Osteuropa kompakt
Issue 141 / March/April 2017

Osteuropa kompakt

Table of Contents

Azerbaijan

Rules of "Electronic delivery note application, registration and use" is approved

On 14 March 2017, Cabinet of Ministers approved the Rules of application of e-delivery note, its registry and use.

According to the Rules, e-delivery note is an electronic document, issued by a person supplying goods, rendering services or performing works to sole traders and legal entities at the time of delivery of goods (services, works).

A taxpayer prepares, confirms and issues e-delivery note via accessing to the Internet Tax Department with enhanced electronic signature.

If VAT taxpayers do not amend transaction within 5 days from the date of issuance of e-delivery note, based on the provided e-delivery note an electronic VAT invoice will automatically be prepared and submitted by the software on behalf of these taxpayers.

VAT registered persons and persons engaged in trade and (or) catering whose taxable supplies exceeds AZN 200,000 in any 12 consecutive months should issue e-delivery notes to the buyer of goods (services, work) as of 1 April 2017, while all other taxpayers as of 1 January 2018.

We would also like to note that according to the recent amendments to the Tax Code, if during the filed tax audit it is revealed that either delivery note or e-delivery note or e-VAT invoice evidencing the purchase of goods in the taxpayer's possession does not exist, the purchaser will be subjected to the following financial sanctions:

- 10% of goods purchased: one violation in a calendar year;
- 20% of goods purchased: two violations in a calendar year;
- 40% of goods purchased: three and more times in a calendar year.

Transfer Pricing Regulations have been approved

The Ministry of Taxes approved Transfer Pricing Regulations, effective as of 08 February 2017.

Transfer pricing is only applied for the purposes of corporate/personal income tax and to so-called controlled transactions exceeding AZN 500,000 per controlled party.

The following transactions are controlled:

- a resident and non-resident in related party relationship;
- a permanent establishment of a non-resident or any representative office, branch office or other unit of such non-resident in other countries;
- a resident and (or) a permanent establishment of a non-resident and persons established (registered) in a country with a favorable tax regime.

For the purposes of comparability analysis, both internal comparables (internal data of the party to the controlled transaction) and external comparables (external data of the independent parties) may be used.

In doing the comparability analysis (a process of selection of the uncontrolled transaction comparable to the controlled transaction) the following criteria must be taken into account:

- Type, origin, quality and other indicators of the goods (works, services);
- Contractual terms, including quantity of the goods (work, services), delivery and payment terms;
- Functions performed by the parties to the transaction;
- Tangible and intangible goods and rights in the possession of the taxpayer;
- Economic conditions- geographical location of the markets, existence of similar goods (work, services) in the market;
- Marketing strategy, etc.

Where the transaction involves transfer of intangibles, additional comparability factors must be considered.

The Regulations provide 3 transactional transfer pricing methods and 2 profit methods:

- Comparable uncontrolled price method ("CUP");
- Resale price method ("RSM");
- Cost plus method ("CoPM");
- Comparable profit method ("CPM");
- Profit split method ("PSM").

The Regulations prescribe, to the extent it is possible, strict priority of application of CUP method. Other methods may only be applied if the transfer price cannot be determined by direct application of CUP or no comparable uncontrolled price is found.

If no comparable transaction is found during application of CPM, this method may be applied based on a "20% deemed profit method".

If the audited controlled transaction involves supply of goods (work, services) and if the actual price charged:

- is below the transfer price or lower limit of the arm's length range, taxes shall be computed based on the transfer price; or
- exceeds the transfer price or lower limit of the arm's length range, taxes shall be computed based on actual price.

If the audited controlled transaction involves purchase of goods (work, services) the value of which was claimed as tax deductible, and if the actual price charged

- is below the transfer price or upper limit of the arm's length range, taxes shall be computed based on actual price; or
- exceeds the transfer price or upper limit of the arm's length range, taxes shall be computed based on the transfer price.

The actual price charged in a controlled transaction is respected if such price equals the transfer price or falls within the arm's length range.

The transfer price is the average price, being the sum of all prices charged in selected comparable uncontrolled transactions divided by the number of such uncontrolled transactions.

A TP documentation filing requirement is introduced for transactions per controlled party exceeding AZN 500,000 per annum. The TP documentation must be filed by the end of March 31 following the tax/reporting year. Failure to do so is subject to a financial sanction of AZN 500.

Where the value of the transactions per controlled party does not exceed AZN 500,000 and no filing requirement is applicable therefore, the taxpayer is still required to follow the Regulations in computing his/her tax liability.

In determining transfer prices, the following databases may be used:

- International or local exchange quotations;
- Foreign trade statistics of the customs authorities;
- Reports placed in reliable sources;
- Databases of specialized agencies to which the tax office is subscribed, etc.

An advance pricing agreement mechanism is also introduced. At the taxpayer's request, the tax office may inform the taxpayer on the recommended transfer pricing method to apply for a particular transaction. The taxpayer is required to submit his/her request at least 3 months prior to carrying out the transaction.

The Regulations also set out provisions on TP dispute resolution, and avoidance of double taxation, as well as provide relevant examples of each of the transfer pricing methods.

PwC Azerbaijan will organise an awareness session dedicated to Transfer Pricing, scheduled for 7 April, 2017. The event will be held in JW Marriott Absheron Baku Hotel from 09.00 till 13.00.

Amendments to the law on Telecommunication

According to the amendments, both an operator and a provider of Internet telecommunication services must register with the Ministry of Transport, Communications and High Technologies (hereinafter referred to as the "Ministry") within 15 days after commencement of services provision. In case of changes in registered information, operator and provider should inform the Ministry within 10 days upon these changes took place.

The amendments provide that operator / provider should respond to inquiries from law enforcement agencies, ministries and courts within 3 working days.

Decree on simplification of electric power supply to construction objects

Decree establishes rules on supplying electric energy requested by entrepreneurs being below 150 kWh to constructions. The decree aims to improve business environment, make Azerbaijani market more attractive to foreign investors and increase quality of provided services. According to the presented rules, entrepreneurs will be able to file an application regarding their need in energy supply to their planned to be constructed or already existing buildings to ASAN Communal Centres (the "Centres"). The process of electric energy supply will consist of following three steps:

1. Entrepreneurs application to the Centres for the preparation of technical terms, project cost estimate documents by the Centres;
2. Payment of project cost estimate documents fee, carrying out construction and installation works and physical connection to energy supply chain;
3. Electric power supply to construction.

The process described above should not take longer than 24 days.

