



The new GGI website

# New GGI Website online now

The GGI website [www.ggi.com](http://www.ggi.com) has been redesigned. In particular the intranet (members only section) has been changed to make it an even better communication platform for all GGI members. Some of the benefits you will

find, for example, are that you can add as many employees of your firm to the website listing as you wish. You can find even more detailed company and member profiles in GGI's intranet, create your own distribution lists and

email to your GGI fellows via the login area. The login area is a superb communication tool for all GGI members. Just have a look at [www.ggi.com](http://www.ggi.com) and convince yourself of the benefits the login area offers you.

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## DIARY

### → 06 February 2010

GGI Practice Group Chairperson Meeting Zurich, Switzerland

### → 20 February 2010

GGI Executive Committee Meeting Zurich, Switzerland

### → 12 – 14 March 2010

GGI EasyMeet Luxembourg, Luxembourg

### → 22 – 25 April 2010

GGI European Conference Madrid, Spain

### → 17 – 20 June 2010

GGI Central & Eastern European Conference Eisenberg, Austria

### → 29 July – 1 August 2010

GGI Latin American Regional Conference Panama City, Panama

### → 10 – 12 September 2010 (tbc)

GGI German Speaking Chapter Freienbach - Switzerland

### → 1 – 3 October 2010 (tbc)

GGI EasyMeet Ljubljana – Slovenia

### → 21 October 2010 (tbc)

GGI Asian Regional Conference Beijing - China

### → 21 – 24 October 2010 (tbc)

GGI World Conference Beijing - China

Please refer to our website for actualised information and additional events: [www.ggi.com](http://www.ggi.com), entry "Events"

tbc = to be confirmed



## UPCOMING CONFERENCES

## 22-25 April 2010: GGI European Conference in Madrid, Spain

Geneva Group International cordially invites all members to attend its forthcoming European Conference from 22-25 April 2010 in Madrid, Spain. Spanish GGI member firms Dr. Frühbeck Abogados, S.L.P. and Ficesa Treuhand, S.A.P. Auditores y Asesores Fiscales are proudly hosting the conference which is to be held at the wonderful Hotel InterContinental Madrid.

At the GGI Conference, all GGI Practice Groups will hold meetings, most of them on Friday afternoon. You can register for the meeting(s) of your choice in advance by using the conference application form.

Dr. Thomas Geiger will chair the PG Auditing, Elisabeth Heller chairs Enhanced Business Opportunities, Dr. Attila Kovács the Insolvency PG and Johan F. Langelaar chairs Cross Border



Madrid – Plaza Mayor



Gran Vía de Madrid

Debt Collection. Please note the Practice Groups Insolvency and Cross Border Debt Collection will have separate meetings for the first hour and then they join forces in one meeting room. Ionut Catalin Zeche chairs International Executive Services, Dr. Michael Karger and Dr. Bernd Tremmel chair IT&IP (formerly IT, E-Commerce & Telecommunications since the PG is expanding its area of focus. The Group will now also work on topics relating to industrial property law, licensing laws, IP, trademark rights and patent law). Andrew Lindsay and Marco G. Walser chair M&A, Dr. Reinhard Nacke chairs Real Estate and Claudio Cocca the Task Force: Financial Crisis.

A new Practice Group will be set up by Susanna Norelid from Swedish GGI-Memberfirm Advokatfirman NorelidHolm KB.

On Saturday morning Susanna will hold a workshop “**Establishing a practice group Corporate and Commercial Law**”. Please inform GGI head office at [b.reiss@ggi.com](mailto:b.reiss@ggi.com) if you are interested in participating in the group.

On Saturday afternoon participants can choose between three different sightseeing programs. First offer is a wonderful panoramic tour in the city of Madrid with stop at Thyssen Museum which houses a magnificent collection of over 800 works and was acquired from Baron von Thyssen by the Spanish government. Besides a rich collection of Old masters, the museum has a wonderful modern section that includes French Impressionists Manet, Monet and Degas. You can also go on a panoramic tour that  
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will give you an accurate over-

## Editorial

Dear GGI-member,

Happy new year to all of you! We hope you had some peaceful days between Christmas and New Year.

Have you already had a look at the new GGI website? It took some doing but the result now is nothing to sneeze at. We are delighted to welcome 10 new member firms from all over the world: Austria, Germany, Greece, USA, Mexico, Israel, Singapore, India and Iran. What a great start into the new year! Many of you certainly have had New Year's resolutions like to reduce stress at work or quit smoking. We propose to you another challenge: Try the paperless office to save resources and protect the environment. GGI member Graham Busch has been practising a paperless office for years and he gives you a humorous insight into how it's worked for him. It's worth a try. Ever thought about art as an investment?: Javier Lumbreras, a famous Spanish fifth generation art collector has done so for many years. We are tickled to have him contributing to this issue.

Also GGI members have been really keen to contribute to this issue with articles on a wide range of subjects. Seiichi Yoshikawa is commenting on political changes in Japan, Adinda van der Werf presents the Dutch Innovation Box and Romanian member firm Dragomir si Asociatii writes about a new approach of the Court of Justice of the European Union over the principles of EU law.

Keep up the good work, everybody: share your views, thoughts and interests with the entire Insider's readership by contributing an article. We are looking forward reading from you! We wish you a happy, healthy, blessed, prosperous (and paperless) new year!

Your GGI Team



view of the historical city of Madrid. The Royal Palace, home of the Spanish Crown, is the single most important palace in Spain and arguably the best maintained in Europe. It is an enormous, 18th century palace with 2800 rooms. Housing tapestries, a royal clock collection and five Stradivarius violins, as well as a Chandelier collection, the palace is a "must see" while in Madrid. Although the Spanish Royal Family no longer lives in these quarters, the palace

still plays host to state visits.

The third option is the visit of the world famous football Stadium, the Santiago Bernabeu Stadium. The stadium seats over 90'000 people. Its interior holds thousands of sporting mementos as well as the renowned trophy collection, where you can find almost any known soccer championship trophy.

On **Saturday evening** there will be a Gala reception and a Gala dinner in the Casino de

Madrid.

The Casino de Madrid is located in an exceptional historical building. The prestigious chef Ferrán Adriá (Three Michelin Stars) is the Casino's gastronomic consultant and oversees all the food services.

If you have not yet registered for the conference, you can still do so at GGI head office by returning the completed application form by fax to +41 44 256 18 11.



Coat of Arms of Madrid (Bear and Strawberry Tree)

## REVIEW OF PAST CONFERENCES

# GGI First Asian Regional Conference in Bali, 11-13 December 2009

GGI Member firm Kosasih, Nurdiyaman, Tjahjio & Rekan (KNTR) were honored to host the first GGI Asian Regional Conference in Indonesia. The conference brought together members and member candidates from the versatile and economically interesting Asian incl. Middle East region. During two and a half days the participants enjoyed a full program of brief lectures, workshops, practice group meetings and leisure activities, taking a well-earned break from the daily routine and usual year-end- hectic.



