

Global Update



March, 2009

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EDITORIAL

The March issue of **Integra International's** Global Update includes articles from our member firms in Poland, Argentina, United States, Spain, Hong Kong and Greece. The content of the articles range from VAT questions in Poland, Taxation of trusts in Spain, IFRS and PRC GAAP, to transfer pricing issues in Greece and US entity selection. The broad variety of countries involved as well as the wide spread of different technical content show Integra International to be the alternative to the big four accounting firms. Our experts can help our clients in nearly every part of the world. We can offer accounting, auditing and tax consulting in all countries where we have members.

The world wide presence of **Integra International** has been increased by some new member firms in Romania (Bucharest), China (Shanghai), and Egypt (Alexandria and Cairo). We expect to cover some 3 – 5 additional cities by the end of 2009. With more than 2,500 people working in the offices of our member firms world wide we can really say that Integra International is your global advantage.

Integra International is also proud of its increasing activities and connection between the different member firms. Company visits, sharing experience, working together on cross border deals and transactions, and serving multinationals in different countries are a constantly growing part of our business. Initiatives like the Integra corporate finance group – a special interest group which has been set up together with our friends from ABL - an international organization of law firms (www.a-b-l.com) - will help offer added value to our clients. Our tax group is just now organising their next workshop to be held in London on September 5th – topic will be “International M&A and Taxation”. We will work out some cross border case studies which then will be discussed by our international tax experts.

More information about Integra activities and special interest groups will be highlighted in the next issue of our **Global Update**.

We are not talking about the bad economic situation - we are looking forward to serving our clients and we are optimistic that with our help and service our clients can be successful after this downturn.

Integra  **International**
Your Global Advantage

Vienna, March 2009
Franz Schweiger



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CHANGES TO THE POLISH VAT LAW

On November 7, 2008 the Parliament adopted a number of changes to the Polish VAT Act. The amendment harmonizes some controversial Polish VAT regulations with the Directive 2006/112/EC, in particular in the areas that were subject to the decisions of the European Court of Justice and of Polish administrative courts. Under the revised law, entrepreneurs could benefit from simplifications influencing the planning and the management of company financial resources (e.g. acceleration of the VAT refund procedure, extension of VAT deduction period) and reducing tax burdens related to VAT reporting (e.g. the quarterly reporting scheme, VAT on importation or the call-off stock procedure). The amendments came into force on December 1, 2008 with some exceptions regarding, inter alia, the specific regulations on goods imported under a single customs permit or the taxation of real estate, which became binding at the start of this year.

This article is a short review of these amendments, with focus on selected provisions that have been modified in a way that has a positive impact on settlements by both the Polish taxpayers and their foreign business partners.

Quarterly VAT reporting

One of the key changes which the amendment brings is the possibility of choosing a quarterly reporting scheme. Under this scheme, taxpayers are entitled to report the amount of VAT due for each calendar quarter. During the first two months of a given quarter, the taxpayer is required neither to file a VAT return, nor to assess the actual amount of VAT due. He only pays VAT advances, equal to 1/3 of his VAT liability for the previous quarter. Such advance VAT payments must be made by the 25th day of the month following the month for which the advance payment was due. The amount of the tax due for the entire quarter is established in the VAT return submitted by the 25th day of the month following the end of the quarter. Within this period, the taxpayer must pay tax due calculated as the difference between the amount of VAT due and the total sum of VAT advances.

It is noteworthy that such a reporting scheme may be used as an effective tool for the planning of VAT savings by taxpayers who foresee an increase in their VAT turnover in the forthcoming monthly periods. Payment of advances may, in such a situation, postpone the moment of paying the actual amount of VAT due for two months.

Quarterly reporting may be also profitable for entrepreneurs involved in intra-community supplies or exports, as it extends the periods in which the 0% VAT rate can be applied. As a rule, in order to benefit from the 0% VAT rate, an intra-community supplier is required to provide specific documents proving that goods have been effectively delivered onto the territory of another EC Country (an exporter is required to prove that goods have left the EC territory). In practice, due to the fact that the documentation is frequently delivered to the supplier/exporter after the appropriate VAT deadlines, the taxpayer cannot benefit from the preferential tax rate. By using quarterly reporting, taxpayers may delay the moment of declaring intra-community supplies or exports until the 25th day of the month following every quarter.

Importation of goods

Before the amendment, the taxpayer was required to pay the VAT on importation to the Customs Office within 10 days of receiving a notification from the Customs Office. The amount of tax was refunded to the taxpayer by being converted into the input tax in the VAT return for the reporting period in which the taxpayer received the relevant customs document.

The new regulations, entering into force on December 1, 2008, provide an alternative to the above-described procedure, i.e. the possibility of a non-cash settlement of the VAT due on importation, which can be used by taxpayers entitled to apply, simplified customs procedures with a monthly reporting period (the procedure only applies to completed customs notifications as described in art 76 1b) and c) of EC Customs Code). In order to apply this procedure, the taxpayer must fulfil the following formal requirements:

- inform the Customs Office and the Tax Office,
- submit a confirmation that his taxes and social security contributions have been paid without delays;
- submit a VAT registration;
- pay the collateral of the VAT amount due on importation (released after a VAT return has been submitted with the amount of VAT due on importation).

If such a settlement is permitted, the taxpayer will declare the amount of VAT due to the Customs Office, but will not be required to pay it. The VAT on importation will be settled by the way of declaring the amount of output and input tax directly in VAT returns submitted for the period when the goods were imported. Importation of goods will be then financially neutral for a taxpayer (the output VAT on importation will be “consumed” by input tax in the same reporting period).

The amendment also harmonizes the Polish regulations on importation with the revised EC Regulations on the procedure of a single customs permit (in particular with art.1.13 of EC Regulation 2454/93 on executive regulations to EC Customs Code), which entered into force in the European Union on January 1, 2009. Under this procedure, goods can be declared for customs purposes in the country of the taxpayer’s seat, even if they are physically located in another EC country. The new provisions provide for a specific type of VAT return designed for the settlement of VAT due on importation covered by the single customs permit (VAT-IM). The tax must be paid by the 16th day of the month following the month in which the tax liability on importation arose and no later than before the standard VAT return is submitted.

Deduction of input tax

Before the amendment, the taxpayer was entitled to deduct input tax within two reporting periods, i.e. the period when the invoice was received and the next reporting period. Under the revised law, the period of input tax deduction based on purchase invoices has been extended to three reporting periods. This means that in case of the quarterly reporting scheme, a taxpayer can have even 9 months for VAT deduction.

