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Azerbaijan

Establishment of Credit Guarantee Fund OJSC

The Decree on "Number of measures to provide state support to entrepreneurs for the expansion of access to financial resources" establishes the Credit Guarantee Fund ("CGF") Open Joint Stock Company. The main aim of the CGF is to simplify the access to financial resources for entrepreneurs and increase access to financial resources, as well as stimulate business activity and form a credit system based on distribution of risks in financial sphere. The CGF is a legal entity that will insure AZN credits received by entrepreneurs in authorized banks. It is planned to establish CGF's Supervisory Board that will consist of 7 members and a Management Board. The Decree establishes a Working Group consisting of 5 members. The Working Group will submit its proposal on CGF's charter, structure, charter capital, draft procedure on guaranteeing the loans received by the entrepreneurs in AZN, draft rules and procedures for granting subsidies to interest rates accrued on loans, draft rule determining credit rating system and risk reduction, proposals on other risk management tools to the President within one month.

Rules on presenting Electron Signature certificates to non-residents in the diplomatic representatives and consular departments of Azerbaijan Republic

According to the rules, in order to obtain e-signature certificate a non-residents (foreigners and stateless persons living in the foreign country, citizens of Azerbaijan permanently living in other country, legal entities operating overseas) will need to visit "e-non-resident" electronic portal, add the requested information to the portal and in case if they do not receive any negative answer from the system within 3 working days, the e-signature certificate will be sent to the relevant diplomatic representative and consular department of Azerbaijan Republic abroad. Once the certificate reaches the diplomatic representative/consular department, a non-resident that has applied for it, will receive an invitation and will be able to collect his/her e-signature.

Decree on approval of the Protocol on the establishment of the Working Group

The Decree regulates the actions of the contract parties establishing free trade zone between GUUAM members.

The Cabinet of Ministers has been assigned responsible for implementation of the protocol, while the Ministry of Foreign Affairs shall notify GUUAM member states on implementation of necessary domestic procedures required for the protocol to come into legal force.

Decree on ensuring the activity of Trade Representatives

According to the decree, the embassies and consulates of Azerbaijan abroad will establish administrations of trade representatives ("Administrations"). The trade representatives and their administrations shall be a part of the Ministry of Economy's structure. The Ministry of Economy with a consent of the Ministry of Finance shall approve the stuff schedules and number of the employees of the administration of trade representatives. The Ministry of Economy shall carry out technical and financial assurance of the administration of trade representatives. The Cabinet of Ministers shall of the administration approve the regulation and structure, and prepare and submit draft law on exemption of salaries of trade representatives' and administrations employees from income tax within one month.

Decree on ensuring activity of State Agency on Compulsory Medical Insurance

Decree approves the charter of the State Agency on Compulsory Medical Insurance ("Agency"). Founder's authorities are empowered to the President and the Agency. The President's authorities include establishment of the amount of charter fund, approval of financial reports, executive body's establishment, termination and determination of executive body's authorities, reorganisation and liquidation of the Agency. The authorities of the Agency include determination of development directors and approval of its structure.

Order on additional measures related to continuation of state support for the development of sericulture

The order has been passed for the purpose of the development of sericulture. Under the order, Ministry of Agriculture allocates fund from the state budget for supply of mulberry seeds and silkworm. Additionally, these goods will be provided free of charge to consumers.

Decree on Establishment of the Moral Values Promotion Fund

Moral Values Promotion Fund has been established for the support of religious confession, protection and development of moral values, as well as ensuring state support to this field. Fund will be subordinated under the State Committee for Religious Associations.

Charter of Moral Values Promotion Fund

The Fond is a non-commercial legal entity which provides a state support to the implementation of freedom of religion and protection of moral values. Functions of the Fund are the enlightenment in the field of religious beliefs, development and implementation of the programs upon the relationships between the state and religion, and providing state support to activities of the religious state bodies over the protection of freedom of religion.

Decrees on various issues

The President of the Republic of Azerbaijan has passed the Decrees on Regulation on Administration of the Cabinet of Ministers, work plan of the Cabinet of Ministers and Charter of the Azerbaijan Higher Military College.

