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# The International Tax Newsletter

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## Tax and Other Policy Measures to Combat Covid-19

*“After the storm comes the Rainbow” said by Shannon L. Alder and rightly said so.*

The Covid-19 pandemic in all its waves and glory did put every man in a state of wonder about what other uncertainties could come with it. One would not disagree that we have all been survivors who have shown a great deal of resilience and adaptability, though our losses have been huge personally and financially. It's the counted steps and measures we've taken to be here. Shifting from the otherwise traditional methods to the now new and improved methods of digital era, where business, people and transactions are all working on virtual platforms unanimously towards the future.

Certain Statutory Measures were taken by the Government of India in the year 2020 as well as in year 2021. Some were for the benefit of Individuals and companies alike, some for the nation and some for the world. It would be hard not to mention a select few here:

- A new concessional tax regime introduced in 2020, subject to certain conditions, was introduced and then taken further in 2021. Under this certain domestic companies of certain specified industries could be charged a concessional tax at 22%, while new manufacturing companies could be charged concessional tax at 15%.
- The taxable years for start-ups were changed, where earlier a start-up could choose to be charged tax on any 3 out of its initial 7 years has now been changed to any 3 out of the initial 10 years, provided the income doesn't exceed 250 million INR
- Vivad se Vishwas (VSV) scheme was introduced to handle direct tax disputes. This also faced digitalization as now the litigation would be done by a National Faceless Appellate Tribunal
- Reduction in the Minimum Alternate Tax (MAT) rate from 18.5% to 15% was announced on 7<sup>th</sup> June 2020 with a notification.
- The scope of Equalization levy was expanded as well as been amended in 2020 and 2021 respectively
- The Dividend Distribution Tax was abolished to increase the attractiveness of the Indian Equity Market in the Finance Act, 2020 (FA20)

Apart from these many other relaxations and extension of deadlines for various statutory compliances were provided. The impact of Covid-19 brought about reduction in MAT and corporate tax rates having initial adverse consequences on contracts, commercial entitlements and obligations that would be dealt with separately. However, from the perspective of optimising cash flow, certain steps that could be taken:

- Analysis of current structure for potential restructuring to avail concessional tax regime
- Ascertainment of cash flow projections for the year and conclude estimated advance tax
- Speedier disposal of tax refunds i.e. the VSV scheme newly introduced can be considered
- Lower withholding tax rates

The evaluation of tax impact of subsidiaries and Private Equity (PE) on account of tax relief measures announced in respective jurisdictions, (by and large every jurisdiction) have offered facility of deferring regular tax payments (with or without any consequential interest or penalty) as well as relaxation in the compliance dates/speedy disposal of tax refunds.) Some notable initiatives come from:

- ◆ **Luxembourg** - bilateral agreement with France and Belgium regarding taxation of cross border workers
- ◆ **Korea** - measures to stimulate demand and assist domestic business
- ◆ **New Zealand** - reintroduction of depreciation for commercial buildings
- ◆ **Norway** - loss carry backward facility
- ◆ **Portugal** - defer Withholding tax payment

Exposure for deemed PE in India - especially when strategic decisions are taken in India by senior management personnel currently in India. The question may also arise if the residence of such person constitutes PE in India? The OECD guidelines were issued in this regard and most tribunals have taken cognisance of OECD guidelines.

**The Rationale stated in the OECD report**, for the changes in Policy methods adopted by various countries was for 3 major reasons:

- 1) **To Support:** As many relaxations were provided, most of them consisted the lowering of tax rate to give additional support to households, businesses.
- 2) **To Coordinate:** On an international level, this was essential to increase the gains from national policies to tackle the pandemic, enhance resilience and to ensure a strong and inclusive recovery
- 3) The report also was focussed on **Moving Forward** which meant that the enhanced structural reforms would raise opportunities, improve economic dynamism and foster a strong and sustainable recovery.

**The outcomes foreseen in 2020 did come true, partially, when it was in the initial stages as stated below:**

In the changed business scenario, amended provisions of buy back of shares and dividend tax structure may not have many practical consequences. However, the same may be relevant whilst considering corporate restructuring exercises. Shutdowns had led to sharp declines in the level of output, with consumer expenditure potentially dropping, the business prospects have declined.

**Low valuation due to market conditions and the On-going transactions**

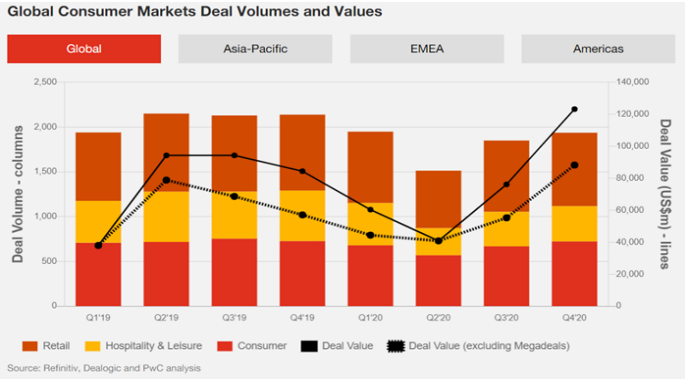
- Exemptions vide FA 2020 for Abu Dhabi fund, SWF and pension funds - practical utility and likely FDI norms, Private wealth management; Succession planning through family trusts or traditional 'will' approach. Evaluate consequences of
- a) revocable v/s irrevocable trust
  - b) discretionary v/s specific trust
  - c) potential of future inheritance tax

Before concluding the plan of action, due consideration shall be given to various aspects like trustee lineage, decision making authority, distribution of Cyprus and income of trust, necessity of providing veto powers v/s unanimous decisions, exit policy and the off shore structure may be explored especially for families with foreign citizenship or where members are residing abroad. There had to be an understanding of the underlying tax cost on migration of assets to the trust and other regulatory requirements under SEBI, RBI, Stamp duty, etc.

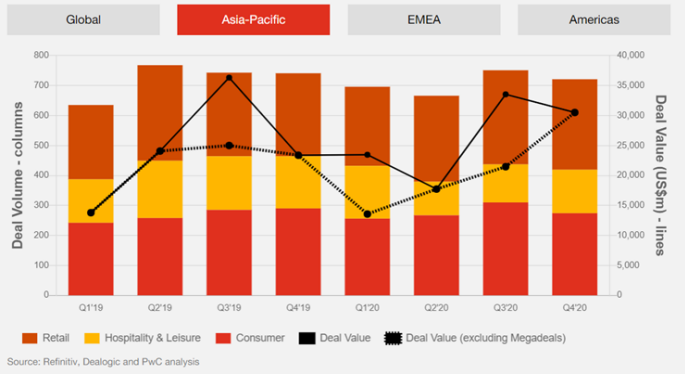
**However, according to the PwC Analysis towards the end of 2020 in Q3 and Q4** there was noticeable increase in certain Valuations. The M&A transactions had increased from 17% to 20%. We witnessed more aggressive deal-making and restructuring activities as deal volumes rose from 2% to 18%. This was due to the acceleration of all things digital, new partnerships within and outside the Industry, faster product development through more rapid iteration.

