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Amendments to the Law on Medicinal products

According to the amendments, the Ministry of Health of the Republic of Azerbaijan, in addition to state regulation measures stated under Article 4.2 of the Law, will carry out the following:

1. *Pharmacosurveillance list of medicinal products.* Pharmacosurveillance is the measure taken to detect, evaluate and preclude side effects of medical products and other undesirable outcomes arising out of use of such products;

2. *Preparation of list of specially controlled medicinal products*. Specially controlled medicinal products are the products that requires special control over the use of medical products in terms of their adverse effects on human health;

3. *Classification of medicinal products*. Classification of medicinal products implies the systematization and cataloging of the medicinal products due to origin, release order, physical-chemical, toxicological, pharmacological, therapeutic and other characteristics;

4. *Expertise of medicinal products.* Expertise of medicinal products is examinations and inspections to determine the quality, effectiveness and safety of the medicines through physical, chemical, biological, clinical researches clinical tests (clinical investigations), identification of bioequivalence, as well as examinations and inspections carried out by examining the documents upon registration, pharmacosurveillance and standardization of the medical products.

One of the concepts added by the Amendments is the recall/withdrawal of the medicinal products. Recall/withdrawal of medicinal products means partial or complete withdrawal of medicinal products from circulation, which have been considered as unsuitable or dangerous to human health by the manufacturer or the ministry of Health*. According to the respective Decree* of the President of the Republic of Azerbaijan, the Cabinet of Ministers of the Republic of Azerbaijan will approve the procedure for recall/withdrawal of medicinal products by agreeing with the President in 3 month (including rules for the expertise of medicinal products).

With the Amendments, circle of persons authorized to import the medicinal products into the country has been also identified. For state registration purposes, specimens of medicinal products and the medical substance, which is used in the production of medicinal products, might be imported into the country by the Ministry of Health*,

enterprises engaged in production or wholesale pharmaceutical activity, representative office (branch or authorized person) of the foreign manufacturer in the Republic of Azerbaijan in the quantity defined by the Cabinet of Ministers.

According to the Amendments, in order to control the effectiveness and safety of the medicinal products, regardless of ownership and organizational legal form all treatment-and-prophylactic enterprises, the holder of the state registration certificate or the person authorized by such, for ensuring safe use of medicines, take pharmacosurveillance measures and determine the person in charge of pharmacosurveillance in accordance with the procedure set by Cabinet of Ministers.*

Responsible persons for pharmacosurveillance of treatment-and-prophylactic enterprises, owner of state registration certificate on medicinal product or the person authorized by it have to submit additional information as to side effects of the medicinal product and other undesired consequences arising from use of the medicines, as well as information on pharmacosurveillance and report documents to the relevant state authority.

*-*According to the Decree of the President of the Republic of Azerbaijan on the implementation of the Law on Amendments to the Law pf the Republic of Azerbaijan on Medicinal products dated No. 1150-VQD of May 18, 2018.*

Amendments to the Tax Code of the Republic of Azerbaijan

According to the Amendments, tax rates of some excisable products – tobacco products have been increased. The tax rate for 1000 units cigars, cutting cigars and cigarillas has been raised from 10 to 20 AZN, and for 1000 units of tobacco cigarettes and its substitutes has been raised from 4 to 12 AZN.

Limits and Procedures of providing information on financial transactions performed by foreign legal and natural persons in the territory of the Republic of Azerbaijan to competent authorities of these Countries

The rules approved by the decision No. 211 of the Cabinet of Ministers of the Republic of Azerbaijan dated June 3, 2015, have been approved in the new edition. With new rules, the following procedures, rules, and lists have been defined:

1. Comprehensive inspection procedures related to the identification of accounts peculiar to legal entities and/or individuals of the United States, as well as detailed inspection procedures of accounts owned by individuals and/or legal entities for foreign countries in accordance with the General Accountability Standard;

2. Issuance limits on Financial Transactions of Legal Entities and Individuals performed in the territory of the Republic of Azerbaijan to competent authorities of these countries;

3. Procedure for providing information on financial transactions carried out by individuals and legal entities of foreign countries from financial institutions to the Ministry of Texes of the Republic of Azerbaijan;

4. Procedure for providing information on transactions carried out by individuals and legal entities of foreign states in the territory of the Republic of Azerbaijan

from the Ministry of Taxes of the Republic of Azerbaijan to competent authorities of those parties;

5. List of financial institutions of the Republic of Azerbaijan that do not report;

6. List of accounts that are not reported from.

Amendments to the Resolution of Cabinet of Ministers of the Republic of Azerbaijan on Terms of business trip expenses

According to the Amendments, the 1 day norm of business trip expenses in the territory of the Republic of Azerbaijan has been increased and determined in the following amounts:

- In Baku – 90 AZN;
- In Ganja, Sumgayit and Nakhchivan – 70 AZN;
- In other subordinate cities, regional centres, urban-type settlements and villages – 65 AZN.

PwC Azerbaijan's 2nd Annual CEO Survey was presented at AmCham Members' June Luncheon

On 22 June 2018, Aysel Suleymanova, Marketing and Communications Leader of PwC Azerbaijan presented the key findings of the 2nd Annual CEO Survey in Azerbaijan to AmCham Azerbaijan business community. She shared the insights on mega-trends, including the growth rates of the world economy, increase of profitability, business, economic, political, social threats, along with the lack of trust in business.

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.

- **Amendments to Tax Code**
- **News in E-visa system**
- **Law on Environmental Impact Assessment**
- **New e-learning solutions from PwC's Academy Azerbaijan**
- **PwC Azerbaijan participated at business seminar on IPO, Corporate Governance and Listing**

Amendments to Tax Code

According to the amendments, import of 200 pieces of cigarette and 1.5 liter alcohol by natural person for individual consumption has been exempted from excise. For information, previously that index was 3 liter and 600 pieces of cigarette, respectively.

News in E-visa system

Labor visa option was included into "e-visa" electronic visa system. From now on expatriates intended to be engaged into paid labor activity in Azerbaijan may feel free to apply for obtainment of labor visa via electronic system. We would like to remind that previously the only way to receive the mentioned type of visa was manual paper application made through the Ministry of Foreign Affairs of the Republic of Azerbaijan and the Embassy of Azerbaijan in the relevant country.

Law on Environmental Impact Assessment

New adopted Law defines legal, economic, organizational grounds of impact assessment on environment and human life in respect of realisation of urban planning and strategical documents, as well as production activities and other activities, and regulates relations in this field. In addition to the Law, the list of activities for environmental impact assessment has also been enacted.

New e-learning solutions from PwC's Academy Azerbaijan

PwC's Academy IFRS e-learnings are the perfect solution for getting an overview of the given IFRS standard. Our e-learnings are interactive, focused educational materials with practical exercises. They are all prepared by experts with extensive experience, and are available in English and Russian. The e-learnings contain narration in order to facilitate the learning process and to enhance the interaction with the learner.

Why choose PwC's Academy e-learning courses?

- Fast, easy and flexible access from the comfort of your home or your favorite coffee shop
- Interactive, focused educational material prepared by experts with extensive experience
- Half of the e-learning course time is devoted to practical exercises

Find out more:
https://www.pwc.com/az/en/services/corporate-training/ifrs-e-learning-courses.html

PwC Azerbaijan participated at business seminar on IPO, Corporate Governance and Listing

On 11 July 2018, Vugar Akhundov, Deals Leader at PwC Azerbaijan delivered presentationon “IPO overview” at business seminar jointly organized by the Baku Stock Exchange (BSE) and the Azerbaijan Export and Investment Promotion Foundation (AZPROMO) at Baku Business Center.

In his speech Vugar highlighted the main factors companies should consider before deciding to go public, the importance of careful thought, preparation and planning for a successful IPO, as well as advantages and disadvantages of this process.

At PwC, we have a dedicated capital markets team of about 500 professionals in over thirty countries who have extensive experience, market intelligence and tools to support you through every stage of the IPO process, from preparation to execution.

- **Amendments to Law on anti-money laundering and fighting against financing terrorism**
- **Approval of Charter of Service of Finance Monitoring of the Republic of Azerbaijan**
- **Establishment of State Agency for Use of Raw Mineral Resources**
- **Amendments to Migration Code**
- **Approval of Charter of Agency for Intellectual Property**
- **Internal Audit courses by PwC ‘s Academy Azerbaijan**

Amendments to Law on anti-money laundering and fighting against financing terrorism

With Amendments, requirements for employees and chiefs of finance monitoring authority have been defined. Employees and head of finance monitoring authority are not liable for their actions or non-actions while carrying out official duties, provided that it is not proved the actions or non-actions are illegal or dishonest.

Approval of Charter of Service of Finance Monitoring of the Republic of Azerbaijan

Charter of the Service has been approved with the Decree of the President of the Republic of Azerbaijan dated 18 July 2018. Main objectives of the Service will be as follows:

- Monitoring compliance with the legal requirements for the prevention of money laundering or terrorism financing in the Republic of Azerbaijan;
- To carry out a single implementation in the relevant area, as well as to coordinate monitoring participants, other persons involved in monitoring, supervision and other public authorities, to ensure transparency and efficiency.

The Service relies on advanced international standards while concluding its activities under the Charter.

Establishment of State Agency for Use of Raw Mineral Ressources

With the Decree of the President of the Republic of Azerbaijan dated 16 July 2018, the State Agency for Use of Raw Mineral Resources under the Ministry of Ecology and Natural Resources has been established. According to the Decree, the Agency is a public legal entity regulating activities over the use of subsoil in accordance with the Law on subsoil, supervising compliance with standars, requirements and legislation in the field of use and protection of subsoil, as well as arranging auctions in regards to use of subsoil and rendering services in this field.

In addition, it is defined that the Decree is not implemented to regulating use of subsoil in relation to energy.

Amendments to Migration Code

According to the Amendments, if an administrative penalty without deportation is imposed on foreigners or non-citizens due to breach of rules on stay and residence in the Republic of Azerbaijan, those persons are obliged to pay the penalty and additional penny in order to enter the country. Once the penalty and respective penny have been paid, those persons may enter the country.

With Amendments, foreigners and non-citizens staying temporary more than 15 days in the Republic of Azerbaijan are required to be registered in place of residence.

