Osteuropa kompakt
Issue 143 / July/August 2017

Osteuropa kompakt

Table of Contents

Azerbaijan

List of preferential tax jurisdictions

On 11 July 2017, by the executive order of the President the list (the "List") of countries and territories with preferential tax regime was approved.

We note that the transactions with the any person registered or established in either of these jurisdictions over AZN 500,000 per person/per annum are subject to Azerbaijani Transfer Pricing Regulations.

Also, if any resident person owns directly or indirectly more than 20% or more of the shares of any company deriving income in either of above jurisdictions, he/she is liable for reporting and paying taxes on such income pursuant to Azerbaijani Controlled Foreign Corporation ("CFC") rules.

The list of countries and territories with preferential tax regime must be approved for each year.

According to the List, the following countries and territories are considered a favorable tax jurisdiction:

Andorra	Liberia
Anguilla	Liechtenstein
Antigua and Barbuda	The Maldives
Aruba	Man Island
Netherlands Antilles	Marshall Islands
The Bahamas	Montserrat
Bahrain	Monaco
Bermuda	Macau
British Virgin Islands	Nauru
Belize	Niue
Barbados	Panama
Gibraltar	Palau
Jersey	Seychelles
Dominica	St. Kitts & Nevis
Hong Kong	Samoa
Cayman Islands	St. Vincent and the Grenadines
Cook Islands	St. Lucia
Costa Rica	Turks & Caicos Islands
Guernsey	Vanuatu
Grenada	US Virgin Islands

New rules on Administration of Double Tax Treaties

Ministry of Taxes approved new Rules on Administration of Double Tax Treaties ("Rules"). The Rules have been enacted as of July 1, 2017 repealing the old rules.

The Rules introduce several notable novelties compared to the old rules. We are studying the Rules very carefully and will provide more detailed information in our next issue.

Draft law on amendments to the Customs Code

The draft law creates an opportunity to present customs notifications and application in an electronic form. Also, amendment removes the definition of cargo customs declaration (the only document that has been required for goods re-loading) from the Code.

Draft law on "Insurance on unemployment"

The proposed law establishes mechanisms improving people's social security in the labor market. According to the draft law, the 0,5% of person's salary will have to be paid to the State Social Protection Fund of Azerbaijan both by an employer and an employee for unemployment insurance. A dismissed from job person will have to register as unemployed in State Employment Service under the Ministry of Labor and Social Protection. Following the registration, insurance will compensate person's unemployment up to 6 months and during that time will try to find an appropriate job for him/her. The amount of compensation will depend on the work experience of an employee.

Establishment of State Advertisement Agency

For the purposes of advertisement placement, production and broadcasting matters regulation, the President established a new public legal entity -the State Advertising Agency (the "Agency"). The President's Administration has been instructed to prepare the Agency's draft charter and present proposals regarding those who will act as founders of the Agency.

Your local contact person:

Aysel Suleymanova
Marketing & Communications Manager
aysel.suleymanova@az.pwc.com
Tel: +994 12 497 2515

Bulgaria

Implementation of the country-by- country reporting requirements in Bulgaria

In brief

On 4 August 2017 the amendments to the Tax and Social Security Procedures Code (TSSPC) introducing the country-by-country (CbC) reporting requirements in Bulgaria were published in the State Gazette.

It is expected the new rules to enable the tax administration to undertake measures against the harmful tax practices, tax avoidance and aggressive tax planning.

New rules

In line with Action 13 of the OECD Base Erosion and Profit Shifting initiative, the amended TSSPC introduces new rules related to the mandatory CbC reporting by multinational enterprise groups (MNE Group) with consolidated group revenue exceeding EUR 750 million.

Once submitted, the CbC reports will be subject to automatic exchange between the tax administrations of the jurisdictions in which the MNE Group operates.

Specific rules are envisaged to MNE Groups with total consolidated group revenue exceeding BGN 100 million, whose ultimate parent company is a Bulgarian tax resident.

Who should report in Bulgaria?

The following entities will have the obligation to submit CbC reports to the National Revenue Agency (NRA):

- an ultimate parent company of a MNE Group, that is a tax resident in Bulgaria, if the consolidated group revenue exceeds BGN 100 million in the year preceding the reporting fiscal year;
- a Bulgarian subsidiary or a permanent establishment of a MNE Group, with consolidated group revenue exceeding BGN 1,466,872,500 in the year preceding the reporting fiscal year when:
  - the Bulgarian tax administration does not have an available mechanism to receive the CbC reports, filed by the ultimate parent entity of the MNE Group or another designated reporting group entity; or
  - the MNE Group has appointed the Bulgarian subsidiary/permanent establishment to submit a CbC report on behalf of the group (i.e. to act as a surrogate parent company) or on behalf of all EU group members, subject to the requirements envisaged in the law.

What should be reported?

The CbC reports shall be prepared in a table format containing information on revenue, profit (loss) before tax, income tax paid and accrued, share capital, accumulated earnings, tangible assets (other than cash and cash equivalents) and number of employees for each tax jurisdiction, as well as on the business activities of all group members.

The CbC reports will be filed only electronically in a format to be approved by the executive director of the NRA by 31 October 2017.

Deadlines

Filing obligation

The CbC reports should be submitted to the executive director of the NRA within 12 months of the end of the reporting fiscal year of the ultimate parent entity of the MNE Group.

The first year, for which CbC report should be filed by Bulgarian ultimate parent companies or surrogate parent entities is FY 2016.

In the other cases, the first reporting year is FY 2017.

The CbC reports, subject to automatic exchange of information, will be communicated by the NRA with other tax administrations within 15 months of the end of the reporting fiscal year of the MNE Group.

For the FY 2016 reports, the deadline is extended with 3 months (i.e. 18 months in total).

Notification obligation

A Bulgarian tax resident, part of a MNE Group shall notify the executive director of the NRA of the group entity that will submit the CbC report. The notification deadline is the last day of the reporting fiscal year of the MNE Group.

For FY 2016 the notification deadline is 31 December 2017.

Penalties

Failure to submit CbC reports will entail an administrative penalty between BGN 100 thousand and BGN 200 thousand for first violation, and between BGN 200 thousand and BGN 300 thousand for subsequent violations.

Reporting of false or misleading information will entail penalty in the amount of BGN 50 thousand to BGN 150 thousand for the first violation and BGN 100 thousand to BGN 250 thousand for subsequent violations.

Failure to fulfill the notification requirements will entail a penalty between BGN 50 thousand and BGN 150 thousand for the first violation, and between BGN 100 thousand and BGN 200 thousand for subsequent violations.

In case a Bulgarian entity of an MNE Group, that is liable to file a CbC report in Bulgaria, fails to notify the tax authorities that the ultimate parent company has refused to provide all the information required for the filing, is subject to penalty in the amount of BGN 10 thousand for first violation and BGN 15 thousand for subsequent violations.

Your local contact person:

Irina Tsvetkova Partner
Tax and Legal Services Leader
irina.tsvetkova@bg.pwc.com

Paul Tobin Partner
Tax Services
paul.tobin@bg.pwc.com

Czech Republic

Updated OECD Transfer Pricing Guidelines released

On 10 July 2017, the OECD released an update of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The revised edition of the Guidelines incorporates the changes introduced by the 2015 BEPS reports on Actions 8-10 and Action 13 that address the topics of aligning transfer pricing outcomes with value creation, transfer pricing documentation and country-by-country reporting. It also includes revised guidance on safe harbour rules. The Czech transfer pricing rules refer to the Guidelines.

Your local contact person:

David Borkovec
Lead Tax & Legal Services Partner
Tel: +420 251 152 561

Hungary

ECJ judgement on payment of default interest on late VAT refund

As you might already be aware from press reports, the European Court of Justice has established in its latest judgement in a case involving Hungary (C- 254/16) that the Hungarian provisions on payment of default interest are not in conformity with EU law.

A company experienced a protracted pre-disbursement audit, during which the refund of the VAT to which the company was entitled was delayed. Claiming that the company had failed to disclose data (or had not disclosed data as required), the tax authority imposed a default fine and denied payment of default interest on late VAT refund on these grounds.

