



XLNC

GLOBAL PROFESSIONAL
EXCELLENCE



Inaugural XLNC
Conference in
Madrid, Spain

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MAGAZINE

Editorial

Dear XLNC Member,

If you have already seen the XLNC website and social media pages, then you will know that the result now is not to be sneezed at.

XLNC was founded only five months ago, but already counts 25 high-quality member firms from around the world. What a great start for this strong international alliance! A list of all member firms can be viewed in this issue from page 20, while Richard Kleiner, Chairman of XLNC, welcomes you all in this edition. Discover more about the topics to be discussed and key highlights at the inaugural XLNC Conference in Madrid, Spain.

The first XLNC Focus Group on M&A/Corporate Finance has been established. Read more about the Group's objectives and contents and find out how to join this Group or set up another Focus Group.

XLNC members have actively contributed to this issue with articles on a wide range of subjects. Dr Benjamin Cortez (Germany) summarises expected tax reforms in Germany after the elections, Natalie Jones (Australia) shares her experiences on using the Cloud, Dr Mashal AlZarooni (UAE) reports on the Compliance updates in Dubai, Daniela Gavrilescu (Romania) informs readers about the VAT split in Romania and Karin Buschdorf (Switzerland) discusses Residence and Flat Taxation in Switzerland. New Member Dr Alessandro Stradi (Italy) reports on Taxation on Cryptocurrencies in Italy. Also, you can stay abreast of risks related to Cryptocurrencies thanks to an article from LEVICK.

Keep up the good work, everybody: share your views, thoughts and interests, and latest news from your profession with the entire XLNC magazine readership by contributing an article. Report on your company's news or on the successful deals you had with fellow XLNC members.

We look forward to hearing from you, and wish you an enjoyable read.

Your XLNC Team

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Madrid, Spain | 14-16 September 2018

Viva España – Inaugural XLNC Conference

We are pleased to announce that the dates of the XLNC Autumn Conference 2018 in Madrid, Spain, are confirmed. At this Conference, we aim to bring XLNC members and candidates together to create an environment conducive to trust, where we can also explore mutual business opportunities. We know that you will build lasting connections with fellow XLNC members, while learning and benefitting from one another's expertise and experience.

Early arrivals will get to enjoy an optional, private VIP tour of the Madrid Palacio Real and some of its secret corners (not open to the general public). This Royal Palace of Madrid, one of the largest in Europe, stands on the site of the former Alcazar of Madrid, a medieval fortress transformed into a lavish palace by John II, Charles V and Phillip II, who in 1561 made it the



Keynote Speaker H.E. Dr Benita Ferrero-Waldner



Puerto de Europa (The Gate of Europe towers), Madrid

official residence of the Spanish Monarchy. Phillip V then decided to build a new Royal Palace on this site.

The Conference officially begins on Friday evening with a Welcome Reception and a Welcome Dinner in the InterContinental Hotel, where the Conference will also be held. On Saturday, we have a very busy day planned. We are delighted to have H.E. Dr Benita Ferrero-Waldner as our Keynote Speaker. A career diplomat, H.E. Dr Ferrero-Waldner has been Secretary of State and Minister of Foreign Affairs in her native Austria, and Commissioner of the European Union (2004-2008). In January 2004 she stood for the office of President of Austria. At the end of the same year, she became European Commissioner for Austria in the Barroso Commission, taking the office of Commissioner for External Relations and Neighbourhood Policy

until the end of 2009 when she became Commissioner for Trade, a post she held until February 2010.

Following the Keynote Speech, we will have a session of Member Introductions followed by a Roundtable Discussion with regards to strategy, the future and upcoming events. After lunch, you will be able to choose specific Focus Groups to get involved with. (Anyone interested in running one of these Focus Groups Meetings at this Conference should contact Marco Izzo at izzo@xlnc.org.)

During the Conference, any Accompanying Persons will have the option of visiting the World Heritage City of Segovia. Segovia is symbolic of a complex, historical reality. Its neighbourhoods, streets and houses are laid out in accordance with a social structure in which hierarchy

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was organised and dominated by belonging to one of the different cultural communities. The evidence of this cultural process can be seen in the large number of outstanding monuments in the city, among which the Roman Aqueduct stands out. Other important monuments can be visited, such as the Alcázar (begun around the 11th century), several Romanesque churches, noble palaces from the 15th and 16th centuries, the 16th-century Gothic cathedral (the last to be built in Spain in this style).

We will end the Conference on Saturday evening with a Closing Dinner full of Spanish flavour.



The famous ancient aqueduct in Segovia, Castilla y Leon

All XLNC members and candidates should have received an email from us with regards to registering for this

event. If you have not, please contact Anita Szoeké at szoek@xlnc.org for information on how to register.

Welcome to our first edition of the XLNC magazine

■ By Richard Kleiner

It is a great privilege to have been selected as Chairman of XLNC's Steering Committee and I am positive that our mutual endeavours will lead to a brighter future for us all.

I would like to start by thanking our members for their commitment to our new alliance and to share how much I am looking forward to expanding the XLNC network across jurisdictions which are not currently represented. With our multidisciplinary approach, I truly believe that we are well placed to offer a holistic service to clients across a range of international requirements. I am certain that our members will be instrumental in driving XLNC's future success. We very much welcome



Richard Kleiner

suggestions and comments on any initiatives or issues; they should be addressed to Marco Izzo (izzo@xlnc.org) and/or myself. Please feel free to contact me directly; I would be

pleased to hear your thoughts. One of my key aspirations for XLNC is to strengthen our current network through frequent interactions, information sharing and having a unified purpose. It is my great hope that our shared affinity for supportive and amicable relationships will also bring great enjoyment along the way.

