

# MAZARS U.S. TAX DESK NEWSLETTER

**March 2020**



## **IN THIS ISSUE!**

Welcome to the first edition of the Mazars U.S. Tax Desk Newsletter for 2020!

In this issue, we explore and share our perspectives on:

- UK Budget 2020
- Changes to the Transfer Pricing regime in Ireland;
- Germany's CFC taxation;
- Changes to withholding tax in Poland; and
- China's new foreign investment law.

The above is only a selection of the wide array of contributions in this issue. Please see overleaf for a full listing.

We are delighted that our publication is continuing to grow in content and circulation numbers. If you would like to share your country insights, please feel free to contact us.

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 **EUROPE**

 MAZARS



## CFC – THE IMPACT OF THE ANTI-TAX AVOIDANCE DIRECTIVE

The German Controlled Foreign Company (in the following “CFC”) rules were originally intended as provisions against abusive structures which aim at tax base erosion and profit shifting. However, due to the extensive wording of the German CFC rules, they apply to non-abusive cross-border investments as well.

Due to changes to tax legislation in the US, the importance has increased for clients with companies in the USA. The already strict rules are now being tightened further by a European Union directive, the Anti-Tax Avoidance Directive (in the following “ATAD”), and the German implementation law. The German Federal Ministry of Finance has therefore submitted a draft amendment to the CFC rules which has not yet been adopted by the legislator. However, it can be assumed that the amendments will be adopted in principle. In particular, the previous domestic control is to be replaced by a shareholder-related approach taking into account related parties. The low tax threshold and the list of passive income will remain almost unchanged.

### TAX CONSEQUENCES

Under the German CFC rules, income generated by a CFC (e.g. US LLC) could be subject to German corporate income and trade tax (combined approx. 30%) or individual income tax (progressive maximum rate 45%). Foreign taxes on the CFC income would be considered for the determination of the CFC income.

If the German CFC rules generally apply, the German taxpayer is obligated to file a CFC tax return. Where the German taxpayer violates this obligation, penalties, or even criminal charges could apply to the German investor.

### REQUIREMENTS

The German CFC rules apply when the following requirements are met:

- A. Foreign corporation controlled by German taxpayer,
- B. Passive income,
- C. Low tax rate.

#### A. Foreign company controlled by tax residents in Germany

The requirement of the foreign company remains unchanged. An entity qualifies as foreign company if it is a corporation within the meaning of German Corporation Income Tax Act with a registered office outside Germany. To qualify as a corporation, it is crucial that the articles of association of the foreign entity resemble those of a German corporation (e.g. GmbH) or a German partnership (e.g. KG). The qualification under non-German law is irrelevant. Thus, the US “check-the-box”

system remains disregarded.

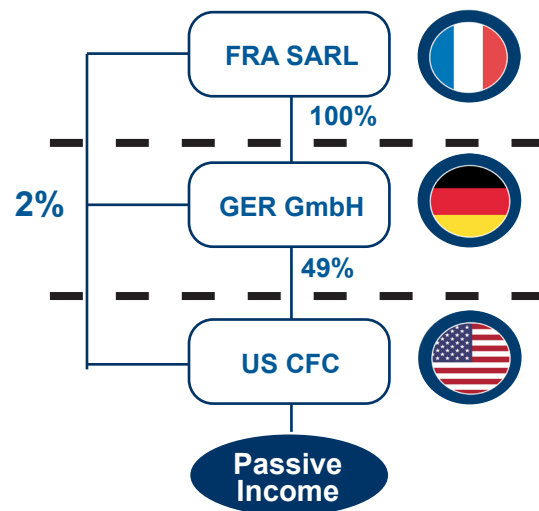
Under current law, unlimited taxpayers must hold a direct or indirect interest of more than 50% in the foreign company.

The draft provides for a purely shareholder-related approach, taking into account related parties. The decisive factor is therefore whether the entity that is tax resident in Germany (if applicable together with the related party) controls the CFC.

Control is deemed to exist if, at the end of the CFC’s financial year, more than half of the nominal capital or the voting rights in the CFC are attributable to the entity that is tax resident in Germany or if it is entitled to more than half of the profit or the liquidation proceeds.

A person is considered to be related to the taxpayer if, for example, the person holds at least one quarter of the nominal capital directly or indirectly or is entitled to one quarter of the profits or voting rights.

This means that the control by a German taxpayer can already exist if the taxpayer itself holds less than 50% of the shares or votes in US CFC.



Please note that the taxation should only take place in the amount of the participation in the capital or the voting rights, in this example 49%.

#### B. Passive income

The catalogue of passive income remains largely unchanged. However, interest will always be classified as passive income. It is therefore no longer relevant whether the taxpayer proves that he took out the loans on foreign capital markets and not with a person related to him.

Probably the most important change is regarding the taxation of dividends. These were previously active income and were therefore not subject to additional taxation. The change in the law now stipulates that dividends are no longer active if, among other things, they are deductible by the dividend-paying company or if they are dividends from an investment that amounts to less than 10% of the shares (“free float”).

### C. Low tax rate

According to the German CFC rules, a low tax rate requires that the passive income is subject to an effective corporate income taxation of 25% or less. The effective tax rate for companies in the USA would have to be determined under consideration of the Federal corporate income tax (21%) and the respective State tax.

### CONCLUSION

The reduction of the Federal corporate income tax rate from 35% to 21% has made German CFC rules relevant for German cross border investments in the US (corporations, permanent establishments, or partnerships).

Due to the harsh penalties and potential tax fraud charges in case of the violation of the CFC tax

declaration obligations, each investment into the US should be subject to CFC analysis to take necessary actions and avoid adverse consequences for the German taxpayer.

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**IRELAND**

## DIVIDEND WITHHOLDING TAX (DWT) - REAL -TIME REPORTING

A significant reform of the Irish Dividend Withholding Tax (DWT) regime came into effect on 1 January 2020. Further changes effective from 1 January 2021 have also been announced. These changes represent significant reform of the DWT regime and will impact on those paying and receiving dividends from Irish companies.

### CURRENT REGIME

Budget 2020 announced changes to the DWT regime. With effect from 1 January 2020, Irish resident companies must withhold DWT at the rate of 25% (20% pre 1 January 2020) on dividend payments and other distributions,

Given the number of exemptions available, DWT typically only tends to apply to distributions made to Irish tax resident individuals and residents in countries which do not have a double taxation treaty ("DTA") with Ireland, or are not in the European Union.

All DWT deducted by companies must be paid to Revenue via Revenue's Online Service (ROS) by the 14th of the month following that in which the distribution is made together with the DWT return. Where the withholding tax is not paid on a timely basis, interest will apply at 0.0274% a day for each day or part of a day from the date the DWT becomes payable.

The DWT return must be filed even if there was no DWT deduction from the distribution.

