Luxembourg

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On 17 December 2015, the draft bills no. 6847, no. 6891 and no. 6900 were voted by the Luxembourg Parliament. They have been subsequently adopted on 21 December 2015. Hereafter, some of the most important changes are briefly described.

Changes to the minimum tax for corporations and the net wealth tax

Up to and including the tax year 2015, Luxembourg based corporations are subject to a minimum tax for both corporate tax (reference is made to our Flash News dated 5 January 2015) and net wealth tax purposes (EUR 62 for S.A. Société anonyme / Public limited company, S.C.A. Société en commandite par action / Partnership limited by shares and S.E. Société Européenne / European company as well as EUR 25 for S.à r.l. Société à responsabilité limitée / Limited liability company).

With introduction of the new tax rules, the minimum tax for corporate tax purposes will be abolished from 2016 onwards and replaced by a minimum net wealth tax which is assessed on the basis of the balance sheet total. The current minimum net wealth tax will no longer apply. The new minimum net wealth tax corresponds to the previous minimum corporate tax (including the contribution to the employment fund). The distinction between "finance and holding companies" (financial assets, marketable securities and cash > 90% of balance sheet total) and "other companies" has been maintained, as well as the assessment based on the balance sheet total. However, an additional tariff level was added.

As before, the regular net wealth tax may be reduced in respect of the prior year's corporation income tax payable (including contribution to the employment fund and after crediting the investment tax credit) if a special reserve is constituted and maintained (subject to conditions).

In case of a tax group for income tax purposes, each company within the tax group continues to be subject to net wealth tax in relation to its own taxable assets (no tax group for net wealth tax purposes).

Also in this situation, the alternative to credit prior year's corporate tax of the controlling company of the tax group to the net wealth tax of each of the controlled subsidiaries in the tax group remains possible. In a first stage, the corporate tax has to be credited at the level of the controlled subsidiaries in descending order of their assets before crediting the corporate tax at the level of the controlling company / controlling subsidiary.

However, there is a cap on the minimum net wealth tax for the entire tax group with a maximum of EUR 32,100. Again, in a first stage, the excess of the minimum net wealth tax is to be deducted at the level of the controlled subsidiaries in descending order of their assets before deducting it at the level of the controlling company / controlling subsidiary.

In order to apply the minimum net wealth tax to securitization vehicles, SICARs, ASSEPs and SEPCAVs, the respective legal provisions, which provide for the general exemption of these companies from net wealth tax, have been limited to such an extent that the

exemption from net wealth tax now only applies subject to this minimum tax.

Moreover, a graduated net wealth tax rate will become applicable as from 01.01.2016.

- 0.5% for a tax base of up to EUR 500 million
- For a tax base of over EUR 500 million, the net wealth tax consists of the sum of EUR 2.5 million and 0.05% of the portion of the tax base exceeding EUR 500 million, whereby there is no cap.

Changes in the tax exemption of intercompany dividends

As part of the amendment, two EU directives, directive 2014/86/EU (avoidance of double nontaxation) and directive 2015/121/EU (introducing a common minimum anti-avoidance rule), which change the parent-subsidiary directive (2011/96/EU), have been transposed into national law.

From 2016 on, the withholding tax exemption for dividends pursuant to Art. 147 no. 2 (a) and (d) ITL¹ will no longer apply, when, taking objectively all facts and circumstances into consideration, artificial arrangements are implemented, whose primary objective or one of their primary objectives is to obtain a tax advantage, or if they violate the principles of the Parent-Subsidiary Directive.

Accordingly, the exemption as laid down in Art. 166(2bis) ITL and § 9 no. 2a MBTL² will no longer apply insofar as the underlying income is tax deductible in another EU Member State or, when, taking objectively all facts and circumstances into consideration, dividend distributions are part of artificial arrangements, whose primary objective or one of their primary objectives is to obtain a tax advantage, or if they violate the principles of the Parent-Subsidiary Directive.

Balance sheet total in EUR	Other companies	Finance and holding companies
0 to 350,000	EUR 535	EUR 535
350,001 to 2,000,000	EUR 1,605	EUR 3,210
2,000,001 to 10,000,000	EUR 5,350	EUR 3,210
10,000,001 to 15,000,000	EUR 10,700	EUR 3,210
15,000,001 to 20,000,000	EUR 16,050	EUR 3,210
20,000,001 to 30,000,000	EUR 21,400	EUR 3,210
Exceeding 30,000,000	EUR 32,100	EUR 3,210

¹ Income tax law

² Municipal business tax law

Artificial arrangements in the meaning of this provision shall exist if there are no strong commercial reasons which reflect the economic reality. An artificial arrangement can also take place in several steps.