As confirmed again by the ECJ, if refund of the overpaid VAT to the taxable person is not made within a reasonable period, the principle of fiscal neutrality of the VAT system requires that the financial losses incurred by the taxable person owing to the unavailability of the sums of money at issue should be compensated through the payment of default interest. Therefore, the Hungarian legislation on which the tax authority's position is based does not comply with EU law and principles.

This judgement makes it clear that the EU VAT Directive sets limits to protracting tax authority audits and VAT refund for several years. According to the principle of tax neutrality endorsed by EU law, VAT charged to taxpayers should be refunded within a reasonable period.

Otherwise, the tax authority should compensate financial losses through the payment of default interest. The judgement in the above case shows that certain Hungarian procedural rules are not - or not fully - in conformity with these provisions, and may not be taken into account by the Hungarian courts when making decisions. Instead, EU law must be directly applied.

In addition to the tax authority's practice, the statutory environment on which it is based also needs to be reconsidered, as the tax authority acted in compliance with Hungarian legislation when it rejected the taxpayer's request for payment of default interest. In certain cases - as in the present case -, the legislation to which the European Court of Justice objects may also seriously infringe the EU principle of proportionality (e.g. if the procedure is protracted for an unreasonable period). Legislators should take this into consideration when redesigning the rules of taxation, which is currently underway.

The above shows that in many cases Hungarian legislation and authority practice are either more stringent or are not in conformity with EU provisions. Therefore, we recommend that taxpayers who feel they have been treated unfairly as regards the above legal principles, use all means of appeal with reference to EU law with the help of experts, also for past cases.

Changes in insolvency proceedings

Collaterals, reform of the European Insolvency Regulation

When the new Hungarian Civil Code (Act V of 2013 on the Civil Code, hereinafter the „Civil Code") entered into force, it prohibited that parties secure financial claims by stipulating (i) the transfer of ownership or any other rights or (ii) the transfer of claims, or establishing an option right (i.e. fiduciary collaterals).

This provision of the Civil Code, however, adversely affected lending practices. The legislator therefore modified the provisions as of 1 July 2016 by lifting the general ban on applying fiduciary collaterals (it is still applicable to consumer contracts).

The related modifications to insolvency proceedings entered into effect as of 1 July 2017: fiduciary collaterals entitle the creditors privileged rights similar to those granted by liens and pledges. Therefore, in the course of insolvency proceedings, creditors' claims secured by fiduciary collaterals are classified as protected, whereas in case of liquidation proceedings, creditors' claims – similarly to those of pledgees – are satisfied in a privileged manner.

We must emphasize that additional rights attached to fiduciary collaterals may only be applied in the course of insolvency proceedings if, amongst others, the respective collateral is duly registered in the collateral registry or the land registry.

The amendment of the regulation might have positive impacts on lending practices as the position of creditors in insolvency proceedings will be strengthened.

As of 26 July 2017, the European Insolvency Regulation has also undergone a reform. We highlight those rules that are applicable to the appointment of the authority to initiate an insolvency proceeding: in order to protect creditors, the options of the debtor to modify the center of main interest (COMI) are limited, hence the appointment of the acting court may not be manipulated. The new rules also introduce group insolvency proceedings. This will increase the efficiency of insolvency proceedings involving different members of a group of companies. In turn, this will increase the chances of rescuing the group as a whole.

Tax incentive for energy-efficiency investment projects

The highly anticipated Government Decree on the details of the corporate tax incentive for investment projects aimed at energy efficiency has been published. We summarize below the key points of the Decree.

Government Decree No. 176/2017 (VII. 4.) ("Decree") on the implementing rules of the tax incentive for investment projects aimed at energy efficiency was published on 4 July 2017. The Decree settles procedural issues regarding the certification of investment projects' energy efficiency, and how the tax incentive may be used.

Projects become eligible for the tax incentive through certificates issued by energy auditors or auditing organisations listed by the Hungarian Energy and Public Utility Authority.

Before launching a project, the energy auditor or energy auditing organisation provides the taxpayer with preliminary audit information, with which the rate of possible savings on the planned investment can be calculated. The energy savings have to be measured considering the baseline, regulations, or in exceptional cases, against the energy savings of a similar asset with the lowest energy efficiency available on the market.

After the project is put into operation, a final energy audit is prepared and the auditor issues the certificate. The content requirements for the certificate are included in the Decree.

When applying the tax reduction for the first time, taxpayers must include the following in their corporate tax return for each project: the name of the project, the date and place it goes into operation, the date of the certificate issued, the eligible costs of project elements and their historical cost, the total eligible costs, a declaration proving that the taxpayer did not apply for other aids aimed at energy efficiency, the amount of state aid used that has to be taken into consideration for aid cumulation, and the total energy savings measured in GJ. In subsequent tax returns, taxpayers must include the tax year the reduction was first used, the date and place the project went into operation, and the total amount of tax incentives received at present value.

The tax incentive may only be claimed in connection with projects aimed at energy efficiency launched after 1 January 2017, and only for eligible expenses incurred after the start of the project.

The Government Decree also includes a transitional provision for those who launched the project after the amendment to the corporate tax act has entered into force, but before the Government Decree was published. In this case, the preliminary audit information can be provided to the taxpayer after the project was launched.

In light of the above, we recommend reviewing whether planned investments are eligible for the energy efficiency tax incentive. The tax incentive is up to 30% of eligible costs (but not more than the HUF equivalent of EUR 15 million at present value), and can be used at the earliest in the tax year in which the project became operational, and in the following five tax years. The project must be operated for at least five years.

The owner pays!

Decision of the European Court of Justice concerning environmental damages

In its judgment No. C-129/16, the European Court of Justice reinforced the Hungarian regulation that partially breaks the "polluter pays principle". The liability for environmental pollution will not only lie with the polluter but will also be assigned to the actual owner of the real property on which the pollution was produced.

The decision is of precedential nature, as the European norms (Directive 2004/35/EC) define environmental liability primarily on the basis of the "polluter pays principle".

In comparison to the European rules, the Hungarian regulation applies a stricter approach in terms of liability for environmental pollution. The Hungarian provisions, besides the "polluter pays principle", bring the "owner pays principle" to the forefront, in other words, liability for the environmental pollutions lies not only with the actual polluter but the owner of the real property as well.

In practical terms, it means that in case of environmental pollution, the authorities would primarily hold the owner of the real property liable. Although the Hungarian regulation allows the owner of the real property to exculpate itself from liability if it specifies who produced the pollution, in practice, making use of this opportunity is barely possible.

The European Court of Justice is of the view that although the Hungarian regulation is stricter than the European rules, it does not contradict the European norms. The Court however noted that the penalty imposable for the environmental pollution must be proportional to the purpose intended to be achieved through the penalty.

Liability for environmental pollution may imply spending billions (for the imposed obligation of fact finding, indemnification, soil replacement, monitoring); in addition, the owner of the real property shall not only act and pay for the expenses in relation to its own real property but the surrounding polluted areas as well.

This factor poses substantial risks to M&A transactions and other real property sale and purchase transactions, but even in simple lease agreements, proper legal guarantees must be laid down to ensure that legal risks are mitigated.

Your local contact person:

Tamás Lőcsei
Partner, Service Line Leader
E-mail: tamas.locsei@hu.pwc.com
Tel: +36 1 461 9358

Poland

Works on amendment to the Polish CIT Law and PIT Law announced by the Polish government

In brief

The Polish government announced works on amendment to the Polish CIT Law and PIT Law aimed at further limitation of base erosion and profit shifting practices. The amendment will i.a. partly implement provisions of the EU Anti-Tax Avoidance Directive in Poland. Works on the amendment are at early legislative stage within the government and there is no indication when any draft bill will be presented nor when new regulations may come into force. The deadline for implementation of the Directive is generally 1st January 2019.

Overview

Although the draft bill has not been published yet, the general note released by the government states that the amendment should ensure that profits are taxed where economic activities generating them are carried out and where value is created.

