MOORE Media

MOORE MEDIA NEWSLETTER

Welcome to the latest edition of the Moore Media newsletter. I am delighted that we again have a range of articles from all over the world, which are diverse geographically, and also in terms of content between tax, technical and member opinions on current issues. I strongly believe that the diversity within an overall common purpose is one of the strengths of our Media Group in being able to best help our clients.

When I last wrote back in early May, we were in the early stage of reaction to the Coronavirus pandemic with most areas of production (commercials, TV and film) shut down and there being no attendance at theatres, cinemas and general live events. The last five months has seen progress in some areas but continued frustration in a number of others, which continue to overshadow large swathes of the media sector.

I am extremely grateful to Steve Davies, the CEO of the APA, for providing an article highlighting the progress that has been made in production where under agreed guidelines, and with targeted support from governments, content is now being made. However, talking to clients it is clear that it is a slower process with the logistics of social distancing sitting alongside creativity.

Streaming services have filled the void created by the inability to operate cinemas and theatres with full audiences and all have seen increased subscription figures. However, this is not a complete substitute for the cinema experience as shown by the fact that pre-pandemic cinema was also enjoying a boom, and it was hoped that with lockdown restrictions easing, audience levels would increase and coincide with a raft of major film releases now to enable the bulk of the industry to survive. Certainly, the major studios and producers maximise revenues through cinema release rather than direct streaming sales. However, with continuing Coronavirus concerns around the globe and the threat to revenues that go together with this, the big studios have further delayed the launch of their main films – the latest and most high profile being the new James Bond film, which is now pushed back until April 2021. The immediate response to this has been for Cineworld to close all their sites in the UK and the US and for Vue to limit their opening hours. Current predictions are that at least 20% of all cinemas will likely close in the next six months.

Theatres are feeling similar pressures, with closures being extended despite protestations to governments. The UK government has announced a substantial aid package to the arts, and through the Lottery Fund has just agreed to support the pantomime season here at Christmas, which is a major source of theatre revenue. Despite these initiatives it is likely theatre closures will be at the same level as those predicted for cinemas.

While traditional markets are under pressure, to provide some balance I would highlight the article from my colleague, Chris Song in South Korea, focusing on the rapid development of Seoul as a growing media centre.

These are seismic shifts in the cultural landscape across the globe and these are likely to continue and hit deeper as the effects of the pandemic reach across 2021 and potentially beyond. Companies will need to adapt and find new ways of working and new markets to survive and prosper in this volatile environment. Moore Media is uniquely placed to provide pro-active support at this time, so please do get in contact.

Graham Tyler
Global Lead Media

INFLUENCERS UNDER THE SPOTLIGHT

Due to the discussion in the Chambers of the Congress in Argentina of a new law that regulates the activity of the "Influencers" the issue took on public status and became a hot topic for discussion along the advertising industry and media.

What is an Influencer? The guide for communication for commercial purposes, recently published by CONARP (Advertising Self-Regulation Council of Argentina), defines them as those who create relevant content for their followers, influencing them undoubtedly given the high degree of involvement, reach, loyalty and commitment (engagement, from a marketing perspective).

In a multiplatform context of atomized media and audiences, brands keeps increasing the use of this communicational alternative and hire influencers aligned with their product and brand's strategy in order to spread their content through their social media channels and reach their followers (consumers).

On this framework, the influencer's activity is considered a communication for commercial purposes, and as such, must contemplate the rules and principles for its responsible implementation.

Does it represent a labour relationship? A freelancer? Creative services? No, it is a media by definition and principles.

How does their business works? The influencers together with their communication channels (Instagram, Facebook, YouTube, Twitter, etc.), as mentioned, are in essence a media and as such receives income from the advertising investments, either with posts, videos, participation in events and any other action that includes generating content for brands. It is important to consider in all these marketing actions, that the content to publish is in accordance with the current regulations of each country, to avoid contingencies, since there are no borders for digital content once published.

What does the new law pursue to regulate? Mainly, to be sure they pay taxes, which already is happening because the big brands cannot pay them if they do not invoice them properly. There may be some cases of smaller brands that pay them with their own products in exchange of their services and these procedures could be outside the scope of fiscal control, so being regulated the tax authority will have more tools to reach them. The objectives of the Law are also that advertising is performed in a responsible way and that is stated clearly that it is a paid message made with a commercial purpose; currently it is being clarified including the mention that it is content developed in collaboration with a brand or the hashtag #SponsoredContent, for example.

Broadly speaking, it is worth to have a law that regulates and helps to professionalize the activity, although these issues were already covered by the recommendations of CONARP, an entity that is formed by the Argentine Chamber of Advertisers (CAA), the Argentine Advertising Association (AAP), the Argentine Chamber of Media Agencies (CAAM), the Argentine Advertising Council (CPA) and the Union of Interactive Agencies (Interact) and that works really well in its role for the self-regulation of the advertising business and its good practices. Organizations with similar purposes operate in most countries. These good practices, the creation of specialized agencies in the segment and the experiences gathered by the marketing departments of the brands, have contributed to professionalize this communicational alternative and its exponential growth.

Let's hope that the Government, when implementing the new regulatory framework, will understand the inherent dynamics of the activity and do not burden it with unnecessary bureaucracy and innumerable forms that will end up destroying what it pursues to regulate. If they deeply understand this basic concept and request advice of the parties involved before implementing it, giving this new media a general legal framework surely will be positive for the business.

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LIVE STREAMING IS AN INCREASINGLY POPULAR ACTIVITY AND THESE DAYS THERE ARE BIG BUCKS INVOLVED. BUT WHAT ARE THE TAX CONSEQUENCES?

A person who is broadcasting their online activity in real time is 'live streaming'. This form of entertainment has developed into a massive industry for video gamers and other creatives, with recent COVID-19 'stay at home' restrictions leading to a surge in viewership and the number of people streaming online.

