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Business

GERMANY

Permanent Establishments in Germany

By [Dr. Astrid Plantiko](#)

[WINHELLER Attorneys at Law & Tax Advisors](#)

Frankfurt, Germany

There are several possibilities to do business in Germany. Either one forms a German company that takes care of the domestic business. Alternatively, foreign businesses can operate through so-called permanent establishments in Germany.

Do I Have a Permanent German Establishment?

A rather difficult question is, at what time "doing business in Germany" becomes a permanent establishment. According to German law, a permanent establishment shall mean any fixed place of business or facility serving the business of an enterprise. In particular, the following is considered to be a permanent establishment:

[Full Article](#)

GERMANY

Hard Fork: German Tax Treatment and Date of Acquisition

By [Benjamin Kirschbaum, Esq.](#)

[WINHELLER Attorneys at Law & Tax Advisors](#)

Frankfurt, Germany

More often, so-called hard forks occur in the cycle of a cryptocurrency. The first cryptocurrency that completed a hard fork was the Ethereum blockchain. In the course of the so-called DAO hack in 2016, Ethereum was split into Ether (ETH) and Ether Classic (ETC).

In 2017, Bitcoin followed with even two forks: Bitcoin Cash (BCH) and Bitcoin Gold (BTG). However, it is still largely unclear how these operations will have to be treated under tax law.

[Full Article](#)

HONG KONG

Does a BVI Company Have "Share Capital"? And Why is This Question Important?

By [ONC Lawyers](#)

Hong Kong, Hong Kong

In a recent commercial transaction case that we handled, the purchaser (the "Purchaser") intended to purchase certain properties in Hong Kong by acquiring shares in the companies holding the properties (the "Transaction"). However, the Purchaser ran short of money to complete the Transaction and needed to seek loan financing (the "Loan") from third party lenders (the "Lenders"). One of the Lenders is a company with limited liability incorporated under the laws of Hong Kong. The Purchaser borrowed money from the Lender through its parent company, which is a company limited by shares incorporated in 2017 under the laws of British Virgin Islands ("BVI") (the "Borrower")

[Full Article](#)

TURKEY

Establishment of a Company in Turkey

By [Yamaner & Yamaner Law Office](#)

Istanbul, Turkey

As being a natural bridge between Europe and Asia; Turkey has attracted many direct and indirect foreign investors from all countries over the world for many years. Turkey keeps on preferred by foreign investors from the aspect of having successful and stable economy, qualified and competitive labor force, liberal and reformist investment climate, low taxes and incentives and large domestic market. Turkey is a member of Customs Union with the EU since 1996 and Free Trade Agreements with 27 countries.

[Full Article](#)

NETHERLANDS

Consequences of a "403 Statement"

By [Reinier W.L. Russell, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Exemption from publication of annual financial statements of part of a group is possible by a "403 statement", in which the mother company accepts liability for the subsidiary.

If legal bodies are part of a group they can be exempted from the requirement to file their annual financial statements with the trade register. It is thus possible that the consolidated financial statements for the group will suffice. The advantage of a group exemption is that competitors do not gain insight in the financial data of the separate companies within a group. In addition, it will make a substantial difference to the costs not to have all legal bodies within a group publish separate financial statements.

[Full Article](#)

UNITED STATES

How the New Federal Income Tax Affects Small and Middle-sized Business

By [Timothy M. Singhel, Esq.](#)

[Spicer Rudstrom PLLC](#)

Every "individual" residing in the United States needs to know at least a quick and dirty on the [major new changes to the federal income tax system](#) that were signed on December 22, 2017. After all, not many people want to read the 500+ pages of text that constitutes the entire recitation of the legislation. I certainly do not. I have been told that even some members of Congress still have not, let alone before voting on it. For those of you who do, you can feel free to click on the link above and go crazy. For the rest of us, some may want to review the official word on the [changes directly from the IRS](#), or peruse much longer and detailed articles, or use a tax calculator that requires a lot of inputs. For anyone that is still not interested but still needs to know the major ways that the changes will affect their small or middle-sized business, fear not, just read the rest of this blog and then do your due diligence on any changes you want to make as a result.

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Copyright/Trademarks

AUSTRALIA

Redbubble Defeated in Pokémon Battle

By [Selwyn Black, Esq.](#) & [Nicholas Huang, Esq.](#)
[Carroll & O'Dea Lawyers](#)

Sydney, Australia

Pokémon Company International, Inc. v Redbubble Ltd. [2017] FCA 1541 is a recent decision of the Federal Court which shows how consumer and copyright laws can interact with the developing digital economy.