### PROPOSED REAL-TIME REPORTING

The second prong to DWT reform announced in Budget 2020, is a real-time reporting regime. With effect from 1 January 2021, real-time DWT reporting is being introduced in respect of distributions to be made by Irish resident companies, including Authorised Withholding Agents (AWAs), to individuals.

The DWT modernisation which Revenue proposes to implement will address the perceived "tax gap" which currently exists between the amount of DWT remitted by companies and the amount of tax ultimately payable on this income by investors. The new regime will ensure that individual investors in receipt of dividends are paying the right tax at the right time. The effect of the modernization programme will be to accelerate the payment of tax.

### WHAT DOES THIS MEAN FOR COMPANIES AND AWA?

Under the new proposed system, Revenue will use real-time data collected under the Pay As You Earn (PAYE) system to administer the DWT regime. A "personal withholding rate" (based on an individual taxpayer's marginal rate of tax, including USC and PRSI where applicable) will be provided to allow companies who pay dividends directly to individuals to calculate the DWT to be deducted from each individual.

The company or AWA that pays the relevant distribution must keep a record of the tax reference number or Personal Public Service Number (PPSN) of the person(s) beneficially entitled to the relevant distribution.

There is no current proposal to change the return dates or due dates for companies to pay over the DWT deducted.

## WHAT DOES THIS MEAN FOR QUALIFYING INTERMEDIARIES (QI) AND NON-QI'S?

A QI is a person who can receive distributions on behalf of other persons, for example, a nominee or custodian. QIs under the new process will continue to notify the paying company in writing whether the distribution is for the benefit of non-liable or liable persons.

## WHAT DOES THIS MEAN FOR INDIVIDUALS?

This new process will ensure that individuals pay the correct amount of income tax, Universal Service Charge (USC) and PRSI on dividend payments at the right time.

The dividend amount, as well as credit for the DWT paid, will be pre-populated onto the individual's income tax return or End of Year Statement (for individuals taxed under the PAYE system).

## CONSULTATION PROCESS

Revenue are currently reviewing submissions as part of the public consultation process which closed on 12 December 2019. More details on the mechanics of the proposed new DWT regime is required, particularly around taxpayer confidentiality/GDPR and operational issues for companies ensuring IT systems can adapt to the new regime.



## CHANGES TO THE TRANSFER PRICING REGIME

The Irish Finance Act 2019 ('the Finance Act 2019') was signed on 22 December 2019 and has introduced new laws that will reshape Ireland's Transfer Pricing Regime. The Finance Act has embraced the latest international tax standards which has resulted in a dramatic change in Irish tax law from 1 January 2020.

Finance Act 2019 is the conclusion to consultations and legislative considerations by the Department of Finance. Most of the legislation takes effect from 1 January 2020, although the expansion of scope to include small and medium-sized enterprises ('SMEs') has been deferred to a later date. Ireland's Revenue Commissioners ('Revenue') has, since 2015, conducted audits to enforce transfer pricing legislation, which has been in force since 2011. The breadth of tax law updates introduced by Finance Act 2019 will influence how Revenue seeks to enforce transfer pricing legislation going forward and what documented evidence Irish business is meant to have ready on demand for Revenue inspections.

The new transfer pricing changes can be divided into 8 distinct areas;

1. Proposal to remove the exemption from medium-sized companies
2. Removal of the grandfathering exemption
3. Re-characterising arrangements lacking substance
4. Excessive payments deemed a distribution;
5. 2017 OECD Transfer Pricing
- 3.

6. Documentation using Master and Local Files
7. Apply transfer pricing to specified non-trading transactions
8. Extend rules to capital transactions Ireland's transfer pricing regime will reflect the 2017

## SMALL AND MEDIUM ENTERPRISES

An SME employs fewer than 250 people and have either: (i) turnover not exceeding €50 million, or (ii) balance sheet values of less than €43 million. The legislation proposes to remove the current exemption for these businesses. Medium companies need only apply transfer pricing rules for cross-border arrangements above €1 million. Documentation obligations are also substantially reduced relative to the Master and Local File framework mentioned earlier.

While it was proposed the transfer pricing rules will be extended to SMEs, the date of implementation is subject to Ministerial Order and will not apply from 1 January 2020.

## PRE-JULY 2010 ARRANGEMENTS ("GRANDFATHERED" ARRANGEMENTS)

Grandfathered arrangements agreed prior to 1 July 2010 are no longer exempt from transfer pricing rules in Ireland. The original purpose of the exemption was to ease the transition burden of transfer pricing compliance. It is not expected that many ongoing transactions in Ireland continue to claim this exemption, and hence few businesses, if any, will be affected by this change.

## RE-CHARACTERISATION OF AN ARRANGEMENT

Finance Act 2019 contains additional provisions aimed at curtailing tax benefits of artificial arrangements. A provision allows Revenue to re-characterise an intragroup arrangement if it is demonstrated that the arrangement: (i) lacks the required substance (e.g. relevant people functions), and (ii) conflicts with commercial arrangements of independent parties.

## EXCESSIVE PAYMENT AND DEEMED DISTRIBUTIONS

Where an Irish business pays an amount in excess of the arm's length amount in connection with an intragroup transaction, then legislation will deem the excess payment to be a distribution subject to a potential withholding tax unless an exemption is available.

## 2017 OECD GUIDELINES

Ireland's transfer pricing regime will reflect the 2017 OECD Guidelines as basis for determining the arm's length price for intra-group transactions. Finance Act 2019 adopts the accepted practice into Irish domestic tax law, which previously referenced a 2010 version of the OECD Guidelines.

## NEW DOCUMENTATION OBLIGATIONS

Larger businesses operating in Ireland must prepare an OECD standard Master and Local Files to evidence their compliance with transfer pricing rules.

An Irish business of any size will have an annual obligation to prepare a Local File if it is a member of a global group that has turnover greater than €50 million. An Irish business will have a further Master File obligation if it is a member of a global group that has turnover greater than €250 million. The Master File is group-wide document that introduces a tax authority to the business, its transfer pricing policies and capital structure.

The Local File is a detailed document seeking to prove that all material intra-group transactions were executed using the arm's lengths pricing. Businesses have 30 days to submit documentation to Revenue upon request, whereas 3 months was afforded previously. Failure to prepare and submit the required documentation will attract penalties of €25,000 or greater for larger businesses; or €4,000 for those companies under the €50 million threshold.

Businesses in scope for documentation requirements

should bridge gaps with existing documentation to align with latest OECD standards. A critical new item in the Local File is to reconcile transfer pricing policies to statutory accounts of the Irish entity.

## EXTENSION TO CAPITAL TRANSACTIONS

Intra-group sales and purchases of assets will be subject to Ireland's transfer pricing rules if the market value of the assets is greater than €25 million. If valuations of those assets do not satisfy the OECD arm's length standards, then Irish businesses can be exposed to further capital gains tax on sales or reduced capital allowance relief (i.e., tax depreciation) on acquisitions.