According to the wording only direct investments in EU corporations should be affected. In principle, dividends from non-EU corporations, liquidation proceeds or capital gains should not fall under this regulation. It should also not apply to the net wealth tax exemption rules for qualifying participations.

Extension of the scope of the tax group

With retroactive effect from 2015, the possibility of a horizontal integration has been introduced. Basically, fully taxable resident corporations or domestic permanent establishments of fully taxable foreign corporations may create a tax group with fully taxable resident corporations or a domestic permanent establishment of a fully taxable foreign corporation.

Alternatively, a tax group can now also be established via a non-integrated parent company, in as much as it is a fully taxable resident corporation, a domestic permanent establishment of a fully taxable foreign corporation, a fully taxable foreign EU corporation or a foreign permanent establishment of a fully taxable foreign EU corporation. In these cases, the aggregation for tax purposes will take place at the level of a so-called controlling subsidiary. Only those subsidiaries in the tax group can qualify as controlling subsidiary which are closest to the nonintegrated parent company in the group's hierarchy. If several subsidiaries in the tax group are equally close to the non-integrated parent company in the group hierarchy, one of them can be selected as the controlling subsidiary.

For the creation of a tax group, a continuous direct or indirect participation in the capital of at least 95% at each level from the beginning of the first fiscal year of the tax group is required. As far as intermediary companies are concerned, they have to be fully taxable corporations and partnerships are treated as tax transparent.

Furthermore, a joint written request of all corporations involved in the tax group (incl. the nonintegrated parent company) has to be submitted before the end of the first tax year of the tax group. In a tax group with a non-integrated parent company, the controlling subsidiary has to be determined

in the application. The tax group must be maintained for a minimum period of 5 years.

Tax loss carry forwards existing from periods prior to the tax group may only be offset insofar as the company, which has suffered the losses in the past, is in a profit situation. After a tax group has been terminated, tax loss carry forwards accumulated during the existence of the tax group can only be used at the level of the controlling company or the controlling subsidiary.

Each company of the tax group is liable for the taxes, late filing fees, charges and penalties of the controlling company or the controlling subsidiary. The companies forming part of a tax group can only be members of one tax group.

SICARs (Sociétés d'investissement en capital à risque) and securitization vehicles are excluded from the tax group rules.

New rules on tax deferral in exit scenarios

For taxes on capital gains in case of the relocation of an entity within the meaning of Art. 38 ITL or the relocation of the registered office together with the center of management of a corporation within the meaning of Art. 172 ITL to other EU member states or to countries with which Luxembourg has concluded a double tax treaty and agreed on an exchange of information, a tax deferral may be granted upon request (without assessment of late interest and without collaterals). The deferral applies until the transferred goods are sold abroad. In case of qualifying contributions, mergers etc. in the meaning of the EU merger directive, the deferral will remain in place insofar as the beneficiary entity will assume the obligations related to the tax deferral (annual documentation in due form). The tax payer may, however, terminate the deferral at any time.

Abolition of the IP-Regime

Until now, certain intellectual property rights (software copyrights, patents, trademarks, internet domain names, patterns and designs) could benefit from a privileged tax treatment as 80% of the respective net income (license fees and capital gains) could be treated as tax exempt income and the respective assets were 100% exempt from the net wealth tax.

Following the OECD report published on October 5, 2015 on action 5 of the Action

Plan on Base Erosion and Profit Shifting (BEPS Action Plan), the Luxembourg IP-Regime, as laid down in Art. 50bis ITL and §60bis BewG³, will be abolished as from 1 July 2016 (respectively as from 1 January 2017 for the determination of business assets).

In line with the OECD recommendations, a grandfathering rule may be applied by tax payers who already make use of the IP-Regime (created or acquired before 1 July 2016), for a transitional period of 5 years starting on 1 July 2016 and ending on 30 June 2021 (respectively on 1 January 2021 for net wealth tax purposes).

However, this grandfathering rule is not applicable if the intellectual property rights have been acquired after 31 December 2015 by a related person, unless the IP was previously qualifying for a privileged treatment in Luxembourg or abroad. However, the privileged treatment abroad has to be comparable with the Luxembourg regulations (so-called back-end regimes). It should be noted that for the determination of a related party as defined by this regulation, the definition of Art. 56 ITL (direct and indirect participation > 50%) is decisive, not Art. 50bis ITL.

If the grandfathering rule cannot be applied, the privileged tax treatment just remains valid for the year 2016.

Acquisitions as defined by this regulation include all transfers for value but also all tax neutral transfers (contributions, spin-offs, merger – initial acquisition dates will not be considered).