The Facts

1. The Pokémon Company International, Inc. (Pokémon Company) oversees the licensing of Pokémon products in Australia.

2. Redbubble Ltd (Redbubble) operates an online marketplace that enables artists to upload images or words to the Redbubble website. That work is then applied onto products such as clothing and mugs, which customers can purchase.

[Full Article](#)

NETHERLANDS

Wikipedia images - Freely Usable, but Not Unconditionally Usable

By [Guus van Lieshout, LL.M.](#)
[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Many companies and platforms use the "free" images on Wikipedia. "Free" images, yet out of a sudden a high invoice arrives because of copyright infringement. How can you prevent this?

For companies it is rather attractive to use images on Wikipedia. The pictures are available for commercial use and may often even be modified so that you can adapt them for your own purposes. So you put the image on your own website or blog. But then a lawyer's letter arrives: you have violated the licensing conditions and are using the image illegally. Please be so kind as to pay a compensation for the use of the image and the legal fees. How did this happen? And how can you prevent this?

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Cybersecurity & Data Privacy

GERMANY

Missing Privacy Policy Can Be Expensive

By [Olga Stepanova, Esq.](#)

[WINHELLER Attorneys at Law & Tax Advisors](#)

Frankfurt, Germany

The General Data Protection Regulation of the European Union, entering into force EU-wide on 25 May 2018, is currently causing much excitement. Many companies did not yet notice that next to sanctions from the data protection authorities also competitors could threaten them with costly warnings.

[Full Article](#)

UNITED STATES

Potential Barriers and Limitations to Successful Cyber Subrogation

By [Donato, Minx, Brown & Pool, P.C.](#)

Houston, Texas

In a previous blog, we discussed "[What is Cyber Subrogation?](#)" This blog will focus on potential barriers and limitations to successful cyber subrogation. While this list is non-exhaustive, it gives an overview to the various barriers and limitations to successful cyber subrogation. These barriers include (1) contractual waivers and limitations; (2) a lack of clear applicable standards; and (3) the first individuals to investigate the breach or attack are likely the later target defendants, i.e., the fox guarding the henhouse analogy.

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UNITED STATES

Are Your Business Secrets Really a Secret?

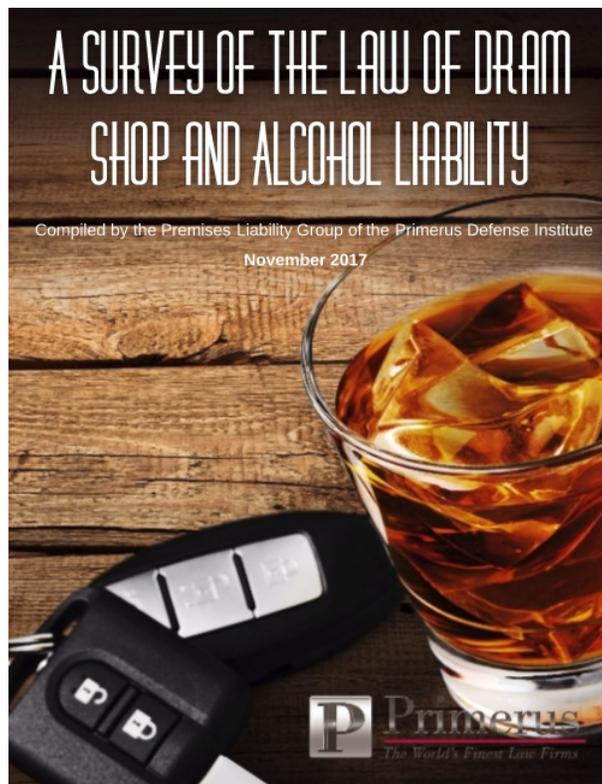
By [Lance W. Thompson, Esq.](#)

[Spicer Rudstrom, PLLC](#)

Nashville, Tennessee

Business owners need to be aware that employees may be transferring trade secrets completely by mistake simply by owning a smartphone. Storing confidential information and/or trade secrets on cloud storage services can pose serious risks to the protection of that information. Typical sources of cloud computing include Google Drive, Apple's iCloud, Dropbox, Amazon Web Services and Google's Chromebook. Data in the cloud is for the most part stored in privately owned or third-party data centers that may be located anywhere in the world. By their very nature, these services provide you with the ability to store your data on remote servers maintained by the service provider. This means that the data is not solely within your control.