Decree on amendment to the Regulation on local executive authorities

With the Decree, the Regulation has been harmonised to the Law on Road Traffic. According to the Decree, local executive authorities will provide free parking areas and an individual parking coupon with the vehicles' users, on the users' requests, those who live in houses or apartments located near the motorways where the parking areas are organised.

Court practice on tax disputes

1. Individual entrepreneur authority

Amount of claim: approx. AZN 431k

Court instance: The Supreme Court

Date of decision: June, 2016

Subject: Apartment construction tax*

* - according to the tax legislation having legal force at the time the dispute raised

Issue: Taxpayer was permitted by local executive authority to demolish a private house belonging to him and build it again. Tax authority, in its turn, imposed an apartment construction tax on the taxpayer.

Court decision: The court stated that constructing a private house (which belongs to a person by private property right) at its current place after its demolition should not be considered as an apartment construction activity. Furthermore, according to the tax legislation, individual or personal buildings and apartments, that are separately erected and not adjacent with other buildings, are not subject to taxation.

The Law of the Republic of Azerbaijan On amendments to the Law "On State Registration and State Register of Legal Entities"

According to the amendments, e-registration of legal entities with foreign investments will be possible. Thus, the foreign citizen or a person without citizenship should fill in the e-application form on the website of the relevant authority and approve with strengthened e-signature for electronic state registration of limited liability company with foreign investment. In the process of electronic state registration, the founder (founders) shall provide information on the area of his activity, acquaint himself with the charter prepared by software in line with the input data in real-time mode and approve it with strengthened e-signature.

Decree of the President of the Republic of Azerbaijan on amendments to the "National Action Plan for 2016-2018 on Promotion of Open Government"

This decree added a new part to the "National Action Plan". In accordance with the international principles for increasing transparency in the extractive industry, it was determined to take measures to ensure transparency in the mentioned industry and to continue cooperation with NGOs, private sector representatives and independent experts.

Court practice on tax disputes

1. Individual entrepreneur vs. tax authority

Amount of claim: approx. AZN 245k

Court instance: The Supreme Court

Date of decision: January, 2017

Subject: Profit tax

Issue: Individual entrepreneur sells his real estate. The tax authority, in the case of taxpayer's condition, claims that this activity is subject to taxation and calculates its tax.

Court decision: The Supreme Court supported entrepreneur's position. The Court declared that in such cases the courts should determine whether the sold real estate was sold for entrepreneurial purposes or not.

According to the tax legislation, the calculated tax amounts vary depending on the fact whether the real estate was sold for entrepreneurial purposes or not.

Draft Law On amendments to the Migration Code

If the law is passed, foreigners and non-citizens will not submit the following documents for obtainment (or prolongation) of residence permit in the Republic of Azerbaijan:

- Family reference letter;
- Notarised copy of certification on marriage;

- Notarised copy of documents proving the profession of those persons provided that they have profession.

In addition, copy of the document entitling residence permit to foreigners or non-citizens who are in Azerbaijan on other purposes, will not be demanded anymore for obtainment of work permit.

Order of the Cabinet of Ministers on amendments to the List of e-services

With the order, the following e-services will be provided under the Ministry of Justice:

- Payments through the internet for notary acts, issuance of apostille and state registration of civil status acts;
- Payment of court fees;
- Submission and receipt of statement of claims and other documents, certified by e-signature, on commercial disputes;
- Providing parties of commercial disputes with the information on court proceedings;
- Submission and receipt of applications and other documents, certified by e-signature, on the 'order proceeding'.

Court practice on tax disputes

1. Bank vs. tax authority

Amount of claim: approx. AZN 121k

Court instance: The Supreme Court

Date of decision: 19 January 2017

Subject: Market price

Issue: 'Bank A' has granted a bank loan to 'Bank B' in a lower interest than the interbank loan interest rate assigned by Central Bank. Tax authority has imposed a tax on 'Bank A' by applying market price over this transaction.

Court decision: The court, by supporting the position of 'Bank A', laid out: Financial services differentiate from other services which are subject to market price.