It is a pivotal year for my own firm, Gerald Edelman, as over the coming months several exciting projects will come to fruition. The launch of our newly refreshed brand is imminent and will, no doubt, bring new life to the somewhat traditional perception of our firm. This fundamental change to our identity will form the cornerstone of a number of strategic initiatives to be executed over the coming years.

In terms of growth, we have recently welcomed a new partner, Richard Staunton, to the firm. Richard heads our VAT division which has now substantially increased in size and brings with him two talented VAT specialists. The team will be focusing on helping our clients deal with all VAT matters – even the most complex queries – and they have particular expertise in dealing with tribunal matters.

Another area of expansion for the firm made possible by a recent change in UK law is the provision of probate services. I am pleased to announce that my partner Colin Burns and I are now authorised to provide licenced probate services. We will continue to work with lawyers where land and buildings require conveyancing and will also defer to them if any contentious matters arise from the administration of the estate. Until now, our predominant focus has been on the London market. I am pleased to announce that we have recently joined forces with SB&P, a firm of Chartered Accountants in

Liverpool, in the north of England. The partnership of Gerald Edelman North West LLP and SB&P LLP will generate new opportunities for our firm and I am particularly excited to build our presence within the northern regions. This move is a key step towards achieving our growth aspirations, particularly given the changes through A.I. that will impact all professional services.

At Gerald Edelman, we are constantly on the lookout for fresh, new talent and are always seeking to inspire our teams to flourish, build their careers and create a legacy for the future of the firm. We understand that the success of any business hinges on its people and that talent management is an area of concern for many of our clients. With this in mind, we have introduced a new HR consultancy service which will provide wide ranging support in relation to personnel matters, from procedural implementation to employee engagement and, of course, ensuring that clients operate within the tricky minefield of employment law.

Globalisation and the rapidly evolving pace of business certainly create challenges; however, I believe that by collectively facing the future with optimism as well as pragmatism, an open mind and an adaptable but positive mindset, we will learn and grow to achieve even greater success. I very much look forward to seeing as many of you as possible at the inaugural XLNC conference in Madrid in September. Until then...

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XLNC Focus Groups

All XLNC members are experts in their area of practice. The exchanging of knowledge, experience, and the latest news and trends from a certain field of expertise with international colleagues helps members to stay at the forefront of their profession. Therefore the concept for XLNC Focus Groups has been invented as a result of the initiative of active XLNC members: institutionalised

interest groups open to all XLNC members throughout the different disciplines. Being involved in these groups enables them to provide their clients with access to professionals with a global background, who have similar practice focuses and interests.

This allows them to:

- Exchange information to find ...*next page*

Follow us on social media!

Have you visited XLNC's social media sites? Go to LinkedIn and Facebook and get connected – an easy way to share information and stay abreast of latest developments.



- better approaches and solutions to clients' issues;
- Stay internationally connected to information and issues that are relevant to their professional areas;
 - Exchange ideas, experiences and views to further strengthen communication among fellow members with common Focus backgrounds;
 - Develop relationships and generate business opportunities through networking with experts from your field of business;
 - Gain insight into specialised issues.



The lists of Focus Group members will be soon published on the XLNC website.

M&A / Corporate Finance Focus Group

Richard Kleiner, XLNC Chairman, and Dr Barbara Fasoli have established the first XLNC Focus Group to cover M&A and other related corporate finance activities.

Objectives and Aspirations

It is widely recognised that M&A and, indeed, deal making and creating are wonderful opportunities for professional advisers to bring value to their clients which both enhances the relationship with said clients and, of course, provides fee earning opportunities.

Significant corporate finance experience is not a pre-requisite for joining the new Focus Group. However, having an open mind to such opportunities is a pre-requisite, as the Focus Group will discuss areas that are distinct from the traditional and conventional compliance services that most professional advisers (accountants) currently provide to their clients.

To achieve the objectives and aspirations of a fully interactive Focus Group, it will be necessary for member firms to provide details on various sectors that their clients operate in, in order to assess whether there are possible opportunities for mergers, acquisitions, consolidation plays and even strategic alliances between clients across different jurisdictions.

In addition to deal brokering, there will also be an emphasis on fundraising, whereby clients may be looking for investment from individuals or, indeed, corporates who have the knowledge and appetite to invest in a chosen sector.

This is another area where additional fees could be generated or advice could be provided to the member firm whose client is looking to raise funds in refining and possibly modifying the presentation to potential investors.

In order to achieve its objectives and aspirations, the Focus Group will meet at least twice a year:

- to develop strategies suitable for XLNC members;
- to share the work carried out in conferences;
- to write articles in international journals.

The activity of M&A and corporate finance is one centred on creativity and having a mindset for solution and problem solving as opposed to the compliance approach to traditional and conventional services. Member firms who have the mindset to look at things from a 'business and commercial' perspective rather than the strict compliance perspective are welcome to join the Focus Group.

How to join

All XLNC members interested in actively joining the M&A / Corporate Finance Focus Group are welcome to contact Dr Barbara Fasoli Braccini at barbara.fasoli@mfpbpartners.com or Richard Kleiner at rkleiner@geralddedelman.com.

