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Azerbaijan

Law on joining the Vienna Convention On the Law of Treaties

The Republic of Azerbaijan has joined the Vienna Convention on the Law of Treaties dated 23 May 1969. The Vienna Convention on the Law of Treaties is a convention regarding the international law on treaties between states. The convention has a limited scope and applies to treaties concluded between states. The President of the Republic of Azerbaijan has ordered the Cabinet of Ministers to draft law on international agreements on the basis of the convention's clauses and provisions in four months.

Food Security Agency's Regulation

Food Security Agency will carry out development of state policy, law-making process, state registration of the food products being produced and imported, as well as their packaging materials, state supervision upon the protection of consumer rights and issuing food security certificates to the food products exported to foreign countries in the field of food security. The Agency will be able to conduct inspections and impose administrative penalties on its competency.

Charter of Azerbaijan Industrial Corporation OJSC

The corporation will involve in production and sales of competitive goods (works, services) in domestic and foreign markets in agro-industrial sector, development of high-tech companies ("start-ups"), technological modernization of production and application of modern technologies in subordinate enterprises, development of proposals and measures for improvement of investments, taking measures aimed at increasing the commercial relations between the foreign investors and domestic producers at subordinated enterprises.

Law On amendments to the Migration Code

The amendment states that the court will be able to restrict the citizens, non-citizens or foreigners those who are pregnant or have young children, to leave the country as yet they are emancipated from the rest part of imprisonment or end of their imprisonment if their imprisonment is postponed.

Law On amendments to the Civil Code

The Civil Code has been amended regarding publicity of real estate state registration. According to the amendment, the state extraction relating to the real estate placed at the e-government system by its owner, will be provided through e-system of state registration upon irremovable property in real time in accordance with Law on notary by notary officer or those who have competence to sort out notarization activity.

Draft Law On amendment to the Migration Code

If the proposed amendments to the Migration Code get passed, the new part will be added on clauses for registration of foreigners and non-citizens upon their place of stay in the Republic of Azerbaijan. This amendment will be read as – there will be no requirement for foreigners or non-citizens to get registered again, where they temporary live, upon place of stay if that place (flat or other residential area) belongs to owner of another place where foreigner or non-citizen has been already registered.

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Czech Republic

European Commission proposes a radical change of VAT system

The EC released a proposal for reform of the VAT system in the EU. The fundamental change is that VAT should be charged for intra-EU cross-border supplies of goods as if the goods were sold domestically. This would end the temporary VAT system applied from 1967. The EC will strive to reach an agreement during the final negotiations on four cornerstones:

1) Tackling fraud - VAT will be newly charged on cross-border trade between businesses which is currently VAT exempt.

2) Introduction of One-Stop-Shop - businesses will be able to make declarations, payments and deductions for cross-border supplies of goods through a single online portal in their own language and according to the same rules and administrative templates as in their home country. Member States will then pay the VAT to each other directly.

3) Greater consistency - VAT will always be paid to the Member State of the final consumer and charged at the rate of that State.

4) Less red tape – e.g. simplification of invoicing rules or cancellation of the EC Sales List. The EC proposal also introduces the concept of a Certified Taxable Person, a category of trusted business that will benefit from the various simplifications (in detail in the next article).

Some of the measures will come into force as early as in 2019. However, the proposal will require unanimous agreement from all Member States in the Council, including Great Britain, which is expected to leave the EU by 29 March 2019. Therefore, further steps by Great Britain will also be crucial to the legislative process.

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Kazakhstan

Court practice on the matter of protection of competition

Dispute between a Company and the Department of the Committee on Regulation of Natural Monopolies and Protection of Competition under the Ministry of National Economy of the Republic of Kazakhstan (“the authority”)

Claimed amount for confiscation: KZT 49,225,770

Amount of penalty: KZT 5,853,250

Court: Supreme Court of the Republic of Kazakhstan

Date of hearing: August 2017

Decision: Rejection of the claim made by the authority on recovering monopoly income

Facts in issue:

A Company was alleged by the authority for abuse of a dominant or monopoly position in its activity in a region and was claimed for confiscation of monopoly income amounted to KZT 49,225,770.

The Company’s activity was to provide maintenance services for gas distribution pipelines and household gas equipment (“the services”).

As per the claim of the authority, the Company concluded agreements with organizations and individuals in the region for provision of the services without notifying them of the possibility of concluding such agreements with other service providers specialized and certified for the same services. As the organizations and individuals could have accessed to other options, if otherwise, the authority recognized the company’s activity as abuse of a dominant or monopoly position, and calculated the monopoly income for confiscation as given above.

Position of the Supreme Court:

The Supreme Court decided in favor of the Company by revoking the confiscation claim of the authority.

The court decision was based on Article 225 of the Entrepreneurial Code of Republic of Kazakhstan (“EC”) which provides grounds for determining monopoly incomes. The court concluded that the claimed activity of the Company does not imply any of the grounds stipulated by Article 225 of EC and that there is no grounds for imposing confiscation of the monopoly income.

Our comments:

The concept and grounds for determining monopoly incomes stipulated in Article 225 of the EC include:

1) abuse of a dominant or monopoly position by the establishment of monopolistically high price
2) abuse of a dominant or monopoly position by the establishment of a monopolistically low price;
3) abuse of a dominant or monopoly position by the establishment of a monopossonically low price;
4) antitrust collusion.

Taking into consideration that the claimed actions of the Company do not meet any of the grounds mentioned before, we believe that, the court's decision to revoke the confiscation of the monopoly income is justified.

Changes to Rules for establishment of maximum prices for medicines under GVFMA and OSMI framework

In brief

The Pharmacy Committee sent NCE "Atameken" the draft of the Rules for establishment of maximum prices for medicines under the frameworks of the Guaranteed Volume of Free Medical Assistance

("GVFMA") and the Obligatory Social Medical Insurance ("OSMI"), (the "Rules"). If approved, the Rules will introduce significant amendments to the current rules for establishment of prices for medicines approved by the Order No. 639 dated 30 July 2015 ("Order No. 639").

In detail

Below are the key changes to be introduced by the Rules to the procedure for establishment of maximum prices under the frameworks of GVFMA and OSMI.

Establishment of manufacturers' registered prices

- Applying Ex Works Prices

Unlike the current Order No. 639, the Rules will apply Ex Works prices as a basis for establishment of a manufacturer's registered price by taking into account expenses incurred, including on marketing and running the manufacturer's representative office in Kazakhstan.

Ex Works price means a manufacturer's sale price for medicines to its distributor in the manufacturer's country of incorporation

(excluding any risks and expenses related to transfer of the goods from the seller's territory to the place of destination). However, the Rules do not specify what types of expenses can be recognized as expenses on marketing and running representative offices in Kazakhstan and how these expenses shall be confirmed.

- Comparing with External reference pricing

The Rules provide the list of countries for reference in order for foreign manufactures to establish registered prices.

Unlike the Order No. 639, there is no division of countries into main and reserve countries. The list refers to Ex Works prices in the following countries for comparative analysis: Belarus, Hungary, Latvia, Czech Republic, Bulgaria, Russia, Turkey, Slovenia, Poland, Austria, Netherlands, Belgium, Spain, Greece and Israel.

Moreover, the Rules exclude the possibility for manufactures to negotiate Ex Works prices for establishment of a registered price even if the proposed price is higher than the comparable reference prices. As such, if an applicant's price exceeds the average of the lowest five Ex Works prices in the above-mentioned list, the application for price registration will be rejected.

- Registered price for reproduced medicines (generic and biosimilar)

The Rules establish that the registered price for biosimilar should be 10% lower than the price of the manufacturer of the original biological medicines. Whereas, the Order No. 639 stipulates that the price of biosimilar should not exceed 70% of the price of the original medicine.

In addition, the Rules cancel the requirement that the registered price for reproduced medicines should be reduced if two or more generics or biosimilars of the same kind have been registered.

- Currency of the registered price

Manufacturers' registered prices should be determined in KZT. When applying for price registration, conversion of a manufacturer's price into KZT should be based on the official rate of the National Bank of Kazakhstan on the last complete business day preceding the date of filing the application.

At the same time, unlike the Order No. 639, the Rules do not provide any indexation provision for the case of change in the official exchange rate of KZT to USD by more than 15%, for establishment of the maximum prices.

It should also be noted that the Rules shorten the period from six months to three months during which it is restricted to change the registered prices of medicines.

Wholesale markup

To cover expenses on and make profits from wholesale realization of medicines, the Rules allow manufactures to charge wholesale markups on the registered prices of medicines which are to be procured under the frameworks of GVFMA and OSMI on a regressive scale.

The regressive scale of the wholesale markup determines the amount of a wholesale markup in percentage, which depends on the value of the registered price of medicines, namely:

Registered price of medicines	Regressive scale of wholesale markup
up to KZT 1,000	20%
from KZT 1,001 to KZT 3,000	19%
from KZT 3,001 to KZT 5,000	18%
from KZT 5,001 to KZT 30,000	17%
from KZT 30,001 to KZT 100 000	16%
more than KZT 100,001	15%

Establishment of maximum prices for medicines to be procured under GVFMA and OSMI framework

In accordance with the Rules, maximum prices for medicines of each trademark are determined based on their registered prices with consideration of wholesale mark-ups.

The Rules provide that the maximum prices for the international non-proprietary name ("INN") are formed on the basis of the maximum value of the lowest three maximum wholesale prices for trade names.

Taking into account all the above mentioned, the Ministry of Healthcare will approve the list of maximum prices for medicines, on the basis of which the lists of medicines to be procured in the frameworks of GVFMA and OSMI will be developed and approved for the next calendar year.

The Rules will become effective ten calendar days after the day of their first official publication.

