

info

International Tax, Audit, Accounting and Legal News

Focus

BEPS

**OECD Project against
Base Erosion and
Profit Shifting**

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Focus BEPS



“The Trip to Panama”

This is the title of a popular German children’s story book which may or may not have been the inspiration for quite a few wealthy people throughout the world to make this virtual voyage of discovery to conceal their assets in this Central American state by avoiding their home countries gaining access to them. Our current lead story, fiscal evasion, is wholly appropriate to this topic: as long ago as 2012, the G20 states commissioned the OECD to draw up measures designed to combat base erosion and profit shifting (BEPS). As usual, we have also prepared other interesting topics for you, including the new accounting law in Vietnam, the Union Customs Code, and an article on what makes good management reports (all on page 3), the RMB cash pooling business in China (page 6) and the introduction of the long-awaited law on industrial property institutions and regulations in Latvia (page 7).

I hope you enjoy reading this newsletter.



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What makes really good management reports?

Having looked at a fair old number of management information (“MI”) systems and monthly reporting formats, what strikes me is that some of the prettiest, most eye catching and most clearly laid out are often the most ineffective. We all love a graph and there is nothing more pleasing than a multi-coloured pie-chart, but are these displays of wizardry actually useful? Most are not, for one simple reason: these reporting formats lack a key ingredient – they do not produce “calls to action”.



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www.ecovis.com/en/management-reports



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Vietnam

Major Amendments to Accounting Law 2015

Having applied in Vietnam for nearly 10 years, Accounting Law 2005 has revealed a number of limitations when it comes to comparison with the development of the economy. According to many experts, it is essential to make amendments to the law in order to make it appropriate to the far-reaching global economic integration of Vietnam. A bill of amendments to the accounting law was submitted by the ministry of finance to the government, in which there are breakthrough changes aiming at approaching transparency – one of international accounting standards (IAS), accepting and acknowledging IAS as well as the practice of accounting and auditing in regional and international countries.



Read more about the major amendments:
www.ecovis.com/en/accounting-law2015



Germany

Union Customs Code: New provisions to observe

The new Union Customs Code (UCC) is to come into effect on 1st May, 2016. It supersedes the currently applicable customs code and is complemented by a delegating and implementing act, thus repealing the previous Customs Code Implementing Provisions (CCIP). The new regulations in the UCC will serve to bring customs laws in Europe in line with modern-day needs and make them competitive on a global scale. The next step is to introduce all the measures necessary, because this reform will lead to radical amendments in the customs procedures used in businesses. Enterprises will be required to adapt their internal customs procedures and are obliged to have converted them by the end of 2020.

The legal revisions to the UCC make an impact on all aspects, ranging from temporary storage to specific measures, particularly those applying to inward and outward processing. The stock status at which customs debt is incurred and extinguished has been completely revised. Furthermore, licensed authorised economic operators (AEOs) have been significantly revaluated. In addition, certain forms of preferential treatment can from now on only be applied for by these AEOs. It is therefore important for businesses to make internal adjustments to the UCC at an early stage and to familiarise their employees with the new regulations; in this way they can avoid mistakes made during conversion to the UCC and adopt the correct measures.



“We suggest you consult your advisor about the amendments and their consequences when seeking approval for customs procedures, and about the streamlining of regulations and the maintenance of your status as an authorised economic operator (AEO).”

Monik Vent
tax advisor, Ecovis, Munich, Germany



Italy

INTERNATIONAL ASPECTS OF BEPS AND THE PERSPECTIVE OF SMES

The initiative to combat base erosion and profit shifting (BEPS) carried out by the Organisation for Economic Co-operation and Development (OECD) and the G20 has been a hot topic in today's tax world.