Furthermore, it should be noted that the Luxembourg tax authorities will spontaneously and without prior request provide information on the identity of the beneficiaries with regards to all privileged IP rights created or acquired after 6 February 2015 (date of the OECD publication on the agreement on the "Nexus Approach") to the competent foreign tax authorities.

To the extent that information is obtained as part of the tax return, it will be forwarded to the other state no later than 1 year after the filing of the tax return. In case the information is obtained prior to this, it will be forwarded within a period of 3 months after the notification.

Currently, no draft bill for introducing new regulations for a new IP-Regime has been submitted yet, which then would be

³ Bewertungsgesetz (valuation law)

10. Luxembourg

in accordance with the so-called “Nexus Approach” provided for by the OECD. It is however expected that a respective draft bill will be presented in the near future.

Changes with respect to individuals which are tax resident during part of the year

There are also retroactive tax changes as from the year 2015 for individuals, who are only tax resident in Luxembourg during part of the year. So far, in the event of a partial tax residency, only pensioners and employees could opt to be treated as if they were tax resident for the entire year. This option might be advantageous, as only in this case various lump-sum amounts, limits, allowances, etc. can be taken into account in the tax assessments.

However, at the same time all domestic and foreign income received during the period of nonresidency has to be considered when determining the global tax liability. This option is now available to all partial resident taxpayers, regardless of the type of income generated.

Introduction of a step-up for immigrating individuals

Likewise as of the tax year 2015, individuals, who transfer their tax residence to Luxembourg, can opt for a so-called “step-up” in relation to their qualifying participation in corporations (> 10%) and the respective convertible loans. This measure has been introduced in order to prevent possible

double taxation in case e.g. an exit tax is levied on such securities in the exit country. This step-up, however, can be applied independently of the country a tax payer is immigrating from and of the effective occurrence of double taxation.

With this step-up, the purchase price of the respective securities, from a tax point of view, will be revalued to their market value at the time of the immigration to Luxembourg. Thus, part of a possible subsequent capital gain, relating to the period prior to the immigration, remains taxfree in Luxembourg.

Whereas the initial date of acquisition prior to the immigration is used for the calculation of the respective holding period, the year of arrival in Luxembourg should be taken as a basis for the calculation of the revaluation coefficient as laid down in Art. 102 (6) ITL.

The step-up is, however, not allowed if persons were tax resident in the past for more than 15 years in Luxembourg and have not been tax resident for less than 5 years before (re-)immigration.

Abolition of the voluntary disclosure regulations and introduction of a temporary tax amnesty for individuals

With effect from 1 January 2016, the regulation on voluntary disclosure according to § 410 AO4 will cease to exist. Thus, in case of intentional non-compliance with tax regulations (tax fraud acc. to § 396 AO) and negligent tax avoidance (tax evasion acc. to § 402 AO) respective penalties have now to be

paid (in particularly severe cases of systematic tax fraud, the penalties may be assessed up to 10 times the evaded tax and include imprisonment up to 5 years).

Simultaneously with the abolition of the voluntary disclosure regulations, transitional rules for the period from 01.01.2016 to 31.12.2017 (§ 489 AO) will come into force (temporary tax amnesty).

Every tax payer who submits, on a voluntary basis, a complete and uniform subsequent tax declaration pertaining to income, net wealth and inheritance/donation to the tax authorities within this period should be granted impunity if the offences committed are those defined by §§ 396 and 402 AO. However, an additional payment will be levied further to the tax payable on income and net assets. If the subsequent tax declaration is submitted in the course of the year 2016, the penalty will amount to 10% of the additional tax payable. For disclosures made in the year 2017, the penalty will increase to 20% of the additional tax payable.

In order to benefit from the special conditions, such declarations have to be filed voluntarily and the underlying income and assets must not have been detected or disclosed yet nor form part of administrative or legal proceedings.

As from 1 January 2018, a voluntary disclosure to avoid penalties will no longer be possible.



New measures to fight against tax fraud and tax evasion being applied in France



Two new measures have been introduced in the Finance Bill for 2016 and the Amended Finance Bill for 2015.

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As part of the fight against tax fraud and tax evasion initiated in the past years at the level of the G20 and the EU, France implemented end of 2013 a first rule limiting the tax deductibility of financial interest, known as the "anti-hybrid rule", in order to tackle aggressive tax planning. Two new measures, pursuing the same purpose, have been introduced in the Finance Bill for 2016 and the Amended Finance Bill for 2015.