Deduction of input VAT and tax deductible costs

The amendment repealed provisions which excluded the right to deduct input VAT in case the incurred expense could not be treated as a tax deductible cost for income taxation purposes. The Polish jurisprudence indicated that these provisions were inconsistent with Directive 112/2006/EC, and this derogation seemed necessary.

Shorter period for VAT refund

On July 10, 2008 the European Court of Justice held that the 180-day period for VAT refund and the guarantee deposit of PLN 250 000 applied to taxpayers who had been in business for fewer than 12 months were discriminative for new taxpayers and contrary to the VAT proportionality principle (C-25/07 Alicja Sosnowska vs. Director of Tax Chamber in Wrocław).

It seems that the revised provisions concerning VAT refund periods are to some extent a response to the ECJ's decision. Currently, the period for VAT refund is 60 days, calculated from the date of submission of VAT returns, and it is the same for all taxpayers, regardless of how long they have been in business.

However, although the deposit guarantee was abrogated, some limitations on VAT refund for new taxpayers are still in force, e.g. if the tax authorities are challenging the amount of the VAT declared for refund, the taxpayers are required to pay a "property collateral" equal to the amount of the requested refund. Such collateral may be paid in cash but it is also permissible to submit it in the form of a bank guarantee, securities or a cheque confirmed by the national bank of its issuer.

Under the amendment, the 180-day period for VAT refund applies to taxpayers who, prior to submitting their VAT returns, have not carried out any taxable transactions (in the past, VAT refunds to such taxpayers were challenged by the tax authorities). This deadline can be reduced to the standard 60-day period if the taxpayer pays a collateral equal to the amount of requested refund.

Call-off stock procedure

Before the amendment, a foreign supplier who maintained a consignment warehouse in Poland in order to supply stored goods to Polish customers was required to:

- register for VAT purposes in Poland;
- declare VAT on intra-Community purchases;
- declare output VAT each time he made a supply to a Polish purchaser.

Under the revised VAT Law, the provisions on call-off stock, commonly applied in the other EU countries, were introduced into the Polish regulations. The aim of this mechanism is to transfer the tax burden resulting from the transaction of transferring goods to the warehouse by the foreign supplier onto the Polish purchaser. This means that the foreign supplier will no longer be required to register for VAT purposes in Poland. The transaction of moving goods into a Polish warehouse and its sale to a Polish purchaser should be settled in the same way as other intra - community supplies in the country of the foreign supplier's VAT registration. On the other hand, the Polish purchaser will be required to declare the VAT under the same rules as those governing intra-community acquisitions of goods, which means that the whole transaction will be financially neutral for him.

The application of the procedure is contingent, however, on the fulfilment of a set of specific requirements by both parties to the transaction:

- the foreign supplier cannot be registered for VAT in Poland,
- the goods stored in the consignment warehouse are used by the Polish purchaser for production purposes or for provision of services, excluding commercial activity,
- the tax authorities have been informed about the procedure,
- the purchaser keeps a detailed record of goods moved into a warehouse.

The above restrictions mean that this procedure cannot be applied when the Polish purchaser acts as a distributor of products stored in a warehouse.

It is worth adding that the amendment introduced a similar solution with regard to supplies performed by Polish taxpayers to consignment warehouses located in another EC country.

Taxation of real property

The Polish legislator decided to implement an option for taxation of exempted supply of buildings, construction or their parts provided by art. 137 sec. 1 c) of Directive 2006/112/EC. The option for taxation may be applied in the case of the supply of buildings (construction or their parts), provided that more than 2 years have elapsed from the date when such a

building was first settled. If the period between the first settlement after construction and building supply does not exceed 2 years, the taxation of the transaction is obligatory.

Statistical classification does not limit the place of supply of services

Before the amendment, the VAT consequences of rendering services were determined only by the Polish Classification of Products and Services ("PKWiU"). This provision applied, inter alia, to consulting, data processing, information delivery, engineering, legal and accounting services (so called "intangible services") which, according to EC Directive, are as a rule taxed at the place of the recipients' seat.

These provisions had a direct negative impact on the VAT treatment of, for example, clinical research services rendered by Polish companies to recipients located abroad. The reference codes given to them by the statistical office were often not included in the VAT catalogue of intangible services. As a consequence, the tax authorities ruled that clinical research services could not benefit from VAT taxation in the country of the recipient's seat, but, in accordance with the general provisions of the VAT Law, were taxable in the country where the provider has its seat, i.e. in Poland.

Thus, in practice, the majority of companies conducting clinical research services in Poland treated them as if they were subject to the 22% VAT rate. It is noteworthy that this approach was contrary to the practice applied in other EC countries, where such services were treated as being outside of the scope of VAT in the country of its provider.

In 2007, these companies appealed to the European Commission for the amendment of the Polish VAT Law which defined the place of supply of intangible services by reference to the PKWiU statistical codes. The inconsistency of the Polish VAT Law with EC Directive was confirmed by the Commission who summoned Poland to eliminate it.

The revised provisions of the amendment stipulate that PKWiU can be used only as an auxiliary tool to determine the place of supply of services which should be taxed in the country of the recipient's seat. Additionally, the catalogue of intangible services was modified so that the reference to PKWiU is by way of example only.

These changes mean that PKWiU cannot currently limit the scope of services which should be taxed in the country of the recipient's seat. The amendment gives hope to clinical research providers that the tax authorities' approach can be changed, making their services more competitive with services provided by entities located in other EU countries.

Services provided by foreign suppliers in Poland

The revised law affects intangible services provided by entities with a permanent establishment in Poland to Polish taxpayers. According to the rules, the place of supply of intangible services is to be reported for VAT purposes by the recipient of such services.

Before the amendment, however, foreign entities with permanent establishment in Poland (i.e. branches of international companies registered for VAT purposes in Poland) taxed all services provided (including intangible services) at the 22% VAT rate. Consequently, the VAT on the value of services was calculated twice – at the moment of sale by the service provider and at the moment of purchase by service recipient. Thus, the VAT was paid by service recipient on the gross amount of purchased services.

Under new VAT regulations, the VAT on all services provided by the entity with permanent establishment in Poland needs to be declared only once - by the service provider (not by both parties to the transaction). In such a case, the service recipient is not required to settle the VAT on their value.