Another good example of the international character of BEPS issues is transfer pricing. To read more about it:

www.ecovis.com/en/beps



The BEPS Project (Project), launched in February 2013 and finalised in October 2015, translated into a package of final reports, comprises 15 actions covering a comprehensive range of issues such as the digital economy, anti-abuse rules in domestic law and tax treaties, harmful tax competition, transfer pricing etc. The work on the BEPS Project is still ongoing, requiring the completion of certain un-finished rules, as well as the supervision and assessment of the implementation of the Project in countries participating in the Project.

BEPS deals with the erosion of the tax base of one jurisdiction by shifting the profit to another, possibly low or no tax base. This international character will have various implications in identifying, understanding and dealing with BEPS concerns, as the main concern relates to the circumstance that the schemes adopted have been considered legal so far.

For example, BEPS Action 2 identifies six types of hybrid mismatch. This may be generated by (i) hybrid entities, for example,

entities which are regarded as transparent in one jurisdiction and opaque in another, or (ii) hybrid instruments, for example, a profit sharing loan, the payment out of which is considered interest in one jurisdiction and dividend in another. The result might be double deduction of expenses in both jurisdictions, or deduction in one jurisdiction and non-inclusion in the taxable income in another. If we stand in the shoes of only one of the two jurisdictions, no problem of tax avoidance will be identified, as these arrangements are all perfectly consistent with the relevant domestic laws. The BEPS issue can only be seen when we have a holistic view and take the results in both jurisdictions into account. Consequently, the solution put forward by the BEPS Action 2 Report is two-fold, requiring, in most of cases, the payer jurisdiction to deny the deduction, and if this is not done, requiring the receiver jurisdiction to take responsive measures.

However, it should be noted that despite the international characteristics of BEPS issues as mentioned above, most of the proposals put forward in the BEPS Report need to be implemented by domestic legislation, with the exception of Actions 6 and 7, which concern provisions under bilateral tax treaties, and Action 15, which concerns developing a multinational instrument to modify bilateral tax treaties.



“At the end of the day, taxation is within the fiscal sovereignty of states, and they enjoy their own discretion regarding how and to what degree they are going to implement the proposals under the BEPS Project.”

Giammarco Cottani
L.L.M, lawyer, Ecovis, Milan, Italy

For example, the BEPS Project gives states the discretion to decide on the amount of administrative resources they want to spend on the issue of attacking schemes falling within the scope of the Project. In other words, states need to strike a balance between the administrative resources contributed to tackling BEPS and the benefits obtained. A good example in this regard is the exemption for small multi-national enterprises (SMEs) referred to in several Actions. For example, in the Action 13 Report, SMEs with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or a nearly equivalent amount in domestic currency as of January 2015 are exempted from the obligation to submit country-by-country reports. In Action 4 Report, it is suggested a de minimis monetary threshold be included to carve out entities that have a low level of net interest expenses from the rules of interest deduction limitations. The Actions 8–10 Reports provide an option to set a threshold for the application of the simplified approach to low-value-adding services provided for by associated enterprises within the same group, i. e. only MNEs not exceeding the threshold can benefit from the simplified approach for their low-value-adding services.

Nevertheless, not all the actions in the BEPS Project provide exemption for SMEs, and it might happen that SMEs that are not conducting any activities involving BEPS issues would bear a heavier compliance burden due to the implementation of the Project. This concerns, mostly, the added administrative burden in documentation and reporting, e. g. under the limitation of liability provisions proposed in Action 6, or transfer pricing documentation requirements proposed in Action 13.

Whilst SMNEs may qualify for exemption from anti-abuse rules under their domestic jurisdiction, given the disproportionate administrative burden entailed, it is advisable for those SMNEs expanding their cross-border activities to acquire a proper understanding of how international tax rules are applied.