[Full Article](#)



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Member lawyers of The International Society of Primerus Law Firms from around the country who routinely represent clients and their insurers in alcohol liability-related matters have contributed to *A Survey of the Law of Dram Shop and Alcohol Liability* to assist you, the client, to gain a rapid understanding of the law as it is applied around the country.

We hope that you find this compendium useful. The lawyers of the Primerus Defense Institute stand ready to assist you, whenever and however they are needed.

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Labor and Employment

AUSTRALIA

Employer Tax Obligations - "No Lightning Rod Test"

By [James Tadros, Esq.](#)

[HHG Legal Group](#)

West Perth, Australia

Within the last few years, the Australian Tax Office (ATO) and Western Australian Office of State Revenue (OSR) have intensified efforts to ensure that employers are compliant with their employment tax obligations. For the ATO, the primary employment tax obligations are PAYG and superannuation. For the OSR, it is pay roll tax. These obligations arise where the ATO and/or the OSR determine that a business is an employer of employees. Where the ATO or OSR make that determination and issues an assessment notice or its equivalent to the subject entity in respect of that determination, that entity bares the onus to rebut the presumption that the workers are employees. The problem lies therein; as there is no 'lightning rod' or 'bright line' test to determine if the worker is an employee or independent contractor, potential employers are left in limbo at both the contracting and dispute stages.

[Full Article](#)

GERMANY

Monitoring Employees Without Using Keylogger Software is Inadmissible

By [Benjamin Pfaffenberger, Esq.](#)

[WINHELLER Attorneys at Law & Tax Advisors](#)

Frankfurt, Germany

The Federal Labor Court (Bundesarbeitsgericht; "BAG") recently decided that employers must not monitor their employees using a so-called keylogger software, unless the employee is suspected of having committed a criminal offence or a serious breach of duty. A keylogger software captures all keystrokes that are typed on the keyboard and takes screenshots at regular intervals. According to the Federal Labor Court's decision, such monitoring by the employer violates the privacy of the monitored employee.

[Full Article](#)

HONG KONG

Can Police Search Your Mobile Phone?

By [ONC Lawyers](#)

Hong Kong, Hong Kong

Mobile phone privacy is always a concern for the public. With the advancement of technologies, mobile phones have become a convenient work tool for us and we rely on various smartphone features such as internet, instant messenger, email, etc. to communicate, share digital files and photos, and complete work tasks.

In a recent judicial review before the Court of First Instance ("CFI"), *Sham Wing Kan v Commissioner of Police* [2017] HKCU 2725, an important question of whether the police has power to search and examine *without warrant* the digital content of mobile phones and other personal digital communications devices found on the person arrested was raised.

[Full Article](#)

NETHERLANDS

Sick Employees and Privacy

By [Jan Dop, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

When your employee is sick you, as an employer, are interested in what is going on and how long you will have to miss your employee. But what about the employee's privacy? What are you allowed to ask - and what not?

Under the Personal Data Protection Act the processing of personal data regarding a person's health is prohibited. With the introduction of the General Data Protection Regulation (Algemene Verordering Gegevensbescherming; AVG) in May 2018, these rules will be strengthened even more. As a consequence, there will be more administration, stricter supervision by the Dutch Data Protection Authority (Autoriteit Persoonsgegevens), and higher fines amounting to 20 million euro or - if this amount is higher - 4% of the global annual turnover.

[Full Article](#)

PERU

Peru New Immigration Regulation for the Hiring of Foreign Workers

By [Evelin Coloma Cieza, Esq.](#)

In recent years, Peru has become an attractive destination for the migration of foreign workers, considering our economic growth, as well as the favorable conditions in commercial and labor matters. Let's not forget, also, that the Peruvian labor market was facing shortages of talent (qualified positions) not covered by local professionals or technicians, which was exacerbated by the demand for sophisticated products and services, upon which, businessmen found themselves in the need to look for foreign professionals.

Under the scenario described, there was a prominent need for a new migration regulation taking into account the country necessities in terms of technology, talent, development of industry, tourism, population policies among other aspects, that will constitute a new legal framework in accordance with the increase of foreigners migration and its different status, solving the past difficulties that were restraining foreigners to work in Peru formally and duly employed according to law and permitting foreign companies to designate foreign workers to perform services to Peruvian companies under the scope of services agreements.