Elimination of the 30% VAT penalty (30% additional tax liability)

This change may be considered by many Polish taxpayers to be the most important one. The amendment eliminates the VAT penalty calculated as 30% of any underestimated VAT liabilities (understatement of output VAT and overstatement of VAT to be refunded). The amount of the penalty, in conjunction with the still unclear and complicated VAT regulations, was a source of significant financial risk for entrepreneurs in Poland. It was also generally commented that by applying an “additional tax liability” to VAT payers, the principle of VAT neutrality was infringed; as such a penalty is fact an additional non-deductible tax burden. Under the EC Directive regulations, measures limiting VAT deductibility are permissible only if they can prevent tax evasions or avoidance of taxation.

In the period preceding the amendment, the Polish administrative courts referred to the European Court of Justice (ECJ) two prejudicial questions concerning the conformity of the VAT penalty with Directive 2006/112/EC: the first one – the Ceramika Paradyż case (C-168/06) – concerned penalties for understating the amount of the VAT by the taxpayer in periods preceding the accession date (before May 1, 2004). The next question was on settlements due for periods after the accession date (C-502/07, K-1 case). It seems that the decision on its elimination from the VAT Law was taken by the Polish legislator mainly for fear that the ECJ might challenge the conformity of the VAT penalty with Directive 2006/112/EC.

Unfortunately, in both cases the ECJ’s responses were negative. In its decision of 6 March 2007 in the Ceramika Paradyż case, the ECJ refused to deal with the question submitted by the Administrative Court in Łódź, stating that VAT penalties referring to settlement periods preceding Poland’s accession to the EU were outside of the scope of the EC law. In a recently published decision (January 15, 2009), the ECJ held that the common system of valued added tax does not prevent EC countries from introducing administrative penalties, referred to in the Polish VAT Law as “additional tax liability”. Such measures do not constitute, in the ECJ view, special measures within the meaning of the EC Directive regulations. This could mean that although the amendment repealed the penalty, the risk of its return cannot be excluded.



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SOMETHING YOU ALWAYS WANTED TO KNOW ABOUT FRAUD BUT WERE AFRAID TO ASK PART I

ASSET MISAPPROPRIATION

Asset misappropriation schemes are the most common fraud schemes perpetrated, making most companies, if not all, vulnerable. Although asset misappropriation schemes are the least costly in comparison to the other fraud schemes, nevertheless, with the median loss

found in the 2008 Report to the Nation on Occupational Fraud and Abuse¹ to be \$ 150,000, it is an amount that could cripple an organization in most countries.

Asset misappropriation schemes include both the theft of company assets (such as cash and inventory) and the misuse of company assets, such as using a company car for a personal trip.

CASH SCHEMES

Predictably, cash schemes dominate asset misappropriation schemes. It was found that cash misappropriations were nearly 90% of total losses due to asset misappropriations. Cash schemes can be broken down into three categories: skimming, larceny and fraudulent disbursements.

1. Skimming

Skimming is the removal of cash from a victim entity prior to its entry in the accounting system. Employees who skim from their companies steal sales or receivables before they are recorded in the company books. Because of this aspect of their nature, skimming schemes are known as “off-book” fraud; they leave no direct audit trail.

The most common skimming schemes involve sales, receivables, refunds and others. The most basic skimming scheme occurs in sales. An employee sells goods and services, collects and pockets the payment but does not record the sale. Since there is no record of the sale, there is nothing out of balance, making it difficult to detect. Skimming can also occur by understating a legitimate sale by recording an amount in the books for less than the amount collected.

One common receivable skimming scheme concerns the write-off of accounts receivable. At the time customers pay their accounts, the amount received is taken, leaving the customer with an outstanding balance. The balance is the written-off to bad debts with the payment never getting recorded in the books. However, the most common skimming scheme involving receivables is lapping. Lapping is the crediting of one account from money received for another account.

2. Other skimming schemes

Other skimming schemes include theft of checks through the mail and refunds. Theft of checks is a frequent target of employees seeking “extra compensation”. In a skimming scheme, the employee takes the incoming check appearing as if the check was never received. This scheme is especially successful when there is only one employee in charge of receiving the payments and recording cash receipts.

Another scheme concerns substituting checks for currency. One other skimming scheme of note is short-term skimming. Although it is not a distinct method of stealing sales and receivables, short-term skimming involves keeping the stolen money for only a short period of time and then eventually passing the money on to the employer. The money stolen is placed in an interest bearing account or short-term security and the money earned off the account is retained by the perpetrator while the principal is returned.

3. Larceny

In the occupational fraud setting, a cash larceny may be defined as the intentional taking of an employer’s cash (the term cash includes both currency and checks) without the consent and against the will of the employer. Previously, skimming was defined as the theft of off-book funds. On the other hand, cash larceny schemes involve the theft of money that has already appeared on a victim’s company books.

¹ Association of Certified Fraud Examiners – May 2008

Larceny of cash on hand occurs right where the money is - the cash register. In this scheme the employee opens up the cash drawer and removes the cash. Since there is a record of the currency which flows through the cash register, a trail is left behind to catch the perpetrator because the register will be out of balance. The trick is for the employee to devise a method that conceals the crime. One common method is to leave personal checks to cover the amount of cash stolen and yet another is to steal small amounts of cash at a time and attribute the shortage to error.

In larceny from the deposit, part of the cash is stolen before the deposit is actually taken to the bank. To avoid detection, the employee implements a deposit lapping scheme similar to receivable lapping, or to carry the money as deposits in transit.

4. Fraudulent disbursement

Fraudulent disbursements are schemes where the perpetrator causes his company to issue a payment by some trick or device. Fraudulent disbursement schemes are categorized in the following way:

a. Billing schemes

In a billing scheme, the perpetrator submits or alters an invoice that causes his employer to willingly issue a check. Though the support for the check is fraudulent, the disbursement itself is facially valid. Remember that in check-tampering schemes the perpetrator may have to forge a signature or alter the face of a check to make it appear valid. In billing schemes, the check itself is valid, having gone through the normal cash disbursement cycle.

b. Expense reimbursement scheme

Expense reimbursements are carried out through mischaracterized expenses, overstated or fictitious expenses or by way of multiple reimbursements.

c. Payroll schemes

Payroll schemes involve ghost employees, falsified hours or rate of pay, commissions and workers compensation schemes.

d. Check tampering schemes

Check tampering is a type of fraudulent disbursement scheme in which an employee either (1) prepares a fraudulent check for his own benefit or (2) intercepts a check intended for a third-party and converts the check to his own benefit.

e. Register disbursement schemes

These schemes differ from the other register frauds in that, when the money is taken from the register the removal of money is recorded on the register tape. A false transaction is recorded as though it was a legitimate disbursement to justify the removal of money. This scheme type is comprised of false refunds and voids.