[Source: Draft Order «On Introduction of Amendments to the Order of the Acting Minister of Healthcare and Social Development of the Republic of Kazakhstan dated 30 July 2015 No. 639 «On Approval of the Rules for the Establishment of Prices Assessment for Medicines and Medical Products under the Guaranteed Volume of Free Medical Assistance»]

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Lithuania

Payroll accountant's homework to handle changes in 2018

A differential personal allowance (DPA)

From 1 January 2018, the employer will be required to apply a DPA the State Revenue Service (SRS) has forecast according to the employee's income in the past period. For example, in 2018 the DPA forecast will be calculated and reported as follows:

DPA application period	1 January through 31 July 2018	1 August through 31 December 2018
Qualifying income	Taxable income received over the period from 1 October 2016 to 30 September 2017	Taxable income received over the period from 1 December 2017 to 31 May 2018
Date of calculation	15 December 2017	20 July 2018
Reporting deadline	by 1 January 2018	by 1 August 2018

The same timing principles will be used for calculating and reporting the SRS DPA forecast in subsequent tax years.

The employer will be required to apply the SRS DPA forecast for the relevant period to employees that have filed their payroll tax book.

Since the person's income may vary, the DPA notified to the employer may be inconsistent with the current level of salary. For example, if the employer applies a DPA that is too high for the current salary, the employer can inform the employee about the following options:

1. The person will be required to file the annual tax return in order to pay additional PIT; or
2. The employee can remove their payroll tax book, which means that the DPA, other allowances and the rate of 20% is not applied. In this case the person can voluntarily file the annual tax return in order to recover any overpaid PIT; or
3. The person can file a request to the employer for applying only the rate of 23%,[1] thus balancing the application of too high a DPA by not applying the reduced rate of 20% to income of up to €1,667 a month. In this case either the PIT surcharge would drop or an overpayment would arise.

When filing the annual tax return, the total PIT applied to the employee will be the same in any case, but the employee should assess whether it's more convenient to receive a lower net salary each month in order to recover the overpayment through the annual tax return, or a higher salary each month and pay additional PIT through the annual tax return.

Scope for planning income

According to the Finance Ministry's estimates, employees earning up to €6,000 a month will receive a higher net salary from next year. According to PwC estimates, persons earning in excess of €6,000 will experience a proportionally small drop in net salary. So it might not be efficient to make substantial changes to the employment income structure based on the reform alone. At the same time, it's possible to consider making changes to salaries of management and staff in order to use any incentives eligible for a more favourable package of employee taxation.

Metal products and household equipment to attract reverse charge VAT

We have informed about amendments to the VAT Act that extend the reverse-charge procedure to supplies of metal products (and related services) and to supplies of consumer electronics and domestic electrical appliances from 1 January 2018. This article explores the Cabinet of Ministers' Rule defining goods that are considered metal products according to codes of the Combined Nomenclature, and services connected with supplies of metal products, as well as goods that are considered consumer electronics and domestic electrical appliances according to Combined Nomenclature codes.

Amendments to Cabinet Rule No. 17

On 14 November 2017, the Cabinet of Ministers debated and adopted the following amendments to Cabinet Rule No. 17 of 3 January 2013, Application of Provisions of the Value Added Tax Act and Certain Requirements for Payment and Administration of Value Added Tax:

- The word "renovation" is replaced with the word "renewal" and the word "reconstruction" with the word "rebuilding" to reflect the new terminology used in the Construction Act;

- Appendices 7 and 8 to the Cabinet Rule, which define goods that will attract a special VAT scheme from 1 January 2018, have been amended. These goods are identified according to the Combined Nomenclature (Annex I to Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff as amended). The appendices to the Cabinet Rule use eight-digit codes and four-digit positions for goods. According to an annotation to the amendments, product groups designated by a four-digit position include all the eight-digit codes mentioned in that position;

- The Cabinet Rule also defines "services connected with supplies of metal products" that will be subject to the reverse-charge procedure under the VAT Act: cutting, bending, machining, welding, rolling, cleaning, surface treatment, and other forms of processing metal products.

It is worth remembering that because of new amendments to the VAT Act, the rules governing VAT returns have also been amended to specify, among other things, new codes R7, R8 and R9 for designating amounts of VAT charged on acquisitions of goods and services that are subject to reverse-charge VAT.

Changes in taxation of traders

The latest amendments to the Personal Income Tax (PIT) Act and the National Social Insurance (NSI) Act include a set of amendments relating to the tax treatment of traders. These amendments were adopted in the summer and came into force on 8 August. Also, amendments to the Cabinet of Ministers' Regulation No. 899, Application of Provisions of the Personal Income Tax Act, were approved on 14 November. This article explores some of the changes in the PIT and NSI treatment of traders.

A new approach: PIT payable on at least 20% of income

Currently, a trader's actual business expenses that do not exceed operating revenue can be included in expenses. Any excess should be treated as an operating loss to be offset against operating income in the next three tax periods.

Amendments to the PIT Act provide that when calculating taxable operating income, business expenses that do not exceed 80% of the individual's total operating revenue can be written off as operating expenses. At the same time, certain types of expenses are defined that can be fully included in business expenses without applying the statutory cap.

The taxpayer's operating loss (a negative operating income, ignoring the 80% cap on operating expenses) can be offset in a chronological sequence against taxable operating income in the next three tax years, subject to the 80% cap. The following types of expenses can be fully included in business expenses:

1. Salary and employer's NSI contributions, as well as solidarity tax the trader pays for his employees;
2. Real estate tax;
3. Depreciation; and
4. Compensations to tenants for vacating residential premises and terminating their tenancies because of necessary refurbishment work or rebuilding for the conduct of a trade or business.

An example of how a trader might calculate his tax:

		EUR
1	Revenue	20,000
2	Salaries and employer's NSI	17,796.96
3	Depreciation	1,500
4	Other operating expenses	500
5	Total expenses (5=2+3+4)	19,796.96
6	Profit (6=1–5)	203.04
	Taxable income adjustments:	
7	Depreciation (7=3)	+ 1,500
8	Contractual penalty to related party	+ 200
9	Capital allowances	– 3,000
10	Result of taxable income adjustments (10=7+8+9)	– 1,300
11	20% of operating revenue (11=1x20%)	4,000
12	Operating expenses fully deductible under section 11 (3.2) of the PIT Act (12=2+9)	20,796.96
13	Taxable income, allowing for operating expenses fully deductible under section 11(3.2) of the PIT Act (13=1 –12)	0 because 20,796.96 > 20,000
14	**Tax on operating income (14=13x20%)**	**0**
15	**Loss to be carried forward to next periods**	**1,300**

At the same time, necessary changes have been made to the PIT Act and the Cabinet of Ministers' Regulation, because the Corporate Income Tax (CIT) Act will cease to apply from 1 January 2018, and so these rules are included in the relevant sections of the PIT Act. Changes will also be made to the following areas:

1. The employer's contributions to private pension funds are not allowable business expenses if the trader's tax debt exceeds €150 (applicable to traders that use double-entry bookkeeping);
2. The trader's depreciation is governed by the PIT Act, not the CIT Act;
3. When writing off bad debts, individuals will face an extra criterion: 0.2% of net turnover.

The NSI surcharge

Traders currently pay NSI contributions under a scheme applicable to self-employed persons under the National Social Insurance Act. Accordingly, NSI contributions are not payable if the person's monthly income is less than the statutory minimum monthly wage (€380 in 2017). This amount should also be monitored for the year – overstepping the annual threshold of €4,560 will trigger NSI contributions payable at a rate of 31.13% on at least the minimum wage in the month of excess and subsequent months.

This arrangement will continue from 1 January 2018 onwards. The rate of NSI for self-employed persons will increase by one percentage point to be allocated to healthcare services. Additionally, the person should pay contributions for pension insurance equal to 5% of the difference between their actual income and the NSI base, for example:

	Monthly income of €4,000	Monthly income of €300
NSI base (full rate)	380	n/a
NSI base (additional rate)	3,620 (=4,000–380)	300

The additional rate of NSI will not apply if annual income is below €50.

These additional contributions are payable on all income, including amounts received from a foreign taxpayer.

Changes in tax treatment of endowment premiums

The Personal Income Tax (PIT) Act has been amended with effect from 1 January 2018, affecting employers that provide their staff with endowment insurance in addition to salary. This article explores the coming changes and some preparations that can be made before 2018.

Favourable payroll tax treatment of premiums

The lawmaker has provided for a favourable tax treatment of endowment insurance premiums that employers pay for their staff, i.e. such premium payments are exempt from PIT and national social insurance contributions if certain requirements are met.

This favourable treatment will basically continue into 2018, but endowment policies will have to mature in a minimum of ten years to qualify. This applies to endowment policies entered into after 2017.

The table below summarises the requirements that employer premium payments must meet if they are to qualify for the favourable tax treatment today and next year:

<table>
<tr><th></th><th>Today</th><th>2018</th></tr>
<tr><td>Requirements that remain unchanged</td><td colspan="2">Amounts paid during the year to an insurance company registered in Latvia or the EU/EEA should not exceed 10% of the employee's gross pay for the tax year
The endowment policy should provide that an insurance benefit is payable to the insured person (or their beneficiary) but any other amounts related to the operation or termination of the policy are payable to the employer (policy holder) and the policy should not provide for lending to insured persons</td></tr>
<tr><td>The amended requirement</td><td>The policy matures in at least five years</td><td>The policy matures in at least ten years</td></tr>
</table>

Endowment policies entered into before 2018 will be governed by the current wording of the PIT Act, including the five-year maturity requirement.

The Finance Ministry or the State Revenue Service has yet to publish an explanation of how the new rules will apply to group policies that are entered into before 2018 and cover a variable pool of employees. In our view, if a group policy is entered into before 2018, then premiums paid for any employees joining it after 2017 should qualify for the favourable treatment.

Lithuanian tax news

Tax reforms are taking place not only in Latvia. Proposals for amending the Lithuanian Corporate Income Tax (CIT) Act were presented on 17 October 2017. This article explores key proposals.

Extension of tax exemption on the sale of shares

It is proposed that the percentage of shares that must be held before their sale if the transaction is to be exempt should be reduced from 25% to 10%, i.e. capital gains arising on the sale of shares will be exempt if more than 10% of voting shares are held for more than two years (in some cases three years).

Extension of investment project relief

The proposals extend the validity of investment project relief and allow companies to reduce their taxable profit for 2018 and later periods by 100% of their fixed-asset costs incurred up to the year 2023 if certain requirements are met. Currently taxable profit can be reduced by 50% of those costs incurred during the period 2009–2018.