[Full Article](#)

UNITED STATES

The "Joint Employer" Standard in Employment Law: The Roll Back Begins

By **[Christian & Small LLP](#)**

Birmingham, Alabama

We have discussed in past updates that the U.S. Department of Labor during the Obama administration was extremely proactive in the areas of organized labor and employee rights. New regulations and legal interpretations dramatically eroded employers' rights to implement policies and procedures to manage workplaces and workforces. With Trump's election, most employment attorneys expected a retreat from these expansive regulations and interpretations. The question was whether the roll-back would be led by the Administration via executive order, the Congress via legislation, or the Department of Labor via regulations and decisions. Over the last month, the answer has proven to be the Department of Labor.

[Full Article](#)

UNITED STATES

Employers Phone Home - Out of State Employer Sued in Massachusetts

By **[Adam J. Shafran, Esq.](#)**

[Rudolph Friedmann LLP](#)

Boston, Massachusetts

In a recent decision out of the U.S. District Court for the District of Massachusetts, a New York-based employer was held subject to suit for unpaid wages in Massachusetts because it allowed an employee to work from home in Massachusetts. The facts of the case serve as an important reminder to employers that they may be subject to suit in any state where they allow their employees to work from home remotely.

[Full Article](#)

UNITED STATES

NLRB's New General Counsel Signals Major Policy Changes Are on the Way

By **[Connie Elder Carrigan, Esq.](#)**

[Smith Debnam Narron Drake Saintsing & Myers, LLP](#)

Raleigh, North Carolina

In November 2017, the United States Senate confirmed Peter Robb as the new General Counsel for the National Labor Relations Board ("NLRB"). On December 1, 2017, Mr. Robb issued Memorandum GC 18-02 ("Memorandum") in which he outlined several changes in NLRB policy. The anticipated shifts in NLRB priorities and strategy are expected to be a welcome change for employers as the Memorandum signals Mr. Robb's intention to change or rescind many of the more controversial initiatives pursued by the NLRB during the previous administration.

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Shipping & Logistics

HONG KONG

Increased Liability Limits for Shipowners Under the Merchant Shipping (Limitation of Shipowners Liability) Ordinance

By [ONC Lawyers](#)

Hong Kong, Hong Kong

The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Amendment of Schedule 2) Order 2017 came into operation on 4 December 2017. The amendment serves to give effect to the latest revision in limits of liability for maritime incidents in accordance with the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976 ("Convention"). The amendment also reflects the latest limits adopted by the International Maritime Organisation by resolution Leg. 5(99) concerning the liability for claims for loss of life or personal injury and other claims such as claims for property damage.

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Tax Law

UNITED STATES

Doubling Down: Gift, Estate and GST Tax Changes Under the Tax Cut and Jobs Act

By [Greenberg Glusker](#)

Los Angeles, California

On December 20, 2017, Congress approved sweeping tax reform legislation under the "[Tax Cuts and Jobs Act](#)." The President is expected to sign the Act into law before the end of the year. Although the Act contains numerous provisions with a substantial impact on the income tax liability of individuals, families and businesses, the changes to the gift, estate and generation-skipping transfer (GST) taxes are more modest, and are outlined below..

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Transportation Law

UNITED STATES

FMCSA Comment Period for Personal Conveyance and 90 Day ELD Agricultural Transportation Exemption

By [Brandon Howard, Esq.](#)

[Roberts Perryman](#)

St. Louis, Missouri

Update - The comment period on personal conveyance has been extended by 30 days. Here is a [link](#) to the proposed guidance. Comments were previously due by January 18, 2018, and may be submitted through the [Federal Docket Management System](#). The biggest issue at hand is allowing laden CMV vehicles to be used for personal conveyance vs. only unladen CMV's to be used as personal conveyance. See the article below for a more in-depth look at the issue.

[Full Article](#)

UNITED STATES

Graves Amendment

By [Donato, Minx, Brown & Pool, P.C.](#)

Houston, Texas

The Graves Amendment, found in the Federal Transportation Equity Act of 2005, created immunity for vehicle lessors as to claims of vicarious liability arising out of the lessee's conduct during the rental period.

The relevant subsections of the Graves Amendment read as follows:

(a) In general. - An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if-

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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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