5. Detection

Auditors should actively look for areas that have been shown to have a higher potential for fraud as well as actively investigate fraud indicators. Some of the areas that the auditor can take an active role in detecting fraud are:

- investigate customer complaints;
- investigate unusual payees (i.e., employees);
- handwritten vs. computer generated;
- non-vendors;
- non corporate sponsored credit card companies;
- perform surprise audits of cash;
- account for consecutive sales orders and cash register transactions;
- perform site visit of vendors;

- review contracts which are awarded outside the bidding process;
- review budget variance reports which compare the actual vs. budgeted expenses by cost centre;
- review accounts which have unusual activity, i.e., high reimbursements at the end of a fiscal period;
- analyze payee addresses;
- analyze payroll deductions;
- review unusual endorsement on checks;
- investigate missing cancelled checks;
- investigate past due notices received by the organization;
- investigate noticeable changes in an employee's lifestyle;
- review accounts which have been written-off or other discounts applied to determine if they were properly handled;
- match deposits to the date the customer's account was credited;
- review supporting documentation for unusual journal entries;
- review transactions which have been overridden;
- review alterations, missing documentation and photographed documents where original should be present.

INVENTORY AND OTHER ASSETS SCHEMES

The term "inventory and other assets" is meant to encompass the misappropriation schemes involving any assets held by a company other than cash. Inventory and other assets are targeted for theft by employees in a number of ways. Non-cash schemes can range from taking a box of pens home from work to the theft of millions of dollars worth of company equipment. The most common schemes involve misuse and larceny.

Larceny, as would be expected, is a great concern and problem for employers. Losses can be relatively minor but can also run into million dollar losses. Larceny schemes include the following:

a. Asset requisition and transfer

In this scheme, non-cash assets are moved from one location to another and then misappropriated. The most common scheme is when the employee requisitions material and then steals them. At the extreme level, the employee may create a completely false project just to steal the assets procured. Another scheme occurs when the employee transfers an asset from his present location and steals it.

b. Fake sales and shipping

Employees are not the only perpetrators of larceny schemes. The fake sale requires not only the action of an employee but an accomplice as well. The fake sales occur when the employee allows the outside perpetrator to walk off with merchandise without paying for it. Generally, when this scheme occurs, the employee actually bags the merchandise making it appear as a legitimate sale, but it is never recorded.

c. Purchasing and receiving schemes

The purchasing and receiving functions act as a conduit for stealing inventory and other assets. In this scheme, as opposed to billing schemes, the purchase is for material or supplies that the company cannot use.

d. Unconcealed larceny

Unconcealed larceny schemes occur when employees steal merchandise in plain sight. While many fraudsters may take measures to conceal the theft by hiding it in briefcases, in clothes or in the dead of night, employees also take merchandise openly in front of fellow employees, the thinking being that co-workers assume that

the culprit has a legitimate need for removing the item. Other employees may notice the open theft, but choose not to report it.

Detection of inventory and other assets schemes will involve:

- statistical sampling;
- analysis of inventory records and shipping documents;
- performing surprise audits of inventory, fixed assets and computer software;
- physical inventory counts and verifications;
- conducting analytical reviews of acquisitions of equipment and software, disposal of equipment,
- report of thefts and maintenance of equipment
- computer generated trend analysis on inventory levels by type and dates, cost per item and shortage of inventory items.



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Impressions from my internship in UK – London

In order to increase the level of collaboration within Integra International I spent three wonderful days in London at the office of Wilder Coe.

On my first day I got a brief introduction to all the employees of the firm. The office is located very centrally in London near Paddington Station and my first impression was that Wilder Coe is well equipped technically.

Our Integra Member in London offers a wide range of different services like:

- Audit and Business Assurance
- Company Secretarial Services
- Managing and Minimising Tax
- Turnaround Restructuring and Business Recovery
- Buying, Selling or Floating a Business
- Litigation Support and Forensic Accounting

I also had the chance to talk with Tim Cook a Partner in the Tax Division and to Ian Saunders who is responsible for company secretarial services. I had the opportunity to see how a company formation is done in UK and was very impressed at how quickly it can be done. The formation of a limited company can be done by Wilder Coe through their electronic system within a maximum of one hour!

On my second day Mark Saunders invited me to Wilder Coe's second office located in Stevenage where their sister company Artaius Limited is based. There I had a nice chat with Melanie Troiano, Client Relationship Director. If you have a client from abroad who wants to have an office located in London the people at Artaius should be your first contact. They have a very good relationship with lawyers, banks, trade commission and so on and they can offer a wide range of services for your client to get their business started. I also had the

opportunity to talk with another partner Norman Cowan who is in the turnaround, restructuring and insolvency division.

In the afternoon we went back to the office in London and I took part in a marketing meeting in the office. It is great to see how Wilder Coe is engaged in marketing and also how they present Integra International. I also got to know Bee Chew, a partner within the audit & business assurance division. She gave me an excellent introduction how a business valuation is done at Wilder Coe – thanks once again.

On the third day the Integra Cross Border Tax Group had a meeting at Wilder Coe to go through the agenda of the upcoming Tax Group meeting which will be hosted in London – details and invitation will be following.

After the Tax Group meeting Wilder Coe arranged a great lunch at an Italian restaurant and provided us with delicious food, red wine and conversation.

During my stay in London Mark Saunders was such a great host. It was a pleasure to get to know some clients from Wilder Coe and enjoy a fantastic Indian meal. I was also very happy that he invited me to a musical at the Appollo Victoria Theatre called “Wicked” – I am still impressed by the costumes and the great vocalists.

Summing up I want to say CHEERS to Wilder Coe, and especially Mark Saunders. If you want to do business in London this firm should be your first choice.

The pictures below (Left to Right) show Franz Schweiger (left) from Vienna and Francesc Bellavista from Barcelona in Wilder Coe’s offices, Francis Hoogewerf from Luxembourg and Mark Saunders and me enjoying Italian Food!



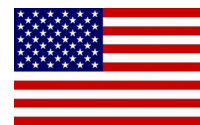
Postscript from Mark Saunders of Wilder Coe in London

We were delighted to host Bettina during her visit to London and we hope that she went away with a good impression of the United Kingdom and the way Integra firms in the UK can help the clients of members elsewhere. An important part of Integra is that the members get to know each other very well and in this way can advise their clients with confidence about the services that our member firms can offer around the world.

On behalf of all the members we invite all clients of Integra firms, if they are travelling near a member’s office, to make themselves known to the firm in question and visit them during their travels. We will all make you welcome and help in any way we can. Your local Integra member will be pleased to make the introduction and if you are visiting London I look forward to welcoming you!