The amendment will focus on the following instruments which were identified in some cases as used for tax planning:

- setting-off tax losses created artificially on capital transactions against revenue from actual business operations;
- excessive use of debt financing;
- transfer of income to jurisdictions with preferential tax treatment;
- revaluation of assets, in particular intangibles such as trademarks, without reporting any revenue;
- use of Polish tax capital groups for tax avoidance.

It was announced that the above items will be addressed by:

- separation of income / loss sourced from capital transactions from other income / loss sources of a taxpayer;
- modification of current thin capitalization restrictions and CFC rules, to implement the EU Anti-Tax Avoidance Directive's provisions in this respect;
- amendments to regulations on Polish tax capital groups;
- limitation of deductibility of costs borne on certain intangible services;
- introduction of minimum income tax level for taxpayers holding substantial real estate (shopping centers are explicitly mentioned in the note).

Apart from the above, no information regarding new regulations has been presented so far.

Our view

Although the government's note is very brief, it may by concluded that the new regulations should reflect wider EU / OECD works and initiatives aimed at prevention of aggressive tax planning, with additional instruments stemming from Polish tax practice.

At this stage it is difficult to establish how the new regulations may influence income taxation in Poland as no details / wording have been presented. Nevertheless, further developments in this respect should be closely observed as impact, in particular for multinational companies investing in Poland, may be significant.

Important changes in PIT taxation of employee incentive programs based on shares and derivatives - announced by the Polish government

In brief

Recently the Polish government published draft bill amending PIT Act which includes important changes in taxation of the income derived, inter alia, under employee incentive programs based on shares and derivative financial instruments. Below you can find a short summary of the most important planned changes, which are likely to enter into force on 1st January 2018.

Changes in share-based incentive programs

The proposed amendments to the PIT law clarify the conditions for deferring income tax on the acquisition of shares to the moment of their sale. This preference is applicable only to taxpayers who acquire the shares of the joint-stock companies which have their registered office on the territory of the European Union or the European Economic Area (i.e. tax deferral is still not applicable to the limited liability companies).

The most important changes applicable from 2018 are:

- Introduction of definition of the incentive program;
- The group of potential beneficiaries will be limited to employees or individuals who receive income from civil law contract from activities performed personally;
- The incentive program must be based on a resolution of the general meeting of shareholders (currently the shares, not the program, must be granted by a resolution);
- Tax deferral will be applicable to eligible persons who acquire the shares directly or as a result of exercising derivative financial instruments or other property rights;
- The preferences will be restricted to incentive programs organised directly by a joint-stock company (with which the participant has entered into contract of employment or a civil law contract) or by a joint-stock parent company.

Changes in programs based on derivatives

According to the draft amendments to the PIT Act, income from the exercise of rights in securities or derivative financial instruments obtained as a result of the acquisition of these rights as a benefit in kind or unpaid benefit, is recognised as a source of income under which this benefit was obtained.

What does it mean to me?

The proposed amendments to the PIT Act may cause a change in tax qualification of income received from 2018 under incentive programs.

If tax deferral conditions are not fulfilled, income from acquiring the shares will be subject to progressive taxation (18% and 32%) instead of the 19% tax applicable to capital gains.

As a result, some companies may have tax payers' obligations.

In case of income derived under incentive programs based on derivative financial instruments or securities, if the above mentioned changes enter into force, such income will be no longer subject to the 19% tax applicable to capital gains, instead a progressive taxation (18% and 32%) will apply.

What action should be taken?

In order to properly prepare for the upcoming changes in the PIT law, it is now worthwhile to analyse provisions of the current incentive programs organised by companies. Both Polish and foreign entities, which offer employees part of variable remuneration in a form of shares or derivative financial instruments, should analyse tax qualification of the income received under the new rules. This is also a good time to consider introducing a new incentive program in your company or changing the existing one.

We would like to point out that some of the previously obtained tax rulings may lose their protective power. After the presented amendments enter into force, it may be necessary to apply for a tax ruling for a company or a taxpayer in the scope of PIT income from the old or new program.

Your local contact person:

Iwona Patyk
Tel: + 48 502 18 4511
iwona.patyk@pl.pwc.com

Agata Oktawiec
Tel: + 48 502 18 4864
agata.oktawiec@pl.pwc.com

Romania

Law 177/2017 amending and supplementing the Fiscal Code

In brief

Law 177/2017 approving Government Emergency Ordinance no. 3/2017, amending and supplementing Law no. 227/2015 governing the Fiscal Code, has been recently published.

In detail

Law 177/2017, in effect from 24 July 2017, brings the following changes:

Title II – Corporate income tax

Reinvested profit

This facility is now applicable also to taxpayers that choose to become corporate income tax payers under the terms of Art. 48 par. 52 of the Fiscal Code (by subscribing a share capital of a minimum of RON 45,000).

Expanding the conditions for the deductibility of certain expenses on inventory goods or depreciable fixed assets found missing or damaged

New requirements / situations have been added to harmonise tax legislation with Law 217/2016 on reduction of food waste.

Expenses on write off of food or animal by-products not intended for human consumption or agri-food products unfit for human or animal consumption are deductible, provided that certain conditions on the reduction of food waste are met.

Title III – Taxation of micro-enterprise income

The provisions of the Fiscal Code related to the definition of micro-enterprises also apply to Romanian legal persons falling under Law no. 170/2016 on the tax on specific activities. According to the new provisions, the application of the micro-enterprise income tax system prevails over the provisions of Law no. 170/2016.

Rules for applying the micro-enterprise income tax system

Romanian legal persons falling under Law no. 170/2016 on the tax on specific activities and which as at 31 December 2016 generated revenues between EUR 100,001 and EUR 500,000, and which also qualify for the application of the micro-enterprise income tax system, are required to pay the micro-enterprise income tax starting with August 2017.

The switch in the tax system must be reported to the territorial tax authorities by 25 August, in accordance with the provisions of Law no. 207/2015 on the Fiscal Procedure Code.

By way of derogation from the legal deadline for the calculation, reporting and payment of the respective tax on specific activities / corporate income tax the deadline is 25 August 2017 (instead of 25 July 2017), and the first reporting period covers is 1 January 2017 - 31 July 2017 (instead of 1 January – 30 June 2017).

The taxable base for micro-enterprise income tax

Taxpayers now have the option to deduct from the tax base for micro-enterprise income tax purposes the income from provisions, depreciation adjustments or impairment losses that were set up while the Romanian legal person was subject to micro-enterprise income tax.

Title IV – Personal income tax

Non-taxable income

Subscription-based medical services - under Law no. 95/2006 - covered by employers for their employees are non-taxable income, providing that it is capped at the RON equivalent of EUR 400 per year.

Deductions for salary income tax purposes

For purposes of deduction from the gross salary income of voluntary health insurance premiums and/or subscription-based medical services, under Law no. 95/ 2006, which are covered by employees and are capped at EUR 400 per year, the insurance contracts/medical subscriptions may cover medical services provided to employees and/or to their dependent(s), as defined by the Fiscal Code.

Tax exemption for specific types of income

The procedure for the application of the income tax exemption to fixed yearly income brackets in the case of individuals, i.e. sole proprietors, individual enterprises, family enterprises, in respect of production sold to/through agricultural cooperatives, is to be approved under an order by the ANAF president as endorsed by the Ministry of Agricultural and Rural Development.

Definition of income derived from other sources

Statutory retirement age allowances, granted as per Law no. 357/2015 supplementing Law no. 96/2006 regulating the Status of deputies and senators, and monthly allowances granted to persons who served as head of State, as per Law no. 406/2001 granting certain entitlements to persons who served as head of State, are now included in the category of income derived from other sources.

Tax calculation for specific types of income from other sources

Income derived by individuals engaged in production activities, trade, provision of services, liberal professions, as well as income from intellectual property rights, agricultural, forestry and fishery activities (others than those listed in the Fiscal Code as independent activities and agricultural, forestry and fishery activities), will not be subject to the income tax withholding obligation applicable to payers of the income, providing that the individuals produce proof of their fiscal registration for these activities, by submitting to the payers of the income their self-statement at the time the income is paid.

