

The logo for XLNC, featuring the letters 'XLNC' in a bold, white, sans-serif font, enclosed within a white rectangular border that has a slight 3D effect.

XLNC

**GLOBAL PROFESSIONAL
EXCELLENCE**

A photograph of St. Charles's Church (Karlskirche) in Vienna, Austria, at dusk. The church is illuminated with warm lights, and its reflection is visible in the water in the foreground. Two tall, fluted columns stand on either side of the main entrance. A dark, abstract sculpture is visible in the lower-left foreground.

**XLNC Spring
Conference in
Vienna, Austria**

Issue No. 02 | November 2018 | © XLNC AG

MAGAZINE

Editorial

Dear XLNC Member,

Welcome to the Autumn issue of the XLNC magazine. Within you will find worthwhile articles from all across the globe.

In addition to providing you with a brief review of the inaugural XLNC Conference in Madrid, we also hope to pique your interest in the XLNC Spring Conference 2019 in Vienna.

XLNC member firms can share their company news in this magazine, and in this issue Gerald Edelman are proud to announce their new HR consultancy services.

Turn to the XLNC Focus Group pages to read updates from the newly-established Taxation Focus Group (TFG), the M&A and Corporate Finance Focus Group and the Technology Focus Group, all of whom held meetings at our last Conference for the first time.

We are also proud to announce another new Focus Group on Art & Media, led by Dr Alessandro Stradi. Read through his objectives and plans and connect with him if this Focus Group is of interest to you.

You can look forward to reading a variety of topic-related articles: Richard Kleiner (UK) shares his thoughts on the subject of UK audit reforms – primarily centred around the level of fees generated from non-audit services. Michael Hirth (Austria) informs us on dealing with customers' data on social media platforms in light of the new GDPR provisions. Victor de Castro Esteller (Spain) reports on Inheritance Tax in Spain – good news for non-residents. Michael Derin (Australia) discusses key factors for entrepreneurs to succeed.

Mihaela Mitache and Amelia Savu (Romania) keep you updated on quarterly dividends distributions in Romania, while Sabine Münzel (Germany) writes about the latest legal news in the field of Digital Inheritance. Dr Mashal AlZarooni (UAE) shares the latest information on the hot topic of the newly-implemented-in-2018 VAT in the UAE, and Richard Kleiner (UK) discusses Key Risks in Private Equity Investment. Last but not least, Prof Mark A. Cohen has written an interesting article on

the curious relationship between lawyers and accountants.

A big thank you to all the authors in this magazine for their contributions. We are particularly pleased to note the variety of countries that they represent.

We wish you an enjoyable read and if you are interested in having your voice heard or if you have some interesting company news and would like to contribute, then please get in touch with Barbara Reiss at b.reiss@xlnc.org.

Our head office will be closed from 21 December 2018 (5pm) to 4 January 2019 for the Christmas holidays. The office will reopen on Monday, 7 January 2019.

We are looking forward to seeing you all very soon and would like to wish everybody a relaxing and peaceful festive period. We hope that you will all be blessed with happiness over the holidays and enjoy a great start to the New Year.

Your XLNC Team

Contents

| | |
|--|----|
| ■ EDITORIAL..... | 02 |
| ■ CONTENTS, CONTACT, DISCLAIMER..... | 03 |
| ■ XLNC EVENT REVIEW | |
| → XLNC Autumn Conference, Madrid, Spain 14-16 September 2018 | 04 |
| ■ XLNC EVENT PREVIEW | |
| → XLNC Spring Conference, Vienna, Austria 17-19 May 2019 | 06 |
| ■ XLNC INTERNAL NEWS | |
| → Publishing Opportunity | 08 |
| → Gerald Edelman's new HR consultancy service | 08 |
| ■ XLNC FOCUS GROUPS | |
| → Kick-off meeting of the XLNC Tax Focus Group in Madrid on 15 September 2018 | 09 |
| → Update on the M&A/Corporate Finance Focus Group | 11 |
| → Insights from the Recent Technology Focus Group Meeting | 12 |
| → New Focus Group on Art & Media | 13 |
| ■ COMMON INTEREST | |
| → A new outlook for Facebook Insights? | 14 |
| → The end of the discrimination to non-resident for Inheritance Tax in Spain | 16 |
| → UK audit reforms? | 18 |
| → Can you succeed as an Entrepreneur if you treat your Business like a Hobby? | 20 |
| → News about the digital heritage | 22 |
| → Quarterly Dividends Distribution is finally possible in Romania | 23 |
| → Key Risks in Private Equity Investment | 25 |
| → Lawyers and Accountants: Collaborators and Competitors in the Multidisciplinary Age | 27 |
| → VAT in UAE | 31 |
| ■ NEW XLNC MEMBER FIRMS | 32 |

Contact

XLNC AG

Chamerstrasse 172
6300 Zug
Switzerland
T: +41 41 911 22 77
F: +41 41 911 22 88
E: info@xlnc.org
W: www.xlnc.org

Disclaimer

The information provided in this XLNC magazine came from reliable sources and was prepared from data assumed to be correct; however, prior to making it the basis of a decision, it must be double checked. Ratings and assessments reflect the personal opinion of the respective author only. We neither accept liability for, nor are we able to guarantee, the content. This publication is for XLNC internal use only and intended solely and exclusively for XLNC members.



Delegates networked and mingled in a relaxed environment

Madrid, Spain | 14-16 September 2018

Inaugural XLNC Autumn Conference

4

The first XLNC Conference took place in Madrid, Spain, during 14-16 September 2018.

We were delighted to welcome over 60 participants from all over the world. The intimate setting at the InterContinental Hotel in Madrid made this event a very special one, and getting to know fellow XLNC colleagues made it a valuable one.

The Conference started on Friday afternoon with an optional VIP tour to the Madrid Palacio Real, which included a few areas in the palace not open to the general public. This was followed by a Welcome Cocktail Reception and Dinner, which allowed our delegates to mingle and network in a relaxed environment.

On Saturday morning, Richard

Kleiner (Gerald Edelman, UK), Chairman of the XLNC Steering Committee, provided a warm welcome before introducing our Keynote Speaker, H.E. Dr Benita Ferrero-Waldner. Her impressive biography has already been included in a previous issue of the XLNC magazine.

Ferrero-Waldner, in her speech on 'Refounding Europe?', discussed the necessity for the European Union (EU) to reposition itself at this important moment, to become more united, stronger and a real political actor. She also talked about migration, as well as the technological revolution and digitalisation which are creating new working conditions. In light of increasing populism and nationalism which has seemingly undermined democracies, Ferrero-Waldner highlighted ideas and proposals to move forward in the EU during these challenging times.

The next part of the morning



H.E. Dr Benita Ferrero-Waldner inspired the audience with her speech 'Refounding Europe?'

session proceeded with an introduction to all XLNC member firms participating in the event, as well as all the candidate firms in attendance. After the break, there was an open discussion involving all members and candidates, highlighting information about the structure and functioning of XLNC as well as any other issues highlighted by the attendees.

In the afternoon, there were four separate Focus Group meetings, during which experts from all over the world exchanged technical knowledge, while exploring opportunities for future joint business projects: the Tax Focus Group, chaired by Graham Busch (Gerald Edelman, UK) and Dr Benjamin Cortez (Schlecht und Partner, Germany); M&A and Corporate Finance, chaired by Dr Barbara Fasoli Braccini (MFB Partners, Italy) and Carl Lundberg (Gerald Edelman, UK); Marketing & Business Development, chaired by Nishi Chundee (Gerald Edelman, UK); and Technology, chaired by Gerald Paolilli (Paolilli, Jarek & Der Ananian, LLC, USA). Read news and updates from XLNC Focus Groups on pages 9 ff.

After a most interactive day, the Conference ended with a dinner and flamenco show at El Corral de la Morería.

For those not too tired from the



Keynote speaker H.E. Dr Benita Ferrero-Waldner and Richard Kleiner, Chairman of the XLNC Steering Committee

night before, an additional day-trip was organised on Sunday morning. Only 30 minutes away from Madrid, the delegates were taken to visit the Royal Monastery of San Lorenzo de El Escorial, one of the best reflections of the ideological and cultural aspirations of Spain's 'Golden Age', as expressed through the unique blend of Italian and Flemish artistic styles favoured by Philip II in the 16th century and one of the most important heritage sites to be found in Spain. It was a wonderful Conference, providing a fantastic opportunity for XLNC members to meet and get to know one another. We are now already looking forward to the next XLNC Conference, which will take place in Vienna during



A lively discussion followed the keynote speech

17-19 May 2019. Registration is already open. Members should contact Anita Szoeko (szoeko@xlnc.org) if you have not yet received an invitation to register.



Getting to know each other during Welcome dinner and Welcome reception





Vienna – Town Hall

Vienna, Austria | 17-19 May 2019

6

XLNC Spring Conference

Although 2018 is not yet over, preparations for the XLNC Spring Conference 2019 are already in full swing. Discover this fascinating city together with your XLNC colleagues.

Vienna's imperial grandeur is the legacy of the powerful Habsburg monarchy. But Vienna offers more than rich history – its past is alive in its present. Vienna is also at the cutting edge of contemporary art, design and architecture. You can enjoy spectacular cakes in one of Vienna's traditional coffee houses, and you also can find innovative fresh new flavour combinations from creative chefs. There are a diverse ensemble of museums in the innovative MuseumsQuartier, and also many Old Masters and treasures in the Kunsthistorische Museum, one of the Habsburgs' most



Dr Thomas P. Müller

dazzling palaces on the Ringstrasse. A diverse social programme has been put together for all participants to enjoy this city to its fullest.

The Conference will be held at the Imperial Riding School Renaissance

Vienna Hotel, centrally located.

Keynote speaker Dr Thomas P. Müller will no doubt engage and fascinate you with his speech 'Criminal Psychology and the Methods to Interpret Human Behaviour'. He has a PhD in Criminal Psychology and Forensic Psychiatry from the University of Innsbruck in Austria.

From 1982 to 1992, Müller trained at the Federal Police School in Innsbruck and, after serving in different police forces, he became a member of the SWAT team of the Federal Police Force. After taking a break to pursue further education, he became the Chief of the Criminal Psychology Service in the Federal Ministry of the Interior, Group D/INTERPOL. Since that time, he has routinely taught and researched in the areas

of criminology, abnormal criminal psychology, hostage negotiation, threat assessment, criminal personality profiling, crime scene assessment and criminal investigation analysis.