GGI Asian Regional Conference in Indonesia

Friday saw the International Taxation Practice Group (ITPG) meeting chaired by Alan Rajah. Raghu Marwah held a Note on Taxability of Foreign Companies in India. Martin Thieslauk talked about Doing Business In Germany. Devin Xie spoke about China Tax Reforms Amid the Global Financial Crisis. Doris Foo held a presentation on

Singapore as an international Headquarters for Businesses, Innovation and Talent. Haruki Yoshida gave an Outline on Japanese Taxes. Alan Rajah spoke about Tax Efficient Profit Extraction in the UK.

Special guest at the Friday evening welcome reception was Mrs. Sonja Hürlimann, Deputy Head Mission of the Swiss

Embassy in Jakarta. Despite her more than full schedule she joined the delegates wishing all a nice and successful Conference. She delivered a speech, with some fruitful information about the Swiss presence in Indonesia.

On Saturday, in his key note, Joseph Tan, Chief Economist of Credit Suisse ASIA, gave an

outlook on the Asian Market through a fascinating presentation. He underlined that the Asian Economies will grow between 4.5% and 8.5% in 2010. At the bottom end is Thailand due to its political instability. Vietnam is benefiting from this situation dramatically, whereby Indonesia's outlook is good and  
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its economy should grow by 6,5 % this year. He mentioned that since China and India are out of recession they are now decoupling from the western economies. Both countries also have a large domestic market with a strong growing Middle Class. He stood for questions and answers.

Marco G. Walser introduced the practice group M&A and enhanced business in the region. Walser focus with his temper attracted everybody's interest and attention.

He spoke about the G7 countries which have mature companies, are technology driven, and internationally focused but suffer from higher cost of production. The BRIC countries (Brazil, Russia, India, China) have expanding economic interests worldwide, like China in Africa, are acquiring technology, i.e. know-how of transfer like Russia in Europe. They are in need of geographic diversification. BRIC have a strong economic growth and a lower risk of failure as the "Next 11". The latter (Bangladesh, Egypt, Indonesia, Iran, Mexico, Nigeria, Pakistan, the



Coffee break

Philippines, South Korea, Turkey and Vietnam). Are they the future "BRIC"? asked Walser. The "Next 11" are characterized by low production costs, a strong economic growth but also a higher risk of failure than BRIC.

Asian participants were encouraged to initiate their own Practice Group. Purush Dheendayan from Astral Consulting will set up an ITPG and Jeff Sun and Xie Devin from Gateway Consulting will initiate a M&A group Asia.

Claudio Cocca presented the GGI Management Report and

emphasized on the importance of the ASIAN Region to establish its own Practice Groups. In addition, he introduced the YGGI (Young GGI), all participants showed great interest. Cocca underlined the importance and benefits of members' introducing new candidates and the Network Development. The new approach of the Due Diligence process was also highlighted. Finally, Cocca lead a panel discussion related to GGI Networking.

Subsequently, Peter Kaeser presented the Regional

Management Report and announced the opening of a sub-regional office in ASIA in the near future. The 2010 Regional Asian Conference will take place in Beijing a day prior to the World Conference. The Regional Asian Conference will be held in Japan in 2011. A Middle East North African Conference will also be instituted very shortly.

Also highlighted were the advantages of new members organizing launch announcements/ events and inviting existing and potential GGI members. Upcoming events will be held in the following cities: Coimbatore, Teheran and Beirut.

An entertaining closing reception/ dinner was held at the spectacular venue Klapa New Kuta Beach with live music on Saturday night.

**A future for children** – Daniel Elber, Vice President of the association "future for children" in Bali, a Swiss foundation, joined us after dinner at the Klapa Bar.

On Sunday, participants enjoyed discovering the beautiful island in a different way - a pirate's treasure hunt by jeep.

## ITPG meeting in Frankfurt, 4-6 December 2009: Talking about taxes in teams

"The best education for a clever person is found in travel", says German poet J.W. von Goethe in his famous "Wilhelm Meisters Lehrjahre". And so more than 40 GGI members travelled to Frankfurt, Goethe's town of birth, for the International Taxation Practice Group (ITPG) Meeting hosted by GGI member firm Benefitax GmbH, Steuerberatungsgesellschaft, Wirtschaftsprüfungsgesellschaft from 4-6 December 2009.

After the welcome by Oliver Biernat and Astrid Rechel-Götz on behalf of the host firm at the Saturday morning session, Ionut Zeche summarized the results of the successful and well-visited ITPG meeting in Cyprus. Then all participants were

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ITPG meeting in Frankfurt



asked to combine their individual presentations with some personal statements on how to further increase referrals within GGI. ITPG members and visitors came up with creative and feasible ideas which afterwards were discussed for further development in different workgroups. Some precise projects could be presented in the end by the speakers of the different subgroups which are planned to be set into practice starting in 2010 and shall be presented to all ITPG members at the 2010 meetings.

The afternoon session was reserved to international tax issues presented in excellent presentations by some ITPG members: Dov Ingber gave a presentation on the Israeli income tax reform – tax benefits

to new immigrants and veteran returning residents. Klaus Küspert followed with an interesting contribution on Controlled foreign corporations (cfc's) Comparison of rules in EEC countries and discussion. Dr. Anita Ihasz Kovacsné spoke about the new social security regulation EC reg. 883/2004 and how it affects expatriate issues as well as how ITPG members can generate business from that. Oliver Biernat talked about Confédération Fiscale Européenne (CFE) and Alan Rajah briefly presented the agenda and contents of the Asian Conference in Bali. All presentations can be downloaded from the GGI intranet.

At the end of the meeting the ITPG chairmen for 2010/11

were elected. The new "old" chairmen Graham Busch, Ionut Zeche and Oliver Biernat stood for a second round, and were re-elected with great approval. Participants thanked them for their achievements obtained during the past two years of their chairmanship.

Host firm Benefitax GmbH, Steuerberatungsgesellschaft, Wirtschaftsprüfungsgesellschaft had arranged a fantastic leisure program for the participants. Those arriving earlier on Friday took the chance to meet at the Benefitax premises for a first exchange of experiences. The evening program opened with a walk through the historical part of Frankfurt including the Stock Exchange and the Christmas market, before the members met for the dinner

at Frankfurt Hilton Hotel where the whole meeting was held.

On Saturday evening the participants visited the Spa-city of Bad Homburg, had a walk through the romantic Christmas Market inside and around the Bad Homburg Castle and tasted the typical hot spicy Glühwein. The evening closed with a traditional wintery goose dinner at an historical restaurant in one of the most traditional parts of Frankfurt. On Sunday morning Benefitax' guests could enjoy a guided visit at Goethehaus (Goethe's family home and museum). All participants left Frankfurt with lots of new ideas and look forward continuing their work together with their GGI fellows in the many interesting ITPG projects.

## EasyMeet Cyprus, 20-22 November 2009

The 6th GGI EasyMeet held in Cyprus, proved to be an out and out success. The hosts, GGI member firm Eliades & Partners, were delighted to welcome the participants from several European countries and Dubai.

### Practice Group Meetings

On Friday two Practice Group meetings took place. The International Executive Services Group discussed a case study on practical challenges in implementing the domestic immigration law by offering structure planning



*Participants EasyMeet Cyprus*

to multinationals employing foreign individuals. Topics were local payroll vs. assignment and freelancer vs. administrator.