Extra CIT relief for entities carrying out R&D activities

The proposals introduce additional CIT relief for entities investing in scientific research and development (R&D). Currently entities engaged in such activities can deduct their R&D costs three times from their income for the tax period in which they are incurred if certain requirements are met. It is also proposed to apply a reduced CIT rate of 5% on profit (calculated according to a formula described in the proposals) from the use, sale or any other transfer of ownership of intangible assets if-

- income from the use of intangibles was earned and all the related expenses incurred only by the producer of such assets;
- those intangibles are copyright computer programs or any other intangibles protected by patents or other additional protection certificates issued by the European Patent Organisation or EEA or DTT countries.

Changes in restrictions on representation expenses

According to the proposals, only 50% (instead of 75%) of representation expenses will be recognised as deductible expenses in 2018 or later periods. Also, deductible representation expenses should not exceed 2% of the entity's income for the tax period.

The rules governing expenses that cannot be attributed to representation costs are also amended to disqualify only gambling costs from representation expenses. If the proposals are approved, hunting, fishing or golf costs will be allowed as representation expenses in certain cases.

Extension of tax relief to FEZ companies

The proposals change the procedure for applying CIT relief to entities registered in free economic zones (FEZ). FEZ companies meeting certain criteria are to be released from CIT payment for the first ten years of trading (currently six years) and allowed to pay CIT at the standard rate reduced by 50% for the next six years (currently ten years). It is also proposed to introduce a list of activities that are not eligible for CIT relief for FEZ companies instead of the current list of activities allowed to be carried out in FEZ. It should be noted that these rules would apply to companies that are registered in FEZ after 2017.

Changes in taxation of collective investment undertakings, venture capital and private equity entities

The proposals also amend the rules for taxation of collective investment undertakings (CIUs) and venture capital and private equity entities (hereinafter "funds"). The following amendments are being proposed:

- Supplement the CIT Act with new definitions of "collective investment undertakings" and "venture capital and private equity entities";
- Include CIUs without legal status (e.g. funds) in the definitions of "Lithuanian taxable entity" and "foreign taxable entity" and treat them as taxable entities;
- Recognise all income of CIUs as non-taxable, including dividends (except when they are received from tax havens);
- Recognise all income of Lithuanian entities or permanent establishments in Lithuania from holding shares/contributions in CIUs as non-taxable, unless a CIU is registered in a tax haven.

Other proposals

Small companies that employ fewer than ten people on average and whose income does not exceed EUR 300,000 for the tax period are to qualify for 0% CIT in their first year of trading if they meet certain additional conditions.

Entities with social enterprise status are to attract a standard rate of CIT (currently they are zero-rated).

A 5% CIT is to be restricted to co-operative enterprises receiving more than 50% of their income from agricultural activities (as opposed to all agricultural businesses).

It is proposed to establish an alternative for land depreciation for enterprises engaged in agricultural activities, i.e. such companies would be able to deduct 1/20 of their land value from their income for each tax period from the date of acquisition of such land.

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Poland

Act on ratification of Multilateral Instrument to Modify Bilateral Tax Treaties is officially published

In brief

On 14th November 2017 act on ratification of Multilateral Instrument to Modify Bilateral Tax Treaties („MLI") was published in official Journal of Laws. MLI globally implements mechanisms created to prevent international profit shifting to locations where they are subject to reduced taxation or non-taxation. Poland is the third country (after Austria and Isle of Man) ratifying MLI.

In detail

Goal of MLI

MLI contains solutions aimed at creating mechanisms allowing countries to react against actions which lead to reduction of tax base (base erosion) and transfer of income to jurisdictions offering reduced taxation or non-taxation (profit shifting).

MLI was created in order to quickly and swiftly introduce solutions implemented during BEPS project into existing DTTs. MLI allows to automatically change DTTs concluded by the respective country, thus eliminating the necessity of conducting long-lasting bilateral negotiations between countries.

MLI from the Polish perspective

Poland declared 78 DTTs for the MLI's purposes. Among declared DTTs, there are i.a. DTTs with: Austria, Belgium, Canada, Cyprus, Denmark, France, Holland, Ireland, Luxembourg, Malta, Mexico, Norway, Sweden and the United Kingdom. DTTs with i.a. USA and Germany are currently out of scope of MLI.

Method of tax credit instead of method of tax exemption

At the moment of signing MLI, Poland has declared 77 DTTs in which method of avoiding double taxation used to this point, i.e. tax exemption method may be replaced by tax credit method.

Principal Purpose Test („PPT")

Principal Purpose Test was chosen by Poland in the transition period as a mechanism of eliminating abuse of benefits resulting from DTT. Goal of conducting the PPT is mainly to find out whether receiving benefit resulting from DTT was one of main goals of a particular arrangement or transaction. Intended goal of Poland is to introduce to DTTs the additional conditions

(determined during bilateral negotiations) limiting the possibility of applying tax benefits resulting from DTTs (limitation on benefits clause).

Permanent establishment

In relation to rules regarding avoidance of permanent establishment status (e.g. by using commisionaire structures) established in MLI, Poland made a reservation that these rules will not be applicable to DTTs declared by Poland.

MLI's entry into force

MLI's entry into force will happen after three months from the date when MLI is ratified by a fifth country.

MLI will be applicable in relation to the particular DTT after both parties of the particular DTT will sign MLI, ratify it and finish other procedures required by their internal law. OECD foresees that the first changes to DTTs may happen in the beginning of 2018.

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Romania

Deadline extension for the application of the limitation of VAT deduction right for car-related expenses

In brief

Deadline extension for the application of the limitation of VAT deduction right for car-related expenses.

In detail

Council Implementing Decision (EU) 2017/2012 was published on 10 November 2017, authorising Romania to extend the deadline for the application of the limitation of VAT deduction right for car-related expenses, as of 1 January 2018 until 31 December 2020.

[Source: Council Implementing Decision (EU) 2017/2012 dated 7 November 2017 amending Implementing Decision 2012/232/EU authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax, published in Official Journal of the European Union No. L292 dated 10 November 2017]

VAT deduction right – involvement in VAT fraud

In brief

Government Emergency Ordinance no. 79 / 8 November 2017 concerning the modification and completion of Law no. 227/2015 regarding the Fiscal Code was published, clarifying the VAT deduction right of taxable persons involved in fraud.

In detail

According to the Ordinance, the Romanian tax authorities are allowed to deny the VAT deduction right of taxpayers only if, after checking all available evidence under the law, they can prove beyond any doubt that the taxable person knew or should have known that a transaction involved VAT fraud which occurred upstream or downstream in the supply chain.

In this way, taxpayers are encouraged to adhere to the voluntary compliance and good faith principles and to take preventive steps to identify the extent to which their suppliers / customers are involved in fraudulent chains. This newly-adopted measure is welcome, as its stated purpose is fighting abuses in tax authority practice, as the VAT deduction right has often been rejected based purely on suspicion of fraud.

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

VAT Fraud Tracker monitors the movement of goods within the EU, by using statistical information and by automatically indicating inbounds and outbounds showing signs of potential cross-border fraud. FAIT is an automated instrument used for the extensive checking of business partners as far as tax, reputational and operational risks are concerned.

[Source: Government Emergency Ordinance no. 79 / 8 November 2017 concerning the modification and completion of Law no. 227/2015 regarding the Fiscal Code published in Official Gazette no. 885 / 10 November 2017]

The takeaway

In order to avoid being denied their VAT deduction right, a legislative clarification encourages taxpayers to be proactive and monitor whether their suppliers / customers are involved in fraudulent chains. Our new tools, VAT Fraud Tracker and FAIT, can be the first steps. To test the demo version for free, you can arrange a meeting with the PwC team right now!

Fiscal Code amendments

In brief

Government Emergency Ordinance no. 79 / 8 November 2017 concerning the modification and completion of Law no. 227/2015 regarding the Fiscal Code has been published, with its provisions entering into force on 1 January 2018. We present below the provisions regarding corporate income tax, micro-enterprise income tax, personal income tax, statutory social contributions and value added tax (VAT).

In detail

Title II - Corporate income tax

The above-mentioned Government Emergency Ordinance transposes the Anti-Tax Avoidance Directive into national law, introducing new rules and amending existing ones:

1. Interest deductibility rules

The interest deductibility rules currently in force (i.e. interest limitation cap and debt-to-equity ratio) are being replaced by new rules.

As of 1 January 2018, the exceeding borrowing costs (calculated as the difference between any debt-related costs – including foreign exchange expenses and capitalised interest - and income from interest and other economically equivalent income) incurred in a fiscal period which exceed the deductible threshold of EUR 200,000 will be deductible for corporate income tax purposes up to the limit of 10% of the calculation base. The non-deductible exceeding borrowing costs can be carried forward indefinitely. The limitation also applies to any debt-related costs in connection with loans granted by financial institutions.

The calculation base is determined as the gross accounting profit, minus non-taxable revenues, plus exceeding borrowing costs and deductible tax depreciation.

If the calculation base is zero or negative, the exceeding borrowing costs are treated as non-deductible for corporate income tax purposes during the current tax period, but can be carried forward indefinitely.

The above-mentioned interest deductibility rules also apply to financial institutions, but not to independent entities (entities that they are not part of a consolidated group for financial accounting purposes, do not have related parties and permanent establishments), which can fully deduct exceeding borrowing costs.

The new rules will also apply to interest and foreign exchange losses carried forward from the past and accumulated as at 31 December 2017.

2. Exit taxation

A taxpayer will be subject to corporate income tax (at 16% tax rate) for transfer of business carried out by a permanent establishment, transfer of assets or transfer of residence. The taxable base should be calculated as the difference between the market value of the assets and their fiscal value.

3. General anti-abuse rule

The Ordinance also introduces a new anti-abuse rule applicable to an arrangement or a series of arrangements which, with regard to all relevant facts and circumstances, are not genuine, having been undertaken for the main purpose of, or having as one of the main purposes, obtaining a tax advantage that defeats the object or purpose of the applicable tax law. Specifically, the above-mentioned arrangements are to be ignored when calculating the tax liabilities attributed to a taxpayer.