While Ireland's tax regime contains pre-existing provisions with regard to capital transactions, the extension of transfer pricing rules adds prescribed documentation obligations and compliance requirements for asset transfer transactions. In certain conditions, other provisions in tax legislation supersedes transfer pricing rules, thereby, removing the arm's length value requirement for pricing the relevant assets.

## EXTENSION OF THE NEW RULES TO INCLUDE NON-TRADING TRANSACTIONS

Transfer pricing rules in Ireland only apply to income earned or expenses incurred related to a trade, i.e. in general terms, profits subject to the 12.5% tax rate. Transfer pricing rules will apply to Irish entities that are subject to tax, with a few exemptions. There has been pressure to discourage a form of nontrading transaction, referred to as Interest-Free Loans, granted by Irish companies to non-Irish affiliates. These arrangements can yield tax savings outside Ireland. Certain businesses now have until 31 December 2019 to identify and to execute their preferred alternative arrangement to the interest-free, intra-group lending that was the target of this legislation. Finance Act 2019 exempts non-trading transactions involving two parties both subject to Irish taxation, i.e. wholly domestic transactions, provided the arrangement has no tax avoidance motive or benefit.

## THE NEXT STEPS?

Serious consideration needs to be afforded to the new legislative changes introduced in the Finance Act 2019 in respect of Transfer Pricing. The new rules are likely to impact all areas of Irish businesses in some manner and will undoubtedly need to be considered when implementing any new structures, inter-group transactions or cross bordered arrangements.

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## MINI TAX REFORM

As a part of continuous efforts to reduce and simplify Croatian tax burden, the Croatian tax authorities have introduced a set of tax changes effective as of 2020. Below is an overview of the main changes.

### CORPORATE INCOME TAX

Annual revenue threshold for determining CIT tax rate at 12% has been increased from HRK 3 million to HRK 7.5 million (approx. EUR 1 million). If the annual revenue is above HRK 7.5 million, the applicable CIT rate is the standard rate of 18%.

The same annual revenue threshold of HRK 7.5 million (approx. EUR 1 million) may be applied by companies to determine their CIT liability on cash basis instead of accrual basis.

Croatia further introduced exit taxation and hybrid mismatch rules for prevention of profit shifting, in accordance with Council Directive (EU) 2016/1164 dated 12 July 2016 on establishing rules against practices of tax avoidance („Anti-Tax Avoidance” Directive – ATAD I) and Second Directive Council Directive (EU) 2017/952 (ATAD II).

### VALUE ADDED TAX (VAT)

The Croatian Government decided not to reduce the standard VAT rate to 24% as initially announced, so it remains at 25%.

Application of reduced VAT rate (13%) has been extended to preparation and serving of meals at restaurants and catering services.

VAT exemption for certain activities of public interest are now applicable even if performed by taxpayers (medical care services and other services in a public interest provided by corporations).

Implementation of Council Directive (EU) 2018/1910 (so called “quick fixes”) consisting of: a) simplification of rules for movement of own goods, b) chain transaction rules, c) customer’s valid VAT ID number as substantive condition for application of VAT exemption for intra community supply.

Transport documentation necessary to prove intracommunity supply is now defined with EU Implementing Regulations 2018/1912.

### PERSONAL INCOME TAX

PIT liability will be decreased by 100% for resident taxpayers up to the age of 25, and by 50% for all resident taxpayers between 26 and 30 years of age. Such tax relief will be allowed ex officio via annual tax calculations

Basic personal allowance is increased from HRK 3.800 to HRK 4.000 (approx. EUR 530) per month.

Employers can pay tax free additional and supplementary health insurance to their employees up to HRK 2.500 (approx. EUR 330) annually.

Detailed criteria for determining characteristics of hidden employment have been introduced. Based on this, any form of contractual relationship may be challenged by the Tax Authorities as hidden employment if there are sufficient elements to argue that a particular job has the main characteristics of an employment.

### ADMINISTRATIVE COOPERATION IN THE AREA OF TAXES

Croatia implemented Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16 / EU regarding the mandatory automatic exchange of information in the field of taxation with regard to cross-border reporting arrangements.



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## BUDGET 2020

On 11 March, Chancellor Sunak announced the 2020 budget in the House of Commons. This the recently elected Conservative government's tax and spending plans for 2020.

### GENERAL TAX CHANGES

- The rate of corporation tax will remain at its current rate of 19%.
- The Structures and Buildings Allowance ('SBA') has increased from 2% to 3% a year for new non-residential structures and buildings. Qualifying buildings include offices, retail space and other business premises and could be an attractive incentive in making investment decisions.
- To incentivise UK innovation, the Chancellor has raised the rate of the tax credit available in respect of R&D expenditure – RDEC increases from 12% to 13%.

### FINANCIAL SERVICES

There were a number of measures announced in the Budget that relate specifically to financial services businesses.

- A consultation will commence on asset holding vehicles, commonly held through partnership structures and with elements of offshore ownership. This will look at alternative fund structures for both direct and indirect taxes. These arrangements are common for pension platforms, with assets held across the infrastructure and real estate sectors through such structures. A key objective is to look at how the UK regime can be made more attractive for these types of vehicles and also to address the risks of VAT recovery within these structures, associated with management fees arrangements.
- Life insurers writing BLAGAB (Basic Life Assurance and General Annuity Business) will not be subject to the capital loss restrictions that will be applied to companies in general from April 2020. The government has included a carve-out within the provisions for ring-fenced BLAGAB losses to be used against future BLAGAB profits.
- Economic Crime Plan 2019 – 2022 - The government intends to introduce a levy on firms that are subject to Money Laundering Regulations, to help fund the government's plans to tackle economic crime.
- Banks with annual taxable profits above £25m pay an 8% bank profit surcharge on top of the 19% corporation tax they pay.
- The Government has announced a consultation to review the corporation tax rules relating to the anti-avoidance rules relating to Anti Hybrids which were effective from 2017. The content and scope of the consultation remain to be detailed, but further

consultation on these complex measures should be cautiously welcomed.

### DIGITAL SERVICE TAX

The Chancellor confirmed that the UK will enact the Digital Services Tax ("DST") legislation with effect from 1 April 2020. It was thought that this measure may be delayed or withdrawn in the light of ongoing Brexit negotiations.

- The DST will apply to large-multinational technology companies with global revenues exceeding £500 million, of which, more than £25 million is derived from UK users from in-scope activities. Notably, it will apply whether a group has a UK taxable presence or not.
- In-scope activities include:
  - The provision of social media platforms. This includes blogging sites, online dating sites and video/ image sharing platforms;
  - The provision of a search engine; and
  - The provision of an online market place.
- Financial and payment service providers could be exempted from being considered an online marketplace for DST purposes should they meet certain criteria.
- A group's first £25 million of taxable revenues derived from UK users will not be subject to the 2% Digital Services Tax. Taxable revenues include any revenue earned by the group (derived from UK users) which is connected to the social media service, search engine or online marketplace. This is irrespective of how the business monetises the service.
- Companies which exceed the thresholds must notify HMRC that they are within the scope of DST. The notification needs to be made within 90 days of the end of the relevant accounting period. The DST is payable 9 months after the end of the relevant accounting period. The tax is deductible against any charge to corporation tax, but not creditable against other UK taxes.
- A DST return must be filed within 12 months of the end of the accounting period. A group can nominate a company to file a return (otherwise the burden will fall on the parent of the group) and pay the tax, although each company that was a member of the group is liable for this tax.