Approval of Charter of Agency for Intellectual Property

The Agency is a public legal entity and its employees are equal to civil servants. The purpose of the Agency is to ensure effectiveness, transparency and sustainable development of IP rights, protect rights of IP owners, and develop knowledge of this field in the republic of Azerbaijan. The Agency relies on advanced international standards and principles while carrying out its activities under its Charter.

Internal Audit courses by PwC Azerbaijan's Academy

The course provides you with the tools and knowledge to conduct internal audits as a member of an internal audit team. We focus in particular on the interpersonal skills required of an auditor, how to structure and plan your day, and how to gather effective audit evidence to report on the audit findings. Designed to cater for an audit of any management system, this course will leave you with the skills needed for the modern workplace.

The program contains the building block of the internal audit profession and the essential knowledge and skills needed to perform effectively in a risk based internal audit world. The program is ideal for junior and senior internal audit professionals. The program is also suitable for internal audit professionals who wish to apply risk based internal audit.

Decree of the President of the Republic of Azerbaijan on additional measures to develop management in urban planning

- **Amendments to customs fees**
- **PwC's Academy Azerbaijan provides trainings on IFRS updates**

Decree of the President of the Republic of Azerbaijan on additional measures to tevelop management in urban planning

With the Decree, State Urban-Planning and Architecture Committee of the Republic of Azerbaijan is entitled to grant permits to construction and operation of buildings in the administrative area of Baku city (excluding the permits to construction and operation of buildings, which are granted by the Cabinet of Ministers and State Agency for Apartment Construction of the Republic of Azerbaijan). For information, previously this permit has been provided by Baku city Executive Power.

In other administrative areas, the permits on buildings will be granted by local executive powers.

Amendments to customs fees

According to the Resolution of the Cabinet of Ministers dated 06 August 2018, No.344, the customs fees for customs clearance of good shave been defined as follows:

Customs value (AZN)	Customs fee (AZN)
< 1000	15
1000 – 10 000	60
10 000 – 50 000	120
50 000 – 100 000	200
100 000 – 500 000	300
500 000 – 1 000 000	600
1 000 000 <	1000

In addition, new customs fees have been approved for trucks, vehicles, minibus and bus, and other motor vehicles, which have been arrived in customs area (incl. temporary), as AZN 30 and 25, respectively.

- **Amendments to Civil Procedural Code of the Republic of Azerbaijan**
- **Amendments to the Law on Notarial activities**

Amendments to Civil Procedural Code of the Republic of Azerbaijan

According to the amendments, rules of order proceeding will not be implemented on the following claims:

- Contracts on rendering licensed telecommunication services;
- Credit contracts concluded with credit organizations;
- Payment of consuming household natural gas, water, electricity or heating.

Amendments will enter into force from the date of 1 January 2019.

Amendments to the Law on Notarial activities

According to the amendments, notary in place of a debtor should give a notice of execution on the documents defining the debt in order to collect money or seize property from the debtor.

Notice of execution shall be performed if the debt is indisputably proven by the documents provided and respective period of claim under the Article 373 of the Civil Code has been met, unless other periods have been defined under the law.

State bodies, legal and natural persons could apply for giving a notice of execution in an electronic way by using e-signature. Natural persons could also apply to notary in written.

Claimant should send the debtor a demand letter by certified mail at least 20 days before the date of applying to notary, which shows that notice of execution will be given incase of non-performing obligations. Rules on sending a notice of foreclosure of mortgage subject and the period for giving a notice of execution by notary after providing that notice are regulated under the Law on Mortgage.

Notary shall give a notice of execution in the period of one business day after receipt of written application from natural persons or via the e-notary information system of the Ministry of Justice and willsende-executioninformationsystemoftheMinistryofJusticeforexecution.

- **Law on Accounting Chamber**
- **Decree of the President on promotion of application of e-services in the fields of labour, social protection, social assurance and employment**
- **Regulation on Commission on business environment and international rankings**
- **PwC's Academy Azerbaijan provides trainings on IFRS updates**

Law on Accounting Chamber

With the adopted Law, the following has been regulated:

- Legalstatus,legalbasisofactivitiesandmanagementandstructureoftheChamber;
- Objects of external state financial supervision on ensuring state surveillance over use of state assets and other state property legally, reasonably and efficiently, and interrelations between other parties.

Decree of the President on promotion of application of e-services in the fields of labour, social protection, social assurance and employment

According to the Decree, "Centralised E-information System" (hereinafter "E-information") shall be established on the basis of information databases of the Ministry of Labour and Social Protection of the Population (hereinafter "the Ministry"). The Ministry shall ensure to set up e-social internet database in 3 months for providing services to the population related to functions of the Ministry.

In addition, the Ministry shall ensure to establish sub-systems in E-information in 6 months in order to render employment services electronically.

The activities towards personal data protection and protection of activities conducted on e-social database shall be carried out to get her with Special State Protection Service of the Republic of Azerbaijan.

Regulation on Commission on business environment and international rankings

The Commission is a collegial body participating in and giving opinions, including development of legislation and administration, on the following:

- Building competitive business environment and benefits for entrepreneurship;
- Increasing investment attractiveness of the country;
- Improving the position of Azerbaijan in international rankings.

- **President Decree on additional measures on regulation of urban planning**
- **Presidential Decree relating to State information resources and e-government**
- **PwC Azerbaijan is helping clients to create globally mobile workforce**
- **PwC's Academy Azerbaijan organizes master-class on "Investment Model Review"**
- **PwC's Academy Azerbaijan organizes master-class on "Building effective teams"**

President Decree on additional measures on regulation of urban planning

According to the Decree, local executive powers shall grant a permission to construct only if the State Committee for Urban Planning and Architecture ("Committee") has provided an opinion on conformity of construction project with the urban planning documents. In addition, in case the municipalities and local executive powers allocate the land plots for the construction purposes (except for land plots accolated for the construction of houses in accordance with the informing procedure), the opinion on conformity of construction purpose (intended to be realized on that land plot) with the urban planning documents shall be provided by the Committee.

Presidential Decree relating to State information resources and e-government

The President of the Republic of Azerbaijan has signed the Decree on approval of Regulations on archiving, integration, operation and formation of State information resources and systems, and certain measures relating to e-government.

With the Decree, in order to optimize management of rendering e-services to the population, increase the effectiveness of data exchange between State information resources and systems, and ensure systemisation of the respective data in the State information resources and systems, the following sub-systems of E-government Information System have been set up:

- Single Information System on Utility Services;
- Single Information System on Social Services;
- Single Information System on Agricultural Services.

PwC Azerbaijan is helping clients to create globally mobile workforce

On 13 September 2018, PwC Azerbaijan's Tax Reporting Team provided a training on Global Mobility services offered to expatriates. The training featured themes on identification of tax residence status, the process of preparing tax return and de-registration process from Tax Authorities once the employees finish their assignments.

During the training assignees completed tax questionnaires and were introduced to online portal for exchanging information between expatriates and Global Mobility team of PwC; our Tax Reporting team also answered specific questions of participants regarding their tax liabilities.

As PwC, our purpose is to make mobility easy for clients. With over 10,000 P&O specialists in 138 countries around the world, we serve over 17,500 clients in the last two years including 76% of the "Global Fortune 500". PwC Azerbaijan provides practical support in such areas of Global Mobility as international assignees management designed to reduce costs of tax payments, pre-assignment planning including conducting of pre- and post-departure tax consultations, Azerbaijan individual tax return completion as well as repatriation assistance and on-going support in locations throughout the world.

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Estonia

DAC6 has entered into force. What will change in tax consulting?

The fight against cross-border aggressive tax planning is a pressing issue in the European Union.

On 25th of June 2018, **Council Directive 2018/822/EL[1] (hereinafter: DAC6)** amending Directive 2011/16/EU on administrative cooperation in the field of taxation entered into force (**hereinafter: directive on administrative cooperation in the field of taxation**). The said Directive regulates the exchange of information between tax authorities in European Union.

The new directive is aimed to fight against aggressive tax planning and strengthen tax transparency.

The Estonian Ministry of Finance also had a role to play in the making of the Directive, as Estonia was the Presidency of the Council of the European Union and at the time one key issue was the fight against cross-border aggressive tax planning[2]. According to the experts of the Ministry of Finance, tax optimization and tax evasion are major problems for European Union's internal market and the success of internationally operating companies cannot be based on unpaid taxes.

What is the problem according to the experts of Ministry of Finance?

It was found that taxpayers and tax consultants, who face tax laws in different countries on a daily basis, have knowledge of tax system gaps and inconsistencies. This advantage over local taxpayers and tax authorities is exploited to develop new and complex cross-border arrangements, which allow optimizing or avoiding tax payment. The solution was to create a regulation that would obligate tax consultants (and in some cases taxpayers) to share information with tax authorities on which cross-border arrangements are recommend and used for tax evasion. When the new rules come into force tax authorities would also begin to mutually share the information received, so that there would be possibility to regulate the new arranges through law amendments or tax audit.

The fight against aggressive tax planning has been supported by the Member States, as a proof on 13th of March 2018, the finance ministers unanimously agreed on the introduction of a mandatory reporting obligation for cross-border arrangements and was it was adopted by ECOFIN on 25th of May.

Content of DAC6

DAC6 is a nightmare for all tax consultants, as it forces each so-called intermediary, including tax consultants, to inform the Tax and Customs Board of potential aggressive cross-border tax planning arrangements at the threat of a penalty. After the tax authorities have received the information, they will regularly exchange information (quarterly) with their colleagues in other Member States through the Common Communications Network (CCN).

[1] Council directive (EU) 2018/82 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

[2] https://blogi.fin.ee/2017/07/neli-maksualgatust-mis-on-eestil-eesistumise-ajal-laual/.

It is up to the Member States to lay down penalties against violations of national rules that implement the Directive, but according to the Directive, such penalties should be *effective, proportionate and dissuasive".

According to DAC6 intermediaries is defined as any person that designs, markets, organizes, makes available for implementation or manages the implementation of reportable cross-border arrangement, but also any person who provides assistance or advice with respect to the services mentioned above. To the extent that the intermediary is entitled to legal professional privilege under national law, the disclosure obligation shifts to the taxpayer who benefits from the arrangement. Thus, it is strived to ensure that the tax authorities would in any case receive the information about the arrangements that can be connected to cross-border aggressive tax-planning.