**Developments noticed in Deal Value Units:**

**- Globally :**



**- Asia-Pacific :**



\*Countries including India have taken several measures which can directly address the Health and economic crisis in the face of this uncertainty. The human cost of economic crisis was felt deeper due to weakened health system, more limited capacity (like limited fiscal space).

The Implementation of lockdown has had a sudden and profound impact. Declining in output along with falling consumer spending indicated the direct effects of containment. India responded with measures to keep pace with evolving impacts and risks. In this regard, multilateral collaboration and coordination can increase the effectiveness of transfer pricing recovery and strengthens the economy's resilience to future shocks. OECD released a report on 15 April 2020 on developing tax policy in response to Corona-virus crisis – and how can it help in strengthening confidence and resilience.

It recognises that tax revenue would remain significantly reduced for number of years. Government shall be required to adopt policy action which can offer support to businesses directly affected by the crisis. It suggests that the best way to boost tax revenue will be to support solid growth through sufficiently strong and sustained stimulus. There will be a continued need to explore and assess new ideas as well as revisiting existing ones (e.g. solidarity levies, carbon taxes, etc.) It is quite likely that **Pillar 2** would become more prominent to address the tax challenges of digitalisation of the economy. At the same time increased use of digital services and the need to collect more revenue could provide new impetus to efforts to reach an agreement on **Pillar 1**.

Government could focus on incentivising investment while strengthening the taxation of economic rents and boosting resilience. Tax policy will avoid tax disputes and support tax certainty. As far as India is concerned there is significant potential to increase revenue e.g. further efforts in expanding tax base (through property tax, carbon tax & progressive taxes) and accelerating the pace of ongoing digitalisation of tax administration. All this, coupled with initiatives focused on enhancing cooperation - locally as well as internationally - like providing finance and expertise to the businesses.

With limited capacity and fiscal elbow room, government will have to find avenues to offer an environment which can facilitate access to new external financing and also offer support to restructuring and cancellations of debts.

As the lockdown is opening up in phases, the Government of India has taken several measures to revive the Indian economy. Some of the attractive points are:

- 1) Self-Reliant India (Atma Nibhar Bharat)
- 2) Reforms and liberalizations of foreign investment policy for certain sectors
- 3) Revised FDI limit in the defence sector
- 4) Product linked incentive scheme in the pharmaceutical sector
- 5) Reforms in civil aviation, coal & minerals sectors
- 6) India to be the world's next manufacturing hub

Even though the current pandemic has taken its toll on the economy, the reforms under the Self-Reliant India Movement come as a promise for a silver lining for foreign investment for India's post Covid-19 economy.

These government measures and reforms have a significant potential to boost several sectors and lead the way for India to become a major global investment hub. With the help of the 'Self-Reliant India Movement' coupled with the 'Make in India' campaign, India would not go unnoticed by global investors. India has become a strong contender for such foreign investments and the proposed economic stimulus is a stronger promise to deliver the same.

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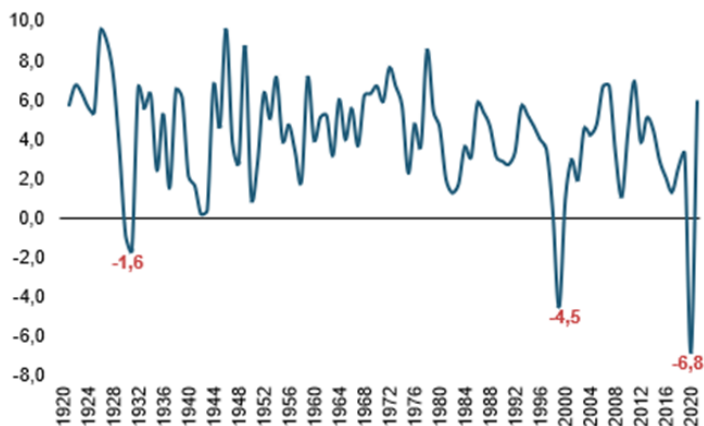
## Colombian government tax measures taken due to Covid-19 effects

*The health emergency produced by Covid-19 has generated in Colombia a series of political, fiscal and economic events, for which the Government, the private sector and local leaders have joined forces to confront it, and measures have been taken.*

### FISCAL SITUATION IN COLOMBIA AS OF 2020

According to the National Department of Statistics, the Colombian economy presented in 2020 a contraction of GDP of 6.8% and unemployment levels higher than 15.9%.

**Economic growth in Colombia\***  
(annual variation, %)



The sectors that contributed the most to the contraction were construction; mines and quarry exploitation; and commerce, transport, accommodation, and food services. Which added together contributed -5.9 percentage points to the fall. On the other hand, some sectors had a positive impact such as the agriculture sector, which grew 2.8%, followed by financial activities and insurance (2.1%), real estate activities (1.9%) and public administration (1%).

It is important to mention that in a large part of Latin American countries, the COVID-19 pandemic has led our countries to adopt measures aimed at the least favored people. For this reason, our governments have financed through long-term loans with multilateral funds such as the IMF (International Monetary Fund) and the IDB (Inter-American Development Bank)

Therefore, the National Government took some measures such as :

### AID TO THE MOST VULNERABLE POPULATION

#### Solidary Income

People who do not receive any transfer from the State, will receive a benefit of US \$46 per month, which will continue until June 2021.

The selection of beneficiaries was made by the National Planning Department considering the updated information from the main authorities of Colombia such as the Ministry of Labor, Ministry of Health and Ministry of Treasury databases.

### Families In Action, Young People in Action and Older Colombia

President Duque announced the Youth in Action strategy, which supports young people living in poverty and vulnerability so that they can continue their technical, technological, and professional studies, which will be expanded by 140 thousand new places.

As for the Colombia Mayor program, aimed at people over 70 years of age, they receive an exceptional monetary transfer and will receive (US \$ 46).

### VAT Refund for The Most Vulnerable

Lower-income families receive resources that alleviate the impact of the tax imposed on the consumption of products and services by the most vulnerable people.

The refund is \$21 US and will be made every two months by direct consignment or electronic payment. With this the Government points out "the 700,000 poorest households of Families in Action and 300,000 of the priority lists of the Colombia Mayor program will benefit."