Draft law on amendments to the Civil Code

The Draft Law dated April 25, 2017, retrieved from the official website of the Parliament of Azerbaijan, makes following amendments to the Civil Code of Azerbaijan:

1. Prohibits purchase of shares of the main company by subsidiary and dependent organisation;
2. Adds the right to make amendments to agenda of a general meeting and requires to add more topics for discussion to the agenda of this meeting to the rights of participants of the general meetings of Limited Liability Companies ("LLC"), as well as the right to terminate the authorities of the chosen board of directors (supervisory board) and/or inspection commission;
3. Adds more details in the procedures that Supervisory Board of LLC should follow;
4. Adds the clause describing requirements towards audit committee of LLC;
5. Adds the list of information that needs to be covered in the annual reports and balance sheet of Open Joint Stock Companies ("OJSC");
6. Includes the procedure of transfer of shares in OJSC: decision on alienation or purchase of 50% or more shares of OJSC or in other Company, respectively, can be adopted by two-thirds majority decision during the general meeting of shareholders. The proposal on purchase of 50% or more of shares in OJSC should be officially presented to each of shareholders;
7. Gives the priority in sale and issuance of additional shares to owners of simple (ordinary) or other voting shares in Closed Joint Stock Companies ("CJSC");
8. Broadens the rights of shareholders in Joint Stock Companies ("JSC") by adding the right to:
    a) bring members of executive and supervisory board to liability for damaged caused to JSC by their negligence;
    b) participate in the process of sale of shares of JSC;
    c) apply to court or other competent authority with request of reimbursement of damage caused to JSC or shareholders as a result of deals made;
    d) familiarise themselves with deals to be signed.
9. Requires the execution of payment of dividends within 30 days after the decision regarding payments of such;

This alert is based on a draft law. We will monitor it and update information once the draft law is adopted.

Court practice on tax disputes

1. *Company vs. the State Service for Antimonopoly Policy and of Consumer Rights protection*

The amount of assessments: approx. AZN 55,000.

Court instance: The Supreme Court

Date: July 2016

Subject: Scope of authorities of inspection

Issue: The State Service for Antimonopoly Policy and of Consumer Rights protection (hereinafter, the "State Service") carried out an inspection at the Company, detecting that the labels of meat products produced by the Company did not reflect correctly the content of products, and, therefore, imposed financial sanctions to the Company.

Decision: The Supreme Court, supporting the position of the Company, noted that carrying out an inspection of compliance of the content of products with their labels it is not under the authority of the State Service. According to the Laws, the authority on detection of such incompatibility belongs to another state body.

2. *Employee vs. Employer*

The amount of assessments: approx. AZN 69,000.

Court instance: The Supreme Court

Date: June 2016

Subject: Implementing the provision of the labour legislation on termination of employment agreement

Issue: The Employer - a representative office of a foreign legal entity, has terminated the employment agreement, indicating the reason in termination order as "reduction of production volume". The employee claimed that the termination order was not justified, as in reality the volume of work was not reduced, and demanded his restoration to the job plus compensation for the material damage caused.

Decision: The Supreme Court, concluding in favor of the employee, noted that it should have been stated in the termination order in writing that "the employee will be hired after a certain period", which was a mandatory obligation of the employer.

Your local contact person:

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

Hungary

Brexit officially kicks off – get ready for the changes with PwC

The specialists of PwC's Brexit working group provide comprehensive assistance to companies with business ties to the UK in finding and implementing structures that adapt to the legal uncertainties following the official start of Brexit.

British Prime Minister Theresa May's letter invoking Article 50 of the Lisbon Treaty was delivered to the president of the Council of the European Union yesterday (29 March 2017), formally announcing the UK's intention to leave the European Union.

The Brexit working group of PwC Hungary provides complex consultancy services to companies that have business relations with the UK, with regard to both the current and the potential implications of the process. Our tax, legal, accounting and business advisory services enable these companies to comprehensively and successfully prepare for Brexit.

Our Brexit working group helps identify management decisions necessitated by the UK's exit. It also helps assess the impact of the different options and their implementation, so that affected companies can react appropriately to the new and uncertain situation.

We aid companies in reviewing and changing their business processes to achieve efficiency and compliance. It is particularly important to review business structures that involve transactions governed by regulations that might change significantly.

To help our clients get ready for Brexit, PwC's professionals conduct legal and tax due diligence of our clients' business contracts and suggest modifications made necessary by the UK leaving the EU. To facilitate effective planning, we prepare financial forecasts to show if – and to what extent – additional costs or profit declines are expected to result from Brexit in transactions with UK business partners. We also analyze human resource planning issues following Brexit: based on the current workforce of our clients, we forecast the impact of Brexit on their employees.

Briefly on the General Data Protection Regulation

What exactly is the General Data Protection Regulation?

The General Data Protection Regulation, the enforcement of which starts on 25 May 2018 (in Hungarian: "Általános Adatvédelmi Rendelet"; "GDPR") is a new regulation with direct applicability in all the member states of the European Union. It will function as the principal source of law for data protection, data security and privacy in the coming years.

The provisions of the GDPR are applicable only to data processing (controlling) that takes place at least partially in an automatic way and data processing (controlling) that is not automatic but results in the processed (controlled) personal data becoming part of a given database. Therefore, personal data contained in unstructured documents are not subject to the GDPR.

The rules of the GDPR are mandatory for data controllers and data processors having an establishment in the EU that conduct their data processing activities either within or outside the boundaries of the EU. Further, the rules are applicable to data controllers and data processors that do not have a place of operation in the EU but carry out their operations with regard to data subjects resident in the EU, if the data processing is related to either offering goods or services to the data subjects or monitoring their behavior.

Obligations arising from the GDPR

Although most of the provisions set forth by the GDPR can be deduced from the regulations currently in force as well, the GDPR establishes obligations that are significantly more precise and detailed.

Among others, the GDPR expects the following of data controllers:

- complete transparency of all data processing operations;
- continuous documentation of all the data processing operations, and a high level of awareness;
- integrated data protection solutions by design and default ("privacy by design");
- ensuring data subjects' "right to be forgotten";
- ensuring data portability to data subjects;
- conducting privacy impact assessments in certain cases;
- reporting and information obligations in case of privacy breaches;
- adherence to new, more detailed rules concerning the processing of personal data belonging to data subjects below the age of 16.

The GDPR sanctions data controlling that infringes the rights of data subjects – depending on the gravity of the infringement - by considerable fines ranging up to 4 % of the global annual turnover in the preceding financial year, or EUR 20,000,000 (whichever is higher).

Preparation for the GDPR

As the first step of preparing for the application of the GDPR, organizations should consider appointing a data protection officer („DPO") or a person with similar duties, even if the organization is otherwise not required to do so on the basis of the GDPR.

In this way, the organization can ensure that during the preparation for the GDPR, its data-related operations are assessed and documented on the basis of a uniform approach and in the course of this, a data asset inventory of adequate detail is also prepared and in addition, the steps necessary for compliance can also be identified and implemented.

DPOs can be appointed from the employees of the data controller or it is possible to appoint a third party on the basis of a service agreement, even if appointing a DPO is otherwise mandatory as per the GDPR.

A DPO must be appointed if:

- the data processing (controlling) is carried out by a public authority or body;
- the core activities of the controller or processor consist of processing operations that require the regular and systematic monitoring of data subjects on a large scale;
- the core activities of the controller or the processor consist of processing (controlling) a large scale of special categories of data (e.g. health data, labor union membership, ethnic background and origins).

However, merely appointing a DPO will not suffice to prepare for the GDPR. All the existing data-related operations must be charted, internal procedures and rules must be amended, risk management procedures must be designed and adequate information must be provided to the data subjects on the new rights to which they are entitled on the basis of the GDPR.