The rapid growth in live streaming services has led to some of the largest companies in the world investing or developing their own streaming platforms: Examples include Google (YouTube Gaming), Amazon (Twitch), Facebook Gaming, and until just recently Microsoft (Mixer).

Some of the top individual streamers earn over $400,000 per month from their various revenue streams through viewer donations and signing exclusivity deals with companies' worth tens of millions of dollars. This is the extreme side of the scale, but given how easy it is, anyone is able to broadcast their online activity. This has resulted in a large number of streamers 'dabbling' in broadcasting for fun and earning a bit of extra money in the process.

Streamers earning a regular income may start to incur additional costs to broadcast in a more professional manner to attract additional viewers – this is where it gets interesting. At what point does streaming for fun (a hobby), turn into streaming to make money?

Simply put, income and expenditure relating to activities such as live streaming that go beyond a hobby may be required to be included in their income tax return.

This is a general principle of tax law that can be applied to any activity. The Australian Taxation Office (ATO) has produced guidance to assist people in determining when something becomes more than a hobby. Particularly of note:

1. **You've made a decision to start a business and have done something about it.**
   - Registered for an ABN or business name?
   - Developed a brand / logo for you stream?
2. **You intend to make a profit – or genuinely believe you will make a profit from the activity – even if you are unlikely to do so in the short term.**
   - What is the purpose – simply for fun?
   - Is there another activity (i.e. another job) that supports the streaming, or is streaming the main revenue generating activity?
   - Is the ultimate goal to stream full time?
3. **You repeat similar types of activities.**

Stream regularly and for long periods of time?

   - Make videos for YouTube and other platforms to promote the brand/stream?
   - Promote on social media to increase viewership of the stream?
   - Regular schedule with set days / hours?

4. **The size or scale of your activity is consistent with other businesses in your industry.**

   - How much has been invested in the set-up? (i.e. green screen, professional videos, professional lighting, brand design.)

5. **Your activity is planned, organised and carried out in a businesslike manner.**
   - Are there sponsorship deals?
   - Is there a partnership with a streaming service?
   - Is the stream advertised?
   - Release other creative content to assist in building the streaming 'brand' or name?
   - Separate bank account for all streaming income and expenditure? Do you maintain any accounting software?
   - Sough or paid for professional or expert advice, or joined any professional associates or bodies?

Whether or not someone is carrying on a business is a question of fact and as we always say in tax, the answer is: it depends! Just because a streamer makes a bit of money every now and then doesn't mean they are running a business (and have to pay tax on that income). Everyone's situation is different. There is a need to assess how each of the factors apply to the specific situation.

Think of it as a see-saw. At some point the factors are going to tip the balance from a hobby to a business. Some factors may have more weight than others however, there is no one factor alone which is going to tip that balance.

If activities do not amount to a business yet, it is always prudent to keep reviewing these factors as a streamer gains more followers and viewer donations.

If activities amount to a business, there will be a need to start keeping records of all forms of income.

What kind of income might you need to declare?

- Donations from viewers
- Advertising revenue
- Sponsorship revenue
- Subscription revenue

Tax is paid on income less expenses, so keeping a list of expenses in earning that income means you pay less tax.

Deductions could include (but would not be limited to):

- Hardware (including computer, monitor/TV's, Peripherals, webcams, recording and lighting equipment)
- Internet costs
- Software subscriptions
- Office furniture and equipment
- Portion of power, heating, lighting costs
- Portion of your rent
- Advertising

If expenses are more than income for a particular year, then the activity is deemed to have made a loss. The next consideration would be whether there is an ability to offset this loss against income from other sources (i.e. another job) for that year.

The ability to offset 'non-commercial losses' against other income requires meeting certain criteria. If the criteria is not met, losses will be quarantined and carried forward to offset against future income of the streaming business, or can be offset against other income in a subsequent year in which the criteria are met.

The tax system in Australia is based on self-assessment, meaning the onus is on the taxpayer to comply with tax legislation. As technology rapidly improves year-on-year, so do the ATO data-matching capabilities, and as a result, unreported income is becoming a large focus area for the ATO given the wealth of information available to them.

The bottom line is a need to make sure that when activities amount to a business, that the income is being reported in the correct manner. The consequence of failing to do so may result in the requirement to pay tax on all earnings (including the possibility of interest and penalties) if the ATO determine a business has been operating for some time.

If you are live streaming and think the above may apply to your situation or have any other tax related questions, feel free to get in touch with Thomas Cusmano on cuzma123 (Twitch) or cuzma#4095 (Discord), or through your local Moore Australia advisor to discuss your situation.

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SEOUL, NEXT REGIONAL HUB FOR INTERNATIONAL MEDIA

The New York Times recently said that it will relocate its Hong Kong-based digital news operations to Seoul, South Korea. It was induced from HK national security law passed by Chinese regime in this year. This is very remarkable case to represent Seoul's potentials as a media hub in APAC region. Many of English news media companies have established their APAC regional hub in Hong Kong and now most of them started to find other alternative locations due to changed environment in Hong Kong. However, it's not only due to political climate in Hong Kong but industrial and market changes in media sector helped as well. Younger generations are more familiar with new media platform such as Youtoube, Netflix, Facebook, etc. than traditional media such as TV and newspaper. Under this context, Seoul is one of the most attractive replacement cities as media hub for the future due to the following reasons.

1. South Korea is one of the most exemplary democratic country in Asia and the freedom of the press is well protected. It is very important infrastructure to grow media industry.
2. South Korea is one of the strongest countries in ICT industry and ICT infrastructure is the best in the world. Also, media consumers are very sensitive to new trends and quickly adopting the innovative change. It would be good for new media companies as a test-bed market.
3. K-POP and other Korean culture is very popular all around the globe at the moment. Entertainment and media contents industry are growing and can be valuable nutriment for the growth of media sector.

Korean government has recently released the policy to support the growth of media industry. It clearly indicates that Korean government will support Korean media industry aiming to grow market size up to USD 10 billion and at least 5 global media platforms in Korea by 2022.