### Relief From ICETEX (Colombian Institute of Educational Credit and Technical Studies Abroad)

The ICETEX Educational Aid Plan is aimed at users who need relief in their current cash flow and for those who continue their studies in the second semester of 2020 and require this support.

The aids are:

- Grace period in current loan installments (aimed at users who require the interruption of payments until December, whether they are enjoying the benefit or requesting it for the first time. This will not generate interest).
- Temporary reduction of interest to the value of the CPI (aimed at users of stratum 1, 2 or 3, who are not beneficiaries of the rate subsidy, and who renew their credit for the second semester of 2020, or who access for the first-time credit).
- Term's extension in amortization plans (aimed at users who need relief from their current cash flow, and who are in the study or amortization stage)
- Granting of credits without joint debtor 2020-2 (people from levels 1,2 and 3 affected by the occurrence of the pandemic, as well as students targeted by their academic trajectory and particular socioeconomic conditions through Guarantee Funds constituted by ICETEX and Institutions of Higher Education can have access to educational credit without a co-debtor).

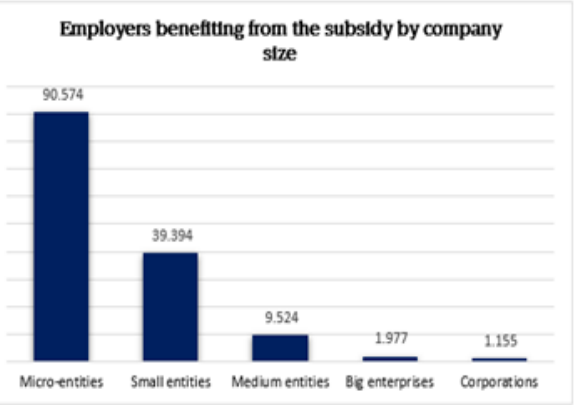
### Home Purchase Subsidy

Until 2022, 200 thousand subsidies will be available for the purchase of new housing, 100 thousand of them, for families earning up to 4 minimum wages (US \$259) interested in buying social housing. The other 100,000, will be for households of any income level that want a non-VIS home, the price of which does not exceed 500 minimum wages, that is, US \$103,637.

**ECONOMY AND EMPLOYMENT**

Due to the high level of unemployment caused, among others, by the measures adopted by the National Government due to the mobility restrictions associated with avoiding the contagion of COVID-19, subsidy programs were designed aimed at companies aimed at protecting formal employment, such as:

**Payroll subsidies**



More than 4 million employees benefited

Source: National Administrative Department of Statistics – (DANE)

Applies to companies and persons that have at least 3 employees that can demonstrate to have had a decrease in their income of 20% or more in their invoicing due to the health crisis. The subsidy was also applied to the payment of the service premium.

**Lines of credit to protect the employment of the most affected companies.**

Companies and entrepreneurs can access 19 preferential credit lines.

**COMMERCE, INDUSTRY AND TOURISM**

- ◆ VAT exemption for all tourist and hotel services.
- ◆ The energy surcharge for accommodations, theme parks and recreation will be suspended.
- ◆ The rent advance for travel agencies and air transport will be eliminated and the parafiscal contribution will be postponed giving cash to this sector in the second semester.
- ◆ Restaurants, ice cream parlors, bakeries, patisseries etc. that operate as franchises, will be exempt from paying VAT and consumption tax.
- ◆ 25% of the advance on rent was lowered for the clothing,
- ◆ footwear, furniture, and events sector.

**TAX REFORM PROPOSAL**

The national government proposed tax reform measures to reactivate the economy and generate resources to maintain social programs.

This reform did not pass-through Congress due to the country's social movements. Currently, the Government is analyzing new fiscal measures to finance the economy

**JPA INTERNATIONAL IN COLOMBIA**

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## An introduction to the measures taken by China to stabilize economic growth

*This article is a brief introduction to five of the main fiscal taxation policies and subsidy measures that China has adopted for steady economic growth during the epidemic period through the online platform.*

### Value Added Tax (Vat)

The first is about Value Added Tax (VAT), of which there are four parts. The first is to reduce the VAT rate of some industries. Among them, the current 16% tax rate on manufacturing industries will be reduced to 13% and the current 10% tax rate on industries such as transportation and construction will be reduced to 9%.

The second is to raise the threshold for small-scale VAT taxpayers from monthly sales of 30,000 yuan to 100,000 yuan. This means that small-scale companies with monthly sales of less than 100,000 yuan will be exempt from paying VAT.

The third is to reduce the VAT rate on second-hand car sales from the original 2% to 0.5%.

The fourth is refunding the remaining tax credits at the end of the VAT period. According to the original procedure, when input tax of the current month is larger than the output tax, the overpayment claim would be rolled forward to the next month but now the tax authorities will refund the tax. Which is good news to help businesses cash flow.

### Four main Preferential corporate income tax policies

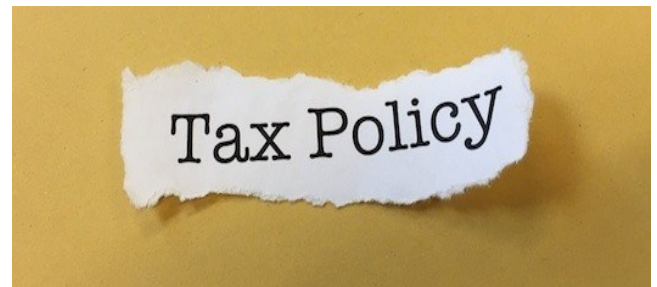
In the second aspect, I would like to explore the four main preferential corporate income tax policies. One is to expand the scope of income tax preferential treatment for small and micro enterprises. For enterprises with taxable income of less than 3 million yuan, the part which that does not exceed 1 million yuan will be subject to corporate income tax at a reduced rate of 5%, and for part of the annual taxable income exceeding 1 million yuan but below 3 million yuan, the corporate income tax will be reduced by 10%. If the company's taxable income exceeds 3 million, it is not a small or micro enterprise.

Without the above-mentioned preferential policies, the corporate income tax will be directly levied at the rate of 25%. To give an example, If a business year-end taxable income is 2.99 million yuan, then its taxable income is 1M multiplied 5% plus 1.99M times 10%, which equals 249,000 yuan; but its year-end taxable income becomes 3.01 million. Its payable corporate income tax is 3.01 M multiplied by 25% equal to 752,500 yuan. It can be seen from this that the taxable income has only increased by 20,000 yuan, but the taxable amount has increased by 503,500 yuan.

Secondly, for companies that are more affected by the epidemic, its loss carry-forward period in 2020 will be extended from the original 5 years to 8 years.