The 1408 EU Regulation was presented and a pension scheme and related certificates. Another topic discussed was that of artifices used for implementation of different structures and lobbying with the authorities to

accept the said structures.

At the International Taxation Practice Group meeting, Ionut Zeche presented the Romanian prospective on new VAT sourcing rules for services as of 1 January 2010 by transposing into the domestic legislation of 8th and 9th Directives. Zeche also talked about EU Directives coming across multinationals and mother-daughter

companies by avoiding double taxation on dividends and interest. George Christou presented Cypriot Tax accounting and best practices.

On Saturday three workshops offered participants the opportunity to gain knowledge on topics like Company Residence, Bank Secrecy, and international commercial arbitration. To highlight just

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one: The International Commercial Arbitration workshop held by Melina Karaolia was extremely well organized and attracted a lot of attention. Participants discussed fundamental issues of International Arbitration, e.g. being an alternative to national court and a private mechanism dispute resolution.

In the Bank Secrecy-Workshop participants talked about the applicable law regulating Bank Secrecy in their respective countries and whether their countries have adopted the OECD model. They discussed the limits of this legislation and whether the latest financial climate has changed the application of Bank Secre-

cy in their countries.

In the Company Residence-Workshop participants discussed the vital importance for establishing the tax status of an international company. They discussed what conditions should a company satisfy in order for it to be considered tax residence in their respective countries and what

documents should necessarily be submitted to the local authorities.

Participants enjoyed the special atmosphere of the Atlantica Miramare beach hotel. Social highlight was a dinner at a tavern in Limassol on Saturday evening where people enjoyed delicious traditional meals as well as live music and dancing.

# Investing in Art as a Real and Tangible Asset

By Javier Lumberras

It is quite well known that a strong investment portfolio requires a methodical well-diversified asset balance in order to minimize risk. These assets can be financial and non financial. For the purpose of this article, I shall refer to the non-financial assets, with the exception of real estate, called real and tangible assets, such as gold and more specifically, art.



Let me briefly refer to the historical precedent set by the 1970's when the global economy experienced a period of high inflation and slow growth. During this time, real and tangible assets reported superior returns to their financial colleagues. In 2009, governments were concerned about low growth and unemployment and to revive the economy, they created incentives that included a compounded growth of public spending and an unprecedented increase in the money supply. This excess in money supply can poten-

tially cause inflation coupled with slow growth provoking financial instruments to generate very poor rates of return for investors with savings. Real and tangible assets are a great alternative due to their growth potential while being generally unaffected by inflation.

In vesting in art is a relatively new concept. Obviously, collecting art has always existed and the tangible value of art is not in question. However, in years prior, art investments were focused on the revaluation of assets and were in the hands of a few elite and knowledgeable dealers and collectors causing the art market to be very opaque. With the creation of the internet, everything changed. Now the market is very transparent because art rates are available on the internet and within seconds, one can find out precisely the price a work sold for. Recently, art has become a major asset because of the creation of indexes that prove not only their growth over a century of

compiled results of public sales and auctions, but their low correlation with other investment assets. As a result, investors have found that diversifying ones assets to include some real and tangible segments that will be averse to inflation are crucial to a successful investment portfolio.

As with so much in life and in matters of the mind, heart and money, timing is everything. It wasn't very long ago at the peak of the economy that the price of quality art was rising at an unsustainable level. Speculators and the extremely wealthy drove up the prices of Old Masters and blue chip Impressionist & Modern Art sales, which is why an unusual percentage of lots sold well above the estimates. The auction rule of thumb that for every five lots, one does not sell, one sells against the reserve, two sell within the estimate and



Wassily Kandinsky

one sells above it – became all but irrelevant. In short, until quite recently, opportunities to purchase fine works of art at sensible levels were few and far between.

Clearly, the economic malaise now facing much of the world has changed the way the

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game is played. As I discuss in my recently published book, *The Art of Collecting Art*, art is a valuable asset class because it has a low correlation with other types of investments, thus reducing overall risk. While stocks can suffer double-digit losses in one day, the art market exhibits far more stability due, no doubt, to the limited supply of fine works of art and the emotional attachment of their beholders.

**BUSTILLO/LUMBRERAS  
FAMILY HISTORY OF  
COLLECTING ART**

Art is not a newfound passion of mine; it has been in my family for five generations. My great great maternal grandfather, Francisco Bustillo, started investing in art back in the middle of the 1800's in Spain. Living in Valladolid at the time, he invested his portfolio into equal segments between stocks and bonds, real estate and art, a similar approach to that of the Rothschild's Family. All the walls on their estate were filled with paintings, especially those of 17th and 18th century Old Masters. The art has since been distributed

to many family members, including myself, while simultaneously preserving capital. Art has and always will be a solid investment because works of art of superior quality will retain their high prices throughout the ups and downs in history and are generally unaffected by other markets or inflation.

**ARTEMUNDI GLOBAL FUND**

With inspiration stemming from my long standing passion for the arts and strong track record of investing within the industry, I recognize that an art investment fund has the potential to serve as a very valuable asset class investment instrument, especially in troubled economic times. With all of that in mind, I have created the Artemundi Global Fund (AGF). AGF is a diversified art investment private equity fund with a strategic portfolio that covers half a millennium of universally recognized artists with proven track records.

I. The principal investment objective of AGF is to acquire outstanding examples of fine art in calculated categories in

order to earn an attractive rate of return while taking care to preserve capital. At the same time, we recognize that art is the one investment that provides constant pleasure and we seek investors who share our aesthetic perspective. They will be participating in a small closed-end fund that is not merely a tool to greater riches, but also an investment that rewards in so many other ways.

II. AGF's asset diversification covers more than half a millennium, ranging from XV century art to the art of XXI Century. Some 16% of the portfolio is dedicated to Old Masters; 32% to late XIX Century and XX Century masterpieces inclusive of Impressionism, Post-Impressionism, and Modern; 20% is invested in Modern Latin-American art of the XX century; and 16% focuses on Contemporary Art from emerging markets. The remaining 16% is kept in cash at all times for short-term opportunistic transactions.

III. Our focus is quite narrow, emphasizing classical media, oil, acrylics, mixed media, and sculpture. Size and portability are very important; we look for small gems. We tend to stay away from large or unwieldy objects. Most of our acquisitions carry price tags of between \$250,000 and several millions, not merely to simplify



*Henry Moore*

the managing of the inventory but also because we believe that this is the safest strategy in terms of attracting a wider audience and for selling the work as a comprehensive collection later on.

IV. Our minimum investment is a \$500,000 unit for individuals which can be split between investors, \$1,000,000 for institutions or family offices and \$10,000,000 for Strategic Investors. Strategic Investors have the opportunity to be on the advisory committee, which is included on the inner circles of the buying methodology and trade secrets from the 5th generation art collector. We try to keep our investor group as close as possible in order help maintain a friendly and familiar environment.

V. We also provide what may well be a first in the art investment industry. We believe that works of art, at least our works of art, cry out to be seen and should not be hidden away in vaults or warehouses. Therefore, our policy is to enable  
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*Roberto Matta*



investors to display the Fund's holdings in their homes or offices on a revolving basis. Additionally, we provide investors with the opportunity to learn more about the art of collecting and the art in their Fund through lectures, monographs, and our own insights acquired over the years.