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## CHANGING ROMANIAN TAX LANDSCAPE

The last part of FY 2019 and first part of FY 2020 were marked by a series of amendments to the Romanian tax landscape.

To the largest extent, the amendments consisted of the anticipated transposition of EU directives, namely the disclosure requirements under DAC6, adoption of hybrid mismatches and the introduction of harmonisation and simplification of certain rules in the Value Added Tax (VAT) system.

### REPORTING OF CROSS-BORDER ARRANGEMENTS (“DAC6”)

Romania transposed into its domestic legislation the provisions of Directive (EU) 2018/822 regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (“DAC6”).

As a result, mandatory disclosure requirements are introduced in the context of enhancing tax transparency at the EU level by means of identifying potentially aggressive cross-border tax arrangements.

The disclosure requirements set out by DAC6 are mainly applicable to intermediaries (i.e. inter alia tax consultants, lawyers, accounting practices) with regards to EU cross-border arrangements which fall under the scope of so called “hallmarks” where a tax advantage was pursued. Nevertheless, there are specific scenarios under which the taxpayer is subject to such obligation.

In case the intermediary is subject to a legal professional privilege, it can report the respective cross-border arrangements only with the written consent of the relevant taxpayer. Otherwise, the intermediary has the obligation to notify either another intermediary (if it exists) or the relevant taxpayer, with any of the latter mentioned having the obligation to report to the Romanian Tax Authorities.

### Applicable penalties

Failure to comply translates to the following penalties:

- A fine ranging between RON 20,000 (EUR 4,160) and RON 100,000 (EUR 20,800) for non-reporting or late reporting by the intermediary or by the relevant taxpayer;
- A fine ranging between RON 5,000 (EUR 1,040) and RON 30,000 (EUR 6,250) for the failure to notify another intermediary or the relevant taxpayer, in case the first intermediary is subject to legal professional privilege.

**The first reporting deadline is 31st of August 2020 and it will include all the reportable cross-border arrangements carried out between 25th of June 2018 and 1st of July 2020.**

Further to this initial deadline, a timeframe of 30 days will be applicable for reporting eligible cross-border arrangements after 1st of July 2020.

### SIMPLIFICATION OF VAT RULES

The Romanian domestic law transposed the provisions set out by Directive (EU) 2018/1910 which aims to establish a level playing field at the EU level in terms of the following VAT operations:

#### A. Call-off stock arrangements

Unitary conditions are established at the level of the EU for the application of the call-off stock simplification measure, as follows:

- The reciprocity rule is no longer a condition for applying the call-off stock simplification, as all Member States will apply the regime under the same conditions;
- Company shipping the goods is not established and does not have a VAT fixed establishment in the Member State where the goods are shipped;
- The company applying the call-off stock regime must declare in the Recapitulative statement information related to the VAT number of the persons to whom the goods are delivered.



## **B. Chain transactions**

The Ordinance provides clarification regarding the allocation of the transport in cases when the intermediary operator is responsible for carrying out the transport, in view of establishing the intra-community supply of goods.

## **C. VAT exemption for intra-Community supplies of goods**

The Ordinance provides a new substantial condition for the application of the VAT exemption for intra-Community supplies of goods, consisting of the correct submission and completion of the Recapitulative Statement.

The obligation to submit the above-mentioned statements is suspended until the 31st of December 2022.

## **HYBRID MISMATCHES**

Starting from February 2020, Council Directive (EU) 2017/952 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries has been transposed into the Romanian legislation.

A hybrid mismatch may appear, inter alia, in case a deduction of an expense is applicable in two different jurisdictions (i.e. double deduction) or in case of a deduction of an expense granted in one jurisdiction, without the income obtained as a counterpart in another jurisdiction to be taxable (i.e. deduction without inclusion).

## **COUNTRY-BY-COUNTRY ("CBC")**

Since CbC implementation in Romania in 2017, based on our practice, Romanian subsidiaries of multinational groups have the obligation to submit a notification to the Romanian Tax Authorities in order to state the Ultimate Parent of the group including country of residence as well as details regarding its FY.

If there is no automatic exchange of information between the jurisdiction where the Ultimate Parent submits the CbC report (e.g. United States) and where the subsidiary is a tax resident (e.g. Romania), the Romanian entity must also submit the CbC report, priorly submitted in the US, to the Romanian Tax Authorities.

Given that there is no automatic exchange of information relationship in terms of CbC between the US and Romania, at the time of publishing the newsletter, Romanian subsidiaries of US groups (that submit the CbC report in the US) must also submit the CbC report to the Romanian Tax Authorities.

Pursuant to the Romanian CbC legislation, it may be interpreted that the Romanian constituent entity may be subject to the penalties applicable to a Reporting Entity, as follows:

- late or incorrect submission of the CbC report for which a EUR 6,400 – EUR 10,600 penalty is applicable;
- failure to submit the CbC report for which a EUR 15,000 – EUR 21,300 penalty is applicable.

Until an automatic exchange of CbC information is available between Romania and the US, our recommendation is to assess the status of the Romanian entity part of the US group that submits the CbC report to the IRS, and to determine whether the CbC report must be submitted in Romania as well.

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## CHANGES TO WITHHOLDING TAX

Following the entry into force of the Act to amend the Personal Income Tax Act, the Corporate Income Tax Act and other acts on 1 January 2019, fundamental changes came into force in the field of withholding tax in Poland.

### CHANGE TO WITHHOLDING TAX MECHANISM

One of the most significant changes is replacement of the mechanism previously used for withholding tax “Relief at source” with the mechanism known as “Pay and tax refund demand” in relation to the payment of receivables subject to withholding tax in excess of PLN 2,000,000 in the fiscal year. The new procedure deferred by the Regulation of the Minister of Finance dated 31 December 2018 until 30 June 2020, imposes an obligation to collect withholding tax from payments exceeding the above limit and gives a possibility to have it later refunded upon the tax remitter’s or taxpayer’s request. This regulation means that the payer is required to collect withholding tax at the rate in force under the Corporate Tax Act, excluding exemptions, relieves and reduced rates referred to in the specific provisions and in the Corporate Tax Act (regardless of the current certificate of residence of the recipient of receivables).

As a result of this, all payments made from Poland to foreign entities (e.g. dividends, interest, royalties, remuneration for consulting, marketing or support services etc.) will be subject to WHT at a rate of 19% or 20%. The recipient of the receivables will have a right to submit an application for a refund of overpaid withholding tax. Upon verification of the fulfilment of the conditions for application of exemptions or preferential tax regime in Poland, the tax authority returns the overpaid amount of withholding tax.