It is worth mentioning that the concept of "aggressive tax planning" is not defined in the DAC6. Instead, in the annex IV of the new Directive ("Hallmarks"), reference is made to a number of hallmarks, which are features that could describe a serious threat as tax evasion or tax abuse:

A) Generic hallmarks linked to the main benefit test;
B) specific hallmarks linked to the main benefit test;
C) specific hallmarks related to cross-border transactions;
D) specific hallmarks concerning automatic exchange of information and beneficial ownership;
E) specific hallmarks concerning transfer pricing.

For cross-border arrangements to require being reported to the tax authorities, at least one of the hallmarks specified in the annex IV must be met- i.e. trait or feature, which indicates to the potential risk of tax evasion. Briefly, there is reporting obligation if there is a tax evasion that is reasonably foreseeable as a result of the arrangements.

Taking over DAC6, adaption of standards and the first period for submitting the declaration

Member States incl. Estonia must transpose the Directive into their national laws and regulations by 31 of December 2019. It is likely that the Tax Information Exchange Act will be amended and upgraded.

The date of application of the DAC6 is 1st of July 2020.

It is important for the taxpayers to note, that Estonia as a Member State has to implement measures to require information from intermediaries or any associated taxpayers about cross-border arrangements, where the first step for the arrangement occurred between 25th of June 2018 and 1st of July 2020. The information about cross-border arrangements has to be filed by 31th of August 2020, after which the information is exchanged between the Member States.

Tax Information Exchange Act

The directive on administrative cooperation in the field of taxation has been transposed into Estonian law with Tax Information Exchange Act, which provides the procedure rules and base for automatic information exchange. The remaining part of the directive on administrative cooperation in the field of taxation (i.e. Information exchanged on self-initiative or at the request) has been transposed into the Taxation Act, which sets the ground rules for international aid.

According to directive on administrative cooperation in the field of taxation, Estonia automatically exchanges information on earned income, board member fees, pension and

income derived from immovable property regarding any person who is located in another Member State.

Prior amendments of directive on administrative cooperation in the field of taxation

For refreshing the memory, we will recall previous amendments to the directive on administrative cooperation.

In 2014, the Directive was amended for providing the exchange of financial accounts information about tax residents in other countries. Banks, insurance companies and other financial institutions must collect and forward the information on accounts related to holding of funds, including settlement and securities accounts to the Tax and Customs Board. Such "accounts" also include life assurance contracts. Information is not collected on individual transactions. In order for financial institutions to be convinced of what client the exchange of information can affect, they can ask the client for confirmation of their tax residence. In the context of the exchange of information, a person may be exposed simultaneously to several countries.

The information exchange relates in particular to those who have a residence, set or have an economic interest in the foreign state, i.e. those who might be subject to tax in foreign state. If the client is an Estonian tax resident, information about his accounts is not forwarded to the tax authority.

Financial institutions began to collect information for European Union and OECD countries about their clients from 2016. Estonian Tax and Customs Board transmitted the information received to the tax authorities of the countries concerned in September 2017. For more information about the information exchange, please see the homepage of Ministry of Finance: http://195.80.113.140/fatca.

Automatic exchange of information on binding rulings

In 2017, according to the amendments to the Directive in 2015, the information about binding rulings with a cross-border dimension were automatically exchanged between tax authorities. The exchange of information did not bring any additional obligations to entrepreneurs.

The exchange of information applies to the binding rulings issued as from 2012.

Information exchange for multinational enterprises

As of 2018, according to the amendments to the Directive in 2016, there is a reporting obligation for multinational enterprises i.e. country by country reporting. Both, information exchange model and automatic exchange of financial accounts information model, have been copied according to the standards from the OECD model.

Annual reporting includes key information on income tax liabilities, profits, share capital, tangible assets, branch of activity (of subsidiaries) and number of employees in multinational enterprises with consolidated revenue of over EUR 750 million. If there are problems with reporting in the country where the parent company of a group is located, the liability for reporting falls on its subsidiaries. The tax authority will forward the report to the countries in whose territory the group operates. For the first time, the groups had to report information concerning the financial year of 2016 by the end of 2017 at the latest.

The next step in the evolution of the VAT system in the EU is done!

On May 25, 2018 the European Commission published a detailed proposal for council directive amending Directive 2006/112/EC in relation to applying the definitive VAT system.

Briefly about the proposal

The proposal will replace the transitional system in force from 1993 on business-to-business (B2B) transactions with a definitive system, according to which the domestic and cross-border transactions in the EU will be treated in the same way.

It is a proposal for a directive, which sets out the detailed technical elements of the operation of the definitive VAT system and complements the Commission's proposal of October 4, 2017 (discussd in our February 2018 newsletter).

What is going to change?

The current approach, according to which the intra-Community B2B supply was tax-technically divided into two: intra-Community supply (non-taxable) and intra-Community acquisitions (subject to VAT). Subsequently, such B2B supply of goods is treated as a single transaction – intra-Community supply of goods, which according to the definition would be: "a supply of goods carried out by a taxable person for a taxable person or for a non-taxable legal person whereby the goods are dispatched or transported, by or on behalf of the supplier or the person acquiring the goods within the Union, from one Member State to another Member State". Therefore, the provisions on intra-Community acquisitions are deleted from the VAT Directive.

The proposal provides that such B2B supplies of goods are taxed in the Member State of destination, i.e. the place of supply is always located in the Member State of destination (where the consumption of the good is expected). Thus, the principle of the country of origin (where goods is produced) is abandoned, which according to the current wording of Article 402 of the Directive is the basis of the definitive VAT system, since this principle was not politically acceptable to the Member States.

Who is responsible for paying VAT?

Similarly, to the decision of European Commission in October 2017, if the seller (supplier) is in principle liable for the payment of the VAT in the Member State of arrival of the goods. An exception to the general rule is where the supplier is not established in the Member State of taxation and the customer is a certified taxable person- in that case, the customer will pay the VAT due by way of reverse charge in the Member State of arrival of the goods.

Therefore, if an Estonian company, without an establishment in Finland, will sell goods to a Finnish company, who does not have the status of certified taxable person and the goods are transported to Finland (the state of taxation), then the Estonian company as a seller must add Finnish VAT to the invoice, which is calculated on the basis of the Finnish VAT rate applicable to the goods (either 24%, 14% or 10%). Generally, VAT liability arises when issuing an invoice in the case of intra-Community B2B sales (if the invoice was not issued on time, the special scheme will apply) and the Member States are not allowed to make exceptions.

If the Finnish company as a buyer has the status of certified taxable person, then the buyer must calculate VAT on the basis of Finnish tax rates (i.e. reverse charge is applied)

and the invoice is submitted by the seller without VAT (i.e. in net amount) Therefore, for the certified taxable person the current system will remains valid, where the seller does not pay VAT (0% VAT rate) and the buyer calculates VAT in the country of location by way of reverse charge.

Declaring and paying VAT in the future

According to the example in the previous section, the declaration and payment of Finnish VAT to the Finnish tax authorities will take place either directly (the seller registers himself as a taxable person in Finland) or through the special arrangement.

To this end, the VAT Directive extends the scope of the special scheme, allowing it to be used for business-tobusiness transactions. Currently the special schemes (i.e. MOSS special scheme or "*Mini One Stop Shop*") are used to sell digital services to end-users located in other EU
Member States. Thus, the MOSS specific scheme becomes OSS special scheme ("*One Stop Shop*").

To sum up, with the expanded scope of the special scheme, the Estonian company can submit VAT returns and pay the VAT arisen from all Member States of the EU in the country of registration, i.e. in Estonia and therefore avoid the need to register in each Member State.

Taxable persons using the special scheme will start submitting quarterly VAT returns with same form, whereby the obligation to submit is not affected by whether the transactions have taken place or not. If the annual turnover of a taxable person using the special scheme in the EU exceeds EUR 2 500 000, then the VAT return must be submitted on a monthly basis.

The right to deduct input VAT in VAT return using the special scheme

The main change compared to the present special scheme is that the deductible input VAT can be declared in the VAT return, i.e. the VAT paid on purchases in the respective Member State, as well as the import VAT, if the respective Member State has made it possible to simplify the payment of import VAT in VAT return (Estonia has been using the simplification, please see VAT Act § 38 21) and 22)). Thus, Estonian company using the special scheme may have a claim for refund in another Member State, if the deductible input VAT exceeds the output VAT.

The status of certified taxable person

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 (CTP) 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. For example, with the CPT permit the Estonian taxable person can proceed to buy goods from another Member State, without paying Estonian VAT and instead declare the purchase in the VAT return under the reverse charge mechanism. In the same reflected way the sales to a taxable person of another Member state with the CPT permit can take place.

Consequently, having a CPT permit becomes a valuable right in commercial sense.

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.

The status of a certified taxable person in one Member State shall be recognized by the tax authorities of all the Member States.

Combined returns

Even though with the Commission's proposal it is provided, that the supplier is responsible for paying VAT on intra-Community B2B supply, according to the proposal the submission of the combined returns (current Form VD i.e. Intra-Community supply) for the supply of goods is no
longer necessary. The same applies when the receiver of the goods is a certified taxable person.

The obligation to submit combined returns is maintained only for services.

The deadline for adopting the Directive

After the Directive has entered into force, the Member States (incl. Estonia) shall adopt and publish, by June 30, 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with the Directive and shall apply those provisions from July 1, 2022.

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Mongolia

Revised Law on State Registration of Legal Entities will become effective from November 1, 2018

Law on State Registration of Legal Entities ('Registration Law or Revised Law'), enacted on June 21, 2018, will be enforceable from November 1, 2018, repealing and replacing the previous Law on State Registration of Legal entities. Under the newly revised Registration Law, following major changes are introduced:

1. Removal of some types of legal entities

Under the previous Registration law, types of legal entities included press organization, organization for culture, education, research and health, foreign invested legal entity etc. However, the Revised Law removes the above types of legal entities and suggests them to choose one from the rest of the listed types. The Law on Implementation of Registration Law ('Implementation rule') requires the already set-up educational, research, health or press organizations to choose their new type from a company, a partnership or a fund and to propose their request to the legal entity registration office ('LERO') before November 1, 2018 for re-newing their registration accordingly. However, another provision of the Implementation rule allows LERO to receive and register requests for changing legal entity types within 2 years from the effective date of the Revised Law.

