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PORTUGAL
UNITED KINGDOM
POLSKA
BRASIL
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Who we are



Pragma is a European based network of law firms with members worldwide.

With 350 lawyers and *dottori commercialisti*, 45 law offices in 15 countries, Pragma is the first group of latin philosophy and culture which is renowned for its ability to solve complex economic juridical problems.

It was set up in 2001 as the result of a common will shared by a group of four European firms of lawyers and law advisers who, after having

worked together for over ten years, decided to unite all their resources at the service of companies with new demands brought about by the developing new Europe and the increasing globalisation of business relations.

 Pragma is an E.E.I.G. (European Economic Interest Grouping) with its head office in Brussels (Belgium).

In Pragma, we aim to deliver high quality services and to offer a comprehensive service to companies through small coordinated teams.

News from our network

Meeting of the Board of Directors

The Board of Directors met in February 2008 in Barcelona, Spain, in the office of *Manubens y Asociados*.

Members of Pragma's Board with Wojciech Celichowski and Pragma's coordinator



COORDINATOR Nathalie FACON	VICE CHAIRMAN Carlos MANUBENS	MEMBER Wojciech CELICHOWSKI	DIRECTOR Cecilia CARIA MENDES	CHAIRMAN Michel LACROIX	DIRECTOR Greg WOLTON	SECRETARY/ TREASURER Gilberto GELOSA
						



Gustavo Cuevas, member of the Board and manager of *Cuevas Abogados* in Chile, attended part of the meeting via webcam.

Gustavo Cuevas
Member of the Board

Wojciech Celichowski, manager of *Celichowski-Szyndler-Wieckowska i Partnerzy* in Poland, was invited to talk about the organisation of the annual conference in Poznań in October.



Pragma's annual conference will take place in Poznań, Poland from 10th to 12th October 2008

Members' anniversaries

The French network of law offices *Jean-Claude Coulon & Partenaires*, located in 18 offices all over France will celebrate his 40 birthday in September 2008.

Both the Italian office *Interconsulting Studio Associato* in Milan and the Spanish office *Manubens y Asociados* in Barcelona will turn 10 year in July of this year.

In brief

POLAND

The office *Celichowski-Szyndler-Wieckowska i Partnerzy* opened a new office in Warsaw. Now, Wojciech Celichowski's office is located both in Poznań and the Polish capital.

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LATIN AMERICA

Carlos Manubens, manager of *Manubens y Asociados* in Barcelona and Vice-Chairman of Pragma, went to South America last November to visit Pragma's members and contacts in Argentina, Uruguay, Chile and Brazil.

One of the most important benefits of this trip is the project to set up a collective office in Madrid that would be the bridgehead of Latin American Pragma's members in Europe. This office would be financed by *Manubens y Asociados* in Spain and by Latin American Pragma's members (*Del Carril, Colombres, Vayo & Zavalia Lagos* in Argentina, *GrowAssociates* in Brazil, *Cuevas Abogados* in Chile and *Alvarez Valenzuela Abogados* in Mexico).

ITALY

The office *Interconsulting Studio Associato* in Milan has moved to Via Victor Hugo, 4. Its fax and phone numbers remain unchanged.

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Brazilian software's legislation

Although software in Brazil has specific rules (Law 9.609 of 02/19/98), it is also protected by copyright and, for this reason, patrimonial rights can be totally or partially transferred to third parties through licensing, concession or cession.

The registration of the transfer document at the *Instituto Nacional da Propriedade Industrial – INPI* (the Brazilian Patent and Trademark Office) is not compulsory but strongly recommended as it brings guarantees against third parties in case of litigation.

The Law assigns to the software the nature of a service (LC 106/2003) but the Supreme Court of Justice in Brazil decided that the software can have two different natures: the first one called standard or "off the shelf" is the nature of merchandise; the second one called customized is the nature of service. This difference is important because products and services have different taxations.