He has served as a Hostage Negotiation Coordinator and translator for the Austrian Secret Service Department, under the instruction of the CIA. He conceptualised and initiated the ViCLAS-System (Violent Crime Linkage Analysis System) for all law enforcement agencies in Austria. He also initiated the ViCLAS-System in several states in Europe, including Germany, Norway, Sweden, Denmark, Portugal, the UK, Switzerland and Poland. He was also responsible for the development of the National Center for the Analysis of Violent Crime / Criminal Psychology Service within the Federal Ministry of the Interior in Austria.

Müller has taught many courses to law enforcement agencies and universities, within the Ministry of the Interior and the Department of Justice. He has also lectured to professional groups such as judges and public prosecutors throughout Austria, Germany, England, Italy, Scotland, Poland, Canada, Australia, the USA and South Africa.



Vienna – ‘Fiaker’, horse-drawn carriages for city tours



Vienna – Saint Stephen's Cathedral

The personal exchange between XLNC experts also forms a significant part of the event and you will have many opportunities to socialise and get to know each other better. Through dialogue and a healthy exchange of ideas, experiences and knowledge among peers, participants of Focus Group meetings will be able to learn from each other and find better approaches and solutions to serving their clients better. Focus Group meetings have been scheduled in two consecutive rounds, so each delegate can participate in at least two of these meetings.

In addition, have a look at our online conference programme to stay abreast of the latest event information and get inspired by detailed sightseeing tour descriptions.

If you have not already registered for the conference, please do so as soon



Vienna – monument of Johann Strauss, the ‘Waltz King’

as possible. Registration is already open and all XLNC members should have received an email from us with regards to registering for this event. Members should contact Anita Szoeka (szoeka@xlnc.org) if you have not yet received an invitation to register. The Early Bird Registration Deadline for this event is 30 November 2018.

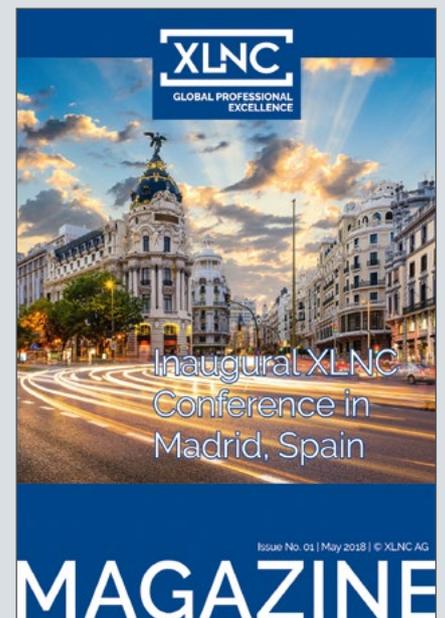
Have you got news to share with other XLNC members?

A new partner perhaps?
Or new offices?
Or even new service offerings?

Keep us up-to-date with the latest happenings in your company or on any successful dealings you had with fellow XLNC members! In this magazine, you will be able to announce if your firm added a new partner, if your company won an award, if you moved offices, if you offer new additional services, etc. We invite you to share your views, thoughts and

interests, and the latest news from your profession with the entire XLNC magazine readership by contributing an article.

This is your magazine. All submissions are invited. (The deadline for inclusion in the next issue is 02 April 2019) Please email Barbara Reiss at b.reiss@xlnc.org with your contribution.



8

Gerald Edelman's new HR consultancy service

People are paramount to a business' success and hiring and managing people can quickly present both unexpected and challenging scenarios.

Making sure that your people are well managed is incredibly important. From your initial interview process and producing an effective offer letter,

to ensuring that you are equipped with the knowledge to exercise your rights as an employer, having the correct systems and practices in place can make all the difference.

In the contemporary working environment where employee expectations, advancements in

technology and frequent changes in employment legislation can create a minefield of complexities to navigate, both business owners and even the most experienced HR professionals can benefit from additional support.

Gerald Edelman's HR consultancy service has been implemented

to help clients to manage their organisation's talent and personnel issues in a variety of ways.

HR consultation days offer access to a CIPD qualified consultant who will provide insight, guidance and assistance on how to move forward with personnel related goals, or on any complex case work such as disciplinary, grievance, redundancy and gross misconduct issues or developing a long-term HR strategy.

HR project work can be used

XLNC member firm

Gerald Edelman

Audit, Accounting, Tax, Corporate Finance, Strategy, Management Consulting
London, UK

T: +44 20 7299 1400

W: www.geraldedelman.com

Richard Kleiner

E: rkleiner@geraldedelman.com

to support businesses going through a period of change or experiencing significant growth. In these circumstances organisations often require dedicated resource on a project basis across multiple aspects of HR, such as measuring employee engagement and driving new initiatives, reviewing and designing a robust end-to-end recruitment process or designing a reward and recognition package.

Gerald Edelman's HR retainer service is designed to provide access to advice and guidance on day-to-day personnel issues for a fixed monthly fee. Clients often use this option for reassurance to internal HR departments or for procedural guidance. The retainer service is telephone based however, face-to-face consultation days can also be built into the package. This service would typically cover issues such as employee contract review, creating bespoke employee contracts and staff handbooks, and recruitment assistance.

Outsourced HR for SMEs is useful for businesses that are unable to anticipate the nature of their HR



Richard Kleiner

needs but would like the reassurance of knowing that support is available. This service aims to provide a solution for businesses that would prefer not to commit to a fixed monthly fee or large project work by providing access to consultants on a fixed hourly rate with no long-term obligation.

Whatever the size, sector and in-house HR capabilities of their business, and whether they would like occasional support or more integrated assistance, the Gerald Edelman team can work in partnership with their clients to manage their HR needs.

Madrid, Spain | 15 September 2018

Kick-off meeting of the XLNC Tax Focus Group

■ **By Dr Benjamin Cortez
and Graham Busch**

The newly formed XLNC Tax Focus Group ('TFG') held its first meeting on 15 September 2018 in Madrid during

the inaugural XLNC conference. The TFG – one of various newly formed focus groups – strives to be a strong network of tax practitioners within the XLNC network, actively addressing and thereby helping

to solve tax related issues. Prior to the Madrid conference the TFG had held a joint conference call on 21 June 2018 with strong participation (Minutes of the

...next page

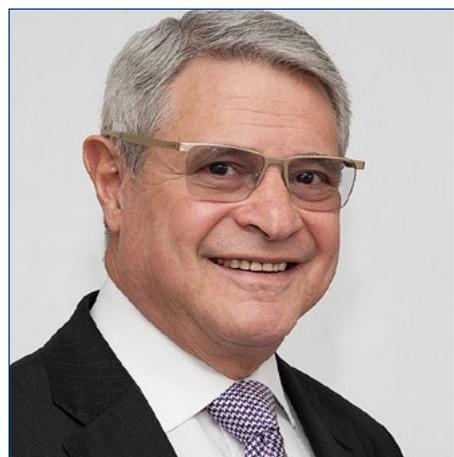
conference call are available upon request, also for non-TFG members), organised by the co-chairmen of the TFG Graham Busch (Gerald Edelman, UK) and Dr Benjamin Cortez (Schlecht und Partner, Germany).

The TFG meeting in Madrid was opened with a hearty welcome to the participants by Graham Busch. Summarising the results of the previous joint conference call, it was reconfirmed that quarterly calls will be held and with a growing TFG membership, consideration of the timing for various time-zones will be given. The dates of the conference calls will be 29 November 2018 and 28 February 2019 prior to the Vienna conference. Interested members should contact the TFG to receive the dial-in details.

As a result of discussions about the means and ways the TFG



Dr Benjamin S. Cortez



Graham Busch

members can work together, a closed LinkedIn TFG group has been set up to foster a more direct and ongoing interaction amongst the members. Interested members should also contact the TFG to be invited into the LinkedIn group.

Apart from organisational topics, four technical presentations were held during the TFG meeting. Dr Alessandro Stradi (ABACO, Italy) held a presentation on the Italian Branch Exemption, issued on 28 August 2017 by the Italian Tax Authorities. The underlying purpose of the rule is to allow Italian taxpayers to opt for the exemption of the profits and losses pertaining to their foreign branch and thereby avoid double taxation and increase the competitiveness of Italian companies in overseas markets. Sonal Shah (Gerald Edelman, UK) illustrated the benefits of the UK LLP as a viable international trading entity. Specifically, for non-UK-residents the UK LLP based tax transparent treatment is an interesting option for channelling international trading. With an increase in international labour mobility, associated tax-related issues are increasing. In his presentation, Timothy Quinn (Azure, Australia) highlighted the pitfalls and opportunities of remote workers across borders, illustrating the associated risks and showing



how awareness of these is essential for the benefit of our clients. With a trending German real estate market and a strong domestic economy, inbound real estate investments into Germany have recently increased. Dr Benjamin Cortez described the tax considerations of inbound real estate investments into Germany.

Interested members should feel free to contact the noted presenters or the TFG for the presentation slides or to address any questions or issues they may have on these topics. All inquiries can be directed to Graham Busch and/or Dr Benjamin Cortez.

XLNC member firm
Schlecht und Partner
Wirtschaftsprüfer Steuerberater
 Audit, Accounting, Tax, Corporate Finance, Management Consulting
 Stuttgart, Germany
 T: +49 711 40 05 40 30
 W: www.schlecht-partner.de

Dr Benjamin S. Cortez
 E: b.cortez@schlecht-partner.de

XLNC member firm
Gerald Edelman
 Audit, Accounting, Tax, Corporate Finance, Strategy, Management Consulting
 London, UK
 T: +44 20 7299 1400
 W: www.geraldedelman.com

Graham Busch
 E: gbusch@geraldedelman.com

Update on the M&A/Corporate Finance Focus Group

■ By Dr Barbara Fasoli Braccini

This Focus Group's main objective is to create a 'community' of XLNC members who are experts in the field of M&A and/or Corporate Finance to exchange knowledge and experiences, business referrals and best practices.

We believe the most important element of a successful cooperation is personal contact. Therefore we want to build a strong network of XLNC M&A experts, who get to know each other very well during our Group meetings. We offer much more than just 'small talk', but during intense working sessions, where we find out how our colleagues think, work and handle situations, we can build strong personal ties. We understand that referring business between members is a matter of trust and reliability. Developing individual and personal contacts is always essential, even in today's modern and globalised world. Meeting international M&A experts from XLNC member firms and actively exchanging news on latest developments from our area of practice will be very valuable for all of us and offers huge potential for creating a solid basis on which to build working relationships based on mutual trust and confidence.

Knowing each other and maintaining a sustainable communication always makes the difference, because you realise that a network is a good way to learn to speak



Dr Barbara Fasoli Braccini

the same language throughout the world for us and our clients.