Rules regarding unincorporated partnerships

New provisions have been added to regulations concerning unincorporated partnerships, to also include partnerships between individuals and legal entities subject to taxation under Law no. 170/2016 regarding the taxation of specific activities. In such cases the legal entity distributes to the individual a net income/net loss proportional to the participation share which corresponds to its contribution, determined in accordance with Title II "Corporate Income Tax" of the Fiscal Code.

Title VII – Value added tax

Art. 287 on the adjustment of the taxable base for Value Added Tax purposes has been amended.

For supplies of goods or services whose value cannot be recovered following the enforcement of a reorganisation plan admitted and confirmed under a court ruling/bankruptcy of the beneficiary, the VAT adjustment may be performed within five years from 1 January of the year following the court ruling on the reorganisation plan/ completion of the bankruptcy proceedings.

Following the amendments to art. 316 regulating the registration of taxable persons for VAT purposes, the criteria to be met by operators for VAT registration purposes (i.e. obligation to support intent and capacity to carry on economic activities) have been replaced with fiscal risk assessment criteria.

These criteria will be established under an order by the ANAF president.

Title VIII – Excise duties and other special taxes

Competent authority

The Commission/territorial commissions in charge with authorising operators of goods subject to excise duties are dissolved.

Authorisation of tax warehouses, registered consignees/consignors and authorised importers is now the responsibility of the regional directorates for public finance. The relevant procedure and requirements will be regulated in an order by the Minister of Public Finance.

The challenge settlement division within the Ministry of Public Finance is the competent body in charge with settling challenges lodged by economic operators following:

- rejection of an application for an authorisation for a tax warehouse, registered consignee/consignor/ authorised importer;
- revocation of an authorisation for a tax warehouse, registered consignee/consignor/ authorised importer;
- annulment/suspension of a tax warehouse authorisation.

Excise duty level

Following the amending of Annex No 1 from Title VIII of the Fiscal Code, the excise duty applicable in 2017 on cigarettes has increased from RON 435.58/1,000 cigarettes to RON 439.94 lei/1,000 cigarettes. The specific excise duty (applicable until 31 March 2018, inclusive) is increased from RON 329.222 /1,000 cigarettes to RON 333.582/1,000 cigarettes.

Annex No 1 also provides for the excise duty applicable as of 1 January of each year for the period 2018 – 2022. According to the Annex, the excise duty on cigarettes, fine-cut smoking tobacco intended for the rolling of cigarettes and other smoking tobaccos will be increased on an annual basis.

[Source: Law 177/2017, published in the Official Gazette no 584, on 21 July 2017]

The takeaway

The main amendments and clarifications brought by Law 177/2017:

Title II – Corporate income tax

The switch in the tax system must be reported to the relevant tax authorities by August 25, and the first period for the calculation, reporting and payment of the respective tax on specific activities, and of the corporate income tax due by these taxpayers, is 1 January 2017 - 31 July 2017.

Title III – Taxation of micro-enterprise income

Where requirements for the application of the micro-enterprise tax system are fulfilled, this system will prevail over the provisions of Law no. 170/2016 on the tax on specific activities.

Starting August 2017, the micro-enterprise income tax system applies to legal entities that fall within the scope of Law 170/2016 on the specific tax and that also meet the requirements for applying the micro-enterprise income tax system.

Title IV – Personal income tax

Medical subscriptions covered by employers for their own employees are exempted from income tax, subject to certain conditions.

For purposes of calculation of the taxable income, insurance contracts/medical subscriptions may cover medical services provided to employees and/or to their dependent(s).

The obligation to withhold the income tax at source has been lifted, subject to certain conditions, in respect of specific types of income derived by individuals, which do not fall under the category of income from independent activities or income from agricultural, forestry and fishery activities.

Title VII – Value added tax

VAT related to uncollected debts may be adjusted within five years starting with 1 January of the year following the court ruling on the reorganisation plan/ bankruptcy proceedings.

The obligation to support willingness and capacity to conduct economic activities, for purposes of VAT registration of companies / economic operators, have been removed and replaced with a VAT risk analysis criteria.

Title VIII – Excise duties and other special taxes

The main amendments to the Fiscal Code in excise duty matters include: a new competent authority in charge with authorising economic operators of products subject to harmonised excise duties, and the increase of the excise duty (the specific excise duty included) applicable in 2017 on cigarettes.

The amendments to excise duties entered into force on 24 July 2017.

Fiscal Code Amendments regarding the calculation base for social and health insurance contributions

In brief

Government Ordinance no. 4/2017 amends Law 227/2015, regarding the Fiscal Code, on the employer calculation base for social insurance contributions and health insurance contributions.

In detail

Calculation base for social insurance contributions and health insurance contributions due by employers and those treated as such

For employers and those treated as such, the monthly calculation base for social insurance contributions and health insurance contributions on salary income, and income treated as such, which is lower than the minimum gross salary and paid based on a part-time or full-time individual employment contract is set at the level of the minimum gross salary valid for the month for which such contributions are due, based on the number of working days the employment contract was active in that month.

Exceptions

The new amendments do not apply for the following employee categories:

a) Pupils and students, up to the age of 26 years old, in formal education;

b) Apprentices, as defined by law, up to the age of 18 years old;

c) Disabled people who, as defined by law, can perform employment activities for under 8 hours per day;

d) Individuals who retired at the age limit under the public pension system, with certain exceptions;

e) Individuals with monthly salary income based on two or more individual employment contracts, if the total amount of salary income is at least equal to the minimum gross salary.

For the purpose of applying the abovementioned exceptions, employers have to request justifying documents from individuals in categories a, c and d. The Public Finance Minister is to issue a Public Order establishing the application procedure for category e individuals.

The provisions of this ordinance come into force as of 1 August 2017 and apply to income obtained for August 2017.

[Source: Government Ordinance no 4/2017 published in the Official Gazette. 598/25.07. 2017]

The takeaway

- The monthly calculation base for social insurance contributions and health insurance contributions, due by employers and those treated as such, is set at the level of the minimum gross salary for individuals whose monthly gross salary income is below the minimum gross salary.
- The new amendments apply to certain categories of employed individuals.

Your local contact person:

Anda Rojanschi, Partner
Tel: +40 21 225 3586

Russia

New tax incentives for R&D investments

In brief

On 12 July 2017, the Federation Council approved updated rules on taxation of research and development (R&D).[1] The respective bill awaits the signature of the Russian President.

The bill does not involve any revolutionary changes. A number of provisions widely discussed in the State Duma were not included in the final draft. In particular, one such provision proposed to add the assignment of exclusive rights or the granting of rights to use certain intangible assets in Russia to the list of non-VATable transactions.[2] It was also proposed to allow applying multipliers in calculating the amortisation of intangible assets and reducing the profit tax rate for exporters of intellectual property rights (in other words, introduction of a patent box regime in Russia).[3]

At the same time, those companies that are involved in R&D or that own intangible assets will certainly find some favourable changes. Thus, expenses on acquiring intangible assets used solely for R&D purposes or royalties for using corresponding IP rights will be recognised for tax purposes with a multiplier of 1.5.

In detail

Below, we outline the most significant changes.

- Intangible assets identified during inventory are not recognised as income

The bill states that income in a form of IP rights identified during inventory from 1 January 2018 to 31 December 2019 is not taxed.

- Expanded list of R&D expenses that can be recognised with the multiplier of 1.5

The list was enlarged to include the following:

✓ incentive payments specified in Article 255.2 of the Russian Tax Code (i.e. bonuses and extra charges for R&D staff) and accrued insurance contributions;

✓ expenses on the acquisition of exclusive rights for inventions, utility models or industrial designs, or the rights to use such IP under licensing agreements, if they were solely used for R&D purposes (the provision is in force until the end of 2020).

To recap, application of the 1.5 multiplier to R&D expenses is the only case when the recognised expenses may exceed the actual expenses of a taxpayer.[4] This measure was

[1] http://www.council.gov.ru/events/news/82318/ and http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=34564-7&02

[2] Under Article 149.2.26 of the Russian Tax Code, this exemption applies to inventions, utility models, industrial designs, computer software, databases, integrated circuit layout designs and know-how. It was proposed to include selective breeding results, as well as works of science, literature and art in the list.