4. Controlled foreign company rules

New rules have been introduced regarding the taxation of controlled foreign companies. Under these rules, a taxpayer should include in its taxable base, in proportion with its holding in the controlled foreign company, the latter's non-distributed income derived from the following categories:

(i) Interest or any other income generated by financial assets;

(ii) Royalties or any other income generated from intellectual property;

(iii) Dividends and income from the disposal of shares;

(iv) Income from financial leasing;

(v) Income from insurance, banking and other financial activities;

(vi) Income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value.

A company is considered a controlled foreign company if the following conditions are both met:

a) The taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of the capital or is entitled to receive more than 50% of the profits of that company;

and

b) The actual corporate income tax paid on its profits by the company or permanent establishment is lower than the difference between the corporate income tax that would have been charged for the company or permanent establishment under the applicable Romanian corporate income tax provisions and the actual corporate income tax paid on its profits by the company or permanent establishment.

Title III - Micro-companies income tax

The revenue threshold under which a company is considered a micro-company has been increased from EUR 500,000 to EUR 1,000,000.

The current exceptions under which certain companies are not considered micro-companies companies have been repealed. Specifically, all companies, including companies obtaining at least 20% of their revenues from management and consultancy activities, companies with a share capital higher than RON 45,000 or companies active in certain industries (e.g. banking; insurance and reinsurance; capital market; gambling; exploration, development, operation of oil resources and natural gas) are considered micro-companies if their revenues as at 31 December of the previous year do not exceed the RON equivalent of EUR 1,000,000.

Title IV – Personal income tax

- The income tax rate has been decreased from 16% to 10% and its applicability remains unchanged – income from independent activities, salary income and income treated as salary, rental income, investment income (except dividend income, for which the 5% income tax rate remains the same), pension income, income from agricultural, forestry and fishery activities, prizes and income from other sources.

- The income tax rates applicable for intellectual property income have been decreased:

  – from 10% to 7%, for establishing the advance payments, performed on account of the annual income tax;

  – from 16% to 10%, for establishing the income tax as final income. In this case, the calculation base is determined by the gross income minus the fixed expenses allowance.

- The tax authorities perform the reassessment of the net income from independent activities, determined in real system, by deducting the social insurance contribution from the annual net income.

- The monthly gross salary income for which the personal deduction applies has been increased to RON 1,950. Digressive personal deductions apply to monthly gross salary income between RON 1,951 and RON 3,600. In order to qualify as dependent persons, individuals' taxable and non-taxable income must not exceed RON 510 per month.

- Provisions have been copied from the Methodological Norms of the Fiscal Code to qualify as pension income the rights received in accordance with Law no. 411/2004 regarding private pension funds and with Law no. 204/2006 regarding voluntary pensions. In addition, for establishing the monthly taxable income, each fund can grant only one non-taxable threshold for one-off payments granted based on the special legislation.

- The submission of the tax return on the calculation and withholding of income tax for each beneficiary of income has been reintroduced for payers of income from intellectual property rights, land lease and income generated by associations between individuals and legal entities. The tax return filing deadline is the last day of February of the current year for income derived during the previous year.

Title V - mandatory social contributions

- Social contributions applicable on salary income and other income treated as such have been amended and the fiscal burden is borne as follows:

  – Employees: 25% social insurance contribution and 10% health insurance contribution;

  – Employers (individuals or legal entities) and other entities treated as such: insurance contribution for work of 2.25% and social insurance contribution of 4% for uncommon work conditions and 8% for special work conditions.

- Social insurance contributions and health insurance contributions due by employees concluding a full-time or part-time employment contract cannot be lower than the social contributions due on the national minimum gross salary in force during the month for which the social contributions are due, corresponding to the number of working days during the month for which the contract is active. Certain exemptions apply e.g. pupils or students younger than 26 years, apprentices younger than 18 years and disabled individuals.

- The insurance contribution for work is due by employers (individuals or legal entities) or other entities treated as such and by employees deriving in Romania salary or income treated as such from employerssubject neither to the European social security rules nor to the social security agreements Romania applies. The monthly contribution calculation base is the total gross salary income or other income treated as such.

- The social insurance contribution due by individuals deriving income from independent activities is calculated by applying the 25% rate to an income amount chosen by the taxpayer; such income cannot be lower than the national minimum base gross salary. The social insurance contribution is not due by individuals whose monthly net income derived during the previous year / monthly estimated net income or whose monthly value of the income norms is below the level of the national minimum gross salary.

- Individuals deriving cumulated annual income which is at least equal to 12 national minimum gross salaries, from one or more income sources (income from independent activities, income from association with a legal entity, rental income, investment income, income from agricultural, forestry and fishery activities or income from other sources), have to pay the health insurance contribution of 10%. The monthly calculation base of the contribution is the national minimum gross salary in force during the month for which the contribution is due. Individuals who are required to pay the health insurance contribution must file with the relevant tax authority a declaration concerning the monthly threshold for health insurance contribution purposes. The annual declaration filing deadline is 31 January of the year for which the health insurance contribution is established.

- The exception from the payment of the health insurance contribution due on investment income or on income from other sources no longer applies to individuals who obtain other income such as salaries or pensions.

- New categories of individuals exempt from the payment of the health insurance contribution have been introduced (e.g. individuals who benefit from income support, individuals unlawfully incarcerated, monastic members of recognised religions).

- EGO provisions in the income tax area apply to income derived and expenses incurred as of 1 January 2018, as well as to salary income, income treated as such and to pension income related to January 2018. In respect of mandatory social contributions, EGO provisions apply to income derived as of 1 January 2018. Income related to periods prior to the 2018 tax year are subject to the mandatory social contributions in force during the period to which the income relates.

Title VII – Value added tax

The tax authorities are allowed to deny the VAT deduction right of taxpayers only if, after checking all available evidence under the law, they can prove beyond any doubt that the taxable person knew or should have known that a transaction involved VAT fraud which occurred upstream or downstream in the supply chain.

[Source: Government Emergency Ordinance no. 79 / 2017 concerning the modification and completion of Law no. 227/2015 regarding the Fiscal Code published in Official Gazette no. 885 / 10 November 2017]

The takeaway

The provisions of GEO 79/2017 will come into force as of 1 January 2018. Among the most important elements are:

Corporate income tax

Anti-Tax Avoidance Directive provisions have been transposed into the Romanian Fiscal Code. This brings a new set of interest deductibility limitation, exit taxation, anti-abuse and controlled foreign company rules.

Micro-companies income tax

The micro-company tax regime rules have been amended by increasing the revenue threshold to EUR 1,000,000 and repealing all exemptions.

Companies, especially companies with carried-forward losses and holding companies currently qualifying as profit taxpayers that may become micro-companies, should assess the potential impact of these changes and identify solutions for minimising any adverse implications. For undertaking such an assessment, you can arrange a meeting with the PwC team right now!

Personal income tax and mandatory social contributions

- The tax rate has been decreased from 16% to 10% for most types of income.
- The level of personal deductions applicable to salary income has been increased.
- The social contributions due by employees have been increased to 35% and the social contributions for normal working conditions due by employers have been decreased to 2.25%. In addition, employers owe a social insurance contribution of 4% for uncommon working conditions and 8% for special working conditions.
- Individuals deriving income from independent activities owe the social insurance contribution of 25% applicable on a chosen income, which cannot be lower than the national minimum gross salary.
- The health insurance contribution (10%) is due, in certain conditions, by individuals deriving income from independent activities, income generated by association with a legal entity, rental income, investment income, agricultural, forestry and fishery activities income or income from other sources. The monthly calculation base of the contribution is the national minimum gross salary in force for the month for which the contribution is due.
- The exception from payment of the health insurance contribution due on investment income or on income from other sources no longer applies to individuals who obtain other income such as salaries or pensions.

Value added tax

- The tax authorities are allowed to deny the VAT deduction right of taxpayers only if, after checking all available evidence under the law, they can prove beyond any doubt that the taxable person knew or should have known that a transaction involved VAT fraud which occurred upstream or downstream in the supply chain.

A bill for approving GEO 79/2017 has been published on the Senate website, but we understand that the text will undergo some changes.

Romanian National Agency for Fiscal Administration approves country-by-country report (CbC) and CbC notification templates

In brief

On 11 December 2017, the electronic versions of the country-by-country (CbC) report and CbC notification templates were published by the Romanian National Agency for Fiscal Administration.

Previously, on 14 November 2017, the National Agency published Order no. 3049/2017, which approved the CbC report and CbC notification templates, as well as the procedure for their submission. However, in the absence of the above-mentioned electronic templates, submission of the CbC reports technically was not possible.

In detail

On 11 December 2017, the Romanian National Agency for Fiscal Administration published on its website the electronic forms of the CbC report and CbC notification templates that are to be used for submission by the Romanian taxpayers – Forms R404 and R405, respectively.

The CbC report and CbC notification templates previously were approved by the National Agency on 14 November 2017 through Order no. 3049/2017 (the Order).

The Order also provides the procedure for completion of and submission of the CbC report and CbC notifications, in line with the legislative framework adopted earlier.

CbC report template

The CbC report template is in line with the template provided by the Directive (EU) 2016/881 of 25 May 2016 and comprises the following sections:

- Romanian reporting entity's identification data;
- MNE group identification data;
- Overview of allocation of income, taxes, and business activities by tax jurisdiction;
- List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction; and
- Additional information.

The CbC report is to be submitted for the fiscal years starting with 2016, within 12 months of the last day of the reporting fiscal year of the MNE Group.

CbC notification template

The CbC notification should be used by the Romanian resident entities that are part of MNE groups to:

- notify the Romanian tax authorities whether they are the ultimate parent, the surrogate parent, or other Romanian resident entity required to file the CbC report, or
- notify the Romanian tax authority regarding the identity of the MNE member that is filing the CbC report, and its residency.

CbC notification should be submitted by the last day of the reporting fiscal year of the MNE group, but no later than the deadline for filing the tax return of the respective constituent entity for the preceding fiscal year.

