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GERMANY

Cryptocurrencies: Federal Ministry of Finance Confirms VAT Exemption

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The last few days and weeks have seen a lot of uncertainty among companies trading in cryptocurrencies. According to a media report, the Bonn tax office had refused to grant VAT exemptions for transactions in Bitcoin as they considered Bitcoin to be no legal tender. This opinion is however contradicted by the Hedqvist Judgment of the European Court of Justice (ECJ). The latter had ruled that VAT exemptions applied to transactions in Bitcoin because Bitcoin had no other purpose for operators than to be a means of payment. As a result of the harmonization of the European VAT system, this ruling also applies in Germany.

Full Article

GERMANY

Resignation as Managing Director of a German GmbH

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The managing director of a limited liability company under German law (GmbH) can resign from office at any time, without notice and for no particular reason, unless otherwise provided in the articles of association. However, resigning at an inopportune time, e.g. when

the company is in a crisis, is not permitted. In such case, the company might be entitled to damages for abuse of law by the managing director.

[Full Article](#)

HONG KONG

The New Significant Controllers Register-Revealing Beneficial Owners of Companies

[ONC Lawyers](#)

Hong Kong, Hong Kong

Following the Financial Services and the Treasury Bureau's ("FSTB") consultation conclusion published in April 2017 regarding the enhancement of anti-money laundering and counter-terrorist financing regulation in Hong Kong, the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) is amended with effect from 1 March 2018 (the "New Requirements"), which requires companies incorporated in Hong Kong to obtain and maintain updated beneficial ownership information by way of keeping a significant controllers register ("SCR").

[Full Article](#)

NETHERLANDS

The Parent Company's Right to Issue Instructions

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Amsterdam, Netherlands

Parent companies may issue instructions to subsidiaries. When is this allowed? Are there any limits regarding the right to issue instructions?

Each company has the statutory requirement to promote its own interests. Consequently, companies from the same group may have conflicting interests in certain situations. What does this mean for the permissibility of instructions issued by a parent company to a subsidiary? Can a parent company impose on a subsidiary to provide an intragroup guarantee?

[Full Article](#)

PERU

Peru Australia Free Trade Agreement "PAFTA"

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[Llona & Bustamante Abogados](#)

San Isidro, Peru

On February 12, 2018, the governments of Australia and Peru signed a free trade agreement in order to improve economic relations between the two countries. The free trade agreement will benefit Peruvian consumers by halting the increase of current custom duties, gradually eliminating certain customs duties, and preventing the implementation of new custom duties including those on content transmitted electronically.

[Full Article](#)

UNITED STATES

The "Me Too" Movement and Its Influence on Your Business Taxes

[David B. Watson, Esq.](#)

[Christian & Small, LLP](#)

Birmingham, Alabama

A claim of "hostile environment" sexual harassment is a form of sex discrimination that is actionable under Title VII. Claims for a sexually hostile work environment have been around since the late 1970's (the claim was recognized by the United States Supreme Court in 1986). For years, employers have adopted and modified workplace policies and practices designed to prevent the creation of a sexually-hostile work environment. As the law has evolved, so have the policies and practices. Not all efforts are successful. Some employees may ignore the prohibitions against certain conduct and mistreat other employees, or an employee believe another employee has failed to abide by the policies and the employer is responsible. Whatever the case, EEOC charges and lawsuits may follow.

[Full Article](#)

UNITED STATES

Pulling the Reins on LLC Management

[Mark F. Geraci, Esq.](#)

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Islandia, New York

When given the right set of ingredients, New York Courts have concocted creative remedies to solve legal problems to address what might otherwise be considered statutory shortfalls.

Perhaps most notably is the Court of Appeals' decision in *Tzolis v Wolff*, 10 NY3d 100 (N.Y. 2008) which held that LLC members could bring derivative suits on the LLC's behalf, even though there are no provisions governing such suits in the Limited Liability Company Law. The Court even recognized that the legislature might have considered, but declined to include such a provision in the law. In the years following *Tzolis*, Courts have walked a fine line between following the letter of the law and making bold pronouncements of judicial activism, leaving some to wonder if the counter-majoritarian difficulty truly exists where matters of corporate and partnership law are concerned.

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Cyber Security & Data Privacy

CROATIA

Getting ready for the GDPR - A Matter of Urgency

[Vukmir & Associates](#)

Zagreb, Croatia

Adoption of the General Data Protection Regulation (GDPR) represents the most significant change to data protection law in the EU in the last 20 years, with the effects that stretch beyond EU boundaries. In this document, we provide an outline of the principal changes introduced by the GPDR, and the key areas to be aware when preparing for compliance.

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Labor and Employment

AUSTRALIA

High Court Cements Position on Personal Payment of Penalties

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Sydney, Australia

The recent decision of High Court in *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2018] HCA 3 will alarm unions and their officials: if a union official breaches a civil remedy provision in the *Fair Work Act 2009* (Cth), they may be ordered to pay the penalties personally, without seeking or accepting an indemnity or a contribution from their union.