Graham Busch will set up the International Taxation Focus Group and more Focus Groups are planned. All XLNC members have been informed by Email and information on the xlnc.org website are updated continuously.

XLNC members interested in setting up another Focus Group or joining any of the groups are welcome to contact Marco Izzo at izzo@xlnc.org or Barbara Reiss at b.reiss@xlnc.org to discuss further steps.

Professional Services Networks – the Model for Globalisation

■ By Stephen J. McGarry

Dear XLNC members,

Congratulations on your new network. The network is the global model for accounting and, more recently, legal services. Why?

All businesses comprise a pool of financial, intellectual, and human capital that creates a product or performs a service. This capital can be configured in an unlimited number of ways to achieve specific objectives for the service provider or manufacturer. With professional services, objectives are achieved via a controlled entity, such as an accounting or law firm, or the membership of an association of independent service providers.

There are many different ways to configure networks, ranging from a single profession network to one that is multidisciplinary. The type of organisation is defined by elements of purpose, structure and process. The purpose of a network is different from that of a company or professional firm in that it is limited to specific activities that will benefit its members and enhance its performance. Within the network, they can operate to pursue their interests. These interests can include referrals, joint venturing, access to expertise, developing regional expertise, publishing articles for clients, branding, technical information exchange, market positioning, pro bono services and more. Growth is also organic, based upon the opportunities that present themselves.

In addition to the objectives of the network itself, it is necessary to create a framework with the potential to allow members to expand their services. The network's structure reflects the activities it seeks to promote and the underlying cultures of the members. In the end, the scope of these interests must be balanced by the members' interests and those of the network. The result is that each network will be different.

One of the major factors influencing the need for networks is the globalisation of the economy. Supply and demand are no longer local. The price of commodities is affected by a number of uncontrollable factors, such as the weather halfway across the world or the demand in developing countries. In a market where production takes place wherever utilisation of assets and human resources occur most effectively, professional services providers need to represent their clients globally. Networks are the only practical method to accomplish these objectives.

A network is more than a support organisation or collaborative framework in which the members can meet clients' needs. It is an entity entrusted with a common corporate identity. Though the network, as opposed to the members' own logo and brand, the network name can establish

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and represent a standard required of all its members. Consequently, membership in the network creates a global corporate identity. The goal of this identity is network participation that will ultimately translate into business for the individual independent members.

From a theoretical point of view, networks are an effective model and a powerful system for enhancing services. The members and the networks are different parts of the resource equation for providing members with seamless and high-quality local and global services.

There is no real limit to what can be accomplished through a network when both it and its membership work together. This collaboration is at the heart of the network.

Why Do Firms Join?

When asked why they joined, members usually state tangible reasons: to receive referrals from other members; to have reliable firms to which they can refer; to maintain independence; to meet clients' needs; to retain existing clients by being able to provide

services in other states or countries; and to use the membership to obtain new clients in their market.

They also join for intangible reasons. In today's world, change is both constant and accelerating. Therefore, having access to other members can be important. A network helps to reduce the degree of uncertainty by bringing together a greater number of specialised resources to work on a problem. In addition to facilitating the exchange of knowledge that can reduce risks in firm operations, network memberships also reduce possible loss through burden sharing. Membership is a proactive way to profit from change while simultaneously conserve resources, and it can enhance the prestige of the member through their association with prestigious firms that the client already uses.

Stephen McGarry

With a B.A., M.A., J.D. and LL.M. (Taxation), Stephen McGarry founded World Services Group (WSG), a multidisciplinary network, in 2002. As president, he grew it to 150 firms that have 21,000 professionals in 600 offices in more than 100 countries. In 1989, McGarry founded Lex Mundi, the world's largest law firm network. As president, he grew it to 160 law firms that today have 21,000 attorneys in 600 offices in 100-plus countries. These two networks represent 2 percent of all the lawyers on earth, whose members bill their clients an estimated USD 20 billion dollars annually. In 1995, he founded HG.org, one of the first legal websites. Today, it is among the world's largest sites, with more than 10 million pages and 1.3 million unique users each month, who download almost 2 million pages. In 2015, McGarry created the Association of International Law Firm Networks, or AILFN, an association of the leading law firm networks whose members have more than 300,000 lawyers in 5,000



Stephen McGarry

offices, billing clients USD 120 billion dollars annually. McGarry is admitted by exam to the bars of Minnesota, Texas and Louisiana. In 2002, American Lawyer Media (ALM) published McGarry's treatise, *Multidisciplinary Practices and Partnerships*. McGarry has authored numerous articles on associations and international business transactions. His most recent publication, *Leaders in Legal Business* (2015), has been downloaded more than 5,000 times.

The Need for Global Networks

Internationalisation was slow to start because the legal profession was much more restrictive than accounting in allowing foreign firms to enter and practice in their countries: there were rules requiring that the names of the partners be present in the name of the firm. The forces of the international community converged in the late 1980s, when American and English firms began establishing branches in primary commercial centres. This niche competition in local markets had the immediate effect of forcing local firms to evaluate alternative ways of providing services to their international clients.

Law firms and accounting firms are each looking for niche markets. Previously, the common niche market was international. Specific businesses served financial services companies. Now, networks' interests are much

broader. In accounting and legal there are more than 200 networks, each serving the needs of the clients of their members in virtually every area of practice. The efforts

of tens of thousands of leaders has proven that networks are the only viable model for global business. As the founder of a number of professional service networks

and organisations dedicated to law firms and accounting firms, I salute the initiative of XLNC and welcome the birth of this new multidisciplinary alliance.