Definitely, these trends and government support in Korea will help to grow media industry in Korea and we believe that Seoul will be one of the most attractive destination for international media and innovative new media companies who're looking for the next regional hub in APAC region.

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CORONAVIRUS DESTROYS, PRODUCTION PRODUCES

Commercials production is about overcoming all challenges and getting the commercial made – on time and on budget.

To an individual production, Coronavirus is just another production challenge but for the industry as a whole and the businesses within it, it has been and continues to be much more than that of course.

You can't producer commercials if advertisers are concerned that asking anyone to leave their home to work might risk their health and are so uncertain about the economy and the demand for their product that they don't know whether they should be advertising them, as was the case in the early stages of the pandemic.

Stage one for us was bringing the community together to share information on how to save business costs and support staff via industry zoom calls. We had hundreds of APA company owners on those and I know they immensely valued the community and moral support they brought – as much as the practical support.

We also sought to support the freelancers our members work with and who are the backbone of this industry. MKS partner Graham Tyler and I did a zoom call with 500 of them to work on measures to get them support. We got as far as the Treasury Committee accepting our case that support must be given to freelancers and making that recommendation to the Chancellor but that support failed to come. That was a great failing, in contrast to the areas such as furloughing where the Government supported the economy in a bold and effective way.

Our next task was to help production companies, agencies and brands emerge from that. Putting together the APA Coronavirus Shooting Guidelines (and updating them as law and Government advice changed) was key to that. It was adopted as a standard by the whole industry and it demonstrated that it was safe and legal to produce commercials- provided you followed those guidelines.

We still though needed to deal with the Coronavirus risks to a production – in potentially causing it to be postponed or cancelled. Insurers were burned by paying out millions of pounds on the Olympics and Wimbledon and offered no hope of including Coronavirus risks in production insurance.

We were resolved that- and this is unique to the UK and a tribute to the boldness of clients and their trade association ISBA who could see we needed a solution to get productions going, so entered into the Tripartite agreement with the agency body, the IPA and ourselves, by which advertisers underwrote those risks.

That greatly contributed to getting production going and since late July, as did all the work agencies and production companies did to minimise risk to advertisers in the way they planned shoots and reassure them about how those risks would be managed to avoid them having to suffer any additional Coronavirus costs.

We need production to continue to be busy until the end of the year. We have a lot of initiatives to do that. We continue our dialogue with the Government to persuade them that they need to extend the quarantine exemption for directors etc coming to the UK from film to advertising. We are part of the UK Advertising Export Group with the Advertising Association and the IPA, promoting the expertise of our members overseas.

I have great confidence in the ability of APA members to adapt, find answers and to produce and to their resilience. Even that would be severely tested by a second lockdown but we have been reassured by Government that keeping business going is an absolute priority – they can't afford for that not to happen- so we will still be able to make commercials and be there to emerge into the sunlight of a post Coronavirus world.

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UNIQUE JAPANESE TAXATION RULES APPLIED TO MEDIA AND ENTERTAIMENT BUSINESS

Japan has established itself as a leader in the production of animation, games, and other entertainment across various forms of media. As an industry, Japan generates more than USD101 billion a year world-wide in the field. The physical market for live concerts, sporting events, and movie theaters accounted for approximately 80% of this total up until 2018. Today these markets have been drastically changed due to the effects of the COVID-19 pandemic.

Although live media has suffered a great deal of difficulty in maintaining its market, the development of content which includes games and digital concerts has enjoyed market growth under what has become the new normal. This increase in these digital markets will bring Japan not only new markets but also new taxation which has not yet been fully disclosed to foreign media providers.

CONSUMPTION TAX

B2B transaction

Under the Japanese Consumption Tax ('JCT') Law, a tax is imposed on sales, leases, and services when such are provided in Japan.

The method of calculation of this tax is similar to VAT in Europe.

A foreign supplier providing "B2B" (Business to Business) digital services has an obligation to provide advance notification to domestic business customers that the provision of these services are subject to a reverse charge system on the relevant invoices. When a Japanese business makes a taxable purchase from a foreign service provider, the business can claim a corresponding tax credit against the same taxable income. Instead of asking the service provider to file and pay JCT, the business which purchased the service in Japan pays the JCT. This practice is commonly referred to as a reverse charge system.

Due to transitional measures, JCT collected pursuant to a reverse charge system is forgiven where the Japanese service recipient's JCT taxable sales for the corresponding year is 95% or more.

Digital services that transmitted by means of electronic and telecommunication services (e.g., internet), such as the provision of games, e-books, music and games, usage of a cloud server, communication tools and advertisements are treated as 'Digital Services'.

B2C transaction

While a B2B foreign service provider does not have a JCT filing obligation, a foreign supplier which provides B2C (Business to Consumer) electronic services must file JCT returns for the services provided through the internet or any other electronic communication method where the following conditions are met.

- Taxable sales are above JPY10 million for the basis year, which is typically two years prior to the current fiscal year
- The business has paid-in capital of at least JPY10 million
- A parent company has taxable sales of at least JPY500 million for the basis year

There is a tax filing exemption period for a newly incorporated company or a newly formed company in JCT for a maximum of two years.

B2C foreign service providers must register themselves as taxpayers and file JCT tax returns within two months after the financial year end if they fall into one of the following categories.

In Europe, where a platform provider such as GAFA (Google, Apple, Facebook, and Amazon) acts as agent in filing the VAT for the content provider, however, this system does not apply in Japan. Therefore, if a foreign service provider may ignore the tax filing obligations for this exemption period.

Recently, Japanese national tax authorities ('NTA') have traced digital communication records which exist with platform providers, and have directly contacted foreign service providers to urge JCT return filing by sending notice to affected parties by postal mail.