Thirdly, for companies that undertake epidemic prevention and control, the expenditure for expanding production capacity is allowed to be included as a one-time pre-tax deduction. According to corporate income tax law, this expenditure would have been included in fixed assets and depreciated over 10 years.

The fourth policy is to expand the accelerated depreciation policy for fixed assets that was originally available in some industries to all manufacturing sectors.



### Tax preferential policies for certain industries

The third aspect is tax preferential policies for certain industries. Support for cultural enterprises: by the end of 2023, income from the film industries engaged in film production, distribution, and projection engaged in rural areas will be exemption from VAT.

There will also be a temporary exemption of VAT on service income obtained by pension institutions until the end of 2020. An exemption of VAT on the heating income of heating business in 2020; the exemption of real estate tax and urban land use tax on the factory buildings and land used for heating.

Furthermore, between 1<sup>st</sup> June 2019 to 31<sup>st</sup> December 2025, income from the provision of community elderly care, childcare, and housekeeping services is exempt from VAT; if the house or land is used to provide community pension, childcare, and housekeeping services, deed, VAT is exempted. From 1<sup>st</sup> January 2018 to 31<sup>st</sup> December 2022, the purchase of new energy vehicles will be exempt from vehicle purchase tax.

Finally, in 2020, taxpayers will be exempted from VAT on income derived from the provision of public transportation services and living services, as well as the provision of essential living materials and express delivery services for residents.

## Employment subsidy policy for stable jobs

The fourth aspect looks at the employment subsidy policy for stable jobs. If the layoff rate for small, medium and micro enterprises is not higher than 5.5% and if the total number of employees of small, medium sized enterprises is less than 30, the layoffs shall not exceed 20% of the total number of employees, then they can apply for the unemployment insurance refund. Next, the subsidy policies for enterprises in difficulty. For example, enterprises in difficulty that have been identified, can refund 6 months' worth of unemployment insurance benefits according to the number of insured employees.

## Introduction to some other related subsidy policies

Finally, I will give you a brief introduction to some other related subsidy policies. One is the phased reduction and exemption of corporate annuity, unemployment, and work-related injury insurance contributions. Large-scale enterprises will be halved for five months of corporate pension, work-related injury and unemployment insurance, and small, medium, and micro enterprises will be exempted for 11 months.

The second is to gradually reduce employee medical insurance contributions and halve the payment of employee medical insurance units for five months.

The third is to reduce the employee pension insurance contribution rate and reduce the employee pension insurance unit contribution rate from 18% to 16%.

Fourth, the "six taxes and two fees" of local small-scale VAT taxpayers will be halved. By 31<sup>st</sup> December 2021, small-scale VAT taxpayers in individual provinces affected by the epidemic will be reduced by 50% of the tax amount. Including resources tax, urban maintenance and construction tax, real estate tax, urban land use tax, stamp tax, farmland occupation tax, education surcharge and local education surcharge (i.e. "six taxes and two fees").

The fifth is to support inclusive financial policies for small and medium-sized enterprises, individual industrial and commercial households and farmers, such as exempting value-added tax for the interest income of small loans from financial institutions to farmers, small and micro enterprises and individual industrial and commercial households.

The above are some of the fiscal, tax and financial subsidy measures China has taken in the face of the epidemic. It should be said that the implementation of these measures has played a positive role in stabilizing jobs to a large extent. It also explains why China's economy grows steadily in the beginning of 2021.



### JPA INTERNATIONAL IN CHINA

There are 18 taxes in China under the current tax systems and all of them are applicable to enterprises with foreign investment, foreign enterprise and foreigners.

A deliberate tax plan in advance is the key for enterprises to obtain business success and align their tax strategies with their competitive advantage and strategic development goals by reason-ably and legally minimizing burden of taxation.

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## France commitment to energy transformation in the 21st century « Climate & Resilience »

### The French tax system is innovating and investing eco-friendly



#### Energy transition for green growth

With the Act of 17 August 2015 on energy transition for green growth, France committed fully to energy transformation in the 21st century. It has provided the essential tools for energy transition and made

France a reference in the field.

The Act is already in effect: more than 50 provisions are for immediate application. Indeed, global warming and energy consumption represent a cost for France; about 70 billion euros. Thus, eliminating and reducing these changes have been a real opportunity to fight against unemployment through green growth. Then French citizens could take advantages of new technologies and conquer new markets in the fields of renewable energy. On one side, relief on local direct taxation (local economic contribution, property tax) is also available in certain parts of the country, particularly for setting up or expanding industrial businesses. It should however be verified that the relevant local authorities have approved these measures. On the other hand, businesses that spend money on research may be granted tax credits, which can be offset against the corporation tax they owed.

### Tax benefits

New businesses with innovative start-up status are entitled to exemptions from:

- Personal income tax or corporate income tax; Total exemption for the first financial year or the first period, when they are taxed on profits (this may not be longer than 12 months), followed by a 50% exemption for the next year when they will have profit.
- Total exemption on the local economic contribution (CET) and property tax for seven years following a decision by local government.

The exemption from tax on profits can be combined with the research tax credit (CIR) and innovative tax credit (CII) start-ups can also receive an immediate refund of their CIR receivables.

### Incentive tax relating to the incorporation of biofuels.

TIRIB (in French language) is a tax that concerns several energy products. The regulatory framework for the products concerned is provided by Community law by Council Directive 2003/96/EC of 27 October 2003 and Council Directive 2008/118/EC of 16 December 2008.

The European requirements included in these directives are transcribed into French law in Article 265 of the Customs Code. The latter specifies that the TIRIB applies in particular to petroleum products, fuel and hydrocarbons. TIRIB's purpose of reduction or exclusion of palm oil-based uses is exhaustive. First, the incentive tax for the incorporation of biofuels is imposed on gasolines and diesel activities and uses. Whatever the origin of the raw materials incorporated on them, according to the same objective criteria and on the date of the same operative event namely when they are produced. Furthermore, the tax can be avoided if the percentage on use of biofuel is  $\geq 8.2\%$  for diesel, 8% for gasoline in 2020.

The tax is priced on volume for 2020: At 101€/HL diesel or gasoline used (compared to 98€/HL in 2019).