On the one hand, the French legislator, in response to OECD Base Erosion and Profit Shifting (BEPS) Action plan, introduced a new tax filing obligation for multinational enterprise ("MNE") group members, known as the "country by country reporting" ("CbCR") which aims at boosting transparency in international tax matters.

This new tax filing obligation will basically apply to:

- French companies holding foreign subsidiaries or having foreign permanent establishments, preparing consolidated accounts and whose annual consolidated turnover is at least €750m, provided that they are not held by a French or foreign entity subject to this or a similar obligation;
- French subsidiaries of foreign groups of which the parent company is located in a State which doesn't have a country by country reporting tax filing obligation, and which either has been appointed by the group to file the return, or cannot provide evidence that another group company has been appointed for that purpose.

The law provides that, within 12 months following the fiscal year end, these entities

must file with the French tax authorities a tax return reporting the allocation country by country of the group profits, various economical, accounting and tax aggregates and information about the localization and the activities of all group entities. The precise content of the return should be provided by a decree.

This new filing obligation will apply for the first time to fiscal years open as from 1 January 2016, which means that the first filings are expected at the end of 2017. The CbCR can be subject to an automatic exchange of information with the States having concluded an agreement with France in that purpose. However, French Parliament rejected an alternative proposal for public CbCR.



On the other hand, a new anti-abuse provision has been introduced for the purpose of the parent-subsidiary regime to implement a directive voted by Council of the European Union on 27 January 2015 (EU Directive 2015/121 amending the 2011/96/ EU Directive).

As a reminder, under the parent-subsidiary regime, subject to certain conditions, dividends paid by a French subsidiary to its EU parent are exempted from withholding tax and dividends received by a French parent from its French or foreign subsidiaries are 95% exempt from corporate income tax.

Under the new anti-abuse clause, the withholding tax exemption and the CIT exemption will not apply to dividends paid within the framework of an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the law, are not genuine having regard to all relevant facts and circumstances. The law specifies that "an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality". This new provision, which reflects exactly the wording of the amended EU Directive, raises a lot of issues in terms of interpretation, in particular regarding the concept of the "valid commercial reasons which reflect economic reality". The European Court of Justice will most likely be required in the coming years to provide its interpretation of these concepts at EU level.

These provisions will be effective for fiscal years open as from 1 January 2016.



Adjusted deadlines for filing annual accounts

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The ultimate deadline for filing the annual accounts with the Dutch Trade Register has been shortened by one month. As per the amendment, the terms that apply for the private limited liability company (B.V.) and the public limited liability company (N.V.), are as follows:

- Within five months after the end of the financial year, the management board needs to prepare the annual accounts. The general meeting of shareholders can extend this term by a maximum of five months on account of special circumstances - this used to be six months.
- Within eight days after the annual accounts have been adopted, the management board needs to publish them by means of a filing with the Trade Register.
- If the accounts have not been adopted two months after the (extended) preparation deadline, publication by means of a Trade Register filing must be done immediately.

Failure to comply with the filing deadline is an economic offence and, in the event of the company's bankruptcy, may lead to personal liability of managing directors.

Company size - threshold changes

Under Dutch law, the size of the company determines the applicable reporting, auditing and filing requirements. There are four regimes: large, medium, small and micro. Classification is based on company size, and the smaller the size, the more lenient the applicable requirements. As an example, companies that fall under the small company regime and the newly introduced micro company regime are not required to have their annual accounts audited. Listed companies do not benefit from the lighter rules that apply to smaller companies,

regardless of their size they will need to apply the large company regime rules.

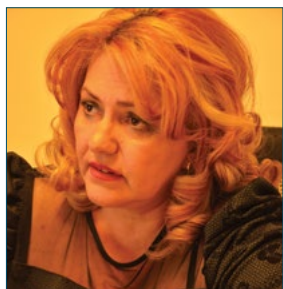
A company will fall within a specific regime, if at two consecutive balance sheet dates, and without any interruption thereafter, at two successive balance sheet dates, it has met two or three of the following requirements:

	Micro	Small	Medium	Large
Total assets	< €350k	< €6m	< €20m	> €20m
Net turnover	< €700k	< €12m	< €40m	> €40m
Number of employees	< 10	< 50	< 250	> 250

Effective date

The new legislation applies to financial years starting on or after 1 January 2016. The new rules may be applied to financial years that have started before 1 January 2016.

For more information or help on these subjects, please contact us at www.borsboomac.nl.



