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Branch of foreign company in the Republic of Azerbaijan against tax authority

Issue: Foreign Company has been involved in significant highway construction by concluding contract and in order to operate its activities in Azerbaijan, established a branch (hereinafter referred to as "Branch"). The Branch has been rendered services by a domestic company – subcontractor within the project. Albeit the Branch has paid VAT on the basis of e-tax invoices provided by the subcontractor, during tax audit, the Branch could not present tax authority with the document proving payment of the main amount in non-cash.

Parties' position: The Branch asserts that main amount has been paid in non-cash by the Foreign Company. Tax authority, in turn, has revoked the transaction on the main amount – VAT deduction and imposed tax on the Branch and at that moment, considered that Foreign Company and its Branch are separate legal entities.

Court decision: The first and second court instances have not satisfied the position of tax authority by issuing a decision in favour of the Branch. However, the Supreme Court has annulled the decision held by the Court of Appeal and returned for rehearing.

The Supreme Court stated that the Foreign Company and its Branch are separate legal entities from the perspective of tax law. In that case, main amount has been paid by one taxpayer, but its VAT has been paid by another taxpayer. However, according to tax law, VAT deduction does not include payment of the main amount and its VAT by separate taxpayers.

PwC Azerbaijan's 2nd Annual CEO Survey: Transform with the World

On 15 March 2018, PwC Azerbaijan launched its 2nd Annual CEO Survey in Azerbaijan. The key findings of the survey were presented to the businesses and media at an event attended by CEOs and top management, public officials diplomats.

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The Azerbaijan CEO report is part of PwC's Annual Global CEO Survey introduced at the World Economic Forum, in Davos for the past 21 years. The CEOs of 40 private and public companies from all the key industries in Azerbaijan participated in the survey and shared their insights on the economic trends, business issues and opportunities.

The level of CEOs optimism, both globally and locally, is the highest since 2010, almost double since the previous survey. The CEOs see growth prospects short and mid-term for their businesses while the economic and commodity prices are stabilizing, with many countries embracing the institutional reforms and diversification. The recent crisis brought disruption and it turned out to be the primary catalyst of a change, making a positive effect on both the private and public sector enterprises, forcing them to reconsider their strategies and business models.

You can read our report by following the link below:

https://www.pwc.com/az/en/publications/assets/PwC_Azerbaijan%27s_2nd_Annual_CEO_Survey.pdf

Approval of Regulations on Board of Appeal

Aforementioned Regulations on Boards of Appeal under the President of the Republic of Azerbaijan, of local and central executive authorities have been approved. According to the Regulations, persons dealing with commercial activities may lodge an appeal against the decisions, actions or non-actions (which have been held with regard to the person's commercial activities) of local and central executive authorities to those state bodies' Board of Appeal in accordance with rules defined under the Regulations. It might be possible to make an appeal against the decisions, other actions or non-actions to the Board of Appeal under the President which have been upheld by Boards of Appeal of local and central executive authorities in respect of applications lodged previously.

Decision of Cabinet of Ministers on Requirements about special smoking areas

According to the Requirements, the following requirements have been defined:

a) Requirementsconcerningspeciallydesignatedclosedareasfortobaccosmoking Speciallydesignedclosedareasfortobaccosmoking(hereinafterreferredtoasspecialclosedspaces)areintendedonlyforsmokers(allkindsofhookahsandelectroniccigarettesarealsosubjecttotobaccoproductswithinthescopeoftheserequirements)andmeetthefollowingrequirements:

- Special closed areas should be located outside the building, away from public places of entrance-exit, public gathering, leisure and waiting areas;
- Special places should be completely isolated, entrance and exit should be through one door;
- The materials used for the construction and installation of special closed spaces should be fire-resistant, inner and outer surfaces should be resistant to easy washing and cleaning detergents and disinfectants;
- Special closed areas should be equipped with automatic orself-closing doors that are opened and closed;

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- Printed and other educational materials regarding tobacco smoking and detriment of tobacco smoking to health should be placed in areas of special closed places;
- Mottos or signs such as "Place specially designated for tobacco smoking", "Smoking is harmful for your health" and "Entrance is prohibited for the persons under 18" should be placed at the entrance of specially closed areas;
- Security requirements should be met and fire prevention facilities should be installed in special closed places;
- Special ashtrays (wastecontainers) made of metal should be placed in special closed areas to collect cigarette butts or any part there of as well as other tobacco products;

- Special closed areas should meet sanitary and hygienic standards and regular cleaning should be conducted at these places;

- Ashtrays envisaged for tobacco products and other trash cans which can be used for this purpose should be regularly disposed in containers designed for domestic waste and discharged from places where the tobacco is prohibited.

- Specially designated closed areas should be equipped with ventilation system.

The ventilation system should meet the following requirements:

- special closed areas should be kept under negative air pressure in comparison with the areas where smoking is prohibited. Mechanical system should operate during all working hours to create negative air pressure;

- Air removed by mechanical ventilation system from the special closed system should not mixed with ventilation and air-conditioning system of other non-smoking places;

- Mechanical ventilation system should provide change of air at the special closed areas at least 10 times within an hour;

- Air removed by means of mechanical system from the entrance or exit of the premises, windows and the places with clean air received to ventilation systems should be discharged up to the level of roof in accordance with the engineering-communication requirements of construction facilities.

b) Requirements concerning specially designated open smoking areas

Specially designated open spaces for tobacco smoking (hereinafter referred to as" special open places") are intended only for smokers (all kinds of hookahs and electronic cigarettes are also considered as tobacco products within the scope of these requirements) and should meet the following requirements:

- Special open areas for tobacco smoking should be placed outside the entrance and exits of the buildings;

- "smoking area" sign should be placed in special open spaces;

- Special ashtrays (waste containers) made of metal should be placed in the special open are as for cigarette butts or any part thereof, as well as for other wastes of tobacco products;

- It is prohibited to throw away cigarette butts or any part of it, as well as any other wastes of tobacco products outside the envisaged areas;

- Compliance of special open areas with the sanitary and hygienic standards and regular cleaning works should be ensured.

Amendments to the Law on Bankruptcy and Insolvency

New rules on rehabilitation have been added to the Law. Under the Amendments, rehabilitation of a debtor shall be carried out in accordance with rehabilitation plan.

Debtor shall prepare the rehabilitation plan in 3 months from the date of decision on rehabilitation, which is concluded between debtor and creditor, and debtor shall present the plan to meeting of creditors. Rehabilitation plan and amendments there to shall be held by the decision of meeting of creditors and approved by court.

The following legal consequences will occur from the date of holding the decision on launch of rehabilitation by court:

a) By taking into account the rights of the administrator which are stated in Article 20.4 under the Law, it is prohibited for founders (participants), management and supervision bodies of debtor to use the properties belonging to the debtor and give orders on the properties;

b) Execution of court decisions held against the debtor is suspended;

c) It is not allowed to all creditors, founders (participants), members of management and supervision bodies of debtor to bring a case before court regarding insolvency;

d) With drawal from bank accounts of debtor regarding demands of all creditors and indisputable debts, as well as addressing demands to properties of the debtor are not allowed.

Amendments to the Law on Food products

With the Amendments, hygiene, veterinary and phytosanitary compliance of the activities of persons, who engages in food products, will be inspected, those persons will be registered in food safety and food products will be expertized. The persons will be included into state registry on food safety and they will be provided with state extraction.

Food Safety Agency will carry out the registration of persons engaging in food products industry.

PwC Azerbaijan Times

In addition, the activity of non-registered persons will be prohibited. Amendments will enter into force from 1 July 2018.

Amendments to the Law on Standardization

The following has been added to the Law: the State Standards for food products are only recommended demands and they will be applied voluntarily. Amendment will enter into force from 1 July 2018.

Amendments to Administrative Procedural Code

If an application is submitted to the authority established under relevant executive power (hereinafter referred to as the “Authority”) against its administrative act (or regarding rejection of application) in a period of time which has been defined under Articles 73.1 and 73.2 of the Law on Administrative Proceeding (hereinafter referred to as “Period”), claim period stated under Articles 38.1 and 38.2 of the Code is suspended:

- Till the end of Period intended for appealing against the decision (written response) of the Authority (in case there was not appeal to the Authority);

- Till the date of submitting decision (written response) to applicant, in case of appealing to the upper Authority against the decision of the Authority.

Competences of the Authorities will be carried out by boards of appeal under central and local executive powers, the Board of Appeal under the President of the Republic of Azerbaijan and the President of the Republic of Azerbaijan, respectively.

Amendments to the Law on Banks

According to the Amendments, banks should give the data on each of borrowers to the centralized credit registry under Financial Market Supervision Authority ("the Authority") in accordance with the rules defined by the Authority. The rules on protection of bank secrecy defined under the Law are applicable to the data collecting in centralized credit registry.

Amendments to Resolution of Cabinet of Ministers on Rates of customs duty on import-export in the Republic of Azerbaijan

With Amendments, the following is exempted from customs import duty:

- In accordance with confirming documents of Ministry of Energy of the Republic of Azerbaijan, equipment and materials imported to the country in the frame of reconstruction of huge oil refineries.

The Resolution will enter into force after 30 days from 1 May 2018 and will be inforce until 31 December 2021.

Amendments to the Law on Banks

With amendments, the following has been added to the Law:

- Licensed persons on currency transactions should abide by the requirements defined under the Law on Against financing terrorism and legalization of properties and money amounts acquired by means of criminal activities.

Law on Alat free economic zone (FEZ)

Milli Majlis has adopted Law on Alat free economic zone ("the Law") on its third reading. Under the Law, residents of Alat FEZ, legal entities and their employees, administrative entities and competent authority of Alat FEZ will be exempted all taxes due to their activities in Alat FEZ. Inaddition, taxes and customs duties will not be charged for services and goods imported to Alat FEZ. Legal entities entitled to operation in Alat FEZ will not be a subject to any nationalization, expropriation or other any restrictions to private property. With regard to dispute settlement, competent authority of Alat FEZ will provide the establishment of one or more of the followings:

- Arbitration centre;
- Alternative dispute settlement body.

Amendments to Regulations of declaration of goods and vehicles passing through customs border

With amendments, the person in charge should submit the following data, beforehand, in written on paper or e-form to customs authority for the vehicle intended for bringing to customs area.

- Date of entering of vehicle to customs area;
- Route and directions of vehicle;
- Crew and passenger of vehicle;
- Cargo which will be discharged, regardless of its assignment and purposes of import;
- Cargo which is not supposed to be discharged in customs area, if any;
- Customs area where vehicle will enter.

Amendments to Administrative Offences Code

With amendments, new article on defining administrative sanction for breaking the legislation (on insurance against unemployment) by insurer has been added to the Code. According to the Article, individuals will be fined in amount of AZN 100, officials will be fined in amount of AZN 200 and legal entities will be fined in amount of AZN 400, if they make the following administrative offences:

Azerbaijan Times

- Not registering in insurer (relevant state authority) as an insurer (who is employer);
- Not insuring their employees against unemployment;
- Not paying insurance cost to the insurer (relevantstateauthority)incertainamount,timeandrulesdefinedunderLawoftheRepublicofAzerbaijanonInsuranceagainstunemployment;
- Not informing, within five days from the date of order, the insurer about the occupation, specialty and salary of the employee who has been warned in accordance with the first part of Article 77 of the Labour Code of the Republic of Azerbaijan;
- Not submitting the information to the insurer, which is basis for defining insurance payment, calculation and payment of insurance cost;
- Not informing the insurer as to restructuring or liquidation in compliance with Civil Code of the Republic of Azerbaijan;
- Failure in accounting on calculation and transaction of insurance cost and not reporting to the insurer on that, failure in maintenance of data and documents basis for insurance cost.

Amendments to the Law of the Republic of Azerbaijan on Accounting

According to the Amendments, the main goal of the state regulation on accounting in the Republic of Azerbaijan is to ensure the preparation of financial statements based on International Financial Reporting Standards (IFRS) for all type of entities, including Small and Medium Enterprises, Public Sector, and accounting rules and maintenance of accounting records in the country. At the same time, with these amendments, the National Accounting Standards and the simplified accounting rules for small entrepreneurs were removed from the Law.

According to the Amendments, tax reports submitted to the tax authorities by commercial and non-commercial entities in accordance with the Tax Code of the Republic of Azerbaijan are not substitute for the financial statements submitted according to the requirements of the Law.

Additionally, according to the Amendments, chief accountants of the following entities should be professional accountants:

1. Legal entities, which controlling interest (stocks) of shares belong to the state;

2. Other public interest entities, except the legal entities with securities traded at the stock exchange;

3. Large Enterprises (an entrepreneur with AZN 1.250k and more annual income, or 125 or more employees);

4. Public legal entities publishing their annual or consolidated financial statements and state-funded organizations.

The legal entity rendering accounting services to the above-mentioned persons on contractual basis should have an employment contract with at least two professional accountants and individual engaged with an entrepreneurial activity without establishment of a legal entity shall have employment contract with at least one professional accountant.

Professional accountant is the person who successfully passes an exam organized by the State Examination Centre*, obtains a professional accountant certificate and is a member of professional accounting organization.

The relevant certificate is provided to persons who successfully passed professional accounting examination and registered by the Ministry of Finance*. Professional accounting organization is a non-commercial organization consisting of professional accountants and accredited by the Ministry of Finance*.