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United States of America



US ENTITY SELECTION

Investors intending to expand their international business to the US are confronted with various entities from which to select. The choices are usually to conduct the business as a:

- (1) branch, which may or may not have a “permanent establishment” in the US;
- (2) corporation formed in a jurisdiction other than the US and taxed as a “foreign corporation” filing an 1120F²
- (3) corporation formed in the US;
- (4) general partnership electing to be classified as a corporation;³
- (5) limited partnership formed in a jurisdiction other than the US;
- (6) limited partnership formed in the US,
- (7) Limited Liability Company formed in a jurisdiction other than the US, if it is available;
- (8) Limited Liability Company formed in the US

There are other choices which are not addressed herein and all of these entities have different tax rates and attributes, even among various tax treaties.⁴

Many times the choice of the entity can be quickly decided by considering the “Branch Profits Tax” applicable to branch and partnership structures used by the non-US business.⁵ Besides exposing the non-US business entity to a difficult-to-derive tax⁶ many investors will not wish to lose their anonymity to US, individual US states, foreign, or any of the above, and other governmental authorities. In some instances, the foreign investor may have to file a tax return with US authorities.⁷

A foreign corporation that operates businesses in the US may be required to pay a branch-profits tax in addition to paying the US corporate income tax. The branch profits tax is a 30% tax on the entity’s US trade or business that are neither reinvested in a US trade or business by the close of the tax year, or disinvested in a later tax year. The amount which is subject to tax is referred to as the “*dividend-equivalent amount*.” The branch profit tax rules also apply

² This and other forms are on the Internal Revenue Service’ website at <http://www.irs.gov/pub/irs-pdf>.

³ Most of these entities can make a “check the box” election to be taxed as a partnership, if there is more than one owner, as a “disregarded entity,” if there is only one owner, or as a corporation, by filing Form 8832, Entity Classification Election. See page 6 of that form for how the US classifies foreign entities classified as corporation for federal tax purposes.

⁴ Treaty rates are ignored in this memorandum, although the 30% rate is certainly overridden by treaties.

⁵ 26 USC §884, Branch Profits Tax (a) IMPOSITION OF TAX. – In addition to the tax imposed by §882 (*inserted-- Tax on Income of Foreign Corporations Connected with US Business*) for the taxable year, there is hereby imposed on any foreign corporation a tax equal to 30% of the dividend equivalent amount for the taxable year.

⁶ 26 USC §884(b). This is referred to as the “*dividend equivalent amount*.” This is a hypothetical amount which the hypothetical entity could remit as a hypothetical dividend, interest or other disbursement hypothetically leaving US jurisdiction.

⁷ Examples may include, among others: Form 1040NR, US Nonresident Alien Income Tax Return; Form 1040C, US Departing Alien Income Tax Return; Form 1042, Annual Withholding Tax Return for US Source Income of Foreign Persons; Form 1042S, Foreign Person’s US Source Income Subject to Withholding; Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts; among others.

to branch-level interest tax ⁸and anti-tax-treaty shopping provisions⁹, each with its own peculiarities.

A foreign or US partnership directly owning US trade or business property or a foreign partnership that has foreign individuals as its partners would not provide anonymity, may or may not limit the foreign owner's personal liability and likely would not shield the property from US estate taxation. Similar to direct ownership by a foreign individual, from an income tax perspective, indirect ownership by a US or foreign partnership with foreign individual partners allows the profits generated from the US to be subject to only one level of US income tax. The branch profits tax is not imposed on the US or foreign partnership or on the foreign individuals that are its partners, *but* the branch tax would be imposed if a foreign corporation were to be a partner.¹⁰ Also subject to the tax is a foreign corporation that elects to be treated as a domestic corporation under §897(i).¹¹

A foreign corporation reports the branch profits tax on its U.S. federal income tax return, Form 1120-F, for the taxable year. The branch profits tax generally is due and payable in the same manner as a foreign corporation's regular U.S. federal corporate income tax liability. However, no estimated tax payments are due with respect to the branch profits tax.¹²

History

Until 1987, there was a difference in the tax burden on foreign corporations that operated through a branch in the US and foreign corps that chose to operate through a US subsidiary. The net income of the US branch was taxed at the usual corporate rates. But there were substantial different tax consequences to the foreign parent when it sought to repatriate the profits home to the non-US parent. Branch profits could be repatriated with no tax because no income was realized as a result of the repatriation, while dividends paid by a US subsidiary were subject to a withholding tax of 30%.

Dividend-Equivalent Amount

This amount is the entity's effectively connected earnings and profits for the taxable year reduced, or increased, by the net change in the branch's US net equity for the taxable year. There is a limit on the increase in the US net invested equity, in that the increase may not exceed the accumulated effectively connected "earnings and profits" as of the close of the preceding taxable year. Note that here the term "earnings and profits" does not have the same meaning as net income.

⁸ Branch Profits Tax also applies to certain interest paid by or allocated to the branch if there is excess interest paid by the branch to its foreign parent or lender. This is then subject to the applicable withholding tax as if the branch were a wholly owned US subsidiary. Interest actually paid by the branch may be less than the amount of interest allocated to the branch under applicable provisions of the Internal Revenue Code. For example, if a USA branch actually paid interest of \$5,000 but was able to deduct interest of \$6,000, the \$5,000 would be treated as US sourced interest with the usual tax consequences and then the extra \$1,000 would be subject to the 30% branch profits tax.

⁹ No foreign corporation can be exempt from the branch profits tax and subject to a lower treaty rate if it results because of an income tax treaty that is not with the qualified resident of the foreign country.

¹⁰ IRC §875; see Regs. §§1.884-0(a) and 1.884-1(f)(1); Rev. Rul. 85-60, 1985-1 C.B. 187; S. Rep. No. 313, 99th Cong., 2d Sess. 403 (1986).

¹¹ A foreign corporation that has an election under §897(i) continues to be treated as a foreign person for all U.S. tax purposes other than §897, 1445 and 6039C. See Rev. Proc. 89-31, 1989-1 C.B. 895.

¹² Regs. §1.884-1(a).



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TRUST TAXATION IN SPAIN

The Trust is not acknowledged in the Spanish Legal Compilation. Nor has Spain subscribed the Hague Convention of July 1st 1985, which pretends to eliminate or at least to simplify the problems derived from Trust unawareness in many Legal Compilations. Despite being a model of large international broadcasting - not only in English-speaking countries of Common Law but also in Civil Law territorial jurisdictions such as Mexico, Liechtenstein, Panama or others - the Spanish case laws and scientific doctrine is very poor.