The main modifications of the fiscal legislation in Romania

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■ **Between 01 January 2016- December 31, 2016 the VAT rate is 20%**

■ **Starting with 1 January 2017 the VAT rate is 19%;**

The reduced VAT rate of 5% applies for the cultural services and sport events (for which the currently rate is 9%), and for books, newspapers, magazines, school books;

It was introduced the **reverse taxation mechanism** for:

- Buildings, parts of buildings and lands of any kind;
- Mobile phones, gaming consoles, tablet PCs, laptops - up 31 December 2018
- The annual turnover for micro companies will increase from 65,000 EUR to the 100,000 EUR.

The **income tax rates for micro companies** will be:

- 1% for companies with more than two employees, including;
- 2% for companies with an employee;
- 3%, for companies with no employees.

■ The **prescription right** of the fiscal authorities to determine tax liabilities, **for five years, begins from 01 July** of the next year for which the due tax liability (in the present the prescription period of 5 years starts from 01 January).

■ For documentation of the compliance with the principle of the market value of the taxpayer / payer who carry out transactions with affiliates must prepare transfer pricing documentation. At the request of a central fiscal authority taxpayer / payer is obliged to submit transfer pricing documentation.

■ The annual interest rate for foreign currency loans will **decrease from 6% to 4%.**

■ **Starting with 1 January 2016 the dividend tax rate for individuals, companies and non-residents is 5%.**

■ The net income from rental property is determined by **deducting expenses from gross income** determined by applying **40% to the gross income;**

■ Regarding the **local taxes applicable starting with 01 January 2016 :**

The tax rate for **residential buildings owned by individuals** will be between 0.08% -0.2% applied to the taxable value of the building;

In case of **non-residential buildings owned by an individual** the tax rate is calculated applying a percent between 0.2% and 1.3% on the amount that can be:

- Revaluated amount of an authorized evaluator in last 5 years of reference;
- The final value of construction works, for the new buildings built in the last 5 years preceding the reference year;
- The value of buildings which results from the sale contract, for buildings acquired in the last 5 years preceding the year of reference.

If the value of the building cannot be calculated according to the above paragraph the tax rate will be 2%;

In the case of **mixed-use buildings owned by individuals**, the tax / charge is calculated based on the area used for residential and non-residential purpose or based on the fact that the tax residence or economic activity takes place in that fiscal head office;

The residential buildings **owned by the companies** have a tax rate between 0.08% -0.2% applied to the taxable value of the building;

The tax rate for **non-residential buildings owned by the companies** will be between 0.2% -1.3percent applied to the taxable value of the building;

In case of the buildings owned by the companies, if the building owner has not updated the taxable value of the building in the last **3 years** preceding the reference year, the tax rate / tax building will be 5%. If the owner of the building for which tax is due on the taxable value of buildings not updated within the last 3 of the previous reporting year, the tax difference will be borne by the owner;

If the right of ownership of buildings, land, car, was sold, the tax will be due by the person holding the ownership of the building at 31 December of the previous fiscal year ;the new owner pay taxes starting on 1 January of the next year;

If a right of ownership of land was sold, the tax will be payable by the person holding the ownership of the building at 31 December of the previous fiscal year in which the land is sell;

In order to establish local taxes for fiscal year 2016:

- Individuals which, on December 31, 2015 were owned buildings for non-residential purpose or mixed destination are required to submit declarations until March 31, 2016 including,
- The companies are required to submit, until 31 March 2016, declarations of the buildings owned at 31 December 2015, specifying the taxable value, destination.



Doing business in Spain

PLANARTUS www.plana-artus.com

Spain is one of the most important economies worldwide, the 13th in terms of size, being also a significant destination for foreign investment. In this article we present a useful introduction of the different types of company existing in Spain, describing its legal, tax, labour and accounting obligations.

Legal

1. COMPANY

The most common corporate entities in Spain are the Limited Liability company (Sociedad de Responsabilidad Limitada or SL) and the Public Limited Company ("Sociedad Anónima" or "S.A."). Both types of companies enjoy limited liability for its shareholders. S.A.s are the most common corporate vehicle in Spain for multinational companies and listed companies. However, the use of SRLs is more frequent since the Spanish corporate law establishes more stringent requirements to operate an S.A., including the increase of the minimum capital amount required to incorporate company. See table on the left.

2. BRANCHES

Unlike companies, branches do not have legal personality different to that of their home office. Thus, the branch liability exposure extends to its parents by operation of law.

Because the branch is not, from a corporate standpoint, a different entity onto itself, but rather a part of the foreign company, the corporate requirements are minimal.