The aim of the M&A and other related corporate finance activities Focus Group that I chair is to share information regarding M&A and Deal opportunities within the XLNC community and beyond. The importance of a 'social approach'

XLNC member firm

MFB Partners

Accounting, Tax, Legal, Corporate Finance, Strategy, Management Consulting, Fiduciary
Rome, Italy

T: +39 06 372 92 97

W: www.mfbpartners.com

Dr Barbara Fasoli Braccini

E: barbara.fasoli

[@mfbpartners.com](https://twitter.com/mfbpartners)

in a merger and acquisition process has been investigated by several studies that have highlighted the influence of relationships ('information brokers') in the acquisition decision-making process.

Deloitte's 2018 M&A trends report states that 'Companies are sending strong signals that they intend to aim for bigger M&A targets in 2018; sizable majorities of corporate respondents and private equity investors anticipate brisker activity over the next 12 months. If the legislative environment yields substantive changes, that could also lead to additional deal activity. This could help get the M&A train back on track – both in terms of deal volume and aggregate deal size. Corporations did maintain their appetite for deals in 2017, as the overall volume of transactions increased, though the aggregate value of deals was smaller.'

During the Focus Group discussion in Madrid, we agreed that the first step could be the creation of a database of different investment opportunities that we have in our respective countries (as companies, distressed assets, etc.) that could help and support our client's growth. The database could start using an easy 'software' like Dropbox where each member of the Focus Group could prepare a 'library' of clients who may be looking to expand internationally within certain sectors and collation of financial

...next page

parameters relating to each interested client in terms of deal, size, etc.

We also want to create and maintain a real interest which means that we would like to share knowledge through XLNC members.

Mergers and acquisitions involve a number of issues that are very much specific, according to the country where they take place. Typical regional factors with a direct impact on mergers and acquisitions include:

- company law;
- employment law;
- community law;
- regulations and regulatory powers;
- community codes of practice and standards;
- custom and embedded practices; and
- protectionism.

The opportunity that we have is to cover this knowledge gap and share the 'different points of view' thereby enriching ourselves.

This could be done by organising specific training courses or writing a guide including a chapter for every country or area.

Any XLNC member interested in actively participating in our Focus Group is welcome to contact Dr Barbara Fasoli Braccini directly. We look forward to having a well-visited Focus Group meeting during the XLNC Spring Conference in Vienna.

Insights from the Recent Technology Focus Group Meeting

■ By Gerald F. Paolilli

It was a pleasure to meet everyone who attended the inaugural meeting of XLNC in Madrid! In particular, I would like to thank

XLNC member firm
Paolilli, Jarek & Der Ananian, LLC
 Audit, Accounting, Tax,
 Corporate Finance, Strategy
 Boston (MA), USA
 T: +1 978 392 3400
 W: www.pjcpa.com

Gerald F. Paolilli
 E: gfp@pjcpa.com

the participants in the Technology Focus Group discussion.

As a group, we set out to develop an outline of priorities for future consideration.

In this Focus Group, there are likely three distinct areas that will provide valuable areas for future discussion:

- client specific technology industries;
- financial technologies; and
- technologies applicable to managing our practices.

In this first meeting, our discussion very quickly moved towards changes in accounting information systems.

The following observations were brought up as fuel for discussion:

- More than 50% of all business transactions are processed completely electronically;
- All payment transactions involve financial institution custody, which means that virtually all transaction data is available in electronic format even if a payment was submitted manually;
- Many vendors and customers require electronic invoice presentation;
- Most jurisdictions require electronic tax remittances.

Meeting participants discussed the various ways that emerging technologies have changed accounting processes. In particular, Adilson Galdeano (BRB São Paulo Serviços de Contabilidade LTDA, Brazil) and Hernan Groisman

(Estudio Groisman - Auditores y Consultores S.A., Argentina) provided valuable insight into how emerging technologies have changed accounting information systems in Brazil and Argentina.

As accountants we need to ask ourselves, 'Why are we continuing to maintain accounting systems using the paper document model?' While new technologies change our daily lives at a rapid rate, it is short-sighted to disregard how technological changes affect the guidance and services that we can provide to our clients.

Automation is changing all aspects of accounting systems in acquisition, recording, reconciliation, and



Gerald F. Paolilli

reporting of information. The changes brought about by robotics in other industries are now having a similar impact in the accounting

profession. When automation is combined with artificial intelligence, there is a significant potential for disruption, up to and including the displacement of employment positions. If we choose to disregard these technological changes, our clients will look elsewhere for assistance in implementing information technology for business decision making.

The next step in our action plan is to outline the accounting processes and tools available in today's technological environment. Meeting participants were asked to submit any documentation they have developed for gathering, processing, and controlling information flow using online data transfer software.

New Focus Group on Art & Media

13

■ By Dr Alessandro Stradi

Encouraged by XLNC head office, Dr Alessandro Stradi is pleased to set up the Art & Media Focus Group and has already started to carry out an in-depth analysis of the market, needs and demands.

Evaluating needs and demands for setting up this Focus Group the main reason is economically motivated, but that's not the only one:

- Works of art and artefacts have always represented an investment option in the portfolios of investors;
- The works of art and artefacts make up part of the tangible assets of numerous banks

- and financial institutions;
- There are many specialised art foundations;
- The art market, particularly the contemporary one, has been characterised by its ability to become a real industry;
- The main financial intermediaries, wealth managers and private sector, see the art market not only as a place of privilege as a place to network but also a way to create professional relationships;
- A few areas of the market still have a huge unsaid potential,
- At the same time there is an objective and widespread lack of professional services (legal and fiscal) that supports the market;
- By creating this service it could



Dr Alessandro Stradi

favour the growth of the art market, the possibility

...next page

to increase the number and value of the transactions;

- The increased interest in not only contemporary but also modern

XLNC member firm

ABACO

COMMERCIALISTI ASSOCIATI

Audit, Accounting, Tax, Corporate Finance, Strategy, Management Consulting

Modena, Italy

T: +39 059 343 400

W: www.studio-abaco.com

Dr Alessandro Stradi

E: alessandro.stradi@studio-abaco.com

and classic art would determine an exponential growth of the gross profit for the sector. This market has in fact been static for years and there is a wide variety of products that can be placed on the market.

Objectives of this newly-established Focus Group (operative with immediate effect) are:

- To find out which colleagues are interested, by trying to gain interest in those countries where contemporary art has established a flourishing market (USA, UK, Europe, China and Russia);
- To discuss fiscal topics in depth, in particular regarding the indirect taxation and the customs duties;
- To exchange information about tax regimes in the various countries;
- To guarantee legal support for the

contractual art (more specifically regarding the origin and the authenticity of the work); and

- To create a valid reference point for the operators of the sector (collectors, galleries, auction houses, institutional investors and financial analysts,...).

In the upcoming spring issue of the XLNC magazine, we aim to include a technical contribution as well as a presentation of our Focus Group.

If you are active in this field and would like to join this Focus Group, do contact Dr Alessandro Stradi directly, whether you require further information or if you would like to contribute. Let's start working together in this wonderful area of practice.

A new outlook for Facebook Insights?

■ By Michael Hirth

Promoting business in today's social media driven economy demands that companies have a presence on platforms such as Twitter, LinkedIn or Facebook. Thus, communicating via business accounts implies processing customers' data. Under new GDPR provisions, who is liable for the use of an audience's information? The social

media platform or the administrator of the account? The Court of Justice of the European Union ('CJEU') replied to this question on 5 June 2018³, by holding administrators of a Facebook fan page jointly responsible with Facebook. Facebook reacted to the decision with a 'Page Insights Controller Addendum'⁴ – however, is operating a fan page for businesses really safe?

Inside Facebook's processed data

Companies (or private persons) that set up a special user account for their business on Facebook create a Facebook page, commonly known as a 'Fan page', where they can introduce their business and post information.⁵ Setting up this page implies becoming administrator

03) Case C-210/16, Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH [2018]

04) www.facebook.com/legal/terms/page_controller_addendum [11th October 2018]

05) Nicolas Blanc, Wirtschaftsakademie Schleswig-Holstein: Towards a Joint Responsibility of Facebook Fan Page Administrators for Infringements to European Data Protection Law?, 4 Eur. Data Prot. L. Rev, 2018, p.120

06) Court of Justice of the European Union, The administrator of a fan page on Facebook is jointly responsible with Facebook for the processing of data of visitors to the page [Press release No 81/18] Luxembourg, 5th June 2018 available online: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-06/cp180081en.pdf> [11.10.2018]

of said page and use of a range of tools for analysing and configuring collected data. In particular, by using a tool called 'Facebook Insights', administrators collect anonymous statistical data about visitors to their page.⁶ This data is acquired through the information Facebook collects via evidence files ('cookies'), which contain a unique ID number that is stored on the hard disk of the user's computer.⁷ The use of these insights enables administrators to ask for demographic data, as well as information on the lifestyles and interests of the target audience; and to consequently take part in the processing of the audience's data.⁸

Processing data and liability under the General Data Protection Regulation ('GDPR')

GDPR aims to protect the processing of personal data and to determine therefore the entities that can be held liable. A key role in this context are entities that can be identified as the 'controller', a body which, 'alone or jointly with others, determines the purposes and means of the processing of personal data'⁹. Controllers are the entities held responsible when data processing infringements are committed, hence being identified as such is a sensitive issue. Their identification depends moreover not only on their capability to determine the purposes of the processed personal data, but also on their supervising authority when data is processed across



Michael Hirth

borders. Cross-border processing of data was also one of the emerging issues in the Case brought before the CJEU on 5 June 2018¹⁰: In fact, Facebook designated its subsidiary, Facebook Ireland, internally as 'the party responsible for all data processing activities within the territory of the EU'¹¹. The question that was brought before the Court

questioned this decision by arguing that another subsidiary, Facebook Germany, should be held liable for infringements within German territory and under German law.¹²

Key issues and the Court's response

As far as the application of national law is concerned, the Court found that German national law is applicable, as the controller has a presence in that Member State. The Court nonetheless also confirmed Facebook's decision to designate Facebook Ireland as the competent party in stating, in the line of the GDPR¹³, that the supervisory authority from one Member State, as long as it acts as 'main establishment', exercises the role of controller in cases of cross-border data processing.

...next page

Safety under Facebook's Page Insights Controller Addendum ('PICA')?