2. Time extension on registration with the LERO

According to the previous law, legal entities were required to register themselves within 10 days after reserving the company name. This period was extended to 30 days by the Revised Law. Regarding dissolution process, the time frame for deregistration with LERO was not exactly stipulated in the previous law, but, under the Revised law, the deregistration period is stated as 3 days.

Previously, a registration process for foreign invested legal entities took 10 working days and registration for other entities took 2 working days after submitting the complete documents to LERO. However, the Revised Law shortened this registration date to 5 working days for foreign invested legal entity. But, incase of registration due to re-organization, the registration process is still up to 10 working days for foreign invested legal entities.

3. Electronic registration service

As the previous law stated, the complete registration process will be conducted electronically. For instance, applicant may make a registration, reserve the company name, obtain a reference and receive other services electronically. However, this online registration has not gone any further due to the technical and other issues until today, and Revised Law still contains such provisions on electronic registration.

4. Deregistration

Under the Revised Law, Ministry of Finance will send letters to LERO regarding the proposal to deregister companies who have failed to submit their financial statements to the corresponding authority for more than 8 quarters. After receipt of such letters, LERO will announce such proposal through their website. LERO will deregister the entity unless one of the following circumstances has arisen within 6 months from the website announcement:

- LERO has received a written complaint,
- a bankruptcy case has opened,
- a financial statement was submitted or
- a liability was ruled by a court decision with respect to the proposed entity,.

Authorized persons from companies to be deregistered shall be liable for any consequences arisen from such deregistration.

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Poland

Significant changes to Polish Transfer Pricing regulation

In brief

On 16 July 2018, a draft law changing significantly the Polish transfer pricing regulations was published.

It grants the tax authorities new tools for auditing and challenging the related party transactions as well as changes the obligations imposed on taxpayers conducting such transactions.

The main purpose of the new regulations will be to enhance the efficiency of tax audits and transparency of related party transactions. On the other hand, the new law, once enacted, will limit reporting requirements with respect to typical low-value-adding transactions.

In detail

Draft law presented for public consultations

The draft law amending the Personal Income Tax Act, the Corporate Income Tax Act and some other acts was published on 16 July 2018. The draft was presented for public consultations, so the final content of the regulations may differ from those recently published. The key changes proposed currently are described below.

Non-recognition and re-characterization

The new law, once enacted, will grant the tax authorities additional tools. They will be able to re-characterize or even disregard related party transactions if they conclude that unrelated entities would not enter into transaction declared by the taxpayer or would conclude different transaction. Consequently, when assessing the arm's length level of remuneration in a given transaction, they could refer to other transactions or terms that in their opinion could have been applied by unrelated parties.

Introduction of safe harbours

Safe harbours will be introduced for two transaction types, i.e. loans meeting specific requirements and low-value-adding services. In the case of the former, an official interest rate will be published, whereas, for the latter, a mark-up of 5% will be recommended.

Transfer pricing adjustments

The new regulations will also modify rules on conducting transfer pricing adjustments. In particular, they will determine in which period the adjustment should be reported. However, the taxpayers will be obliged to meet a number of requirements before conducting the adjustment, which may make them difficult to apply in practice.

New TP documentation materiality thresholds

New transactional materiality thresholds applicable for TP documentation (local file) will be introduced, i.e.

- PLN 10 million (approx. EUR 2,5 million for transactions concerning tangible assets and financing), and
- PLN 2 million (approx. EUR 0,5 million for other transactions).

The new thresholds will, in practice, result in reducing the scope of documentation requirements, especially for small and medium-sized taxpayers.

Materiality threshold for master file will be set at PLN 200 million of consolidated revenue. Taxpayers submitting the CbC report (those achieving consolidated revenues exceeding EUR 750 million and meeting other specific requirements) will also be obliged to submit the master file to the Head of the National Revenue Administration.

According to the new regulations, the master file may be prepared in English. Translation into Polish will only be required at the explicit request of the tax authorities.

Contents of transfer pricing documentation and benchmarking studies

The scope of mandatory elements of transfer pricing documentation will also change. The detailed contents of the local file and master file will be determined in a decree of the Minister of Finance. Although it will only be possible to comment on the contents after the decree is published, it is clear based on the draft law that there will be changes in comparison to the current contents of the local and master file.

Benchmarking studies will become a compulsory element of the documentation for each transaction described in a local file (no specific materiality thresholds will be applicable), except for those to which safe harbours apply. If it is impossible to prepare such an analysis, the taxpayer will be obliged to prepare an analysis showing compliance of the conditions on which the transaction was concluded with the conditions that would have been set by unrelated entities.

Extension of deadlines for the preparation of documentation

The deadline for filing a statement on the preparation of local transfer pricing documentation will be permanently extended to 9 months after the end of the tax year for local documentation. The deadline for preparing the master file will be 12 months after the end of the tax year.

New reporting responsibilities

Taxpayers will also be required to submit a new electronic form (TP-R form), which will replace the CIT-TP / PIT-TP forms introduced recently. The new form will need to be submitted within 9 months after the end of the financial year. The form will contain selected information on the transactions carried out with related entities.

The takeaway

The proposed regulations introduce a number of significant changes from the taxpayer's point of view.

On one hand, the tax authorities are granted new tools (non-recognition and re-characterization) but on the other hand, certain new obligations are imposed on taxpayers while some others are repealed.

The new law will surely increase the transparency of related party transactions and facilitate the selection of taxpayers for tax audits by the tax authorities.

The new regulations are to be binding as from 1 January 2019, however, taxpayers will have the right to apply the new regulations referring to the TP documentation voluntarily, also to tax years started after December 31, 2017.

Employee's Capital Pension Scheme – Permanent Committee of the Council of Ministers adopted draft of new regulations

In brief

On 17 July 2018 the Government Legislation Centre published an updated draft of the law on establishing of Employees' Capital Pension Schemes (hereinafter called Pracownicze Plany Kapitalowe – PPK), which was adopted by the Permanent Committee of the Council of Ministers. The regulations would need to be agreed by the Parliament to become biding.

Key assumptions of Employees' Capital Pension Scheme

Common

Employees' Capital Pension Scheme would be a new, mandatory for employers and voluntary for employees system for collecting pension savings under the third pillar of the pension system. The new scheme is intended to improve the structure of Polish pension savings and shall be complementary to the voluntary Employee Pension Schemes (PPE).

Participants

The participants of the new system will be all employees between 19 and 55, who will automatically be registered under the PPK scheme with the right to opt out of the program. Employees over 55 will be able to join the program voluntarily.

Mandatory

PPK will be mandatory for all employers, who hire employees and persons engaged in home work within the meaning of the Labour Code, members of agricultural production cooperatives and members of farmers' circle, persons performing work on the basis of a contract of agency, contract of mandate or other contracts on performance of services within the meaning of the Civil Code as well as members of supervisory boards remunerated for these functions. Under the planned regulations the obligation to implement PPK will initially cover all employers employing over 250 people. Employers who have already established the Employees' Retirement Pension Scheme (PPE - which is a voluntary program), will not be obliged to create PPK, provided that the mandatory employer's contribution to PPE will not be lower than 3,5% and at least 25% of the employees joined PPE. Additionally, an employer who established PPK, and then created PPE (in line with the principles described above) may stop financing the basic and additional contributions to PPK (for employed persons who joined PPE) from the month following the month in which PPE was registered by the supervisory authority.

The exemption from the obligation to create a PPK will also apply to persons who do not run a business activity. The exemption may also be used by micro-entrepreneurs if all employed persons submit a declaration of resignation from participation in PPK.
In addition, the financial institutions with which a contract for establishing of PPK has been concluded are obliged to inform the employees about the terms of participation in PPK and about the obligations and rights of the employing entity and the contributors of PPK in relation to their participation in PPK.

The financial institution cannot charge any fees to the PPK participant from payments made to PPK, withdrawals, refunds, transfers and annual payments.

Contributions

Employees' Capital Pension Scheme will be based on the co-operation of employers and employees in creating of employees' long-term pension savings in the investment funds

(both employers and employees will make contributions). The employee's contribution will be 2% of the employee's remuneration (with the possibility of an additional voluntary contribution of 2%). The employer's contribution will be 1.5% of the employee's remuneration (with the possibility of the additional voluntary contribution of 2.5%). The additional voluntary contribution paid by the employer can be differentiated depending on the period of employment or on the basis of the employer's rules of remuneration or the collective labor agreement.

Employees contribution can be lower than 2% (but not less than 0.5%) for those employees whose income is lower than the equivalent of 1.2 of Polish minimum wage in a given month.

Employers will be able to choose a financial institution (among all institutions authorised on PPK portal), which will be managing employees' pension savings. The savings will be private, assigned to a specific person and subject to inheritance.
The savings accumulated on the PPK account could be used to cover own contribution related to a bank loan financing an acquisition or construction of a house / flat. Also, up to 25% of the savings can be paid out in case of severe, chronic illness of the employee, a spouse or child.

Fiscal incentives

Participation in PPK will be associated with some fiscal incentives. The employer's contributions will be exempted from pension & disability contributions and may be treated as the employer's tax deductible costs. Also other expenses connected with the functioning of PPK, which are incurred by the employer, can be deducted from employer's income. The employee's contributions will be financed from employee's net remuneration. There will also be a co-financing from the State of PLN 250 (i.e. a so-called welcome contribution) and the additional payment of 240 PLN (i.e. the annual premium). Both extra payments will be free of tax. Disbursement of funds accumulated in PPK will also be exempted from taxation in well-defined cases.

Implementation schedule

- From 1 July 2019 – the obligation to create PPK will lay on all entrepreneurs employing at least 250 people
- From 1 January 2020 - the obligation to create PPK will lay on all entrepreneurs employing between 50 to 249 people
- From 1 July 2020– the obligation to create PPK will lay on all entrepreneurs employing at least 20 people
- From 1 January 2021 - the obligation to create PPK will lay on remaining employers and public-sector.

Further important changes in income taxes and the Polish Tax Code

In brief

On 24 August 2018 r., a draft law changing significantly income taxes and the Polish Tax Code was published on the Government Legislation Centre's website. The main purpose of the new regulations will be to simplify the Polish tax law related to income taxes, the introduction of new tax incentives and further development of the anti-avoidance measures. The plan is that the changes will come into force on 1 January 2019.