Germany: Grand coalition reloaded – German Tax Reform Outlook 2018-2021

■ By Dr Benjamin S. Cortez

On 7 February 2018, the leadership of both the German Christian Democratic Parties and the Social Democratic Party agreed to form a new government, with Ms Merkel as the Chancellor, for the legislative period 2018–2021. This article summarises the potential tax agenda of the new government.

I. Background

Following the federal elections in Germany that took place on 24 September 2017 and the unsuccessful first round of coalition talks between the Christian-Democrats, the Green Party and the Liberals, the new government will be established by the Christian-Democrats and the Social-Democrats, the same parties that have governed Germany for the last four years. After tough negotiations, the 'grand' coalition between Germany's Christian-Democrats and Social-Democrats successfully finalised its coalition agreement on 7 February 2018, 136 days after the election. The 177-page strong coalition agreement includes a description of the future



Dr Benjamin S. Cortez

government's policy goals and what measures it wants to take. Although the coalition agreement includes few details on concrete tax measures, it does offer some insight into what can be expected. The agreement does not specifically mention any major tax reform projects or changes in tax rates. The focus will be on combatting tax evasion, harmful tax practices and unfair tax competition. The most important of these measures are briefly outlined below. It should be noted that subsequent changes or additions

to other points cannot be ruled out.

II. Tax policy measures

1. Corporate taxes

- A commitment to support a Common, Consolidated Corporate Tax Base (CCCTB) and minimum corporate tax rates.
- The newly established government will seek close cooperation with France to implement initiatives to create a joint German-French economic area and to seek answers to international changes, in particular the US tax reform.
- Combating tax evasion, tax avoidance and unfair tax competition, as well as money laundering in national, European and international contexts. Implementation of the EU Anti-Tax Avoidance Directive (ATAD and ATAD2), which includes in particular an adaption of the German controlled foreign company legislation, added rules governing hybrid structures and

- amendments to the German interest limitation framework.
- Contemporary transformation of the German Foreign Tax Law (AStG); in this case in particular the reform of the German supplementary taxation (§§ 7-14 AStG).
 - Identifying and establishing measures for appropriate taxation of the digital economy, and global Internet companies. Implementation of the BEPS commitments.
 - Adoption of tax incentives for research and development (R&D) activities, especially for SMEs.



2. Taxation of individuals

- Successive abolition of the solidarity surcharge – a 5.5% surcharge on the income tax – until 2021, with relief for lower and middle incomes from the solidarity surcharge. Currently, a discharge of corporations – the 5.5 % surcharge is also levied on corporate income tax – is not likely to be enacted, though this remains to be seen.
- A reform of the income tax rate is not foreseen, however no increase

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- in the tax burden on citizens shall be enacted; therefore, the 'cold progression' (when tax payers are pushed into higher tax brackets through inflation alone) is to be reviewed on a two year basis.
- Abolition of the 25% flat withholding tax on interest income with the establishment of a functioning automatic exchange of information. This would result in the taxation of interest income at ordinary progressive tax rates.
 - Reduction of contribution rates for unemployment insurance by 0.3 percentage points.
 - For commercial electric vehicles, the aim is to introduce a special depreciation to act as an incentive.

3. Indirect taxes

- Optimisation of the collection and reimbursement procedure

for import sales tax.

- Introduction of a substantial financial transaction tax in the European context.
- Combating VAT fraud and evasion in internet commerce transactions. Utilisation of electronic marketplace operators to retrieve lost sales tax, and the involvement of dishonest entrepreneurs via their platforms.
- Exemptions for start-ups for the first two years after the establishment of the monthly advance VAT return.

4. Others

- Real estate transfer tax: Implementation of an effective and legally compliant regulation to end abusive tax structuring by means of share deals.
- Examination of a tax exemption for the first purchase tax on the first purchase of residential land for families, as an incentive.
- Extensive incentives for residential construction (including special depreciation in the amount of 5% p.a., in addition to the linear depreciation for four years for privately financed new residential construction in the affordable rental segment).
- Introduction of a government grant scheme to support families building homes (Baukindergeld) for the first purchase of a new building or inventory in the amount of EUR

1,200 taxable household income (per child p.a. for ten years up to an income limit of EUR 75,000).

- Fiscal promotion of energy-efficient building renovation.
- Securing the property tax as a source of revenue for the municipalities.
- Improving the combatting of tax evasion and optimising of tax collection and tax audit by allowing the 'confiscation' of all assets obtained from a criminal offense and illegal profits.
- Strengthening of the Federal Central Tax Office (BZSt) as a central point of contact for non-residents, as well as customs in all areas of responsibility.

III. Summary

Even though the coalition agreement does not include any specifics on the intended tax regulations, certain takeaways and observations can be made. From a policy standpoint, it is noteworthy that close cooperation with the French Government is mentioned specifically and several times in the agreement, rather than only in the tax area. With this background, it can be expected that certain future measures and initiatives (in particular at the EU level) would be driven by the combined efforts of the two governments.