Published 12 September 2018 as an extension of the general terms and conditions¹, Facebook proposed an agreement assuming all main responsibility for compliance with data protection law. Furthermore, Facebook considers itself liable for fulfilling information obligations, rights of the persons affected, data security and notice of data protection breaches. Obligations remaining with page administrators include establishing an appropriate

legal basis for the use of Insight data and to notify every request by visitors or data protection authorities to Facebook.² Assuming the legal consequences of this agreement, administrators are mostly safe when promoting their business on their Facebook page. However, the establishment of a Facebook privacy statement remains indispensable, referring to the PICA as well as the use of Facebook Insights.

07) Nicolas Blanc, *ibid.* p. 120

08) Court of Justice of the European Union, *ibid.*

09) Art. 4 GDPR

10) Case C-210/16, *ibid.*

11) Nicolas Blanc, *ibid.* p. 121

12) Nicolas Blanc, *ibid.* p. 121

13) GDPR art. 55 and 56

1) www.facebook.com/legal/terms/page_controller_addendum [11.10.2018]

2) Jan Lennard Müller, Facebook reagiert auf EuGH Artikel, 20.09.2018, available at: www.it-recht-kanzlei.de/eugh-facebook-page-insights-controller-addendum.html [11.10.2018]

The core question in this case was about whether page administrators, although external to Facebook as social network operators, can be considered as controllers and therefore held responsible for processing data in connection with their page. In its decision, the CJEU found page administrators help determine the purpose of the visitor's

personal processed data, mostly by defining the page's parameters.¹⁴ Furthermore, the Court stated that 'the administrator of a fan page hosted on Facebook, by creating such a page, gives Facebook the opportunity to place cookies on the computer or other device of a person visiting its fan page, whether or not that person has a Facebook account.'¹⁵ For these reasons, the CJEU concluded that administrators must also be considered controllers, though jointly with Facebook.¹⁶

Although the Court's intention was to relativise this burden of responsibility for millions of page administrators, in stating that 'joint controllers' does not signify equal

responsibility¹⁷ ('operators may be involved at different stages of the processing of personal data and to different degrees, so that the level of responsibility of each of them must be assessed with regard to all the relevant circumstances of a particular case'¹⁸), as ramifications on business would be considerable. Indeed, were the CJEU's decision taken literally, should companies delete their pages to be sure to avoid transgressing data protection provisions? Certainly not, especially after Facebook reacted to the judgement by proposing an agreement about primary responsibility regarding fulfilling data protection obligations: the 'Page Insights Controller Addendum'.

XLNC member firm

**Leitner Hirth
Rechtsanwälte GmbH**

Legal
Graz, Austria
T: +43 316 710 111
W: <https://lhra.at>

Michael Hirth

E: hirth@lhra.at

14) Court of Justice of the European Union, *ibid.*

15) Case C-210/16, *ibid.*

16) Court of Justice of the European Union, *ibid.*

17) XPAN Law Group, *Are You a Joint Controller with Facebook?*

18) The CJEU's Judgment in Case C-210/16, 2018 available on: <https://xpanlawgroup.com/are-you-a-joint-controller-with-facebook-the-cjeus-judgment-in-case-c-210-16/> [11.10.2018]

The end of the discrimination of non-residents for Inheritance Tax in Spain

■ By Victor de Castro Esteller

Spain is divided into several regions with their own regulation in many issues, including taxes. For instance, there is a common law (federal law) for Inheritance and Donations

Tax (IDT) approved by the federal Parliament. Additionally, all the regions have adopted statutes that have reduced the taxation. This implies that there are seventeen different regulations depending on the residence of the testator or the

donee. The discrimination occurred if the testator or the donee lived outside Spain, when some assets were located in Spain or when the tax payers lived in Spain. The tax payers were not able to apply any regional regulation and they were obliged



to calculate tax quotas taking into account the federal law. It determined higher tax quotas and a clear discrimination for those tax-payers.

In 2014, a judgement from the Court of Justice of the European Union declared that the different tax treatment jeopardized the free movement of capital. As a consequence, the Spanish Parliament

approved a modification of the federal law in order to suit the IDT rules to the EU guidelines. In fact, the modification allowed non-resident people to apply regional laws – with many tax reliefs – instead of federal law, but only if they were resident in other EU countries.

In 2018, two judgements from the Spanish Supreme Court stated that EU guidelines are still violated by the tax treatment for non-EU resident people. Therefore, all the tax payers are already able to apply the regional tax reliefs. It means the definitive end to the discrimination and opens the door to claim the refund of the tax quotas paid in the past.

Wrapping up, beyond the application of the new interpretation to the future inheritances and donations, it is important to highlight that the tax quotas paid within the statutory



Victor de Castro Esteller

limitation period (the last 4 years) must be refunded by the Treasury. To get the refund plus delay interest (around 4% per year), the taxpayer should submit a claim based on the abovementioned judgements. Nowadays, taking into consideration the huge number of claims, the Treasury spends between one and two years issuing the refund.

XLNC member firm
PLANARTÚS, S.L.
 Audit, Accounting, Tax, Legal
 Barcelona, Spain
 T: +34 93 467 51 57
 W: www.planartus.com

Víctor de Castro Esteller
 E: vcastro@planartus.com

UK audit reforms?

■ By Richard Kleiner

As reported in the UK press, there is currently a fierce debate underway over the future of audit.

Any UK audit reforms will be primarily centred around the level of fees generated from non-audit services – predominantly by the Big Four. Across much of the European Union, auditors are not allowed to charge more than 0.7 times the audit fee for non-audit services. This constraint does not currently apply in the UK. Could the current issues be resolved with an independent body appointing certain company auditors? I read an interesting article from Board Agenda recently on this subject, most of which is set out below.

In July 2002, Lord Sharman, a former chairman of KPMG International, conceded that having a public-sector body audit listed companies might be a good idea.

Almost exactly 16 years later and history has, more or less, repeated itself. Last week, a partner with the international accountancy and audit firm Grant Thornton floated the idea that a public body should be appointing auditors to listed companies.

The two ideas are subtly different. Lord Sharman suggested the UK National Audit Office might audit companies or, at the very least, be the auditor of 'last resort', mirroring the role of the Bank of England to lenders.

Grant Thornton's proposal is that a public institution, such as the PSAA (Public Sector Audit Appointments), the body that appoints auditors for local authorities in England, should



Richard Kleiner

appoint auditors to companies. While the methods differ slightly, the aim remains the same: use a public, independent body to improve competition among audit firms and break the link that means auditors check the homework of the people who appoint them.

Lord Sharman's idea, though reasonable in principle, and perhaps a little shocking for audit firms at the time, failed to fly. Is Grant Thornton's proposal likely to meet with greater support?

Blocks

It's worth reviewing the role of the PSAA. Created in 2014, the PSAA appoints auditors for around 500 separate bodies, structured around five-year contracts based on expenditure of GBP 54.5m annually, including the body's costs.

However, the PSAA does not appoint auditors on a one-contract-at-a-time basis. To make the process more economic, the PSAA awards a contract that includes a 'block' of audits. Firms tender to be auditor, then the body allocates the audits. Auditors are therefore never pitching

to audit a specific local authority, thereby neatly side stepping potential conflicts of interest.

PSAA does one other interesting thing: It vets proposals for auditors to supply non-audit services to local authorities. In other words, non-audit services should be disclosed and approved by the PSAA before they can happen. Audit committee chairs faced with reorganisation like this could expect significant upheaval in their work and responsibilities.

However, a body like the PSAA for listed companies is not the only idea around addressed at resolving what has become an audit crisis. Others have suggested the Big Four firms – KPMG, PwC, EY and Deloitte – limit their activities to a certain percentage of the audit market. Some have suggested 80%, others say 60% would be a more reasonable slice of the cake.

Elsewhere, there are proposals for joint audits; two audit firms work on each audit. This is what happens in many European countries where the argument is that it ensures independence and allows smaller audit firms the chance to develop their capacity by sharing work. Yet another frequently floated solution is to have a committee of investors appoint the auditors. That might be difficult, given how fleeting the holding period is for some shareholders. However, those managing tracker funds might be cajoled into becoming involved.

Yet another idea that has so far received little airtime in the current debate is the possibility of reforming the ownership rules for audit firms. Currently, only qualified



auditors can own audit firms. Paul Boyle, a former chief executive of the Financial Reporting Council – the body that regulates auditors and writes the UK's corporate governance code – argues that a change in the rules would allow

more entrants to the audit market, thus making it more competitive.

Audit market, audit quality

Many in the audit industry concede that these are plausible reform proposals, but the Big Four firms are expected to argue that they miss one big issue: they probably do little to address audit quality.

The argument goes that the reliability of audit is where the scandals come from, the latest being KPMG's much criticised work on the audit of Carillion, the UK construction giant that failed at the beginning of this year (This week it also emerged the firm has also admitted 'misconduct' over regulatory work it did for BNY Mellon, an investment bank).

The Big Four will argue that audit quality issues are being mixed up with market issues. As one audit veteran commented, 'Having different players in a flawed system doesn't make the system any better'.

That leads to an argument that the underlying problem is a financial reporting system which now places too much store in telling the future and is accompanied by few obvious statements about the risk involved in compiling and, likewise, reviewing forward looking information. While companies are expected to define the future and auditors expected to sign off on it, big shocks remain likely.

Whatever the arguments, perhaps the bigger issue is whether government has the appetite, or bandwidth, to invest in significant change. History suggests it will opt for

...next page

XLNC member firm

Gerald Edelman

Audit, Accounting, Tax,
Corporate Finance, Strategy,
Management Consulting
London, UK

T: +44 20 7299 1405

W: www.geraldedelman.com

Richard Kleiner

E: rkleiner@geraldedelman.com

incremental change, well short of anything significantly disruptive.

More than a decade ago Lord Sharman wrote: 'I am completely confident that if audit firms

rededicate themselves to their stated obligation of working on behalf of the shareholders then the wind of change will only have blown beneficially for corporate governance'. Sharman may be disappointed. However, his hope

also jars with the current zeitgeist that companies must be run for a wider group of stakeholder than just stock owners. That alone could be enough to compel government into some form of action.'

Can you succeed as an Entrepreneur if you treat your Business like a Hobby?

■ By Michael Derin

Whether you need motivation to transform your idea into a functioning business or you just need a little boost when you're down, it's always good to seek wisdom from bright and successful minds who have experienced it all before.

Recently, I heard one successful entrepreneur say '***If you don't want to work ON YOUR startup for at least 10 years, don't start up at all!***' This was meaningful to me because, as a business owner myself with more than 25 years' experience in entrepreneurship, I can easily relate with that sentiment.