## WITHHOLDING TAX EXEMPTION

In the case of dividends, interest and royalties paid from Poland to related entities, it will be possible (instead of having to pay the tax at a rate of 19%) to apply to the tax authority for the opinion on the application of exemption. However, the time for its issuance is 6 months. This means that in order to avoid payment of WHT in Poland, you should just now apply for an opinion on the application of the exemption, as 6 months is the waiting period for such an opinion. Therefore, if payments in 2020 from Poland are planned for an amount exceeding PLN 2,000,000 in total (approximately EUR 48,000), it is necessary just now - in order to avoid payment of tax - to submit an application for an opinion exempting collection of this tax. In this matter, we offer you our assistance.

In the absence of an opinion on the application of the exemption, the Polish payer will be required to collect the withholding tax. Then, the payer (or its foreign counterparty) will be able to apply for a refund of the tax paid – but the Polish payer may request a refund only in the case if the agreement concluded by it contains a gross-up clause. Therefore, it is necessary to conclude agreements with Polish entities or to check them in terms of having (or not) a clause transferring the burden of paying the tax to the payer. In this respect we also offer you our help.

The above-mentioned deferment does not influence the provisions regarding withholding tax procedure which entered into force on 1st January 2019, i.e. the obligation to verify a counterparty in terms of exercising due diligence (eg. an obligation to verify tax rates, check contractors, conditions of WHT exemptions or reduced rates, and information flow – at present the possession of a tax residency certificate only is insufficient); to analyse the status of a taxpayer acting as beneficial owner or the changes concerning the scope of penal and fiscal liability of a taxpayer/tax remitter. If the WHT payer fails to meet the aforementioned requirements and does not collect a 20% or 19% WHT on payments made outside of Poland, then the failure to pay such a tax will be treated as tax arrears on which interests are accrued. Additional penalty was also introduced in the form of an additional tax liability of at least 10% of the unpaid tax.

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## SUPREME COURT DECISION - DUTCH FOREIGN TAXPAYER RULES

In 2012, HoldCo distributes a dividend of EUR 24.2 million to X BV. X BV, a tax resident of Luxembourg, filed a tax return for the corporate income tax for the year 2012 and reported a taxable profit and taxable amount of nil. X BV did not report the dividend as Dutch income. The Dutch tax authorities (“DTA”) took the position that the dividend distribution should be seen as taxable income from a substantial interest.

### REGULATION

According to Dutch law, an entity that is not established in the Netherlands is considered a foreign taxpayer, if and insofar as the entity has “Dutch income”. The aim of the anti-abuse provision is to prevent tax avoidance and aggressive tax planning. Dutch income is the taxable income from a substantial interest in a Dutch company if:

- I. the substantial interest is held with the main purpose, or one of the main purposes, of avoiding income tax or dividend withholding tax (“DWT”) from another (subjective test), and
- II. there is an artificial construction or series of artificial constructions (objective test).

### COURT DECISION

The Supreme Court ruled that the interest was held with the main purpose of avoiding DWT from Y. Based on the look through concept, a dividend distributed directly to Y would be taxed less favorably (15%) than to X BV (no taxation).

Furthermore, the Supreme Court mentions three situations in which relevant substance/business rationale is met:

- I. The company of the entity in which the taxpayer has a substantial interest is an extension of the company of the taxpayer;
- II. Holding companies that perform an essential function for the benefit of the business operations of a group;
- III. Participation companies that hold interests in one or more entities that do not directly or indirectly invest, without having a holding function within the group.

At the time of the dividend payment in 2012, HoldCo held the position of a so-called ‘cash company’, did not have any relevant substance and lacks economic activities. X BV therefore held the interest in HoldCo as an investment, as a result of which this interest did not belong to the business capital of X BV. Therefore, the objective test is met.

### IMPLICATIONS

In a rapidly changing international playfield, this decision of the Dutch Supreme Court should not come as a

surprise. Lack of business activities and substance may lead to the cancellation of tax benefits. This is becoming even more relevant now that the MLI has entered into force. This would have significantly impacted the outcome of this case, as the safe-harbor of 2.5% tax on dividends based on the treaty would not have applied.

In this case the Dutch Supreme Court confirms the standards used by the DTA to assess whether the foreign taxpayer - anti-abuse regulations - should apply to holding companies with substantial interest in Dutch companies. Substance / business rationale of companies investing in the Netherlands is becoming more important and needs to be checked regularly to see if Dutch foreign taxpayer rules may be applicable.



## NEW RULES FOR FOREIGN EMPLOYERS

As of 1 March 2020, foreign employers/contractors posting foreign workers in the Netherlands are required to submit a notification with the Dutch social security authorities (SVB) for each foreign employee who will be posted to the Netherlands.

### THE NOTIFICATION APPLIES TO THE FOLLOWING SITUATIONS:

- A foreign employer is providing services in the Netherlands and to perform these services the employer temporarily posts foreign employees to the Netherlands. During their work in the Netherlands, the employment contract with the foreign employer must be maintained.
- A foreign self-employed person who temporarily performs an assignment in the Netherlands in one of the designated sectors, such as construction and industry.

The notification contains information about the nature of the work, the duration of the posting and the work address. Also information should be provided about the identity of all parties involved.

The mandatory notification is introduced to provide the Dutch authorities with more tools to monitor and ensure that foreign employers and self-employed workers meet their requirements regarding Dutch tax, social security and labor law, such as statutory minimum wage, A1 certificates, etc. Temporary assignments that started

before 1 March 2020 do not have to be reported.

### FOREIGN EMPLOYERS' CONTACT PERSON IN THE NETHERLANDS

Foreign employers are required to appoint a contact person in the Netherlands who can address questions from the labor inspection (Inspection SZW) about the notifications and the posted workers. In addition, certain documents (such as employment contracts, proof of payment to the employees, pays slips, etc.) must also be available at the work location during inspections. The contact person must be authorized to send and receive documents relating to the posted workers on behalf of the company. The name of the contact person will also be mentioned as part of the notification obligation.

### ADMINISTRATIVE SANCTIONS

Employers that do not meet the requirements per 1 March 2020 can be imposed substantial administrative sanctions by the Dutch labor inspection. The client who is using the services from a foreign employer is also made responsible to check online if the notifications that are submitted by their supplier are correct. The client can also receive a similar sanction if he has not checked and approved the notifications, or if they have not acted on inaccurate notifications. The notifications also need to be kept on the work location during inspections.

### ONLINE PORTAL

The notifications need to be made in an online portal (available in English): <https://meldloket.postedworkers.nl/runtime/?lang=en>.