In the context of the EU Anti-Tax Avoidance Directive (ATAD and ATAD2) the wording of the agreement potentially indicates that Germany is not intending to go far beyond what is required as a minimum standard under the EU-directive. The modernisation of the German Controlled Foreign Company Provisions (CFC rules) does not come as a surprise, and has been on the agenda for some time. It will, however be interesting to see whether the 25% tax rate (the rate under which low-taxation exists for purposes of the CFC rules) will in fact be reduced. The need for a reduction is evident in the context of a continuous reduction of the corporate tax rates in EU-Member States that has made the low tax threshold of the CFC-provisions of 25% an issue with Member States that cannot be regarded as tax havens. The introduction of anti-

hybrid rules for financing structures has been anticipated, since a draft law that proposed anti-hybrid rules in 2014 (see GTLN 22 December 2014) was not implemented.

In addition, the new government's plans for amending the interest deduction limitation rules remain to be seen, and it is unclear whether such changes would be in the form of technical amendments, a reduction of the current 30% EBITDA threshold or a response to a case pending before the Constitutional Court (see GTLN dated 16 February 2016). The agreement also does not detail the measures that would be introduced for taxation of the digital economy for multinational companies, and whether these would be aligned with the EU initiative on taxing the digital economy.

The coalition agreement is a policy

document, rather than draft law, and while taxpayers should not rely on the statements in the agreement, they should take the announcements in the agreement into consideration and closely monitor future developments.

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Should I move my business to the Cloud?

■ By Kelly Morgan and Natalie Jones

Cloud software is the new black. Everyone is doing it, so should you? Considering it for your business? Here are our top 8 ways to benefit with a transition to the cloud.

1. Collaboration

When working with others, whether they are a freelancer in another country, a partner or a client, it is easier when documents are in the

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Kelly Morgan



Natalie Jones

cloud. You can work collaboratively together, accessing the same networks and utilising software that enables more than one person to be viewing documents at the same time.

2. Reduce IT costs

If you no longer require staff to be in a physical location, then you don't need as much hardware. You don't even need a phone handset, even this can be located on the cloud with a VOIP (Voice over internet protocol) phone that can be accessed through a computer.



3. Cloud Finances

Using a cloud accounting software can allow you to have real time results, stats and reporting at your fingertips no matter where you are. The latest cloud-based solutions with add-ons have significantly changed the way people manage their finance function. Automation is significantly improving what used to be time intensive tasks enabling businesses to get much more out of their team than before.

4. Data protection & recovery

Many hours are wasted each year on businesses recovering data

and protecting local server-based environments. The risk is that even with the best protocols in place data can be lost and unrecoverable. With cloud-based data you can access it from any internet device. This means that disaster recovery and management is more secure and effective. Cloud services are housed in remote servers that have the best security systems available. They are always being updated with security updates - this makes them safer than your computer or a local server-based environment.

5. Remote access

Work anywhere, anytime both domestically and internationally. Work from home, while you are on holidays or when you travel for work. You can access important documents, client information, accounting and customer systems all at your fingertips. This can increase the productivity of your workforce and help to facilitate a flexible working culture.

6. Scalable

You can add and remove employees and their access at the click of a

button enabling your business to be quickly scalable at any point in time.

7. Always up to date

When you purchase software that you install on your computer, you need to ensure that you always have the latest version. This might include installing an update from the internet or purchasing a more up-to-date version. With cloud based software the updates are automatic meaning you are working off the latest versions without even realising it!

8. Work life is just easier!

Using the cloud for your business will make your life easier. Following the benefits my colleague Kelly Morgan has summarised for you, I can inform you that we at Azure Group have had very positive experiences using the Cloud. We have adopted a fully scalable cloud-based environment for our business and offer a cloud-based solution for our clients called 'Azure space'.

It is our fuss-free cloud solution where our clients can securely manage their accounting, record keeping, and compliance needs all in one place. Azure Space allows our clients to maintain their company corporate files, keep a record of their compliance affairs and work in a real time environment with us. It has revolutionised the interaction between our clients and Azure team members. It has enabled us to attract more international clients and work seamlessly with head offices overseas for reporting purposes. Azure Group have also implemented various cloud-based platforms that are improving the way in which we operate with our clients. I would be happy to share our experiences with you, hopefully when we will meet in person at the latest conference in Madrid.

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Dubai Compliance Updates

■ By Dr Mashal AlZarooni

This article highlights the updates to the new regulatory requirements in Dubai which are applicable in 2018. These are 'Value Added Tax (VAT)' and 'Restructuring and Bankruptcy'.

Value Added Tax (VAT)

VAT in Dubai came into effect from 1 Jan 2018 as part of the government's strategy to diversify its revenues – with the aim to reduce the country's dependency on oil and other hydrocarbons as a source of revenue.

Companies with revenues more than USD 100,000 per annum are required to register with the Federal Tax Authority (FTA). Companies who fail to register and comply with the requirements will be liable for criminal offence. Khalid Al Bustani, director general of the FTA, said 'we will not tolerate tax evaders, and we will not tolerate tax avoiders.' The FTA has postponed the penalty for not registering until the end of April to



Dr Mashal AlZarooni

give companies more time to prepare their business, but it highlighted that this did not mean these companies were exempt from registering.

The rate of VAT is set at 5%, while there are products that will be set at 100% tax such as tobacco and energy drinks. Some products and services will be exempted from the VAT such as food, education and health etc.