In the Amendments, there will be a state supervision intended for accounting subjects in respect of their accounting processes during state financial supervision and tax audits carried out by Ministry of Finance and Ministry of Taxes, respectively. In certain accounting subjects (credit organizations, insurance companies, investment funds and their management, as well as persons providing licences for securities market), the state supervision will be implemented by the authority established by relevant executive power.

In addition, a number of new definitions have been introduced into the Law together with amendments to certain definitions.

*According to the relevant Decree of the President of the Republic of Azerbaijan on application of the Law

PwC Azerbaijan appoints the new Leader of Legal Practice

PwC Azerbaijan has made a new appointment to its leadership team. Elchin Mammadov, has joined PwC Azerbaijan as the Head of PwC Legal. Elchin is bringing extensive experience in various fields of law, including contracts, banking and litigation. He is dual qualified and admitted to practice as a lawyer in Azerbaijan and a solicitor in England and Wales. Elchin was formerly a partner in Omni and in MGB Law Offices (formerly known as McGrigors) and Ledingham Chalmers. PwC's legal practice in Azerbaijan has significantly expanded during the past few years. We have 7 lawyers, specializing in diverse fields of law, from immigration and labor to litigation. Also, this year, "The Legal 500" has again confirmed Tier 2 position for PwC Azerbaijan for the year 2018.

The ranking is based on a series of criteria, highlighting practice areas > and teams who are providing the most cutting edge and innovative legal advice to the clients in various industries. PwC Azerbaijan' steam of legal professionals handles corporate and M&A, banking and finance, oil and gas, IP, employment and immigration matters. The Firm's legal team offers integrated legal advice, with access to specialists from across the whole of PwC network. With over 3,500 lawyers in 90 countries and immigration law services in 116 countries, PwC is the largest legal services network by geography.

Amendments to the Law of the Republic of Azerbaijan on Protection of consumers' rights

According to the amendments, goods whose production (sale) is licensed and certified can be advertised only if supporting documents are available. In this case, the number, issuance date of the licence and certificate and name of issuing body should be specified in the advertisement

The damages suffered by consumers as a result of unfair, inaccurate and hidden advertising should be paid by the subject of advertising activities who found guilty according to court decision.

Amendments to the Law of the Republic of Azerbaijan on Public Television and Radio Broadcasting

According to the amendments, advertisements broadcast on public programs (broadcasts) should be easily understood and distinguished from visual (visual) and (or) acoustic (audio) elements of those programs (broadcasts).

Those who are sponsors of the program can broadcast sponsor advertisement.

Sponsor's name, activity area and information on its goods, trademark and company logo can be provided with visual or audio by showing news crawl. This total volume of information in sponsor advertisement should not be more than 2 minutes in each public program.

PwC outlines the Workforce of the Future

On 14 June 2018, PwC Azerbaijan held "Workforce of the future" business breakfast for HR specialists at JW Marriott Hotel Baku. The event was attended by over 40 professionals from leading state and private companies.

We are living through a fundamental transformation in the way we work. Automation and 'thinking machines' are replacing human tasks and jobs, and changing the skills that organisations are looking for in their people. These momentous changes raise huge organisational, talent and HR challenges – at a time when business leaders are already wrestling with unprecedented risks, disruption and political and societal upheaval.

Rena Rzayeva, People & Organization Leader at PwC Azerbaijan, shared

PwC Azerbaijan Times

Insights into how people think the workplace may evolve and how this will affect their employment prospects and future working lives according to "Workforce of the future" report.

She spoke about the megatrends, such as technological breakthroughs, demographic shifts, shifts in global economic power, how digital and artificial intelligence are changing work.

Rena has also outlined four different models of future work scenarious with huge implications for the world of work. Those organisations and individuals that understand potential futures, and what each might mean for them, and plan ahead, will be the best prepared to succeed.

For a better understanding of this topic, you can read our report by following the link below:

https://www.pwc.com/gx/en/services/people-organisation/publications/workforce-of-the-future.html

At PwC we build tailored people and organization solutions to help our clients achieve their strategic ambitions creating lasting, differentiated value.

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Estonia

Draft law for the amendments to the value-Added Tax Act

The Ministry of Finance has sent for round of approvals the draft law for amendments to the Value-Added Tax Act (VAT Act) which concerns the following topics. The amendments should enter into force in January 1st, 2019.

Tax treatment of vouchers

From January 1st, 2019 the Directive regulating VAT treatment of vouchers is amended. The purpose of the aforementioned Directive is to simplify, update and harmonize the VAT rules applicable to vouchers. With the draft law these amendments are transferred from the Directive to the VAT Act.

The concept of a voucher is defined, it can be either single-purpose or multi-purpose and the discount vouchers are excluded from the definition. Different types of vouchers must be defined because the time of supply for various types is different. Vouchers can be issued on paper or electronically. Voucher is deemed to be as a single-purpose, when the place of supply of the goods or services and the VAT payable on those goods or services are known at the time of issuing the voucher. In all other cases the voucher is defined as multi-purpose voucher. According to the explanatory note, the new provisions for vouchers will not change the VAT treatment of tickets for public transport, cultural and sporting events and postage stamps.

Only vouchers, which can be used for redemption of goods or services are targeted by these rules. The rules do not apply on various instruments granting merely discounts.

When a single-purpose voucher is sold, the VAT liability arises on the day when the voucher for goods or services is handed over to the purchaser (if a prepayment is received before handing over the voucher, the VAT liability arises at the time of receiving the funds for prepayment). For example, a restaurant gift card is a single-purpose voucher[1]. If the seller of single-purpose voucher is an intermediary (for example a web site for vouchers) the intermediary's supply arises from the provision of the service to the real seller of the good or service. The time of supply of the actual seller of the goods or service is generated either from receiving the payment or delivery of the goods/services to the purchaser, whichever is earlier.

When a multi-purpose voucher is sold, the time of supply is not when the voucher is handed over to the purchaser (or receiving the payment) but VAT should be charged when the goods or services are redeemed. Multi-purpose voucher is for example a gift card of a book store[2]. It is a multi-purpose voucher because goods with both 20% and 9% VAT rate are sold in a book store.

Change in the place of taxation of digital services in case of small supply

The rule for the place of supply in case of digital services provided cross-border to a final consumer in another Member State is amended. Both electronic communications and electronically supplied services are considered as digital services. The proposal establishes a threshold of EUR 10.000 for digital services in a calendar year, after exceeding the threshold the place of the supply of services is the country of location of the final consumer. Until this threshold has not been exceeded, an enterprise has the right to comply with the rules of taxation in its Member State (including the tax rate) excl. in the event that the enterprise itself does not decide otherwise.

This means that from January 1st, 2019 an Estonian company with a VAT number, who sells digital services to final consumers located in other Member States (for example Latvia, Lithuania, Finland) declares VAT on the form KMD line 1 (taxable supply at a rate of 20%) rather than on a quarterly MOSS VAT return (as a general rule, the provider of digital service is MOSS special arrangements user). If the sale of digital services to other Member States exceeds EUR 10 000 from the beginning of the calendar year, then from the day on which the threshold is exceeded, the place of supply of services is the country of location of each final customer. The seller can apply for the MOSS special arrangement and declare the supply on the MOSS VAT return.

If the seller of the digital services is currently using the MOSS special arrangements then from January 1st, 2019 it is permitted to continue the same arrangement regardless of the threshold, meaning the place of supply for all crossborder customers will be the country of location of the final customer.

Filing import VAT on VAT return

Generally the import VAT on goods or fixed assets in taxed and payed to customs in accordance with the customs regulations, but this obligation can also be complied with in a substantially simpler way - by declaring the import VAT on
the VAT return form KMD line 4.1, provided that the conditions in the VAT Act are met.

The Ministry of Finance is drafting a proposal to simplify the conditions, which give the taxable person the right to use the line 4.1 on form KMD.

The main obstacle to the majority is eliminated, according to which the share of 0% supply in the total supply, of the previous 12 months before the corresponding customs declaration was submitted, should be at least 50%. However, in order to avoid tax evasion, the list of conditions is supplemented with a new condition, according to which the taxable person must have “an impeccable business reputation” to help ensure that only law-abiding taxpayers are entitled to use line 4.1. Since Value Added Tax Act § 38 (2) 6) is also amended, the interest in maintaining an impeccable business reputation is ensured, otherwise the Tax and Customs Board may invalidate the right to use line 4.1.

As a result, the number of persons who may apply for the right to declare import VAT on VAT return should be extended, since those who don’t have any 0% supply or it forms a small part of the total supply can also apply (currently there are about 200 persons with such right, estimated number of persons is 3 000).

In addition, it is provided that the taxable person who imports fuel can deduct VAT in the VAT return.

The deadline for filing the first INF14 declaration fell

The deadline for filing the INF14 (for loans granted and repaid) for the first time was 20th of April.

The first INF14 had to be filled in for longer period than one quarter, since in addition to loans granted and repaid in the 1st quarter of 2018, the loans granted and repaid within the period from July 1, 2017 to December 31, 2017 had to be reported in accordance with the transitional provision (Income Tax Act (ITA) § 61 (54)). A loan, which was granted under a loan agreement concluded before July 1, 2017, but which was increased or for which the repayment deadline was extended during this period, is also subject to reporting. The first INF 14 should have been filed no later than April 20, 2018. The reporting obligation also applies to permanent establishments of resident and a non-resident companies (no reporting obligation for banks and public limited liability funds).

It should be noted that only the loans issued (cash-bases) to parent and so-called sister companies will be subject to the reporting obligation. Loans will be classified into three categories: (classical) loans, loan granted under cash pool agreements and other transactions equivalent to loans (such as overdrafts, deposits).

Amendments in Taxation Act

The Parliament of Estonia is in the process of adopting a draft law introducing amendments to Taxation Act and related legislation aimed at making the tax proceedings more efficient and modern. Amendments will be effective from January 1st, 2019. Please find below a description of the most significant changes, according to our selection.

Declaring in full euros

The draft law amends the principle of rounding-off the tax amounts payable or refundable. The rounding is currently done with euro-cent accuracy, in the future the rounding should be done in full euros according to the general rule, unless otherwise specified by the specific tax law or customs regulation. For example, currently the report on intra-community supply (VD) is filled in with full euro accuracy, but the VAT return (KMD) is filled in with eurocent accuracy and in the future the KMD should also be filled in full euros.

Amendments concerning tax arrears

The amendments clarify the concept of tax arrears in order to clarify, that tax arrears include the amounts refunded without incorrectly and the interests calculated on tax not paid by the due date.

In addition, when issuing a certificate on the absence of tax arrears, the threshold of tax arrears is raised. Currently, the Tax and Customs Board issues a certificate on the absence of tax arrears if the amount of tax arrears is below 10 EUR (including the amount of interest). In future, the certificate on the absence of tax arrears is issued when amount of tax arrears is below 100 EUR (including the amount of interest).

Calculated tax interest is not public information

If the taxpayer is late in tax payment, the interest is automatically calculated, but the interest liability is not disclosed until the taxpayer has received an administrative act (a claim for interest) from Tax and Customs Board, where the due date for payment is provided (Taxation Act §27 (2)). Therefore, the interest liability is not public information until claim for interest payment is submitted to the taxpayer and becomes public information after the due date for the payment of interest claim has fallen (unless the claim for interest is suspended).

Late payment interest as business related expenses

Income Tax Act § 34 (3) is amended with two exceptional cases, when late payment interest can be considered as a business related expense, meaning its payment will not trigger the obligation to pay corporate income tax on top of the late payment interest. If the taxable person voluntarily corrects a tax return in which the data was either incomplete or incorrect and as a result tax arrears arise, then the obligation to pay late payment interest on tax arrears still arises, but without the obligation to pay corporate income tax on the interest. However, the implementation of this exception is not black-and-white: if the declaration contained false information intentionally or with the aim of creating a tax advantage, the tax authority may not accept late payment interests as business related expenses. The second exception is a situation in which a taxpayer faces tax arrears due to payment difficulties, but he himself requests payment of tax arrears by instalments – the interest calculated after the date of approval of payment of tax arrears in instalments is no longer subject to corporate income tax.

The amendment does not therefore apply to late payment interest payable as a result of a tax proceeding and late payment interest due on tax arrears which have not been deferred. These late payment interests continue to be subject to corporate income tax.

Non-calculation of tax interest

An additional provision (Taxation Act §119 (5)) is included which establishes that in certain cases the tax authority does not calculate the late payment interest. For example, if a tax audit is delayed as a result of tax authorities activity (or inactivity), the tax authority does not calculate late payment interest on tax for that unreasonably delayed period.

Interest payable to the taxpayer

In the future, the taxpayer does not have to submit a separate application to the Tax and Customs Board for interests payable, in situations where the Tax and Customs Board is obliged to pay interest to the taxpayer – for example, if the tax authority has issued a notice of tax assessment, which the taxpayer has paid, but the court has later canceled. The tax authority complies with the interest obligation upon its own initiative, transferring interest to the taxpayer's prepayment account.

Tax proceedings

The differences between the examination of individual cases (*üksikjuhtumi kontroll*) and tax audits (*maksurevisjon*) are abolished. Instead, tax proceeding is introduced as tax examination category, which is regulated by Taxation Act §41 and these provisions will apply on tax proceedings that begin as of January 1st, 2019.

Solidarity-based liability of the factual company manager

In the future, it will be possible to collect the tax arrears caused intentionally from a person who is not registered as a member of the management board in the commercial register, but who is the factual manager of the company.