Software Licensing

Software Licensing can be used with three different purposes: (i) to the buyer's own use, (ii) for sale and (iii) to technical knowledge transfer. In both (i) and (ii) cases, the registration of the document at INPI is not required. However, in (iii) case, the registration is required (article 11, Federal Law no.9.609) to make the licence effective against third parties and to validate the deduction of the royalties paid to foreign companies.

The registration of the contract means that the owner must provide for the source code, a memorial describing the program, its internal specifications, diagrams, flowchart and all the technical information necessary to transfer the know-how of the technology. If a foreign company owns the Software Licensing, the company must determine who will be

Calendar of events in 2008



-  Monday 28th April 2008 afternoon:
Annual General Meeting in Paris, France
-  From 10th to 12th October 2008:
Annual conference in Poznań, Poland
-  From 8th to 16th November 2008:
Mission in China (Shanghai and Beijing)

responsible for the payment of the taxes and the royalties.

If the software is customized - that is to say if it can be adapted to the specific needs and requests of the customer and if its functionality can be compromised if its installation and adaptation are not made properly - the software will be considered and taxed as a service - ISS (service tax). It is important to point out that the importation of software incurs also the taxation on the supporting media, which is considered as a product and will be taxed as so (II, IPI, ICMS, PIS/COFINS importation).

Payment of Royalties

The payment for the operation of the copyrights (or the use of intellectual rights in general) is called royalty as well as the amounts paid for the services of technical assistance to the effective use of the software and related to the knowledge necessary to its use.

The amounts paid and considered as royalties are not freely used as operational expenses of the company. To do so, some rules must be applied, even if the payment occurs between the subsidiary and the main office. In this last situation, rules of transfer pricing will not apply. The rules applicable to the royalties are essentially the following:

- Expenses of royalties will be admitted only if they are necessary to the maintenance of the possession, use or fruition of the goods or rights that generate the incomes;
- The maximum admitted as operational expense is 5% of the sales net revenue of the product manufactured or sold;
- The amount that exceeds this maximum percentage will be

considered as payment of dividends.

Expenses of royalties are deductible only when it is strictly mentioned in Law. They can be renewed for five years only once. 2

Royalties are not deductible in the following situations:

- If they are paid to partners (natural persons or legal entities) or directors, their family or dependants;
- If they are paid to third parties to get the rights for the use of a certain good and paid to extend or amend the capital eligible to be amortized during the term of the contract;

Royalties will also be taxed in the following cases:

- Brazilian subsidiaries pay royalties to their main office;
- A Brazilian company pays royalties to a beneficiary not resident in Brazil who maintains, directly or indirectly, control of the company capital and does not have the contract registered at *Banco Central do Brasil*, unless the contract has been registered at INPI at any time since 1st January 1992.
- Royalties exceed the maximum limit allowed by the Law (5% of the sales net revenue), although it is worth remembering that INPI is the one who decides the deductibility rate.

The above rules also apply to the royalties paid for technical, scientific or administrative assistance but they can be deductible only after the registration of the contract at INPI and during the first five years of the company's operation.

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Transfer pricing and valuation of intangibles

Current transfer pricing issues concern the terms and conditions of sale of a product or supply of a service. However, more and more often, they also concern the licensing of a trademark or a patent.

In case of transfer of intangible assets, the main difficulty is to value these assets properly. Even though the OECD transfer pricing guidelines are nowadays internationally respected, tax administration no longer hesitate to contest the amount of royalties between companies of a multinational group.

With regard to the valuation of intangibles, the most appropriate transfer pricing methods recommended by the OECD are the following two methods:

- The Comparable Uncontrolled Price ("CUP") is to be preferred where a comparable transaction exists on the market;
- The Profit Split Method is recommended in other cases. It is based on the idea that consolidated profit breaks down into two components: routine and residual profit.

Source: IFA

Germany: Taxation of transfers of functions

The amended German Finance Act for 2008 issued a specific regulation providing for the systematic taxation of cross border transfers of functions between companies of the same group.

This regulation does not concern only cases already defined by the German Act on the sale of ongoing business assets but applies to a broader notion of "business opportunities", such as, for example, the transfer of a risk to a foreign company or the delegation of provision of a service to such an entity.