Types of VAT

- a) **Standard Rate** – This is set at 5%, which covers most goods and services.
- b) **Exempted Rate** – This is 0% (zero percent), however you can't claim your input tax.
- c) **Zero Rate** – This is set at 0% (zero percent), however you can claim your input tax.
- d) **Excise Rate** – This is a 100% tax, on products such as tobacco and energy drinks.

The UAE is connected with other GCC countries through 'The Economic

Agreement between the GCC States' and 'The GCC Customs Union'. It closely coordinates VAT implementation with other GCC countries. Read more on the websites of the Federal Tax Authority and the Ministry of Finance.

Restructuring & Bankruptcy

The UAE government has issued Federal Decree Law No. 9 of 2016 on Bankruptcy (the New Law). The New Law came into force on 29 December 2016. The objective was to modernise and streamline bankruptcy procedures available for UAE companies whilst maintaining a backdrop of accountability for directors of failed enterprises. The New Law sets out three main procedures for a business in financial difficulty:

- a) **Protective composition:** this is a debtor-led, court-sponsored process, designed to facilitate the rescue of a business which is in financial difficulty but not yet insolvent. The scheme requires the approval of both a majority in number and two-thirds by value of the unsecured creditors. The scheme must be implemented within three years of court approval, which may be extended for a further three years with creditor approval.
 - b) **Insolvency with restructuring:** where a debtor is insolvent but the court determines that the business is capable of rescue, it may approve a restructuring scheme. Such a scheme is similar to the protective composition described
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above, requiring the same levels of creditor approval, but a longer period of five years (extendable by a further three years) is allowed for implementation.

In each case, a 'trustee', who must be independent of the debtor, is

appointed to manage the process. The New Law includes strict time limits for making filings and lodging objections, and it is expressly provided that the relevant process continues while the court considers any objections. This is important, as time-consuming proceedings may otherwise prove

to be a practical obstacle to using the procedures under the New Law. In Dubai, and all over the UAE, there are only a very few 'Restructuring and Bankruptcy cases'; businesses are still reluctant to file cases for restructuring and bankruptcy.

Cryptocurrency and Transparency: An Oxymoron?

**By Robert Gemmill,
Senior Vice President of LEVICK**

As the cryptocurrency market continues to grow amidst ever-volatile price swings, attorneys and facilitators of the transactions known as 'initial coin offerings' (ICOs) are a new target for the Securities and Exchange Commission (SEC). SEC Chairman Jay Clayton is warning so-called 'crypto lawyers' that those circumventing federal securities laws could face disbarment or worse. Clayton has instructed SEC staff to be vigilant in addressing legal approaches to ICOs that do not comply with securities laws and the professional obligations of the US securities bar.

The massive expansion of cryptocurrencies has provided a new market – and potential pitfalls – for attorneys. Crypto lawyers and blockchain practices are in high demand due not only to the popularity of cryptocurrency but also because of the ambiguity of the industry. As of now, the rules and regulations regarding the exchanges

and investments of digital 'tokens' are vague – leaving plenty of space for error, intentional or not.

The primary issue perplexing lawmakers and the crypto industry is whether or not ICOs are legally defined as 'securities' in the framework of the Securities Act of 1933. The Securities Act was created following the crash of 1929 to protect investors. Using the Supreme Court's Howey Test, one can determine if certain transactions qualify as 'investment contracts'. Those that do are considered securities under the Act.

The statute's framework requires issuers and sellers of securities to provide investors with the information necessary to make well-informed investment decisions. The Act also prohibits the sale of a security unless it is registered with the SEC.

If the following requirements are met, a transaction will be considered a security if:

1. 'It is an investment of money;
2. There is an expectation of



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- profits from the investment;
- 3. The investment of money is in a common enterprise;
- 4. Any profit comes from the efforts of a promoter or third party.'

Note that although 'money' is used, the Howey Test has been expanded to include other assets. According to the SEC, based on the test, one should assume that ICOs are 'securities'. However, to avoid falling prey to the Howey test, cryptocurrencies can be (and often are) decentralised. In other words, cash with no owner or development team, and therefore no expectation that a company may profit. For example, the transaction of Bitcoin has not been registered with the SEC, because currently no one has been identified as responsible for the registration process. The lack of clear legislation allows ICOs to function without

regulation, putting crypto lawyers and investors in a vulnerable position.

Clayton stated in his warning to crypto lawyers that when counselling clients on the status of an ICO, some ‘appear to provide the “it depends” equivocal advice, rather than counselling their clients that the product they are promoting likely is a security’.

To improve the circumstances for attorneys and investors alike, crypto lawyers would benefit from improved transparency in the cryptocurrency market. Sage communications advice and a strategy that supports legal counsel can help merge the seemingly competing interests of cryptocurrency and transparency. After all, part of the appeal of cryptocurrency lies in its anonymity and ambiguity.

A proactive approach includes assisting crypto lawyers as they work with their clients and lawmakers to develop a solid legal foundation and set of regulations for the cryptocurrency market – while also managing the client’s reputational risk through the process. Improving transparency does not mean giving up the very ideals that make cryptocurrency so revolutionary. It simply means correcting the misunderstandings about cryptocurrency and doing so on your own terms – not that of a regulator or litigator. Being proactively transparent will protect cryptocurrency’s appeal, not harm it.

The prosperity of the cryptocurrency market will increase the need for more advisors and legal counsel. A transparent and more proactive

approach could assuage the SEC, inform the general public and reassure investors. Attorneys who take the necessary steps to clearly communicate externally during this uncertain period will have a head start on defining their role or specialty in the cryptocurrency market. They will also be protecting their clients in the court of public opinion, before any further regulation or litigation appears.