Tax proceedings

The precise composition of the data in the employment register (TÖR) will no longer be provided by the law, but instead by the implementing act, as the data, which is required is dynamically changing and increasing over time. It is also planned to include additional data concerning the work in the TÖR (job title and place of work).

Automatic decisions and documents

It will be regulated in which cases (Taxation Act §462) the tax authorities have the right to submit decisions and documents created by an automated data processing system via e-Tax/e-Customs environment (warnings, tax notices, certificates).

For example, the decision of payment of tax arrears by instalments, provided certain conditions are met (period of payment by instalments is up to 1 year, the amount of tax arrears is up to 20,000 EUR etc.); the decisions on registering for VAT or VAT group; tax notices etc. In practice, the application and decisions on payments by instalments is already an automatized process.

The regulation on delivery by electronic means is supplemented and the legal basis for using the e-Stamp is laid provided for.

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1 Medieval meal in Olde Hansa Tallinn - value EUR 60.
2 Rahva Raamat gift card, diferent values.

Legal acts ATAD

The Ministry of Finance has submitted for rounds of approval a new draft law amending Income Tax Act with the principal aim to transpose the anti tax-avoidance rules from the EU 2016/1164 Anti-Tax Avoidance Directive or the so-called ATAD into Estonian legislation. The ATAD was already briefly discussed in our July 2016 Newsletter. ATAD is based on OECD rules, which were taken as the basis for providing the minimum standards of anti tax-avoidance measures to be applied within the EU.

The draft law foresees that the amendments should be adopted by 1 January 2019 as this is the deadline posed on Member States for adopting the Directive. The Ministry of Finance is not expecting a significant increase of the income tax to the state budget as a result of the amendments.

New chapter

Income Tax Act (ITA) will be supplemented with a new chapter (101), which will include most of the new measures transposed from the Directive against profit shifting and tax base erosion. Five new paragraphs will be included in the new chapter: § 541 - § 545.

Abuse of profit taxation rules will trigger taxation

General anti avoidance rule (§ 51) will be introduced with the main aim of ignoring any transaction or chain of transactions which have been conducted with the main purpose of gaining a tax advantage for the purposes of income taxation.

As a result of introducing the new general anti avoidance rule (often referred to as the GAAR) the previous similar provision of ITA § (50 (14)), which was in force from 1.11.2016 to prohibit the abuse of the exemption method on dividend distributions will be annulled. The new GAAR will be applicable within the whole ITA and therefore should also cover this specific situation.

Income, which the Estonian resident company (or Estonian permanent establishment) did not receive or expense, which was borne in connection with the aforementioned transaction or chain of transactions will be subject to income tax pursuant to the new provision (**ITA §-s 541**).

Income tax on the undistributed profits of Controlled Foreign Companies (CFC rules)

Until now the Estonian CFC rules have only been applicable on transactions conducted by private individuals (ITA § 22). The rules foresee for attribution and taxation of profits of offshore companies controlled by Estonian private individuals as if these were distributed to the private individuals.

These provisions will remain in force and in addition a new tax object will be included. Namely, taxation of profits of a controlled foreign company at the level of Estonian resident company (or a permanent establishment) if the criteria laid out in **ITA § 544** for attribution of profits is met. Unlike the general rule for declaring tax, such profit must be declared by the taxpayer based on the financial year of the controlled foreign company. For example if the financial year matches the calendar year, the profit should be declared by 10 July and tax remitted by 10 September.

Controlled foreign company is defined as any non-resident enterprise in which the resident company alone or together with related parties holds more than 50% of shares, profits or voting rights. Estonia has opted to transpose the rule so that the tax rate of the foreign jurisdiction is irrelevant. As a result any company located in any EU Member State (e.g. Cyprus, Malta or the Netherlands) or company located outside the EU could fall within the scope of the CFC rules.

In order for the tax obligation to be triggered the following conditions must be met:

1) the underlying transaction or chain of transactions of the controlled foreign company which created the profit was fictitious;

2) the principal aim of the underlying transaction or chain of transactions was gaining a tax advantage;

3) the factual management of the CFC is undertaken by key employees of the shareholder (the controlling company) and this created the opportunity to derive the profit.

In practice deciding whether the abovementioned conditions are met or not will be the most complicated part about the application of the provision.

Therefore, going forward the establishment of foreign companies or even the use of existing foreign companies should be carefully considered and determined whether sufficient business reasons exist in light of the new tax rules.

Exceeding borrowing costs

Deduction of excessive borrowing costs (as a general rule interest expenses) from tax base will be limited if the following three criteria are met and none of the exceptions apply (**§ 542**). The provision will not apply to financial undertakings (banks, insurance companies) and standalone entities. Standalone entity is a taxpayer, which is not part of a consolidated group and has no associated companies or permanent establishment(s).

The criteria is as follows.

First, it needs to be established whether the borrowing costs in a financial year exceed 3 MEUR. If not, then the fulfillment of the next criteria does not need to be checked. If yes, then it needs to be established if the borrowing costs exceed 30% EBITDA-d (i.e. earnings before interest, taxes, deductions). If yes, it needs to be established whether the company is in a profit or loss-making position to determine whether the borrowing costs which exceed 3 MEUR and 30% EBITDA, exceed losses. If yes, income tax must be paid on the part exceeding the loss.

As an exception to the general rule of declaring and paying tax on a monthly basis, such taxation will follow the financial year. Exceeding borrowing costs must be declared by 10 July and tax paid by 10 September if the financial year matches the calendar year.

The threshold, which triggers taxation is very high in the context of Estonia and since there are also exceptions to the general rule, the Ministry of Finance estimates that there would be approximately 10 companies in Estonia which are potentially impacted by this rule.

Exit taxation

The idea behind exit tax (**ITA § 543**) is to guarantee that when a resident company transfers assets from Estonia to its permanent establishment(s) in other state(s) then income tax is charged on the amount which equals to the fair market value of the transferred asset (the company will have the right to deduct capital contributions from the tax base). If a resident company transfers its tax residency away from Estonia then taxation will be triggered according to ITA § 50 (2)2 meaning the tax base will be capital repayments exceeding capital contributions.

In case of transfer of tax residency or assets within EEA member states the payment of exit tax can be deferred by paying it in instalments over 5 years.

Broadening the applicability of exemption method

ITA § 50 (1)1 will be supplemented with new subsections to broaden the scope of application of exemption method on dividend distribution. Exemption will also be granted on dividends paid on account of assets upon the transfer of which exit tax has been paid or dividends received from controlled foreign companies or from sale of shares in such companies to the extent of the taxed amount.

Legal acts

On the 25th of May the Administrative Law Chamber of the Supreme Court settled a tax dispute, on whether the income tax exemption applies when the heir sold the real estate

which had been returned to his father in the course of ownership reform; and if yes, then on which grounds.

Circumstances

According to the content of the tax dispute, the Tax and Customs Board did not agree with the seller, who was an heir to ½ legal share of real estate in Pärnu County and who applied income tax exemption on the sale of the property. It is important to note that the property consisted of two cadastral units, on one of them at the time of the sale were buildings needing repair, which were not registered in the Register of buildings, including dwelling, barn, shed, etc.

The appellant argued that according to Income Tax Act (ITA) § 15 (4) 5) tax exemption was applied to the cadastral unit without buildings and according to ITA § 15 (5) 2) income tax exemption was applied to the cadastral unit with the buildings (incl. dwelling).

According to ITA § 15 (4) 5) the income from the transfer of the property returned in the course of ownership reform is tax exempt and according to ITA § 15 (5) 2) the gains from the sale of that property is tax exempt, when an essential part of the property is a dwelling and the immovable has been transferred to the taxpayer's ownership through restitution of unlawfully expropriated property.

The opinion of the Supreme Court

The Supreme Court resolved the question, whether it is possible to apply the tax exemption to two cadastral units separately (as the appellant did). The court ruled that ITA § 15 (5) 2) provides tax exemption to the full amount of gains from the sale of the immovable property. Therefore, when selling an immovable property with a dwelling it is not possible to use the income tax exemption differently on two cadastral units. Supreme Court also noted that from the point of view of taxation, it did not have any meaning that the dwelling needed repair.

Is the Tax and Customs Boards interpretation for ITA § 15 (4) 5) too narrow?

The Supreme Court found that because the essential part of the sold immovable was the dwelling (among other things), then the basis for the tax exemption was ITA § 15 (5) 2) (specific provision) and not (4) 5) (general provision).

By explaining the difference in these provisions the Supreme Court noted (paragraph 13 of the decision), that in relation to ITA § 15 (4) 5) the exemption applies to the immovable property (land) on which there could be also other buildings that are essential parts of the property other than dwelling.

It can be concluded that the current understanding and interpretation of the Tax and Customs Board, that ITA § 15 (4) 5) can only be applied to a land without buildings, is too narrow. It is also worth noting that the administrative court regarded the treatment unequal in situation where according to ITA § 15 (4) 5), the successor on whose land there is a growing forest would be entitled to income tax exemption and the successor on whose land there are buildings would be not. Therefore, the correct interpretation of this provision is that the exemption covers, in addition to land, all of the essential parts of the immovable, in particular the buildings, regardless of whether the buildings and land were returned at the same time or separately.

Is the tax exemption provided in the ITA § 15 (5) 2) transferable to the heir?

Supreme Court concluded, that because the transfer of immovable was not carried out by the bequeather (or acquired by the successor), but the owner was replaced, the succession of a property returned in the course of ownership reform does not exclude the application of the income tax exemption provided for in ITA § 15 (5) 2).

To the question whether the income tax exemption in the provision was an inseparable right of the bequeather, the
Supreme Court replied negatively. To justify it, the Supreme Court argued that the succession did not change the way the inherited property was acquired, which was the main condition in the provision, and the inherited property was still immovable transferred through restitution of unlawfully expropriated property.

In addition, the Supreme Court explained the difference between provisions of ITA § 15 (5) 1) and 2). Clause 1 provides that the income tax exemption can be used if the taxpayer used the sold dwelling as his place of residence. This is a condition that no other person can fulfill and that cannot be transferred to the heir- this means that the heir could use this provision for income tax exemption only if they have used the dwelling as a place of residence, otherwise it would be subject for taxation.

Therefore, in this situation, according to ITA § 15 (5) 2) the successor was entitled to use the tax exemption instead of the bequeather and can receive tax refund.

The Tax and Customs Board has partially changed their interpretation as a result of the decision

The new interpretation of the Tax and Customs Board shows that the interpretations for ITA § 15 (5) clauses 5)1 and 3)2 are still partially negative, justifying it by referring to the judgement of the Tallinn Circuit Court of January 2015 in the matter No 3-14-50711. According to Tax and Customs Board, it is important to distinguish on which basis the heir received the inherited property, either in the course of ownership return or through privatisation with the right of pre-emption and depending on this the heir can either apply the tax exemption or not.

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[1] 5) a structure or apartment as a movable has been transferred to the taxpayer's ownership through restitution of unlawfully expropriated
property or through privatisation with the right of pre-emption.

[2] 3) an essential part of the immovable or the object of apartment ownership or a right of superficies is a dwelling and such dwelling and the
land adjacent thereto has been transferred to the taxpayer's ownership through privatisation with the right of pre-emption and the size of the
registered immovable property does not exceed 2 hectares.

The VAT system in the EU is finally evolving!

The European Commission has published a proposal1 for council directive amending Directive 2006/112/EC with the aim of transforming the VAT system. In Estonia, not enough attention has been paid to this proposal. The proposal marks down the initial part of the first legislative phase in order to move from the transitional system to a definitive VAT system with the underlying principle of taxation in the country of destination.

Since the transition to a definitive system is to be carried out in stages and will take years, then the proposal of the European Comission suggests several short-term improvements to the current system of VAT (so called “quick solutions”). In addition, the legal basis of the definitive system is defined.

The amendments enter into force on the twentieth day following their publication in the Official Journal of the European Union. Estonia must adopt and publish the laws, regulations and administrative provisions necessary for the implementation of the amendments by January 1, 2019 at the latest.

A new concept of a certified taxable person is introduced

Taxable persons are identified through a VAT identification number issued by a Member State, but currently no distinction is made between a reliable and a less reliable taxable person. A certified taxable person can in principle be deemed to be a reliable taxpayer and simplification rules could be applied on transactions where such certified taxable persons are involved.

Pursuant to Article 13a of the directive, obtaining a status of a certified taxable person will be based on unified criteria which will be valid throughout the European Union. The criteria for being considered a certified taxable person will automatically be fulfilled in case of persons who have been granted the status of an authorized economic operator for customs simplifications. The local tax authority, in Estonia the Tax and Customs Board, is to manage the certification of taxable persons.

Simplifying and harmonizing the taxation of call-off stock schemes

Under existing rules, the transfer of goods to another Member State without the transfer of ownership and with the aim of constituting a stock for an already known customer (call-off stock) from which the latter can acquire goods at a chosen time, is equivalent to an intra-Community supply giving rise to an intra-Community acquisition of goods by the supplier. When the stock is used by the client (goods are taken out of the stock) a second supply takes place, where the place of supply is in the Member State in which the stock is located. Therefore, a single cross-border sale transaction brings about two supplies for VAT purposes.
As a rule, the supplier is obliged to be registered for VAT purposes in the Member State of arrival in order to be able to declare intra-Community acquisition under its VAT number. As the registration in the Member State of destination is troublesome and expensive for both the supplier and the tax administrator, certain Member States, including Estonia, apply simplification measures while others do not. This in turn leads to a situation where rules are not applied in a uniform manner within the single market.