[3] According to the beneficial tax treatment of income related to intellectual property, only part of the income is subject to taxation and/or is eligible for reduced tax rates. The relevant authorities suggested introducing this regime when considering the bill during the second reading (in particular, see Letter of the Federal Intellectual Property, Patent and Trademark Service (Rospatent) No. 01/19- 18482/08 of 6 February 2017).

[4] The list of R&D for which expenses may be recognised with the multiplier is provided in Russian Government Resolution No. 988 of 24 December 2008.

introduced to support domestic inventions and development, and the suggested amendments will only add to the effect.

- The 1.5 multiplier will apply to those expenses that form intangible assets and will be recognised through amortisation

Under the new version of Article 262.7 of the Russian Tax Code, the 1.5 multiplier can be applied not only for the recognition of R&D expenses in the period when research is completed, but also if the expenses are included in the initial cost of the amortised intangible assets. In this way, whether the corresponding expenses are recognised on a one-off basis or through amortisation will not limit the ability to recognise them in an amount 1.5 times larger than the taxpayer's actual expenses.

- Reduced administrative burden on R&D companies

According to the Russian Tax Code (Article 262.8), taxpayers applying the 1.5 multiplier must submit a report on the completed R&D to the tax authorities together with their tax returns. It is proposed to set out that when R&D is registered in a special web-site defined by the Russian Government5, this report will not be required.

The takeaway

We expect that the President will sign the bill into law.

Please note that the Ministry of Finance is currently reviewing the tax benefits to keep only those benefits that are efficient and functioning. We assume that the adoption of clarifications on 1.5 multiplier means that this benefit will remain.

It is advisable that taxpayers take into account changes discussed above when estimating their tax burden for the next year.

Government plans for tax reforms over a three-year period

In brief

This year, the Russian Ministry of Finance will prepare a united document outlining the main priorities for Russian budgetary, tax and customs policies for 2018-2020. The draft document is available on the website of the State Duma Budget and Taxation Committee.[5] As expected, it will be submitted to the State Duma this autumn.

The document contains some important proposals including:

(1) decrease of social contributions and increase of VAT (the much-discussed "22/22 manoeuvre", although the draft document does not specify any particular rates);

(2) introduction of investment tax deduction (taxpayers would apply it at their discretion instead of the existing rule of depreciation);

(3) introduction of a new tax on additional income for pilot projects of oil-producing companies instead of the Mineral Resource Extraction Tax (MRET) and export duties (this measure is designed to shift the main tax burden to later periods of oilfield development).

Please note that the draft document does not mention introduction of a progressive personal income tax scale.

[5] http://komitet-bn.km.duma.gov.ru/upload/site7/ONBNiTTP_v_GD_03.07.17 (2) .pdf

In detail

The Ministry of Finance emphasised that the reforms would ensure tax stability and predictability. However, the draft version of the Policies proposes a number of important changes.

Proposed changes to the tax law

- Introduction of an investment tax deduction to replace depreciation (optional for taxpayers). The Ministry of Finance said the deduction would include: (1) a reduction of profits tax on amount of investments in fixed assets (the costs of buying or modernising fixed assets in 3-7 depreciation groups);(2) each Russian constituent region would decide whether or not to introduce the tax deduction; and (3) the maximum deduction would be equal to 50% of a facility's cost.
- Introduction of a new tax on additional income on pilot projects in the oil and gas sector instead of the MRET and export duties. It would shift the main tax burden to a project's payback period when the entity is in a better position to pay taxes.
- Polishing of CFC rules (in respect of reporting and loss carry forward rules).
- Polishing special tax regimes, including to the single agricultural tax, which has led to numerous instances of abuse, and to the patent system in respect of taxation of rental income.
- Changes to the current rules for calculating the excise tax (on ethyl alcohol in particular).
- Revisiting the provisions on personal income tax (on operations involving shares and interest, including those associated with exiting an organization or its liquidation).
- Finalising the "stock-taking" of tax benefits to keep only efficient and functioning benefits, introduction of a moratorium on any new tax benefits starting from 2018 (in respect of taxes payable to regional and local budgets).

Proposed improvements to tax administration

Requirement for all retailers to use cash registers that report data to the Russian Federal Tax Service (FTS) in on-line regime (starting from 1 July 2018).

De-offshorisation measures including development of a "mechanism" to enable the Russian FTS to collect three-tiered documentation of transfer pricing (provided under the BEPS Action 13 provisions), and information from financial market entities about their clients, beneficiaries and/or controlling persons.

Use of big data technology "to expand the ammunition of the tax administration" (a quote from the draft document).

The takeaway

It is time to assess the influence of proposed changes on your business. Let's keep track of the Policies development in the Russian State Duma.

Bill on three-tier transfer pricing documentation and the automatic exchange of information sent to State Duma

In brief

The State Duma will consider a bill that requires the provision of three-tier transfer pricing documentation.[6]

The bill states that organisations that are members of MNCs should provide three-tier reporting to tax authorities (country-by-country reports (CbC), global and national documentation). Tax authorities will automatically exchange the CbC reports of such MNCs to prevent abuses of the tax code. It should be noted that tax authorities can already exchange information on transfer pricing matters under the current DTTs and in accordance with the OECD's Convention on Mutual Administrative Assistance in Tax Matters.

For the purpose of the bill, an MNC is defined as a group of organisations (foreign structures with no separate legal identity), related through ownership and/or control, for which consolidated financial statements are prepared and with at least one company being a Russian tax resident or a foreign company that is subject to taxation in Russia due to the incorporation of its permanent establishment in Russia.

We reviewed the bill during public discussions[7] and analysed its business impact. During both public discussion and its consideration by the Russian Government, the bill was subject to revision. Thus, the bill available on the State Duma website also differs from the version previously published on the federal portal for draft laws and regulations. We believe the following key amendments to the bill are worth mentioning:

- The effective date of the law has been revised. The law will apply from 2018 (in respect to financial years beginning in 2018) instead of from this year. Yet companies have the possibility of voluntarily disclosure of information regarding prior periods that began before 2018 (this might even be required, e.g. if a CbC report must be prepared and submitted under the laws of a foreign jurisdiction where the MNC's subsidiaries are located starting from periods before 2018).
- The deadline for the submission of documents (global documentation) has been revised.
- Failure to provide transfer-pricing documentation entails penalties for RUB 100,000 for any type of documentation (failure to provide notification of being a constituent entity of an MNC entails a penalty of RUB 50,000).

The new requirement will apply to MNCs with a total revenue over RUB 50 billion under consolidated financial statements for the previous financial year, whose ultimate parent entity is a Russian tax resident, or to MNCs whose revenues are over a certain amount set out by the laws of the foreign country in which the ultimate parent company is a tax resident.

The new requirements for submitting three-tier documentation on transfer pricing to Russian tax authorities are outlined below.

[6] http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=231414-7
[7] http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2016-44.html
http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2017-16.html

In detail

The bill stipulates that organisations that are members of MNC should provide three-tier information on transfer pricing. An MNC is a group of organisations (foreign structures with no separate legal identity) related through ownership and/or control, provided that at least one company is a Russian tax resident or a foreign company that is subject to taxation in Russia due to the incorporation of its permanent establishment in Russia, and consolidated financial statements are prepared for this MNC.