This model only appears significantly in the Double Tax Treaty Protocol with the United States, which gives legal personality to the Trust.

In front of this situation, the tax consequences for using the Trust are very doubtful. The Spanish Tax Authorities have seldom declared anything about this issue and never in a clear way:

- For Transfer Tax purposes, the Spanish Tax Administration analyzes – in two cases - a Real Estate Trust created to manage timesharing. The question is if the change of a trustee or administrator through selling the shares is considered a transfer in Spain where the real estates were located. The Tax Administration does not talk about the trustee matters and it focuses on determining if effectively a share transmission is liable or exempted to the Transfer Tax.
- For the Inheritance and Gift Tax purposes, the Spanish Tax Administration has recently answered setting the Trust aside in order to assess the hereditary acquisition. According to this opinion, the beneficiaries resident in Spanish territory are not subject to Gift Tax as if they were to receive assets from the Trust but they are subject to Inheritance Tax taking into account the kinship with the real owner (settlor).

In our opinion, in Spain the Trust could have tax effects as long as there were any of the following circumstances:

- a. In the case of establishing an irrevocable inter vivos Trust and the beneficiary resides in Spain or the assets are within Spanish territory.
- b. In the case of establishing a mortis causa Trust, if the beneficiary resides in Spain or the assets are within Spanish territory.
- c. If the beneficiary resides in Spain and he is in possession of certain incomes deriving from the Trust.
- d. If the incomes came from a Spanish source and they were subject to Spanish taxes as if perceived by a non resident with no permanent establishment, taking into account the applicable DTT.

Concerning the Trust we find a large variety of different situations since not only each compilation responds to its own concept of the institution but to a great extent it is ruled by the settlor's free configuration of the Trust. For this reason, it will be necessary to analyze every single case in order to determine which would be the legal treatment to be applied even though the response will never be clear enough.



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COMPARISON OF IFRS AND PRC GAAP

The Ministry of Finance of the People's Republic of China (MOF) encourage international accounting harmonization and is working to achieve convergence of Chinese accounting practices with the requirements of International Financial Reporting Standards (IFRS).

On February 15, 2006, the MOF formally announced the issuance of the Accounting Standards for Business Enterprises (ASBE), which became mandatory for listed Chinese enterprises from January 1, 2007. Other non-listed Chinese enterprises are also advised to apply the new ASBE for financial reporting.

The application of the new standards will be expanded to all state-owned enterprises controlled by the Chinese central government starting in January 1, 2008, and phased in for all large sized companies starting 2009. The new Chinese Accounting Standards' scope includes all IFRS principles. However, there are a number of differences between ASBE and IFRS to reflect unique circumstances in China, largely reflecting unique circumstance, environment and local application. Then, the IFRS conversion and IFRS audit are common for those foreign investment enterprises in PRC China for group consolidation purpose or for ease of understanding for their foreign investors.

The ASBE cover almost all of the major topics found in the International Financial Reporting Standard learning, while with some significant exceptions, and have been applicable to all listed Chinese companies since the beginning of last year. Companies that are not listed are being advised to adopt the new measures, or at least prepare in some part to make their finances more consistent and transparent to international investors.

There are different challenges among the new measures substantially in line with IFRS over the last twelve months in PRC China. The Firms experienced with the transition to the new accounting standard may find it difficult to present an accurate report of the impact of the change, at least in the short run. This has the potential to provide misleading information to the users of financial statements. It is important for consistent market confidence that firms are able to communicate their true performance to shareholders. More consistent and regulated financial reporting could lead to higher volatility in results for firms, a situation which would need to be reported to any stakeholder in the firm.

The major differences of ASBE from IFRS are:

- Certain specific standards allow only a cost model to compute the value of tangible and intangible assets including land, building, equipment and goodwill under ASBE. The IFRS allows a revaluation model for market value.
- The corresponding Chinese standard for Related Party Disclosures of ASBE notes that "state-controlled entities are not regarded as related parties simply because they are state-controlled." The Related Parties Transactions are fully disclosed under IFRS.

- The corresponding Chinese standard for The Effects of Changes in Foreign Exchange Rates under ASBE states that the currency for financial reporting is restricted to RMB. The currency for financial reporting is open to any currency under IFRS.
- The land use right is recorded as intangible assets instead of an operating lease. The cost model is employed under ASBE.
- ASBE allows the equity method of accounting for Chinese jointly controlled entities.
- The ASBE prohibits reversing impairment losses but IFRS allows it under some circumstances, except goodwill impairment.
- When preparing a financial statement, ASBE restricts some aspects of the income statement that would be allowed under IFRS. Expenses are analysed in different ways depending on the particular aspects of the income statement under ASBE. They are analysed by function for income statement purposes.
- The presentation of cash flow statement must follow direct method under ABSE.
- The corresponding Chinese standard under ASBE is unlike IFRS. ASBE does not address the accounting requirements for defined Employee benefit plans.
- When accounting for government grants and disclosure of government assistance, only the presentation for gross grants related to assets is allowed in the balance sheet under ASBE.

In implementing such a standard in a very huge and broad country like China, and with so many different levels of enterprises and personnel, it is no wonder there will be lots of challenges to come across. It acknowledges that medium and small companies may find IFRS challenging, and believes that fair value could be an issue in China due to the lack of good data on some investments and the lack of trading in others.

Furthermore, the new Chinese Institute of Certified Public Accountants (CICPA) Code of Ethics that was issued for public comment in September 2008 is expected to be approved by the MOF. The new code will drive the CICPA code in line with the International Federation of Accountants (IFAC) Code of Ethics.



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USSR to GAAP to IFRS

If someone told me six years ago that I would be working as a CPA for a public accounting firm in the USA, I would have laughed. Six yeas ago I was a sophomore at the Belarus State Economic University studying management and organization of trade. I did not speak English, had no idea what CPAs' were and what an individual tax return was. Now I prepare income tax returns, work on business valuations and financial statement audits at Gold Gocial Gerstein, LLC a CPA firm 4,550 miles away from Minsk, Belarus.

The journey to where I am now was a challenging and exciting process. I had to start everything from scratch and make a transformation from citizen of a Soviet State to an individual in the American culture and business environment.

I arrived at JFK airport in the New York City with a backpack and \$600, which is the equivalent to 3 months salary that my mother saved for a “rainy day”. The “Big Apple” swallowed me in an instant. I have never travelled before. I also barely spoke English. I knew no one, had no relatives or friends, and had no place to go. However, I had a plan and was determined that no matter what, I would survive and succeed. I knew that I had no option to fail because my family counted on me. I understood that every step that I was going to take was solely my responsibility.