Action	Contents
1	Address the tax challenges of the digital economy
2	Neutralise the effects of hybrid mismatch arrangements
3	Develop recommendations regarding the design of controlled foreign company rules
4	Limit base erosion via interest deduction and other financial payments
5	Counter harmful tax practices more effectively, taking into account transparency and substance
6	Prevent treaty abuse
7	Prevent the artificial avoidance of PE status
8–10	Assure that transfer pricing outcomes are in line with value creation
11	Establish methodologies to collect and analyse data on BEPS and the actions to address it
12	Require taxpayers to disclose their aggressive tax planning arrangements
13	Reexamine transfer pricing documentation
14	Make dispute regulation mechanisms more effective
15	Develop a multilateral instrument

China

RMB CASH POOLING BUSINESS

The slowing down of the Chinese economy with a drop in the foreign exchange reserve has also affected cash pooling services for multinational corporations.



Read more:

www.ecovis.com/en/rmb-cash-pooling



In the last issue of the Ecovis newsletter “info international” 1.2016 we contributed an article with news from China that RMB operations were being centralised. In the article we introduced the three available options for cash pooling business in the PRC which regulatory bodies in the last months of 2015 further facilitated. Among the methods introduced was the China-wide cross-border bilateral RMB capital pooling, the “free trade zone” renminbi capital pooling as well as the centralized operation of foreign exchange funds by multinational corporations.

However, towards the end of 2015 and in early 2016 the Chinese yuan lost ground as the Chinese economy reached its slowest



“All this fuelled concerns of a larger devaluation of the RMB already towards the end of 2015 and also in early 2016. Therefore on 18 January 2016 the PBoC in a meeting held with banks involved in cash pooling services for multinational corporations instructed them to limit outflows.”

Connie Cai

C.P.A. (China) F.F.A. certification (UK),
Ecovis, Shanghai

pace of growth in 25 years. In mid-August 2015 the People's Bank of China (PBoC) weakened the RMB with the aim to move a fixing mechanism more towards a market driven mechanism. Yet in January 2016, China's exports fell by 3.2 percent year on year to 1.23 trillion yuan (200.78 billion US dollars). Imports were at 860 billion yuan, which is a decline of 19.7 percent. Overall foreign trade value fell to 9.8 percent year on year in January 2016. Then in February 2016 the monthly foreign trade surplus shrank by 43.3 percent year on year while the overall foreign trade value fell to 15.7 percent year on year to 1.43 trillion yuan.

Meanwhile the United States' Federal Reserve raised its interest rates in December 2015, the first increase in nearly a decade, while further economic projections signaled interest rate increases of up to four times in the US in 2016.

Combined with the drop of the foreign exchange reserve in China, all this fuelled concerns of a larger devaluation of the RMB already towards the end of 2015 and also in early 2016. Therefore on 18 January 2016 the PBoC in a meeting held with banks involved in cash pooling services for multinational corporations instructed them to limit outflows.

Under the stipulation handed out by PBoC, those banks qualified for RMB cash pooling services shall limit outflows in such a way that there should not be any net remittance outflow of capital. If it does not comply with the directive, the respective bank would be required to pay for the additional deposit reserve for 100% of the excessive amount. The bank furthermore may be prohibited from continuing cash pooling related services if not following the information. ●



Latvia

INNOVATION IN INTELLECTUAL PROPERTY REGULATION

On 1 January 2016 the long-awaited Law on Industrial Property Institutions and Regulations (hereinafter: the Law) came into force.

It needs hardly be said that intellectual property, especially industrial property, such as patents, industrial design, indications of geographical origin and trademarks, plays a significant role in the international competitiveness of a country's economy. Proper protection of industrial property requires proper registration, appeal and opposition procedures. What improvements would benefit inventors and others seeking to register and protect their innovations?

Improved procedure for examination of appeals and oppositions

The basic improvements of the Law lay down the procedure for appeals against decisions of the Latvian Industrial Property Office – the Latvian Patent Office – and also for examining oppositions against the registration of others industrial property rights. Although the institution for the examination of both appeals and oppositions is one and the same – the Appellation Council of Industrial Property (hereinafter: the Appellation Council) – the Law makes a list of detailed provisions established with a view to ensuring the functional independence of the Appellation Council from the Patent Office which is still responsible for the administration of the Appellation Council.