Submission procedure

The Order provides the following alternatives for submission of the CbC report and CbC notifications:

- Submission to the competent Romanian Tax Authorities in PDF format, accompanied by an XML file recorded on a CD, as well as by a duly signed paper-based version, or

- Submission by electronic means, in line with legislative provisions.

[Source: Order of the Romanian National Agency for Fiscal Administration no.3049/2017 dated 14 November 2017]

The takeaway

The Romanian National Agency for Fiscal Administration has approved the CbC report and CbC notification templates, as well as the related procedures for their completion and submission.

In light of the approval of these templates, the Romanian resident entities that are members of MNE groups should assess their obligation to submit a CbC report and/or CbC notification in order to observe the deadlines provided by law.

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Russia

A revolution in taxing hydrocarbon producers is just around the corner

The State Duma will consider a bill on the taxation of additional income from hydrocarbon production ("TAX"). While the idea of changing the tax regime for hydrocarbon production has been around for nearly 20 years, an agreement on the key parameters of the new tax regime has only been reached recently, enabling Duma deputies to officially begin discussing the possibility of changing the existing legislation on taxing hydrocarbons.

The new tax regime would fundamentally change the current approach. It would shift the main tax burden to a later period in a field's life cycle, and it would stipulate that TAX would be paid only after a project has reached its break-even point. The rate would be subject to the earning capacity of each particular subsoil plot, enabling businesses to improve their project's economics, settle with their creditors within a shorter period of time and, most importantly, bring into development low-margin hydrocarbon fields, including those with hard-to-recover reserves.

The TAX rate is set at 50% of profits and it would be charged after a project has reached its break-event point. Whether it is economically advantageous or disadvantageous would depend on the economics of production at a particular site. In any case, the TAX appears to be the next step in the development of the tax regime for oil production. A taxpayer and the government would share the risks associated with developing a field and the profits generated by it if the development is profitable.

In detail

When would the new tax regime come into effect?

It would come into effect in 2019.

Where would the new tax regime be applicable?

It would only apply to pilot projects first. The bill refers to particular subsoil plots that fall into one of four applicable groups (see Appendix 1).

Subsoil plot users from groups 1 and 2 would have the right to refuse the switch to the TAX (if this is the case, a taxpayer would continue to assess and pay MRET and corporate income tax), while users from groups 3 and 4 would not be allowed to do so.

How does it work?

The TAX would apply to surplus income from the production of raw hydrocarbons, and it would be defined as the difference between estimated revenues from production and the sum of actual and estimated production costs for a calendar year. Schematically, it can be presented as follows:

TAX base = **Estimated revenues** – **Actual expenses** – **Estimated transportation costs** – **Estimated export duties**

The actual costs for developing a subsoil plot, along with the estimated transportation costs (depending on the production area) and export customs duties (assuming all produced hydrocarbons were immediately exported), would be deducted from the revenues that are dependent on exchange quotations for hydrocarbons (e.g. Urals oil prices for crude oil) and production output (i.e. the actual selling price is of no importance here).

The relevant formulas can be found in appendices 2 through 5.

Therefore, the possibility of manipulating the numbers to minimise taxation is all but ruled out. Only the actual expenses incurred by a taxpayer (including the cost of subsoil plot development, depreciation, payroll, insurance contributions, R&D and other expenses directly related to field development) would be taken from accounting records. With that the final amount is under control: the bill introduces a minimum TAX formula. This amount might even be equal to zero in certain circumstances.

Furthermore, the bill puts forward special rules for carrying forward losses from prior periods, including historical ones (e.g. those accrued prior to the switch to the TAX). The TAX therefore would be charged only after a project has reached its break-even point and when the tax base is at a positive amount.

A calendar year would be the tax period and a tax return would need to be filed by 28 March of the year following the reporting year.

The tax rate would be 50% of the tax base.

What would happen to the MRET?

The MRET on oil would be calculated based on the following formula: one Russian rouble (RUB) per tonne of oil multiplied by a coefficient based on Urals oil quotations, the period of time that has passed since the date of the initial commercial production and the rate of export customs duties. The coefficient calculation formula is presented in Appendix 6.

What about transfer pricing?

The bill specifies that transactions between related Russian parties would be treated as controlled under the TP rules if at least one of the parties to the transaction is a taxpayer of the TAX, and if the transaction is considered for TAX purposes. The threshold is set as RUB 60m per year.

The takeaway

We will continue to monitor the progress of this bill. We recommend that you be actively involved in the discussion of the proposed amendments, since it is possible to do so at this stage of the legislative process.

If the TAX is applicable to your fields and you would like to assess the benefit of the new tax regime, please contact Andrey Soldatenko, the EU&M Tax Services director, by phone at either +7 (812) 326-6969 or

+7 (495) 223-5097, or by email at andrey.soldatenko@pwc.com.

Please find more detailed information here:

https://www.pwc.ru/en/tax-consulting-services/assets/legislation/tax-flash-report-2017-63-eng.pdf

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Serbia

New OECD Transfer Pricing Guidelines

In brief

This July the Organisation for Cooperation and Economic Development (OECD) released the 2017 edition of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the OECD Guidelines). The 2017 edition represents the first full update of the OECD Guidelines since 2010. The revisions incorporate the substantive changes made by the 2015 final Base Erosion and Profit Shifting (BEPS) reports on Actions 8-10 (Aligning Transfer Pricing Outcomes with Value Creation) and 13 (Transfer Pricing Documentation and Country by Country (CbC) Reporting).

The OECD Guidelines incorporate a number of important international tax policy decisions that have been made over the course of the BEPS Project. We list the some of the major changes for your further consideration below:

- The existing characterisation of entities within a group might need to be revised. Namely, precise delineation of intercompany transactions is paramount, and the actual conduct of parties will prevail over contractual agreements where there is a misalignment between the two.

- More attention is dedicated to intercompany transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Guidance on remuneration for intangibles and research and development activities has been changed. Although legal agreements continue to serve as a starting point, returns from intangibles are allocated to the entities that carry out key functions: the development, enhancement, maintenance, protection, and exploitation (DEMPE), and not necessarily to the legal owner of the intangibles or entity providing the funding.

- Characterisation of functional profile of entities within a group might need to be revised, especially in regard to allocation of risks assumed. Namely, a six-step process for identifying risks is provided, with the return for risk allocated to the party that controls the risk and has the financial capacity to assume it.

- The new OECD Guidelines include clarification of the previously existing guidance on the application of the comparable uncontrolled price (CUP) method to commodity transactions. The proposed guidance seeks to ensure that pricing reflects value creation, thereby protecting the tax base of commodity dependent countries, by ensuring that parties performing value-adding functions in relation to the commodity being transferred are remunerated with an arm’s length compensation.

- The OECD Guidelines introduce an elective, simplified approach for low- value-adding intra-group services. It provides definition of low value-adding intragroup services, a list of services that would typically meet the definition, an elective simplified approach to determine arm's length charges for low value adding services, including a safe harbour of five percent is established for low-value-adding intra-group services. As an indirect implication, for services that cannot be characterised as low-value-adding it might be advisable to consider whether a five percent margin is still appropriate under the arm’s length principle.

- The revision made under Action 13 generally pertain to the Chapter V (Documentation) of OECD Guidelines. Namely, Chapter V now outlines the OECD-favoured three-tiered approach to transfer pricing documentation, which includes Master file, Local file and CbC report. It should be noted that documentation requirements under the new OECD guidance deviate from current Serbian documentation requirements. Therefore, it should be borne in mind that documentation prepared under OECD approach will likely require amendments in order to be fully compliant with local requirements.

In addition to aforementioned, the OECD Guidelines also incorporate revised guidance on business restructuring, transfer pricing methods, cost contribution agreements, etc. It should be noted that further changes are expected.

Takeaway

The amended OECD Guidelines can be expected to result in multinational companies taking a broader insight and review of their existing business models and transfer pricing policies in order to mitigate possible risks in course of tax audits. It is important that any resulting changes from such revisions be also considered from a local transfer pricing perspective.

For companies in Serbia the new guidance may also be relevant in their annual transfer pricing compliance. Namely, although new rules outlined in the OECD Guidelines have not been introduced in local legislation, the current position of OECD is that outlined principles on how to conduct analysis and reach an arm's length standard are only an interpretation of already existing rules (arm's length standard). Having this in mind, as well as that CIT Law stipulates OECD sources as the basis of local transfer pricing rules, which in practice are often used as an authoritative source of interpretation, for companies in Serbia it is important to take into consideration the new guidance when analysing their intercompany transactions.

Announced Postponement of Application of New VAT Rulebook

In brief

Serbian Ministry of Finance has announced that the application of the new Rulebook on VAT Records will be postponed for 1 July 2018.

Based on the information published on the Website of the Serbian Ministry of Finance

(http://www.mfin.gov.rs/pages/article.php?id=13362) application of the new Rulebook on VAT Records is going to be postponed.

Formally, postponement will be covered by the amendments of the VAT Law, expected to be adopted till the end of this year.

Until the Serbian Parliament adopts this amendment, effective date of the new Rulebook on VAT Records remains 1 January 2018.

Amendments to the Value Added Tax Law

On Wednesday, 6 December 2017, the National Assembly of Republic of Serbia, started with a discussion on, inter alia, draft Law on Amendments of the Value Added Tax Law, which is proposed by the Serbian Government on 1 December this year.

Below we present the most important amendments:

Supply of goods and services

Supply of goods and services between the grantor of concession and concessionaire will not be subject to VAT as of 1 January 2018, provided that the following conditions are cumulatively met:

- Supply is performed based on the public-private partnership contract with elements of concession;
- The grantor of the concession and concessionaire are VAT payers; and
- If such supply would be subject to VAT, the customer would be entitled to input VAT recovery.

VAT exemption for the goods that passenger dispatches abroad

VAT exemption with input recovery right is applicable for the supply of goods that passenger dispatches abroad within his luggage for non-commercial purposes, if prescribed conditions are met, which inter alia envisage that:

- Passenger does not have a permanent residence in the Republic (based on the information on the place stated in the passport, ID card or other identification document);
- The total value of delivered goods exceeds EUR 150;
- VAT payer, i.e. supplier has the proof that passenger dispatched goods abroad;
- Supply is not related to excise goods and the goods that are intended for equipping and supplying means of transportation used for private purposes.