In order to solve this issue, the new rules propose that transporting goods from an EU Member State of departure to an EU warehouse of a certified client will no longer be

considered an intra-Community supply. As a result, the zero-rated intra-Community supply and the taxable intra-Community acquisition will only take place when the client takes goods out of the stock, on condition that the transaction takes place between two certified taxable persons. In this event, it will no longer be necessary for the seller to register for VAT purposes in every Member State where it has placed goods under the call-off stock arrangement.

The tax administrators will track the transactions through a register of call-off stock goods, which both the supplier as well as the acquirer will be required to keep. In addition, the supplier is to declare the acquirers to whom goods dispatched under call-off stock arrangements are supplied at a later stage in its EC sales list.

Only one supply in a chain transaction can be zero-rated, but which one?

Article 138a) in order to establish which supply in a chain transaction can be considered as a zero rated intra-Community supply, where the participants are vendor-intermediarycustomer.
A chain transaction is defined and should be understood as successive supplies of the same good which result in a single intra-Community transport of those goods. It should be noted that both the vendor and the intermediary must be certified taxable persons to make use of this provision.

The transport is ascribed to the supply between the vendor and intermediary if the intermediary notifies the supplier about the Member State of arrival of the goods and the intermediary operator is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins. Such a situation is a zerorated intra-Community supply for the vendor. Where any of the conditions are not met, the intra-Community transport shall be ascribed to the supply made by the intermediary operator to the customer and that supply is subject to zero rate.

Application of zero rate for intra-Community turnover

Article 138(1) of the directive is amended to enforce the requirement for a valid VAT identification number of the acquirer in a Member State other than that in which transport of the goods begins as a substantive condition in order for the vendor to be allowed to apply the zero rate. Now, it is a formal requirement that works in practice as a substantive condition, since EC sales lists cannot be submitted without a valid number.

Transitional system is replaced by a definitive system

The current taxation of trade between Member States is based on a so-called transitional system which was intended to be merely a temporary solution before moving on to the definitive system, but has nevertheless been in force for more than 25 years already. Under the current wording of Article 402 of the Directive, the definitive system is based on the taxation of goods in the state of dispatch (i.e. the state of origin), so that intra-Community trade would be subject to the same conditions as domestic trade.

Discussions with Member States, however, have demonstrated that the principle of taxation in the Member State of origin is politically unacceptable. The taxation at destination (VAT is paid in z Member State where the goods and services are consumed) was deemed a more favorable solution and Article 402 of the Directive will be replaced in order to lay down the cornerstones of the definitive system for the taxation of goods and services for trade between Member States.

It is established that the definitive system will be based on the taxation of goods and services in a Member State of destination. The supplier will be liable for the payment of the VAT unless the acquirer is a certified taxable person (in which case the certified taxable person will account for the VAT in its VAT return under the reverse charge mechanism). Where the person liable for VAT is not established in the Member State where the tax is due, he will be able to file his return and settle payment obligations via a so-called One-Stop Shop system.

The transition to the definite system would take place in a step-by-step manner. The second part of the first legislative phase begins in 2018, in which the Commission will present a proposal for a directive providing the technical and other implementing provisions necessary for the operation of the definitive VAT system.

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Latvia

Time to file annual income tax returns (resiedents)

Unless they have already done so, Latvian residents (and non-residents as well, but this article is meant for residents) are now expected to prepare and file their annual income tax return for 2017 in order to calculate and pay tax on any taxable income on which tax has not been paid during the year, and to recover any overpaid tax on any unclaimed balance of personal allowance, allowances for dependants, allowable expenses, contributions to private pension funds (PPFs), life insurance premiums etc.

The time limit for filing the annual income tax return

Where additional tax is due or filing is mandatory, the annual income tax return should be filed between 1 March and 1 June 2018.

Please note that there are rules effective from 30 June 2016 that exempt Latvian residents, who have derived employment income in another member state on which PIT or an equivalent tax has already been withheld in the country concerned, from reporting that income in Latvia. Thus, if the person's foreign income is only employment income derived and charged to PIT in another member state, they are not required to file the annual income tax return in Latvia.

Please note, however, that the interpretation of the State Revenue Service (SRS) is that the annual income tax return should be filed and additional PIT paid on any income that is exempt in another member state but taxable in Latvia (this does not apply to foreign personal allowances and other relief). Accordingly, in that case the person may have to pay additional PIT on foreign employment income. So the tax resident should closely monitor what type of income has been received and what is their tax treatment in the member state concerned in order to calculate the tax liability correctly.

If a person wishes to recover tax, say, on allowable expenses (medical and education expenses, contributions to PPF etc) the annual income tax return may be filed within three years after the tax became due in respect of the 2017 annual income tax return, which is 16 June 2020.

The annual income tax return can be filed by paying a visit to the SRS or using the Electronic Declaration System (EDS) or a secure electronic signature by email.

Disclosures on the annual income tax return

The income tax return and its annexes should make the following disclosures:

1. taxable income derived in Latvia in the tax period (2017) (Annex D1);* income from capital on which tax has not been deducted at source in Latvia (Annex D1.1); foreign source income (Annex D2);** business income (Annex D3);*** allowable expenses (Annex D4 – for each family member);

2. non-taxable income exceeding EUR 4,000 for the tax year, except for benefits listed by section 9(1)(37–40) of the PIT Act or benefits paid by the National Social Insurance Agency, and any income derived from offering assistance to or secretly cooperating with law enforcement investigators and any means of subsistence received from a special protection agency.

*The annual income tax return should only disclose information that is not available from national information systems, i.e. the SRS will complete any chapters of the tax return on which information is available from national information systems.

**No filing required if the resident has received employment income in a member state where it has already been charged to a tax similar to PIT.

***The annual income tax return should not show any employment income paid by a microbusiness under the Micro Business Tax Act or any business income earned in a microbusiness. And business losses cannot offset against other types of income.

Mobile app Allowable Expenses

Please note that the SRS has developed a mobile app *Allowable Expenses* available free of charge to users of Android devices from Google Play, to users of iOS devices from App Store, and to users of Windows devices from Microsoft Store. The app can be accessed via the EDS or www.latvija.lv. The app is designed to gradually accumulate documents supporting allowable expenses (receipts and their descriptions) during the year.

To send a payment document from the mobile app to a receipt store:

1. photograph the document supporting the allowable expense using the mobile device's camera or select the right document from the device's image gallery;
2. add more details; and
3. press "Save".

Commissionaire structure: transfer pricing, accounting and tax implications

The commissionaire structure is a well-known operating model around the world, but not so widespread in Latvia, thus raising many questions about accounting, taxation, and transfer pricing (TP). This article explains the TP and corporate income tax (CIT) treatment of commissionaire arrangements and inherent risks.

Commissionaire

The commissionaire business model is widely used by multinational groups of companies selling and distributing tangible goods. A commissionaire can be described as a hybrid between a full-risk distributor and an agent. The commissionaire operates in his own name but on behalf of the principal and does not, therefore, take title to the goods sold.

Overview

The general legislative framework for commissionaire arrangements in Latvia is contained in the Commercial Code. The TP rules and the CIT Act as well as international tax rules prescribe the tax treatment of such structures. As a general structure described in the Commercial Code, a commissionaire operates on behalf of the principal under a commercial commission contract. A commissionaire sells goods to independent customers in his own name but on behalf of the principal. The commissionaire does not take title to the goods sold, as title passes directly from the principal to the commissionaire's customers under the commercial commission contract.

Commissionaire arrangements are popular with multinational groups. If the principal and the commissionaire operate within the same group, the commission qualifies as a related-party transaction. As a result, there are several CIT and TP aspects the group needs to consider when setting up or running a commissionaire structure:

- the commissionaire's fee;
- the accounting principles; and
- the permanent establishment risk.

Remuneration

If the commissionaire and the principal are related parties, the commissionaire's fee is a related-party transaction governed by the overall TP rules. The OECD Guidelines provide that a commissionaire is entitled to a commission proportional to the functions he performs. To understand the functional profile of the parties to a transaction, it is important to understand which related party performs value-driving functions (considering the assets used and risks controlled and assumed) within the business value chain. In analysing risks, the OECD Guidelines emphasise the need to assess not only the contractual assumption of the risk but also the entities' actual capacity to control and assume the risk. Where it is found that a related party contractually assumes a risk but does not control it, or does not have the financial capacity to assume it, that risk should be allocated to the enterprise exercising control and having the financial capacity to assume the risk. The allocation of profits is proportional to the significance of a risk.

A commissionaire usually acts as a limited risk entity and does not, therefore, perform any value-driving functions or control significant risks. As such, it does not recognise revenues from sales and costs of goods sold. Usually, the commission is linked to the profitability of the principal's sales. It is important to note that the commissionaire as a limited risk entity does not take market risk and cannot, therefore, be in a loss-making position, nor should it take gains from successful sales. The principal takes market risk and is entitled to excess profits in the case of a market upturn as well as losses arising from adverse market fluctuations.

When evaluating the functional and risk profile of the commissionaire it is very important to assess whether the functions performed and risks assumed by the commissionaire could not in substance be treated by the tax authorities as a distributor's functions, which require a higher remuneration than the commissionaire's fee

Accounting

Guidelines and accounting principles for the commissionaire structure are laid down by the Cabinet of Ministers' Regulation No. 775 (Application of the Company and Consolidated Accounts Act), under which the commissionaire should not recognise in its revenue any amounts collected on behalf of the principal. The commissionaire's revenue therefore consists of fees he charges for his services. Revenues from third parties arranged by the commissionaire can flow either –

1. directly into the principal's account, or
2. to the principal through the commissionaire's bank account.

In the former case, the payments from third parties do not flow through the commissionaire and need not be reported in his financial statements.

In the latter case, however, the commissionaire collects revenues from third-party customers in his bank account and then transfers the money collected to the principal. It might not be clear at first how accounting should be handled. While the sales will not be recognised in the commissionaire's profit or loss, they will still flow through the commissionaire's balance sheet. The sales made by the principal through the commissionaire will be recorded on his balance sheet under a separate entry *Principal's Trade Receivables* and offset against accounts payable. Also, in notes to the financial statements, the commissionaire may provide details of the principal's trade receivables (outstanding balances and movements). The transfer of funds to the principal will be based on his decision made in line with the Latvian Accounting Act.

Please note that this is only one of possible accounting settings of the commissionaire structure. We do not suggest this setting is the best practice or a mandatory obligation to follow.

Permanent establishment

Since the commissionaire's activities are closely linked to sales, he risks being considered a dependent agent in Latvia, thus creating a PE risk for the principal under the Latvian Taxes and Duties Act and international law such as the model tax convention and double tax treaties. For example, one of the PE criteria a commissionaire structure may fall under is the habitual exercise of the right to conclude contracts or a role leading to the conclusion of contracts in the name of the principal. A principal who meets these criteria may be considered to have a PE and liable to register it. After registering a PE, the principal will have to allocate revenues and expenses associated with the activity performed in Latvia in order to tax in Latvia the profit an independent entity would gain in comparable circumstances.

However, there are some other conditions for the existence of a PE, and PE risk should therefore be assessed on a case-by-case basis in the light of international tax rules, national legislation, and effective double tax treaties.

Tax ruling on free employee meals

The State Revenue Service (SRS) has published an advance ruling[1] explaining the tax treatment of meals an employer provides to his employees. This article explores the ruling and the application of relevant provisions of the Corporate Income Tax (CIT) Act effective from 1 January 2018.

Background

The company seeking the tax ruling retails a variety of products at non-specialist shops and pays for meals provided to shop workers. The cost of those meals cannot be traced to individual employees.

In financial periods before 2017 the company recognised the employee meals as non-business expenses for CIT purposes and added them back to taxable income after applying a coefficient of 1.5.

The company says the costs of employee meals are paid under a collective agreement, they exceed neither €480 a year nor 5% of the company's gross wages, and all of the other conditions listed by section 8(15) of the Personal Income Tax (PIT) Act are satisfied. Accordingly, the company believes the employee meals are business expenses for CIT purposes.

The company enquired about recognising the employee meals as business expenses in prior tax periods and adjusting its calculation of taxable income for CIT purposes in prior periods.

The legal framework

In the ruling the SRS refers to provisions of the CIT Act governing taxable income of resident entities and permanent establishments (section 4(1) of the CIT Act) and their non-business expenses (section 5(1) of the CIT Act).

Section 8(15) of the PIT Act, which came into force on 1 January 2017, provides that an employee's income attracting wage tax excludes any meals the company pays for under a collective agreement up to €480 a year (on average €40 a month) as long as the company

meets all the other conditions of section 8(15). Accordingly, the meals are an employee's fringe benefit that is exempt from wage tax, provided the company meets all of the PIT criteria.

Since the meals are a fringe benefit exempt under the PIT Act, they are business expenses for CIT purposes.

Answers given in the ruling

1. In reply to questions asked by the company, the SRS makes the following points: According to their economic substance, the company's employee meals can be treated as business expenses, provided they meet the conditions of section 8(15) of the PIT Act;

2. For CIT purposes the costs of employee meals up to €480 a year (on average €40 a month) which the company pays under a collective agreement, and for which the conditions of section 8(15) of the PIT Act are satisfied, are business expenses under the CIT Act and can be deducted on the CIT return;

3. Because section 8(15) of the PIT Act was not in force before 2017, the company is not allowed to adjust its calculation of taxable income for CIT purposes in prior periods or recognise the employee meals as business expenses.