On 6 June 2017, in the joint event of Réti, Antall & Partners Law Firm and PwC Hungary, you can familiarize yourself with the provisions of the GDPR with the help of our colleagues and guest speakers, and you can also get an overview of the steps to be taken in order to ensure compliance with the new regulation.

Your local contact person:

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

Latvia

Three problems facing companies on process efficiency projects

The main purpose of process efficiency projects is to understand which day-to-day activities can be done differently to improve the company's profit margins. In most cases it's the company itself that arrives at the decision to launch such a project, but sometimes the need is pointed out by suppliers, customers, or bankers. This article takes a look at three common practical problems arising on such projects.

Problem 1. We don't know where to begin and what to strive for

Increasingly more Latvian companies are ranking process efficiency among their top priorities. On the other hand, the phrase "process efficiency" sounds quite broad, and so its perceived meaning varies from company to company.

We are also hearing the names of international methodologies such as Lean, Six Sigma, Kaizen, and 5S, which are not comprehensible to everyone and raise more questions than answers. One of the main questions is this: What's our goal (and where do we start)?

To answer this question, it's useful to devote one day for your management to sit down with people who are experts in all these methodologies and have experience of many practical projects at other companies in order to assess your maturity level and use a structured system of evaluation for determining where you are now and where you would like to be. A further benefit is that you set some real goals. After finding, for example, that your maturity is at level 1, it wouldn't make sense to strive for level 5 in the short term.

Problem 2. Management want to change, but employees don't

Not everything on your management's to-do list is embraced by your employees. Another problem facing companies is direct or indirect resistance to change. Our experience suggests that in any process efficiency project the bulk of resources should be allocated to change management, which includes explaining, listening, motivating, encouraging, structuring, praising etc all the employees involved in the processes, instead of focusing on the implementation of technical solutions, development of procedures, analysis of process descriptions etc.

Problem 3. Results achieved in the short term aren't sustainable in the long term

Unfortunately your initial enthusiasm begins to fade, and your good start is slowed down. To prevent this, we recommend that at the very beginning you regard process efficiency as a change of mentality and define it as one of your strategic long-term pursuits, not as a project. Using the maturity assessment mentioned above on a regular basis allows you to pat yourself on the back and enjoy what you've achieved in the short term, as well as considering what should be done going forward to make sure the fruits of your earlier labours don't disappear and to outline steps you want to take next.

EU digital single market

Information and communication technology is no longer a separate industry, but rather the basis of all modern economic systems. Increasingly integrating with all industries and communities, the Internet and digital technology are changing the way we live and work as society and as individuals conducting transactions. However, these developments present government agencies with complex political challenges that cannot be met without a concerted effort across the EU.

The European Commission's priority of creating a digital single market

The existing obstacles to the free movement of data, capital and facilities on the Internet mean that people lose the ability to use some of the goods and services, and the possible scope for traders' activity is fairly limited, with the result that entire industries and government agencies are not receiving the full range of benefits available from digitalisation.[1]

Unfortunately most online service markets are still confined to country level, with a mere 7% of EU small and medium enterprises (SME) ensuring the cross-border availability of their goods and services.

According to EU estimates, 90% of work needs digital skills, but only 59% of EU residents have access to 4G Internet, 52% of cross-border purchases get blocked, small enterprises could save up to €9,000 per country on translation and legal expenses, and EU residents would save €11 billion by shopping online. Taking these obstacles down in Europe could increase European IKP by €415 billion.

In view of this, the European Commission ranks creating a digital single market among its top priorities. A digital single market is a market that allows the free movement of persons, goods, services, and capital, and gives individuals and entities free access to online facilities for use in an environment of fair competition, as well as providing a high level of protection for consumer and personal data regardless of their nationality or residence. The main goals of the digital single market strategy are to remove regulatory barriers and truly unify the 28 economies into one market.

The strategy covers three main EU policy areas with the following main tasks:

- Giving consumers and businesses better access to online goods and services across Europe – for this purpose we must urgently bridge the key gaps between online and offline environments to remove obstacles to cross-border operations online:
  - cross-border e-commerce rules that consumers and businesses can trust;
  - quality cross-border parcel delivery services at reasonable prices;
  - avoiding unreasonable geographical blocking;
  - better access to digital content – modern copyright rules;
  - easing the VAT burden and obstacles in cross-border trade.
- Creating suitable conditions for the development of digital services – we need a fast, secure and reliable infrastructure and content services based on appropriate rules for innovation, investment and fair competition, as well as equal conditions for competition:
  - developing telecommunications rules appropriate for the purpose;
  - mass media rules for the 21st century;
  - a regulatory environment for platforms and intermediaries appropriate for the purpose;
  - enhancing trust in digital services, in their security and personal data processing.

---

[1] The Commission's report to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. The Digital Single Market Strategy for Europe. (2015) Brussels.

- Making the most of the European digital economy's growth potential – we need investment in IT infrastructure and technology, technology research and innovation to strengthen the competitiveness of manufacturing, and in improving public services:
    - building a data economy;
    - improving competitiveness through cooperation and standardisation; and
    - inclusive e-society.

Creating a digital single market is a significant part of the EU strategy aimed at preparing for the future and providing EU residents with a higher standard of living going forward. We need a political will as well as funding to achieve this. The European Commission's main measures to implement a digital single market will be –

- investment in the digital single market;
- an international dimension; and
- efficient governance of the digital single market.

The strategy means that the EU can soon begin work on drafting rules to help develop and put the strategy into practice.

Job classification to be amended

This summer is bringing changes to Latvia's official Classification of Occupations. Its proposed new version has been finalised, but the Ministry of Welfare (MOW) is urging the business community to help make changes going forward. This article explores how job titles are classified in Latvia.

The Latvian Classification of Occupations

This is a systematised list of occupations (trades, professions, specialities) designed to provide Latvia with labour records and job comparisons consistent with international practice based on the International Standard Classification of Occupations (ISCO-08). All occupations are divided into groups according to codes set by the International Labour Organisation. Each occupation has a prescribed set of basic tasks and qualification requirements. The Latvian Classification describes the main knowledge and skill requirements for any individual taking up a particular occupation. The Latvian Classification also groups the standards for certain occupations.

Rules for classifying occupations

The Cabinet of Ministers' rules[2] are to be amended with effect from 1 June 2017. The proposed amendments delete 230 occupations that are no longer current on the labour market and add 50 new occupations to the classification, as well as adjusting certain job titles and codes. The classification is recast in the form of tables to make it easier for users to find any required occupations and their codes. The proposed amendments have yet to be approved by the ministries and endorsed by the government.

The current rules expire on 31 May 2017. The law requires that the Classification of Occupations should be issued as a new cabinet regulation drafted by the MOW.