The procedure for exercising VAT exemption, VAT refund and necessary evidences that the goods are dispatched abroad shall be regulated in more details by the Ministry of Finance.

These amendments, if adopted by the Parliament, should be effective as of 1 January 2019.

Recovery of input VAT

It is proposed that the VAT payer has right to recover input VAT for the cost related to food and drinks that it provides to employees and other hired workers, in its hospitality facilities, provided that the taxpayer charges a compensation on that basis. Draft Law does not deal with the amount of compensation charged from customers in the context of input VAT recovery right.

Decrease of VAT liability related to application of reverse charge VAT

In the event that the Tax authorities in course of tax audit dispute to the taxpayer input VAT recovery right related to the supply of goods and services where the taxpayer assessed VAT as a VAT debtor, VAT payer, on the basis of the decision, has the right to decrease output VAT calculated on this basis.

Considering that this rule will be applicable as of next year, we believe that this procedure will be applicable for all decisions issued after this rule become effective (notwithstanding if the audit was performed before the Law on amendments of VAT Law entered into force).

Place of supply of unique tourist service

In order to align Serbian VAT rules with EU rules, the place of supply of unique tourist service will be considered to be the place where the service provider has a seat or a permanent establishment.

Taxation of investment gold

Proposed amendments of the Law introduce special procedure for taxation of supply of investment gold, which should be applicable as of 1 April 2018.

Postponed submission of VAT assessment overview

The obligation to submit VAT assessment overview is postponed for six months, i.e. until 1 July 2018.

Proposed Amendments to the Corporate Income Tax Law

In brief

Serbian Government has recently issued a draft Law on Amendments to the Corporate Income Tax Law ("the Draft CIT Law") which was submitted for approval to the National Assembly of the Republic of Serbia. It is expected that the proposed CIT Law amendments will be adopted in the near future. The most significant amendments are presented in the text below.

Tax depreciation of intangible assets

It is envisaged that the tax depreciation of intangible assets should be equal to their accounting depreciation. Pursuant to the Draft CIT Law, tax depreciation of intangible assets will be calculated by applying the straight line depreciation method proportionate to the asset's useful life, defined by the moment of its recognition in taxpayer's statutory financials in accordance with the accounting legislation, on the base determined as the acquisition value of each individual intangible asset separately.

Tax depreciation of fixed assets consisting of movable and immovable parts

Draft CIT Law envisages an exception for calculation of tax depreciation of fixed assets consisting of movable and immovable parts.

Namely, it is prescribed that such assets are classified into tax depreciation groups pursuant to the manner in which they are recognised in taxpayer's statutory financials, in line with the relevant accounting legislation.

Write-off of non-performing bank loans

In accordance with the Draft CIT Law, expenses recognised by banks in regard of write-offs of receivables related to loans granted to individuals and legal entities, which are considered as non-performing loans in terms of the rules set by the National Bank of Serbia, will be considered as CIT deductible, provided that the such write-offs were performed in line with regulations of the National Bank of Serbia.

Withholding Tax

Draft CIT Law envisages changes to the scope of withholding tax in terms of service fees paid to non-resident legal entities, other than those from tax havens, prescribing that withholding tax applies solely on fees for market research services, accounting and audit services and other legal and business consulting services.

Furthermore, the Draft CIT Law provides for an extension of the deadline for submission of withholding tax return and payment of withholding tax liability to three days from the date of payment of income subject to withholding tax.

Tax holiday

Draft CIT Law clarifies that a taxpayer will lose the right to the tax holiday right in case the taxpayer reduces the number of employees employed for an indefinite period during the tax holiday period, so that the average number of employees employed for an indefinite period, determined on the last day of period for which the tax return is submitted is lower than the number of employees employed for an indefinite period which taxpayer had in the tax period in which it qualified for the tax holiday.

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Slovakia

Changes to electronic communication with tax authorities as of 1 January 2018 and the tax reliability index

As of 1 January 2018, all legal entities will be obliged to communicate with the tax authorities electronically

All VAT payers and tax representatives of tax entities are already obliged to file documents and communication with tax authorities electronically. As of 1 January 2018, an amendment of the Tax Administration Act extends electronic communication with tax authorities to all legal entities that are registered in the Slovak Commercial Register and from 1 July 2018 it will also be extended to natural persons – entrepreneurs.

Legal entities that have not been yet communicated with the Tax Office electronically, should therefore register on the website www.financnasprava.sk and request for authorization for electronic submission.

As of 1 January 2018 legal entities will not be able to conclude an agreement for electronic filing

A taxpayer can file documents electronically if it obtains a qualified electronic signature, resident card with electronic chip or concludes an agreement for electronic filing of documents with Tax Office. As of 1 January 2018, the last option will no longer be available for legal entities. Agreements concluded up to 31 December 2017 will remain valid. However, natural persons – entrepreneurs will still be able to conclude the stated agreements on electronic filing with the tax authorities.

Tax authorities plan to adopt new softwarning notifications

The currently used softwarning notification is a notification protocol for the Control Statement. The Financial Administration plans to adopt two new softwarning notifications:

1. Information regarding discrepancies between data stated in filed VAT returns and control statements;
2. Reminder to take into account findings from a VAT audit in the corporate tax return.

The Financial Administration will rate the tax reliability of taxpayers.

The Financial Administration will adopt the institute of the tax reliability index. Tax authorities will provide certain benefits to taxpayers that meet the criteria to be considered as tax reliable entity. Tax authorities will send notifications on the granted status of a tax reliable entity by the end of 2018.

Changes in amendment Act No. 595/2003 Coll. on Income Tax

Introduction of Exit Tax

This regulation is intended to ensure that the economic value of gains made in Slovakia is also taxed here, specifically when taxpayers transfer property, tax residence, or business activities outside of Slovakia and, from the legal point of view, assets or (a part of) a business are not being sold.

The tax will apply where taxpayers (Slovak tax residents and non-residents with a permanent establishment in Slovakia) transfer outside of Slovakia:

- Individual property (transfer carried out by a tax resident from their headquarters in Slovakia to a permanent establishment in another country, or by a tax non-resident from their permanent establishment in Slovakia to their headquarters or permanent establishment in another country);
- Business activities (transfer carried out by a Slovak tax resident to another country, or by a tax non-resident from their permanent establishment in Slovakia to another country); or
- Tax residence (tax resident is no longer a Slovak tax resident).

The tax will be calculated by applying a 21% tax rate to a specific positive tax base, which is determined as follows:

- When transferring individual property, its fair (market) price at the exit time will be considered as income and its tax value will be regarded as an expense;
- When transferring business activities, the fair (market) price of assets and liabilities transferred at the exit time will be considered as income and the specific tax base will be calculated as when selling a business or part thereof.

The exit tax will either be paid in one instalment in the period for filing the tax return, or, upon request, in five annual instalments if it is a transfer to EU or EEA member states. In all other cases, the tax will be payable in one instalment in the period for filing the tax return. When paying the tax in instalments, the taxpayer will also pay interest on the outstanding instalments.

The new regulation about the exit tax also addresses the valuation of assets and liabilities for Slovak tax purposes where a Slovak tax non-resident becomes a tax resident in Slovakia.

The exit tax will be applied for tax periods commencing on or after 1 January 2018.

Introduction of tax exemption for intangible assets

The amendment introduces a tax exemption of 50% for income from considerations for granting a right to use, or for using a protected patent, utility model, or software created by the taxpayer (basic patent box). Tax exemption refers only to assets created by own activities and will apply to tax periods in which amortisation of an intangible asset is included in tax expenses.

A similar exemption will also apply to a certain part of income from selling goods which were manufactured on the basis of a protected patent or a utility model (extended patent box). Tax exemption will account for 50% of income attributed to the sales price, less related costs and less profit margin.

If intangible research results acquired from another person are used to develop intangible assets, the tax exemption will be reduced by a coefficient.

It will not be possible to transfer an entitlement to a tax exemption within the basic or extended patent box to a legal successor in the event of a merger, fusion, or demerger, or to a beneficiary recipient of an in-kind contribution.

For tax exemption purposes, each taxpayer will be obliged to keep separate records substantiating the entitlement to the benefit drawn and, if requested, submit these records to the Tax Office within 8 days.

Entities applying this tax exemption will be made public via a register kept by the Financial Directorate of the Slovak Republic.

Higher deduction of R&D costs

Taxpayers performing R&D will be able to deduct 100% of R&D costs and expenses from their tax base, instead of the current 25%. The deduction may also include the cost of software licenses for software used in performing R&D activities.

Introduction of tax exemption when selling ownership interests

The amendment introduces an exemption from corporate income tax when selling shares and ownership interests (hereafter “participation”) in Slovak and foreign companies. However, the tax exemption will not apply to taxpayers whose core business activity is trading in securities.

The conditions for applying a tax exemption are as follows:

Income from the sale of a participation is obtained no sooner than after 24 consecutive calendar months as of the day on which at least a 10% share in the registered capital of the company being sold is acquired (and this period commences no sooner than on 1 January 2018); and

The selling taxpayer, thanks to personnel resources and material equipment, performs substantial functions in Slovakia and bears and manages the risks associated with the participation ownership.

In the context of the new tax exemption, other ITA provisions are also amended, e.g. assessment of tax deductibility of a loss from the sale of shares, adjustment to the tax deductibility of interest on loans received for the purpose of acquiring a participation.

Introduction of a tax for certain non-residents when transferring a participation

The list of income from Slovak sources for tax residents from other EU member states has been extended by payments from Slovak tax residents when transferring shares or ownership interests in a trading company or membership rights in a cooperative seated in Slovakia.

However, the final tax will still depend on the wording of the applicable Double Tax Treaty.