PwC comment

In the light of the ruling and the provisions of the CIT Act, employee meals can be recognised as business expenses under the new CIT Act effective from 1 January 2018, provided the company meets all the conditions of section 8(15) of the PIT Act.

[1] Advance Ruling No. 30.1-8.7/251758 of 25 September 2017 on the tax treatment of employee catering services. The ruling refers to provisions of the CIT Act that were in force up to 31 December 2017.

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Mongolia

New requirements registering the “ultimate holder” of a legal entity for tax purposes

The Parliament of Mongolia amended the General Taxation Law of Mongolia and other several laws on December 9, 2017. Under these amendments, a concept of an "ultimate holder" of a legal entity is newly introduced for tax purposes. Any change of ultimate holders of a legal entity, which maintains a mining license or land use (or possess) right is deemed as a sale of its land right or mining license and subject to a 30% Corporate Income Tax("CIT").

Ultimate holders refer to the following types of persons who exercise control over management and assets of a legal entity directly or indirectly with a chain of ownership at one or more levels of legal entities through a number of shares, percentage of participation or a number ofvoting rights:

a. *holding a majority of voting rights of a legal entity;*

b. *holding a majority number of shares or shares with the highest market value of a legal entity;*

c. *similar others.*

The Law of Mongolia On Legal Entities’ State Registration defines an ultimate holder of a legal entity and obliges legal entities to register relevant information on such ultimate holders with the Legal entity registration office (“LERO”) and respective tax departments.

Under the new amendments, LERO shall not register a change of an ultimate holder if there is no provision of a tax reference letter confirming that respective taxes, which arise due to a change of the ultimate holder, have been paid.

In this regard, the amendments to the tax laws require that a change of an ultimate holder of a legal entity which maintains a mining license or the right to possess or use a land (“Rights” or “Right”) shall be treated as a sale of a Right and subject to a 30% CIT on the total income earned. Importantly, a tax obligation is imposed on the legal entity holding such Rights, but not the person who earns the income from the transaction.

Assessing taxable income

In general, a taxable income shall be assessed based on the value of Rights pro-rated to the number of shares or percentage of participation which are transferred from a Right-holding entity, or its ultimate holders.

For the purpose of certainty, the Ministry of Finance passed the Decrees №379 and 380, dated December 25, 2017, which set the following methodologies to assess taxable income:

1. Methodology to assess and impose taxes on income from sales of the right to use or possess land (Decree №379)

2. Methodology to determine the value of mining licenses and assess taxes on income from transfer of mining licenses (Decree №380).

Detailed information on determining the value of Rights and assessing the taxes can be found at the following links:

http://legalinfo.mn/law/details/13017?lawid=13017

http://legalinfo.mn/law/details/13018?lawid=13018

Ultimate holders' registration

Legal entities possessing Rights should provide the following information with respect to their ultimate holders before June 1, 2018 to the LERO and respective tax departments:

i. Name of ultimate holders;

ii. Number of shares, percentage of participation or number of voting rights in the legal entity possessed by the ultimate holders.

If ultimate holders are changed, the legal entities possessing Rights must notify respective tax departments about such changes within 10 calendar days from the date of the decision issued.

In return, tax authorities shall issue a reference letter, if respective tax liabilities have duly been fulfilled by the Right-holding entity. Based on the letter, the LERO may also register such changes.

Penalties

Breach of the above-mentioned legislative requirements (including a failure to comply with requirements for assessing taxes,reporting and/or concealing relevant documents and information and providing false documentation for tax purposes) shall be subject to cancellation of the respective Rights (a mining license and/or the respective right to use or possess land).

Note:

State Newsletter (Issue №46/1003/, dated December 25, 2017), an official legal gazette-, which contains publications of the Law on Amendments to the General Taxation Law and other regulation referenced herein-, can be found at the following link:

http://www.parliament.mn/n/9bgo

9 working days to do until the deadline for registering the "ultimate holders" of a legal entity

Legal entities possessing a mining license or the right to possess or use land are required to register their ultimate holders information before June 1, 2018 to the Legal Entities Registration Office (LERO) and respective tax authorities.

In our Tax and Legal Alert 1/2018 dated 12 January 2018, we outlined the new regulations on ultimate holders of legal entities, which maintain mining licenses and/or land use or possession rights.

Particularly, legal entities holding the licenses should register their ultimate holders to the LERO and respective tax authority, while legal entities maintaining a land use or

possession right should register their ultimate holders to the respective tax authority. Only 9 working days have left until the statutory deadline for registering ultimate holders to end.

Required documents for the ultimate holder's registration:

List of required documents	Tax authority	LERO
TB-07 form (Ultimate holders of mining licenses)	✓	
TB-08 form (Ultimate holders of the right to possess or use a land.)	✓	
State registration certificate copy	✓	
Mining license copy/Land certificate copy	✓	✓
Ultimate holder's national ID copy/ Certificate copy.	✓	
Ultimate holder's UB-15 form		✓

Required documents for the ultimate holder's registration:

For legal entities, non-compliance to the above deadline for registering their ultimate holders may be subject to fines of MNT 500,000 by the LERO[1] and MNT 4 million by the tax authority[2]. Moreover, the failure to register or disclosure of false information regarding the ultimate holders can be a ground for termination of mining licenses[3].

For detailed information, please contact us.

[1] Paragraph 1.1 of Article 15.23 of the Infringement Law (2017)

[2] Paragraph 7.2 of Article 11.19 of the Infringement Law (2017)

[3] Article 56.1.11 of the Mining Law (2006)

Poland

Provincial Administrative Court confirms that tax ruling should secure a right to the refund of input VAT

In brief

In its verdict of 18 April 2018 Provincial Administrative Court in Warsaw once again confirmed **that the protective power of tax ruling issued for the taxpayer should protect not only against the actual payment of tax, but may also secure a right to refund of input VAT**. The case concerned denial of the input VAT refund on acquisition of shopping malls (structured as an asset deal on a piecemeal basis).

In detail

In the judgment of 18 April 2018 (no. III SA/Wa 2329/17) the Provincial Administrative Court in Warsaw repealed the decisions of the tax authorities denying input VAT recovery on the real estate transaction. The main aspects of the case included the protective power of the tax ruling in the light of a non-harm rule and the criteria for classifying a transaction as an enterprise deal.

The case in question concerned acquisition of a number of shopping malls structured as an asset deal on a piecemeal basis. Classification of the object of the transaction as sale of assets on a piecemeal basis and the recoverability of input VAT by the buyer was confirmed in advance with a tax ruling of the Polish tax authorities.

Post transaction, the tax authorities denied the input VAT refund, claiming that the transaction should be classified as an acquisition of a going concern and – as such – should not be subject to VAT. Moreover, the tax authorities claimed that the non-harm rule, which stems from Polish Tax Ordinance, protects the taxpayer acting in accordance with the obtained tax ruling only against the payment of tax (including penalty interest) and the fiscal penal liability, but does not secure the right to input VAT recovery.

The reasoning presented in today's verdict once again overturned the opinion expressed by the tax authorities. The court claimed that the non-harm rule contained in Polish law should not exclude the right to input VAT recovery. In fact, the scope of a tax ruling should include other liabilities treated equally to tax arrears, e.g. tax refunds and tax overpayment.

Due to procedural aspects of the case, the court did not examine whether the transaction should be classified as an enterprise deal.

Our view

In the discussed verdict, Provincial Administrative Court in Warsaw again acknowledged the statement that a tax ruling should be interpreted broadly. The same reasoning was also presented by the court in the precedent case conducted by PwC, in a verdict of 20 February 2018 (no. III SA/Wa 1896/17).

Though binding only on the parties subject to the proceedings, the verdict explicitly shows that an unanimous standpoint is being formed in the jurisprudence.

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Romania

Amendments to the Fiscal Code and Healthcare Reform Law

In brief

Government Emergency Ordinance no. 18/2018 (GEO 18/2018) has been published, amending Law 227/2015 on the Fiscal Code ("Fiscal Code") and Law 95/2006 on Healthcare Reform ("Healthcare Law").

The Ordinance relates to the adoption of fiscal-budgetary measures, modification and completion of the tax legislation, the mechanism for establishing, declaring and paying personal income tax and mandatory social contributions due by the individuals, and insured status in the mandatory health insurance system.

In detail

Fiscal Code amendments

The Single Statement

A new form has been introduced, the Single Statement, regarding the tax income and social insurance contributions due by individuals (the Unique return). The format of the form is to be approved by Order of the president of National Agency for Tax Administration, within 30 days as of the entry into force of GEO 18/2018.

The Single Statement replaces seven existing forms (200, 201, 220, 221, 600, 604 and 605) and it has to be filed by individuals deriving the following types of income:

- Income from independent activities;
- Income from intellectual property rights;
- Income from partnership with a legal entity;
- Income from agricultural activities, forestry and fishery activities;
- Income from investments;
- Income from other sources.

The filing deadline for the Single Statement is:

- 30 days as of the start of the activity / obtaining income during the fiscal year;
- 30 days as of the date of the temporary suspension / end of activity or as of qualifying in the category of individuals exempted from paying pension contributions;
- 15 March of the year the income is derived, in order to establish the estimated annual income and the pension contribution;

- 15 March of the year following that in which the income was derived, in order to finalise the annual income tax and health insurance contribution for the previous year;

- 15 March of the year following that in which the income was derived in the case of activity starting during December of the previous year.

For income derived during 2018 and for finalising 2017, the filing deadline of the Single Statement is 15 July 2018.

In 2018, the Single Statement is not to be filed by taxpayers who, by the time of entry into force of GEO 18/2018, have already filed the annual tax returns (Forms 200 and 201) for the income derived in 2017, from Romania or from abroad.

Taxpayers who filed in 2018:

- Form 220 for the "estimated income / income norms",

- Form 221 "regarding income from agricultural activities imposed based on income quotas,"

- Form 600 "regarding income on which social insurance contributions are due and for qualifying under the minimum cap for establishing social health insurance contributions", have to file the Single Statement by 15 July 2018.

Taxpayers do not file the Single Statement if they have already filed, by the date of entry into force of GEO 18/2018, Form 604 "for establishing the health insurance liabilities due by individuals without income or other categories of individuals stipulated by article 80, from Law no. 227/2015 including the subsequent amendments and additions" and maintain their option to remain insured in the public health system. If the option is not maintained, the Single Statement has to be filed.

The Single Statement is generally to be filed online. By way of exception, in 2018, it can be also filed in paper format at the competent tax authority.

Taxpayers assess the tax and social contribution liabilities due for income derived starting with 2018 by applying the rates for income tax / social contributions on the calculation bases stipulated by Fiscal Code.

The payment deadline for income tax, pension contributions and health insurance contributions due on income derived starting with 2018 is 15 March of the year following that in which the income was derived.

For the pre-payment of the estimated income tax and social contributions, a liability reduction is granted, with the level and pre-payment deadlines regulated through the annual State Budget Law.

For 2018, the following reductions are granted:

- 5% of the liabilities related to 2018 fully paid by 15 March 2019 if the Single Statement is filed online by 15 July 2018;

- 5% of the liabilities related to 2018 for full pre-payment by 15 December 2018.

Income derived in 2017 and not declared by the date of entry into force of GEO 18/2018 has to be declared through the Single Statement by 15 July 2018. The annual income tax due and the social insurance contributions are established by the competent fiscal authority, according to the provisions in force for the period to which the income relates.

Individuals who estimate cumulated annual income under the cap of 12 national minimum gross salaries and who file the Single Statement by the legal filing deadline use a calculation base of the national minimum gross salary multiplied by the number of the months left until the next Single Statement filing deadline to pay health insurance contributions.

Individuals who do not derive any income may pay the health insurance contribution using a calculation base equal to the value of six national minimum gross salaries.

The pension contribution paid is not reimbursed in the case of individuals who estimated that they would obtain income over 12 national minimum gross salaries, but whose net annual realised income was below that level. The health contribution due is calculated in reference to six national minimum gross salaries.

Income from intellectual property rights

Income from intellectual property rights and that from independent activities are now regulated under separate tax regimes. The payer of the income (legal entity or other entity obliged to keep accounting records) is obliged to calculate, declare, withhold and pay the tax authorities the following:

- income tax of 10% on a calculation base determined by deducting a flat rate of 40% from the gross salary;

- pension contributions and health contributions if the estimated level of income is at least equal to 12 national minimum gross salaries. This obligation exists for income derived from a single income payer or for income derived from multiple income payers, with the income obtained from at least one of those being over the above-mentioned level; the taxpayer designates by contract the income payer obliged to calculate, withhold and pay the social contributions.

The filing and payment deadline for income tax and social contributions is the twenty-fifth of the month following that to which the income relates.

Individuals who derive intellectual property rights income from payers other than those mentioned above and individuals who chose to determine their net income in the real system have to calculate, declare and pay the income tax and the social contributions, as appropriate.

Retired people and individuals who derive salary income or income treated as such are exempt from paying social contributions on income obtained from intellectual property rights.

Individuals exempted from the payment of health insurance contribution

PhD students who perform educational activities, under a doctoral studies contract, of four to six conventional educational hours per week are exempt from paying health insurance contributions

Obligations of intermediaries and payers of income for which income tax is withheld at source

Payers of income for which income tax is withheld at source have to file a form regarding the calculation and withholding of income tax for every beneficiary at the competent tax authority by 31 January for the previous year. Payers of salary income and other income treated as such, payers of intellectual property rights income, rental income or from partnership with a legal entity are exempt from filing such a declaration.