### Measures for low-income households

Investing in other equipment is the main key to reduce our carbon footprint significantly. Thus, the French Government are helping several households, especially the most vulnerable, to reduce their footprint through some measures such as:

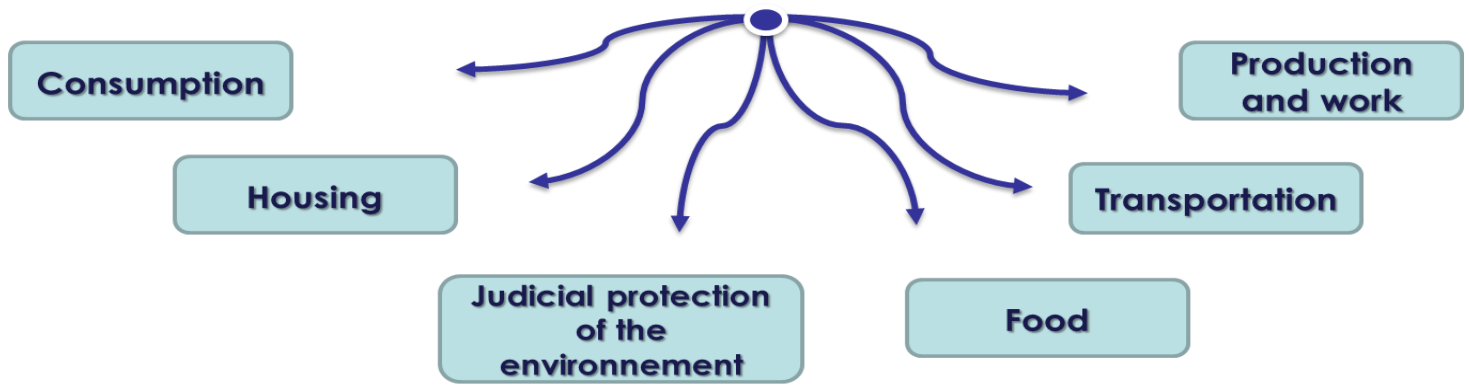
- « Energy saving certificates » enables the modest householder to benefit from assistance of up to €3,000 to replace their old fuel boiler with one that uses renewable energy.
- The tax credit for energy transition (CITE) provides funding for insulation work in homes, will be converted into a premium from 2019 so it can be paid directly to those householders using it once the work is complete and more the following year, as has been the case until now. CITE will continue to tailor the most efficient energy saving measures.



### Climate Law: « Climate & Resilience »

The Climate Law was presented on February 10, 2021, to the Council of Ministers. Aiming to put France on the right path to reduce global warming. Entitled « Climate and Resilience », it reflects almost half of the 149 proposals of the Citizens' Climate Convention intended to reduce France's greenhouse gas emissions by 40% by 2030 compared to 1990. Therefore, this project has for objective supporting businesses by promoting the decarbonization of production methods and the circular economy.





Climate Law covers 6 major themes on which 150 citizens selected by lot worked for nine months. Another bill adopted in January aims to include environmental protection in the Constitution. And some of the CCC's provisions have been included in the recovery plan and the latest finance bill.

## Consumption

Indeed, the Climate Law provides some essential requirements. For instance, there is the obligation to display information to consumers on the environmental characteristics of a product or service (carbon score). In contrast, there is also a prohibition of advertising for fossil fuels and « promotion » by the *Conseil Supérieur de l'Audiovisuel* (CSA) of « codes of good conduct » aimed at effectively reducing audio-visual commercial communications relating to products with a negative impact on the environment ».

The CCC had proposed strong limitations on advertising for the most polluting products. To finish, businesses should target a 20% of the sales area devoted to bulk sales of more than 400m<sup>2</sup> from 2030 with a possible obligation of deposit for glass recycling from 2025.

## Food

One measure concerning food is about an experiment of a vegan menu in school canteens on a daily basis. This is only done in voluntary local authorities on an experimental basis for 2 years. At the end of these 2 years, an evaluation will be made, and the measure could be generalized. An extension in 2025 to private collective catering could be done to use 50% sustainable products and 20% organic. A « trajectory » to reduce emissions from nitrogenous agricultural fertilizers.

## Production and work

Improving the production sector and strengthening the consideration of the environment in public orders will help to involve and transform the mining sector. It would be done by ordinance as well as transforming the energy code to give an important place to renewable energies.

## Housing

Housing must deal with lot of issues nowadays. Climate Law plans to reduce urban fermentations which are often done at the destruction of natural spaces and agricultural lands. Moreover, it allows the fight against the artificialization of soils or the modification of natural spaces and agricultural. Going further, there is the benefit of development action by modifying the rules of urbanism. On the other hand, there is a prohibition of the establishment of shopping malls on natural spaces even if exemptions will be granted to structures smaller than 10,000m<sup>2</sup>. We can see that Climate Law tries to cover every ecosystem, by the inclusion of having 30% protected areas.

## Transportation

This measure concerns individual vehicles and air transport. For example, the project includes the establishment of low-emission zones (limiting the use of certain vehicles) by 2025 in all metropolitan area with more than 150,000 inhabitants.

It aims to end the sale of the most emitting thermal vehicles by 2030. In addition, the bill implements a ban on domestic flights in all areas that can be reached by direct trains in less than 2.5 hours. Furthermore, airlines will have to offset the emissions generated by these domestic flights by 50% in 2022 and 100% in 2024.



## Judicial protection of the environment

This last division focuses on the offence of ecocide for any offence against the environment. It punishes any person found guilty of a behaviour that seriously affect the environment, including the qualification of « ecocide » when committed intentionally. The penalty can go up to a maximum of 10 years in prison and a fine that can go up to 4.5 million euros. Finally, this should help modify the environmental, education, labour or transport codes to promote more environmentally friendly measures.

### JPA INTERNATIONAL IN PARIS

The objective of the JPA Group is to participate in the harmonious development and sustainability of its clients by supporting them in their organization and in their accounting and financial management.

We are permanently attentive to the evolutions whether they are economic, regulatory or technological and, whether it is a question of accounting and financial normalization, audit standardization or development of innovative techniques in consulting, we take care to maintain the highest level of our know-how.

To achieve this, we base our development on an ethic shared by all our employees, which places competence and independence at the top of the list, as well as the ambition to provide a quality and local service.

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## Spain - Solar projects

### Solar industry today

Renewable energies is a sector that has experienced a boom in recent years. This is due to the fact that the general public and legislators, among others, are putting the pressure on to use of cleaner and greener energy. The EU Green Deal is an example of how Member States are placing renewable energies at center stage.

As an example of this trend, major oil companies are spinning off their renewable units and focusing a major part of their resources and activities on this alternative source of energy.

The renewable energy industry in Spain is currently dominated by wind power. Solar energy has nonetheless experienced exponential growth and is on track to become the second largest source of clean energy. Spain is an attractive country to produce solar energy due to an abundance of sun and land.

In the past, solar energy was not profitable enough, and the Spanish government subsidized the development of renewable energy projects. Today however, thanks to new technology, solar projects are more profitable, and the industry is no longer dependent on subsidies. In particular, solar panels can generate more power at much lower costs.

### Life cycle of solar projects

The life cycle of solar projects can be divided into three stages: development, construction and exploitation. The development stage consists mainly in finding the right location and obtaining the licenses to later build the solar plant.