Very few startups hit the jackpot within the first two years. Some of the biggest household names in the world took years to get off the ground. If you want to hit your big audacious goals, commitment, tenacity and managing a heavy



Michael Derin

workload is inevitable. You have to be prepared for... hard work, hard work and then some more hard work!

I recommend you avoid falling into the trap of ***treating your business like a hobby***. We do hobbies for fun and whilst you should absolutely love what you do, you have to put in a substantial amount of effort

if you want to kick those goals.

So here are some of my tips in helping you achieve success...

Work hard. You have to work harder than anyone else. Being on top of your game and staying alert to the next opportunity is extremely important.

Be passionate about what you do. Growing up, my family taught me to choose a career path that I was passionate about. For me, helping other business owners achieve both life and career goals is what I love to do. Passion is the key to achieving success as an entrepreneur.

Start small, think big. Whenever you're trying something new, start out small – you can always scale up. When you were little, what was the first thing you learnt to do, walk or run? You should learn how to walk properly to avoid tripping over. The

time will come when running makes sense and you will have laid the foundations to enable success.

Minimise your decisions. Focus on the big ones. You'll handle small decisions along the way.

Watch out for burnout.

You have worked hard but aren't seeing the results. Many times this can be a trigger for startup burnout. Be mindful of this. Take a step away and have a break and recharge your batteries. Finding your happy place can give you a fresh perspective. Do some research. Do a SWOT analysis of your business. After all, you can't get anywhere without taking action. Try to accomplish one thing per day and bear in mind that there are so many external factors in play that can affect your business and sometimes things just take time to develop.

Find ways to improve your business processes. Look at everything with a critical eye, and always see the potential for improvement. You could follow these three simple steps:

- 1) Map processes;
- 2) Analyse processes; and
- 3) Implement to allow improvement.

Watch your competitors. Don't copy competitors, do it your way, but always keep one eye on them. If they launch a new product, you're the first one who should know about it.

Learn from your mistakes. They are all part of growing. I have always used mistakes as a way of identifying gaps in our business and



improving them. Changing your critical thinking to enable better decision making may also help you avoid repeating the same mistakes.

Talk to strangers. Make it fun for yourself. Meeting new people can bring you the most unexpected things in life. You never know who you might meet - a new business associate? An investor? An employee? A new client? ... the list is endless. Get out there and mingle!

Make yourself available to your team. As a leader, employees will look to you for counsel. Make yourself accessible for questions, concerns and conversation. Build one-on-one relationships at all levels within the organisation and empower your leadership team to do the same.

Have the right support structure around you. Accountants, lawyers, mentors; they are all people that should be your greatest advocates. Ensure you get the right people advising you and your business to enable you to

concentrate on what you do best.

Automate what you can. It's really important to improve your business efficiency. How many times have you heard the quote 'time is money'? Automating whatever can be done to reduce human effort can save man hours for more valuable work.

Run the numbers. You have to know where you stand at any point in time. Having accurate figures at the click of a button is essential to allow you to make big decisions.

XLNC member firm
Azure Group
 Accounting, Tax, Strategy,
 Management Consulting, Fiduciary
 Sydney, Australia
 T: +612 9238 1188
 W: www.azuregroup.com.au

Michael Derin
 E: mderin@azuregroup.com.au



News about the digital heritage

■ **By Sabine Münzel**

Hardly anyone lives today without digital media – nonetheless, the questions around this topic are still

XLNC member firm
SCHLARMANNvonGEYSO
 Audit, Accounting, Tax, Legal
 Hamburg, Germany
 T: +49 40 697 989 433
 W: www.schlarmannvongeyso.de

Sabine Münzel
 E: sabine@schlarmannvongeyso.de

receiving too less attention in the context of legal provision and the organization of succession. Although in a succession to the so-called digital heritage many unpleasant areas of conflict might arise.

One of the key questions about this topic is the following:
 Do heirs have the right to access the deceased's emails, their data in the cloud, and social networks?

In July 2018, an almost path-breaking decision of the German Federal Court of Justice (BGH) made the answer very clear:

The universal succession pursuant to § 1922 BGB (German Civil Code) also

covers the so-called digital heritage. This means that the heirs are just as fully entitled as the deceased himself. The relevant contractual agreements that the deceased has concluded with his contractual partners are therefore authoritative. These agreements are transferred to the heirs.

In many cases it was argued that in the case of a surrender obligation, the data of third parties which are worth to be protected would also be affected. Concerning this the BGH has now stated clear: For the digital heritage nothing would be different to the normal offline mail correspondence.

In these cases as well the

communication partner of the deceased has to expect that the letters fall into the hands of the heirs. The choice of medium would therefore be irrelevant to this question. The heir has to be treated as if he was the deceased himself. The protection of the personal rights of those affected persists and would not be affected by the fundamental inheritance of the digital heritage.

In its decision, the BGH has also clarified the conditions under which the rights of the heirs of the data of the deceased may be restricted or excluded in individual cases. In general, it would be possible that the respective contract between the deceased and his contracting party contains

provisions which exclude the heirs from access to the data. Thus, each user can set by appropriate regulations with its contracting parties that his heirs should not be allowed to view the data.

If the heirs are excluded from access to the data of the deceased by the general terms and conditions (AGB) of the provider, the strict legal requirements for the validity of the general terms and conditions must be examined in each case. A complete exclusion of the heritability of a contractual relationship cannot be stipulated by AGB, because such a contractual regulation would deviate too far from the legal regulation and would therefore be invalid.



Sabine Münzel

There is now – and this is very pleasing – much more legal clarity in this increasingly important area of life.

Quarterly Dividends Distribution is finally possible in Romania

■ **By Mihaela Mitache & Amelia Savu**

For investors in Romanian companies, these recent changes are of special interest, bringing about new possibilities to cash in on their investment results earlier, rather than in the future. Distribution of dividends during the year is permitted in most Member States of the European Union (EU), thus providing flexible cash management. In Romania, the limitation to distribute dividends only after year-end, and only after

the approval by the shareholders or associates of the annual financial statements, has been the rule since 1990 when the first private companies were founded after the fall of the communist regime. The approval of the financial statements could be done, after publishing by the government of the draft financial statements, between February and May of the next year, for the result of the previous year. So, if no dividends are remaining from previous years, the shareholders would have to wait until February of the next year to make a new distribution of dividends.

In July of this year, the Law no. 163/2018 for the modification of the accounting rules was published, which introduced the possibility of companies dividing the distribution of dividends quarterly during the financial year, not only once a year as it had been the case. It is important to mention the situation when a company has accounting losses brought forward: the losses must be covered with priority and only afterwards, if there is still any remaining profit, dividends may be distributed.

...next page

Recently, in September 2018, the application procedure further explained that entities who opt for the allocation of quarterly dividends would have to draw up and register with the authorities a set of interim financial statements, consisting of balance sheets, profit and loss accounts and any significant accounting policies.

In order to prepare the interim financial statements, an inventory of the assets, liabilities and equity of the company should also be provided. At the same time, in the general accounts, a new account 'Claims representing the dividends distributed during the financial year' should be created in order to keep a record of the dividends distributed, according to the law, during the course of the financial year which follows, to be settled after approval of the annual financial statements.



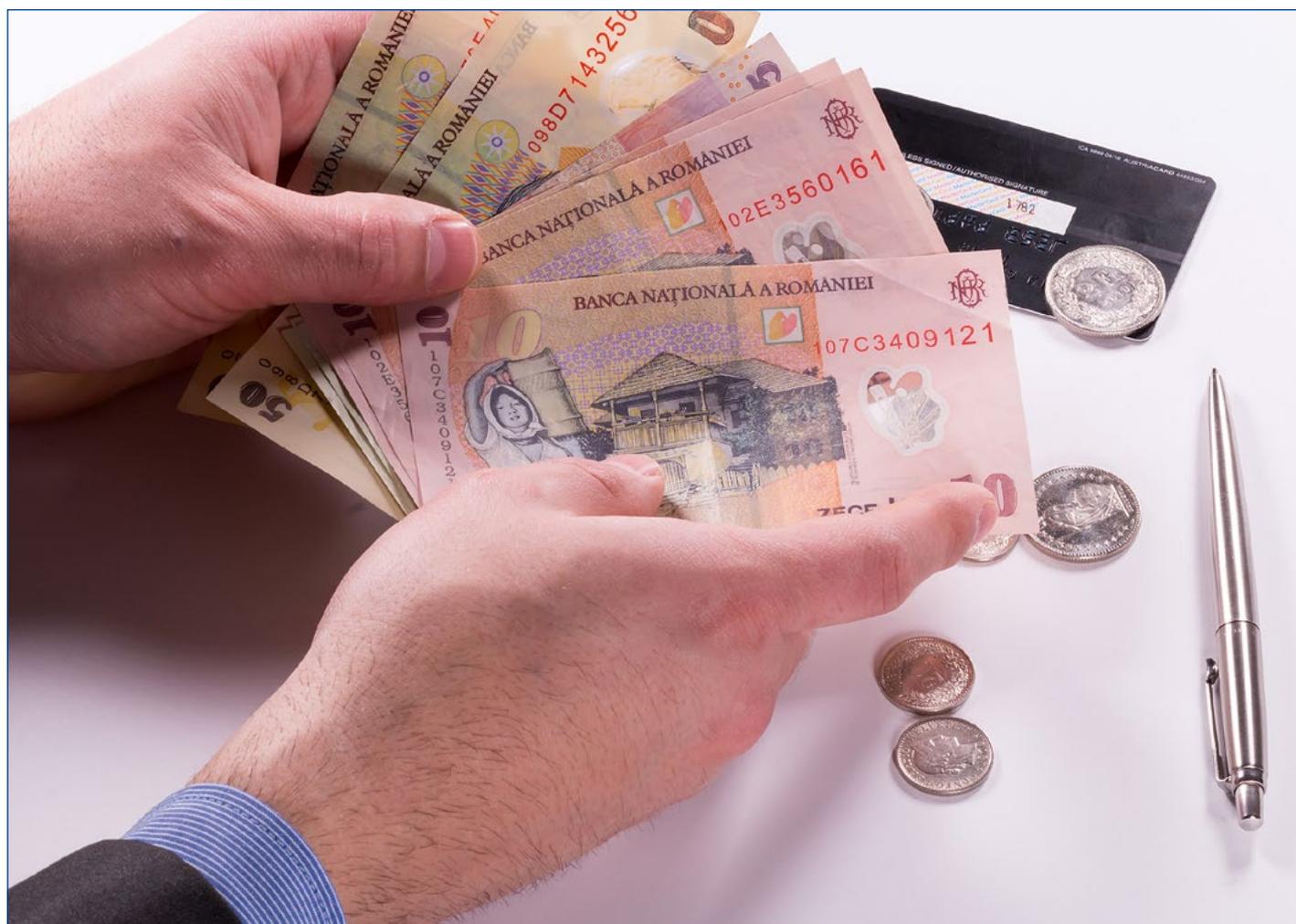
Mihaela Mitache

According to the order recently published, for entities which have opted for the distribution of quarterly dividends, on the basis of interim financial statements, the amounts of interim dividends distributed should also be recorded



Amelia Savu

in the interim financial statements as claims of shareholders or associates. The settlement of the dividends allocated during the financial year must be done in the next year after the approval of the annual financial statements, and the dividends distributed and paid during the



financial year which exceed the annual net profit will have to be reimbursed by the shareholders within 60 days of the date of approval of the annual financial statements. The reimbursement obligation is for persons who cashed dividends on a quarterly basis, and the management of the company is obliged to pursue the recovery of these sums and to take appropriate measures for this purpose.