The main changes aiming at simplifying the regulations and introducing new tax incentives

- **5% preferential PIT and CIT rate** on incomes / gains from intellectual property rights resulting from R&D works (*Innovation Box*);
- **9% preferential CIT rate** for taxpayers with revenues not exceeding EUR 1.2m. in the tax year;
- **deemed deduction** of hypothetical interest (*notional deduction* – maximum of PLN 250ths in the tax year) on equity used for re-investment purposes;
- **new regulations** relating to the purchase of debt portfolio, in particular allowing to recognize the full cost base of acquisition of receivables provided that there is no possibility to recognize losses for tax purposes;
- **withholding tax exemption** for interest and discount obtained by nonresidents from Eurobonds;
- **new regulations concerning** virtual currencies trading.

The main changes in anti-avoidance measures

- **introduction of so-called exit tax**, i.e. the tax on transfer of assets abroad or change of tax residency of the taxpayer;
- **introduction of so-called mandatory disclosure rules** i.e. the obligation to notify information on tax schemes to the tax authorities;
- **further anti-avoidance changes** both with respect to General Anti-Avoidance Rule as wells as specific anti-avoidance clauses included in income tax regulations;
- **introduction of additional tax liability** in case of tax assessment resulting from anti-avoidance rules;
- **completely new mechanism of settlement of withholding tax in relation to payments exceeding PLN 2 m. per annum for each taxpayer** – generally, the remitter will be obliged to collect withholding tax at the domestic rate. The taxpayer or remitter that incurred the economic cost of tax will be entitled to apply for refund of tax to the tax authorities;
- **further changes in CFC regulations**

What does it mean for me?

The amount and importance of proposed changes will have a significant impact on tax settlements.

Withholding tax in Poland – a new mechanism

In brief

On August 24, 2018 a draft bill amending i.a. the Corporate Income Tax ("**CIT**") Law was published. At present, public consultations have been completed and the project was approved by the government on September 24. The bill introduces a new mechanism regarding withholding tax ("**WHT**"), which will have significant impact on foreign investors.

New mechanism

A completely new mechanism of settlement of WHT in relation to payments exceeding PLN 2 m. per annum for each taxpayer is to be introduced. Under the new rules, the conditional exemption from WHT or application of the reduced tax rate stipulated in the applicable Double Tax Treaty will be restricted.

Note that the new requirement will also apply to regulated investment / pension funds, which are currently covered by a tax exemption.

With regard to payments not exceeding PLN 2m. per annum for each taxpayer, the remitter will still be entitled to apply reduced WHT rate or WHT exemption according to the current rules (though the some additional requirements are imposed on the tax remitter).

Certification process

New mechanism allows the remitters not to withhold tax in relation to payments exceeding PLN 2 m. per annum if the remitter submits a statement confirming that:

1. it possesses all documents necessary for applying reduced WHT rate or exemption from WHT;

2. it is not aware of any circumstances which speak against granting tax exemption.

The above will require the remitter to go through an extensive self-certification process, for which guidelines were not specifically set.

It should be stressed out that the remitter will be held accountable as to the completeness of the documents and correctness of the facts considered during the Certification process (fines and penalties including imprisonment under the Fiscal-Penal Code will apply). In addition, a penalty of 10-30% of the tax base may be imposed, if during a tax audit, the tax authorities question the results of the certification process.

Refund

In compliance with the new mechanism, the taxpayer / remitter shall have the right to claim for a WHT refund. This will be a procedure similar to current WHT claims (i.e. very formalistic and requiring an extensive analysis of source documents).

Opinion

Alternatively to the above the taxpayer or the remitter which incurred the economic cost of WHT and meets certain conditions stipulated in the CIT Law shall be able to apply to the tax authorities for an opinion confirming that tax may not be withheld ("**Opinion**").

The Opinion shall be given 6 months from date of application at the latest and be valid for 36 months. Application for the Opinion shall be subject to fee of PLN 2,000.

Tax application for the Opinion might be rejected if:

- the taxpayer does not meet the requirements stipulated in the CIT Law;
- anti-avoidance provisions may be applicable;
- documents attached to the application are not in accordance with the factual circumstances;
- the taxpayer does not conduct a business activity in the country of his tax residence.

How can we help

PwC has extensive experience regarding refund procedure, for both entities from the asset management sector as well as various EU seated holding companies.

Our team of CIT/EU Law and Litigation experts has in-depth knowledge as to the type of documents expected by the tax authorities during various comparability studies. This allows us to provide our clients with complex services covering:

- development of adequate criteria to go through the self-certification process (e.g. how to document the substance of a holding company);
- development of relevant procedures confirming that the all documents are in place (e.g. when to obtain tax residency certificates);
- assistance with obtaining the Opinion, as well as
- assistance during the WHT refund procedure.

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Romania

Information Statement on Sponsorship / Patronage / Private Scholarships

In brief

The Ministry of Public Finance has issued an Order regarding the approval of the form for declaring information on sponsorship beneficiaries.

Failure to file the informative statement is sanctioned by a fine of RON 12,000 to RON 14,000 for medium and large taxpayers, and a fine of RON 2,000 to RON 3,500 for other taxpayers.

In detail

Who is required to submit Form 107?

Completing and submitting the statement is mandatory for taxpayers which sponsor and / or act as sponsors or grant private scholarships and are one of the following:

- Profit tax payers;
- Tax payers of a specific tax for some activities and also pay profit tax;
- Tax payers on micro-enterprise income.

Deadline for statement submission

Depending on the type of taxpayer, the deadline for submitting the statement is:

- for quarterly tax payers - 25 March or the twenty-fifth of the third month following the end of the amended fiscal year;
- for companies earning money from agriculture or for non-patrimonial organisations - 25 February or the twenty-fifth of the second month following the end of the amended fiscal year;;
- for tax payers on micro-enterprise income - 25 January or the twenty-fifth of the month following the last quarter for which micro-enterprise income tax is due;
- for legal persons which dissolve with liquidation during the tax year - by the date of filing the financial statements;
- for legal persons which dissolve without liquidation during the tax year - by the end of the taxable period.

How is the statement submitted?

The statement is submitted electronically. Where the declaration is corrected, the Amending Statement is drawn up on the same form, stating 'X' in the special space provided for that purpose.

Information required in the declaration

The informative statement has to include:

- Year / period for which the statement is being filed;
- Taxpayer’s identification data;

- Beneficiary data (tax ID / address / amount / reported amount / amount deducted);

- Identification data of the empowered person, if applicable.

Penalties

Failure to submit the informative statement is sanctioned by a fine of RON 12,000 to RON 14,000 for medium and large taxpayers, and a fine of RON 2,000 to RON 3,500 for other taxpayers.

Source: Ministry of Public Finance Order no. 1,825 / 2018 for the approval of the template and content of Form 107 "Information Statement on the beneficiaries of Sponsorship / Patronage / Private Scholarships" was published in the Official Monitor no. 646 / 25 July 2018.

The takeaway

Taxpayers required to submit the informative statement about the beneficiaries of Sponsorship / Patronage / Private Scholarships have to ensure that they have a clear record of the amounts awarded and obtain the necessary information from the beneficiaries.

Failure to submit the informative statement could result in fines of RON 12,000 to RON 14,000 for medium and large taxpayers.

Modifications to customs legislation

In brief

Commission Delegated Regulation (EU) 2018/1063 was published on 30 July 2018, amending and correcting Delegated Regulation (EU) 2015/2446 supplementing the Union Customs Code (hereinafter "the Regulation"). The European Commission has also updated Annex A to the Exporter Consultative Guideline (hereinafter "the Guideline") to clarify the level of flexibility for economic operators known as exporters from a customs perspective.

In detail

Exporter - new definition

The main change brought by the customs regulation refers to a more flexible definition of exporter in terms of the conditions for determining a legal person's status as exporter from a customs perspective.

Under **the old definition**, the exporter had to meet one of the following conditions:

- Be established in the customs territory of the Union, holding a contract with a consignee in a third country, and having the power to determine that the goods are to be taken outside the customs territory of the Union, or

- in other cases, the person established in the customs territory of the Union with the power to determine that the goods are to be brought to a destination outside the customs territory of the Union.

The new definition provides that a legal person can qualify as an exporter if it fulfils one of the following conditions:

- It is established in the customs territory of the Union, with the power to determine and has determined that the goods are to be taken out of that customs territory**, or**

- if the above is not the case, the exporter can be any person established in the customs territory of the Union who is a party to the contract under which goods are to be taken out of that customs territory.

The new Regulation allows an exporter, from a customs perspective, to be appointed also by contractual arrangement between the parties. As such, the new provisions are highly relevant in terms of the distinction between an exporter from a customs perspective and the effective supplier of goods delivered outside the European Union, for which the VAT exemption is applicable.

Other modifications

In addition to the exporter definition, the other main changes include:

- When excisable products with Union goods status are exported, the external transit procedure could be applied. This provision will also facilitate the customs authorities' supervision of the movement of excise goods between customs offices.

- If the customs authorities request information from the applicant prior to taking a decision and the applicant fails to provide it within 30 days, the decision-making process is no longer be deferred and the applicants lose the right to apply for a hearing with the customs authorities.

- In certain cases and with the applicant's agreement, the timeframe for the customs authorities to take decisions on repayment or remission can be extended if it is not possible for them to do so by the original deadline. Such cases include additional time being required to verify the proof of preferential origin, the case being awaiting a Court of Justice of the European Union hearing, etc.

- The Regulation reintroduces the specific provisions regarding the mixed storage applicable for the end-use regime for the products classified in chapters 27 and 29 of the Combined Nomenclature (e.g. crude oils).

Source: Official Journal No. 192/1 from 30.07.2018 - Commission Delegated Regulation (EU) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code; Exporter Guideline published on Taxation and Customs Union European Commission https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_code/guidance_definition_exporter_en.pdf].

The takeaway

The Regulation introduces a new definition of exporter, making the conditions more flexible for determining the status as an exporter from a customs perspective. As the Guideline has an explanatory and illustrative nature, but is not legally binding, the customs authorities might adopt a different approach in practice.

There is a clear distinction from the customs perspective between an exporter / expeditor and a supplier performing deliveries of goods transported outside the territory of the European Union. As such, we recommend that companies involved in direct exports or parts of successive deliveries of goods analyse the customs and VAT implications so as to apply the correct VAT exemption and avoid delays in performing the customs operations. The PwC team can assist you for performing such analysis.