The applicable tax rate up to September 30, 2019 was 8% (the national rate of 6.3% plus the local rate of 1.7%). On October 1, 2019, he rate increased to 10% (the national rate of 7.8% plus local rate of 2.2%). As the statute of limitation is 5 years, NTA has asked taxpayers to file tax returns for the preceding 5 year returns with penalty.

Once the foreign service provider is required to file JCT returns, they must appoint an agent in Japan to deal with the submission of tax returns, notification documents, and payment of the required tax. The tax registration process generally takes 4-6 weeks.

Payments to specific services

When a foreign business provides the services related to film, theater actors/actresses, musicians, and any other entertainers or professional athletes, the transaction is regarded as 'provision of specific services'. The Japanese business recipient and the payer is liable to file and pay JCT on the specific taxable purchases. Due to transitional measures, JCT collected for the reverse charge system is forgiven where the Japanese service recipient's JCT taxable sales for the year is 95% or more.

WITHHOLDING TAX

B2B digital service

The B2B payments for digital services such as electronic and telecommunication services (e.g. internet) such as the provision of games, e-books, music, usage of a cloud server, communication tools and advertisements ('Digital Services') should be subject to a 20.42% withholding tax if the payment from a Japanese enterprise is determined to be based on usage volume, term, or amount of sales, as it is deemed to be a usage fee payment for copyright or intellectual property rights.

Where tax treaties allow a reduction in the rate or apply an exemption for the withholding tax, the foreign service provider may apply such reduction or exemption by filing the applicable tax treaty forms and a certification of residence with NTA through the payer, in advance to receive the payments.

Payments to foreign media, professional athletes, and entertainment businesses

Under the Japanese withholding tax regulations, consideration payments from an enterprise to media, professional athletes, or entertainers should be subject to a 20.42% withholding tax.

Japan has tax treaties with over 45 countries, and the tax treaties with other countries supersede the domestic tax laws and regulations. As Japan is an OECD member, in most instances, the consideration payable to media, foreign athletes, or entertainers is taxed in Japan in accordance with the OECD guidelines and definition of entertainment businesses.

Taxable consideration is not limited to the fee payable to individuals but also fees paid to the production agent, preparatory services in home countries, travel and other actual expenses paid as consideration.

Situations also exist where an on-site business creates a tax nexus which requires a foreign service provider to file corporate or individual tax returns.

Even if the tax filing is obligated, the withholding tax still applies to the payments.

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TOTAL BUY-OUT AGREEMENTS AND GERMAN WITHHOLDING TAXES

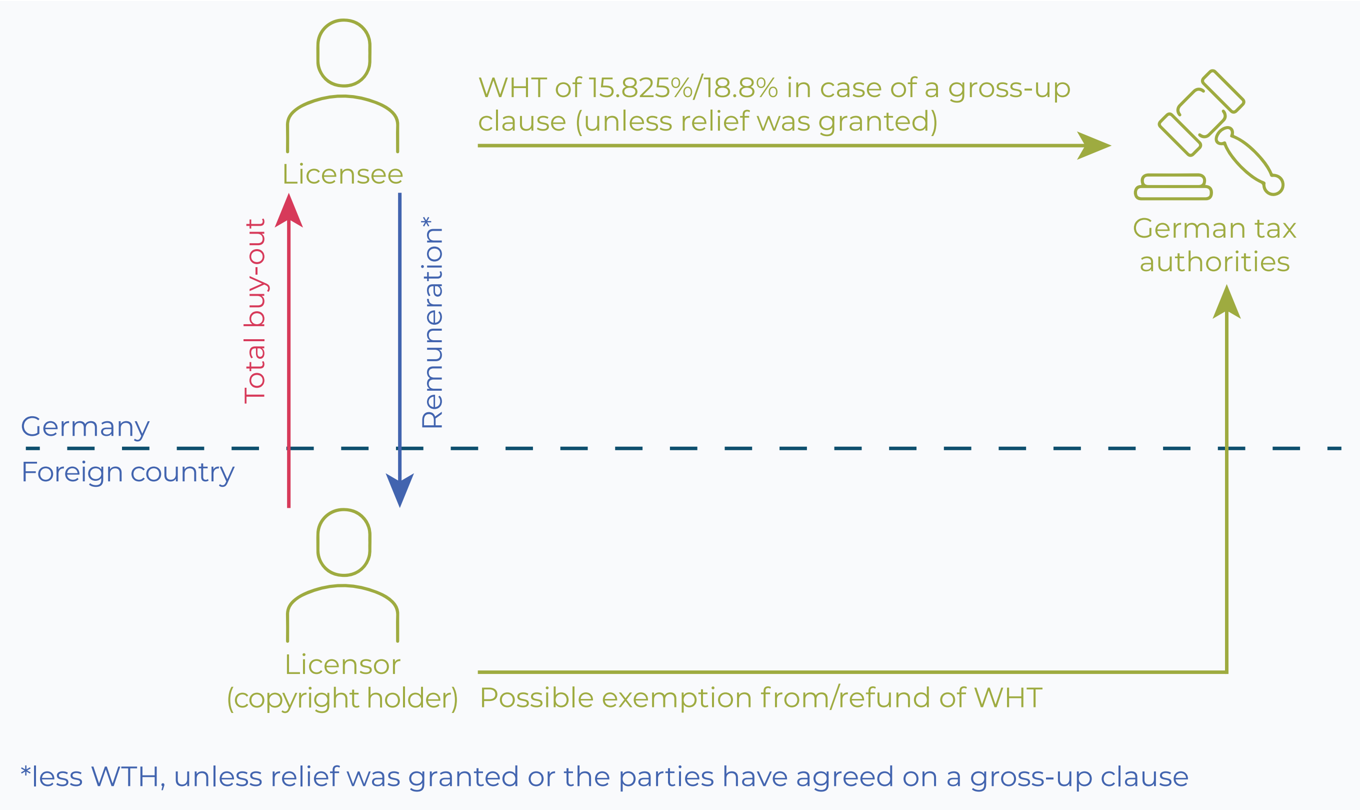
Background, in particular the decision of the German Federal Fiscal Court of 24.10.2018

A remuneration paid by persons/companies resident in Germany to foreign rightholders for the “non-permanent transfer of rights or the right to use rights” (including copyrights/exploitation rights for a copyright) is generally subject to German withholding tax (WHT) of 15.825% (including solidarity surcharge).