I experienced every difficulty of immigrant life like sleeping at the bus terminal, working long hours and hard jobs for the minimum wage. But these hardships made me stronger. I enjoyed studying and always wanted to continue my education. During the first two years of immigration I learned English and applied to college. I was admitted! What a great feeling. I was happy for the first time since I left Belarus. The language barrier was still a problem for me and I struggled to adapt to a new scholastic environment, learn new economic concepts and accounting terms. I also had to work 40 to 45 hours a week to support myself, pay for the schools and help my family overseas.

After the first year in college it was clear to me that public accounting was what I wanted as a career. I understood that this field provided a diversified and challenging work environment where you must stay updated with the latest industry trends and regulations. Passing the CPA exam was the most challenging and the most demanding test of my abilities. I had to give up most of the exciting things in my new home that one can do to study, study and study. It took me nine months to complete and pass all the parts. I’m very proud to be part of this profession and have a CPA designation now.

The difference in business environments between the USA and Belarus was the most striking and difficult to adapt to during my professional development. I guess it comes with a cultural shock. Even though I studied economics and concepts of open market capitalism in Minsk, the diversity and wide range of opportunities kept me intoxicated for a while. I was born in the USSR and grew up in Belarus. People there usually do not move often. They work and live in the area where they were born. They also rarely switch their profession. Is the reason hiding in a political regime that dominates the country or simply the lack of opportunities for the population? I do not know. What I know is that in six years I moved 7 times to 5 different cities, studied in 2 colleges and worked 7 different jobs. At first I found it hard to grasp the idea that it is possible to have no restraints, to do what I like to do and to live where I want. Sometimes I ask myself what my life would be like if I never immigrated to the USA. The answer never comes to me easy. Maybe I would become a business owner, maybe work for a government or not work at all due to tough current economic situation around the world. However I’m certain that I would not experience and learn as much as I did in this short six years in the USA.

I would encourage everyone to seek opportunities wherever they exist and not to be afraid of change. I think it is especially true now in the age of informational technologies. The geographical borders still exist but they are getting thinner. The accounting profession definitely provides one with the possibilities for adventures at home or thousand of miles away. “If you can dream it, you can do it” - Walt Disney.



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INVESTING IN 2009 - ONE SIZE DOESN'T FIT ALL

The world-wide economic crisis has not been so deep since the Great Depression of the 1930's.

Economic Outlook

Consumer demand is likely to remain depressed as unemployment continues to rise. Employment trends lag economic cycles; even as the economy begins to recover, unemployment continues to rise. This puts pressure on the consumer discretionary sector. Add to the unemployment/underemployment situation a dearth of credit and the automobile industry becomes an investment pariah. For the same reasons, home-builders in selected countries are similarly unattractive for other than a short term, limited bounce. But stock markets usually rise before economies recover.

How should your clients protect and maybe even grow their investments? The keys are Return and Diversification.

Often the best investment for a client is the client's own business, if it continues to have good potential growth and profitability. For example, clients could use excess personal savings to pay down their business debt instead of investing in publicly traded stocks and bonds. Instead of subjecting excess personal savings to the vagaries of the bond and stock markets, have your clients invest where they can control what happens to their savings. Also a good business provides greater returns than the stock markets generally. Or if banks are reluctant to loan money to the business, arrange for a client loan or a combination client and bank loan.

The second best investment for the excess savings of a client is in a related business. For example, if your client rents a warehouse that is used in the business, now is a perfect time to buy a warehouse with personal funds, and move. Warehouses can be bought for less than replacement cost because of the worldwide economic crisis. Then your client becomes a real estate owner and investor and is in two businesses: 1) the operating business and 2) the real estate business. The client achieves two disparate results: Diversification of wealth and continued control over investments.

What if your client is in a profession and has no "business" investment opportunity? That client is a good candidate for investment guidance from you or from some qualified investment professional. The client can still buy a building for investment but then the client would have to find a tenant, unless it is already tenanted. In that event, your client needs to manage the building and be sure that the tenant is a good tenant. Not an easy job!

So what is left in which your client may invest? Securities!

While world financial markets are still in disarray, investment opportunities may be edging out the pitfalls. In the current severe global recession, vast amounts of investable funds have

been sidelined. Example: According to the Investment Company Institute, some \$4 trillion dollars have been parked in money market funds and comparable low risk vehicles.

The timing of those funds coming back into the investment marketplace hinges on the success in governments and central banks in resolving the credit crisis – and in many countries, the mortgage/surfeit of existing homes problems. Until then, the prospects for inflation appear subdued.

So what types of securities should clients consider?

Fixed Income

One of the immediate investment vehicles of choice then is the depressed corporate bond sector. Quality should be the watchword. And investors would be wise to seek relatively short maturities (less than five years) to guard against price erosion should inflation resurface sooner than expected.

Equity

Given the timing uncertainties in resolving the crises, greater risk control can be achieved through a focus on larger, well-capitalized companies. At the moment, there are opportunities in three areas:

Energy, though subject to short term political pressures, evinces a compelling long term demand-supply equation. Energy prices are currently depressed; they may even trend a bit lower in the immediate future. But based on the finite nature of supply and the secular growth in demand, the prospects for higher energy prices within a few years are all but assured. The beneficiaries range from the huge international integrated oil companies to drillers and service companies.

Technology is another sector with a favorable intermediate to long-term outlook. Again, as a highly cyclical sector, heavily dependent upon global economic conditions, pricing is currently weak – and may not yet have reached the inflection point. But as one of the drivers of modern economies, technology will be a winner.

Health care is secular growth industry that stands to excel both short and longer term. Bio-tech, especially, but pharmaceuticals and medical devices will continue to feature in the forefront of the global demand for improved quality of life. The aging population of the developed world and the technological strides being made further underscore the demand side of the equation.



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TRANSFER PRICING - NEW LEGISLATION IN GREECE

General

Pursuant to recently released legislation in Greece, rules are being introduced in intercompany transactions, so called “Transfer pricing”.

Announced rules are based on the OECD guidelines for Transfer Pricing and “Arm’s Length Principle” for the commercial transactions between associated enterprises; which according to Article 9 of the OECD Model, are:

- a. an enterprise of a contracting state participating directly or indirectly in management, control or the capital of an enterprise of the contracting state or
- b. the same person participates directly or indirectly in the management, control or capital of an enterprise of a contracting state and an enterprise of the other contracting state.

