

Tax reforms risk pushing companies offshore, say In-House Counsel

In-House Counsel are facing an uphill battle against what appears to be a constant wave of change. And in 2013, this includes radical upheaval to the tax system

When it comes to tax, new regulation is being seen on an almost weekly basis, say In-House Counsel. And adjusting and keeping on top of this continuous change is proving a challenge.

This topic was debated at the recent Iberian Lawyer In-House Club Master Class in Lisbon in association with PLMJ, moderated by Paulo Lino Martins, Head of Legal at Martifer Solar, and Nuno da Cunha Barnabé, Tax Partner at PLMJ. In-House Counsel participated from companies including ANA - Aeroportos de Portugal, Ascendi, Euronext Lisbon, Hewlett-Packard Portugal, IIS World, José de Mello SGPS, Millennium BCP, PME Investimentos and Vodafone.

"Key recent tax changes have been determined by the commitments assumed by Portugal within the IMF/EU bailout to reduce budgetary deficit reduction and deleverage of the economy," explains da Cunha

Barnabé. And any changes to tax regulation mean having to go through the process of revising or explain the entire corporate structure in place, says Isabel Vidal, Head of Legal, Regulation, Compliance, Custody and Settlement Affairs at Euronext in Portugal.

The group discussed the recent alterations to tax legislation and their impact on negotiations and financial performance. "Broadening the tax base of corporate income tax by limiting deductibility of finance costs will be an added factor complicating Portuguese groups performance this year," says da Cunha Barnabé. And the new legislation regarding the reporting of the so-called 'contingent operations' can open a dangerous door for the 'large taxpayers' if misinterpreted, adds Serena Cabrita Neto, also a Tax Partner at PLMJ.

As companies continue to internationalise, In-House Counsel are looking at the best methods and vehicles for doing so. "It is very complex to work in an international market, particularly in relation to tax," says Martins. At Martifer Group, for example, they have an in-house tax team that focuses only on tax restructuring and address the continuous issues arising mainly due to the reforms. "As a company working mainly outside

Portugal, you need to have a tax structure abroad that gives you stability," he adds. "For India, for example, we use the Netherlands as a holding base."

In-House Counsel agreed that in non-traditional markets, offshore vehicles can be a really effective solution, especially when dealing with different jurisdictions and clients who don't understand certain tax system and want uncomplicated solutions. "But with the continuous reforms here in Portugal," adds Vidal, "it can be very difficult to explain the tax situation with any certainty to a foreign counterpart".

The Group unanimously agreed on Holland as the preferred destination for a holding structure, but Luxembourg was also favoured, and even the UK.

But the Tax Authorities are catching on fast to the trend for overseas operations. "They have

squeezed as much as they can out of companies' domestic operations so they are now looking much more closely at international operations," says Cabrita Neto. "And this is going to be their focus for the coming years."

When undergoing tax inspections, lawyers advised, companies should have legal involved from the start to avoid any ramifications later on. Involving in-house lawyers and off-counsels in the audits, before actual

litigation emerges, says da Cunha Barnabé, may reduce the chances of it happening and be decisive for its success.

The conclusions coming out of the Master Class were clear. Tax and legal departments need to work much more closely together to ensure that problems do not accumulate. And there is a challenge, and a reality, in how to better live with offshore vehicles in the day-to-day and to find suitable solutions dependent on jurisdiction.

"There are many ways to mitigate recent changes," says Martins, "and we should look at this as an opportunity to review and improve some of our systems". Companies need to look at the recent changes strategically, adds da Cunha Barnabé, as these reflect a trend and will remain in force for years to come.



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