## VAT: STRICT RULES ON 0% VAT RATE

### CHANGE AS OF 1 JANUARY 2020

With so-called 'quick fixes' that are part of EU VAT package, the EU has tightened control on cross-border transactions in order to fight VAT fraud. As of 1 January 2020, regulations regarding VAT number will be stricter for EU cross-border suppliers of goods. Based on the new regulation, as of 1 January 2020, any missing VAT number for a cross-border supply of goods will lead to VAT due, even if a client only paid the amount net of VAT. Any changes to the VAT number will no longer be possible. A regulation has been announced that will allow the correction of incorrect or missing VAT numbers under certain conditions. It is still unknown what this will look like.

The risk for supplying goods to businesses that may not have a valid VAT number is significant. On average the supplier may lose as much as one sixth of its turnover on the client with an invalid VAT number and this corresponds to a VAT rate of 20%. In the EU standard VAT rates range from 17% to 27%, thus, the higher the local VAT rate applicable, the higher is the risk.

### CONTINUOUS CHECK: VAT NUMBERS MAY CHANGE OVER TIME

As clients' business structures change over time, VAT numbers may change as well. Mergers, restructurings, changes in VAT permit for cross-border transactions and defaults may result in a VAT number being invalid. In practice, this means that a single check upon onboarding a client in the CRM system does not suffice to mitigate VAT risks. It is essential to perform a continuous check

of the VAT position of EU clients, and make sure that for every EU cross-border transaction all requirements are met.

### MAZARS CAN HELP YOU WITH THE CHECK

The EU provides a comprehensive website to check VAT numbers in any EU member state (i.e. 'VIES'). However, as the number of EU clients increases, using VIES become burdensome for most businesses. Therefore, Mazars has developed a service that helps checking VAT numbers in a bulk. Regardless of the amount of numbers, businesses can obtain a check of the validity including a proof on a short notice.

Mazars service is simple and effective: you send us the VAT numbers in an Excel file or CSV-file and we provide with the validation overview and proof including time stamp of the VAT position for every VAT number. By doing this you can assure that you do not invoice a net fee, where you should invoice with VAT included.

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## NEW FOREIGN INVESTMENT LAW

On 15 March, 2019, the National People's Congress has passed the new Foreign Investment Law of PRC (the "Foreign Investment Law" or the "New Law"), which has come into force on 1 January, 2020. The new law marks the next level of Chinese government's opening-up policy to enhance a more transparent business environment and to ensure that domestic and foreign enterprises compete on a level playing field, with equal treatment under the unified legislative rules and processes. It is also an attempt by the Chinese government to respond to international criticism from the US in light of the still on-going US-China Trade Negotiation. In particular, the Foreign Investment Law seeks to address common complaints from foreign businesses and governments, such as by explicitly banning forced technology transfers.

### KEY HIGHLIGHTS

#### Equal Treatment of Domestic and Foreign Investment

- I. Foreign investors seeking to establish business operation in China will be treated exactly the same as domestic companies with simplified registration process, as long as the investment would not be in industry sectors listed on the Negative List. If the foreign investors were to enter into industries in the Negative List, the investment would still be permissible as long as certain requirements specified in the Negative List are fulfilled;
- II. Foreign invested enterprises are allowed to obtain financing through public offering of stocks, issuing of corporate bonds and other types of securities;
- III. Foreign invested enterprises would be able to participate in bidding for government procurement and projects through fair competition with domestically owned enterprises; and
- IV. There would be equal treatment for foreign and domestically invested enterprises in making and implementing government policies and regulations.

#### Protecting foreign investment and trade in China

- I. Freedom of inbound and outbound transactions:  
Capital investment, distribution of dividend, payment of interest, paying of royalties on use of Intellectual Property ("IP") and other compensations that the foreign investors gain legally can be transferred in and out of China freely in RMB or other currencies.
- II. Protection on foreign company's IP:  
In the past, foreign investors from certain industries were required to look for Chinese partners to set up joint ventures. Often, these Chinese companies would require the foreign investor to share technology or sensitive trade secrets. This practice has been interpreted as the Chinese government encouraging forced technology transfer.

The new Foreign Investment Law provides protection of foreign investor's IP and prohibits compulsory technology transfer. The Chinese government has clearly stated that "the conditions for technology cooperation in the process of foreign investment shall be decided by both parties through negotiation; administrative authorities shall not use administrative means to force the transfer of technology; and the administrative authorities shall keep confidential of the trade secrets of foreign investors."

Administrative authorities shall limit the extent, scope and exposure of IP material and content concerning a foreign business' trade secrets that will be required to be handed over to the administrative bodies.

In addition, punitive damages for infringement of IP rights will be established.

#### III. Channel for appeal and complaints:

- ① The Chinese government will establish appeal mechanisms to make sure that all foreign-invested enterprises will have proper channels to communicate with the relevant authorities regarding their complaints and concerns. The mechanisms will ensure that these complaints and concerns would be addressed in a timely manner.

#### Regulation on the type of Foreign-Invested Enterprises

Under the Foreign Investment Law, the organization form of foreign-invested enterprises shall be regulated by the PRC Company Law and the PRC Partnership Enterprise Law as the case maybe.

The Foreign Investment Law replaces the three previous laws, namely the Wholly Foreign-Owned Enterprise Law, the Sino-Foreign Equity Joint Ventures Law and the Sino-Foreign Contractual Joint Ventures Law. Essentially, the WFOE, the Equity Joint Venture ("EJV") and the Contractual Joint Venture ("CJV") would be abolished. These entities would be turned into limited liability companies regulated by the PRC Company Law.

It is worth noticing that the Foreign Investment Law provides a five-year transition period for already established foreign invested enterprise formed under the previous WFOE, EJV and CJV laws to turn into limited liability companies, or to undergo any necessary reorganization in respect of the form and structure.

### TAX IMPLICATIONS

1. Enterprise formed under the PRC Company Law will continue to be governed by the Enterprise Income Tax Law. There should not be any change for previously established enterprises formed under the WFOE, EJV or CJV laws. In addition, these enterprises would continue to be treated as corporations under the relevant tax treaty.
2. The Foreign Investment Law provides that there is a

transition period of 5 years, thus allowing enterprises formed under the WFOE, EJV or CJV laws to be restructured. In the case of joint ventures, the foreign partner should begin to discuss with the Chinese partner, in particularly those formed under CJV laws, in which case, a modification of the group structure may be needed. If the event that group restructuring is required, both parties would need to review the tax implications on the restructuring, e.g., to ensure the restructuring would be eligible for tax free treatment under Caisui (2009) No 59, or would not trigger any un-foreseen tax implications.

3. The supervision and regulation of “investment in domestic enterprises through contracts, trusts and other agreements by foreign investors” have been removed from the final version of the Foreign Investment Law, except this could fall under the “catch-all” clause provision in respect of supervision and regulation. In particular, now that the Negative List has been reduced significantly recently, foreign investment structured through a variable interest structure, the so-called “VIE structure” should be reviewed again. In the event the VIE structure should be restructured, there would be tax implications on the restructuring exercise.