RULES REGARDING INTERCOMPANY TRANSACTIONS IN GREECE

I. Ministry of Development – Market Control Authorities

Related Legislation: Law 3728/2008 & Ministerial Decision (Protocol Number A2 - 8092/31.12.2008)

According to Article 26 (L. 3278/2008), all types of companies operating in Greece (Greek S.A. entities, Limited Liability Companies, personal companies “OE” & “EE” and branches of foreign companies or any other permanent establishments in Greece) are obliged to apply the same or similar terms for their intercompany transactions, with the terms applied between independent companies. Such rules must be in accordance with the OECD’s “arm’s length” principles. Intercompany transactions are the transactions between affiliated companies as these are defined under article 42e of the Greek Corporate Law (L. 2190/1920): direct or indirect control of the majority in capital participation / votes or management.

DOCUMENTATION FILES

For compliance controlling of the above rules, the companies have to substantiate and document their intercompany transactions with the preparation of a transfer pricing study including the following files:

- Regarding “group companies” which have a Greek parent company, the “Basic file” should be prepared, which contains:
 - (a) Group information:
 - Organization chart to include all the associated companies, branches, etc
 - Description of the business and business strategy
 - Group invoicing policy (invoice flow, agreements, transactions volume)
 - Ownership description on royalties and “know how” rights with in the group
 - List with any “Transfer Pricing Agreements” that the group entities may have received approval from foreign tax authorities
 - (b) Company information
 - Analysis of the transactions with the affiliated entities (charges description, invoice flow, amounts)
 - Comparative analysis
 - Description and documentation of the Transfer Pricing method followed, as these are provided by OECD guidelines
- Regarding the Greek subsidiaries of a foreign group, the “Greek documentation file” should be in place, which contains the same details as above.

The “Basic” and the “Greek documentation” files must be sent to the relevant authorities within 30 days from the day the authorities make such a request.

Files must be updated with any changes to the company or the group.

ALL THE DOCUMENTATION FILES ARE IN GREEK

Except the above files, companies must submit a list of their intercompany transactions every year within four months and fifteen days following the end of the fiscal year. This list contains per business item and signed agreement, the number and the value of these transactions, per intra-group entity. The list is submitted to the relevant office of the commerce control authority of the Ministry of Development.

TRANSFER PRICING METHODS

According to the Ministerial decision published, the transfer pricing methods that are recognized as applicable are the following:

- Comparable Uncontrolled Price method (CUP)
- Resale Price Method (RPM)
- Cost Plus Method (C+)

Other “non traditional” methods, such as “Transactional Net Margin Method (TNMM)”, and the “Transactional Profit Split Method (TPSM)” may also be used, but only in cases the above three traditional methods cannot be implemented.

TRANSFER PRICING WIDE RANGE

Released directives provide guidelines not only on the transfer price methods and files, but also they use internal and external comparative information, the control of comparability of used information, the source of information from databases and the determination of prices of intercompany transactions from a selection of acceptable prices.

In reference to the group of acceptable prices, it is clarified that in the cases where from the application of the followed method of transfer pricing and the use of the comparative elements, an assortment of prices or profit results; what is rejected is the lowest 25% of prices and the highest 25% of prices, with the use of quadrants.

In this case, that is to say, becomes determination of quadrants of the total prices or profit of sample that was used, as follows:

Q1 = first quadrant = 250

Q2 = median = 500

Q3 = third quadrant = 750

Therefore, what is considered compatible with the “arm’s length” principle is any price between the first and the third quadrant, with the condition that this choice is justified sufficiently.

EXCEPTIONS

1. Companies which have an annual turnover of up to 1.000.000 € (If the company exceeds 1.000.000 € for two (2) consecutive years then the third year is no longer exempted)
2. Contracts or transactions between associated companies with a total value of less than 200.000 € annually
3. When transactions are made concerning shares or partnership units
4. Transactions related to real estate property
5. Companies under L. 89/1967 and L. 3427/2005 (article 27), so called “Law 89” offices

SANCTIONS, PENALTIES FOR NON-COMPLIANCE

In case the companies do not comply with the above obligations there are fines as follows:

- 10% of the value of the transactions, for failure of the company to submit the transactions list, or failure to submit it on time
- Penalties, according to the Market Regulation Code, are applied when the “arm’s length” principle is not followed, i.e. penalty of 5.000,00€ and criminal sanctions
- All the non-compliant companies have to be notified about the above administrative decisions for sanctions within thirty (30) days
- The company can make an appeal against the above decisions of the authorities within five (5) days of the above notification of sanctions
- The Minister of Development has to accept or reject the appeal within ten (10) days
- In the case of rejection of the appeal, the company can make an appeal against the above decision to the competent Administrative Court within sixty (60) days
- The last appeal is legally acceptable when the company has paid 20% of the relevant penalty

In case there is breach of obligations (paragraph 1, article 26, L. 3728/2008), after examination of the “documentation file” and “transaction statement”, the competent commerce authorities promptly inform the relevant Tax Authorities to apply the provisions of the tax legislation and impose the anticipated tax sanctions.

II. Ministry of Finance – Corporate Taxation

Related Legislation: Article 39 of Income Tax Law 2238/1994 & Article 42e of Corporate Law 2190/1920

According to the current Income Tax Law (L. 2238/94 article 39):

“When contracts for selling goods or rendering services are signed between local entities or a foreign and a local entity and in these contracts the price is set at an unjustifiably higher or lower rate, per case, then the one that is actually realized if the contract was signed with a different party in accordance with the prevailing market conditions at the time of the drafting of the contract, the resulting difference is considered a profit of the entity, who received less or paid more, in terms of price or remuneration, per case. This difference increases the net profits of the entity that appear in its books, without affecting the books and records’ validity.”

Therefore, the difference will be subject to Corporate Income Tax (current rate is 25%).

“The difference resulting from the provisions of this article increases the gross revenue resulting from the books of the entity, in order for this revenue to be taken into consideration for calculating taxes, duties and contributions to other taxations.”

As a result there will be additional taxation in further tax assessments (VAT, WHT, etc).

“A one-off penalty is levied upon the entity, subject to the provisions of this article, set at 10% of the amount of the difference resulting from the provisions of this article. This penalty is levied regardless of the imposition of additional taxes, surcharges and miscellaneous penalties as they are described by the effective rulings. The percentage of the imposed penalty cannot be the subject of an administrative settlement of the difference”.

What results is a 10% independent penalty over the Transfer Pricing difference.

Should any further information or clarification is required, please contact our firm Prooptiki Ltd.

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