As in other ventures, solar projects are structured through SPVs. Once the developer, through its SPV, has obtained the proper licenses, the developer can sell the (ready-to-build or turnkey) SPV to major utilities who will then have the resources and knowledge to carry out the power generation activity, together with the rights and agreements to sell the energy produced.

### Tax issues in Spain

Capital gains generated on the sale of these (ready-to-build or turnkey projects) SPVs are significant.

When selling the shares in the Spanish SPV, the seller can benefit from the Spanish participation exemption regime. This means that no (or very low) taxation arises in Spain when selling such projects.

To apply for the participation exemption regime, the shareholder must hold at least 5% of the company's share capital during the 12 months prior to selling the shares. **1 year holding period requirement**

When selling turnkey solar projects through an SPV, the Spanish tax authorities may argue that the 12-month requirement has not been met. In other words, they could consider that the development activity is only initiated once the construction activities begin. Special attention should be placed to properly documenting the start of the development activity.

### Substance and transfer pricing requirements

On the other hand, to obtain the licenses and permits to construct a solar plant, the SPV must bear significant expenses. These expenses (i.e. "development services") are invoiced among group or related parties and must therefore follow the arm's length principle. The invoice price for these services will determine the taxes to be paid in Spain. When invoicing these "development services", the income from such services will be subject to the Spanish Corporate Income Tax.

In scenarios where the "development services" are invoiced below the market value, the capital gain generated from selling the shares in the SPV will be higher, and thus less tax will be paid in Spain. This is an aggressive approach that the tax authorities might wish to challenge.

In scenarios where the "development services" are invoiced above the market value, the capital gain generated from selling the shares in the SPV will be lower, but the income generated from the services will be taxed in Spain. This is a conservative approach that, in principle, should not trigger any tax issues in Spain.

The pricing of these services have been very volatile in recent years. Some companies are merely recharging the costs while others have established that between 70% and 100% of the share purchase agreement should be allocated to development services.

From a technical perspective, the price applied to these services depends on several factors: development stage when selling the project, specific clauses of the agreement, among other. The pricing of these services is a key issue that can give rise to significant tax liabilities if not assessed properly.

The pricing of these services have been very volatile in recent years. Some companies are merely recharging the costs while others have established that between 70% and 100% of the share purchase agreement should be allocated to development services.

Transfer pricing policy can also be adapted on a yearly basis for FY 2020 and beginning of FY 2021 if changes are temporary and justified by:

- Governmental measures;
- Loss making accounts;
- Closed factory;
- Projected budgets not met.

### JPA INTERNATIONAL IN SPAIN

**Bové Montero y Asociados** is a Spanish professional services firm with 43 years of experience and a team of 100 professionals capable of attending to the needs of its clients in seven languages. The firm's experience in the international market allows it to advise foreign companies belonging to important international groups and to accompany them in their business activities from its five offices in Spain: Madrid, Barcelona, Palma de Mallorca, Seville and Valencia.

With a strong international outlook, the key of Bové Montero y Asociados lies in understanding the needs of each client, studying the organization's essence, analyzing their business difficulties and establishing a close and constant dialogue. In the tax field, the firm has extensive experience in the taxation of multinationals, family businesses, large estates and business restructuring and acquisitions in cross-border operations.

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## Tax update from France

*Overview of recent and important tax news in France that has or will have a significant impact on our day-to-day practice.*

### 1. French tax update

#### Criminalization of tax law for the past 3 years

French Parliament has taken several measures to support French tax authorities in the fight against tax fraud, such as the use of social networks, extension of filing obligations of digital assets and safe deposit boxes, and reward for whistle-blowers.

French judges are following the path of the authorities since criminal responsibility can now be transferred between entities in merger operations.

The CJEU also authorised in January 2021 the “Name and shame” of individuals.

#### Definition of active holding company (“holding animatrice”)

The notion is a condition precedent to many favourable tax regimes which has been recently clarified in jurisprudence:

- ◆ Effective animation has to be anticipated by companies;
- ◆ Proof of effective animation is required, not only statements (meeting minutes, animation agreement, etc.).

#### Tax compliance procedure (“examen de conformité fiscale”)

The decree was published on January 13, 2021.

An independent professional gives an opinion to a company on its tax compliance according to a “cahier des charges” (10 items listed to be analysed).

The item deemed compliant by the certifier will not be subject to penalties or late interests in the event of a tax audit.

#### 3 % tax on real estate market value

Online filing is required since 2021 with a strict annual deadline: 17 May for FY2021.

Foreign entities have to be registered in France to obtain a SIREN number for online filing.

Late filing or filing errors will lead to the payment of the 3 % tax with few possibilities to regularize/avoid.

### 2. Main client’s feedback

#### Increasing number of sales of companies and/or donation

Business owners aged more than 60 years-old are willing to anticipate and prepare their companies for a sale for the next generation.

Tax and legal tools can be used to optimise each process.

#### Increasing tax audits

Tax authorities focused on off-site controls (“contrôle sur pièces”) in 2020 due to COVID. They are targeting individuals and property related matters: wealth tax, inheritance duties, donations and filing obligations.

Relations with the tax authorities are also tightening due to criminal threat, abuse of law procedure with 40/80 % penalties, regional disparities in file processing, or internal instructions.

### 3. International matters

#### Standardization of tax regime to fight fraud and tax evasion

The OECD multilateral convention has already been signed by 95 countries. The OECD published in May 2021 a report on inheritance, estate and gift taxes according to which inheritance taxation could be used to address inequality, particularly in the current context of high wealth inequality and pressures on public finances due to COVID.

The EU Commission communication announced in May 2021:

- ◆ A single corporate tax rulebook for the EU, providing fairer allocation of taxing rights within the EU;
- ◆ Publication by the EU’s largest companies of their effective tax rates (equivalent of OECD Country-by-Country report).

The G7 countries agreed in June 2021 to implement a minimum 15 % tax on MNE specially tax digital players (“GAFA” tax already enforceable in France).

#### Supporting the fight against climate change

A carbon tax at Europe’s borders should be implemented in 2026.

#### JPA INTERNATIONAL CONSULTING IN BORDEAUX

BDA is a French law firm located in Bordeaux specialized in tax & legal services.

Qualified attorneys working at BDA have extensive experience in French and international tax matters.

They focuses their practice on the taxation of French and multinational corporations, particularly on the structuring of merger & acquisition transactions, restructuring projects joint ventures and asset financing with special emphasis on transfer pricing issues.