As it stands, crypto lawyers and their clients risk being at the mercy of an uninformed narrative.

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VAT split was introduced in Romania in October 2017 and is mandatory beginning March 2018

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■ By Daniela Gavrilescu

The motivation for introducing the breakdown VAT payment mechanism (VAT split):

- To increase the voluntary compliance with payment operators by ensuring they have the financial resources to pay VAT to the state budget;

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- To reduce the VAT fiscal evasion;
- To ensure a fair competition environment by eliminating the benefits of economic operators with incorrect fiscal behaviour who do not pay VAT to the state budget.

The VAT payment mechanism does not change any fiscal rule in the field of VAT

These are some examples of existing rules which do not change:

- the rules for charging VAT;
- rules for registration of transactions in the VAT declaration;
- deadline for the VAT payment;
- deadline for submitting the VAT declaration to the state budget;
- rules for the reimbursement of VAT from the state budget.

There are no additional reporting obligations, or similar documents, required.

When does the VAT broken down payment mechanism apply?

From 1 October 2017 each company may choose to apply the mechanism (facilities are granted to those who choose to apply the mechanism). The benefits are:

- Cancellation of delay penalties related to the main tax obligations of VAT outstanding as of 30 September 2017, under certain conditions;
- A 5% reduction in income tax / microenterprise income for the fourth quarter of the fiscal year 2017.

From 1 March 2018, along with the companies which have chosen to apply the VAT split system, the companies which have unpaid VAT

over the limits mentioned by the law (RON 15.000 for big companies, RON 10.000 for medium companies and RON 5.000 for small companies) for more than 60 days from the due date will be forced to apply the VAT split system. The companies which are in insolvency procedures will also be forced to apply the VAT split system.

All VAT payers which are forced to apply the VAT split system will be registered by the fiscal authorities in the official Register of entities who apply for VAT, beginning 1 March 2018. After registration, these companies have a VAT account opened by their commercial bank or by treasury, and they are obliged to include this VAT account on their invoices.

VAT breakdown payment mechanism

Operations for which the mechanism is applicable: taxable transactions in terms of VAT for the place of delivery or of the provision are considered to be within the terms of VAT in Romania.

Operations for which no mechanism applies: the operations for which the customer is liable for the VAT transactions subject to the special VAT regime – the regime of second-hand goods, travel agents



Daniela Gavrilescu

scheme, scheme for farmers, etc. The law stipulates that all **VAT registered companies** (regardless of the article under which the company was registered) **will have to make the payment to the suppliers which are applying the split VAT mechanism by splitting it into 2 payments**: value without VAT in the bank account of the supplier and value of VAT in the VAT account of the supplier. The obligation applies to the invoices issued, starting with the date of publication in the Register. Considering the information above, all the VAT registered companies will have to take account of the following points beginning March 2018:

- All suppliers must be checked on the online ANAF system before any payment, to verify if they are registered in the official Register and whether VAT split payment should apply (The register is available at this address: <https://www.anaf.ro/RegPlataDefalcataTVA/>);
- If the supplier which applies the VAT split system did not mention the VAT account or the VAT split system on the invoice, this does not mean that the payers are exempted from making the split payment;
- This check has to be continuous (to all the payments) because the companies may enter and exit this system anytime;
- The result of the check should be

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- kept (printed or saved) to justify the payment with split or not;
 - If the supplier is applying the VAT split system, the payer has to be sure that they split the payment (cash payments or card are excepted), or, if not, correct it in 7 days to avoid the penalties (0.06% per day);
 - Partial payments are also done through the split.
- If you require any further information on this newly introduced VAT system, we will be pleased to help.

Welcome to Switzerland – Residence and Flat Taxation

■ By Karin Buschdorf

Switzerland is a small country in the heart of Europe, but not part of the European Union. For centuries it is known for its stability, neutrality, its business-friendly environment and for its high-level lifestyle.

Actors like Charlie Chaplin, Sir Peter Ustinov and Sophia Loren, celebrities like Phil Collins or Tina Turner and business leaders like the late IKEA magnate Ingmar Kamprad lived or live in Switzerland. For EU-citizens, it is not difficult to obtain residency in Switzerland based on the bilateral treaties between Switzerland and the EU. Wealthy foreigners often opt for the flat taxation programme, an interesting way to lawfully reside in Switzerland with a special and highly competitive tax regime.

In order to reach a flat taxation agreement with the relevant Canton of residence, it is recommendable to have the necessary preparations carefully made by a Swiss tax advisory firm. The tax authorities need to assess the financial situation of the client, the circumstances of



Karin Buschdorf

life and need to have reasonable assurance that the client will not pursue any gainful economic activity in Switzerland. These conditions have to be fulfilled and often clients struggle with the definition of a gainful economic activity. Generally speaking, the management of the own wealth is not considered as falling under the definition of a gainful economic activity, provided that investments are producing income abroad. Living exclusively on dividends of Swiss blue-chip companies might be problematic, if the assets

are held however by a declared foreign entity, the final dividend disbursement to the individual client originates from abroad and is not considered to be in breach of the requirements to obtain or maintain flat taxation status in Switzerland.