Refined criteria for creating a permanent establishment in Slovakia

Following the implementation of measures set out in the OECD action plan for tackling base erosion and profit shifting, the amendment refines criteria for creating a permanent establishment in Slovakia, e.g. in the following situations:

- Repeated mediation of transportation and accommodation services, even via a digital platform;
- Place of implementing construction and assembly projects with a duration of more than 6 months in aggregate; and
- Activities carried out by a representative if this person plays a main role in contract conclusion.

New rules for taxing business combinations

The option to use historical prices for tax purposes is significantly limited for in-kind contributions to the share capital paid in as of 1 January 2018, which means that taxpayers will have to use the fair-value method.

The option to measure in-kind contributions for tax purposes at historical prices is only retained for cases where a Slovak tax resident contributes a security, an ownership interest, a business (or part thereof) to a beneficiary seated in an EU or EEA member state and the beneficiary takes over the contribution at historical prices and has a permanent establishment in Slovakia that the contribution remains functionally linked with.

The fair (market) prices tax mode will be used for most mergers, fusions, and demergers of trading companies and cooperatives with a decisive date after 1 January 2018.

The historical prices mode may only be applied when the legal successor is a taxpayer seated in an EU or EEA member state, the assets and liabilities of the abolished entity remain in the legal successor's Slovak permanent establishment and this legal successor, in line with the local law, takes over assets and liabilities at historical prices.

These exceptions for using historical prices in business combinations will still be subject to a GAAR test (General Anti-Abuse Rule).

There are also other legislative amendments to the tax method of using fair (market) prices in business combinations. For example, if a Slovak tax resident uses this method to treat his contribution of a business, or part thereof, to a beneficiary seated outside Slovakia, he will no longer be able to split the tax on the difference between the value of this in-kind contribution recognised as a shareholder's contribution and its carrying value into seven years. The entire difference will be taxed in the period in which the contribution is paid up. For mergers, fusions, and demergers treated by the fair-value method, the amended ITA introduces the obligation to tax in an one-off payment the valuation variance, or part thereof, not yet included in the tax base if this valuation variance is paid out, and also indirectly, i.e. via a reduction of the share capital, or the capital reserves from contributions which were previously increased from the valuation variance.

Transport of employees to work

Effective from 1 January 2018, the transport of employees to their place of work and back arranged by the employer may be considered the employee's tax-free income if the employee contributes to the employer's costs for the transport of employees to work and the following conditions are met:

Employees cover at least 60% of the employer's costs for arranging their transport to work; or

Employees cover at least 30% of the employer's costs for arranging their transport to work if production employees work in shifts and such transport is used by at least 30% of the total average registered number of employees.

If payments from employees are less than the stipulated limit, the difference between the amount corresponding to 60%/30% of expenses verifiably incurred by the employer for the transport of employees to work and the total payment from employees, divided by the number of employees using this type of transport, must be included in the employees' tax base from employment.

The wording of the provision regarding tax deductibility of employer's expenses for the transport of employees to their place of work and back has also been modified. Employer's expenses for such transport carried out via motor vehicles for transporting at least 10 persons (e.g. buses) will be tax deductible if there is either no public transport to the place of work, or its capacity does not meet the employer's needs.

Extended criteria for the assessment of tax residence

The assessment of a taxpayer's tax residence is the key condition for determining the extent of tax obligations of taxpayers in Slovakia. Therefore, a new criterion for assessing the tax residence of an individual is given in the ITA.

According to the new rules, an individual is also considered a Slovak tax resident if he has a residence in Slovakia, i.e. accommodation not intended only for occasional use, and it is evident that the individual intends (due to personal and economic reasons) to stay here.

Income from the sale of business property in the joint ownership of a married couple

Income derived by a married couple from the sale or transfer of property or an intellectual right jointly owned by them which was registered as the commercial property of one partner will have to be taxed by that partner who included this property or intellectual right in their commercial property.

This means that it is no longer possible to split the income from a sale between the partners based on their agreement. The partner who registered the property or intellectual right as a business property most recently will be liable to pay tax on the total income.

Tax-free amount for spa care

At the end of the tax period, taxpayers may claim a tax-free amount of EUR 50 p.a. from verifiable payments for spa care. They may also claim the same amount for their spouse or dependent children. However, only one of them can claim this tax allowance.

Modified conditions for taxing income from occasional activities

An individual's occasional income of up to EUR 500 per calendar year is considered tax-free. However, if the individual carries out these activities on a contractual basis and this remuneration is a tax expense for the payer, then the individual is liable to pay tax on such income.

Pensions of former soldiers, policemen, and firemen for years in service received from abroad

When assessing the claim for a tax-free personal allowance, Slovak pensions of former soldiers, policemen, and firemen for years in service (hereafter "military, police and fire service pensions") must be treated in the same way as similar pensions received from abroad. This means that if taxpayers draw a military, police, or fire service pension from Slovakia or from another country at the beginning of the tax period, they either cannot claim a tax-free personal allowance, or the tax-free amount is decreased by the pension paid.

Claiming a tax bonus for a dependent child

A tax bonus for a dependent child may also be claimed by a foster parent who is a "substitute parent" after the dependent child attains full age if this child is continually preparing for employment by studying and if, prior to attaining full age, the child was placed into substitute parental care.

Introduction of rules for controlled foreign corporations (as of 2019)

The rules for controlled foreign corporations seek to tax income artificially diverted by a Slovak parent company to a controlled foreign corporation (hereafter "CFC") if the income is paid without economic justification, or to obtain a tax advantage for the Slovak company.

A company is considered a CFC if:

- It is controlled or managed, directly or indirectly, by the Slovak company (e.g. by voting rights, share capital, or share in profit); and in addition
- The corporate income tax paid in another country is lower than 50% of the tax the CFC would pay in Slovakia.

If income is diverted to a permanent establishment, it will only be sufficient (for purposes of the CFC assessment) to fulfil the second condition (i.e. the condition regarding the hypothetical Slovak tax).

The CFC's income will be taxed in Slovakia by including the CFC's tax base in the tax base of the Slovak parent company to the extent it is attributable to the assets/risks related to the significant functions of the Slovak company which manages and controls the CFC.

To avoid double taxation, the Slovak parent company will be able to factor in the tax paid by the CFC abroad when calculating/paying tax in Slovakia.

The application of adjustments to the CFC tax base in line with transfer pricing rules will take precedence over the application of CFC rules for the taxation of profits.

The CFC rules will be applied for tax periods commencing on or after 1 January 2019.

Amendment to the VAT Act from 1 January 2018

The National Council of the Slovak Republic approved an amendment to the VAT Act on 7 December 2017 that will enter into force on 1 January 2018. We informed you about the changes in the previous Indirect Tax Alerts and we now summarize the approved changes that will have the biggest impact.

Cancellation of the minimum amount of VAT base for application of local reverse-charge for agricultural crops and metals

The amendment revokes the minimum VAT base of EUR 5,000 for shifting VAT liability to a recipient (VAT payer) for agricultural crops and metals and metal semi-finished products.

The takeaways

From 1 January 2018, any local supply of the above goods between two Slovak VAT payers is subject to a local reverse-charge, regardless of the value of the supply. The minimum amount of tax base for the application of the reverse-charge for supplies of mobile phones and integrated circuits will be retained.

This change will have a positive effect, but it may also have a significant impact on administration and the reporting of small-scale sales of agricultural crops to other VAT payers. If by now in case of such sales sellers have been issuing e only cash register documents, from 2018 they will need to modify their cash register system, or issue a regular VAT invoice due to this change.

Cancelation of the obligation to guarantee VAT from the previous stage if the supplier is blacklisted

Under the VAT Act, a customer is liable for the VAT on an invoice that a supplier has not paid, or has become unable to pay if at the time the VAT becomes payable the customer knew, or could have reasonably known, or should have known that the VAT would not be paid by the supplier. Among the reasons as to why a customer knew, could have known, or should have known the Slovak VAT Act defined a listing of such a supplier on a so called black-list of risky suppliers published on the web-portal of the financial directorate. The amendment to the VAT Act removes this condition as, in practice, customers (due to the concern regarding guaranteeing VAT from the previous stage) often paid the amount of VAT charged by the suppliers listed on the black-list straight to the personal account of the supplier kept by the tax office (instead of paying the whole invoice amount to the supplier), i.e. they divided the invoice payment. In practice, various related problems have arisen and due to the minimal use of this institute, this provision has been cancelled.

The takeaways

The fact that a supplier is blacklisted does not automatically mean that the customer is liable for the VAT on an invoice. However, the Financial Directorate will continue to maintain the black-list of risky companies, so VAT payers should still control their business partner's reliability based on this list for their internal purposes, e.g. internal controls when concluding business contracts.

Establishment of a new institute of a tax representative when acquiring goods from another Member State or a third country

A foreign person (not VAT registered) who acquires goods in Slovakia from another Member State pursuant to Article 11 for the purpose of subsequent VAT exempt intra-Community supply or export of such goods, or their supply by a distance sale scheme with a place of supply in another Member State, can avoid VAT registration in Slovakia may be represented by a tax representative in Slovakia.

The tax representative's institute may only be used by a foreign person not registered for VAT in Slovakia who does not supply goods or services in cases where it pays output VAT in Slovakia. Simplification may only be applied to goods sold via the use of an electronic communication interface, such as an electronic marketplace, electronic platform, electronic portal or similar electronic means.

A foreign company that is represented by a tax representative will be obliged to issue an invoice pursuant to the Slovak VAT Act when supplying goods with a place of supply in Slovakia. The invoice must state the tax representative’s identification information. Foreign entities represented by a tax representative will also be entitled to claim input VAT from purchased goods and services in Slovakia via a VAT refund procedure if legal requirements are met. The amendment also introduces more detailed conditions for the application of this institute to the tax representative.

The takeaways

This change will have a beneficial effect on foreign companies who may be represented by a tax representative and so will not need to register for VAT in Slovakia if they meet the above conditions. However, the requirement for the goods to be sold via the use of an electronic communication interface may significantly limit the range of foreign taxable persons eligible for using the tax representative mechanism.

Change in taxation under tour operator margin scheme

In line with EU Court of Justice case-law, from 1 January 2018 the amendment modifies the special tour operator margin scheme. Based on current VAT law, this special regulation only applies if a recipient of tourism services is the final customer – passenger. The amendment extends 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 supplies to an entrepreneur (taxable person) purchasing a package of tourism services for its business. Certain application conditions for this special scheme are defined.