Consequently, when the transfer is made by a German company, it leads to a taxable capital gain being recognized. It is moreover the taxpayer's responsibility to document and evaluate such a transfer on the basis of an estimate of the loss of future profit. The tax authorities will then have the possibility to update this estimate on the basis of current data.

This new provision is a real innovation in Europe and the question can legitimately be raised as to whether other countries might not be tempted to implement a comparable system on the basis of the German model.

Source: IFA

PORTUGAL



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Investment funds in Portugal

Investment funds are an autonomous capital withheld by a depository (trustee) resulting from the investment of individual or collective savings in primary or secondary stock markets.

Each fund share is represented by units of participation which are withheld by several investors.

The investment is managed by a company that has to calculate and

publish the net value of the assets. As they are an autonomous capital, funds can be owned by several individuals or by a collective entity fiscally "transparent" with no legal personality.

As these investment funds are located in a certain country and managed by a company or a depository, they are not allowed to invoke the application of the conventions applicable to that country. As holders of the fund are not considered "residents", treaties should be applied to whom the income or the capital gains are directly attributed, no matter where the entity is located.

The Portuguese tax legislation quotes the tax regime for funds in the articles 22º and 22º-A of the Statute of the Tax Benefits. However, as there is no specific tax regime for funds, the taxation applicable is the one

Definitions

Transfer pricing

The price that is assumed to have been charged by one part of a company for products and services it provides to another part of the same company, in order to calculate each division's profit and loss separately.

Arm's length price

The price at which two unrelated parties would agree to a transaction, most often in the case of companies with international operations whose international subsidiaries trade with each other. For such companies, there is often an incentive to reduce overall tax burden by manipulation of inter-company prices.

Tax authorities want to insure that the inter-company price is equivalent to an arm's length price, to prevent the loss of tax revenue.

applicable to the entities foreseen in the Corporate Income Tax.

If the holders of real state investment funds are residents in Portuguese Territory and are an individual, funds are tax-free if they are obtained from activities that are not commercial, industrial or agricultural (since funds have already been taxed). Apart from these situations, the taxation takes place when the investor receives the income, at a rate calculated according to the holding period of the investment.

Concerning mutual funds in Portugal, *Bank Best* is the leader in distribution of foreign investments funds, according to the report of administration of assets of the mutual stock market commission. In the second quarter of 2007, the volume of assets under administration of *Bank Best* was 341 million Euros, representing 29.5% of the total market of this segment.

In conclusion, although they incorporate tax benefits, investments funds in Portugal are valuable special regimes thanks to the constant norms of the *CIRC* (Corporate Income Tax) concerning the taxation of the companies.

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In the spotlight

Celichowski-Szyndler-Wieckowska i Partnerzy, Poland

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Mariola
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Julita
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Marek
Matyjaszczyk
Lawyer



Karolina
Służewska-
Woźnicka
Lawyer

About us

- July 2004: merger of two Poznań law firms established in 1990.
- January 2006: four lawyers who had long cooperated with the founding partners joined the partnership.

Our team

4 lawyers, 18 legal practitioners, including 7 legal advisers, 5 legal trainees and administrative staff.

Our services

Our office is composed of three departments:

1. Capital and Privatisation Management Department
2. Court Department
3. Labour and Administrative Law Department

We are specialised in the following areas:

Capital and Privatisation Management Department

- Analysis and diagnosis of the legal standing of enterprises;
- Financial and administrative restructuring (debt write-offs, negotiations with banks, Social Security Service and other creditors, settlements);
- Support for issues of new shares, preparing information memoranda and prospectuses for public issues, proceedings with the Stock Exchange Commission;
- Building and managing arrangement proceedings, including those held as part of bankruptcy proceedings;
- Transformations of legal or economic forms of companies;
- Mergers and acquisitions;
- Preparing deeds of company formation and other internal economic deeds (contracts, regulations, statutes);
- Negotiations regarding the entry of a strategic investor, other business agreements and contracts;

Court Department

Commercial law, Civil law, Family law, Criminal and Penal revenue law.