The draft rules under debate incorporate proposals the MOW received before 1 October 2016. The MOW now plans to review the classification twice a year. Employers noticing

[2] The Cabinet of Ministers' Regulation No. 461 of 18 May 2010, *The Classification of Occupations, the Basic Tasks and Qualification Requirements for Each Occupation, and Procedures for Using and Updating the Classification of Occupations*

that an occupation they need has been deleted or a new occupation should be added, are asked to send their proposals to the MOW electronically (lm@lm.gov.lv).

The State Revenue Service advises that where an employee's current job title has been changed or deleted, a new one should be selected and reported according to the classification in force. Reporting should be done by filing "Details of Employees," in which it will be possible to change information to match the applicable classification by giving the code PM.

Lawful consent of data subject to data processing under Regulation

The consent of a data subject – an individual such as a customer – has so far been one of the lawful grounds for data processing. With Latvia required to fully pass the General Data Protection Regulation into its national law by May 2018, companies processing personal data will have to make an effort to ensure their data processing is lawful. This includes evaluating whether data processing by consent is done in accordance with the Regulation to avoid potentially large fines and build customer trust.

Applicability of the Regulation

The requirements of the Regulation cover every entity that processes any personal data in an EU member state or the data of people residing in the EU. Personal data is taken to mean any information relating to an identified or identifiable individual. Companies should therefore review their procedures for processing customer data as well as employee data.

Conditions for the lawful consent of a data subject

Under the current Latvian rules and the new Regulation, the consent of a data subject is one of the lawful grounds for data processing. Compared to the Data Protection Directive, which forms the basis for the current Latvian rules, the new Regulation clarifies the conditions for the lawful consent of a data subject to minimise the scope for interpretation in companies across the EU.

The Regulation lays down the following conditions for treating consent as lawfully received and binding:

1. Consent should be unambiguous, given to a particular purpose of data processing, and distinctly separated from other matters. The data subject should be treated as a consumer, and information about data processing should be provided in clear and simple terms.
2. The company should be able to demonstrate that the data subject has consented to having their data processed, and so in all cases of written consent, the consent should be documented (e.g. in the form of a contract or an email). Where consent has been given electronically (e.g. by checking a box) the company should ensure that the metadata indicating that is stored on the system.
3. Consent should be given freely. If the data subject doesn't consent to data processing on the basis of consent, this should not affect performance of their original contract.
4. The data subject may revoke their consent at any time. The data subject should be given the opportunity to exercise the right of revocation without hindrance.

Since the consent of a data subject may be revoked at any time, the company should evaluate whether they are able to process data on some other lawful grounds, for example, if data processing is prescribed by law or necessary for entering into or performing a contract between the data subject and the company.

The data processing compliance requirement

Although compliance with the Personal Data Protection Act has been a precondition for data processing, the new Regulation reinforces the rights and obligations of the National Data Office to supervise data protection, including a fine of up to 4% of the company's annual revenue or a ban on data processing in the event of a breach. These matters have taken on topicality in the mass media, and so ignoring the data protection requirements may result in the company may lose its reputation and customers.

Recommendations for compliant data processing

The first step in any company would be to identify data processing activities, identifying types of data and purposes of processing, parties concerned (employees and third parties) and lawful grounds in order to evaluate more accurately whether the data processing system is compliant. Since the Regulation imposes a number of data protection requirements, we recommend seeking the advice of a certified data protection expert who can assess how data processing in your company complies with the requirements of the Regulation.

European Commission's paper on VAT implications of transfer pricing

On 29 March the European Commission published working paper No. 923 of 28 February 2017 on the possible VAT implications of transfer pricing (TP). The purpose of this document is to allow the first exchange of views on whether the TP rules can have any VAT implications. Without prejudice to other questions being raised, it seems that the main question to be examined is whether TP adjustments can be treated as a consideration given in return for a supply.

The Commission services wish to discuss with the VAT Committee the possible VAT implications of the TP rules laid down for direct taxation purposes. These rules aim to ensure that the terms of transactions within a multinational group (including the price) match comparable market conditions, and that profits are fairly apportioned between the jurisdictions in which the group operates.

To provide legal certainty for businesses and tax administrations alike, it is worth examining whether the TP rules can have any VAT implications for member states.

The OECD and the G20 members have undertaken the Base Erosion and Profit Shifting (BEPS) project, which deals in part with some TP issues. Yet it is outside the scope of the working paper to examine the VAT implications of the outcome of the BEPS project.

The working paper generally describes the basic TP principles. However, the Commission has highlighted a tension between the TP rules for direct taxation purposes, which are based on the arm's length principle, and the VAT rules, which rely on the existence of a supply for a consideration, the latter being seen as a subjective value.

As regards the interaction between TP and VAT, a TP adjustment (upwards or downwards) can have some VAT implications, for instance, where that adjustment can be treated as more or less a consideration given in return for a taxable supply already made. If an adjustment is found to constitute more or less a consideration for a supply, this can arguably lead to an increase or a reduction in the taxable amount of that transaction, with the amount of VAT due calculated under article 73 of the VAT directive.

If we are to see any VAT implications, not only must there be a supply for a consideration under article 2(1) of the VAT directive, but the consideration must be directly linked to that supply. The existence of such a direct link should be assessed on a case-by-case basis. When it comes to meeting these requirements, a number of aspects need to be considered:

- **The interaction between direct and indirect taxation**. Although the CJEU has never expressly dealt with this issue, it has in the past limited the potential correlation between a direct tax rule and the rules laid down by the VAT directive.

- **The arm's length principle in the VAT directive**. While the VAT directive acknowledges that under certain conditions an arm's length principle may have to be used for inferring the taxable amount of a supply from its arm's length price, the general rule laid down by article 73 of the VAT directive provides that the taxable amount is everything that constitutes a consideration, which is taken to mean the subjective value actually received.

- **A consideration**. If a TP adjustment is to be treated as more or less a consideration given in return for a supply, that adjustment must be not only made for tax purposes but also recorded in the accounts of the parties to the transaction. In other words, there must be an element capable of being identified as an extra consideration for the supply already made.

- **A supply**. A payment, whether in money or in kind, can be treated as a consideration only if it is given in return for a taxable supply. That payment must therefore be capable of being linked to a particular transaction. Where TP adjustments are based on aggregated amounts, it must be possible to allocate them to individual transactions if they are to have any VAT implications.

- **A direct link between the supply and the consideration**. If a payment is to fall within the scope of VAT, it must be directly linked to the goods or services received. According to the CJEU, such a direct link arises from the legal relationship between the supplier and the customer, under which there is reciprocal performance, with the payment received by the supplier constituting the actual consideration given in return for the goods or services supplied to the customer. The CJEU case law relating to the existence of a direct link does not, however, imply that TP adjustments will always meet this requirement.

The delegations are asked to give their opinion on the questions raised in the working paper. We do hope that their opinion will eventually resolve the uncertainties surrounding the VAT implications of TP and minimise the scope for interpretation.

Estonian tax brief

In March 2017, the Estonian parliament amended the Taxation Act with effect from 1 April 2017. This article provides an overview of the main changes.

Obligation to publish information on the number of employees and revenue

Summary information on paid state taxes is currently posted on the website of the Tax and Customs Board, including details of payroll taxes. The tax office now has the power to publish even more information, such as information provided to the Employment Register, in particular the number of employees on the last day of the quarter and summary information on taxable supplies made during the quarter.