Intermediaries, investment administration companies and self-administered investment companies have to send to each taxpayer information related to the total gain / loss for the transactions performed and file an informative statement with the competent tax authorities regarding the same information, by 31 January for the previous year.

Transfer of 2 % from the salary income tax

By 15 March of the year following that in which income was derived, taxpayers can contribute 2% of the income tax due on the taxable annual net income to non-profit organisations, established according to the law, religious organisations and for private scholarships. The obligation to calculate and pay this amount rests with the competent tax authority.

By exception, taxpayers who derive income from salary and income treated as such or income from intellectual property rights may opt for the above amounts to be calculated, withheld and transferred when the income is paid. To exercise this option, the taxpayer should notify the income payer in writing. Once so exercised, this option remains valid for a period of a maximum of two consecutive fiscal years.

Healthcare Law amendments

Insured status in the social health insurance system

The following people have insured status in the health insurance system and have the right to the basic package as of the date of filing the Single Statement:

- Individuals who derive income other than salary over 12 national minimum gross salaries (e.g. income from independent activities, income from intellectual property rights, income from investments) and,

- Individuals who estimate cumulated annual income below 12 national minimum gross salaries but opt to pay health insurance contributions.

If such individuals do not file a new Single Statement for the next period, their insured status lapses on the last day of the period for which they submitted the previous Single Statement.

Individuals who do not derive income and who are not included in the category of the individuals exempted from the payment of the health social insurance contributions achieve insured status in the health social insurance system and have the right to the basic package as of the date of filing the Single Statement. As their insurance status lapses 12 months after submitting the Single Statement, they need to submit another one for the next period in order to maintain their insured status.

In 2018, individuals who derive income other than salary income are insured in the social health insurance system and have the right to the basic package until 15 July 2018 inclusive.

The provisions of EGO no. 18/2018 come into force on the date of publication in the Official Gazette, which is 23 March 2018.
[Source: EGO no. 18/2018 regarding the adoption of fiscal-budgetary measures and for modifying and completion of some regulations, published in the Official Gazette no. 260/23 March 2018]

The takeaway

Fiscal Code amendments

The Single Statement has been introduced for income tax and social insurance contributions due by individuals.

The Single Statement replaces seven existing forms (200, 201, 220, 221, 600, 604 and 605). Its filing deadline is:

- 30 days as of the start of the activity / obtaining income during the fiscal year;
- 30 days as of the date of the temporary suspension / end of activity or as of qualifying in the category of individuals exempted from paying pension contributions;
- 15 March of the year the income is derived, in order to establish the estimated annual income and the pension contribution;
- 15 March of year following that in which the income was derived, in order to finalise the annual income tax and health insurance contribution for the previous year;
- 15 March of the year following that in which the income was derived in the case of the activity starting during December of the previous year.

For income derived during 2018 and for finalising 2017, the filing deadline of the Single Statement is 15 July 2018.

The filing deadline for income tax and social insurance contributions due on income derived starting with 2018 is 15 March of the year following that in which the income was derived. For the pre-payment of liabilities due for income derived starting with 2018, a reduction of liabilities is granted, for which the level and pre-payment deadlines are regulated by the annual State Budget Law.

Healthcare Law amendments

The terms have been established under which individuals who derive income other than salary income become insured under the social health insurance system.

EU consultation on the legal framework for taxation of energy products and electricity

In brief

The European Commission has published a consultation with regard to reviewing the Energy Taxation Directive.

To provide their input, economic operators can fill in an on-line questionnaire by 4 June 2018.

In detail

In order to identify possible changes with respect to the rules on the taxation of energy products and electricity, the European Commission has published a public consultation regarding the review of Council Directive 2003/96/EC. Some of this European normative act's provisions have been transposed into Romanian legislation within the Fiscal Code, Title VIII – Excise duties and other special taxes.

The consultation objective is to gather factual information, data and knowledge on, and assess perception of, the Energy Taxation Directive application to identify whether the current levels of taxation applied to motor fuels, heating fuels and electricity in accordance with the Directive are still fit for purpose, in particular to ensure the proper functioning of the internal market.

The target of the consultation includes a broad range of respondents, such as energy product and electricity producers and traders, consumers from various economic sectors, producers of means of transport, public authorities.

To provide their input, respondents can fill in an on-line questionnaire, which should take approximately 30 minutes, by clicking the link below:

https://ec.europa.eu/eusurvey/runner/Energytaxationdirective?surveylanguage=EN

By filling in this questionnaire, you can express your thoughts on the taxation of such products in Romania or other EU Member States.

The questionnaire is available in all official EU languages and may be submitted anonymously.

Anyone interested in filling in the questionnaire can do so by 4 June 2018.

PwC Romania supports the initiative of the European Commission and encourages all economic operators whose activity performed in Romania involves energy products and / or electricity to take part in this consultation by filling in the questionnaire.

[Source: https://ec.europa.eu/info/consultations/evaluation-eu-framework-taxation-energy-products-and-electricity_en#target_group]

The takeaway

The European Commission has published a consultation with regard to the review of Council Directive 2003/96/EC aimed at identifying possible changes of the rules on taxation of energy products and electricity. The target of the consultation includes a broad range of respondents, such as energy product and electricity producers and traders, consumers from various economic sectors, producers of means of transport, public authorities.

To take part in this consultation, economic operators can fill in an on-line questionnaire by 4 June 2018.

PwC Romania supports the initiative of the European Commission and encourages all economic operators whose activity performed in Romania involves energy products and / or electricity to take part in this consultation by filling in the questionnaire.

Possible additional EU duties on products of US origin

In brief

The US has announced safeguard measures in the form of additional duties on imports of certain steel and aluminum products into the US, but delayed implementation for products from the EU until 1 June 2018. The EU published a counter measure, in the form of a commission implementing regulation: (EU) 2018/724. This regulation provides that the EU can impose additional duties on certain products originating in the US if the US implements the additional duties on certain steel and aluminum products. The EU's additional duties can be applicable as early as 20 June 2018.

In detail

Products affected

The regulation states that the additional EU customs duties would apply in two stages:

1. Duties at a maximum rate of 25% on the value of imports of the products listed in Annex I to the regulation may be applied immediately and until the United States ceases to apply its safeguard measures on products from the EU. Please find below a list of the Combined Nomenclature (CN) chapters affected, including food products, whisky, tobacco products, t-shirts, footwear, steel, aluminum and others.

Chapter 07	**Chapter 22**	**Chapter 62**	**Chapter 73**
Chapter 10	**Chapter 24**	**Chapter 63**	**Chapter 76**
Chapter 19	**Chapter 33**	**Chapter 64**	**Chapter 87**
Chapter 20	**Chapter 61**	**Chapter 72**	**Chapter 89**
			Chapter 95

2. Further duties at maximum rates of 10%, 25%, 35% and 50% on the value of imports of the products listed in Annex II to the regulation may be applied at a later date, but most likely as of 23 March 2021. Please find below a list of the CN chapters affected.

Chapter 20	**Chapter 56**	**Chapter 64**	**Chapter 71**	**Chapter 84**
Chapter 22	**Chapter 59**	**Chapter 66**	**Chapter 72**	**Chapter 85**
Chapter 33	**Chapter 62**	**Chapter 69**	**Chapter 73**	**Chapter 87**
Chapter 48	**Chapter 63**	**Chapter 70**	**Chapter 76**	**Chapter 89**
				Chapter 94

The takeaway

It is difficult to predict what further measures the US government might adopt, but we advise companies to review the regulation annexes and assess whether these potential additional import duties could affect their imports of US origin products into the EU.

As the additional EU duties can be implemented at short notice for the stage 1 products if the US government decides to cease the postponement of additional duties on certain EU

steel and aluminum products into the US, we advise companies to consider these potential additional duties, for example, when negotiating prices with potential buyers.

Amounts cashed for early termination of telecom contracts – within the scope of VAT?

In brief

The Court of Justice of the EU ("Court") recently issued the opinion of the Advocate General in case C–295/17 MEO – Serviços de Comunicações e Multimédia SA, according to which amounts cashed for early termination of telecom contracts fall within the scope of VAT. The ruling of the Court can either follow the same reasoning or take a different approach.

In detail

Portuguese company MEO provides telecommunication services for a discounted price to customers that sign contracts for a mandatory minimum period. In the event of non-payment for the services rendered, the company terminates such contracts in advance and charges customers for the value of the services to be rendered until the expiry of the mandatory minimum contractual period. Treating such charges as compensation, operations falling outside the scope of VAT, the company did not collect VAT in this respect. The Portuguese tax authorities, however, considered that the company did not suffer any loss as a result of the early termination of the contracts and, thus, imposed additional tax liabilities consisting in output VAT collected for those amounts.

The Advocate General concluded that such amounts qualify as remuneration for the services already rendered, subject to VAT, on the grounds that:

- the amounts represent exactly the value of the services rendered until the date of expiry of the mandatory minimum contractual period;
- the company did not suffer any loss as a result of the early termination of the contracts.

The Advocate General argued that such contracts cover a fixed remuneration, corresponding to the initial contractual period, regardless of whether the contracts are terminated in advance or not and, thus, regardless of the number of months for which the customers actually benefit from the services. As such, the Advocate General deems such contracts to be hire purchase agreements, where, for the value of the services to be rendered until the date of expiry of the mandatory minimum contractual period, VAT is due at the date of termination of the contract.

[Source: Opinion of Advocate General Juliane Kokottt in Case C-295/17 MEO- Serviços de Comunicações e Multimedia SA published on the website Curia.europa.eu on 7 June 2018]

The takeaway

This conclusion confirms that, for contractual penalties for the early termination of agreements, falling outside the scope of VAT, there must be a causal link between the charging of such amounts and a potential suffered loss. Furthermore, the value of the penalties has to be different from the price of the services to be rendered until the date of expiry of the mandatory minimum contractual period.

To the extent that the Court follows the Advocate General's conclusions, it is important to note that such a decision could be extended to all cases where customers are charged for the early termination of contracts.

CJEU confirms that input VAT may be deducted even for purchases made in a period already subject to tax inspection

In brief

The Court of Justice of the EU ("Court") recently issued its ruling in case C-81/17 Zabrus Siret SRL, stating that input VAT may be deducted for purchases made in a period already subject to a tax inspection.

In detail

Zabrus Siret SRL is a Romanian company subject to a VAT inspection for the period May 2014 - November 2014 resulting in the issuance of a VAT inspection report in January 2015.

In May 2015, the Company requested VAT reimbursement for:

(i) an amount resulting from a correction performed in relation to the VAT return for July 2014; and

(ii) (ii) a second amount resulting from adjustments performed in February 2015 for transactions related to 2014, for which the company did not have the relevant supporting documents for VAT deduction purposes available until after the tax inspection.

The Company was subject to a second tax inspection for the period December 2014 - April 2015, with the resulting report issued in July 2015. The tax inspectors found that the VAT requested for reimbursement resulted from, amongst other items, purchases made in 2014. As the Company had already been subject to a tax inspection for that period and its right to deduct the related input VAT rejected, the tax inspectors argued that, once inspected, operations could not be subject to another inspection.

The Court decided that, as long as the right to deduct input VAT is exercised within the statute of limitation period, it cannot be rejected simply because the input VAT to be deducted relates to a period which has already been subject to a tax inspection. According to the Court, for VAT purposes, such a Romanian principle cannot be invoked for refusing input VAT deduction right, since it is in place only for the effectiveness of tax inspections and for the proper functioning of the national administration. A contrary conclusion would be unfair, since such corrections can only be made only based on decisions issued by the tax authority or following re-inspections

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[Source: Judgment of the Court of Justice of the European Union in Case C-81/17 Zabrus Siret SRL v Directorate General of Public Finance Iasi - County Administration of Public Finance Suceava, published on the Curia.europa.eu website on 26 April 2018]

The takeaway

The decision emphasises that a taxable person's right to deduct input VAT related to purchases made in a period subject to a previous tax inspection can be exercised after the inspection, by deducting that input VAT via any future VAT return, if:

- the five-year statute of limitation period has not expired;
- no fraud is proven; and
- the state budget is not negatively affected.

The judgment applies not only to situations concerning the right to deduct input VAT being exercised, but to any case in which input / output VAT can be adjusted within the statute of limitation period following the period for which that VAT was inspected.

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Russia

Internal offshore zones to be established on Russky Island and Oktyabrsky Island

In brief

The State Duma will consider a set of bills[1] that will establish special administrative regions on Russky Island in the Primorsky Region and on Oktyabrsky Island in the Kaliningrad Region. The residents will receive a status of a multinational company (MNC) and a number of preferences, including fast registration, tax benefits, some benefits related to currency control. The set of bills also establishes the rules for determining the tax cost of assets of an MNC and of a foreign company recognised as Russian tax resident.

The Russian Ministry of Economic Development, one of the authors of the proposal to create these special regions, expects the above preferences to encourage large foreign holdings (especially those subject to sanctions) to change their current jurisdictions to a Russian one by obtaining an MNC status. However, opponents of the idea are concerned with unequal tax rules for companies doing business in Russia and the potential massive re-registration of taxpayers in these regions, which are in essence offshore zones.

Let's look at how the concept of new offshore zones is set forth in the bill.

In detail

❖ Where are Russky Island and Oktyabrsky Island?

The islands are near the most eastern and western points of Russia, respectively. The territories are currently underdeveloped but have strong potential.[2] The government has already started investing resources into the development of infrastructure in these regions.