See table below

Capital stock	No capital is required for the establishment of a branch, although for practical reason it is advisable.
Registration	Together with the public deed creating the branch, the documents evidencing the existence of the head office, the current bylaws, its directors and the decision to open the branch, duly legalized, must be registered with the Commercial Registry.
Shareholders' meeting call	A branch does not have decision-making body in the form of a board of meeting, since its legal personality is that of the parent company.
Directors	The managing body of the head office will appoint a branch director to act as an attorney-in-fact of the head office at the branch. The director (as a general rule subject the limitations provided for in the powers of attorney) may pursue all the activities entrusted to the branch and registered at the Commercial Registry.
Share transfers	A branch cannot be transferred since it does not have any legal personality.

COMPANY: Main differences between an S.A. and a S.R.L.

Minimum capital stock	60,000 €	3,000 €
Payment upon formation	At least 25% and any share premium	Payment in full
Contributions	A report from an independent expert on any non-monetary contributions is required.	No report from an independent expert on non-monetary contributions is required, although the founder and shareholders are jointly and severally liable for the authenticity of any non-monetary contributions made.
Shares	They are marketable securities. Debentures and other securities can be issued.	They are not marketable securities. Debentures and other securities cannot be issued.
Transfer of shares	Depends on how they are represented (share certificates, book entries, etc.) and on their nature (registered or bearer shares). In principle, they may be freely transferred, unless the bylaws provide otherwise.	Must be recorded in a public document. S.L. shares are generally not freely transferable (unless acquired by other shareholders, ascendants, descendants or companies within the same group). In fact, unless otherwise provided in the bylaws, the law establishes a pre-emptive acquisition right in favor of the other shareholders or the company itself in the event of a transfer of the shares to persons other than those referred above.
Amendments to by laws	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
Venue for shareholders' meetings	As indicated in the bylaws (in any event, the meeting must be held in Spain). Otherwise, in the municipality where the company has its registered office.	
Attendance and majorities at shareholders' meetings	Different quorums and majorities are established for meetings on first and second call and depending on the content of the resolutions. These can be increased by the bylaws.	Different majorities are established depending on the content of the resolutions. These can be increased by the bylaws.
Right to attend shareholders' meetings	A minimum number of shares may be required to attend the shareholders' meeting	These rights cannot be restricted.
Number of members of the board of directors	Minimum: 3. No maximum limit.	Minimum 3. A maximum of 12 members
Term of the office of director	Maximum 6 years. They may be reelected for periods of the same maximum duration.	May be indefinite.
Issue of bonds	Bond issues may be used as a means to raise funds.	Limited liability companies cannot issue bonds.



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Labour

From Social Security point of view, there are no differences between Limited Liability Company (S.R.L.) nor Public Limited Company (S.A.) and Branches. **Common issues:**

Manager as major shareholder	All companies must have at least a self-employed person who has to pay contributions to Social Security.
Employees	In order to hire employees, it is necessary to register the company in the Spanish Tax Agency and the Social Security. The documents required are: <ul style="list-style-type: none"> • Tax Identification Number • Certificate of Incorporation • Power of Attorney If these documents have been issued by a non-Spanish organism, they have to be translated into Spanish by a sworn translator and with the Hague Apostille.
Employee's Social Security contributions	They are calculated according to employee's salaries, the kind of contract (temporary or permanent) and the company's activity. There is a limit contribution which is updated annually.
Tax withholdings	They are calculated according to the salary and the family situation (number of children). The limit rate is 47%.



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Tax

The Corporate Income Tax (CIT) in Spain is the same for Companies (S.A/S.L.) and Branches but depending on the turnover (over or below than 10m €), there are differ-

ent tax rates and tax benefits.

Companies with annual turnover over EUR 10 million are called in Spain "Grandes Empresas" (BIG Companies)

Companies with annual turnover below EUR 10 million are called in Spain "PYMES" (Small and medium sized enterprises-SEM)

Main differences because of the size:

	>10m€ (BIG)	<10m€ (SEM)
Tax rate (1)(2)(3)	28%/30% (Tax rate 28% for the first EUR 300,000 and 30% tax rate applies to taxable income exceeding EUR 300,000)	25%/28% (Tax rate 25% for the first EUR 300,000 and 28% tax rate applies to taxable income exceeding EUR 300,000)
Depreciation	Legal chart on depreciation	Legal chart on depreciation *2
Impairment deduction	Nothing	1% bad debts
Leveling Reservation (Reserva de Nivelación)	Nothing	10% less taxable basis (max 1m€ per year) during 5 years Taxation at the end of this 5 years

1) The new Spanish regulations for 2016 change the tax rate. It will be applicable to the entire taxable basis a 25% tax rate for BIG and SEM companies.

2) Newly created companies incorporated in 2015 that carried out economic activities will be taxed at 15% on their tax base up to EUR 300,000 and a 20% tax rate on any excess

in both the first period in which they obtain a profit and the following tax period.