More information gathered by the tax authorities

The Audit Unit of the Tax and Customs Board now has the power to gather individual and bulk data on taxpayers by filing an information request with one of the national registers (e.g. the Traffic Register, the Land Register, the Cadastral Register, or the Population Register). Gathering this information does not necessarily mean that a tax review or audit will be launched.

An annotation to the Taxation Act explains that this information is necessary for conducting effective risk analyses before tax reviews and audits and for identifying potential violators of tax laws since the information available from the Register of Taxpayers is frequently insufficient. Comparing the information collected from other registers with existing data makes it possible, for example, to determine whether the taxpayer has failed to declare income arising on a taxable property transaction, timber sale, or property lease. This information also helps identify connections between affiliated persons under section 8 of the Income Tax Act. The tax office can approach other registers for information relating to ownership or possession of assets, economic activities, and the nature of related goods, services and logistics.

Country-by-country reporting for large corporations

In March 2017 the Estonian parliament amended the Tax Information Exchange Act and the Taxation Act to require that large corporations should file country-by-country reports. An Estonian tax-resident corporation is considered a reporting entity[3] if its consolidated revenue exceeds € 750 million and it undertakes cross-border activities, i.e. at least one member of the group is tax resident in another jurisdiction (including through a permanent establishment). The reporting entity is usually the ultimate parent of the group.

The country-by-country report consists of information on the group's tax calculations for each jurisdiction in which its members carry on business. This information will help the tax office determine whether taxes were paid in the same jurisdiction where profits were earned. Information is only exchanged with the tax office of the country of residence (the Tax and Customs Board in the case of an Estonian group), who then shares this information with other interested countries. The new rules require that the first report on the financial year 2016 should be filed by the end of 2017.

Proposals for amending the Income Tax Act

The Ministry of Finance has drafted proposals for excluding certain accommodation and transport costs borne by the employer from the definition of a fringe benefit in order to enable employers in need of labour to recruit people living far away from the workplace. The proposals are awaiting approval.

The proposals allow the employer to cover an employee's housing costs free of tax, as long as the accommodation is in the employer's interests, the costs do not exceed statutory thresholds (up to €200 a month for someone employed in Tallinn or Tartu, and up to € 100 elsewhere), and the employee lives at least 50 km from the border of the area where they work and does not own any real estate that could be used as an abode in the area where they work.

There are also plans to amend section 48(51) of the Income Tax Act to exclude trips between an employee's home and workplace meeting certain conditions from the definition of a fringe benefit. More exceptions are being introduced: the employer may reimburse an employee's transport costs free of tax if the employee lives at least 50 km from the border of the area where they work, or if the employer uses a category M2 or M3 vehicle (bus) as a means of transport.

Your local contact person:

Zlata Elksina-Zascirinska,
Tel: +371 6709-4514

[3] According to the explanatory memorandum, fewer than ten groups meet the criteria in Estonia.

Poland

New reporting obligations for Polish taxpayers belonging to large multinational groups came into force

In brief

On 4 April 2017 a new Act on the exchange of tax information with other states came into force. The Act includes provisions on the scope of information included in the „information on the group of entities" (CbCR) as well as puts Polish taxpayers, which belong to large international groups, under additional obligations (a) to report on entities which form part of a group, and (b) to indicate the entity responsible for preparing such information (within 10 months of the last day of the financial year commenced after 31/12/2015).

Details

The Act of 9 March 2017 r. on the exchange of tax information with other states (Journal of Laws from 2017, No. 648) introduces a comprehensive regulation concerning the international exchange of tax information within a single legal act.

In particular, this act contains regulations requiring the taxpayers belonging to a group with consolidated net turnover exceeding EUR 750 million in the previous financial year to provide additional information about entities which form part of a group of entities (country-by -country report; CBCR). Initially, these regulations were included in the CIT and PIT Acts respectively.

Other changes introduced by the new Act were described in our newsflash of 21.10.2016.

Information about entities which form part of a group of entities (CbCR)

The obligation to file CbCR applies to entities operating in groups which:

- prepare consolidated financial statements,
- conduct cross-border operations,
- earned consolidated net turnover for the previous financial year exceeding EUR 750 million.

The obligation is effective for the reporting financial year beginning after 31/12/2015.

The Act provides that, as a rule, CBCR is to be provided by the ultimate parent company in the group (in Poland – if it has its registered office or seat of management here).

Additional obligations for the Polish taxpayers

However, a Polish taxpayer which is not an ultimate parent company may be obliged to submit CbCR if:

- the ultimate parent company is not under such obligation in the state in which its registered office or seat of management is located;
- the authorities of the state in which the ultimate parent company's registered office or seat of management is located did not conclude an agreement on the exchange of information with Poland within 12 months from the end of the reporting year;

- the state in which the ultimate parent company's registered office or seat of management is located has suspended the automatic exchange of information;
- no other group entity has been designated to prepare such information.

In addition, each Polish entity which belongs to a group obliged to CBCR will have to:

- notify that it is an ultimate parent company; or
- specify the reporting entity and the state in which the information will be provided.

This information must be submitted to the Chief of Krajowa Administracja Skarbowa.

Deadlines

CBCR should, as a rule, be provided within 12 months from the end of a reporting year (i.e. for 2016 – by the end of 2017).

If the ultimate parent company does not prepare information about the group, the Polish company will be obliged to prepare and provide such information on its own no earlier than for the year beginning after 31/12/2016. However, the Polish taxpayer may voluntarily file such information also for the year beginning after 31/12/2015.

Taxpayers will have to notify of the entity responsible for preparing CBCR by the end of the group's financial year (for the financial year commenced after 31/12/2015 – within 10 months of the last day of that financial year). In practice - if the group's financial year is equal to calendar year, the Polish taxpayer will have to file the notification for both 2016 (by 31/10/2017) and 2017 (by 31/12/2017).

No model notification is available at the moment.

Sanctions

Entities which fail to meet the obligations imposed by the draft act will be subject to a fine of up to PLN 1 million (depending on the type and extent of the violation, an entity's operations to date and its financial capabilities), imposed by way of decision by the Chief of Krajowa Administracja Skarbowa.

In addition, Article 80d is added to the Penal and Fiscal Code, according to which "any taxpayer which provides false information about Group entities will be subject to a fine of up to 240 daily rates (i.e. of up to PLN 6.4 in 2017).

What is to be done?

- Check whether, as a group, we are subject to the obligation to prepare CBCR;
- Decide who will be responsible for preparing the required information in the group;
- Bear in mind the need to notify the tax authorities of the entity and of the state in which the said entity will be responsible for reporting (for both 2016 and 2017).

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

CJEU clarifies requirement to include royalties / licence fees in the customs value of goods imported by affiliated parties

In brief

The Court of Justice of the European Union (CJEU) Decision was recently published in the Case C-173/15 GE Healthcare GmbH v. Hauptzollamt Düsseldorf regarding the conditions under which the royalties / licence fees paid should be included in the customs value of imported goods, according to the customs provisions applicable prior to 1 May 2016.