The German remuneration debtor is obliged to deduct the WHT from the gross amount of the remuneration and pay the WHT to the German tax authorities. The WHT rate amounts to 18.8% if the foreign rightholder is entitled to a net remuneration free of any tax deductions (gross-up clause) under the relevant license agreement.

However, WHT is – in general – only levied if the rights are transferred “temporarily” (e.g. grant of exploitation rights to a patent under a license agreement for a limited period of time). A right is also considered being temporarily granted if it is uncertain whether and when the transferred right to use a right/exploit a right will end. However, a temporary transfer of rights does not exist if the transferred rights shall remain permanently with the acquirer. The “sale” of a right is therefore, generally, not subject to WHT. Such sale also exists if the transferred right is completely con-sumed economically during the granted term, e.g. in the case of a right related to an event or an advertising campaign.

Contrary to German tax law, under German copyright law copyrights within the meaning of sec. 2 GCAL (German Copyright Administration Law, *Urheberrechtsgesetz*) are inalienable under sec. 29 para. 1 GCAL. It is not possible to transfer a copyright ultimately. As a consequence, a transfer of rights within the meaning of a “total buy out” is not possible



pursuant to German IP law. Pursuant to sec. 32a GCAL, the rightholder is entitled to a continuous legal claim to further remuneration, ensuring that the economic value of the right remains with the rightholder.

Therefore, also a "total buy out" of rights is subject to German withholding taxes (cf. decision of the German Federal Fiscal Court (*Bundesfinanzhof*) as of 24 October 2018, DStR 2019, 916).

That means that a remuneration paid abroad for the granting of exploitation rights – that are sub-ject to German copyright law – are, in general, always subject to WHT. This applies irrespective of whether the parties agree on a temporary or an unlimited grant of the exploitation rights. The respective exploitation rights are generally subject to German copyright law and, thus, to WHT if the parties agree that the relevant agreement is governed by German law.

But, even if the parties choose to apply the laws of another jurisdiction that knows and allows the permanent transfer of a copyright, certain provisions of the German copyright law may remain applicable. In particular, foreign authors/copyright holders may be entitled to a "continuing contin-gent claim to further profit sharing", pursuant to sec. 32a GCAL. This applies, for example, to the extent the copyright will be exploited in Germany under the relevant license/total buyout agreement.

If a license agreement provides for a lump-sum remuneration but includes the transfer of rights as well as other duties, e.g. personal activities, the remuneration must be split for WHT purposes. For the split of the payment, a decree of the German Federal Ministry of Finance (*Bundesfinanzministerium*) (dated Nov. 25th, 2010, BStBl I 2010, 1350) states that 60% of the revenue paid to creators of artistic works can be treated as transfer of intellectual property rights. The remaining 40% of the revenue can be allocated to the personal activity of the creators of artistic works. This split shall be applicable if no evidence for a different split is available (rec. 87 of the decree).

Double Taxation Agreements (DTA) may provide for reduced WHT rates. In particular, many of the DTA provide for 0% (e.g. DTA USA) or 10% (e.g. DTA China) tax rates. A full exemption from WHT may also be applicable to intragroup license payments under the requirements of the EU Interest and Royalties Directive. However, these reduced rates are in any case subject to the foreign author's/copyright holder's filing of a respective application with the German Federal Central Tax Office (*Bundeszentralamt für Steuern*).

Recommendations

Parties of IP-Agreements should consider the WHT exposure when entering into the relevant agreements and examine whether the WHT rate can be reduced under a Double Taxation Agreement. If a full exemption from WHT under a DTA is not possible, alternative licensing struc-tures may be considered.

A "withholding tax clause" should be included in IP-Agreements. From a licensee perspective, such a clause should stipulate that the payments in the agreement are gross amounts (i.e. before any withholding taxes) and that statutory withholding taxes shall be deducted from these amounts.

Combined contracts covering payments subject to WHT and payments not subject to WHT should not include a lump-sum remuneration, otherwise, the split of such payment as determined by the German tax authorities (60%/40%) should be observed.

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STARTING YOUR CREATIVE AGENCY IN THE AGE OF COVID-19

If you've been wondering when to start your creative agency, it's time to giddy-up. In spite of, or due to, COVID-19 troubles, small agencies have an advantage today. (Conversely, if you're an established agency, beware of the little guys in the rearview mirror.)

Economic downturns are the perfect time for those who are gutsy and scrappy.

Big brands and big clients are under pricing pressure themselves or are keen to exert pricing pressure in order to preserve cash. No one knows when this will end exactly, and that's forcing more conservative decision-making. As a result, clients today do not expect an agency to be working out of a cool office space. Draw a line through "build or find super cool creative space" and just go win some work.

Smaller creative shops can compete on price, without sacrificing creativity, and lock down their market share. What's fantastic is that a small agency can price slightly (not a lot!) lower and have bigger margins. Bigger margins mean small agency owners quite often make more money than shareholders in larger shops. When agency overhead is low and the staff talent is lean and mean, even when the rate card is two or three times your cost, it is still less than a larger shop can afford to charge.

Where to start

Now that we've talked you into it, make sure your startup is done correctly. When scale happens, your agency needs strong bones.