The Law also provides for a more detailed procedure for reviewing appeals and oppositions by the Appellation Council. Inter-

alia, it confers discretion on the Appellation Council to examine the case in written proceedings or in verbal hearings.

Improved logical structure for general provisions, common to all types of industrial property

The Latvian substantive law regulating each type of industrial property has still remained divided, so each type of industrial property is regulated by its own law, be it the Patent Law, the Law on Trademarks and Indications of Geographical Origin, the Industrial Design Law and others. However, before the Law took effect, general provisions, like the regulations regarding professional industrial property attorneys or the Appellation Council, had been included in the Patent Law. This created a risk of misunderstandings, if, for instance, a person interested in learning the regulations for professional trademark attorneys were not informed that he or she should also have examined the provisions of the Patent Law, besides the Law on Trademarks and the Law on Trademarks and Indications of Geographical Origin. Now such general provisions applicable to all types of industrial property are covered in the Law.

Time test for the Law

It is still early days to reach a conclusion on the legal efficacy of this new Law but testing out the new provisions in practice will show whether any major improvements are required. ●



“We should note that according to the provisions of the Law, if a party is not satisfied with a decision of the appellation council, it may within a three-month period launch a respective claim to the specially determined court of first instance which shall examine the claim in civil proceedings.”

Dr. iur. Lauris Rasnacs
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Slovak Republic

Ecovis is now also offering legal services

After cooperating successfully with the Bratislava colleagues of ECOVIS LA Partners for many years Ecovis welcomes ECOVIS DT LEGAL. The company is a full service law firm based in Bratislava. The firm was established in 2004 by JUDr. Ing. Dušan Tomka. The team of ECOVIS DT LEGAL consists of eleven team members, including five lawyers. The experience of many of the lawyers comes from practice gained at leading international consulting companies and other attorney offices. The clients of ECOVIS DT LEGAL benefit from the team members' detailed knowledge of the region and business environment factors that form the basis of their successful business activities in the Slovak Republic. Dušan Tomka and his team are ready to assist clients in Slovak, English, German, Czech and Russian.



Hong Kong

Ecovis strengthens its presence in the autonomous territory

In April 2016 ECOVIS Focus Hong Kong CPA Limited joined the international network. The firm was established in 1994 and was restructured into a corporation after the admission of new partners in 2012. The two partners, Yvonne Pang and Eric Cheung, are supported by a team of 30 staff members. ECOVIS Focus Hong Kong CPA Limited offers auditing services. Through its sister companies they can also offer accounting, tax, consulting and visa and migration services. Their international clients are from Australia, France, Germany, South Korea, the United Kingdom and the United States of America.

ABOUT ECOVIS

Ecovis is a leading global consulting firm with its origins in continental Europe. It has over 4,500 people operating in over 60 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice. The particular strength of Ecovis is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every Ecovis office can rely on qualified specialists in its back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments – from preparation in the client's home country to support in the target country. In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally, its one-stop-shop concept ensures all-round support in legal, fiscal, managerial and administrative issues. The name Ecovis, a combination of the terms economy and vision, expresses both its international character and its focus on the future and growth.

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Publisher: ECOVIS International, Mühlebachstr. 2, 8024 Zürich, Switzerland, tel. +41 (0)44-268 25 55, fax +41 (0)44-268 25 59

Realization: Teresa Fach Kommunikationsberatung/Public Relations, 80798 Munich, Germany, grasundsterne GmbH, 80337 Munich, Germany

Editorial Department: Kurt Bülow, Denmark; Pingwen Hu, PR China; Andreas Karaolis, Cyprus; Robert McCann, United Kingdom; Dr. Ferdinand Rüchardt, Germany; Ricardo Quibrera Saldaña, Mexico

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