In detail

The ECJ decision in the Case C-173/15 GE Healthcare GmbH v. Hauptzollamt Düsseldorf has been published. It analyses the issue of including the royalties / licence fees in the customs value of imported goods.

Background

In the case analysed by the Court, the royalties were calculated as a percentage of the beneficiary's turnover and were due to an affiliated entity. The goods were imported from another entity in the same group. According to the terms of the contract, certain goods were not subject to the payment of royalties.

According to the Community Customs Code, the conditions to be fulfilled simultaneously for including royalties / licence fees in the customs value are as follows:

- The royalties / licence fees are related to the goods imported;
- The buyer has to pay these royalties / licence fees either directly or indirectly to the seller, as a condition of sale of the goods being valued;
- The royalties / licence fees are not already included in the price actually paid or payable for the imported goods.

Court Decision

The CJEU decided the following:

- The customs provisions do not require that the amount of the royalties / licence fees be determined at the time when the licence agreement is concluded or when the customs debt incurred, in order for those royalties or licence fees to be regarded as related to the goods being valued. As such, the royalties paid annually based on the turnover established after the goods are released for free circulation may also be included in the customs value;
- The customs legislation allows that royalties / licence fees be "related to the valuated goods", even if they relate only partly to those goods;
- The royalties / licence fees represent a "condition of sale" when, within the same group, the payment is requested by an entity affiliated both to the seller and the buyer, and it is paid for the benefit of the same entity.

[Source: ECJ decision in the Case C-173/15 GE Healthcare GmbH v. Hauptzollamt Düsseldorf dated 9 March 2017]

The takeaway

Companies paying royalties / licence fees to related parties should consider analysing the correctness of the customs valuation for imported goods.

The ECJ decision is based on the interpretation of the legislation applicable before the entry into force of the provisions of the new Union Customs Code.

As such, as of 1 May 2016, the situations in which such costs must be included in the customs value have been expanded.

In order to establish the necessity of the customs value adjustments, the circumstances of the sale have to be analysed, especially when the buyer and the seller are affiliated parties. The circumstances should also be analysed in relation to the transfer pricing policies and the transfer pricing documentation available or in development.

Centralised customs clearance in Romania

In brief

The procedure for centralised customs clearance was implemented at the national level in the systems for reporting goods at the moment of import / export as of 16 March 2016. Under certain conditions, economic operators can lodge the customs declarations related to certain customs operations at a customs office in Romania other than the one where the goods are presented for clearance.

In detail

ANAF President Order No. 866/2017 for completing the technical norms of the Romanian system for automated processing of import customs declarations, approved through ANAF President Order No. 1.885/2016 and Order No. 867/2017 for completing the technical norms of the export control system approved through ANAF President Order No. 1.1.94/2016 (hereinafter "the orders") have been published in the Official Gazette.

These orders implemented the procedure regarding national centralised customs clearance, which was one of the most important simplifications mentioned in the Union Customs Code, applicable as of 1 May 2016.

In order to benefit from this simplification, interested economic operators should fulfil certain conditions, as follows:

- The consignee or the exporter, as the case may be, and the declarant / customs representative are certified as Authorised Economic Operator (AEO).
- The declarant / customs representative has to submit a standard customs declaration at the supervising customs office and present the goods at the customs office of clearance.

This procedure is applicable for all customs operations, except transit.

There are certain types of goods which cannot be the subject of the national centralised customs clearance procedure:

- Excise goods under the customs warehouse regime and under the rules regarding movement / reception under the excise duty suspensive regime;
- Military products subject to export, import and other operations control regime, according to Government Emergency Ordinance No. 158/1999.

[Source: Official Gazette No 187 dated 16 March 2017, pg. 14-15-16]

The takeaway

As of 16 March 2017, the national centralised customs clearance system allows customs declarations to be submitted at a customs office in Romania other than the one where the goods are presented for clearance. This simplification is applicable only to Authorised Economic Operators for the standard procedure of declaration for all customs regimes, except the transit regime.

Amendments regarding transnational posting of workers

In brief

Law no. 16/2017 regarding posting of workers within the framework of the provision of transnational services has been published and comes into force on 20 May 2017. Law no. 344/2006 will be repealed as of that date.

In detail

Law no. 16/2017 is applicable to the posting of workers from an EU member state or from the Swiss Confederation to Romania or vice versa, its purpose being to guarantee an adequate level of protection for the workers posted within the framework of the provision of transnational services.

The provisions of the current Law no. 344/2006 regarding the posting of workers within the framework of the provision of transnational services are reiterated almost in full, with a few clarifications. For instance, it is clarified that the posting allowance is granted in order to compensate for the inconveniences caused to workers by removing them from their usual environments.

In addition to this, Law no. 16/2017 introduces a series of measures and control mechanisms applicable in Romania for cases of posted workers, including measures regarding international cooperation. In this respect, the Labour Inspection Authority is designated the competent authority and the liaison office with the authorities in other EU member states.

Law no. 16/2007 also regulates a series of aspects that can be analysed by the Labour Inspection Authority, through the territorial labour inspectorates, with the purpose of identifying cases of real transnational postings and preventing abuses.

Moreover, it establishes several procedural rules regarding administrative cooperation between competent authorities in EU member states, including the types of requests that can be sent between authorities and the related terms for response. Law no. 16/2017 also regulates the transnational collection of the amounts deriving from the sanctions applied for non-compliance with the posting rules.

Law no. 16/2017 also allows workers posted to Romania to contact the Romanian authorities directly if they consider that their rights as posted workers are not being complied with.

It also stated that in the case of a subcontracting chain for different services in the field of construction, the contractor and subcontractor can be jointly liable for the right not granted to the posted worker.

[Source: Law no. 16/2017, published in the Official Gazette no. 196 dated 21 March 2017]

The takeaway

Law no. 16/2017 transposes Directive 96/71/CE and Directive 2014/67/CE into national law. It comes into force on 20 May 2017, at which time Law no. 344/2006 will be repealed.

Within 60 days as of the publishing of Law no. 16/2017, methodological norms for its application will be adopted. Until the new norms are published, GD no. 104/2007 remains into force.

Your local contact person:

Anda Rojanschi, Partner
Tel: +40 21 225 3586

Russia

Income on Russian bonds may become exempt from Personal Income Tax

In brief

On 15 February 2017, the State Duma passed in the first reading a draft of the Federal Law "On Amending Chapter 23 of the Russian Tax Code", in particular the section on determining the tax base on interest income earned on the marketable bonds of Russian organisations.

Draft Law No. 46023-7 was introduced by the Russian Government.

According to the proposed amendments, income in the form of interest (coupons) received on marketable bonds of Russian organisations that were issued in 2017-2020 and denominated in roubles would become exempt from personal income tax (the "PIT") starting from 2018, provided that the amount of the interest (coupon) payment does not exceed the amount of interest assessed under the current refinancing rate of +5%. If the bond yields exceed the threshold, the excess will be taxable for Russian tax residents at 35%.