3) Companies that own real estate or stock (more than half of its assets), not related to an economic activity, are called in Spain "Sociedades Patrimoniales" (Holding Companies) and they are taxed as BIG Companies.



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Accounting

The main Accounting and Annual Accounts obligations to be fulfilled during the year are the same for the three types of company described in this article (S.A., S.L. and Branches) and are summarized as follows on the table on the right:



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Accounting	Keep detailed accounting records yearly and submit them to the Public Register within four months from the end of the accounting period. This information has to be kept minimum 6 years.
Annual Accounts	<p>Prepare annual accounts during a maxim period of three months after the closing date. Submit them to the shareholders for approval, which must be done within six months from the end of accounting period. The subsequent month of the approval the annual accounts have to be filed in the Public Register.</p> <p>a) Annual accounts are composed by up to six documents:</p> <ul style="list-style-type: none"> o Balance Sheet o Statement of Profit and Loss Account o Statement of Changes in New Equity o Cash-flow Statement o Annual report <p>b) Annual accounts can be presented in three forms (full form, short form or small and medium entities form (SEM)). If a company exceeds two of the following limits:</p> <ul style="list-style-type: none"> o 50 employees o 2.85 million € of total assets o 5.7 million € of total income <p>during two consecutive periods, they will have to present the full form. Otherwise it can be chosen the short or SEM form.</p> <p>c) Obligation for auditing. Any company exceeding any of the three assumptions previously mentioned will submit its financial statements for auditing.</p>



New Rules, same old Paradigm

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A plan to curb multinationals' tax avoidance is an opportunity missed. An interesting subject that I read with interest in a recent Economist magazine is summarised below.

In 2013 investigators from America's Senate shone a harsh light on a highly profitable unit of Apple that was registered in Ireland, controlled from America - and not paying tax in either country. That this "stateless-income" structure was perfectly legal highlighted a big loophole in the global system for taxing multinationals.

There are many such gaps, and the reason is that the patchwork of national rules and bilateral treaties governing how much tax companies owe, and to whom, is horribly dated. It was designed for the manufacturing age. Business today is increasingly digital, services-based and driven by intangible assets, including rights to exploit intellectual property (IP), from patents to logos. These are easier than physical assets to shuffle from subsidiaries in high-tax countries to those in low-tax ones. In short, they make the old rules easier to circumvent.

Hence the relentless rise of tax planning as a core part of multinationals' business plans. The OECD reckons that the resulting revenue losses to national exchequers have grown to as much as \$240 billion a year, or 10% of global corporate income-tax receipts - an estimate it considers very conservative. The share of American firms' profits that they book in low-tax havens has more than doubled since the 1980s; this has helped reduce the actual rates they pay, relative to their home country's headline rate. America's 500 largest firms hold more than \$2 trillion in profits offshore. Its tax laws encourage this, because the profits that its companies make abroad are taxable in America only when repatriated.

Two years ago the Group of Twenty (G20), a forum for big economies, asked the OECD to produce reforms aimed at curbing these

corporate-tax gymnastics and ensuring that multinationals were taxed "where economic activities take place and where value is created". The request was motivated in part by growing public anger over firms not paying their "fair share", and partly by hunger for more tax revenue in an era of austerity.

The resulting "Base Erosion and Profit Shifting" (BEPS) proposals were released earlier this year. They are the biggest shake-up of multinational taxation since the basics of the current framework were put in place in the 1920s. OECD officials were predictably upbeat as they unveiled the plan. Angel Gurría, the organisation's secretary-general, declared that it will "put an end of double non-taxation". Pascal Saint-Amans, the OECD's tax chief, said it marked a change of paradigm that should help to make tax planning "marginal" rather than "a core part of business models" (though he accepted there was still much work to do; two years is but a blink of an eye in global tax diplomacy). The reality is less cheering: the project was flawed from the start because it was impossible to achieve consensus in favour of the radical overhaul that was needed. The result is a patch-up job that offers improvements in certain areas but fails to deal with the core problems.

Start with the good bits.

Companies will be required to do more country-by-country reporting of where they really earn their revenues, hold their assets and employ people, and where they book their profits - information that is often lacking in their published accounts. This will give tax authorities (though not the public) a clearer picture of how much profit is being shuffled around for tax purposes. National tax authorities will

also get more information on "comfort letters" that other countries' taxmen have provided to companies, blessing their tax arrangements. The European Commission, the EU's executive arm, is investigating what it suspects are unfair sweetheart deals that the Netherlands, Ireland and Luxembourg have struck with companies ranging from Starbucks to Fiat Chrysler. This week the EU countries got a head start in implementing the OECD's reform proposals by agreeing on the automatic exchange of information on their cross-border tax rulings.