No requirement to prove the export of the goods in order to apply the VAT exemption for supplies of services directly connected with the export of goods

In brief

The Court of Justice of the European Union (the "Court") has recently issued the Advocate General's opinion in case C-495/17 Cartrans Spedition SRL. The opinion states that there is no requirement for a taxpayer to prove the export of the goods in order to apply the VAT exemption for supplies of services connected with the export of goods.

In detail

Romanian company Cartrans Spedition SRL is a road transport services broker, which transported goods from Romania outside the European Union. Cartrans applied the VAT exemption for supplies of services connected with the export of goods, based on TIR documents (which certified the completion of a customs transit from the customs office of departure to the customs office of destination) and CMR documents. Since Cartrans did not hold during a tax inspection the carriage contract concluded with the beneficiary of the goods, specific transport documents and documents showing that the transported goods had been indeed exported, the Romanian authorities rejected its VAT exemption application right.

According to the Advocate General, although TIR documents do not prove that the transported goods have been exported, taxpayers are not required to prove the export of the transported goods, in order to apply the VAT exemption, but only to prove the direct link between the transport and the export of the goods, which may consist in TIR documents.

The Advocate General's opinion is that, where there is no proven fraud and / or where substantive conditions are met, the rejection of the application of the exemption on grounds of failure to meet formal requirements is contrary to the principle of VAT neutrality and to the principle of proportionality. Even assuming that holding documents proving the actual export of the transported goods were a substantive condition for the application of the VAT exemption for the supply of services connected with the export of goods, the mere fact that Romanian legislation does not indicate these documents may be contrary to the principle of legal certainty.

[Source: Opinion of the Advocate General in Case C-495/17, Cartrans Spedition SRL - Exemptions – Transport services connected with the export of goods – Proof that the goods have been exported outside EU territory – System established by the Customs Convention on the international transport of goods – TIR carnets, published on Curia.europa.eu, on 12 July 2018]

The takeaway

This conclusion emphasizes that supplies of services connected with the export of goods do benefit from the VAT exemption, even in the absence of evidence that the transported goods have been exported (e.g. only based on transportation documents).

If the Court follows the Advocate General's conclusions, note that such a decision could be extended to all supplies of services connected with the export / import of goods, for VAT exemption purposes.

Romania loses annually over EUR 6 billion due to VAT gap, according to an European Commission report

In brief

The European Commission has recently published the 2016 EU VAT gap study, according to which Romania lost EUR 6.13 billion due to VAT gap (out of EUR 147.1 billion EU wide).

In detail

Annually, the European Commission monitors the VAT collection deficit (˝the VAT gap˝) recorded by the EU Member States, which is calculated as the difference between the VAT liability and the amount of VAT actually collected. The VAT gap covers VAT losses due to evasion, fraud, insolvency, bankruptcy, administrative errors and unlawful tax advantages.

The latest European Commission study analyzes 2016´s VAT gap. All 6 Central and Eastern Europe (CEE) countries, namely the Czech Republic, Estonia, Hungary, Poland, Romania and Slovakia, continued to confront with high VAT gaps, but Romania's VAT gap was the highest of them all. Opposite Romania (35.88%) sits Estonia, with the lowest VAT gap (7%).

More concerning than the fact that Romania is the first in the highest VAT gap ranking is the fact that its 2016 VAT gap is higher that its 2015 one. Most Member States, though, recorded decreases of the same indicator, Bulgaria showing the best performance. According to the same study, despite the fact that Romania´s standard VAT rate decreased in 2016 from 24% to 20%, VAT non-compliance increased, negatively contributing to its VAT gap. One can only wonder what Romania's 2017 VAT gap would be, since last year its standard VAT rate additionally decreased, from 20% to 19%.

At EU level, there are six countries that registered VAT gaps higher in 2016 than in 2015 (i.e. Romania, Finland, Great Britain, Ireland, Estonia and France). Romania is the only country from Central and Eastern Europe (except for Baltic states) in this situation; this is why it is really important that Romania follow other states´ best practices in terms of the electronic interaction with the taxpayer. In this context, we remind you that, during the past years, some EU territories adopted various tax administration reforms and upgrades, such as real time reporting, mandatory e-invoicing or SAF-T, which led to lower VAT gaps.

If the National Agency for Fiscal Administration (ANAF) opted to implement modern VAT collection methods, this would create the premises of a normal framework and of the evolution of the VAT collection process, not only on short term, but also on the medium and long run, which is what both ANAF and honest taxpayers want.

*[Source: ** To access the European Commission´s press release and the study on the VAT Gap in the EU-28 Member States: http://europa.eu/rapid/press-release_IP-18-5787_en.htm]*

The takeaway

EUR 6.13 billion is the amount of VAT that Romania did not collect to the state budget in 2016, according to the latest study on the VAT gap, launched by the European

Commission. Since Romania was again last in the high EU VAT gap ranking, one can only wonder whether it will take the same initiatives as its neighbors with significantly lower VAT gaps.

In this context, we remind you that PwC launched at CEE level two unique VAT fraud detection tools. The two solutions, the VAT Fraud Tracker and FAIT, allow the monitoring of current and historical data in order to keep track of intra-Community trade with goods and to identify suppliers / customers susceptible to being involved in fraud.

The reverse-charge mechanism for supplies susceptible to fraud was extended until 30 June 2022

In brief

The Council of the European Union adopted, on the 24th of September 2018, the prolongation of the period for the application of the optional reverse charge mechanism for supplies of goods and services susceptible to fraud. The same document approved the Quick Reaction Mechanism against VAT fraud. These two measures will be active until June 30, 2022*, until the envisaged entry into force of the definitive VAT regime.

In detail

In Romania, cereals, mobile phones and real-estate are just a few examples of products subject to the reverse charge mechanism, whose applicability was to expire on 31 December 2018.

According to a report recently issued by the European Commission on the EU VAT gap, uncollected VAT amounted to EUR 147.1 billion at EU level in 2016, out of which EUR 6.13 billion was only Romania´s state budget loss, which represents a 35.88% VAT gap, the highest in the EU. In this context, the prolongation of the reverse charge mechanism for supplies susceptible to fraud until 30 June 2022 is a useful temporary and targeted measure to fight VAT fraud. Similarly, the digitalization of ANAF, focused on the implementation of the SAF-T protocol, might constitute a modern technology driven VAT collection method.

[Source: Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud: http://data.consilium.europa.eu/doc/document/ST-12033-2018-INIT/en/pdf]

The takeaway

The period for the application of the optional reverse charge mechanism for supplies of goods and services susceptible to fraud was prolonged from 31 December 2018 until 30 June 2022.

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Russia

Tax risks in case a Russian company can't repay debt to a foreign shareholder – overview of recent court practice

In brief

Let's discuss developing court practice on the matter of assessing withholding tax when there is no physical payment of interest under a loan agreement.

For example, a foreign company comes to know that its Russian subsidiary will be unable to repay its debt. Knowing that, the foreign company may make a contribution to the subsidiary's assets and then offset the counterclaims (Russian law does not prohibit such an approach). The tax authorities, though, may qualify the offset as a taxable event (non-monetary payment of income subject to withholding tax). They may assess tax either in accordance with interest payment or dividend payment rules.

Court practice is becoming increasingly conservative. Let's discuss it.

In detail

❖ **Asset contribution and subsequent offset**

- ✓ **Case No. A56-44788/2018** (Resolution of the St Petersburg and Leningrad Region Arbitrazh Court of 30 August 2018)[1]

In 2005-2015, a company had loan obligations to its Finnish parent company and to two foreign sister companies—one in the Netherlands and one in Cyprus.

In the tested period, the company's debt was subject to thin capitalisation rules. The company did not deduct interest expenses.

The loan debt and unpaid interest were assigned by the lenders to the Finnish parent company, which became the lone creditor of the taxpayer. In 2014, the parent company collected all the debts and resolved to make a contribution to the company's assets. The company offset the non-paid interest (over RUB 800 million) against the parent company's debt on the contribution to its assets.

The tax authorities treated the offset as an actual payment of income in non-monetary form and assessed additional withholding tax (treating the income paid as dividends under the thin capitalisation rules).

The company insisted that it did not make any payments abroad and, as such, there was no tax to be withheld.

The court of first instance upheld the tax authorities' position. The court stated that payment may be done in different ways, not only as a direct transfer of cash.[2]

[1] http://kad.arbitr.ru/Card/bd9e2f74-ebad-45c3-8310-a413abf6b986

[2] Although the Russian Supreme Court has taken the official position that it is necessary to recognise indirect capital participation/contribution of money and similar conditions for the purposes of applying reduced tax rates on interest (dividends) set by a double tax treaty, in the case at hand, the court took a conservative stance and confirmed that withholding tax must be additionally assessed at 15%.

✓ **Case No. A54-979/2014** (Order of the Central District Federal Arbitrazh Court of 19 March 2015)[1]

The company received a loan from its parent company based in Luxembourg. In 2009 and 2010, the company treated the interest charged on the loan as expenses. In February 2010, the debt was offset against the debt of the foreign founder on a contribution to the company's assets. The tax authorities applied thin capitalisation rules and contested the deduction of a portion of the interest expenses. Moreover, they additionally assessed withholding tax on a portion of the interest that was treated as dividends. They claimed that the founder had received income from Russia resulting from mutual settlements.

The court of third instance upheld the tax authorities' position. In July 2015, the Russian Supreme Court barred the company from filing a cassation-level appeal for a hearing at the Court's Judicial Board for Economic Disputes.

✓ **Case No. A46-15036/2016** (Resolution of the Russian West Siberian District of 2 August 2017)[2]

A company's obligation to repay a loan with accrued interest was settled against its counterclaim to the lender (a participant registered in Kazakhstan) on making a contribution to the company's charter capital. **The court agreed with the tax authorities** that the lender received non-monetary income subject to withholding tax in Russia at 10% (the 10% rate is stipulated by Article 11 of the Russia-Kazakhstan double tax treaty). Among other things, the court took account of the argument brought forward by the tax authorities that the company had not confirmed the tax paid on the income received in Kazakhstan.

✓ **Case No. Ф10-2895/2016** (Resolution of the Central District Federal Arbitrazh Court of 30 August 2016)[3]

A company could not repay the loan debt to its sole foreign shareholder, which had made a contribution to the company's assets by offsetting counterclaims in order to increase the company's net assets.

The court of third instance ruled that company had not paid the disputed interest and that the foreign company had not received any income from the company in any form (the tax authorities had classified this income as dividends).