AGF's management provides exceptional knowledge and vast experience as art collectors, having invested more than \$250 million in fine art since 1988. We believe success in the fine art market depends

on accumulated qualitative and quantitative methodology, global market arbitrage combined with the ability to identify, interpret and capitalize on specific art transaction opportunities. We also have multinational expertise in the areas of logistics, safekeeping, restoration and conservation.

As active traders in many different forms of art deriving from many significant periods, we have a unique and ongoing perspective of the art market, ever mindful of changing tastes and tendencies. We are

constantly monitoring our strategy to assure we are on course, so as to validate that we are indeed choosing the right works at the right time and that each contributes to the Fund's expected return. Simultaneously, we make the auditing of the fund easier and more transparent, as at any point in time, both the administrator and the auditor can more precisely assess the real value of the portfolio and produce timely and accurate reports. Furthermore, active management enables AGF to

generate the necessary liquidity required to take optimum advantage of unexpected opportunities that come our way.

Reputable institutions including Alter Domus, KPMG, Walkers LLP, Sanchez-Medina, Gonzalez & Quesada LLP and Lloyds Underwriters of London are AGF's partners in the areas of administration, auditing, legal and insurance.

**Javier Lumbreras**  
Managing Member & CEO  
Artemundi Global Fund  
www.artemundi.net

## GGI new member firms

We wish to extend a very warm welcome to our new distinguished members



AUSTRIA

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Services: Financial Audit & Accountancy Services, Tax Consulting,  
Management Consulting, Corporate Finance, International Trust & Estate Planning

## Going paperless – the Lawrence Grant experience

By Graham Busch

**WHY?**

A quick look at our filing room, desks and waste paper baskets was sufficient reason to start with, not to mention our off-site archive. This coupled with the difficulties in working from home or elsewhere away from the office, especially when abroad on business or, dare I say it, on holiday! Plus the huge volume of clients' accounts and tax papers sent to us which needed to be held somewhere temporarily. All added up to an awful lot of ex-trees and wasted time and costs at Lawrence Grant.

**HOW?**

We took a decision during the early part of 2005 to begin the process of going paperless. After all, it was apparent that more and more incoming communications were paperless. We realised from the start that going truly paperless was

a pipe dream but we needed to head in that direction. So we committed ourselves to commencing the process, slowly, from 1st May 2005. Here are some of the considerations we had to take into account:

**Document Management System ("DMS")**

Or in "paperspeak", a filing system but one that would be electronic – a series of filing cabinets, folders and files on our server. One that would allow us to store documents easily, retrieve documents quickly, provide a search facility, be easy to use and relatively inexpensive. Our IT consultants suggested SharePoint, which is a free application offered as part of the Microsoft Office suite.

**Customised Filing System**

Within SharePoint, we had to design a filing system tailored to meet the needs of an accountancy firm. This has evolved over some 4½ years to

what are essentially 3 different cabinets, namely:

- Clients
- Administration
- Private & Confidential (i.e. for Partners only)

Each of these in turn has sub-cabinets, sub-sub cabinets, etc. under them. For example, under "Clients" we have Limited Companies, Partnerships, Sole Traders, Personal Tax Clients, etc. Under Limited Companies we have a folder for each of our corporate clients. Under every such client we have the following structure of folders:

- Accounts
- Correspondence
- Dividends
- Invoices
- Permanent File
- Statutory File
- Taxation
- VAT

I'm sure you get the picture – basically a structure suitable to our requirements.

**Scanner**

Only once deciding which DMS we were going to use and how we wanted to electronically store the documents did we think about how best to scan them in. We opted for a few relatively inexpensive scanners but there are many options including scanners which can automatically name documents as they are scanned in. A few relevant points we considered were:

- Speed
- Automatic sheet feeding, i.e. to scan in numerous sheets of paper in one go.
- Duplex – the ability to read both sides of a single sheet of paper.

**Secure Server**

Whilst we all like to think that our servers are secure, this took on an added meaning now that client files were to be maintained on the server. Ideally this could/should be an  
*...next page*



encrypted system, so generally valueless to anyone able to access the server.

**Secure Back-Up**

Up until 2005 our main concern regarding client information was to lose files to theft, fire, flood or other physical damage. Now we suddenly realised that loss of or damage to our server, or just a temporary crash, could be disastrous. Thus our back-up system became even more crucial than before, not least the ability to restore our client files and be up and running again quickly. Refining our back-up system is an ongoing issue which we review regularly. Lost time is lost money/fees, and unacceptable to our clients.

**Personnel**

All users must be well trained in how to use the DMS to store and retrieve documents. It is preferable that an individual be appointed to head up the system. After all, accountants are not librarians! And don't expect an instantaneous result. We nearly had a riot on our hands soon after commencing when several of our staff found the system awkward and time-consuming. We laugh about it today!

**Daily Receipt of Mail**

Underlying the entire DMS was the need to have an efficient system in place for receiving and dispensing hard copy documents, be they snail mail, hand-delivered or couriered documents. In other words, what happens to paper documents when they arrive in office, who should receive them,



*Paperless Office?*

who should distribute them and how to get them into the DMS. In our office, dealing with the daily post, one of the partners will, upon opening the mail, simply write on the rear of the sheet the initials of the person(s) to whom the item should be scanned and e-mailed and, where not obvious to the scanning filing/clerk, the name that should be ascribed to the document (see below). The partner concerned then drops the item in either the clerk's "Scan and e-mail" tray, or the "Scan" tray (which is when the document does not need to go to anyone but simply needs to be e-filed). Once the clerk has scanned and filed the item, it is invariably shredded unless otherwise directed (which is not often at all!).

**File Naming Convention**

It was necessary from the outset to ensure that a uniform system of file naming was adopted firm-wide. Of course it was not only the scanning/

filing clerk who was naming documents – pretty much all staff do this, e.g. on receipt or sending of an e-mail. The naming convention should achieve the following:

- Date of creation of the document.
- Name of client
- Brief description of document

By way of an example, we use the following:

"2010 01 10 XYZ Ltd e-mail AB to CD advising of tax payment to be made."

The usefulness of a brief but accurate description can not be overemphasised. It is heartening and efficient timewise when trawling a folder for a certain document to be able to quickly identify it visually by the description.

**WHAT?**

One of our earliest decisions was: what to file electronically at the outset. We had to decide:

**How Far To Go Back**

We took the decision effectively not to electronically file anything before our start date. In other words, documents dated before 1st May 2005 remained in paper form only. There is probably no right answer to this question and I am aware of several firms who have gone back and started back-scanning from most current to oldest.

**What To Scan (and what not to)**

We decided to start by electronically filing all non-accounting/non-audit papers. In other words, correspondence, tax, statutory papers etc, just not the actual accountancy or audit working papers. Again this is a matter of individual choice but our rationale was to try a little first and then go wider once we were happy with our initial findings. Today we have our audit working papers all in paperless form and are just embarking on a paperless trial for our accounts (non-audit) working papers files.