Labour and Administrative Law Department

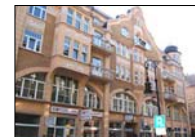
- Support for investment proceedings and other related to construction or administrative laws;
- Services for local governments and local government associations;
- Consultation related to labour law, preparing draft regulations and collective agreements, evaluation of employees' rights and claims, representation at labour courts.

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New website of Les Juristes Associés Midi Pyrénées, Toulouse, France



Partners of Les Juristes Associés Midi Pyrénées.

From left to right:
Nathalie Eychenne Arnaud,
Laurent Diatta,
Isabelle Richard-Monti and
Briotte Marchal

The office of Toulouse, France, *Les Juristes Associés Midi Pyrénées (JAMP)* has updated its website www.lesjuristesassociesmidipyrenees.fr.

Specialised in business law and tax law, *JAMP* was founded more than 10 years ago. In the updated version of its website, you can find a description of this office and its services and read the CVs of its department heads.

JAMP is member of the French network Jean-Claude Coulon Partenaires (www.pragma-fr.com).

JAMP are:

Nathalie Eychenne Arnaud, Laurent Diatta, Isabelle Richard Monti, Brigitte Marchal, Sylvain Favier, Daniel Capeller Arnaud and Fabien Gay-Bellile.

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FRANCE

Abaissement du seuil de revente à perte

La loi Chatel du 3 janvier 2008 pour le développement de la concurrence au service des consommateurs prévoit l'abaissement du seuil de revente à perte.

En effet, le prix de vente au consommateur pourra désormais inclure l'ensemble des ristournes accordées par les fournisseurs, notamment la totalité des marges arrière, introduisant par là la notion de *triple net*: le prix de vente au consommateur pourra être déduit de tous rabais, remises et ristournes, même ceux relevant de la coopération commerciale.

Les objectifs affichés de cette nouvelle loi sont de favoriser la concurrence pour faire baisser les prix et développer la consommation. A terme, la loi pourrait aussi avoir pour conséquence la libre négociation des prix, avec par exemple la suppression de la notion de soldes - la seule exception où l'on peut revendre à perte en France - et la liberté pour les magasins d'avoir un rayons «soldes» permanent.

Très probablement, la nouvelle loi aura pour conséquence une diminution des marges pour les fournisseurs, ce qui devrait les obliger à adopter une politique de prix commune pour qu'il n'y ait pas de diminution trop importante des prix par les distributeurs.

La nouvelle loi Chatel devrait entrer en vigueur à la mi-2008.

CHILE

Relevant amendments to tax legislation

Law No. 20,190 has introduced several amendments to the Chilean Income Tax Law and other regulations that benefit potential investors in Chile. Most notably, the Law creates a new type of company known as a "Joint Stock Company", which enjoys the same tax treatment as an Open Stock Corporation, but has a less rigid structure, since only one stockholder is needed for such a company to exist.

PRESS RELEASE

FRANCE - CHINA

Un château du bordelais vendu à un groupe chinois

Un groupe chinois vient d'acheter une propriété viticole bordelaise, Château Latour-Laguens, une acquisition qui, pour les professionnels, pourrait être l'un des premiers pas de la Chine dans le vignoble bordelais, confirmant son engouement pour le vin français. Le groupe chinois, "Longhai international trading Co Ltd", - un groupe immobilier - est devenu officiellement propriétaire le 24 janvier 2008 du Château Latour-Laguens, une propriété viticole de l'appellation "Bordeaux-Bordeaux supérieur", comprenant 60 ha dont 30 plantés en vignes.

"C'est essentiellement une acquisition de prestige, un outil de relations publiques dans le portefeuille de ce grand groupe", confirme Thomas Jullien, responsable marketing Asie au Conseil interprofessionnel des vins de Bordeaux. Pour le groupe Longhai, dont le siège social est à Qingdao, entre Pékin et Shanghai, ce château bordelais est "un outil fantastique" alors qu'il est "en train de construire un Palais du vin à Qingdao, avec un musée à vocation pédagogique qui regroupera tous les aspects de la production du vin".