## MAZARS' COMMENTS

In a world that is increasingly erecting barriers, the new Foreign Investment Law is a welcome message from the Chinese government that China is open for business. It is no doubt that the law will reshape China's foreign investment legal regime and will formulate the new landscape of China's foreign investment in the long run. There are currently nearly 300,000 foreign invested enterprises which were established under the three previous FIE laws. They are given a transition period of five years to restructure. Some of these restructuring may require restructuring of the group structure, including those structured under the VIE structure, it is important that tax advises be sought to ensure that no un-warranted tax implications are triggered. Mazars will be pleased to assist in this area.

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# SOUTH AMERICA



MAZARS

## TAX MODERNISATION BILL ENACTED

### MODIFICATIONS TO THE INCOME TAX LAW

#### 1. Provisional Payment for Absorbed Profits (PPUA):

As of January 1, 2024, it will not be possible to request tax refunds for PPUA, which currently occur when a company in a tax loss position, receives profits or dividends from another company that has paid the Corporate Income Tax (CIT). Between the years 2020 and 2023, the PPUA refund will be gradually reduced, that is, by the year 2020 by 90%, year 2021 by 80%, year 2022 by 70% and year 2023 by 50%. The part of the loss that does not absorb the profits or dividends received from another company may be allocated in the immediately following year and so on, and the portion of the CIT credit associated with the withdrawals or dividends received, in the part not absorbed by the loss, must be kept under control in the record of the Accumulated Credit Balance (SAC) of the receiving company.

#### 2. New Pro-Pymes Taxation Regime

A new special regime for micro, small and medium-sized enterprises (so called Pymes) is established to provide incentives for investment, working capital and liquidity for Pymes. Pymes will be subject to CIT with a 25% rate, and their owners - final taxpayers - may use all CIT paid as a credit against their personal taxes, based on effective withdrawals.

The most important aspects of this new regime are the following:

- Pymes are understood to be those companies in which the effective capital at the time of commencement of their activities does not exceed Unidad de Fomento (so called UF) 85,000, in which the average annual gross income received or accrued from the business does not exceed UF 75,000 and which do not obtain more than 35% of their gross income derived from certain activities, such as real estate income (except for agricultural real estate exploitation), movable income, among others.

- In the average calculation of gross income, the gross income of related companies or entities, income from the sale of social rights or shares, among others, will be considered.
- The average income limit of UF 75,000 may be exceeded only once. However, in no case may the gross income of a financial year exceed UF 85,000.
  - It will be automatically applicable to Pymes that meet the requirements at the time they begin their activities, provided they have not opted to pay taxes under another regime.
  - Taxpayers who have already started their activities will have the option of applying by giving notice to the Chilean Internal Revenue Service (IRS) between January 1 and April 30 of the year they become part of the IRS, in the form and term established by the IRS by means of a resolution.
  - The PPM rate will be 0.25%, in the year of commencement of activities and to the extent that annual income from the previous year does not exceed 50,000 UF. In case they exceed such amount, they will be made with a 0.5% rate.

#### 3. Optional Transparency Regime

A new special regime is incorporated that will be applied by choice to Pymes, where their owners are taxpayers of final taxes during the respective year, including those that are in the exempt bracket of the Global Complementary Tax (GCT).

Among the most relevant points of this regime are the following:

- Requirements to be considered as Pyme, will be the same demanded for the new Pro-Pymes Taxation Regime.
- They will be released from the CIT and their owners will be affected with final taxes on the taxable base determined by the Pyme in the same fiscal year, according to the manner in which they have agreed to distribute profits in accordance with the provisions of the bylaws, or to the participation in the capital paid in or paid out, and, in the absence thereof, the capital contributed or subscribed.



- They will be free to keep complete accounting records, carry out inventories, prepare balance sheets, make depreciations, keep business records, among others, and will not apply an imputation order to withdrawals, remittances or profit distributions.
- They shall keep control of income and expenses in accordance with the Electronic Purchase and Sales Record or a cash book that will reflect chronologically the daily summary of the flow of their income and expenses, as instructed by the IRS through a resolution.
- The PPM rate will be 0.2% in the year in which it begins its activities and in subsequent years as long as the gross income from the previous year's business does not exceed 50,000 UF.
- Taxpayers who begin their activities may opt to benefit from the regime until 30 April of the year following the beginning.
- Meanwhile, taxpayers who have already started their activities must express their option by notifying the IRS between January 1 and April 30 of the year they are incorporated to this regime.

#### **4. Semi-integrated System maintained for large companies**

A semi-integrated system is maintained for companies with an annual turnover of over UF 75,000 and which determine their results under the full accounting system.

Taxpayers under this system will continue to be taxed on an accrued basis with CIT at a rate of 27% and their owners and final taxpayers will be taxed on a withdrawal basis, and may use 65% credit for CIT, except for residents of countries with a Double Taxation Avoidance Agreement in force or signed with Chile, who may use 100% credit for CIT.



#### **5. Marginal rate of 40% of Global Complementary Tax (GCT) restored**

A maximum marginal rate of 40% is restored, applicable to monthly incomes exceeding 15 million pesos.

#### **6. Art. 107 Benefit, of the Income Tax Law, regarding the alienation of shares and quotas**

The use of market maker contracts to access the exemption of capital gains obtained from the alienation of shares or quotas is restricted. Furthermore, it is established that shares with a market presence will be those determined by the Stock Market Law (No. 18,045), notwithstanding that, if the market presence is given exclusively by virtue of a contract that ensures the daily existence of purchase and sale offers of the securities, the treatment of the greater value as income not income will apply only for the term of one year from the first public offering of the securities.

#### **7. Instantaneous depreciation regime**

With respect to certain investment projects, taxpayers who declare the CIT on effective income determined according to full accounting, may consider a system of instantaneous depreciation for new or imported fixed assets acquired between October 1, 2019 and December 31, 2021. 50% of the acquisition value of the assets acquired may be depreciated in the year in which the use of the asset begins, and for the remaining 50%, accelerated depreciation may be used. On the other hand, a transitional depreciation benefit is established that will allow 100% of the investment in new or imported fixed assets acquired between October 1, 2019 and December 31, 2021 that are installed or used in the production of goods or provision of services in the Araucanía Region to be reduced.

#### **8. Property Tax Exemption (contributions) for Seniors**

Senior citizens whose annual income does not exceed the GCT-exempt bracket are exempt from paying contributions. On the other hand, for those who do not exceed the first section of GCT, the reduction will correspond to 50% of the territorial tax. The current fiscal assessment of the property as of July 1, 2018, may not exceed \$128 million pesos and the overall ceiling (more than one assessment role) of \$171 million pesos.

#### **9. Amendments to the definition of necessary expenses**

The concept of expenses of Article 31 of the Income Tax Law (ITL) is extended, redefining necessary expenses as "(...) those that have aptitude to generate income, in the same or future exercises and are associated to the interest, development or maintenance of the line of business, that have not been reduced by virtue of Article 30, paid or owed, during the corresponding commercial exercise, as long as they are credited or justified in an irrefutable form before the Service (...)".