**Keep two Systems Running?**

We did for a while, both as a safeguard and also to keep the dis-believers happy! The vast majority of users never needed to have recourse to the parallel paper system. After some 6 months, we effectively dispensed with the need to keep electronically saved documents (but see below).

**Keep Any Paper At All?**

We do occasionally keep paper; mainly original signed documents which we feel may be  
*...next page*



required in original hard copy some time in the future. Of course legal requirements may dictate that this is necessary.

#### PLUSSES

- Saving of filing space
- Major cost savings. A London law firm reported a €800,000 saving in its first year, whilst many firms report a dramatic reduction in printers and filing hardware.
- Saving of filing time
- Saving of paper
- Saving of document retrieval time (and much less likely to lose a document)

- Ability to access from remote. We now have a history of over 4½ years of e-files – many of us haven't visited the filing room for years!

#### MINUSES

- Takes time to become familiar with the system
- Resistance from the paper-lovers.
- Lack of accessibility to files due to downtime on server.

#### A FEW TIPS

One mistake we made was to have too many layers to our

filing system. This makes the filing and searching processes longer (the need to dig down so many layers to find the correct folder).

There is a need for all users of the system to “buy into” the concept. It is likely that any such business will have employees or, even more likely, owners who will resist the idea (“Paper was good enough in my day so what's all this rubbish about getting rid of it!”). Everyone must be sold on the idea of less paper, and of working from a screen, not a paper file. The benefits must be clearly explained.

Be strict on file names – it makes it so much easier to find

documents if everyone uses the same naming system.

#### CONCLUSION

The greatest thing since sliced bread! Feel free to contact us with any questions you may have if you are thinking about or in the process of going paperless.

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# A new approach of Court of Justice of the European Union over the principles of EU law

By Dragomir si Asociatii  
Law Offices

**C-101/08 Case Audiolux SA and others vs Groupe Bruxelles Lambert SA (GBL) and others, Bertelsmann AG and others.**

Ever since the creation of the European Union under the Maastricht Treaty, the European Commission as well as the Court of Justice of the European Communities (currently, the Court of Justice of the European Union – CJEU) played an important role as veritable “watchdogs” of the Treaty provisions.

The distribution of competences between a central authority and its decentralized units lies at the heart of every political multi-level system, and this also applies to the

European Union and its institutions as a legal community. The Court's competences and attributions are comprised in the Treaty on the Functioning of the European Union (TFEU) article 263 (ex article 263 TEC) and the following. Thus, the Court reviews the legality of the acts of the institutions of the European Union, ensures that the Member States comply with their obligations under Community law and interprets Community law at the request of the national courts and tribunals. The CJEU has even been able to bring about implicit constitutional change because its members are constrained less stringently than most Supreme Court judges on the national level.

The role of the CJEU in the dynamics of the European

Community is viewed, by some specialists, as exacerbated. For decades, the Court has interpreted the provisions of the treaties in a generous way and further enhanced it by law development, resulting in a systematic extension of the Court's competences. In doing so, the Court relied on general principles of law, namely, its obligation of pronouncing a decision even when the law does not regulate, by resorting to general principles of Community law.

The general principles of law can be found in every law system, as they are the base on which legislation develops. The general principles of community law hold a particular place in the CJEU's jurisprudence, covering the gaps in the law and interpreting the provisions of the Treaty. One of the most

notable principles of community law from a doctrinarian point of view is the principle of equality and nondiscrimination, stated in decisions of the CJEU like the *Skimmed-Milk Powder case*<sup>1</sup>, *Sabbatini v. European Parliament*<sup>2</sup>. The principle of non-retroactivity was upheld by the Court in decisions like *Defrenne v. Sabena II*<sup>3</sup>, *Regina v. Kent Kirk*<sup>4</sup>. The principles of legal certainty, of legitimate expectations were also invoked in the case *Töpfer & Co. GmbH v. Commission*<sup>5</sup>, even though the case failed on its merits.

The Advocate General Trstenjak, in his opinion expressed in the Audiolux case<sup>6</sup> developed what, in his point of view, are the required conditions in order to classify a rule of law as a general principle:

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constitutional status, shared conviction in legal literature, general validity of the stated rule of law.

When interpreting the provisions of the EC Treaty by resorting to general principles of community law, the Court assumes a creative role, a role that is, in some legal specialists' opinion, an intrusion in the EU's law-making process. The Court thus identifies those generally accepted principles, corroborates them with some treaty provisions and uses them as a legal base for its decisions. The CJEU extracts these general principles by relating to the Treaty provisions and to the national law systems of the member states. When resorting to the latter, the Court finds that is not necessary for a rule of law to be accepted by all member states to become a general principle of community law, as it states in the *Hoechst v. Commission*<sup>7</sup> decision. It is important to bear in mind that no matter of its origin, a principle is always applied as a general principle of community law, and not national law. This is evident mostly when dealing with the protection of fundamental rights.

Two questions arise after analyzing the Court's competences as they are stated in the

Treaty on the Functioning of the European Union:

1. Is the Court competent to establish general principles of community law?

2. These principles, once established, represent amendments or addenda to the Community's law system? And if the answer is positive, can the CJEU be considered a "de facto" legislator?

As regards the first point, the EC Treaty does not specify that the CJEU is competent to establish general principles of community law. Nevertheless, their development has been essential for the evolution of the EU and its objectives. This is why the doctrine tried to find legal grounds for the CJEU's ability to establish general principles of community law. The legal ground was found into an extensive interpretation of article 263 paragraph 2 (ex article 230 paragraph 2 TEC) and article 340 paragraph 2 TFEU (ex article 288 paragraph 2 TEC).

Regarding the second point, if we analyze the role that general principles play in a national law system, we are tempted to answer that they do not represent an addendum to the Community law. At state level, general principles represent the foundations of the legal systems, the base the laws are

inspired from. But Community law has a specific character, and as a result, as doctrine and the opinion of the Advocate General in the *Audiolux* case state, general principles of community law vary, as they result from the "spirit and economy" of the EC treaties or from the juridical order of member states.

In the situation in which the principles emerge from the provisions of the EC Treaty, we have shown that the Court has a purely interpretative role. But, when the Court identifies a principle relating to the law system of a member state, it enhances community law by abstracting new rules from a different law system and integrating them in the Community's legal order. It can be interpreted that in this situation the Court exceeded its competences as stated in the European Union Functioning Treaty and acted as a "de facto" legislator.

On the other hand, even the principles that result from the interpretation of the treaty provisions may encourage controversy, because the incorrect interpretation of a legal provision means a modification or addendum to the law. Cases like *Mangold*<sup>8</sup> have established that a national law provision that encourages discrimina-

tion based on age is prohibited, even though the period of time in which the directive's transposition in the law of the member state had not expired.

Drawing a conclusion, we must recognize and appreciate the important role that the establishment of the general principles of community law had for the evolution of the EU and its law system. But we also must admit that in the present, when the EU legal system reached a certain complexity, there is no need for the CJEU to engage in any other activity than that permitted expressly by the treaty.