The requirements for the content of three-tier documentation are in line with the OECD guidelines published as part of BEPS Action 13.[8]

The bill sets out the following requirements for the provision of three-tier documentation for MNCs:

	Notification about membership in an MNC	CbC report	Global documentation (Master File)	National documentation (Local File)
Who should file?	Russian taxpayers that are members of MNC (one notification with information about all members of MNC can be submitted by the ultimate parent entity or an authorised member of MNC, as well as by an MNC member that is a Russian resident on which such an obligation has been imposed)	An MNC's ultimate parent entity or an authorised member A Russian taxpayer that is a member of an MNC	Russian taxpayers that are members of MNC	Russian taxpayers that are members of MNC
Submission Deadline	Within eight months of the end of a financial year of an MNC's ultimate parent company	Within 12 months following the end of a financial year or the last day of a period for which consolidated financial statements of an MNC would be prepared. Information can be requested no earlier than three months after the date of the request receipt by the taxpayer in the cases stipulated by the bill	Within three months of receiving a request from the Federal Tax Service, but no earlier than 12 months and no later than 36 months following the end of a financial year or the last day of a period for which consolidated financial statements of an MNC would be prepared	Information can be requested after 1 June of the year following the calendar year when the controlled transactions were performed
Exemption of MNC members from submitting of the reporting	When the ultimate parent entity, an authorised member or an MNC member on which such an obligation has been imposed submits a notification in regard to an MNC member	When the ultimate parent entity or an authorised member submits a CbC report, provided there is an automatic exchange with the relevant jurisdiction (if applicable), etc.		
Contents	Name of organisation, OGRN, INN, address, details on the ultimate parent entity and the authorised member, date of the financial year-end of the ultimate parent entity, etc.	1. Summary information on members in one jurisdiction: revenues (with a breakdown into transactions with MNC members and associated enterprises, and transactions with other parties); pre-tax profit (loss); income tax assessed and actually	MNC ownership structure, a description of its activities (including a description of the supply value chain), information on intangible assets, on intercompany financial activities and other	Information on a member's activities, a description of the controlled transaction, including the estimated market price range, data on functions of the transaction parties (assets and risks) and

[8] http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report- 9789264241480-en.htm

	Notification about membership in an MNC	CbC report	Global documentation (Master File)	National documentation (Local File)
		paid; charter capital; accumulated earnings; number of personnel; amount of intangible assets 2. Identification information on each MNC member with specification of the main types of business activity	information, including consolidated financial statements and information on pricing agreements and/or rulings received from the tax authorities	other information stipulated by Article 105.15 of the Russian Tax Code. The following information should be provided as well: the taxpayer's management structure, activity and market strategy; the rationale behind agreeing to a certain market price; the auditor's opinion on financial statements; etc.
Financial data source		Consolidated financial statements or accounting and/or tax records generated in accordance with the rules set out in the country of an MNC member's tax residence, or any other information that ensures complete and reliable data in CbC reports		
Form	Electronic (the format is approved by the Federal Tax Service)	Electronic (the format is approved by the Federal Tax Service)	Any	Any
Language	Russian	Russian Information can be provided in a foreign language if the ultimate parent entity is not a tax resident in Russia A taxpayer can also provide a document in a foreign language in addition to a document in Russian	Russian A taxpayer can also provide a document in a foreign language in addition to a document in Russian	Russian Information can be provided in a foreign language in addition to a document in Russian
Currency of reported cost indicators		Rouble Cost indicators may be reported in the currency of the consolidated statements	Rouble Cost indicators may be reported in the currency of the consolidated statements	Rouble Cost indicators may be reported in the currency of transactions
Penalty for failure to provide information (not applicable to cases identified in relation to 2018-2020; except for TP documentation prepared under Article 105.15 of the Russian Tax Code)	RUB 50,000 (the penalty also applies when inaccurate information has been provided)	RUB 100,000 (the penalty also applies when inaccurate information has been provided)	RUB 100,000	

We will monitor the discussion on the bill and give you updates on any amendments.

The takeaway

Please note that new requirements for the provision of three-tier documentation on transfer pricing will soon come into effect for MNC members. We think it is reasonable to review the new regulations and prepare for filing global and national documentation, and drafting CbC reports.

The codification of the unjustified tax benefit from the Russian FTS perspective

In brief

The Russian Federal Tax Service (the "FTS") has explained in a letter[9] to territorial tax authorities how the provisions of article 54.1 of the Russian Tax Code (the "RTC") should be applied.

The letter points out that tax authorities may challenge the received tax benefit only if they can confirm that the transaction has not been carried out by a taxpayer's counterparty and that the taxpayer has failed to meet the conditions allowing them to reduce their tax base or the amount of tax payable (the conditions are set by item 2 of Article 54.1 of the RTC).

Furthermore, the FTS calls on tax inspectorates to abandon their formal approach during tax audits when trying to identify taxpayers that are abusing their rights.

In detail

To recap, Federal Law No. 163-FZ of 18 July 2017 describes the signs of good faith on the part of taxpayers.[10] Expenses can be recognised and taxes can be refunded if:

(1) the primary goal of the transaction is neither the non-payment (underpayment) of nor the offset (refund) of the tax amount, AND

(2) the obligation for the transaction has been met by a counterparty and/or the person who is responsible for executing the transaction under the contract or in accordance with the law.

Please note the following important messages in the FTS' clarifications:

- The above conditions must be met at the same time;
- Tax authorities are required to prove that a taxpayer has intentionally created conditions aimed solely at receiving a tax benefit in the form of an underpayment (an indicator of this may be, for example, coordinated activity between the parties to the transaction)[11].

The letter also instructs lower-level tax authorities to report every three months on the application of the new legislation. Such an aggregation of practices could give an impetus to developing a better-reasoned approach for use by tax authorities in the course of tax audits.

---

[9] Letter No. CA-4-7/16152@ of 16 August 2017
[10] We discussed this legislative initiative in July
http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2017-27.html
[11] The FTS and the Investigative Committee of the Russian Federation have prepared guidelines on how to identify the intentional actions of a taxpayer
http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2017-39.html

Interestingly, the letter mentions the second criteria resultant from the court practice, the criteria being that taxpayers must take due care and prudence when selecting a counterparty. The FTS further commented that tax authorities should exclude formal approaches during audits.

Hopefully, the above information means that situations in which a taxpayer is denied an expense refund solely because their counterparty has not paid the appropriate taxes will become a thing of the past. We believe that tax authorities[12] will continue to check (at least at first) whether taxpayers have taken due care and caution, and have met the conditions set forth in Article 54.1 of the RTC.

It should be noted that according to the FTS, tax authorities must apply the provisions of Article 82 of the RTC (on the burden of proof of non-compliance with the criteria set by Article 54.1 of the RTC) when conducting tax audits assigned after 19 August 2017.

How does one deal with the provisions of Article 54.1 of the RTC? Probably, as is the case with the new rules set forth in Article 82 of the RTC, Article 54.1 of the RTC may be applied retroactively only in cases in which a taxpayer's liability is reduced (its position is improved in any other way). In other cases – for example, in which tax authorities refer to the new conditions during tax audits for periods up to 19 August 2017 and deny the recognition of expenses, referring to Article 54.1 of the RTC in regards to periods prior to the specified date – there are no legal grounds for the application of the new provisions. However, nothing will prevent tax authorities from applying the provisions of Resolution No. 53 of the Plenum of the Supreme Arbitrazh Court of Russia to such periods.

Rules on provision of information by legal entities regarding their beneficial owners have been adopted

Summary

On July 31, 2017 the Russian Government adopted Regulation (the "Regulation") approving the Rules on provision of information by legal entities regarding their beneficial owners and measures taken to obtain information on their beneficial owners provided by the Federal Law "On countering the legalization of illegal earnings (money laundering) and the financing of terrorism" by the requests of authorized state bodies (the "Rules").

The Rules establish the procedure and time limits for provision of the respective information.

The Regulation also requires the Federal Tax Service and the Federal Financial Monitoring Service to elaborate within 180 days legislative acts for implementation of the provisions of the Regulation.

Detailed overview

The Federal Law dated August 07, 2001 No. 115-FZ "On countering the legalization of illegal earnings (money laundering) and the financing of terrorism" (version of July 29, 2017) (the "AML Law") requires the legal entities to provide the documented information regarding their beneficial owners or the measures taken to identify them upon requests of the Federal Tax Service (its territorial bodies) and the Federal Financial Monitoring Service (its territorial bodies) (the "Authorized bodies").

[12] For more details, please see the FTS' instruction letter for territorial tax authorities, No. ЕД-5-9-547/@ of 23 March 2017, and our flash report on it: http://www.pwc.ru/en/tax-consulting-services/fiscal/fiscal-overview-june-3-80.html

Please note that for the purposes of the AML Law the beneficial owner shall mean an individual that ultimately, directly or indirectly (via a third party) owns a legal entity (has a major share in the capital of more than 25 percent) or can control its activities.