Avec une croissance en Chine à deux chiffres depuis cinq ans, les exportations de vin de Bordeaux vers ce pays sont en progression annuelle de 100% en volume - elles représentent 1,8% de la totalité des exportations de vin de Bordeaux - avec notamment une forte demande en grands crus.

Source: www.ladepeche.fr

EU

Cyprus and Malta join eurozone

New coins and banknotes for the people of Cyprus and Malta as the two countries become the newest members of the eurozone.

Cyprus and Malta are next up to reap the benefits of the euro – smoother business operations and easier travel to name just two. On 1 January, the Cypriot pound was converted at a rate of 0.585 to one euro and the Maltese lira at 0.429.

To allay fears of price rises during the changeover period, a number of initiatives have been launched to empower consumers and prevent retailers from opportunistic exploitation. Under the FAIR (Fair-pricing Agreements in Retailing) initiative, 5 000 Maltese businesses have so far pledged not to increase their prices and to correctly display dual prices. And one price-watch exercise will entail anonymous 'mystery shopping' to root out cases of malpractice, with results presented by sector of activity.

These two new arrivals bring the number of eurozone members to 15. The only one of the other countries that joined the EU in 2004 to have adopted the euro is Slovenia. Next up is most likely to be Slovakia in 2009.

Source: www.ec.europa.eu

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Chinese Tax Law reform: Implications for Foreign Investors

After almost thirty years of preferential tax treatment for foreign invested companies, the Chinese government decided to apply the same fiscal rules to both foreign and domestic companies. In December 2007, the Decree of Corporate Income Tax containing the first implementation rules for the new law was issued.

Modification in tax rates

The new law introduced a unique tax rate of 25% both for foreign and domestic companies. Reduced tax rates of 15% and 20% can be applied only to high-tech companies and selected small companies respectively. Concerning high-tech companies, the new law stresses the concept of "core proprietary intellectual property". However, the rules to determine the eligibility of high-tech companies to the reduced tax rate have not been promulgated yet.

A withholding tax rate of 20% was adopted to tax passive Chinese incomes (dividends, royalties, interests, etc.) transferred to companies non fiscally resident in China.

New fiscal incentives policies

Whereas in the past fiscal incentives were based on geographical matters, the new law incentives are determined mainly on industrial bases. The aim is to promote high-tech businesses, environmental protection and energy-saving industries, as well as companies belonging to public sectors.

Transitory regime

For foreign invested enterprises established before the introduction of the new law (16 March 2007) transitory rules were introduced.

Fiscal residence

Following international practices, the new laws introduced the concept of "management or control" to determine the fiscal residence. A company fiscally resident in China is defined as a company under Chinese law or whose effective management is located in China. If a non Chinese company is managed and controlled in China (the elements to be considered are the location of operations, staff, treasury, financial functions and properties), it is considered fiscally resident in China and subject to the Chinese tax law as for international practices.

Mergers and acquisitions

The implementation rules of the new law are not comprehensive: many rules are missing, such as those concerning corporate reorganizations, for example mergers and acquisitions, amongst others. However, it is expected that the tax holidays for intra-group reorganizations will be limited to share transfers when the transferee is a Chinese company.

Although the impact of the new law on foreign investors depends on the industry typology and geographic location of companies, the new reform will reduce considerably the privileges and the competitive advantages that foreign investors in China used to have during the last thirty years. This matter should be taken seriously by foreign companies planning to invest in China since the tax burden may have increased by the time they have made their investment decisions.

As the new law has considerably reduced the possibilities of tax exemption, it could be more attractive for foreign investors to acquire existing foreign companies on the Chinese market than setting up a foreign invested company from zero. During the transition period, foreign investors could inherit the favourable fiscal treatment through the acquisition of existing foreign invested companies by the mean of shares.

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Cover picture



Donghai Bridge ("East Sea Grand Bridge") is the longest cross-sea bridge in the world. It was completed on December 2005. It has a total length of 32.5 kilometres (20.2 miles) and connects Shanghai and the offshore Yangshan deep-water port in China.

The Journal is available on line in English and in French at
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