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<sup>1</sup> ECJ C-84/04, *Skimmed-Milk Powder v. Commission*;

<sup>2</sup> ECJ, C- 20/71, *Sabbatini v. European Parliament*;

<sup>3</sup> ECJ, C-43/75, *Gabrielle Defrenne v. Société anonyme belge de navigation aérienne Sabena* ;

<sup>4</sup> ECJ, C-63/83 *The Queen v. Kent Kirk*;

<sup>5</sup> ECJ, C- 112/77 [1978] *Gesellschaft mbH in Firma August Töpfer & Co. v. Commission of the European Communities*;

<sup>6</sup> ECJ C-101/08, *Audiolux and others*;

<sup>7</sup> ECJ joined cases C-46/87 and C-227/88 *Hoechst AG v Commission of the European Communities*.

<sup>8</sup> ECJ C-144/04 *Mangold v. Rudiger Helm*.

## Big change in Japan? New prime minister announces policies

By Seiichi Yoshikawa

In Japan, in the last election for Lower House of the Diet held in August, 2009,

the Democratic Party of Japan (DPJ) won a landslide victory over the Liberal Democratic Party (LDP), and the DPJ's leader, Yukio Hatoyama,

whose grandfather was also Prime Minister, was elected to Prime Minister. This was an epoch-making event because in the last 50 years LDP

– except for a short period of interruption – had always been in power.

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On October 26, 2009, Hatoyama delivered his first policy address at the Diet. This address shows the basic doctrine of the Hatoyama Government and, as expected, it declares a fundamental departure from the policies of the LDP governments.

First of all, Hatoyama emphasized that his government would end the system of relying heavily on bureaucracy which characterized the LDP governments. Under the LDP governments, almost all major policies (and legislations) were actually decided by officials of the ministries concerned (who did so in consultation with influential LDP politicians) and the cabinet meeting was almost a ceremony to rubber-stamp what was decided by the of-

icials. Thus, some scholars called the Japanese cabinet system a “bureaucrat cabinet system”. Hatoyama stated that in his government policies would be decided by a team of the minister of each ministry and his/her politician deputies.

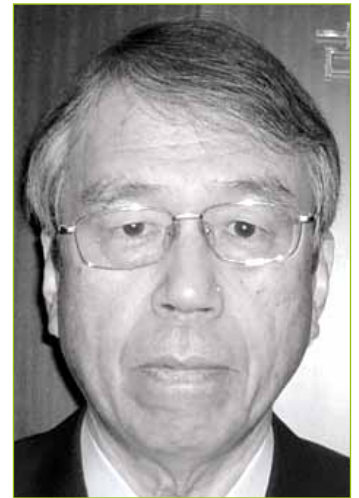
Secondly, Hatoyama stated that he would aim at a “government of fraternity” under which economically and socially handicapped individuals would be more protected. Thus, he would undertake reforms in the field of pensions, medical system, child-raising, medicine and livelihood assistance.

Thirdly, with respect to policies on economy, Hatoyama declared that he would not take an “excessive market-oriented theory”, but rather

attach more importance to the “economic policy for human beings”. This declaration is abstract but appears to be partially intended to overturn legacies of the reform implemented by the government of former Prime Minister Junichiro Koizumi. For example, the Hatoyama government has already decided to suspend sale of the shares of Japan Post to private sectors (which was meant to be privatized by Koizumi), and substantially reshuffled its key executives, including its President.

Hatoyama also emphasized departure from the economic policy dependent on public construction projects (dams, roads, etc.) which was the most favored policy of the LDP governments. Instead, Hatoyama would respond to the present economic crisis by creating employment and assisting households (payment of child-raising assistance fund to each family with young children, free highway, reduction of gasoline tax, etc.), small and medium-sized enterprises and local communities, thereby stimulating domestic demands. He would also assist agriculture, fishing and forestry, and develop green economy, information and advanced technologies.

Lastly, on the foreign policy, Hatoyama stated that Japan would strive to act as a “bridge” between the west and the east, advanced and developing countries, and among different civilizations. He also declared that Japan should make utmost efforts, in cooperation with other countries, to prevent further warming of the earth, elimi-



*Seiichi Yoshikawa*

nate nuclear weapons from the world, and to assist Afghanistan and Pakistan for their political and social stabilization.

A big concern about the Hatoyama address is how realistic his various policies are; particularly, whether he can afford to implement all these policies under the pressing financial situation Japan is facing at present.

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*The Japanese Lower Diet Parliament Building*



## “The firm is like my second home”

Could there be a more flattering compliment to an employer than his office being called a great place to work? GGI member firm **Carle & Andrioli – Contadores Públicos** from Uruguay received this honor. In the 2009 ranking of a Great Place to Work® it was ranked 15th of the most popular places to work in Uruguay.

Asked to name something he really values being with Carle & Andrioli one member said: “We hold special events, each birthday is celebrated and there is a monthly event

for all organized by the firm. This allows us to meet outside the work environment. We learn continuously here.”

Another member called the firm his “second home”. Another member emphasized the commitment that is being expressed by the employees and that everybody shows an interest in each other, whether colleagues or superiors.

Formed in 1991 with the object of providing professional services to companies, organizations and other business associations, Carle & Andrioli – Contadores Públi-

cos now has over 15 years of professional experience working with small, medium-size and big organizations. In the industrial, agricultural, commercial and service fields, both in Montevideo and the interior of the country, Argentina and Brazil.

In 2001 they became a member of “Geneva Group International”. Carle & Andrioli have incorporated the concepts of Corporate Social Responsibility, participating in ACDE’s first and second Index of Social Responsibility and also becoming members of DERES.

The Great Place to Work® Institute, Inc. is a research and management consultancy based in the U.S. with International Affiliate offices throughout the world and more than 20 years of experience. Its idea is that a great workplace is measured by the quality of the three, interconnected relationships that exist there: The relationship between employees and management/ The relationship between employees and their jobs and company/ The relationship between employees and other employees.

## Jersey develops closer links with China

By Robert Christensen

Jersey’s business relationship with China has been strengthened during the past few months, by the recent approval for Jersey companies for listing to float on the Hong Kong Stock Exchange (‘HKSE’), the opening of a representative office of Jersey Finance in Hong Kong, and the first visit to the Island of the Chinese Ambassador to the UK.

In an important development for Jersey’s finance industry, Jersey companies have been approved for listing their shares on the Hong Kong Stock Exchange (‘HKSE’). Jersey joins a select group of jurisdictions that are approved by the HKSE, ahead of its nearest competitor jurisdictions, Guernsey and the Isle of Man.

The approval is the result

of more than a year’s negotiation, research and document preparation involving government officials in Jersey, representatives from Jersey Finance Limited and the finance industry. Jersey’s finance industry can now compete on an equal footing with competitor jurisdictions that have been established longer in Asia.

This recognition presents an excellent opportunity for investors wishing to take advantage of the benefits of using a Jersey company, and also gives a great opportunity to raise capital in the Asian markets.

In considering whether Jersey should be an approved jurisdiction, the HKSE had to be satisfied that a Jersey incorporated company offers at least an equivalent standard of shareholder protection to a Hong Kong incorporated



Robert Christensen

company. Jersey shareholders’ rights and corporate governance in general are substantially similar to those for a UK incorporated company and the Takeover Code applies to Jersey incorporated companies and now applies on a statutory basis following the introduction of the Companies (Takeover and Merg-

ers Panel) (Jersey) Law 2008.