1. Set up a proper company. Even if it's just you in the shed, get a proper legal entity created. Yes, it's worth paying a lawyer.
2. While you're at it, jealously guard equity. Don't give it away! That's a common mistake. If you have a partner, get a prenup (i.e. formation documents, including buy-sell agreements along with other more boilerplate corporate resolutions). This is mostly likely not a "'til death do you part" relationship.
3. It's all about content, right? If you are going to create content, protect your intellectual property by hiring talent so you own the output, or by contracting with your vendors using airtight onboarding documents. If you're creating for clients, protect their property by investing in cybersecurity.
4. Lay the groundwork for your culture. Think about how you'll retain and recruit talent. This is your "equipment," so take care of it. Get an HR advisor who's educated in these matters.
5. Have your lawyer talk to your finance/tax person, so that the legal structure lends itself to growth and reflects your hopes and dreams.
6. Don't confuse a tax person with a managerial accountant or a finance person. These are different skillsets and you need them all, no matter how tiny you are. Don't settle for less.
   - A tax CPA will help you file mandatory forms and stay out of hot water. A good tax CPA will also help you strategically plan for taxes before they're due.
   - A managerial accountant helps with the day-to-day and regularly presents you and your fellow leaders with accurate financial results. A good accountant understands a balance sheet and equity and doesn't just do "bookkeeping." Know now that bookkeeping isn't enough.
   - A finance person takes the accounting (the science) and turns it into forecasts and projections (the art).

Last, assemble a good team — creative, leadership and back office. Have enough new talent to keep it fresh and exciting, but make sure you have some solid citizens aboard, too. You need industry experience and a strong back office to balance your creativity with reality.

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DEAL VOLUMES DOWN BUT DIGITAL MARKETING CONTINUES TO BE POPULAR

M&A in the marketing and media sector Q2 2020

In our Q1 2020 review of UK M&A activity in the marketing and media sector, we said that we expected activity in the first half of 2020 to be severely impacted while businesses focused on more pressing concerns regarding their ability to trade through the Coronavirus crisis. Unfortunately, our latest data shows we weren't wrong! Just 37 UK deals in the marketing and media sector were recorded in Q2 2020; 44% down on Q1, 54% down on the comparable figures for Q2 2019, and by far the lowest number of transactions that we have recorded in any quarter in recent years.

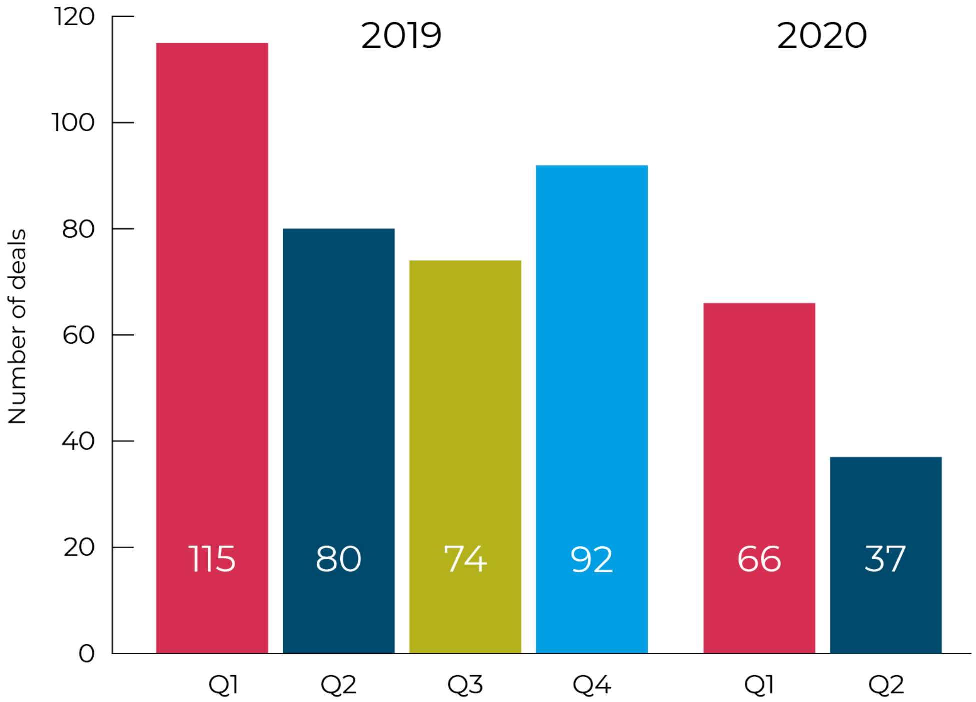
We are not at all surprised to see this reduction in activity, given that the UK was in lockdown for most of this period. The virus has had, and continues to have, a significant impact on businesses throughout the UK, not least on companies in the marketing and media space. TV, film and commercial production and events companies have had no income at all, although activity is now starting to resume. Companies in the live entertainment space are still largely closed down. Agencies may be less badly affected depending on the nature of their clients, but have been experiencing project-freezes, deferments and cancellations.

Deal-doing under lockdown conditions is difficult. Meetings between buyers and sellers over video are not entirely satisfactory, as chemistry between target and acquiring company is essential for a successful transaction. Valuation discussions are difficult when the most recent financial information bears no resemblance to how the target company would have been trading in normal circumstances and where there is uncertainty regarding what the new normal will look like. We are aware of many M&A processes that are on hold for the time being and it is this general suspension of activity that has led to the dramatic decline in the number of deals being completed.

We do not predict any upsurge in transactions in the next quarter but are hopeful of an increase in deal-doing in the final months of the year. As economic activity increases, businesses will start to think beyond their short-term horizons and re-engage with their longer-term strategic goals. When the UK government's support packages – particularly furlough payments – start to reduce, more businesses will probably need to team up with a stronger partner, leading to an increase in so called accelerated or distressed M&A. There are willing buyers out there so we do expect deal activity to resume as prospective sellers come back to the table; driven by increasing confidence in their business's performance or by the need for a safe harbour if their business has run out of road.

"We were expecting Q2 2020 to show a substantial decline in UK M&A activity, and are therefore not surprised to see these disappointing figures," says Nicola Horton, Corporate Finance Principal. "Coronavirus has led to much planned M&A activity being put on hold and, while that is likely to continue into the next quarter, we remain hopeful of a return to a more reasonable level of activity before the end of the year."