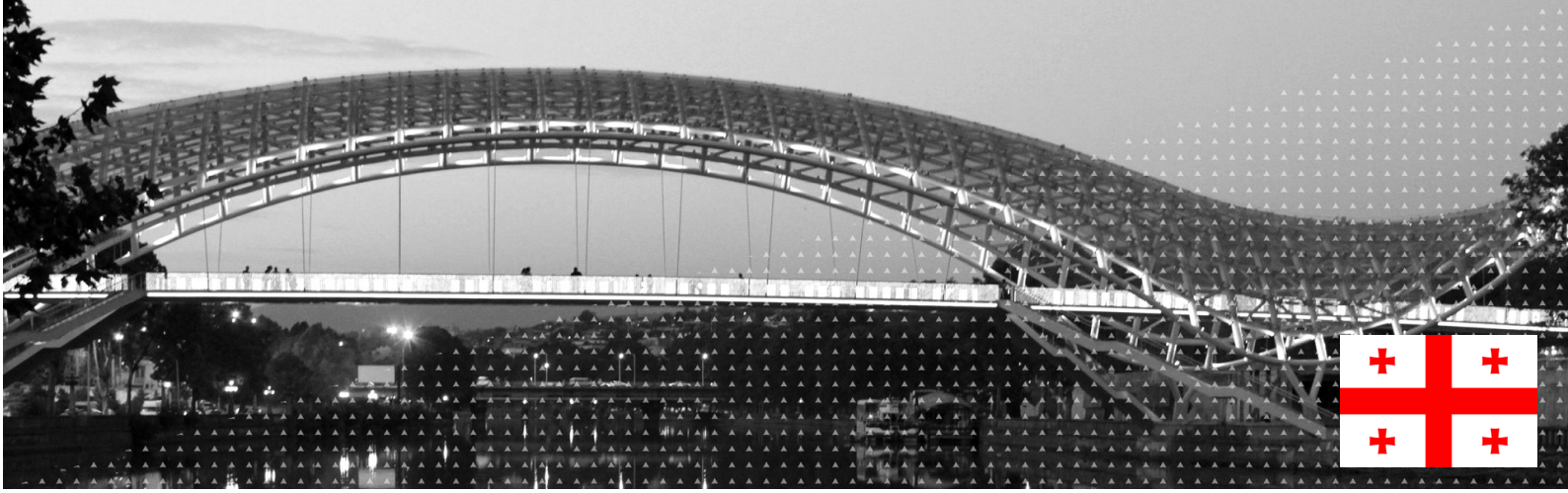
They are also active in tax audits and litigation matters in EC, especially in cases relating to domestic and international tax issues, such as transfer pricing, mutual agreement procedures and double taxation treaties.

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## BEFIT: A way forward to more unified European business taxation

*This article is a brief overview of a tax harmonization in European Union*

EU is a single market of 450 million people but still countries combat tax avoidance and are in need to support jobs, growth and investment, especially to recover after the Covid-19 crisis and due to globalization, climate change, digitalization, and an aging population. The European Stability and Growth Pact (SGP) sets two hard limits on EU member states: a state's budget deficit cannot exceed 3% of GDP and national debt cannot surpass 60% of GDP. But for the majority of countries' national debt is higher than this level. Also countries are still fighting for the FDIs. In the article title dated back in 1999 by Alfred Boss, we read the question: "Do we need tax harmonization in EU?" And so far this process, did not finish.

business tax, the EU should consider full expensing as a means to increase private investment. Given the corporate tax difference across countries, countries like Estonia and Latvia that already have good policies for business investment would have their tax systems made worse unless the EU adopts a pro-investment policy like full expensing. Companies operating in the EU market could also benefit from the reduction of administrative and tax complexity and tax uncertainty. It also includes a carbon border tax and a financial transaction tax. The plan also includes a levy on digital companies which would "coexist with the implementation of an OECD agreement." This would contribute to repayments of the funds raised under the 'NextGenerationEU' investment plan.

### Common Consolidated Corporate Tax Base (CCCTB)

A commission proposed in 2011 that the EU should at least unify what they tax, rather than how much, in a proposal called the Common Corporate Consolidated Tax Base (CCCTB). But the proposal went nowhere because setting tax rates is a jealously guarded prerogative of national parliaments and many EU governments saw it as a foot in the door for the EU to have a say on national tax policies and potentially on actual tax rates later on. EU Commissioner

Gentiloni now said the impetus for reform comes from the post-pandemic situation and the need for states to have strong resources and the need to redesign taxation systems which are "pre-globalisation" and "pre-digitalisation". The EU's "Business in Europe: Framework for Income Taxation" (BEFIT) will be a single rulebook for companies trading in Europe. The Commission believes BEFIT would reduce barriers to cross-border investment, cut red tape and compliance costs. It will replace an earlier Commission proposal called the Common Consolidated Corporate Tax Base (CCCTB).

The Commission's proposals include a crackdown on so-called shell companies that are created to facilitate tax avoidance by certain multinationals. For example, it plans to propose next year an EU law forcing large multinationals to publish the effective tax rate they pay in the EU and, by the end of this year, it plans to present a law against the abusive use of shell companies set up just to minimise the tax bill.

By the first quarter of next year the Commission wants to propose a law that would make it less attractive for companies to finance themselves through debt from a tax point of view, and more attractive to use equity. Reform shall prioritize policies that provide a foundation for sustainable revenue and economic growth, driven by private investment. When reforming the corporate



This reform is looking to safeguard long-term funding for regional governments, investment in public infrastructure, and businesses hardly hit by the changes in the global economy. The initial plans to achieve a framework that will maintain fair competition within the internal market as the different corporate tax systems in the EU deter cross-border investment and prevent businesses from fully benefiting from the advantages of the single EU market. In a medium-term action plan, The European Commission wants to propose in 2023 a more unified way of taxing companies in the European Union,

"Business in Europe: Framework for Income Taxation" as the aim is to establish a level playing field for all businesses while maintaining the EU's international competitiveness. A set of corporate tax rules for the whole of the EU would allow taxing the same things across the bloc and the allocation of profits for taxation at national rates between EU countries according to a formula. Key considerations for the formula would include how to give appropriate weight to sales by destination and how to reflect the importance of the market where a multinational group does business. Also important will be how assets, including intangible ones, and labour should be reflected to ensure a balanced distribution of corporate tax revenue across countries with different economic profiles, the draft said.

The EU's free movement of capital rules could restrict how the Pillar Two rules are applied. EU rules, bar member countries from enacting laws that prevent companies from other member states from establishing themselves there. The minimum tax proposal could arguably create such a restriction, since it could reduce the incentive for companies to base themselves in lower-tax EU countries and "indeed, in one sense that is the point of the proposal," said Greg Price, corporate tax partner at Macfarlanes LLP.