❖ Specific aspects of legal regulation

The bill "On Special Administrative Regions within the Kaliningrad Region and Primorsky Region, and On Amending Certain Laws of the Russian Federation" sets forth the special aspects of creating, operating and closing SARs; administrative procedures within such territories; and the required procedures to apply for the status of a participant in these regions.

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1 No. 488862-7 "On Multinational Companies" (http://sozd.parliament.gov.ru/bill/488862-7).
No. 488869-7 "On Amending Part I and Chapter 25 of Part II of the Russian Tax Code (as related to the tax treatment of multinational companies)" (http://sozd.parliament.gov.ru/bill/488869-7).
No. 488867-7 "On Amending Parts I and III of the Russian Civil Code" (http://sozd.parliament.gov.ru/bill/488867-7).
No. 488838-7 "On Special Administrative Regions within the Kaliningrad Region and Primorsky Region" (http://sozd.parliament.gov.ru/bill/488838-7).
No. 488878-7 "On Amending the Merchant Shipping Code of the Russian Federation as Related to the Creation of the Russian Public Ship Register Due to the Adoption of the Federal Law 'On International Companies' and the Federal Law 'On Special Administrative Regions within the Kaliningrad Region and Primorsky Region'" (http://sozd.parliament.gov.ru/bill/488878-7).
No. 488871-7 "On Amending Certain Laws of the Russian Federation Due to the Adoption of the Federal Law 'On Special Administrative Regions within the Kaliningrad Region and Primorsky Region'" (http://sozd.parliament.gov.ru/bill/488870-7).
No. 488870-7 "On Amending the Federal Law 'On Currency Regulation and Control' Due to the Adoption of the Federal Law 'On Special Administrative Regions within the Kaliningrad Region and Primorsky Region' and the Federal Law 'On Multinational Companies'" (http://sozd.parliament.gov.ru/bill/488870-7).
2 http://government.ru/docs/27957/

The bill “On Multinational Companies” sets forth the special aspects of incorporating and registering MNC, granting and terminating one’s MNC status, legal relationships regarding the equity capital of a company and accounting for equity interests and dividend distribution. It also provides for the scope of competence of governing bodies and sets the requirements for such bodies and MNC documents.
To be eligible for an MNC status, an entity must:

1) carry on business activities in multiple countries, including in Russia

2) be a resident of either Russky Island or Oktyabrsky Island

3) commit to making investments in Russia (the minimum amount and time frame for such investments will be separately determined by the Russian government).

An MNC status may be granted both to Russian legal entities registered in the form of a limited liability company (OOO) or joint stock company (AO) and to foreign legal entities under continuity procedures. A foreign legal entity may change its personal laws by registering as an MNC in Russia, in which case Russian legislation will apply.

Also, the proposed set of bills provides for the establishment of special management companies in that regions that will, among other things, be responsible for reviewing documents and deciding on whether a company is eligible for registration as an MNC.

The set of bills proposes a number of amendments to the Federal Law “On Currency Regulation and Currency Control". However, in our opinion, the proposed amendments do not give any particular advantages to MNCs themselves. Foreign companies registered as MNCs under the continuity procedure will be treated as non-residents for currency control purposes, which means that when entering into contracts with such companies, all Russian entities will be required to comply with Russia's currency legislation, including in relation to contract registration and repatriation requirements.

A detailed analysis of the proposed amendments suggests that the bills do not provide answers to a set of complex issues related to corporate law and international private law.

A number of practical issues have arisen from the fact that the bills provide for limited access to information about MNC founders (members), a person who has the right to act on behalf of an MNC without power of attorney and parties to a corporate agreement. Access can be limited by a registration body once an application is filed by an MNC with the registration body through the management company. The above information may not be published on the official website of the registration authority or on the Internet. Furthermore, the information to which access is limited may be made available to third parties only with the written consent of the MNC. However, it is not quite clear how this right to limit access to data is aligned with financial institutions’ responsibility to identify customers under AML/CFT.

We hope that in regard to legal regulations, the set of bills will be significantly improved during its consideration by the State Duma.

❖ What tax benefits will be granted to MNCs?

The bill amending the Russian Tax Code sets forth a special tax treatment for MNCs.

In particular, it introduces the term "Multinational Holding Company" (“MNHC”) as a subcategory of MNCs. For example, MNHCs include companies registered under the continuity procedure applied to a foreign legal entity that was set up in accordance with its

personal law before 1 January 2018 and whose controlling persons became such before 1 January 2017 (the latter criterion is not mandatory for public MNHCs or for MNHCs that are directly or indirectly owned by other public MNHCs). The bill clarifies who such controlling persons are and introduces criteria for minimal ownership interests held by the controlling person itself and by Russian tax residents in total.[3]

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3 Controlling person is:
1) an individual or legal entity that holds an ownership stake of more than **15%** in the entity (jointly with a spouse and children younger than 18)
2) an individual or a legal entity that holds an ownership stake (jointly with a spouse and children younger than 18 for an individual) of more than **5%** in this entity if the ownership interest of all parties recognised as Russian tax residents (jointly with their spouse and children younger than 18 for an individual) exceeds **25%**.

The bill also determines the circumstances in which an MNC can lose its MNHC status (e.g. during a reorganisation through a merger or acquisition).

For tax purposes, MNCs and MNHCs are recognised as Russian legal entities. At the same time, they are granted a number of tax breaks, such as:

- ✓ a MNHC does not pay tax on the income of its CFCs (the exemption applies through 2029)
- ✓ the dividends received by a MNHC, provided that the criteria for strategic investments are met (e.g. a holding period longer than one year and an ownership stake of more than 15%), are taxed at a **zero** rate (the benefit does not apply to dividends received from countries included in the Ministry of Finance's black list)4
- ✓ the dividends paid by public MNHCs to foreign residents are taxed at a rate of **5%** (until 2029)
- ✓ the income received by MNHCs from the sale of shares is taxed at a zero rate if several criteria are met at the same time, including a holding period of one year, an ownership stake of more than 15%, the shares are not represented by real estate in Russia, etc.

Other special considerations associated with a company's "relocation" to Russia and receiving an MHC status are:

- ✓ an MNC's property value is transferred from its previous accounting records but is capped by its market value. The same rule applies to the value of ownership interests in entities that are not public companies, with over 50% of their assets directly or indirectly represented by real estate in Russia
- ✓ the value of securities (both listed and non-listed) and ownership interests is determined as their market value at the date of the MNC's registration.

A similar procedure for determining the tax basis of assets will be applied to foreign companies recognised as Russian tax residents.

It should also be noted that the bill "On Special Administrative Regions within the Kaliningrad Region and Primorsky Region, and On Amending Certain Laws of the Russian Federation" proposes a number of benefits regarding the employment of foreign nationals. In particular, SAR residents will not be required to receive permits to employ foreign nationals; invitations for entry into the Russian Federation and work permits will be issued regardless of quotas; and all foreigners employed by SAR-registered companies will pay a personal income tax rate of 13% (irrespective of whether or not they are highly qualified specialists).

The takeaway

The wording of the bills will certainly change, and we will follow the process and keep you informed about all important developments.

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4 Russian Ministry of Finance Order No. 108n of 13 November 2007 "On Approving the List of Countries and Territories That Provide a Beneficial Tax Regime and/or Do Not Require the Disclosure and Exchange of Information When Conducting Financial Transactions (Offshore Zones)".

VAT raised, mandatory pension insurance contributions frozen

In brief

A bill introducing several amendments to the Russian Tax Code is submitted to the State Duma for consideration.[1]

(1) 20 % VAT rate will apply starting from 1 January 2019

Raising the VAT rate has already been discussed for a while. The current VAT rate of 18% was adopted in 2004, but the 20% rate that had been in effect earlier will now be reinstituted. It is possible that the bill will be approved during the spring session of the State Duma, i.e. before the end of July this year.

The new 20% rate will apply to goods (work, services) and proberty rights that were shipped (performed, provided or transferred) after the law comes into force, i.e. after 1 January 2019.

Should the bill be passed, taxpayers will have to renegotiate or revise their business agreements and reconfigure their accounting systems in order to apply the new rate of 20% for new sales and purchases together with the rate of 18% for old sales and purchases. Additionally, taxpayers will need to think of how to charge and account for VAT on transactions in the transitional period (for example, if taxpayers receive advance payments in 2018 for sales to be made after 1.1.2019, or of they have prepaid several years in advance for the long-term use of intellectual property rights, etc.).

Please note that the procedure for applying the reduced VAT rate of 10% remains unchanged. This rate applies to certain types of products, including food products (with the exception of specialty foods), children's goods, pharmaceuticals and medical devices, as well as printed periodicals and books (with the exception of advertising and erotica).

(2) Postponing obligatory VAT recovery until 2019 for automotive manufacturers that receive subsidies

Please be reminded of the amendments introduced to the Russian Tax Code in effect from 1 January 2018. According to the amendments, when receiving subsidies for the reimbursement to expenses (regardless of whether the tax amount is included in the subsidy), the previously deducted input VAT on such expenses has to be recovered. Only natural monopolies that receive subsidies may delay input VAT recovery until 2019.

<u>The bill suggests that the following types of subsidies will be covered as well:</u>

- Subsidies to compensate for a portion of expenses incurred to issue and support warranty obligations for wheeled vehicles;
- Subsidies to compensate for a portion of expenses incurred to issue and support warranty obligations with regard to high-performance self-propelled and towed vehicles, including agricultural machinery;

- Subsidies to compensate for a portion of expenses on energy resources used by energy-intensive automotive manufacturers;
- Subsidies to compensate for a portion of expenses on R&D, as well as tests of wheeled vehicles.

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[1]http://sozd.parliament.gov.ru/bill/489169-7

(3) Freezing the rate of pension insurance contributions

The Russian Government is looking to freeze the current rate of obligatory employer contributions to the Russian Pension Fund. They are currently set at 22% on remuneration up to the threshold (1,021,000 RUB per one employee per year for 2018) and 10% on the excess. Otherwise, starting from 2021, income within the threshold would be taxed at the rate of 26% ,whereas the excess would not be taxed at all (Article 425, 426 of the Russian Tax Code).

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Slovakia

Latest tax developments

Guideline on taxation of income from sales of virtual currency

In accordance with the provisions of the Tax Administration Act, the Ministry of Finance of the Slovak Republic ("Ministry of Finance") issued a guideline on the interpretation of the Income Tax Act in relation to taxation of the income derived from the sale of virtual currency.

The guideline defines virtual currency as a digital deposit of value that has no legal status as a currency or as money, but it is accepted as a means of payment that can be transferred, stored or electronically traded.

The main tax information in the guideline is that income generated from the sale of virtual currency is subject to tax, is not tax exempt, and thus is taxable income under the Income Tax Act. Any exchange, for example, an exchange of a virtual currency for assets, for a provision of services, or a sale for consideration, including an exchange for another virtual currency is considered to be a sale of a virtual currency.

The guideline also states that taxable income may be decreased by documentably incurred expenses, but only up to the amount of total income. Thus, it is not possible to declare a tax deductible loss from such a sale.

Taxation of digital platforms via which accommodation and transportation services are provided

An amendment to the Income Tax Act valid as of the beginning of this year lays down obligations for taxpayers that are Slovak tax non-residents and that intermediate transportation and accommodation services in Slovakia via digital platforms.
Based on the view of the Slovak Tax Directorate, foreign operators of digital platforms are obliged to register permanent establishments in Slovakia and appropriately tax the income derived in Slovakia. If this is not the case, Slovak taxpayers that use digital platforms to intermediate the sale of their services, are required to withhold tax from the payments of intermediation fees. The tax should be withheld at 19%, or at 35% if the recipients of the payments are from a non-contracting state. The tax withheld should be remitted to the Slovak tax authorities by the 15th day of the month following the month in which the payment was made.
Based on the information published by the Slovak Tax Directorate, they intend to perform tax audits of the relevant subjects and to register their permanent establishments ex offo.

Change to the calculation of tax relief for recipients of investment incentives and new tax relief for registered social enterprises

The new Act on Regional Investment Incentives published in the Collection of Laws changes the calculation of income tax relief for recipients of investment incentives. New rules will apply to taxpayers that receive a decision on the receipt of an investment incentive in the form of corporate income tax relief after 1 April 2018.
The new Act on Social Economy and social enterprises introduces a new income tax relief for registered social enterprises. Social enterprises are entities with a public benefit interest, as defined under the Act. New provisions will apply as of 1 January 2019.

Guideline on the application of mutual agreement procedure to resolve international tax disputes

In accordance with the provisions of the Tax Administration Act, the Ministry of Finance also issued a guideline on the application of a mutual agreement procedure.
Competent authorities may face disputes regarding the correctness of taxation that may lead to double taxation of taxpayers. To resolve such disputes, the provisions of double tax treaties and the Arbitration Convention may apply, as they allow the competent authorities to resolve disputes using a mutual agreement procedure. A bilateral procedure is performed between competent authorities, and the taxpayer does not participate in such a procedure. In Slovakia, the competent authority is the Ministry of Finance.
The guideline relates mainly to the mutual agreement procedure that taxpayers may initiate in line with the relevant bilateral double tax treaty or the Arbitration Convention. The guideline sets out formal and factual requirements for the procedure in the Slovak Republic, including information on the minimum requirements and the steps the taxpayer must take to file a request to initiate a mutual agreement procedure, and the information on the steps that the competent authorities must follow.
We will provide you with more detailed information on this topic in a separate Tax and Legal Alert.