The takeaways

As of 1.1.2018, the obligation to apply a special tour operator margin scheme will apply to all sales of tourism services packages by travel agencies which sell such packages on their behalf regardless of the status of the recipient of the package of tourism services.

Expanded definition of the capital property subject to mandatory adjustment of input VAT deduction for a period of 20 years

Under the amendment, the definition of capital property extends to all constructions defined in the building law. This means the mandatory 20-year obligation for adjustment of VAT deducted will apply to all construction types, not only to buildings, as has been the case up to now. An adjustment of the deducted VAT on a construction other than a building will apply only to a construction, where the VAT payer claims related input VAT after 31 December 2017.

The takeaways

During the 20-year period, VAT payers must monitor the change in the scope of use of any type of construction, and not just buildings, i.e. also engineering constructions.

Change of conditions for the application of the triangulation simplification for the first customer

One of the terms for the application of a triangulation simplification under current legislation is that the first customer (middleman) is not registered for VAT in the Member State of the second customer. The amendment regulates this condition to bring our legislation into line with EU legislation, so the middleman cannot be established in a Member State of the second customer (i.e. it does not have a seat, place of business, establishment, or does not usually reside there).

The takeaways

In order to apply this simplification, the first customer may be registered for VAT in the Member State of the second customer (final customer), but it may not be established in that Member State. Foreign companies which do not have a VAT permanent establishment in Slovakia and supply goods as of 1 January 2018 in Slovakia as the middleman to their customers, may use the triangulation simplification.

Introducing a notification obligation when selling an immovable property

If a company decides to apply the taxation of a supply of a building, or part thereof, including the supply of building land, where such supply may be VAT exempt under the VAT law, such a company will be required to notify the customer in writing of its decision on taxation by the deadline for issuing an invoice.

The takeaways

Suppliers will be obliged to notify customers in writing that they have decided to tax the supply of immovable property, so the acquirer (VAT payer) is aware he is liable to pay VAT under the reverse-charge scheme.

Changes in VAT guarantee during VAT registration

The obligation to pay a VAT guarantee is extended to cases where an applicant for VAT registration is an individual or legal person who has a VAT underpayment of EUR 1,000 or more at the date of filing a VAT registration application, or to which the Tax Office cancelled the VAT registration in the past.

Additionally, the provision for immediate reimbursement of the VAT guarantee is added for cases where the VAT registration is cancelled within the general 12-month period for repayment of the guarantee by the tax office as, in this case, there is no longer a reason for having the guarantee in the state budget.

The takeaways

If the Tax Office deregistered a taxable person from VAT, or the taxable person has a VAT underpayment of EUR 1,000 or more, such a taxable person is obliged to deposit a VAT guarantee. The tax office is also required to immediately return a guarantee if the company's registration is cancelled within 12 months of the date of the guarantee deposit.

Other changes

- A standardised form will be introduced to be filed by the VAT payer with the tax office if they purchase a used motor vehicle from another member state.
- To reduce the administrative burden for VAT payers, the option to issue a summary invoice is extended for rent and supplies of electricity, gas, water and heat for 12 calendar months where the recipient is a foreign taxable person. Currently, the VAT Act only allows such a simplification if the recipient is a local taxable person established in Slovakia.
- The amendment states 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 middleman must submit an EC Sales List.
- The amendment introduces the obligation to refund VAT deducted from a pre-payment paid prior to a supply if, by the end of the last VAT period during de-registration, the goods or services have not been supplied. This obligation does not apply to companies wound up without liquidation if the legal successor is a VAT payer, or becomes a VAT payer.
- The amendment defines the tax point, the amount of the tax base and the right to deduct the VAT in relation to an assignment of the receivables for the application of a cash-accounting scheme.

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Ukraine

SFS to treat financing of permanent establishments as payment for services subject to VAT

The State Fiscal Service released an individual tax ruling by publishing it in the Unified register of tax rulings. According to the ruling:

- any funds received by a permanent establishment (PE) from its head-office (including financing of the PE's expenses and salaries) should be treated as a payment for services supplied by such PE in favour of the head-office;
- the supply of such services is subject to VAT;
- such PE has to register as a VAT payer if the total value of the services supplied during the preceding 12 months exceeded UAH 1 mln.

In our view, such approach is not in line with the effective legislation and creates the risk of VAT being charged on the financing of PEs if the total amount of such financing for the preceding 12 months exceeds UAH 1 mln.

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

*Individual tax ruling № 2323/6/99-99-15-03-02-15/ІПК dated 20 October 2017

National Bank of Ukraine continues to ease currency control restrictions

On 14 November 2017, the National Bank of Ukraine ("NBU") issued a resolution*, which further eases certain currency control restrictions, namely:

- Starting from 15 November 2017, there are no time limits on the repatriation of dividends to foreign shareholders of Ukrainian companies. Previously, it was allowed to repatriate dividends accrued in 2014-2016 only.
    i. The monthly cap on repatriation of dividends for the period up to and including 2013 is set at the equivalent of USD 2 million.
    ii. The monthly cap on repatriation of dividends for 2014-2016 remains equivalent to USD 5 million.
- An early repayment of a loan provided by a non-resident is now allowed if the Ukrainian borrower is in liquidation.

The changes come into effect starting 15 November 2017.

* NBU Resolution No. 112 dated 14 November 2017

Business conditions for joint-stock companies simplified

On 15 November 2017, the Parliament of Ukraine adopted a law* that substantially changes the legal framework for security issuers, specifically, for joint-stock companies, in Ukraine:

- From now on, all public joint-stock companies ("PJSC"), established before the date the new Law becomes effective, are deemed as companies that have not made public offering, unless:

- ✓ PJSC has undergone the listing procedure;
- ✓ PJSC has specifically disclosed that it had made public offering.

PJSCs that do not meet the aforementioned criteria will be regulated by the rules that apply to private joint-stock companies (hereinafter – "PrJSC").

- The new Law introduces the following differentiation between PJSCs and PrJSCs:
  - ✓ PrJSCs will have less information to disclose, experience less administrative burden, etc.
  - ✓ PJSCs will have to disclose more information, will have more options to conduct public offerings; restrictions on the number of investors during public offering will be lifted, etc.
- According to the new Law, the requirements for corporate governance for banks will change as well. Banks will be able to operate as PrJSCs; the role of the supervisory boards will increase, etc.

The Law is yet to be published. It will come in to effect after signing by the President and official publication.

* Bill No. 5592-"д"from20 April2017

VAT invoice registration and input VAT recovery periods extended

On 3December 2017 the Law*introducing changes to the length of the period for registering VAT invoices/adjusting VAT invoices and recovery of input VAT came into effect. Under the new Law:

- The limit on the period during which a VAT invoice /adjusting VAT invoice can be registered is lifted. Previously this period was limited to 365 days;
- If a VAT invoice or adjusting VAT invoice is registered after 365 days following the date when VAT liabilities occurred, a 50%penalty on the VAT amount stated therein will apply;
- The time period for recovery of input VAT was extended to1095 days starting from the date of issue of the VAT invoice. In the past this period was limited to 365 days. However, if the registration of a VAT invoice is suspended, this term is not to be extended for the duration of such suspension.

* The Law of Ukraine N 2198-19 from 9 November 2017 "On amendments to the Tax Code of Ukraine on stabilization of settlements within the wholesale electricity market of Ukraine"

A new type of bank account is now available in Ukraine

On 18 December 2017 the National Bank of Ukraine ("NBU") issued a Resolution* that lays out rules for opening, maintaining and closing a new type of bank account - Escrow Account. It is a temporary pass through account held by a third party and it is used to facilitate a transaction between two [or more] parties.

The introduction of the Escrow Account will finally allow the implementation of the "squeeze-out" procedure for Ukrainian joint-stock companies. The procedure entails a mandatory sale of ordinary shares by minority shareholders upon request of the shareholder who owns more than 95 percent of the shares. For more details, please see our Flash Report#5 dated 28 March 2017 and Flash Report #18 dated 7 June 2017.

The Resolution will become effective on 21 December 2017.

* Resolution by NBU No. 133 dated 18 December 2017

Supreme Administrative Court ruled for taxpayer in transfer pricing dispute

On December 12, 2017, the Supreme Administrative Court of Ukraine (hereinafter – "SACU) decided in favour of a taxpayer supporting the correctness of application of the net profit method for substantiation of the market level of prices in the controlled transactions.

The tax authorities attempted to use the data from an information compendium provided by DP "Derzhzovnishinform", namely "Tender monitor. Ukraine" for the analysis of the market price range. However, the Court of First Instance as well as the First Appellate court and the SACU stated that since it was impossible to ensure the comparability of the controlled and non-controlled transactions, the official sources of information should not have been used for the analysis of prices in the controlled transactions of the taxpayer.

You can learn more by following the link:

http://reyestr.court.gov.ua/Review/71169930

* Decision by the SACU in case # 816/515/17, December 12, 2017,

Cabinet of Ministers of Ukraine updates list of countries (territories) subject to TP controls*

On 27 December 2017 Ukraine's Cabinet of Ministers updated the list of countries (territories), transactions with which are subject to transfer pricing control.

As compared to the older revision, two jurisdictions were removed from the updated list: Kingdom of Lesotho and French Guiana.

Besides that, the new list is expanded with 22 new jurisdictions, which are listed below:

1. Commonwealth of Dominica	12. Puerto Rico
2. Dominican Republic	13. Republic of Burundi
3. Georgia	14. Republic of Cuba
4. Guadeloupe	15. Republic of Djibouti
5. Hungary	16. Republic of Estonia
6. Independent State of Samoa	17. Republic of Guatemala
7. Islamic Republic of Iran	18. Republic of Latvia
8. Kingdom of Morocco	19. Republic of Malta
9. Lao People's Democratic Republic	20. Republic of Mauritius
10. Lebanese Republic	21. Republic of Singapore
11. Principality of Monaco	22. United Arab Emirates

* The new list will become effective on 1 January 2018.

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