QUARTERLY DEAL VOLUME



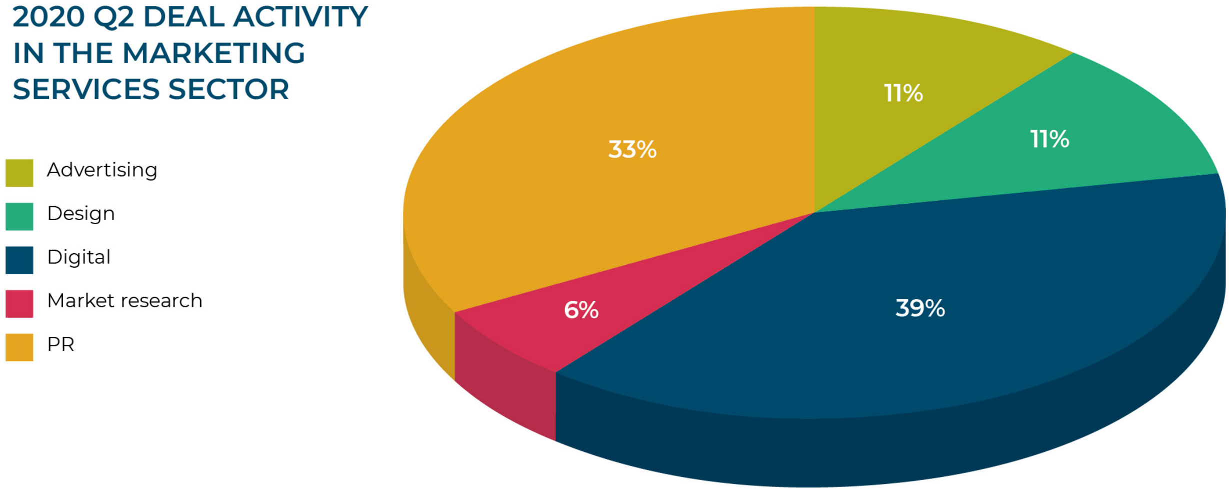
SECTOR ACTIVITY – DIGITAL CONTINUES TO PERFORM STRONGLY

Regarding the types of deals that were most common in Q2 2020, the marketing services sector continued to occupy the top spot (just as it did throughout 2019). It accounted for 49% of the deals we analysed, with mediatech coming a close second at 38%.

Within marketing services, digital marketing retained its pole position, representing 39% of the deals we recorded, but PR was not very far behind, at 33%. We expect continued strong interest from acquirers in digital agencies, digital transformation businesses and companies that enable clients to pursue 'digital first' strategies. Coronavirus has forced many companies to accelerate their digital transformation. What started as temporary solutions may become permanent fixtures in the new world of work, so clients will increasingly need support in these areas.

GLOBAL NETWORKS PRESS PAUSE ON UK M&A ACTIVITY

2020 Q2 DEAL ACTIVITY IN THE MARKETING SERVICES SECTOR



In Q1, we reported on a range of transactions completed by the major global holding companies, including Dentsu, WPP, Havas and McCann. However, our survey this quarter has found no UK deals involving any of the networks. This lack of activity by the major players is representative of the market as a whole – the big holding companies have been just as focused on their existing businesses as the smaller independents.

CONSULTANTS ARE STILL IN THE MARKET

While the global networks appear to have pressed pause on M&A last quarter, some of the consulting firms have remained active.

In early April, EY announced its acquisition of Swedish design and innovation firm Doberman, enabling it to strengthen its capabilities within innovation, customer experience and digital design.

In June, PA Consulting announced its acquisition of San Francisco-headquartered brand strategy and product design agency Astro Studios. PA stated that Astro would add to its global capabilities in strategy, innovation and product design while affording it a new West Coast presence to complement its existing East Coast operations.

PRIVATE EQUITY APPETITE REMAINS STRONG

While the overall UK M&A market is clearly subdued, private equity involvement has remained a key feature of those deals that have managed to get over the line in the period. Private equity-backed investments accounted for 49% of Q2 2020's deals, continuing the trend that we saw in Q1.

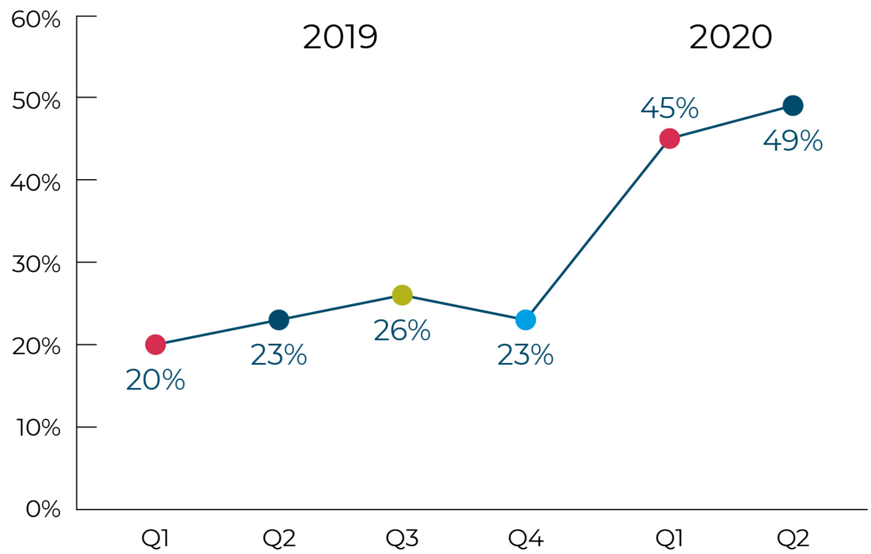
Notable PE deals included Bridgepoint's acquisition of UK-headquartered medical and healthcare communications agency, Fishawack, in April. Fishawack was previously backed by mid-market private equity house LDC, which had supported the group in a series of acquisitions since 2017. Now that LDC has been replaced by Bridgepoint, Fishawack intends to use its increased firepower to expand its global presence still further. Indeed, the same day as the deal with Bridgepoint was announced, Fishawack revealed it had acquired Skysis, a US strategic and market access consultancy, focused on the pharma and biopharmaceutical industry.