Additionally, the draft proposes to exempt income received in the form of discounts upon redeeming such bonds.

In detail

What rules are currently in effect?

In general, income in the form of interest (coupons, discounts) currently falls under income from securities transactions and is subject to PIT in full, irrespective of the yields or other characteristics of these securities.

Currently, tax exemption covers the interest on treasury bills, bonds and other securities issued by Russia, member states of the Union State, the former USSR and individual Russian regions, as well as bonds and securities issued by municipal bodies.

What will change in 2018?

As we mentioned earlier[4], the proposal to reduce (up to 0%) of PIT on coupon yields from marketable bonds was included in a draft document entitled "Key Directions for Economic Policy in 2017 and Scheduled Period of 2018 and 2019".

The draft law proposes to implement this initiative by extending the PIT exemption on income in the form of interest (coupons) received on moderate-yield marketable bonds that were issued by Russian companies from

1 January 2017 to 31 December 2020 (inclusively) and denominated in roubles. This would apply in cases where the amount of the interest payment does not exceed the amount of interest calculated on the basis of the nominal value of the bonds and the refinancing rate set by the Russian Central Bank, with a mark-up of 5 percentage points, effective for the period when the income was paid. Any interest paid in excess of the yield limits would be taxed at an increased rate (35%) for Russian tax residents.

Therefore, the rules for taxing income earned by a taxpayer in the form of interest (coupons) on rouble-denominated bonds will become similar to the rules for taxing the interest income earned from bank deposits. In order to increase the comparative appeal

[4] http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2016-48.html

of bonds, which usually have a higher interest rate than bank deposits, lawmakers want to align the tax treatment of interest income earned by individuals from bank deposits with that of interest income earned from bonds issued by Russian organisations. The high tax rate on interest received from high-yield bonds is apparently intended to warn investors against investing in securities with an increased credit risk and to caution issuers against issuing such bonds.

The non-application of the new tax regime to securities issued before 2017 does not appear entirely logical if the goal is to attract investors. In addition, this limitation could create additional complications for taxpayers and tax agents when they attempt to determine the taxable income on transactions involving bonds issued in various years. It is still unclear from the draft law how interest (coupon) income on bonds issued before 2017 will be taxed starting from 2018.

The draft law also proposes to complement the list of income not subject to PIT with income in the form of discounts received upon redeeming marketable securities that were denominated in roubles and issued by Russian organisations in the period from 1 January 2017 through 31 December 2020 (inclusively).

The takeaway

Companies that act as tax agents of respective types of income should adjust their procedures for withholding PIT and informing the tax authorities.

Potential bond issuers should take account of the new tax conditions when determining the yield on their securities.

Individual investors may consider it reasonable to adjust their portfolios in favour of bonds, while banks should take account of possible cash outflows from deposits to higher-yield financial instruments.

We will continue to follow developments around this draft law.

Procedure for entering into advance pricing arrangement for a cross-border transaction

In brief

The Russian Ministry of Finance (the “MinFin”) has posted a draft order on the procedure for entering into an advance pricing arrangement (the “APA”) involving the competent authorities of foreign governments.[5] The adoption of this procedure is prescribed by Article 105.20.2 of the Russian Tax Code (the “RTC”).

To date, large taxpayers have been able to approach Russian Federal Tax Service (the “Russian FTS”) for conclusion of APAs where the Russian FTS is a party (so called “domestic APA”). The procedure for entering into a similar arrangement with involvement of foreign competent authorities (so called bilateral or multilateral APA) has yet to be adopted, though the respective right of large taxpayers and general principles are stipulated in the RTC.

In detail

The draft order is aimed at enforcing Article 105.20.2 of the RTC and contains a detailed description of the actions that a taxpayer must take in order to enter into an APA for a cross-border transaction where one of the parties is a tax resident of a foreign country. Under the RTC, large taxpayers have been able to enter into such arrangements since 2012. However, the procedure for executing this right has not been in place so far.

[5] http://regulation.gov.ru/projects#npa=38776

In terms of the text of the draft order, it is important to note the following:

1. Entering into an APA is permitted exclusively with those countries that have a valid double tax treaty with Russia.
2. The Russian FTS is empowered to conduct mutual agreement procedures and information exchange in order to enter into an APA under a respective tax treaty or other agreements (so Russian FTS is delegated to perform functions of competent authority for APA negotiations).
3. According to the draft order, the taxpayer has the option of holding a pre-filing discussion with the Russian FTS as part of the APA application procedure. Within 30 days from the date of filing an application for pre-filing meeting (the draft order contains a recommended list of information to be included in such application), the Russian FTS is required to notify the taxpayer about the time and place for the discussion, which should be held within three months from the receipt of the application. For the pre-filing discussion, the Russian FTS may consult with the respective foreign competent authority, if needed. The results of the pre-filing discussion are not binding. Therefore, taxpayers formally could still apply for an APA, regardless of the outcome of the pre-filing discussion.
4. The draft order establishes a recommended APA application form and a list of required documents (in line with Article 105.22 of the RTS and disclosed in detail in the appendix to the draft order). The documents include a demonstration of the results of use of the proposed pricing procedure and/or of the pricing methods over the last three years for which factual data is available, as well for a period (on a sample basis) covered by the APA. It should also include important assumptions made (in particular about sales, prices, currency exchange rates, interest rates, etc.). The Russian FTS is authorised to request from the taxpayer other documents and data that is not specified in the draft order but that would be relevant to APA. The tax authorities should be provided with translation of required documents in to Russian language and in the respective foreign language(s) in order to enable Russian FTS to conduct negotiations with foreign competent authorities.
5. To enable the competent authorities to conduct negotiations on an APA, the taxpayer is required to file an application with the Russian FTS, and its counterparty is required to file an application with the respective foreign competent authority. In this context, the following should be taken into consideration:
    - The Russian FTS will not enter into negotiations with the foreign competent authority to which the taxpayer's counterparty submitted an application, until the taxpayer has filed a respective application with the Russian FTS.
    - The taxpayer needs to submit to the Russian FTS all of the documents (information) that its counterparty provided to the foreign competent authority.
    - If the taxpayer files an APA application with the Russian FTS, it should notify the Russian FTS that its counterparty has filed a similar application to a foreign competent authority.
6. The Russian FTS should review the pricing procedure and/or the procedure for applying pricing methods proposed by the taxpayer and determine whether they comply with Article 105.3 of the RTC. The Russian FTS should also assess other circumstances, in particular, whether the arrangement would be instrumental in preventing double taxation and whether there would be a risk that the taxpayer could obtain an unjustified tax benefit.
7. When considering an application, the Russian FTS should, if appropriate, discuss the issue with the taxpayer (including at the initiative of the latter and within an agreed period) and consult with the respective foreign competent authority.