On the other hand, a new expense is added to Art. 31 N° 13 of the ITL, allowing to deduct those disbursements



incurred due to environmental requirements, measures or conditions for the execution of a project or activity.

Expenses incurred for the benefit of the community may also be deducted, provided that they are of a permanent nature, such as expenses associated with the construction of works or infrastructure for community use, financing of educational projects, among others, provided that they are included in contracts or agreements signed with an organ of the State Administration.

### **10. Replacement Tax of Final Tax**

It is contemplated that taxpayers subject to the CIT determined on the basis of a balance sheet according to full accounting, who at the end of business year 2019 maintain a balance of accumulated taxable profits that have been generated until December 31, 2016, may choose to pay a substitute tax of 30% on part or all of such balance.

This transitional benefit may be exercised until the last banking business day of December 2020, 2021 or until the last business day of April 2022, in respect of the balances to be determined as of December 31, 2019, 2020 and 2021, respectively.

## **MODIFICATIONS TO THE INCOME TAX LAW**

### **1. Digital Services Tax**

It is established as a new taxable event, the services provided in digital format by providers domiciled or resident abroad, which consist of:

- The intermediation of services provided in Chile, whatever their nature, or of sales made in Chile or abroad, provided that the latter give rise to an import;
- The supply or delivery of digital entertainment content, such as videos, music, games or other analogous, through downloading, streaming or other technology, including for these purposes, texts, magazines, newspapers and books;
- The provision of software, storage, platforms or computing infrastructure; and

- Advertising, regardless of the support or means through which it is delivered, materialized or executed.

Additionally, it is noted that it will be presumed that the digital service is used in national territory, if at the time of contracting such services or when making the corresponding payments, at least two of the following situations concur

- The IP address of the device used by the user or other geolocation mechanism indicates that the device is in Chile;
- That the card, bank account or other means of payment used for payment is issued or registered in Chile;
- That the address indicated by the User for billing or the issuance of payment vouchers is located in the national territory; or,
- That the subscriber identity module (SIM) card of the mobile telephone through which the service is received has Chile as its country code.

### **2. VAT refund for the acquisition of fixed assets**

The deadline for requesting a VAT refund is reduced from 6 to 2 months from the date of the investment and the response time of the Service is shortened from 60 to 20 days.

### **3. New Additional Tax Exemption**

Certain payments made abroad for the provision of advertising services abroad and subscriptions to Internet technology service platforms will be exempt from Additional Tax, unless the provider is domiciled or is a resident of a jurisdiction with a preferential tax regime, in which case they will be subject to Additional Tax at a rate of 20%.

This exemption will only apply to taxpayers with revenues of less than UF 100,000 (average for the last 3 fiscal years).

## OTHER AMENDMENTS

### 1. New Property Tax Surcharge

A new article is incorporated to Law No. 17,235 on Real Estate Tax, which provides for an annual surcharge of the real estate tax applicable to the total fiscal assessment of a taxpayer's real estate, in the part exceeding 670 Annual Tax Units, so called UTA (approximately 400 million pesos), according to its value as of December 31 of the previous year. Contributors to this tax are individuals, legal entities and unincorporated entities with respect to the real estate owned by them. The Pymes will be exempted from this surcharge, to the extent that they use the real estate for the business or activity of the company.

The tax base will correspond to the total tax assessment (total sum of the tax assessments of each of the real estate owned by the same taxpayer). The co-owners of real estate will consider only the proportion in the tax appraisal, which is equivalent to their share of ownership.

The surcharge will be applied marginally and in instalments. The first tranche over 670 UTA up to 1,175 UTA (between 400 and 700 million pesos approximately) the rate will be 0.075%; the second tranche over 1,175 UTA up to 1,510 UTA (between 700 and 900 million pesos approximately) the rate will be 0.15%; and the third tranche over 1,510 UTA (over 900 million pesos approximately) the rate will be 0.275%.

This tax will be due annually as of January 1 and will consider in the calculation the real estate registered in the name of the taxpayers as of December 31 of the previous year. As for the draft and payment of the surcharge, this would be made in the months of June and December of each year, as well as the payment of contributions.

### 2. The Taxpayer's Ombudsman Office (DEDECON, from its acronym in Spanish) is created

DEDECON will be created, whose main purpose will be to ensure the protection and safeguard the rights of lower-income taxpayers, i.e. people with incomes up to 30 UTAs and SMEs under the Pro-SME Regime with incomes up to 2,400 UF per year.

Some of its functions include providing guidance to taxpayers on internal tax matters, issuing technical opinions within the scope of its powers, filing

administrative appeals with the IRS, acting as a third party in mediation procedures between taxpayers and the IRS, among others.

### 3. Investment companies will have to pay municipal license fees

A new paragraph has been added to Article 23 of Legislative Decree No. 3063 on Municipal Income, which establishes that investment companies that obtain passive income will be taxed with the payment of a municipal license, which will apply as of July 1, 2020.

As indicated in the new text, its purpose is to provide legal certainty as of its entry into force, on the legitimate difference of interpretation of the taxed event, so that it will not be appropriate to support requests for refunds or collections that correspond to periods prior to the entry into force of the new rule, nor will it affect administrative procedures or lawsuits pending or promoted later with respect to such periods.

### 4. New requirements for Private Investment Funds (FIP)

Art. 92 of Law No. 20.712 on Administration of Third Party Funds and Individual Portfolios is amended, incorporating new requirements to PIFs. It is established that a minimum of 8 unrelated contributors shall be required, none of them having more than 20% of the fees paid by the fund.

On the other hand, it is established that if after a period of one year from the entry into force of the Law, the FIP does not comply with the new requirements, it will be considered for purposes of the ITL as a Corporation and its contributors as shareholders of the same, as of the commercial year in which said non-compliance has occurred.

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**HERE TO HELP**

**M** MAZARS



## HERE TO HELP YOU!

International firms with a competitive advantage have real time access to insightful foreign tax knowledge. The right advisor helps to identify opportunities and to manage risk profiles. Given the far-reaching effects of the OECD BEPS project, awareness of legislative and regulatory changes has never been more important.

The Mazars US Tax Desk was created to help US companies successfully manage these challenges. We can help you to ask the right questions, set priorities and define the action plans needed to succeed in the fast-moving landscape of international tax.

The Mazars US Tax Desk is a platform for companies with existing international operations and those looking to enter other jurisdictions.

In working with the Desk, companies will be able to access a wealth of multifaceted, cross border experience in areas such as:

- International tax structuring
- Transfer pricing
- Inbound and outbound investment
- Intellectual property planning
- Financing structuring
- Treaties – interpretation and maximisation of benefits
- Research and development tax credits
- Cross border financing, leasing and licensing
- Corporate acquisitions and divestments

We are here to help you! As part of our programme to keep you up to date on what is happening in the world, we will publish regular newsletters. These will discuss important tax legislative changes, provide on the ground insight, but most importantly, identify how this news is of relevance to you.

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