In accordance with the AML Law, the legal entities shall provide the following information regarding their beneficial owners:

- full name;
- citizenship;
- date of birth;
- personal identity document details;
- residential (registration) address or address of temporary residence;
- taxpayer identification number (if any)

  and additionally for the foreign citizens:

- migration card details,
- details of document confirming the right to stay (live) in Russia.

Under the Rules, the Authorized bodies may send their requests in electronic form or in hard copy.

Once a legal entity receives a request, it shall provide the information within 5 working days of the date of receipt of the request. The information shall be provided as of date indicated in the request.

In case a legal entity finds out the incompleteness, inaccuracy or mistakes, the legal entity shall provide the revised information within 3 working days of the date when this fact is revealed.

The electronic message send by a legal entity may not be accepted due to inconsistency of format and structure, lack of signatures, recording device defect.

In case of non-acceptance of the electronic message, the Authorized body shall send the notification of non-acceptance within 3 working days of the date of receipt of the message. Once the legal entity receives the notification of non-acceptance, it shall resend the electronic message within 3 working days of the date of receipt of notification.

Please note that breach of the obligation by a legal entity to identify, update, store and provide documented information regarding its beneficial owners or measures taken to obtain the information regarding its beneficial owners upon request of the Authorized body can result in imposition of fine on the company's officials in the amount of 30 000 – 40 000 rubles, on the legal entity – in the amount of 100 000 – 500 000 rubles.

To sum up the above, it is important to note that the Rules are of formal character, establish the means of information exchange, as well as the time limits of the exchange. The special emphasis is put on the technical aspects of the procedure.

However, there are still no considerations on the measures to be taken by a legal entity in case it cannot obtain the information on its beneficial owners in order to be compliant with the AML Law requirements.

How we can help

Should you be interested, we will be happy to consult you on correct provision of the Authorized bodies with the information regarding the beneficial owners.

We keep following the changes in identification of beneficial owners legislation and will inform you about the amendments that may affect Russian business.

Your contact person in Germany:

Tanja Galander, telephone: +49 30 2636-5483
Ekaterina Cherkasova, telephone: +49 30 2636-1523

Russia-Blog: http://blogs.pwc.de/russland-news

Slovakia

Cancellation of the minimum tax base for application of reverse-charge for customer for agricultural products and metals

The amendment to the VAT Act proposes the cancellation of the minimum tax base of EUR 5,000 for application of the local reverse-charge (i.e. shifting of the VAT liability to a customer who is a Slovak VAT payer) for agricultural products and metal products and metal semi-products.

If the amendment is adopted, all local supplies of the above goods between two Slovak VAT payers will be subject to the reverse-charge for the customer regardless of the value of supply.

The minimal amount of tax base for the application of the reverse-charge for supplies of mobile phones and integrated circuits will be retained.

Repayment of partial VAT refund before the opening of an VAT inspection

To improve the business environment, the amendment to the Slovak VAT Act proposes the introduction of a provision allowing the rapid partial repayment of a VAT refund by the tax office in the event of the start of a VAT inspection, about which there are no doubts regarding correctness based on data from the filed control statement.

Based on current law, an excess VAT refund is repaid if a VAT inspection was opened within 10 days of the end of an inspection (a partial VAT refund can be repaid based on a partial protocol before the end of the VAT inspection).

If the proposed changes are adopted, the tax office may, based on the data from the filed control statement, repay to the VAT payer part of an excess VAT refund prior to the opening of the VAT inspection. This would have a positive impact on the cash-flow of the VAT payer. However, the possibility to verify the paid part of the excess VAT refund under the VAT inspection will remain.

Change in taxation of tour operator margin schemes

According to the case-law of the EU Court of Justice, it is proposed to modify the special margin scheme for the provision of tourism services. The amendment proposes the extension of the application of this special scheme to all sales of tourism services regardless of who is the recipient, i.e. it will also apply to an entrepreneur (taxable person) purchasing a package of tourism services for its business.

Based on current VAT law, this special regulation only applies if the recipient of tourism services is the final customer – passenger.

Other proposed changes

The amendment also introduces changes to triangular simplification. Currently, one of the conditions to apply this simplification is that the first customer (intermediary) is not registered for VAT in the member state of the second customer. The amendment proposes a change to this condition so that the intermediary is not established in the member state of the second customer (i.e. he does not have there a seat, place of business, establishment or habitual residence).

The amendment proposes that persons identified for VAT in Slovakia based on §7 and §7 (a) of the Slovak VAT Act, who participate in a triangulation supply as the intermediary must submit a EC Sales List.

Currently, the VAT Act only sets a general 12-month period for the refund of VAT guarantee or part thereof. The amendment proposes the addition of a provision for the immediate refund of the VAT guarantee if the VAT registration is cancelled within this 12-month period.

To reduce the administrative burden for VAT payers, it is proposed to extend the option to issue a summary invoice for rent and supplies of electricity, gas, water and heat for a period of 12 calendar months where the recipient is foreign taxable person. Currently, the VAT Act only allows such simplification if the recipient is a local taxable person established in Slovakia.

It is also proposed to introduce a standardized form to be filed by the VAT payer with the tax office if he purchases a used motor vehicle from another member state.

Your local contact person:

Todd Bradshaw (Country Managing Partner)
Tel.: +421 (0) 2 59350 600
todd.bradshaw@sk.pwc.com

Ukraine

Suspension of VAT invoice registration is now possible

Suspension procedure of VAT invoice registration becomes fully operational

Starting from 1 July 2017, the registration of a VAT invoice in the Unified Registry of Tax Invoices is set to be suspended if the VAT invoice matches the following criteria[13]:

1. The amount of supply of goods/services, stated in such VAT invoice, exceeds more than 1.5 times the expected remaining stock of such goods/services (calculated as the difference between the volumes of purchases and supplies of such goods/services starting from 1 January 2017) and:
    - more than 75% of such stock are comprised of goods deemed to be risky by the State Fiscal Services of Ukraine;
    - goods/services indicated on the VAT invoice are not supplied by the taxpayer on a regular basis;
    - the amount of VAT stated in VAT invoices registered by the taxpayer in the reporting period (including the VAT invoice in question) exceeds the average monthly amount of taxes (excluding import VAT), duties and unified social contribution ("USC") paid by the taxpayer during last 12 months.
2. A license for transactions with excisable goods stated in the VAT invoice is missing.

Registration of VAT invoices should proceed unimpeded if:

- such VAT invoices are not to be provided to the customers and/or issued for VAT exempt supplies;
- monthly volume of supplies is less than UAH 500 ths. and the Chief Executive Officer of such taxpayer holds similar position in fewer than 3 operational tax paying entities;
- the amount of taxes (excluding import VAT), duties, and USC paid in 2016 by the taxpayer exceeded UAH 5 mln. (this criterion will remain in effect until 2018);
- certain criteria related to the tax burden and VAT amount for the reporting period are met.

We will continue monitoring the developments and keep you updated on the issue.

Transfer Pricing: OECD Transfer Pricing Guidelines 2017

2017 edition of OECD Transfer Pricing Guidelines[14] is now available

On 10 July 2017 the OECD[15] announced that it released the 2017 edition of the OECD Transfer Pricing (TP) Guidelines.

[13] Risk assessment criteria adopted by the Order of the Ministry of Finance N 567 dated 13 June 2017
[14] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
[15] Organisation for Economic Co-operation and Development

The 2017 edition is a consolidated version of the various changes resulting from the OECD/G20 BEPS[16] project, in particular, it incorporates substantial revisions to reflect changes agreed in the 2015 BEPS Reports on Actions 8-10 "Aligning Transfer pricing Outcomes with Value Creation" and on Action 13 "Transfer Pricing Documentation and Country-by-Country Reporting".

You may find the new edition of the OECD TP Guidelines by following the link: http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations- 20769717.htm.

PwC Commentary:

Considering that Ukraine is not a member of the OECD, the OECD TP Guidelines are not binding in Ukraine. However, the Ukrainian tax authorities pay attention to these guidelines and consider recommendations outlined therein.