8. The Russian FTS should consider an APA application within the period stipulated by Article 105.22 of the RTC (six months, with a possible extension to nine months). Based on the application, the Russian FTS should decide whether to reject the APA conclusion or to revise the draft arrangement or to start negotiations with the respective foreign competent authority.
9. If an applicant's draft APA requires revision, the applicant should resubmit the draft, which the Russian FTS would consider according to the same procedure and within the same period as the initial APA application. According to Paragraph 26 of the draft order, when resubmitting an APA application, it is not required to submit documentary evidence of payment of the state duty. Article 105.22.7 of the RTC also stipulates that a state duty should not be paid in this case. The duty for the initial APA (as well as for a revision of the APA) is prescribed by Article 333.33.1.133 of the RTC and amounts to 2 million roubles.
10. The draft order establishes the procedure for conducting negotiations between the Russian FTS and foreign competent authorities. It stipulates that the taxpayer should be kept informed about the progress of negotiations (if requested) and that additional information can be requested from the taxpayer. The draft order does not set a time period for such negotiations. Once a mutual agreement between the competent authorities has been reached, the Russian FTS should decide whether to conclude an APA or to require revision of the draft arrangement.
11. The draft order specifies that if an arrangement with a foreign competent authority cannot be reached, the taxpayer could enter into an unilateral arrangement with the Russian FTS.
12. The taxpayer can withdraw an APA application at any stage prior to signing.
13. A valid APA can be amended later, in accordance with the procedure established by the draft order (however, in this case, the RTC would require the payment of an additional duty).

The procedure established by the draft order would apply to cross-border transactions that require an arrangement between two foreign competent authorities (bilateral APA), as well as those involving arrangements between several jurisdictions (multilateral APA).

The draft order contains a detailed chart that outlines the stages for entering into an APA. The chart clearly shows the potential crossroads at each particular stage and help taxpayers to orient in the negotiation process.

It is worth noting that the current edition of the draft order will most likely be updated and amended. However, taxpayers who intend to enter into an APA for a cross-border transaction can already use this edition as a guide for the proposed APA in Russia.

The public discussion of the draft order will last until 17 March 2017.

The takeaway

We recommend that taxpayers who conduct cross-border transactions with related parties assess whether they need to prepare for the possibility of entering into advance pricing arrangements involving foreign competent authorities (or whether they need to revise their existing plans in this area).

At the same time, taxpayers should assess their readiness to start the process, considering the procedure, documents and data described in the draft order, as well as the likelihood that the MinFin will adopt the order in the nearest future.

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

Ukraine

Parliament adopts Law ratifying Ukraine-Luxembourg Double Tax Treaty

On 14 March 2017 the Ukrainian Parliament passed a law ratifying the Double Tax Treaty between the Government of Ukraine and the Government of the Grand Duchy of Luxembourg (further – "DTT").

For the DTT to enter into force the President of Ukraine has to sign it and Ukraine and Luxembourg exchange the ratification letters. Luxembourg has already ratified the DTT. If the DTT enters into force before 31 December 2017, taxpayers engaged in transactions with residents of Luxembourg will be able to apply reduced withholding tax (further – "WHT") rates and enjoy other benefits of the DTT starting from 1 January 2018.

Specifically, the DTT introduces the following reduced WHT rates:

Type of income	Tax rate
Dividends	• 5%, if the 20% ownership threshold is met; • 15% in all other cases.
Interest	• 5%, if interest is paid on loans granted by a bank or any other financial institution; • 10% in all other cases.
Royalties	• 5%, if royalties are paid for the use of, or the right to use any patent, trade mark, design or model, plan, secret, formula or process, or for information (know-how) concerning industrial, commercial or scientific experience; • 10%, if royalties are paid for for the use of, or the right to use any copyright of literary, artistic or scientific work.

Rules on issuance of visas for entry to Ukraine and transit through its territory were simplified

Recently the Cabinet of Ministers of Ukraine (the "CMU") approved new rules on issuance of visas for entry to Ukraine and transit through its territory.[6]

The new rules were officially published on 17 March 2017 and will become effective in 30 days after the publication date.

Key novelties are the following:

- It will be possible to submit visa application online and conduct interviews with applicants via video conference.
- The list of countries whose citizens are eligible to obtain visas at checkpoints at the state border of Ukraine is expanded.
- The term for visa issuance and fees for its issuance were reduced.

[6] Approved by the CMU Resolution No. 118, dated March 1, 2013

- A type D visa will be issued as a multiple entry visa and its term of validity will be 90 days (instead single-entry visa with 45 days term of validity).
- It is no longer necessary to provide standard invitations issued by the State Migration Service of Ukraine in order to obtain a short- term type C visa.

It is expected that these changes will simplify and improve the procedure of issuance of Ukrainian visas.

Government adopts a calculation procedure for weighted average profit level indicator for transfer pricing purposes

The Cabinet of Ministers of Ukraine adopted a Resolution* regarding an algorithm for determining the weighted average profit level indicator for a comparable entity when using several reporting periods (years).

The newly approved formula should be used to define profit level indicators (using financial data of the comparable companies over several periods) to determine profitability range according to the arm's length principle.

Changes to the Advance Pricing Agreement procedure adopted

On March 29, 2017 the Cabinet of Ministers of Ukraine (the CMU) approved changes to the so–called Advance Pricing Agreement* (further – "APA") procedure for transfer pricing purposes.[7]

The key changes adopted by the CMU are as following:

- The term for which the APA may be concluded was extended from the current 3 to 5 calendar years.
- The APA may now come into effect either on a date agreed with the tax authorities or starting from January 1 of the year following the year in which the APA was concluded.
- The taxpayer may now agree with tax authorities the form and term for submitting the report on the APA's execution.

The changes will become effective on April 10, 2017.

PwC commentary:

The proposed change will be an improvement that will make the conclusion of an APA more beneficial.

The National Bank of Ukraine further eases currency control restrictions

On 4 April 2017 the NBU issued a resolution[8], which eases certain currency control restrictions, in particular:

The amount of mandatory sale of foreign currency proceeds was reduced from 65% to 50%;

---

[7] The CMU Resolution No. 194 dated 29 March 2017.
[8] NBU Resolution No. 30 dated 04 April 2017

The daily threshold amount for cash purchases of foreign currency per day was increased from UAH 12,000 to UAH 150,000.

These changes come into effect on 5 April 2017.

PwC commentary:

The new rules will facilitate holding foreign currency in accounts opened in Ukrainian banks. Besides that, individuals can now purchase greater amounts of foreign currency.

National Bank of Ukraine continues its policy of currency control liberalisation

On 13 April 2017 the National Bank of Ukraine issued a resolution, which further eases certain currency control restrictions, namely:

Starting from 14 April 2017 owners of corporate rights/shares (i.e. foreign shareholders of Ukrainian companies) are entitled to repatriate their dividends for 2016. The amount of monthly dividend payments may not exceed an amount equivalent to USD 5 million[9].

Advance payments under import contracts must be performed via a letter of credit if the contract value exceeds USD 5 million (previously it was USD 1 million).

Early termination of loans provided by non-residents is now allowed if i) a loan was provided by a top-rated bank (rated not lower than “A3/A-”) or ii) a loan was provided at the expense of funds originating from the placement of debt securities outside Ukraine.

Your local contact person:

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

[9] NBU Resolution No. 33 dated 13 April 2017

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.