Dividend tax

Domestic: As a general rule, dividends paid by a Romanian company to another Romanian company or individual are subject to a 5% tax. However, the dividends paid by a Romanian company are non-taxable if the beneficiary of the dividend has held, at the time of the distribution, a minimum of 10% of the Romanian company for an uninterrupted period of at least one year.

Non-resident: As a general rule,

dividends paid to non-resident companies or individuals are subject to a 5% withholding tax. However, as Romania is an EU member state, the EU Parent-Subsidiary directive can be applied. Therefore, dividends paid by Romanian tax on profit companies to tax on profit or similar companies resident in one of the EU member states are exempt from taxation if the beneficiary of the dividend has held, at the time of distribution, a minimum of 10% of the shares of the Romanian company for an uninterrupted period of at least one year.

In order to apply the provisions of the relevant Double Taxation Treaty (DTT), the non-resident recipient of the income should provide to the Romanian payer a tax residence certificate attesting its tax residency for the purpose of the DTT. In case the tax rates mentioned in the domestic legislation differ from the rates mentioned in the applicable DTT, then the most favourable rate will apply.

In conclusion, for the year 2018, investors in Romanian companies who would like to apply the quarterly distribution of dividends in 2018 should know that they can share as dividends the profit for the first three quarters of the year on the basis of the interim reports on the date of 30 September 2018.

XLNC member firm

S.C. QUARK CONSULTING s.r.l.

Audit, Accounting, Tax

Romania, Bucharest

T: +40 21 312 3949

W: www.quarkconsulting.ro

Mihaela Mitache

E: mihaela.mitache@quarkconsulting.ro

@quarkconsulting.ro

Amelia Savu

E: amelia.savu@quarkconsulting.ro

@quarkconsulting.ro

Key Risks in Private Equity Investment

Richard Kleiner

The following is an extract from an interesting paper that I read recently that was recently issued by MJ Hudson Allenbridge. The Private Equity industry is an ever-increasing growing sector of the financial services sector and, having had some personal experience within the sector itself, I thought the following extracts provide a good summary of the key risks that investors

should be aware of when considering making Private Equity investments.

Introduction

Following the 2007/08 financial crisis, the global economy has benefited from a long period of quantitative easing, low interest rates and, as a result, a period of relatively sustained growth. This relatively benign environment has helped global asset

prices across the board, albeit with some assets performing better than others. Private Equity ("PE") has been one of the better performing asset classes driven in part by the fact that fiscal and monetary stimuli helped stock market valuations rebound quickly from the financial crisis.

There are several specific risks in PE investing given the

...next page



inherently illiquid nature of the investments and the need to lock-up capital for several years.

What are the key risks?

There are, broadly, five key risks to PE investing:

1. Operational Risk – Operational risk is the risk of loss resulting from inadequate processes and systems supporting the organisation. Operational risk is a key consideration for investors regardless of the asset classes that PE funds invest into.

2. Funding Risk – This is the risk that investors are not able to provide their capital commitments and is effectively the "investor default risk". PE funds typically do not call upon all the committed investor capital and only draw capital once they have identified investments. Funding risk is closely related to liquidity risk as when investors are faced with a funding shortfall they may be forced to sell illiquid assets

to meet their commitments.

3. Liquidity Risk – This refers to an investor's inability to redeem their investment at any given time. PE investors are "locked-in" for between five and ten years, or more, and are unable to redeem their committed capital on request during that period. Additionally, given the lack of an active market for the underlying investments, it is difficult to estimate when the investment can

be realised, and at what valuation.

4. Market Risk – There are many forms of market risk affecting PE investments, such as broad equity market exposure, geographical/sector exposure, foreign exchange, commodity prices and interest rates. Unlike in public markets where prices fluctuate constantly and are marked-to-market, PE investments are subject to infrequent valuations and are typically valued quarterly and with some element of subjectivity inherent in the assessment. However, the market prices of publicly listed equities at the time of sale of a portfolio company will ultimately impact realisation value.

5. Capital risk – The capital at risk is equal to the net asset value of the unrealised portfolio plus the future undrawn commitments. In theory, there is a risk that all portfolio companies could experience a decline in their current value and in the worst case drop to a valuation of zero. Capital risk is closely related to market risk. While market risk is the uncertainty associated with unrealised gains or losses, capital risk is the possibility of having a

XLNC member firm

Gerald Edelman

Audit, Accounting, Tax,
Corporate Finance, Strategy,
Management Consulting
London, UK

T: +44 20 7299 1405

W: www.geraldedelman.com

Richard Kleiner

E: rkleiner@geraldedelman.com

realised loss of original capital at the end of a fund's lifetime.

There are two main ways that capital risk brings itself to bear: through the failure of underlying companies within the PE portfolio; and suppressed equity prices which makes exits less attractive. The former is impacted by the quality of the fund manager, i.e. their ability to select portfolio companies with good growth prospects and to create value, hence why manager selection is key for investors. The condition, method and timing of the exit are all factors which can affect how

value can be created for investors.

Conclusion

Given the illiquid and long-term nature of PE investments, investors can sometimes forget that operational and investment-related risks are still very much present in PE. Furthermore, as investors continue to increase their allocation to PE, and fund managers manage increasingly large pools of capital, investors need to understand the increased vulnerability of their portfolios to PE-specific risks, particularly under different market conditions.



Richard Kleiner

Lawyers and Accountants: Collaborators and Competitors in the Multidisciplinary Age

27

■ **Prof Mark A. Cohen**
<https://legalmosaic.com>

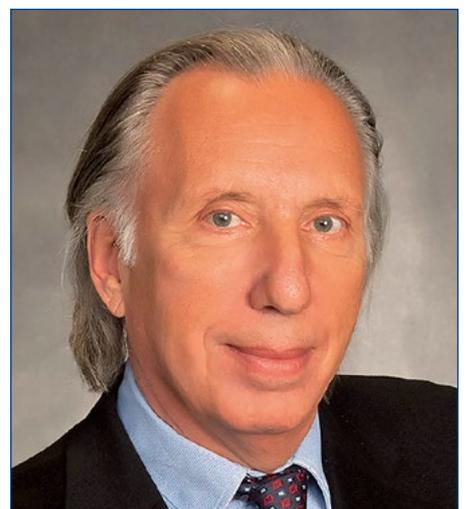
A recent speech to a global network of lawyers and accountants highlighted the curious relationship they share. Lawyers and accountants



are simultaneously collaborators and competitors. The paradox is reconciled by separating the professional and business/organizational elements of their dynamic.

Lawyers and accountants share several common challenges and often collaborate. At the same time, law and accounting firms – as well as other professional service organizations – ‘alternative legal service providers’ (ALSP’s), consultancies, and technology companies – compete for market share in a rapidly converging,

...next page



Prof Mark A. Cohen

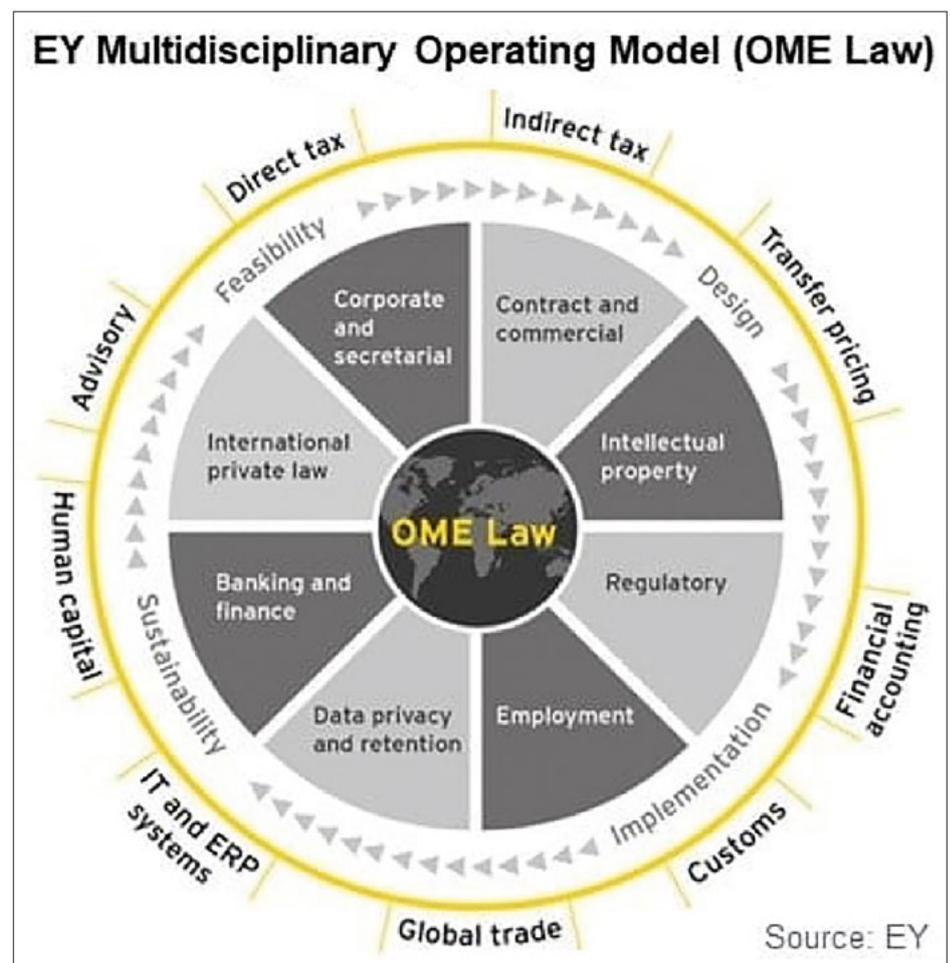
multidisciplinary professional services marketplace. Disaggregation of legal and accounting functions now cuts across the professions. What matters is what services consumers want to purchase, from what provider, and at what price. Consumers are reshaping once clear boundaries separating law and accounting.