Draft of the Insurance Tax Act

A new indirect tax will apply to non-life insurance provided by insurance companies where the insurance risk is located in the Slovak Republic. The tax base will be the amount of the total insurance premium decreased by the tax, and the tax rate will be 8%. The tax period will be the calendar quarter, and the tax return should be filed at the end of the month following the end of the tax period. The tax will be due by the same deadline.

This insurance tax will replace the current levy on insurance premiums. The payment of a levy on compulsory contractual motor vehicle insurance will remain the same. Insurance tax remitted by the taxpayer will be tax deductible.

The Act will become effective as of 1 October 2018 and will apply to insurance which fulfils both of the following conditions – the insurance period starts after 30 September 2018 and the tax liability (e.g. the payment or the prescription of insurance premium) arises after 30 September 2018.

Monetary allowances in relation to summer and Christmas holidays

A new amendment of the Labour Code effective as of 1 May 2018 extends the types of income from employment that are tax exempt. These are the voluntary allowances (bonuses) that employers may provide to employees for work on the occasion of a summer holiday (i.e. in a salary for May) and Christmas holiday (i.e. in a salary for November), in a minimum amount of the average monthly salary.
This exemption will apply on the amount of allowance up to EUR 500 in total from all employers. The information about the received allowance must be declared on the wage list of the employee. The exemption will also apply to health insurance and social security contributions.
The application of exemptions should be set up consecutively in the following years and various conditions must be met. The first exemption will apply to health insurance contributions, provided all relevant conditions are met, for an allowance payment up to EUR 500 for May 2018.

Other changes

- A draft of the new ***Act on Unfair Conditions in Business Relationships Related to Groceries*** extends the scope of monetary and non-monetary supplies, activities and relationships that are defined as unfair conditions. Subsequently, such fulfilments may have negative tax implications for the receiving entrepreneurs.

- A draft amendment to the ***Act on Social Insurance*** proposes to introduce an annual social insurance reconciliation carried out by the Social Insurance Company by 30 September (31 October respectively) of the following year.

  According to the draft amendment, employees, employers and self-employed individuals must pay advances on monthly social security contributions and, subsequently, an annual reconciliation up to the maximum annual assessment base will be undertaken. The determination of the maximum annual assessment base will remain under the current regime. However, the maximum monthly assessment base for employees and employers will be abolished. This will mean that monthly social security contributions will be paid from income received, until the maximum annual assessment base is reached.

  The system of annual social insurance reconciliation is likely to apply from January 2021 (i.e. social security contributions for January 2021 will be regarded as advances), and the first annual reconciliation is likely to be undertaken in 2022.

A new draft amendment of the ***Act on the Electronic Cash Register*** is being prepared. It proposes that entrepreneurs providing specifically listed services will be obliged to use cash registers connected with the Tax Directorate's system when reporting received income.

Currently, entrepreneurs may use either electronic cash registers, or virtual cash registers to report received income and entrepreneurs may voluntarily use virtual cash registers that are connected with the Tax Directorate's system.

Draft amendment to the VAT Act

VAT treatment of vouchers

The goal of the amendment is to transpose the provisions of Council Directive (EU) 2016/1065 of 27 June 2016 (the "Vouchers Directive") into Slovak law. The Directive aims to unify VAT treatment of vouchers in individual EU Member States with effect from 1 January 2019.

Current Slovak VAT legislation does not specifically regulate the VAT treatment of vouchers.

The Vouchers Directive introduces a basic separation of vouchers into single- and multi-purpose vouchers for the purpose of the determination of the date on which a tax liability arises.

A **single-purpose voucher** is a voucher issued for a transaction known at the time of the issue, where the VAT rate or exemption, and the place of supply of the goods or services is also known. For single-purpose vouchers, each transfer (handover) of a voucher should be considered a supply of goods or services to which such a voucher relates, i.e. VAT should be charged on the consideration received for a single-purpose voucher at the time of its transfer. The subsequent use of a single-purpose voucher, i.e. the actual supply of goods, or the provision of services in return for a voucher should not be considered an independent transaction and will not trigger further VAT liabilities.

The Vouchers Directive defines a **multi-purpose voucher** as a voucher other than a single-purpose voucher. For multi-purpose vouchers, the exact VAT treatment of the underlying supply of goods or services cannot be defined at the moment of the voucher transfer. For multi-purpose vouchers, VAT becomes chargeable for the purchaser

concerned upon the actual supply of goods or provision of services in exchange for a voucher, whereas the preceding transfer of the voucher is not subject to VAT.

The above rules only apply to vouchers that can be exchanged for goods or services. These rules will not apply to "discount vouchers", i.e. vouchers carrying a right to receive a price discount upon purchase of goods or services, but not giving a right to obtain such goods or services. The Vouchers Directive also does not apply to transport tickets, admission tickets to events, postage stamps, or other similar instruments.

Takeaways

The new rules will have a major impact on the business activities of companies which issue vouchers, for example, telecommunication companies, companies issuing meal vouchers, etc. The classification of vouchers as single-purpose or multi-purpose vouchers each with a different VAT treatment may prove problematic.

Change in place of supply for digital services

Under the current rules effective from 2015, the place of supply for telecommunication services, radio and TV broadcasting services and electronic services (collectively "digital services") provided to non-taxable persons is the customer's establishment.

The proposed amendment to the VAT Act will align place of supply rules for digital services with Council Directive (EU) 2017/2455 of 5 December 2017 with effect from 1 January 2019. Taxable persons established in only one EU Member State providing digital services to non-taxable persons established in another EU Member State will be entitled to decide that the place of supply of such services is in the Member State of their establishment. This will be possible for services whose value does not exceed EUR 10,000 in the current calendar year, and did not do so during the preceding calendar year.

Takeaways

Introducing a turnover limit for providing digital services to non-taxable persons from other EU Member States should bring a simplification for digital service providers involved in occasional supplies to other EU Member States. Provided the stipulated conditions are met, the service provider may consider the place of supply to be located in the EU Member State of their establishment (Slovakia) and may apply Slovak VAT to the supply of such digital services. In addition, they will not be obliged to follow VAT obligations in other EU Member States.

Tax news and developments

Following the guideline on interpretation of the Income Tax Act in relation to the taxation of income from the sale of virtual currency, about which we informed you in our latest Alert Issue, the Slovak Ministry of Finance has prepared a draft amendment to the Income Tax Act and the Accounting Act ("Amendment"). The Amendment confirms the Ministry's approach to valuation and taxation of income from the sale of virtual currency.

In accordance with the Amendment, virtual currency will not be subject to taxation at the time of its mining or acquisition, but upon sale. The sale of virtual currency is considered to be any exchange, for example, exchange of virtual currency for assets, for provision of services, for another virtual currency or sale for a consideration.

It also proposes a valuation method for virtual currency, depending on the method of its acquisition, as well as a method of valuation of assets and services acquired by exchange for a virtual currency.

If the National Council approves and the President signs the Amendment, the provisions detailing the taxation of income from the sale of virtual currency, and the valuation of virtual currency at real (fair) value, will be applicable in tax returns filed after 30 September 2018.

In accordance with the provisions of the Act on travel allowances, the Ministry of Labour and Social Affairs of the Slovak republic issued the ruling on the values of statutory meal allowances ("Ruling"), valid from 1 June 2018, in the following amounts:

- EUR 4.80 per diems applicable for business trips of 5 – 12 hours,
- EUR 7.10 per diems applicable for business trips of 12 – 18 hours, and
- EUR 10.90 per diems applicable for business trips of over 18 hours.

The above amounts determine, for example, the amount of meal allowance for the employee for each calendar day on a domestic business trip, as well as the employer's contribution for employee's catering, or the contribution in the form of the meal vouchers.

Based on the Ruling, the maximum tax deductible meal allowance contribution for an employer is EUR 2.64. The value of a meal voucher must be a minimum of EUR 3.60, and the minimum employer's contribution for employee's catering in the form of a meal voucher is EUR 1.98.

The tax deductible amount for the employer from 1 June 2018 will be EUR 1.98 to EUR 2.64, depending on the amount of the employer's contribution.

The Slovak Ministry of Finance ("MF SR") drafted a new Act on Tax Dispute Resolution Mechanisms ("Draft Act"). The Draft Act implements the provisions of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

The Draft Act sets the rules for mechanisms for resolving disputes that may arise in connection with double taxation. Such disputes may arise from the interpretation and application of bilateral double tax treaties between the Slovak Republic and (i) the EU / EEA member state, or (ii) a member state with which the Slovak Republic has concluded a double tax treaty.

The Draft Act also sets the rules for mechanisms for resolving disputes that may arise between the Slovak Republic and a member state of the Convention on the Elimination of Double Taxation in connection with the adjustments of profits of associated enterprises, provided such disputes arise from the interpretation and application of the Convention with regard to transfer pricing or the allocation of profits to permanent establishments.

The Draft Act sets formal and factual requirements, including information on steps to be taken by the taxpayer and the competent authorities, as regards resolving a dispute by using the mutual agreement procedure at the advisory commission, or the alternative dispute resolution commission.

The effectiveness of the Act is proposed from 1 July 2019.

MF SR has prepared ordinary a preliminary opinion on the proposal for a:

Council Directive laying down rules relating to the corporate taxation of a significant digital presence; and

Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services

The first of the above proposals sets rules for corporate taxation by extending the concept of the permanent establishment to include a significant digital presence, via which business activity is wholly or partially carried out. The proposal also sets out principles for attributing profits to such a digital business / permanent establishment for tax purposes.

The rules from the proposal should be implemented in local legislation for the Slovak Republic, i.e. the Income Tax Act, by 31 December 2019, with effectiveness from 1 January 2020. Double tax treaties and the OECD Model tax Convention should also be amended.

As the approval of the above solution requires time, mostly for extending the rules to double tax treaties concluded with third countries, another proposal for implementation of digital services tax has been prepared.

This tax will be an indirect tax. Taxable revenues will be those resulting from services consisting of interface placement of advertising targeted at users of that interface, the transmission of data collected about users including the intermediation services that allow users to find other users and to interact with them, where such services are supplied by a tax non-resident. The digital services tax should apply temporarily, until comprehensive digital corporate taxation legislation is implemented.

In connection with the above, MF SR has also issued preliminary information on the preparation of the Slovak **Draft Act on Digital Services Tax.**

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Ukraine

Ready or not? The new era of data protection is here

The General Data Protection Regulation (GDPR) came into force, revolutionising the way that personal data are used and handled.

If you are a company processing personal data for individuals resident in the EU, or targeting Europe for goods and services; or you are monitoring the activities of European citizens online - you are impacted. The location of the HQ is not relevant.

The GDPR is the largest development to data protection legislation since the European Data Protection Directive in 1995. It requires widescale privacy changes in your company. Nevertheless, the GDPR also represents an opportunity to:

- transform your approach to privacy,
- harness the value of your data,
- ensure your company is fit for the digital economy, and
- improve systems and processes so that you can leverage data opportunities while ensuring that you are managing personal data bresponsibly, thereby gaining a commercial benefit while building customer trust.

If your company is impacted but not yet ready, then you need to prioritise getting compliant, and quickly. To support your company in the implementation of the new regulation, PwC Ukraine set up an interdisciplinary team of experts ready to help with your GDPR efforts and bring your corporate data processes and systems into line with the digital world we live in.

Important changes to application procedure for Ukrainian Temporary Residence Permits ("TRP")

Cabinet of Ministers of Ukraine approved new procedure for issuing temporary residence permits*

On June 1, 2018, a new procedure for issuing TRPs became effective.

The following key changes were introduced:

- **Form of the document:** TRPs will be issued in the form of plastic ID cards instead of passport-style documents and will contain a biometric chip. Old passport style TRPs will remain in force for their remaining validity term
- **Processing terms:** TRP applications will be processed within 15 **business** days instead of 10 **calendar** days as it was previously
- **TRP application deadline:** foreign nationals will have to submit their TRP applications at least 15 business days before the expiration date of their legal stay in Ukraine, instead of 10 calendar days as it was previously
- **Application process:** a requirement for foreign nationals to appear in person when applying for the TRP was introduced. The application for obtaining or

extending a TRP may no longer be submitted through the representative. It means that each foreign national is required to appear in person at the migration authorities office at least twice: when applying for the TRP and when collecting it

- **Immigration compliance requirements for minor dependants:** children under 16 years of age accompanying assignees will be required to apply for separate TRPs.

**Approved by Resolution of the Cabinet of Ministers of Ukraine No. 322, dated April 25, 2018*

Important changes in currency control legislation

Ukraine's Parliament adopts new law "On Currency and Currency Operations"

On 21 June 2018 the Ukrainian Parliament adopted a law "On currency and currency operations" (the "Law") *designed to ease the existing currency control regulations in Ukraine.

Unlike the previous legislation, this Law establishes a new rule "anything that is not explicitly prohibited is permitted".

Among the most recognizable changes introduced by the Law are the following:

- Abolishment of the requirement to obtain a license for investing abroad for individuals and legal entities;
- It is no longer required to register loans provided by non-residents with the National bank of Ukraine;
- No maximum term for settlement of liabilities under foreign trade operations, etc.

The Law takes effect seven months after its signing by the President of Ukraine and its official publication.

We will provide an overview on the new law shortly after its signing and will keep you updated on this matter.

**Law "On Currency and Currency Operations" No.8152 dated 19 March 2018*

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