Clients are allowed to move to Switzerland with their family, including dependant relatives; husbands or wives, children and mothers in law. Depending on the nationality of the client, Switzerland distinguishes between EU/EFTA citizens and non-EU/EFTA citizens, the annual lump sum to be paid for federal, cantonal and municipal taxes is in the range of 160'000.- EUR to 300'000.- EUR. This sum is due regardless of the income generated abroad and is only adjusted in exceptional circumstances. Not all Swiss Cantons, which are like Federal States, offer flat taxation arrangements. The individual requirements of clients have to be taken very carefully into consideration. Is the client coming alone or does the client have a family? Will the children need an

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international, English speaking school nearby? Is the proximity to an airport required or can the residence be one or two hours drive away? Will the client look for leisure activities such as golf, riding, sailing? But also, broader aspects of the personal and business life need to be taken into account. Entrepreneurs owning business participations abroad might need to travel on a regular basis out of Switzerland for meetings. Succession planning aspects have to be handled with reasonable care and anticipation too.

Flat taxation agreements offer a very competitive tax regime for wealthy individuals and families, paired with the stability, safety and high quality

of the lifestyle in Switzerland, they are a most efficient and sought-after opportunity. At TROBAG, we are specialised in handling and successfully implementing flat taxation agreements for clients from literally all over the world. We also assist our clients through our broad and efficient network within Switzerland to find a new home, to comply with all administrative requirements and to ensure that the new life in Switzerland becomes a safe, enjoyable and rewarding experience.

TROBAG offers advisory, tax, accounting and fiduciary services to international clients out of its headquarters in Switzerland. For almost 50 years, we have established

a reputation as reliable partner for a demanding and sophisticated clientele, valuing our Swiss approach combined with our global expertise.

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18 Taxation on Cryptocurrencies in Italy

■ By Dr Alessandro Stradi

The recent position taken by the Italian Revenue Agency ('Guideline 956-39/2018') has provided us with ample opportunities to share our knowledge on tax matters with regards to cryptocurrencies here in Italy. During the past weeks, many clients have contacted our offices for the 2017 tax declaration (the so called 'UNICO' and '730/2018'), and expressed an interest in learning more about investments in financial markets. They are particularly curious about cryptocurrencies, such as 'bitcoin'.

In order to get an idea of the volume of cryptocurrencies nowadays,



Dr Alessandro Stradi

we invite you to visit the website <https://coinmarketcap.com>. Here you will see a detailed list of all cryptocurrencies, including Bitcoin

(in uppercase, we refer to the specific asset and not the generic set of cryptocurrencies, which we indicated earlier with lowercase). A little while ago, the capitalization of the market amounted to USD 417,935,131,437. This is an impressive figure and certainly destined to represent a significant proportion in the portfolios of numerous private and institutional investors. This global market, not brokered by companies and supervised financial institutions, has gained considerable importance in recent years. The capitalization of Bitcoin alone amounted to USD 156,352,722,960, around 37% of the total market.

What can XLNC member firm Abaco



do for those (Italian residents) who have invested or intend to invest in cryptocurrencies? Our firm aims to assist them professionally with the many tax obligations.

Professional operators: the activity of intermediation of traditional currencies with cryptocurrencies, made in a professional and habitual way, constitutes a relevant activity for IVA, IRES and IRAP taxes. It is therefore subject to customer due diligence, registration and reporting obligations pursuant to Legislative Decree 231/2007; outside of the business activity: the provisions of art. 67, paragraph 1, letter c-ter of the TUIR¹. In order to correctly tax the transaction, it is necessary to obtain specialist advice (that our firm can offer), once the technical aspects of the transaction have been made known (e.g. type of wallet used, average value in EUR, type of contract, etc).

For income deriving from transactions on the FOREX market and from Contracts for Difference (the so-called 'CFD', financial derivatives contracts), we consider

applying the provisions of art. 67, paragraph 1, letter c-quater, of the TUIR. Regarding these operations, a detailed study is required.

Regarding fiscal monitoring (Decree Law 167/90), the Revenue Agency, with an interpretation discussed at this time not only on national economic headlines but also by the main think-tanks active in tax matters, considers that virtual currencies should apply the same principles established for transactions involving traditional currencies. It is the same for anti-money laundering provisions.

The indication is therefore to fill in the RW table, indicating the Code 14 to Column 3. This also determines that there is a recurrent fulfilment, from year to year, as long as the tax-payer does not decide to get rid of the assets held. Therefore, as always, it is important to rely on qualified professionals and experts when managing 'complex' financial activities. Finally, the Agency excludes that these currencies are subject to IVAFE², because this tax is applicable to deposits and current accounts of a 'banking' nature. We will return to discuss this topic in the future as it is becoming more and more important considering the many aspects of interest that are

involved. We believe that there will be a debate about the assimilation of cryptocurrencies to foreign currencies. Additionally, there will be a necessary study of the notion of the 'key' (private or public) through which each cryptocurrency operates on the market, as well as its actual availability, as different tax provisions and obligations will derive from these.

We will certainly monitor all developments in the Italian environment and would be willing and able to assist fellow XLNC members and their clients to understand and comply with the rules.

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¹ With the acronym 'TUIR' we indicate the 'Italian Single Text' in Direct Levies.

² A special taxation above financial asset owned abroad.

XLNC Member Firms

In all future issues we will present the new member firms since the last issue of the XLNC Magazine. In this first issue you can find a list of all XLNC member firms in alphabetical order. We warmly welcome all of you!

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