However, in some of the most important areas such as grappling with how to tax cross-border online sales, cans have been kicked down the road. Several proposals were diluted at the insistence of powerful countries (not at least America, whose IP rich multinationals are the main target of the reforms). A case in point is the weak proposals on controlled foreign corporations, subsidiaries used to defer tax by parking it offshore. The OECD's "action plan" on this issue - one of 15 in its report - is merely a discussion of alternative approaches, none of which is intended to serve as a minimum standard.



The biggest disappointment is that, in opting to renovate the existing system, the OECD has stuck with its most deeply flawed pillar: the “independent entity” principle. This rests on the fictitious assumption that the various parent and subsidiary companies in a corporate group act like separate legal persons that transact with each other at arm’s length.

They often do not, because transacting at non-market prices, to shift profits to tax havens, was precisely why some subsidiaries were set up. Such antics are supposed to be kept in check by tax authorities’ rules on “transfer pricing”. But these are complex and often ineffective, in part because it is so hard

to be sure if royalties for patents, copyrights and the like have been set at fair prices. The BEPS reforms seek to toughen the rules, but in doing so they add yet more complexity.

Some countries, including Britain, with its new “diverted-profits tax”, have pushed through anti-avoidance laws that may be hard to make fit with BEPS principles. That is probably because they have little faith that other countries will implement them in a way that produces a coherent international framework. If co-ordination is weak, unilateral measures like Britain’s could accelerate as other countries rush to protect their tax bases.

Multinationals’ fear is that growing friction between countries over who gets to tax the lion’s share of their profits leads to the return of double taxation - something that, thanks to the global network of tax treaties, they have been spared from for decades. “There will definitely be more disputes,” says a tax adviser to multinationals. “BEPS is an excuse for all to seek a bigger slice of the pie.” The OECD’s reforms include a strengthening of existing procedures that ensure there is no double taxation. But these have yet to be tested. The head of tax at a global software firm fears that country-by-country reporting, as proposed by the OECD, will only encourage countries to dispute their cut of the taxes a given firm is paying.



Business Advisory Services

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Through my work as both non-executive director and business adviser to many of our clients, I have gained a substantial amount of experience in looking at businesses. I have therefore decided to write a brief article on certain aspects which every business should adhere to.

Every business should have a plan which encapsulates a “vision” and a strategy to take it from where it is now to where it wants to be, regardless of its size or complexity. This may sound obvious but in our experience there are a large number of businesses who are trading without a clear sense of direction or strategic goal.

Imagine the complexity of producing a business plan on a massive scale but a large conglomerate however there are also difficulties of producing a business plan for a SME (small/medium business).

If you are not on the right path you may require assistance, and this is where a firm like Gerald Edelman can help to guide you to where you want or need to be.

If you are just starting out, looking to grow, or facing significant obstacles it helps to have the best advisers working with you, and we will provide pragmatic and commercial advice at each state of your business’s life cycle.

So where to start?

The first step is to gather sufficient information about where your business is today. This could encompass details such as level of sales, profile of customers, number of employees, product range, profitability, assets, sources of finance and anything else relevant to your particular business.

The next step is to consider where you want the business to be. This will involve you having a vision of what the business will or should look like in the future, but in particular there will be a need to identify the area or areas where you can (or would like to) outperform the competition.

This analysis will be unique to every business but will probably include changing some of the factors above. For example, the edge you can maintain over your competition might be focused on the price of your products, the range of your products, the efficiency of your staff, the use of technology, the investment in new products or services, etc.

By this stage you have gathered a lot of information about your business and where you want to take it. The business plan which you now need to generate will help keep you on the right path and take your business forward.

The business plan is more than just financial forecasts on a excel spreadsheet. It must be underpinned by a number of strategies and these must be continually monitored, reviewed and amended if they indicate that the business is losing sight of its vision.

It is a reasonable assumption that the size of the senior management team will be larger in bigger businesses and therefore arguably they will have more resource in terms of time to devote to this planning process, but equally the process may be more complex. The team at Gerald Edelman can help support you through this process.

For other businesses, the management team may consist of a few key people and might even be one owner/proprietor. The key here is not to overcomplicate matters and make best use of the time available. We can help you tailor your approach to suit the needs of your business.

If the contents of this article strike a chord with you then I would suggest that you contact me or the member firm who normally deals with your affairs for an initial meeting to assess how to progress and make the development of your business a reality.



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