The Organization for Economic Cooperation and Development (OECD) is to agree in June on global rules on where to tax large multinational corporations like Google, Amazon, Facebook, Apple or Microsoft and at what effective minimum rate. The deal is aimed at stopping governments competing with each other through lowering tax rates to attract investment and at creating a way to tax profits in countries where the customers are rather than where a company sets up its office for tax purposes.

The digitalization of the economy has intensified tax competition both within the EU and internationally, “risking a new race to the bottom.” Nevertheless, the “race to the bottom” in global corporate tax rates has stalled in recent years with average corporate tax rates in the mid-20s. According to the Tax Foundation’s latest Corporate Tax Rates Around the World 2020, the weighted average corporate income tax rate has declined from 46.52 percent in 1980 to 25.85 percent in 2020 and has leveled off in recent years. Secondly, while corporate tax rates have declined over the past few decades, corporate tax revenues have risen slightly in recent years.

Still opposition in the EU to a high corporate minimum tax rate could be a deciding factor in the OECD-led negotiations on a global tax overhaul. After the Biden administration proposed that the U.S. apply a 21% global minimum rate—sparking speculation that it would push for a high rate in the multilateral talks, too—several European Union countries said they wouldn’t agree to such a high number. Ireland, the Czech Republic, and Hungary have voiced concerns about a higher minimum effective tax rate and said that 21% rate would be too high. Any one of these countries could use its veto power and derail the minimum tax plan in the EU.

Negotiators have yet to publicly settle on a rate, but the Biden administration has raised the stakes in the years-long negotiations by proposing to increase the U.S. minimum rate for income known as GILTI to 21%. Currently, GILTI is a 10.5% tax on companies’ low-taxed foreign income. Global intangible low-taxed income, called GILTI, is a category of income that is earned abroad by U.S.-controlled foreign corporations (CFCs) and is subject to special treatment under the U.S. tax code. The U.S. tax on GILTI is intended to prevent erosion of the U.S. tax base by discouraging multinational companies.

“What they are concerned about is that the real activity is shifting out of the U.S. rather than just profits,” said Michael Devereux, Director of the Oxford University Centre for Business Taxation. France and Germany recently voiced their support for a 21% rate. But French Finance Minister Bruno Le Maire has expressed doubts that the final U.S. rate—which will have to pass Congress—would ultimately be 21%. The EU must adopt a global minimum tax regime in order for the OECD rules to be effective, because it contains some of the world’s biggest economies and largest companies.

Unanimous agreement in the EU is crucial because the bloc will most likely have to implement a minimum tax agreement through a directive, which requires unanimous support from member countries when it involves tax matters. An EU official, involved in tax reform, who spoke on condition of anonymity, said "we need unanimity but we're going to fight for it and convince everybody that it will be good for EU citizens and it's going to be fairer and more effective and good for jobs." Finally, the minimum rate is proposed at 15% globally according to G-7 meeting protocol in June 2021.

### JPA INTERNATIONAL IN GEORGIA

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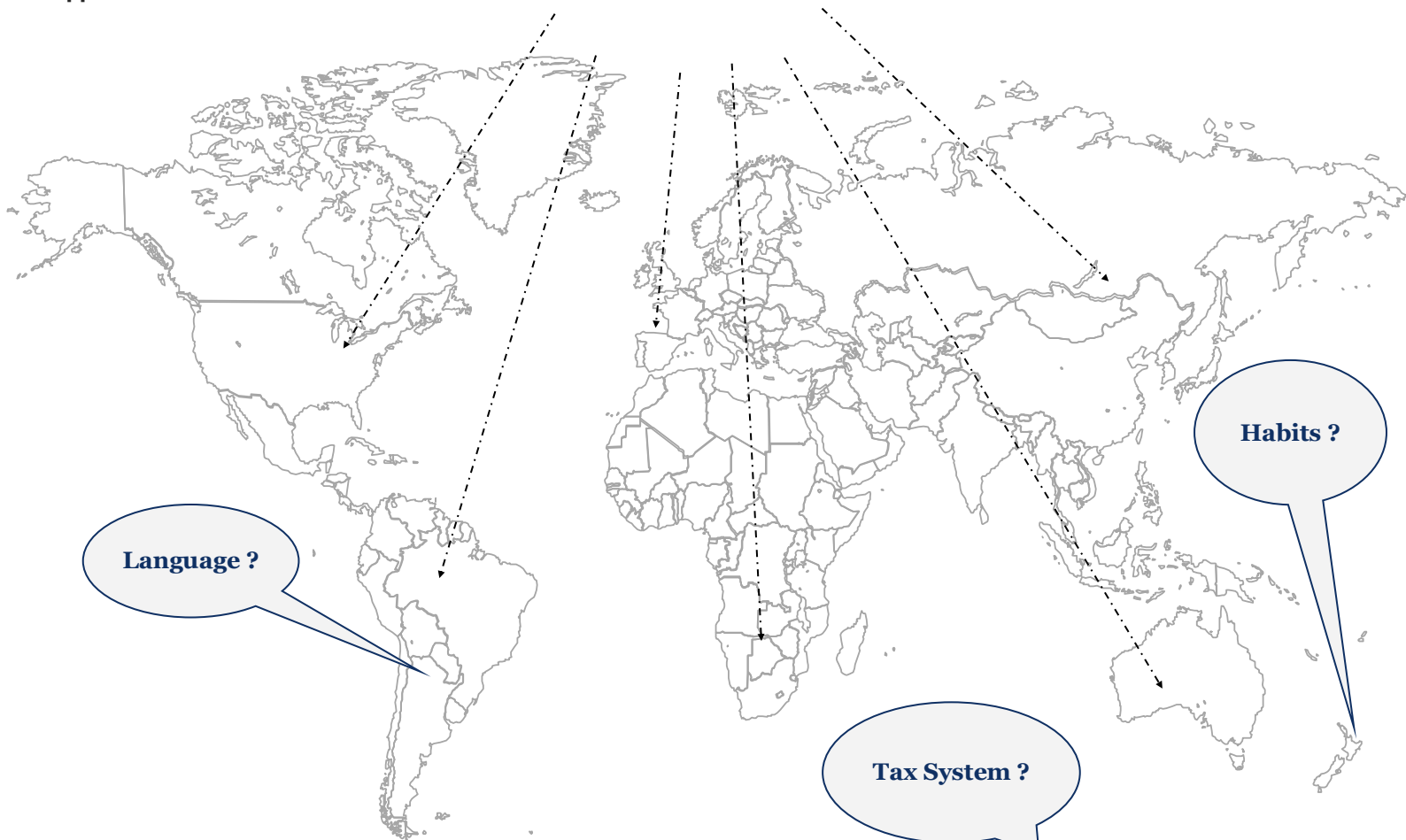
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