Jersey is already recognized as an accepted jurisdiction for both a primary London Stock Exchange (‘LSE’) listing and a listing on the AIM market of the LSE as well as other stock exchanges including New York and Euronext in Amsterdam. This further recognition should also work to promote dual listings.

The addition of Jersey to the HKSE’s approved jurisdiction list is regarded as enormously significant for the Island, as Jersey has been seeking to increase business flows from the Asia Pacific region for some years. Jersey’s finance industry already provides comprehensive corporate finance and debt issuance services in the region. To date, more than 25% of the 60 Chinese companies listed

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*Hong Kong*

on AIM are incorporated in Jersey. 86 businesses use Jersey companies for listing purposes on worldwide stock exchanges from London to New York, with a combined market capitalisation of over £16 billion. Jersey charges no corporation tax or withholding tax on dividends, interest and royalties.

Jersey's Chief Minister, Senator Terry Le Sueur, said, "The inclusion of Jersey firms in the Hong Kong exchange confirms the growing recognition that Jersey has robust company law and is viewed internationally as a well-regulated jurisdiction. Getting access to a major capital market like Hong Kong is a significant step forward and consolidates the work already being done by the Island's representatives in Asia."

Robert Kirkby, Technical Director of Jersey Finance, commented: "Gaining access to a major capital market such as Hong Kong is further excellent news for Jersey. The move by the Exchange authorities adds weight to Jersey's reputation as a rigorously supervised, highly regarded jurisdiction and also demonstrates how the market in Asia views the quality and robustness of Jersey company law. Moreover it gives further impetus to the formal opening of our second overseas office in Hong Kong later this month and is very welcome news. Especially

with China anticipated to become the world's most powerful economy and as Hong Kong is already such an important financial centre, the listing approval for the Hong Kong Exchange is timely and will support our efforts to develop commercial links with the region."

The opening of Jersey Finance's Hong Kong office on 22 October 2009 provides a permanent base for Jersey's finance industry in Hong Kong. The office aims to develop its contacts with leading financial intermediaries, regulators and Government officials both in Hong Kong and mainland China, and across the Asia Pacific region.

Geoff Cook, Chief Executive of Jersey Finance, said that there is an "active pipeline" of Jersey-domiciled and AIM-listed companies looking to list in Hong Kong. With a physical presence in Hong Kong, Jersey Finance is now better placed to support the many business opportunities available in China and the region. He commented, "Hong Kong is regarded as a key global finance location and we are delighted that we now have a permanent presence to help spearhead our increasing participation in financial services in the region. Jersey Finance has visited the area since 2005 with delegations from Jersey and the opening of a formal office is a natural extension

of those growing commercial links with the region."

As a further boost to the growing relationship between Jersey and China, the Chinese Ambassador to the UK, Her Excellency Madam Fu Ying, made her first official visit to the Island on 5 November 2009.

The Ambassador told Jersey's dignitaries that China appreciates the expertise of centres such as Jersey and is open to exploring the many advantages that offshore finance could offer: "At the G20 summit in London tax havens were an issue debated and that is precisely why I wanted to come here and understand whether Jersey is a tax haven or not, and whether it is a good place for Chinese companies to work with. From what I have learned today in discussions that I have had, I think Jersey has a very high rating in terms of financial management. The control, monitoring and the fact that the Island has good surveillance over the banks shows it is a place where there is solid ground. Like Hong Kong, Jersey is not a tax haven, but a low-tax place. It abides by all international rules and regulations. Jersey's financial experts and government have an important role to play in the international debate about how the financial sectors are regulated."

It is hoped that these events represent the start

of a burgeoning and potentially lucrative relationship between the world's fastest-growing economy and Jersey.

For further information on using Jersey companies for international finance, please contact Volaw's Managing Director Robert Christensen.

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## ITPG PAGE

# New IP regime in the Netherlands

By Adinda van der Werf LLM

## Introduction

With effect from 1 January 2010, the innovation box in the Netherlands will be substantially widened.

The idea underlying the innovation box is to make the Netherlands more tax-friendly for businesses with innovative activities.

But what exactly makes this innovation box tax-friendly?

All income from the exploitation of self-developed know-how is subject to corporate income tax at an effective rate of 5%, whereas the R&D costs incurred to develop the know-how are deductible at the ordinary corporate income tax rate of 25.5%.

The following questions will be discussed in more detail below.

1. What exactly is meant by know-how?
2. Exactly how does the innovation box operate?
3. Why is the innovation box attractive to foreign companies?

## 1. Description of immaterial assets

Only technical know-how is covered by the innovation box.

The legislator opted to have the innovation box only apply to know-how that is clearly related to "technical" innovation. This definition of know-how excludes trade-

mark rights, photographer's copyrights, copyrights and suchlike from the application of the innovation box. According to the legislator, the success of a mark is more dependent on a good marketing strategy than on the technical, innovative element.

Technical know-how can be divided into patented and non-patented know-how.

The innovation box may be applied by companies that obtained a patent for inventions or technical applications, such as manufacturing and product know-how, after 1 January 2007. Companies that obtained a patent for inventions or technical applications, such as manufacturing and product know-how, after 1 January 2007 may apply the innovation box. This patent could be a Dutch patent or a patent obtained abroad.

However, there are companies who have developed technical know-how which cannot be patented, such as software and trade secrets. This category of companies may also make use of the innovation box on the condition that they dispose of an R&D statement. Such a statement is issued by the Ministry of Economic Affairs (Senter Novem).

## 2. Operation of innovation box Costs

As described above, the R&D costs (production costs including exploitation losses) are deductible at the ordinary



Adinda van der Werf LLM

corporate income tax rate of 25.5%. The R&D costs need not be capitalised. However, the law does require that the R&D costs are recovered before the income arising from the R&D asset is taxed at the effective rate of 5%. This may be explained in the following example.

## Example

Company A obtained a patent in 2008.

The costs incurred over the years to create this patent are as follows: 2002 (100), 2003 (150), 2004 (150).

The following income is expected to be generated with this patent 2010 (50), 2011 (100), 2012 (250) and 2013 (400).

Based on the deferral facility, the innovation box applies as from the year 2013.

## Timing

As far as patented know-

how is concerned, we would like to point out the following: According to the law, the innovation box can only be applied after a patent has been granted. Profits over the period that the patent application was pending can therefore not be allocated to the innovation box.

It is therefore advisable to first apply for an R&D statement with Senter Novem. Should the certified R&D activities subsequently result in exploitable know-how, any profits (after the recovery of the R&D costs) can be allocated immediately to the innovation box in order to benefit from the 5% rate.

As the procedure for obtaining a patent is usually extremely time consuming, in practice, companies will simultaneously apply for an R&D statement so that the income from the R&D asset concerned can be allocated to the innovation box in an earlier stage.

## Allocation of income to the innovation box

The law requires that income "substantially" (30%) arises from the patent or R&D asset. In other words, the patent or R&D asset must contribute to the profit generated with the immaterial asset for at least 30%.