In Decision No. 310-КГ16-17554 of 26 December 2016, the Russian Supreme Court refused to bring the case to before its Judicial Board for Economic Disputes.

❖ **Similar cases. Capitalisation of income into the principal amount of debt**
The Russian fiscal authorities believe that capitalisation of interest is a taxable event as well.

[1] http:/kad.arbitr.ru/Pdf Document/69147fdd-c568-4e97-8839-088c711e6boc/e182484d-3031-47c6-9dfo-p9ce47doedc7/A54-979-2014_20140821_Reshenie.pdf
[2] http://kad.arbitr.ru/Card/90ab8334-b808-426d-9972-6f7dac5ac5a29cb
[3] http://kad.arbitr.ru/Card/0265bca3-81ab-4bba-ae72-99cc707cb782

Letter No. 03-03-06/1/68472 of 19 October 2017 touches upon the matter of collecting withholding tax upon interest capitalisation. For the purpose of withholding tax, the Russian Ministry of Finance has indicated that the date of income payment is the date when the interest was included in the principal loan amount. This approach has been consistently upheld by the courts for a number of years. Courts agree that capitalisation constitutes payment of income in a non-monetary form. In the case of capitalisation, taxpayers must calculate and pay withholding tax.[1]

- ✓ Should the borrower recognise its taxable income?

Until recently, companies could forgive the debts of their subsidiaries without having any adverse tax implications (the subsidiaries had no taxable income in such cases). Starting from 1 January 2018, a new version of sub-clause 3.4, clause 1, Article 251 of the Russian Tax Code is applied (it was introduced by Federal Law No. 286-FZ of 30 September 2017). Currently, the case when a shareholder forgives a debt is not directly named as a non-taxable event.

Unfortunately, it is not possible to apply the exemption[2] provided in Article 251.1.11 to the interest amount. This exemption has not been annulled, but it covers amounts that were initially transferred to the subsidiary. This means that if debt is forgiven, the amount of interest forgiven should included in a taxable income of a borrower.

- ✓ Should the borrower withhold tax on income "paid" to a lender?

The first matter that must be addressed is to determine whether a foreign lender whose money has not been repaid has earned any income. According to the meaning of Article 41 of the Russian Tax Code, no income actually arises in this case. This allowed one company to win a dispute on withholding tax when its parent company forgave its loan debt (Resolution of the North-West District Federal Arbitrazh Court on Case No. **A05-13582/2014** of 22 April 2016).[3]

The takeaway

The tax authorities are increasingly following the practice of requesting taxpayers to pay withholding tax, even in cases where income was not physically paid. As we see, the option of making an asset contribution and then offsetting counterclaims is not safe. Let's further monitor the practice on debt forgiveness option.

Payments abroad are examined by the tax authorities in details. Court practice has been developing very quickly. You should examine the pros and cons of each option, track recent court practice, and update your risk landscape with your tax advisers.

[1] Please refer to Decision No. 305-КГ15-11372 issued by the Russian Supreme Court on 30 September 2015 (in their question addressed to the Ministry of Finance, the taxpayer also pointed out other court practice regarding this matter and, as we understood, did not contest the approach taken by courts).

[2] The exemption covers free-of-charge transfers of property between shareholders and their subsidiaries

[3] http:/kad.arbitr.ru/Card/abe15108-a898-4c8f-bb88-62b1a987babb

Increasing import customs duties rates on certain US origin goods

In brief

On 6 July 2018 the Prime Minister of the Russian Federation signed Governmental Decree #788 «On approval of import customs duties rates in respect of certain goods originated in the United States of America». The Decree enters into force on 5 August 2018 and introduces higher import duty rates on a number of goods of US origin.

The Decree is issued in response to the increase of import duties for certain Russia goods in the US. The authority of the Russian Government to set higher rates of customs duties on goods originating from «unfriendly» countries is envisaged by the Federal Law No. 127-FZ of 4 June 2018 "On measures of influence (counteraction) to unfriendly actions of the United States of America and other foreign states". Such authority is also envisaged by the Eurasian Economic Union Treaty (Art. 40).

According to the Decree customs duty rates on listed goods are increased by 5-6 times and set at 25-40%.

In detail

Goods subject to higher duty rates

The list of goods subject to higher import duty rates includes certain pipe layers, loaders, trucks, tools for metal processing and rock drilling, fiber. This list indicates the goods and applicable HS codes. On average, customs duties on these goods are increased by 5-6 times and are established at 25-40% rates.

Implications for companies

The practice of raising customs duties or introducing anti-dumping, special and countervailing duties suggests that in addition to increasing customs clearance costs for those Russian companies that import goods subject to such duties there may also be a negative effect on a wider range of importers.

In particular, the customs authorities strengthen their control over goods subject to higher duty rates regardless of their country of origin. Customs usually initiate physical inspection of goods to check their country of origin. The customs authorities often require additional documents to justify the country of origin of imported goods and their customs classification. This will lead to delays in the customs clearance.

Thus, we expect that all goods covered by the Governmental list will be included in the customs risk management system. In the light of possible customs requirement to prove the country of origin by providing a declaration or certificate of origin, it is important to make sure beforehand that the criteria of the goods origin and marking requirements are observed and the origin documents are properly issued.

The takeaway

Since a wide range of goods from the US are subject to the increased duty rates, we recommend that companies importing such goods analyze their import operations and consider whether it is worth arranging an alternative supply chain.

In order to ensure timely release of goods that are in the Governmental list but originated from other countries (non US origin), we would also suggest to consult with

the customs authorities regarding supporting documents to confirm goods country of origin (if and where necessary) taking into account of the supply chain and the logistics route.

It is also recommendable to check the correctness of customs classification of goods to be imported into Russia to avoid delays in their customs clearance since the customs authorities may attempt to challenge goods classification.

FTS approves a new notification form for controlled transactions

In brief

On 14 August 2018, the Russian Federal Tax Service (FTS) published Order No. MMB-7-13/249@[1] of 7 May 2018, which approved a new notification form for controlled transactions along with the format for filing it with tax authorities. The "old" notification form that had been approved by FTS Order No. MMB-7-13/524@ of 27 July 2012 was declared invalid.

The new form will come into use starting in 2019. The deadline for filing notifications – by 20 May of the year following the calendar year in which the controlled transactions were performed – remains the same.

In detail

The document does not have any significant changes but rather ones that are specific and technical in nature. The fields that were optional in the old form (e.g. 4.5 "Code of pricing methods" and 4.6 "Code of source of information used by the taxpayer") remain optional in the new one.

The notification still has a title page and the following sections:

1A Information about a controlled transaction (group of homogeneous transactions)
1B Information about the subject of a transaction (group of homogeneous transactions)
2 Information about an entity that is a party to a controlled transaction (group of homogeneous transactions)
3 Information about an individual who is a party to a controlled transaction (group of homogeneous transactions)

The most important changes to the new notification form are reviewed below in more detail.

- New criteria for qualifying a transaction as controlled

Section 1A has five new codes (136-140) for criteria that qualify transactions between related parties (i.e. Russian tax residents) as controlled. The new codes are expected to apply to a limited number of taxpayers, e.g. those who carried out a controlled

[1] FTS Order MMB-7-13/249@ of 7 May 2018 "On approving a form for the notification of controlled transactions, an electronic format for filing the notification of controlled transactions, the procedure for completing the notification form for controlled transactions, and the procedure for filing the notification of controlled transactions in the electronic format, as well as declaring FTS Order No. MMB-7-13/524@ of 27 July 2012 invalid" (http://publication.pravo.gov.ru/Document/View/0001201808140010)

transaction with a participant in a regional investment project or with a company that applies income tax-deductible investment expenses.[1]

❖ Submitting information on the subject of a transaction

When completing Section 1B, taxpayers are allowed to list the transaction price in a foreign currency, and the code for the currency in which the transaction price is listed will be indicated in a special field, 2.12 "Currency code". However, the total value of the transaction will be listed in Russian roubles.

For credits, loans and other debt liabilities listed under Article 269.1 of the Russian Tax Code (RTC), a new field, 2.13 "Interest rate", needs to be filled out. The rate will be listed in percent per annum.

❖ Transactions to which a commissionaire (agent) is a party

In the past, all parties (e.g. a buyer, a principal and an agent) to such transactions were required to report on it. Under the new rules, agents or commissionaires are not required to file notifications of the transactions concluded as part of an intermediary agreement. The transactions in question include transactions performed by an intermediary not in their own name but on behalf of or on the account of the principal. Only the principal and the other party to the transaction (i.e. the party with which an intermediary has concluded a transaction for the benefit of the principal) are required to complete the notification and provide information about the intermediary.
To implement these rules, the notification form now has corresponding fields:

- ✓ Section 1A: Field 2, "Transaction performed in the name of a commissionaire (agent)"
- ✓ Sections 2 and 3: Field 3, "Information on a commissionaire (agent) shall be completed"

The takeaway

Taxpayers will submit notifications using the new form starting next year (they must be filed by 20 May 2019 for controlled transactions performed in the 2018 calendar year). However, we recommend that you study the document now and start implementing these changes in the systems you use for preparing notifications of controlled transactions.

[1] It should be noted that the criteria for qualifying transactions as controlled in the new form do not reflect changes in the list of controlled transactions, income and expenses that will be recognised as of 1 January 2019 in accordance with Federal Law No. 302-FZ of 3 August 2018 (https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2018-28.html).

Slovakia

Review of the most important changes introduced by the new Act and the related implementing ordinance

The new Regional Investment Aid Act (hereafter the "Act") prepared by the Slovak Ministry of Economy to modify the rules for the provision of investment incentives **has been in force since 1 April 2018**. By supporting new and established investors, the new Act aims at reducing regional differences and promoting higher added-value investments, and research and development to increase the competitiveness of the Slovak economy. It specifies the terms and conditions for the provision of investment aid depending on the requested form of aid and the region in which the investment project is to be implemented (in a so-called priority region, or elsewhere). Priority regions are specified in line with the Research and Innovation Strategies for Smart Specialization (RIS 3) and Industry 4.0 technological trends.

On 1 July 2018, a government directive stipulating specific conditions for the provision of investment aid and the **maximum amount of aid** for an investment project in individual Slovak regions **came into effect**. This new **ordinance** regulates the details of an application for investment aid, of the acceptance of offers, and of monitoring reports.