[Full Article](#)

NETHERLANDS

Non-Compete and Non-Solicitation Clauses in Temporary Contract Valid

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Non-compete clauses and non-solicitation clauses have to fulfill specific conditions to be valid, especially if they are included in temporary contracts.

Non-Compete and Non-Solicitation Clauses

A non-compete clause prohibits employees for a certain period beyond the term of their employment contract from being directly or indirectly active or involved in a business performing similar activities. A non-solicitation clause is an agreement between employer and employee that prohibits the employee from being active for or having contact with clients and business associates of the employer beyond the term of the employment contract.

[Full Article](#)

UNITED STATES

New Employment Laws for the California Employer - 2018

Buchman Provine Brothers Smith LLP

San Francisco, California

In October, as in years past, Governor Brown signed a number of employment-related bills into law. Below is a summary of those laws that will take effect on January 1, 2018, of which employers need to be aware and prepare for.

SB 63 - Parental Leave

The New Parent Leave Act amends the California Family Rights Act ("CFRA") to require employers with less than fifty (50) employees, currently the requirement for application of CFRA, to allow employees to take twelve (12) weeks of unpaid leave for bonding with a new child. Under SB 63, employers with twenty (20) employees will be required to provide employees with twelve (12) weeks of job protected leave if the employee has worked for the employer for at least twelve (12) months and at least 1,250 hours during the twelve (12)-month period preceding the leave. Of import is the fact that CFRA was only expanded to smaller employers for purpose of new child bonding. It has not be expanded to care for a family member with a serious health condition.

[Full Article](#)

UNITED STATES

US Dept of Labor Launches a Pilot Program for Potentially Resolving Overtime and Minimum Wage Violations

Rothman Gordon

Pittsburgh, Pennsylvania

The Wage and Hour Division (WHD) of the US Department of Labor recently announced a new nationwide pilot program, the Payroll Audit Independent Determination (PAID) program, for potential resolution of overtime and minimum wage violations under the Fair Labor Standards Act (FLSA). The WHD advertises the program in part as offering a way for employers to resolve wage and hour claims expeditiously and without litigation. However, we are concerned about serious risks for employers considering this program, and strongly advise employers who are considering entering the program to discuss this option fully with their legal counsel.

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Litigation & Dispute Resolution

HONG KONG

Is It Possible to Obtain a Worldwide Freezing Injunction Against "Persons Unknown"?

[ONC Lawyers](#)

Hong Kong, Hong Kong

With the rapid development of science and new technologies, commercial frauds have become more and more expansive over the past years. In particular, there has been an increasing trend of cybercrimes being carried out through email scams, whereby fraudsters impersonate key personnel in corporations and siphon off money by giving fraudulent transfer instructions to banks. However, it is often difficult to take enforcement actions against fraudsters in these cybercrimes as they often attempt to hide behind a cloak of anonymity in cyberspace.

[Full Article](#)

UNITED STATES

Social Media Discovery, the New Frontier Post *Forman v. Henkin*

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Rochester, New York

It goes without saying that gaining access to a plaintiff's social media accounts is a defense counsel's dream. The thought of pursuing all of the photographs, tidbits, status updates, Snapchat's and emojis of the plaintiff's true pain-free life is the stuff of legend. All of us in the defense and insurance world have heard a story or two about that fateful Facebook post or Instagram picture showing the plaintiff whooping it up on the dance floor, when he or she testified that they could barely walk at their deposition. But recently the courts in both New York and the remainder of the states generally have been very reluctant to provide any sort of real access to the defendant of the Plaintiff's social media. But folks, in the words of the immortal Bob Dylan, "Times, they are a changing."

[Full Article](#)

UNITED STATES

Diamond Offshore Services Ltd. v. Williams-Courts Must View Video Evidence Before Ruling on Issues of Admissibility

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Introduction

In *Diamond Offshore Services Ltd. v. Williams*, an employee sued his employer for injuries arising from a workplace accident.[1] The employee ultimately prevailed and the jury awarded "\$10 million in damages, including almost \$4 million for pain and suffering." [2] The issue before the Texas Supreme Court was whether the Trial Court erred in excluding video surveillance of Plaintiff conducted by Defendant without first viewing the video.[3] Plaintiff argued the video should be excluded under Texas Rule of Evidence 403, as the video was "unfairly prejudicial and misleading." [4] Without ever providing the reasoning behind her decision, the Trial Court Judge excluded the video from use at trial.[5]

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Premises Liability

UNITED STATES

Dealing With Homeless Persons At Grocery Stores

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Grocers do much to help all who enter their stores, including those who are homeless. Grocers often look the other way when the hungry or mentally ill among them steal their food for the first time. They are often reluctant to chase away people who use their bathrooms to clean themselves, even if they leave the premises in a messy condition. They try every day to reason with the unreasonable and calm the irate. Grocers routinely summon ambulances and the police for people in distress, whether they are customers or not.