Income arising from marketing activities is not included in the innovation box. At the end of the year, ...next page



the amount of income generated with the patent or R&D asset itself and the amount of income generated with the marketing activities must be assessed. It is advisable therefore to obtain an advance tax ruling from the Dutch tax authorities in which the correct income allocation is established so that any disputes later on are avoided.

### 3. Innovation box attractive to foreign businesses Outsourcing

The innovation box covers self-developed know-how. However, it is not required that the NL IPCO physically develops the know-how itself each time. It suffices that the company takes the entrepreneurial risk of the development thereof. NL IPCO may therefore also act as the principal for contract R&D. In case of patented know-how, a Dutch company may for its own expense and risk contract a foreign group company or a third party (contract R&D) to carry out innovation activities. Contract R&D is only allowed on the condition that the Dutch company becomes the legal owner of the know-how. This is only possible for patented know-how.

Contract R&D seems out of the question for the development of an R&D asset. This has to do with the fact that an R&D statement will only be issued for development activities performed by a company's own R&D employees, who are on the payroll of the Dutch company.

Purchased know-how (regardless of whether it is patented or not) is not covered

by the innovation box. Other tax efficient structures for the exploitation of purchased know-how are available in the Netherlands for that matter.

### Withholding tax on royalty income

Contrary to most other countries, the Netherlands does not levy a withholding tax on royalties. The Netherlands has concluded tax treaties with approximately over 80 countries in total. With most countries, a reduced withholding tax on royalty payments has been agreed. For example, the Netherlands agreed on a 0% withholding tax rate on royalties with Luxemburg, Ireland, France, Belgium, Russia, UK, USA, Canada, and Sweden. With Portugal a percentage of 10% has been agreed on.

Where a Dutch company receives royalties from a foreign-based group company from which withholding tax has been deducted abroad, the Netherlands allows a credit for this foreign withholding tax. In that case the foreign withholding tax may be credited against the 5% Dutch corporate income tax on the royalties received.

In many cases the foreign withholding tax credit has the effect that the tax payable in the Netherlands is lower than 5% and in some cases is even nil. This is the case where the Netherlands applies the overall method which means that royalty-flows from countries that do not levy a withholding tax and those who do may be mixed.

If NL IPCO, for example, receives 100 in royalties from country A, which levies a

10% withholding tax under the treaty with the Netherlands, and 200 in royalties from country B, which does not levy a withholding tax, the Dutch tax payable on these royalties amounts to 15 (5% of 300). So the full 10 of withholding tax levied in country A can be credited against the 15 Dutch corporate income tax. On balance, only 5 corporate income tax is payable in the Netherlands.

### 4. Combination with cooperation association

Although the profit from the exploitation of know-how realised by NL IPCO is effectively taxed at only 5%, this does not alter the fact that any profits distributed by NL IPCO are in principle subject to 15% Dutch dividend tax. Dividends paid to an EU-based parent company are usually not being subject to dividend tax (EU Parent-Subsidiary Directive). In addition, under a number of tax treaties concluded by the Netherlands (including the treaty with the US), the withholding tax dividends is reduced to zero.

In non-EU situations, the more general solution of inserting a Dutch cooperation association between NL IPCO and the foreign parent is often applied. Because of its legal form, a cooperation association has no obligation to withhold Dutch dividend tax. In such a situation, NL IPCO can distribute its profits to the cooperation association entirely free of tax (exempt domestic dividend payment). The cooperation association may subsequently pass on the dividend to the

foreign parent without having to withhold any dividend tax.

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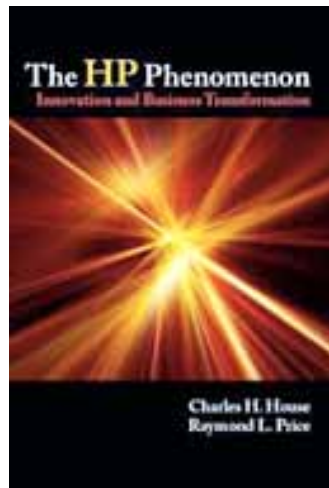
## Book Review

**The HP Phenomenon: Innovation and Business Transformation.** By Charles H. House and Raymond L. Price. 656 pages. Stanford University Press. ISBN-10: 0804752869.

There are two ways to look on this book. Embittered current HP employees spread stories throughout the internet that the authors are wrong and „the current reign at HP is mostly a reign of terror“ and „the current CEO and his immediate staff regard themselves as superior in every way to the general workforce tolerating little discussion“. More polite commentators put it like „The authors obviously left HP some time ago“.

Yes, it's true. One of the authors, Chuck House, was an engineer with HP in the 1960s. Despite company founder David Packard opposing the idea of building a large-screen display monitor, House built it anyway. The success this device achieved with customer proved House right. He was awarded the „Medal of Defiance“ from Packard who realized he had been wrong.

The book was written after interviewing more than 120 of the



company's troupers. While recent history is covered, too, the authors' focus lies on the decades 50-80s. It describes how HP became the fastest growing, most popular company of the last decades. It was a time when there was a hands-on mentality, when bold ideas were moved out of research labs and into production without reluctance and when engineers were recruiting graduates from college campuses themselves instead of leaving this task to full-time HR specialists with the price of mismatches between the employees' skills and the company's actual wants.

The book could be considered a roadmap to building a successful company.

## Further conferences and events

● **What:** 11th Annual Private Investment Funds Conference

**Where:** London, England

**When:** 7-9 March, 2010

**Brief description:** In its 11th year this leading conference brings together top legal, business and fund professionals from around the globe to analyze the future of hedge funds, and the changes and updates to regulatory regimes, amongst other timely topics.

Topics include: The future of hedge funds, US & EU regulatory initiatives; Pay-to-play practices; Managed accounts: what are institutional investors requesting?; The role of sovereigns; Fraud in the industry; The impact of illiquidity. The conference is intended for lawyers in private practices, in-house counsel, business executives at investment management firms, accountants, custodians and other service providers in this field.

**More information (link)**

● **What:** World Conference of Accountants

**Where:** Kuala Lumpur, Malaysia

**When:** 8-11 November 2010

**Brief description:** Since its inception in 1904, the World Congress which has been held every five years since 1977 and every four years since 2002 is the foremost international event for the accountancy profession. This is a highly respected and well attended global forum

attracting a meeting of influential communities to share in the latest information, innovative ideas and to exchange views on a platform of international and regional interest. Coming to WCOA 2010 means: Meeting the most influential and innovative minds in business, finance, policy, standard setters and decision makers from all over the globe.

**More information (link)**

● **What:** 15th International Wealth Transfer Practices Conference

**Where:** London, UK

**When:** 1-2 March 2010

**Brief description:** Topics include. Treaties: the good, the bad, and the ugly; prenups and effects of moving jurisdictions and changing marital regimes; trusts vs foundations: how do they each stack up?; private trust companies: friend or foe?; it's not cool to own your Ferrari: planning with difficult assets; international litigation: how to bust a trust, enforce or contest forced heirship; enforcing judgments in different jurisdictions.

Who should attend: Lawyers involved in advising private clients, trustees, accountants, private bankers. There will be the opportunity to connect with speakers and participants from around the globe.

**More information (link)**

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