The most important changes introduced by the new Act and the related implementing ordinance include:

1. **Tourism** is no longer a supported area under the Act.
2. Investment aid can also be provided in the form of **a transfer or lease of real estate at a price lower than the market value.**
3. **The condition of creating new jobs in industrial production has been omitted**.
4. **For technology centres and shared service centres,** the condition of employing people with completed university education has been replaced by the condition of **paying a higher wage than the average wage** in the district in which the main place of the investment plan implementation is situated.
5. When implementing an investment plan in industrial production, a **supplementary implementation place** is permitted, where the investment aid recipient may place a certain proportion of new machines, instruments, and equipment acquired under the aid in the contractor's business premises (vendor tooling).
6. **Investment and wage costs** may now be included in eligible costs at the same time.
7. **Costs incurred for the lease of land and buildings, and the lease of machines, instruments, and equipment** can also be included in eligible costs.
8. Mandatory **insurance** of the acquired property has been introduced.

9. **Tax relief** is a preferred form of investment aid. Change to the calculation of the proportional part of the tax base when **claiming a tax relief – a constant coefficient of 0.5**.

10. An investor wishing to receive **direct aid as a subsidy** for property acquisition must now invest **a greatly increased amount of funds**.

11. **In developed regions** with an unemployment rate lower than the Slovak average, **investors can receive direct aid as a subsidy for property acquisition** if their investments are made in a priority area.

12. **Investments of small and medium-sized enterprises have been made more favourable in terms of** conditions for the provision of investment aid, maintaining the investment, and retaining new jobs created (3 years).

13. **A combination of investment aid for industrial production and a technology centre** is permitted.

14. The new government directive introduces **district zoning** for granting a subsidy for new jobs created and for investment projects in industrial production, which means that districts adjacent to the district in which the main place of the investment plan implementation is situated are also taken into consideration.

Review of the most important changes introduced by the new Act and the related implementing ordinance

Accounting for virtual currencies

The Insurance Tax Act was published in the Collection of Laws in July. As we informed you in previous alerts, the Act amends also the Accounting Act (in relation to the valuation of virtual currency) and the Income Tax Act (in relation to taxation of income derived from the sale of virtual currency).

The Ministry of Finance of SR ("MF SR") also prepared an amendment to the Guideline on accounting standards and the framework of the chart of accounts in double-entry bookkeeping applicable for entrepreneurs. The amendment states that virtual currency must be booked as a short-term financial asset. It also clarifies rules for booking an increase and decrease of virtual currency and the differences that arise from the valuation of virtual currency and its conversion to euro. The amendment is effective from 1 October 2018.

Amendment to the Income Tax Act

Based on the proposed draft amendments and prepared amendments of other than tax acts, the Income Tax Act has been amended in the following areas:

- Contribution for recreation provided to an employee at their request in an amount and under the conditions specified in the amended Labour Code (up to EUR 275 per year), and a non-monetary contribution (up to EUR 60 per month) that the employer provides to the employee working in shift work for their accommodation, will be exempted from personal income tax. Such expenses may also be tax deductible for the corporate income tax purposes of the employer.

- The value of the tax bonus for each dependent child up to the age of 6 years living in a common household with a taxpayer will double. The value of the tax bonus for a taxpayer taking care of a child up to the age of 6 years will increase by EUR 22.17 per month for each dependent child.

- The value of the last known tax liability from which taxpayers will pay tax advances for personal and corporate income tax purposes will increase from EUR 2,500 to EUR 10,000.

- Taxpayers that report accounting results under the International Financial Reporting Standards will be required, upon a change of the accounting method that leads to an increase (decrease) of equity, to increase (decrease) its tax base in the period when the change occurs.

The amendments will be valid from 1 January 2019, and will be applied for the first time when filing a tax return after 31 December 2018.

Registration of digital platforms

As we informed you in the previous alert, the Amendment to the Income Tax Act valid as of the beginning of the year lays down obligations for taxpayers that are Slovak tax non-residents and that intermediate transportation and accommodation services in Slovakia via digital platforms to register a permanent establishment in Slovakia, and tax income/ profit from such a business.

Based on the available information, only one foreign company has registered such a permanent establishment voluntarily so far. The Slovak Tax Directorate has already registered one subject ex offo, and some other foreign entities are undergoing the registration process. Due to a lack of cooperation with other states, the foreign taxpayers may be subject to double taxation.

Increase of minimal wage

The Slovak Ministry of Labour, Social Affairs and Family has prepared draft a regulation that sets out the value of the minimum wage for 2019 ("Regulation").
The Ministry has proposed to increase the minimum wage as follows:

- from EUR 480 to **EUR 520** per month for an employee remunerated by a monthly wage,

- from EUR 2.759 to **EUR 2.989** for each hour worked by the employee.

The regulation will be valid from 1 January 2019 if approved.

Exchange of information on taxation

The Slovak Ministry of Finance is preparing a draft Act that transposes Council Directive (EU) 2018/822 amending the Directive (EU) 2011/16 as regards mandatory automatic exchange of information on taxation in relation to reportable cross-border arrangements, i.e. the DAC 6 Directive ("Draft Act).

The purpose of the Draft Act is to implement the automatic exchange of information on cross-border arrangements that may be used for potential aggressive tax planning, tax avoidance and tax abuse. The aim is to increase transparency, as the Act will lay down the obligation to report to the responsible authority any cross-border arrangements that fulfil at least one of the listed characteristics. The reporting obligation will primarily apply to the intermediary (e.g. the advisor).

Discussion on the Draft Act is planned for January 2019.

Cross-border business combinations

The Slovak Ministry of Justice published an ordinary preliminary opinion on the proposal for a draft Council Directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions ("Draft Directive").

The Draft Directive has twin objectives: to provide specific and complex procedures that relate to cross-border conversions, mergers and divisions with the aim of supporting cross-border mobility in EU, and to provide the parties involved with the relevant protection. Inter alia, it imposes the obligation to review the agreement on any cross-border transaction by an independent expert and the expert's civil liability for any damage.
The deadline for the obligation to transpose the Draft Directive into national legislation of the Member States is 24 months from the draft's effectiveness.

Directive on posting of workers

Directive (EU) 2018/957 amending Directive (EC) 96/71 on the posting of workers in the framework of the provision of services was published in the Official Journal of the European Union ("Directive").

The Directive ensures a higher degree of protection for assigned employees. It imposes on Member States the obligation to provide employees assigned to their territory with the same remuneration package and working conditions as apply for other employees in the territory. Up to now, the same minimum obligatory requirements applied only to minimum salary tariffs, including overtime rates. The working conditions that apply in the territory for work performance and for which the assigned employees are entitled to, were extended to include the conditions of accommodation, and allowances / reimbursement of travel, meal and accommodation expenses.

The Directive also lays down rules for assignments that exceed 12 months (18 months respectively based on the announcement of extension), and for situations where the assigned employee is replaced by another employee.

The Member States must transpose the Directive into their local legislation by 30 July 2020.

Other changes

- MPs in the Slovak Parliament prepared a **draft Act** that will impose an **obligation on retail chains to pay a special levy**. The proposed value of the levy is 2.5% of net turnover. The Act should be effective from 1 January 2019.

- Based on information published by the Ministry of Finance, Slovakia has filed with the General Council of the OECD an instrument of ratification of the Slovak Republic to **the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting** ("MLI").

The MLI has been signed by 84 countries so far and will become effective in Slovakia from 1 January 2019. MLI is an important part of the OECD action plan as regards prevention of base erosion and profit shifting ("BEPS"), and will enable Slovakia to implement selected BEPS measures more rapidly into its 63 currently valid double tax treaties without bilateral negotiations.

- The Slovak Ministry of Finance published a measure that lays down **the tax return form for the insurance tax** (to be used for the first time upon the filing of an insurance tax return for 1Q 2019).

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Ukraine

Transfer pricing: amendments to Advance Pricing Agreement procedure

Changes to the Advance Pricing Agreement procedure adopted

The Cabinet of Ministers of Ukraine has adopted changes to the procedure on Advance Pricing Agreement (hereinafter – "**APA procedure**") in controlled transactions for transfer pricing purposes*, in particular:

- ✓ the stages and duration of the APA procedure are specified;
- ✓ an option to extend coverage of Advanced Pricing Agreement (hereinafter – "**APA**") to the entire reporting period during which it was concluded and/or to reporting periods that preceded it's entry into force is introduced;
- ✓ a list of issues to be considered during the preliminary stage of the APA procedure is specified; grounds for termination of the preliminary pricing procedure by the State Fiscal Service of Ukraine (hereinafter – the "**SFS**") and the procedure for amending an effective APA are established;
- ✓ an option to extend APA for up to five years after its expiration is introduced.

It is important to remember that if terms of APA are complied with, the SFS has no authority to assess additional tax liabilities, late payment interest or penalties in regard to controlled transactions covered by the APA.

We are prepared to support you with concluding APA.

For more information on the APA procedure please see our Flash Reports: #34 dated 24 July 2015 and #7 dated 4 April 2017.

**Resolution by the Cabinet of Ministers of Ukraine No. 518 dated 4 July 2018. The Resolution becomes effective on the date of the publication in official publications.*

Ukraine signs Multilateral Convention

Ukraine signs Multilateral Convention that will change existing double tax treaties

On 23 July 2018 Ukraine's Minister of Finance signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**" or "**MLI**").

The MLI was designed to implement numerous Base Erosion and Profit Shifting ('**BEPS**') initiatives into the large network of existing double tax treaties. The MLI does not override nor substitutes the existing bilateral agreements. Instead, the MLI 'modifies' these treaties with a number of BEPS measures. Among those measure are:

- strengthening of anti-treaty abuse rules (implementing the principal purpose test);

- amendments to the permanent establishment definition;
- increased effectiveness of mutual agreement procedures and arbitration;
- introduction of measures against hybrid mismatch arrangements.

To become effective in Ukraine the MLI should be ratified by the Ukrainian Parliament and the respective law signed by the President.

The MLI allows amending the majority of Ukraine's existing tax treaties at once. However, a particular tax treaty will be covered by the MLI 'modifications' only when both parties to such treaty ratify the MLI.

Signing of the MLI is a key step towards fulfilment of Ukraine's obligation to implement the BEPS minimumstandard. We will continue to monitor the status of the MLI in Ukraine and keep you updated on the respective developments.

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