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Real Estate & Leasing

AUSTRALIA

Selling and Buying Real Estate with Bitcoin - The Future of Real Estate Transactions?

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1. Introduction

Bitcoin and other cryptocurrencies have been making headlines in recent times. In 2017, the value of Bitcoin soared exponentially. Despite being a highly volatile asset, digital currencies are gradually becoming more widely accepted as legitimate forms of payment in financial and banking markets around the world. With the hype around cryptocurrency showing little sign of slowing, will Bitcoin soon become an accepted form of payment in property transactions?

[Full Article](#)

UNITED STATES

Foreign Investment in US Real Estate After US Tax Reform

[Barton LLP](#)

Pub. L. No. 115-97, originally known as the "Tax Cuts and Jobs Act," was signed into law by President Trump on December 22, 2017 ("Act"). This is probably the most extensive revision to the provisions of the Internal Revenue Code during the lifetime of most readers and its impact will be significant for individuals, corporations and other business entities, both domestic and foreign. We previously distributed a Client Alert on February 8 dealing generally with most changes made by the Act.

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Tax Law

AUSTRALIA

ATO Suspends Application of Professional Firm Guidelines

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[Carroll & O'Dea Lawyers](#)

Sydney, Australia

The Australian Taxation Office (**ATO**) has suspended the application of the Assessing the Risk: Allocation of Profits Within Professional Firms Guidelines and Everett Assignment Web Material (Guidelines) which it published in 2015.

The Guidelines set out low and high risk factors the ATO would consider in assessing whether Part IVA (the general anti avoidance provision of Australian tax laws) would apply in connection with the allocation of profits from a professional firm carried on through a partnership, trust or company. The Guidelines considered that Part IVA may apply to Everett Assignments (where a partner assigns part of their interest in a partnership to another person, such as a spouse).

[Full Article](#)

AUSTRALIA

Tax Reform- OECD Hybrid Mismatch Rules

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In November 2017 the Australia Federal Government circulated the *Treasury Laws Amendment (OECD Hybrid Mismatch Rules) Bill 2017 (Bill)*. If passed in its current form, Schedule 1 of the Bill will implement the OECD hybrid mismatch rules through the insertion of Division 832 into the *Income Tax Assessment Act 1997 (Cth) (ITAA 1997)*.

New Division 832 aims to prevent entities liable to income tax in Australia from avoiding income taxation, or obtaining a double non-taxation benefit, through the exploitation of differences between the tax treatment of entities and instruments under the laws of two or more tax jurisdictions.

[Full Article](#)

UNITED STATES

Tax Deductibility of Fines by Regulators in the Financial Industry

The Tax Cuts and Jobs Act ("Act") has significant tax implications to members of the financial industry who settle enforcement claims with their regulators.

The most significant change is that fines and penalties paid to non-governmental entities that "exercise self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7))" or "as part of performing an essential governmental function" are no longer tax deductible. The Financial Industry Regulatory Authority ("FINRA"), the Municipal Securities Rulemaking Board ("MSRB"), and the National Futures Association ("NFA") would appear to fit within that definition.

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Trade Marks

UNITED STATES

What's In a Name: The *Bell's v. Innovation* Trademark Naming Dispute

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Selecting a unique, memorable, and descriptive name for your next beer release is becoming a daunting task in the increasingly-crowded craft brewing landscape. The same holds true for your brewery's *nom du guerre*. The US Trademark Trial and Appeal Board's decision in *Bell's Brewery, Inc. v. Innovation Brewing* last December is a timely reminder that brewers sometimes must resort to litigation to protect - or more accurately, in this case, defend - their name marks. The opinion also provides a handy rundown of the du Pont factors, which are the 13 guidelines that determine whether your mark steps on the toes of a different mark. The du Pont factors are what a judge will ultimately consider if you end up in a similar legal fight to protect your mark or to push your application through to approval.

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Paradigm Magazine



The **[2017 Fall Paradigm Magazine](#)** delivers articles regarding developments and trends in legal issues relevant to corporate clients around the world, while showcasing Primerus members as leaders with the expertise to assist clients with any legal needs they may have. It is published twice a year and mailed to Primerus members as well as clients around the world.

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- [A Survey of the Law of Legal Malpractice - A Professional Liability Practice](#)

Group Compendium - September 2015

- [A Survey of The Law of Non-Contractual Indemnity and Contribution - Products Liability Practice Group Compendium - April 2015](#)
- [Compendium of Principles of Law Regarding Bad Faith in the Fifty States and D.C. - 2013 Edition](#)
- [A State by State Update of Tort Reform - 2013 Edition](#)
- [Principles of Law Regarding Establishment and Operation of a Business in Various Countries Compendium - International Transactional Services Practice Group - March 2012](#)
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