The question is not whether lawyers will supplant accountants or vice versa – there is rising demand for each profession's (core) services. The issue is which profession, to paraphrase Reggie Jackson, will be 'the straw that stirs the drink' and manage a multidisciplinary delivery structure. Traditional definitions of law and accounting firms are already outdated from a functional, economic, and corporate consumer perspective. Deloitte cannot operate as a law firm in the US, but it has nearly three times the legal market share of Kirkland, the world's largest law firm by revenue.

The Two Professions Share Common Challenges

The legal and accounting professions have much in common: self-regulation; a professional/industry duality; transition from guild to big business; labor-intensive, leveraged economic models that are morphing into tech and process-enabled ones; accountant and lawyer time is leveraged by machines, process, and other human resources, thereby redefining what it means to be a legal/accounting professional; intensifying internal and external competition; and elevated consumer expectations in an increasingly fast-moving, complex, global business environment.

Many tasks that accountants and lawyers once routinely performed are now up for grabs – they are becoming digitized and/or tasked to other



professionals and paraprofessionals. The parameters of 'professional competency' and what that means functionally is yet another common challenge. Just as 'knowledge of the law' alone no longer cuts it for lawyers, so too is 'an ability to crunch numbers' insufficient to ensure a successful career in accountancy. The marketplace demands 'T-shaped' professionals – that means in addition to subject matter competency, lawyers and accountants must also have technological proficiency, collaborative, and 'people skills,' and an understanding of project and process management. These augmented skillsets demand a reconfiguration of professional school curricula and training. Continuing professional education/training – not rote box checking exercises – must become part of each profession's culture and practice to ensure alignment with rapidly changing market needs.

Who Will Bundle Professional Services?

Law and accounting are professions and enormous businesses. Most sources peg legal spend close to USD 1 trillion per year and accounting at about half that amount. The boundaries separating the two industries are becoming increasingly blurred. There are several explanations: (1) greed; (2) the decentralized legal market; (3) the emergence of technology and process as key delivery components; (4) client demand for rapid, scalable solutions; (5) the complexity of business and its need for fast, holistic, scalable, multidisciplinary solutions; (6) regulatory changes; (7) consolidation of other industries – including medicine, accounting, and other professional services; and (8) buyer demand for 'better,

faster, cheaper' goods and services and their growing willingness to explore new options.

Corporate consumers confront complex business challenges that require multiple skillsets and expertise. Buyers are exercising leverage over providers and fomenting competition that cuts across professional lines. They demand thoughtful recommendations from which to make informed business judgments, not piecemeal opinions from a multiplicity of professional sources. Business decisions frequently involve the confluence of regulatory, financial, legal, risk management, technological, and cultural issues that transcend law or accounting. An integrated, multidisciplinary solution is the direction the marketplace is headed. The graphic below depicts Ernst & Young's integration roadmap which is consistent with the approach taken by others in the Big Four. Market fragmentation, languid adoption of technology and process, and consumer demand for new delivery options render many traditional law firms that stay their present course susceptible to defections,

takeovers, and implosions.

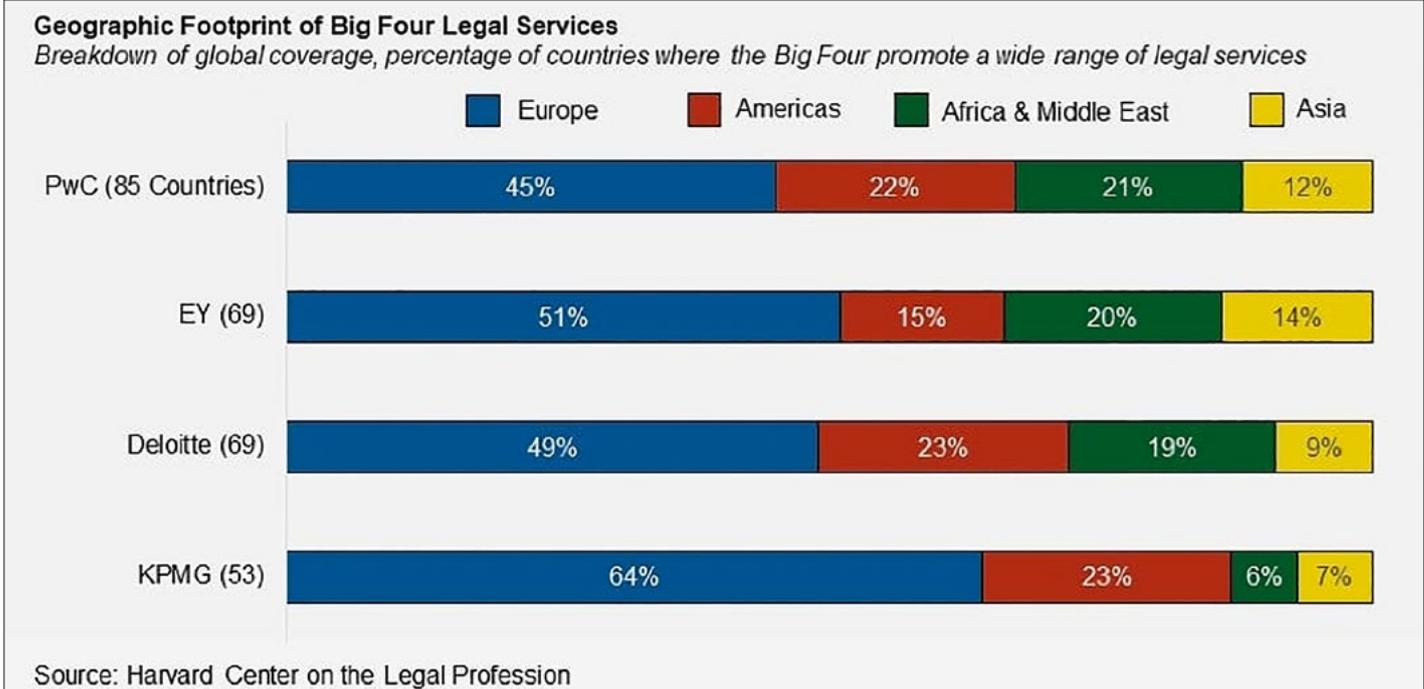
Can't Tell the Providers Without a Scorecard

The long-standing boundaries that separated law and accounting have blurred. Compare the service offerings of the Big Four-or ALSP's like UnitedLex, Axiom, or Integreon- and it's hard to tell one from the other. Each vies for business from the same client pool in a host of service lines that include finance, risk management, mergers and acquisitions, litigation support, cybersecurity, data management, and contracts. Yet even as they compete vigorously for business, law firms, accounting firms from small shops to the Big Four, and ALSP's routinely collaborate. Magic Circle stalwart Allen & Overy (A&O), for example, partnered with Deloitte to develop a market a digital derivatives compliance system called MarginMatrix. Several regional and global law and accounting networks enable members to pair expertise to compete with the single-branded Big Four networks. ALSP's collaborate with

large law firms and in-house legal departments, melding competencies to provide scalable, integrated, and effective customer solutions. Tens of thousands of lawyers are already employed by the Big Four, ALSP's, and consultancies. Many more work on a 'gig' basis. This begs the question: what's the difference between a law firm, an accounting firm, or an alternative legal service provider in today's market? Short answer: from the consumer perspective, it's ceasing to matter.

Many in the legal industry regard the Big Four as an existential threat. Legal pundits have closely monitored the Big Four's renewed incursion into the 'legal' space, and many have opined that it's only a matter of time before they dominate the legal market. A 2015 Economist article titled 'Attack of the Bean-Counters' lays out the case compellingly. It cites the size, capital, global reach, C-suite penetration, technological and process expertise, and global brands of the Big Four as marketplace advantages over law firms. The Big Four – and other 'alternative legal service providers' (ALSP's, a term used to describe companies that provide legal services

...next page



from a non-traditional law firm partnership structure) indeed have a global footprint in the 'legal' space.

The Americas percentage will increase when the US, the world's largest market by legal spend, reregulates its antiquated, protectionist rules that prohibit 'non-lawyer' investment, ownership, and control of law firms. Those rules are routinely circumnavigated by a growing list of legal providers that separate the 'practice' of law from the 'business of law.' That means that law firms – whose demand for services has remained flat for five years and counting in an expanding market – will face even stiffer competition from 'outside' competitors. The threat of accounting firms and other ALSP's – especially large, well-capitalized, tech and process savvy ones like United Lex and Axiom—is very much on the minds of law firm leaders. Raising associate salaries, increasing marketing budgets, and hiring 'chief innovation officers' will not help their cause. Focusing on consumer satisfaction, differentiated service offerings and delivery capability (organic, acquired, or collaborative) will.

Who Has the Required Expertise?

The issue is not whether accountants will marginalize lawyers or vice versa. It's whose expertise is required – and how, when, from what delivery structure, at what cost, and under whose management lawyers and accountants are deployed. Whether this comes from the Big Four, a mega-law firm like Dentons, a UnitedLex-type ALSP, or elsewhere is not what's of primary importance to consumers. What does matter is that providers offer consistent, rapid, data-driven, inter-disciplinary responses to business challenges that deliver impact and value to consumers.

Expertise now has three dimensions when applied to legal delivery: (1) professional (differentiated practice experience, skills, and/or knowledge); (2) delivery – the business of law; and (3) customer relations. Providers that meld the three dimensions of legal expertise with other disciplines – technology, business, and data analytics to cite a few – will dominate the emerging multidisciplinary global market.

Conclusion

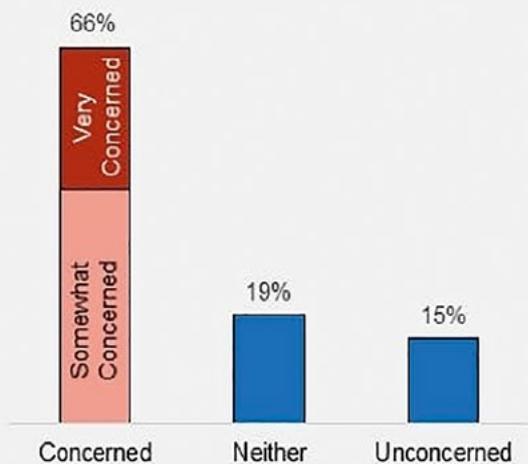
Law and accounting are professions and industries. As professionals, each sets its own practice and ethical standards and monitors practitioners to ensure compliance. Both professions would be well served to expose students – and practitioners – to cross-training and familiarity with the other's nomenclature, culture, and key precepts. This will inure to the benefit of each profession and, more importantly, 'move the needle' for consumers of their services. Whether 'legal' and 'accounting' are delivered from law firms, accounting firms, ALSP's, or some other source, is secondary to the results obtained for consumers. Buyers are driving the bus now, and providers that deliver consistent, efficient, risk-appropriate, multidisciplinary, value-driven solutions to business challenges will thrive. The marketplace will determine which providers do that best, however they are labeled.