Continuing the interest in medical and healthcare communications, Dutch firm Waterland Private Equity bought a significant majority stake in UK-based consultancy Integrated Medhealth Communication in May. Waterland said it would be looking to pursue a buy-and-build strategy with follow-on funding to support the company's global expansion plans across the UK, North America and EMEA, as well as enhancing the group's existing digital and technology capabilities.

Not included in our Q2 data because the transaction has yet to complete but worthy of note is the announced planned acquisition of the Be Heard group by MSQ Partners. If the transaction is approved by Be Heard's shareholders, MSQ will become the new parent company for MMT Digital, Freemavens and Agenda 21. MSQ is backed by mid-market PE house LDC.

"The increase in the proportion of private equity transactions is in line with our expectations from the end of last quarter,"

PE BACKED DEALS AS A PERCENTAGE OF ALL DEALS



says Paul Winterflood, Corporate Finance Director. "Private equity houses remain very interested in this sector. They are making investments in additional platform opportunities as well as continuing to invest in their existing portfolio companies in the form of bolt-on acquisitions to deliver the required growth and ROI."

OUTLOOK

We had always expected Q2's numbers to be lower than Q1's, so are not surprised by the disappointing figures. It is still too early to say how deep or prolonged the economic impact of the Coronavirus will be. However, the gradual reopening of the UK economy gives us hope that, even if Q3's numbers remain low, we will see some recovery in M&A activity in Q4.

While the global holding companies may have temporarily withdrawn from the UK M&A scene, we are aware of keen would-be buyers – independent agency groups and PE-backed businesses. In particular, institutional investors still have large pools of so called dry powder to deploy. They remain keen to support their portfolio companies in their growth plans, while also looking for new platform deals. If anything is dampening activity as far as they are concerned, it is the apparent shortage of new deals coming to market. Would-be sellers may have delayed launching their M&A processes for fear of market uncertainty and how that might impact on valuations. However, we hope that, as businesses continue to recover, shareholders will gain in confidence and start to approach acquirers who are keen to see new opportunities.

In addition, we expect to see more accelerated M&A or rescue deals as the government's support packages start to fall away. Companies in financial difficulties will be looking to find a safe harbour for their people and clients, and will merge with or be acquired by stronger partners.

For more information, get in touch with the Moore Kingston Smith corporate finance team.

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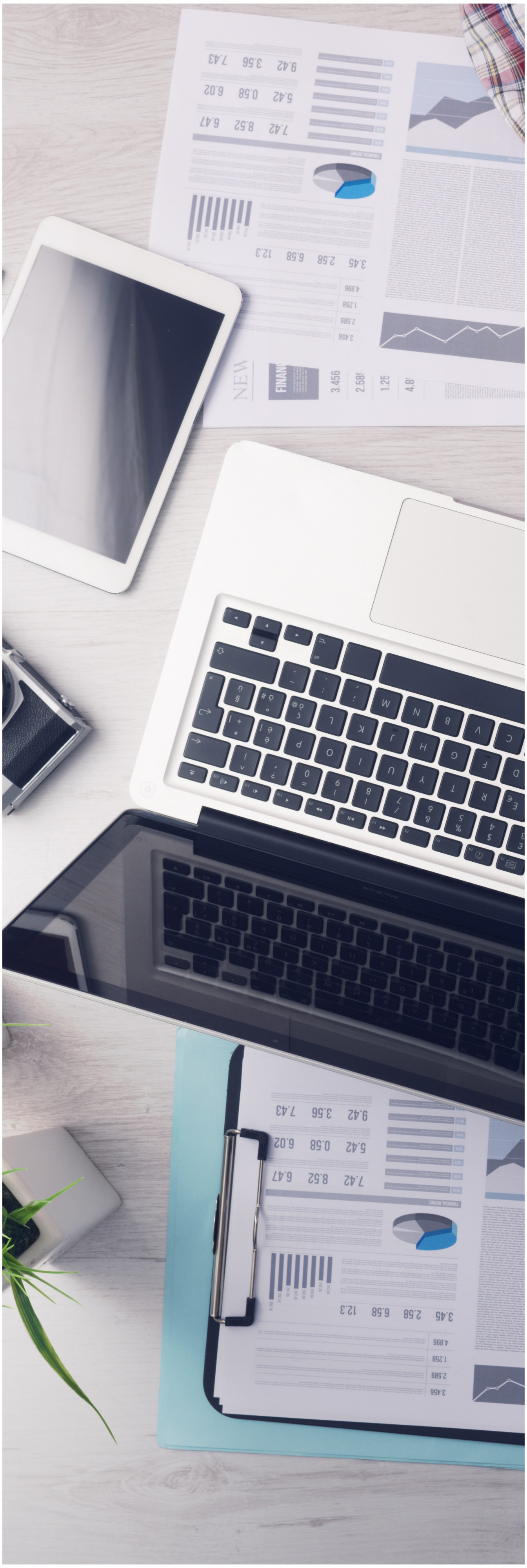

MOORE MEDIA

Media businesses are becoming increasingly international and require advisers who are focused on the big picture while managing the important details. This is why we set up Moore Media – a group of member firms of the Moore Global Network who have expertise in the media sector and can support you with your domestic and international requirements. Moore Media consists of over 25 Moore member firms, who are all passionate about media, entertainment and culture, and understand how the scene operates. We represent companies and individuals across all areas of film and TV, theatre, radio, advertising, marketing services, music, gaming, publishing, post-production, content and mediatech. The Moore Global Network comprises over 200 firms across more than 100 countries around the world, so you can be sure of finding the right adviser for your media business.

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