The 2017 edition incorporates additional clarifications in respect of a three-tiered approach to TP documentation, proper alignment of contractual risk allocation with actual circumstances, low value adding services, intangible assets, commodity transactions, business restructurings, etc.

We will continue to monitor the situation and keep you updated on this issue.

The government clarifies the types of foreign companies subject to transfer pricing rules

The list of organizational and legal forms of non-residents is approved

On 4 July 2017, the Cabinet of Ministers of Ukraine (further – the CMU) approved a list of organizational and legal forms of non-residents (further –OLF list) that is to be used for transfer pricing purposes.

Transactions with these non-resident may qualify as controlled (i.e. subject to Ukrainian transfer pricing rules) based on criteria specified in para «r» para 39.2.1.1. of Tax Code of Ukraine.

Please refer to the OLF list on the next page.

The CMU's Order comes into effect on the date of its publication.[17]

Please consider the impact of these regulations on your business.

[16] Base Erosion and Profit Shifting

[17] The Order of the Cabinet of Ministry of Ukraine #480 from 4 July 2017 "On Approval of the List of Organizational and Legal Forms of Non-Residents Paying No Income Tax (Corporate Tax), Including Tax on Income Received outside the State of Registration of Such Non-Residents, and/or Are Not Tax Residents of the State in which They Are Registered as Legal Entities Person"

Sate (territory)	Entity's legal form (state registration language) and abbreviation	Entity's legal form (English spelling)
Australia	General Partnership (GP) Limited Partnership (LP)	General Partnership (GP) Limited Partnership (LP)
Austrian Republic	Offene Handelsgesellschaft (OHG) Offene Erwerbsgesellschaft (OEG) Kommandit Gesellschaft (KG) Kommandit Erwerbsgesellschaft (KEG), Gesellschaft nach bürgerlichem Recht (GesnbR)	General Partnership General Commercial Partnership Limited Partnership Limited Commercial Partnership Civil Law Partnership
Kingdom of Belgium	Société en Nom Collectif, Vennootschap Onder Firma (SNC, VOF)	General Partnership
United Kingdom of Great Britain and Northern Ireland	Partnership (Ordinary Partnership) Limited Partnership (LP) Limited Liability Partnership (LLP)	Partnership (Ordinary Partnership) Limited Partnership Limited Liability Partnership
The Kingdom of Denmark	Skattesinteressentskab, Interessentskab (I\S) Kommanditselskab (K\S) Udlodende investeringsforening	General Partnership General Partnership, owned shipping firm Limited Partnership Distributing Investment Fund
Republic of Estonia	Lepinguline investeerimisfond	Investment Fund
State of Israel	שותפות כללית (GP) שותפות מוגבלת (LP)	General Partnership Limited Partnership
Italian Republic	Società in Nome Collettivo (S.N.C) Società in Accomandita Semplice (LP)	General Partnership Limited Partnership
Canada	General Partnership (GP) Limited Partnership (LP) Trust Extra Provincial Corporation (EPC)	General Partnership Limited Partnership Trust Extra Provincial Corporation
Republic of Korea	Johap Hapja johap Hapja hoesa Hapmyung hoesa Ikmyung johap	General Partnership Limited Partnership Limited Partnership Company Unlimited Partnership Company Hidden Partnership
Grand Duchy of Luxembourg	Société en Commandite Simple (SECS) Société en Commandite par Actions (SECA) Société en Nom Collectif (SENC) Société Civile Association en Participation Société en Commandite Spécial (SCSp) Société d'Investissement à Capital Fixe (SICAF) Société d'Investissement à Capital Variable (SICAV) Fonds Commune Placement	Limited Partnership Partnership Limited by Shares General Partnership Civil Partnership Association Special Limited Partnership Investment Company with Fixed Capital Investment Company with Variable Capital Fonds Commune Placement
Republic of Mauritius	Société civile Société à responcibilitée limitée Société en commandite simple Société en nom collectif Global Business Companies category II	Civil Partnership Limited Liability Partnership Limited Partnership General Partnership Global Business Companies Category II
Republic of Malta	Partnership en commandite Partnership en nom collectif	Limited Partnership General Partnership
Kingdom of the Netherlands	Vennootschap Onder Firma (V.O.F) Commanditaire Vennootschap (C.V.) Maatschap Stichting Besloten Fonds voor Gemene Rekening	General Partnership Limited Partnership Partnership Fund Private Mutual Fund
Federal Republic of Germany	Gesellschaft Bürgerlichen Rects (GbR) Stille Gesellshaft Kommandit Gesellschaft auf Aktien (KGaA) Kommandit Gesellschaft (KG) Offene Handelsgesellschaft (OHG)	Civil Law Partnership Dormant Partnership Partnership lLmited by Shares Limited Partnership General Partnership
New Zealand	General Partnership (GP) Limited Partnership (LP)	General Partnership Limited Partnership
United Arab Emirates	Free Zone Company (FZCO) Free Zone Establishment (FZE) Free Zone Limited Liability Company (FZ LLC) Limited Liability Company (LLC) Sole Proprietorship (SP) International Business Company (IBC)	Free Zone Company Free Zone Establishment Free Zone Limited Liability Company Limited Liability Company Sole Proprietorship International Business Company
Republic of Poland	Spółka Komadytowa (S.K.) Spółka partnerska Spółka Komandytowo-Akcyjna (S.K.A) Spółka Jawna (S.J.) Spółka prawa Cywolnego (S.C.)	Limited Partnership Professional Partnership Partnership Limited by Shares General Partnership Civil Partnership
Republic of Singapore	General Partnership (GP) Limited Partnership (LP) Limited Liability Partnership (LLP)	General Partnership Limited Partnership Limited Liability Partnership
Slovak republic	Verejná Obhodná Spoločnost' (V.O.S) Komanditná Spoločnost' (K.S.)	повне партнерство партнерство з обмеженою відповідальністю
United States of America (States of Delaware, California, Nevada, New Jersey, New York, Texas, Florida)	General Partnership (GP) Limited Liability Partnerhip (LLP) Limited Liability Company (LLC)	General Partnership Limited Liability Partnerhip Limited Liability Company
Turkish Republic	Kollektif Şirket Adi Şirket	General Partnership Limited Partnership
French Republic	Société en Nom Collectif (S.N.C) Société en Commandite Simple (S.C.S) Groupement d'Intérêt économique (G.I.E.) Société civile Société en participation Fonds Commun de Placement a Risques	General Partnership Limited Partnership Civil Partnership
Czech Republic	Komanditní Společnost (K.S.) Verejná Obhodní Společnost (V.O.S)	Limited Partnership General Partnership
Swiss Confederation	Kollektivgesellschaft, Société en nom collectif, Società in nome collettivo Kommanditgesellschaft, Société en commandite, Società in accomandita (LP) Einfache Gesellschaft, Société simple, Società semplice	General Partnership Limited Partnership Simple Partnership
Japan	Nin'i kumiai Toushi jigyo yugen sekinin kumiai Yugen sekinin jigyo kumiai Goshi-Kaisha Gomei Kaisha Tokumei Kumiai	General Partnership Investment Business Limited Partnership Limited Liability Partnership Limited Partnership Company General Partnership Company Silent Partnership

Your local contact person:

Camiel van der Meij
Partner & TLS Leader
camiel.van.der.meij@ua.pwc.com
Tel: +380 44 354 0404

Contact

Ina Enache
Berlin
+49 30 2636-1249
ina.enache@de.pwc.com

Daniel Kast
Berlin
+49 30 2636-5252
daniel.kast@de.pwc.com

Tanja Galander
Berlin
+49 30 2636-5483
tanja.galander@de.pwc.com

Subscription and cancellation

If you would like to subscribe to our English PDF Newsletter Osteuropa kompakt, please send an e-mail with “Subscribe” in the subject line to the following address: SUBSCRIBE_Osteuropa_kompakt@de.pwc.com.

If you would like to cancel your subscription, please send an e-mail with the word “Cancel” in the subject line to the following address: UNSUBSCRIBE_Osteuropa_kompakt@de.pwc.com.