Prof Mark A. Cohen
<https://legalmosaic.com>

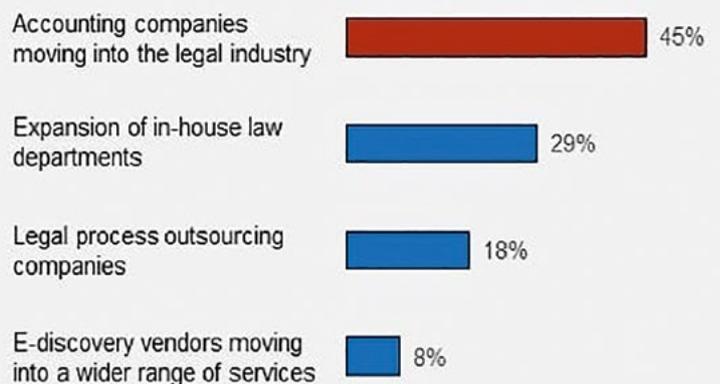
30

Law firm leaders' view about alternative legal services providers and accounting firms?

How concerned are you about alternative legal service providers and accounting firms?



Which competitors do you consider to be a major threat to your law firm's market share?



Source: Elephants in the Room: The Big 4's Expansion in the Legal Services Market, ALM Intelligence





VAT in the UAE

31

■ Dr Mashal AlZarooni

Value Added Tax (VAT) has been implemented in the UAE from January 2018. However, many clarifications have been issued by the Federal Tax Authority (FTA). The following article will discuss Tourist VAT Refunds, VAT Disputes, VAT Export of Services and VAT on entertainment.

Tourist VAT Refunds

The FTA has signed an agreement with a third party operator called Planet to refund VAT for tourists. The tourist will receive 85% of the entitled VAT refund; the operator will deduct AED 4.80 per tax free refund form with a minimum invoice amount AED 250. There are four conditions that need to be met to refund VAT for the tourists. According to H.E. Khalid Al-Bustani, Director

General of the FTA (published in the news on 22 September 2018), these conditions are:

1. the retailer must be registered with the Authority for VAT and have a tax registration number (TRN);
2. the supplier's sales of goods must not be excluded from the refund scheme, as determined by the Authority;
3. the retailer must submit a request to participate in the Scheme as determined by the FTA; and finally,
4. the retailer must meet the financial credit requirements specified by the system operator and be committed to submitting Tax Returns and paying due taxes regularly.

The refunds will be available in certain airports in the UAE for the first phase, and will be extended to cover all airports,



Dr Mashal ALZarooni

seaports and borders of the UAE in the second phase.

VAT Disputes

The UAE government has started to establish committees to look

...next page

into the VAT disputes that arise between companies and the FTA, where the company rejects the fine imposed by FTA by appealing to the Disputes committee, and the case is transferred to the courts. The committees will be set in different cities within the country.

VAT Export of Services

The VAT laws and legislation have set certain conditions for exporting services outside the UAE for VAT purposes. Services shall be zero-rated if all of the following conditions are met:

- the services are supplied to a recipient who does not have a place of residence in a GCC State and who is outside the UAE at the time the services are performed; and

- the services are not supplied directly in connection with: real estate situated in the UAE or any improvement to the real estate; or moveable personal property situated in the UAE at the time the services are performed.

Services may also be zero-rated where:

- the services are actually performed outside the GCC or involve the arranging of services that are actually performed outside the GCC;
- the supply consists of the facilitation of outbound tour packages that are part of the service.

VAT on Entertainment

The FTA published a statement

last week clarifying that certain entertainment will be blocked from companies to recover the input tax on VAT; these include but are not limited to: long-service awards, retirement gifts, Eid gifts, employee-of-the-month gifts, and dinners to reward service.

XLNC member firm
MAZ Chartered Accountants
 Audit, Accounting, Tax, Legal, Corporate Finance, Strategy, Management Consulting
 Dubai, UAE
 T: +971 4 3589996
 W: www.mazca.ae

Dr Mashal ALZaroon
 E: info@mazca.ae

New XLNC Member Firms

In all issues we will present the new member firms since the last issue of the XLNC Magazine. We warmly welcome all of you!

AUSTRIA



Leitner Hirth Rechtsanwälte GmbH
 Legal, Corporate Finance, Strategy, Management Consulting
 Graz, Austria
 T: +43 316 710 1118
 W: <https://lhra.at>
Mag. Markus Leitner
 E: leitner@lhra.at
Mag. Michael Hirth
 E: hirth@lhra.at



Leitner & Hirth
 Rechtsanwälte

BRAZIL



BRB São Paulo
Serviços de Contabilidade Ltda.
 Accounting, Tax
 Sao Paulo, Brazil
 T: +55 11 3149 8160
 W: <http://brbsp.com.br/en/home/>
Adilson Galdeano
 E: adilson.galdeano@brbsp.com.br
Rodolfo Henrique Resende
 E: rodolfo.resende@brbsp.com.br



brb | SP

 CANADA



Bateman MacKay LLP
 Audit, Accounting, Tax, Corporate Finance,
 Strategy, Management
 Consulting, Fiduciary
 Toronto (ON), Canada
 T: +1 905 632 6400
 W: www.batemanmackay.com
Oscar Torres
 E: otorres@batemanmackay.com



 CANADA



HS & Partners LLP
 Audit, Accounting, Tax,
 Management Consulting
 Toronto (ON), Canada
 T: +1 905 678 27 40
 W: www.hsp-ca.com
Louis J. Sapi
 E: lsapi@hsp-ca.com



 GERMANY



**Kreitinger Maierhofer
 Steuerberater PartG mbB**
 Audit, Accounting, Tax, Strategy,
 Management Consulting, Fiduciary
 Munich, Germany
 T: +49 89 452437 8 0
 W: www.kreitinger-maierhofer.de

Klaus Maierhofer
 E: k.maierhofer@kreitinger-maierhofer.de
Michael Kreitinger
 E: m.kreitinger@kreitinger-maierhofer.de



 GERMANY



SCHLARMANNvonGEYSO
 Audit, Accounting, Tax, Legal
 Hamburg, Germany
 T: +49 40 69 79 89 433
 W: www.schlarmannvongeyso.de/en/
Dr Zoran Domic
 E: domic@schlarmannvongeyso.de



 GERMANY



SIGNOS Group
 Audit, Accounting, Tax,
 Management Consulting
 Flensburg, Germany
 T: +49 461 670 370
 W: www.signos.de/en/
Michael Kasimir
 E: michael.kasimir@signos.de



 GERMANY



WEDEMEIER
 Audit, Accounting, Tax, Strategy, Management
 Consulting
 Hanover, Germany
 T: +49 511 856 36 24
 W: www.wedemeier-stb.de
Johann Heinrich Wedemeier
 E: jhw@wedemeier-stb.de

WEDEMEIER

Wirtschaftsprüfer | Vereidigter Buchprüfer | Steuerberater
 Partnerschaft mbB

 HUNGARY
**ARKCONSULTING Kft**

Accounting, Tax,
Management Consulting
Budapest, Hungary
T: +36 1 269 16 31
W: www.arkconsulting.hu/?lang=en
Zsolt Ilyés
E: ilyes.zsolt@arkconsulting.hu


 HUNGARY
**Szécsényi and Partners Law Firm**

Legal
Budapest, Hungary
T: +36 1 345 45 35
W: www.szecsényi.com/en/
Dr László Szécsényi
E: l.szecsényi@szecsényi.com

szécsényi
ÉS TÁRSAI ÜGYVÉDI TÁRSULÁS

 ITALY
**SPADA PARTNERS**

Accounting, Tax, Corporate Finance
Milan, Italy
T: +39 02 7601 4181
W: www.spadapartners.it/en/
Dr Luca Zoani
E: luca.zoani@spadapartners.it


 ITALY
**Studio Antoniotti****Commercialisti Associati**

Audit, Accounting, Tax, Strategy, Management
Consulting, Fiduciary
Turin, Italy
T: +39 011 530 986
W: www.studioantoniotti.it
Dr Giulio Antoniotti
E: giulio@studioantoniotti.it


 LUXEMBOURG
**TrustConsult Luxembourg SA**

Accounting, Tax, Legal, Fiduciary
Luxembourg City, Luxembourg
T: +352 26 78 26 26
W: www.trustconsultgroup.com/en/
Christian Bühlmann
E: christian.buehlmann@trustconsultgroup.com


 THE NETHERLANDS
**Schooten Advies**

Accounting, Tax, Strategy,
Management Consulting
Helmond, The Netherlands
T: +31 492 588 044
W: www.schootenadvies.nl/en/
Marcel Koehler
E: marcel.koehler@schootenadvies.nl



 **THE NETHERLANDS**



STP Tax Lawyers
Tax, Corporate Finance
Amsterdam, The Netherlands
T: +31 88 5060 600
W: www.stp.nl/?lang=en

Eddy Sajet
E: eddy.sajet@stp.nl
Jan Gerrand
E: jan.gerrand@stp.nl



 **THE NETHERLANDS**



Vestius Attorneys at Law
Legal
Amsterdam, The Netherlands
T: +31 20 521 0690
W: www.vestius.com/en/home.aspx

Henk Brat
E: h.brat@vestius.com



 **TURKEY**



Odit Chartered Accountants
Audit, Accounting, Tax
Istanbul, Turkey
T: +90 212 219 00 81
W: www.oditymm.com.tr/?dil=en

Hayati Temel
E: hayati.temel@oditymm.com.tr



 **USA**



Erickson Kernell IP, LLC
Legal
Overland Park (KS), USA
T: +1 913 549 4700
W: www.kcpatentlaw.com

James J. Kernell
E: jkernell@kcpatentlaw.com



Join us at the
XLNC
Spring
Conference

Vienna, Austria
17-19 May 2019

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.





**GLOBAL PROFESSIONAL
EXCELLENCE**

www.xlnc.org