According to the tax legislation, if there is 30 % (more and less) discrepancy among prices applied by a taxpayer over the identical services during 30 days, tax amount could be imposed by considering market price. However, 'Bank A' at this circumstance has not granted a loan to any other banks except 'Bank B' in 30 days.

The Laws on amendments to the Administrative Procedure Code, Civil Procedure Code and the Law on Advocates and Advocate Activity

With the amendments, the individuals will be able to represent in court as representatives only close relatives or legal entities with principal workplace as well as state and municipal bodies. The representatives' authority should be properly documented by the power of attorney.

In addition, it will be impossible to appeal to the Supreme Court on the decisions related to claim of property matter with amount of claim of no less than 2,000 AZN and economic disputes with amount of claim of no less than 10,000 AZN.

The President ordered the Bar Association to increase the number of advocates.

Amendments to the Laws enter into force from 1 January 2018.

The Law on Amendments to the Merchant Shipping Code

With amendments, the general provisions of the Code's maritime liability limitation have been changed. The volume of vessel tonnages and the amount of compensation for damages to the life or health of person and for other claims have been increased.

The Law on Amendments to suspension of inspections in the field of entrepreneurship

With the amendments, the inspections in the field of entrepreneurship will be suspended until 1 January 2021. At the same time, the inspections related to the monitoring of compliance with quality and safety of medicines and the control of food safety carried out by the appropriate authority, have been also included in the list of grounds enabling the inspections.

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Hungary

EU-Canada free trade agreement enters into force

The result of many years of negotiation, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada entered into force on 21 September 2017. With CETA, the EU and Canada are committed to ensure that economic growth, social development and environmental protection are mutually supportive.

Since its establishment, the EU has sought to strengthen its external economic relations through bilateral trade agreements with third countries. CETA aims to strengthen economic relations and make European firms more competitive on the Canadian market.

As of 21 September 2017, CETA removes customs duties on 98% of products that the EU trades with Canada. This means that almost all products exported from the EU – including Hungary – to Canada, as well as products exported from Canada to the EU, will be subject to a 0% duty rate. This is a welcome step that is expected to boost bilateral trade and increase the volume of both exports and imports with Canada. CETA will create new opportunities for European farmers and food producers by securing improved access to the Canadian market for their export products. real property as well.

The removal of customs duties will benefit hundreds of Hungarian companies currently exporting to or importing from Canada, but may also be of interest to businesses that have not yet been engaged in trade with companies established in Canada.

In addition to the flow of goods, CETA will also improve the movement of services by opening the Canadian services market and giving EU companies better access to bid on Canada's public procurement contracts.

Strength in unity – the rules of class action

Hungary's new Civil Procedure Code, which will come into force on 1 January 2018, introduces a number of new legal institutions. One of the most important of these will be class action, which will allow groups of claimants – comprising at least ten individual claimants – to enforce their claims in a single legal procedure, rather than in separate lawsuits. The introduction of class action as a new form of collective redress is thus primarily aimed at procedural economy.

Class action will only be possible in certain types of litigation, including consumer and labour disputes, as well as matters concerning certain types of environmental damage.

For class action, the claims of all claimants involved must be based on the same facts and arise on the same legal grounds. This requirement is met if, for example, all of the claimants purchased the same type of bunk bed from a joiner's shop during a specific period, and wish to bring a claim against the vendor for a price reduction on account of a latent serial defect that only came to light after the purchase.

Before commencing a class action, the claimants must enter into a class action agreement setting out the rules of their cooperation for the duration of legal proceedings.

The class action agreement must also designate a claimant representative, who has the authority to make statements before the court on behalf of all of the claimants and give powers of attorney to the claimants' legal representative.

In a class action, rather than separately reviewing each individual claim, the court will examine a single set of abstract facts ('abstract facts') based on the identical facts and legal background that underlie the claimants' claims, and on the basis of those abstract facts, review a single abstract claim ('abstract claim'). If the court finds that abstract claim

to have merit, it will specify the respective claim amount that is due to each claimant in its decision.

The introduction of class action is expected to allow, through cost efficiency, persons whose rights have been infringed upon to seek redress in court in cases where they would otherwise forgo their rights, i.e. would not enter a legal dispute on their own.

Forms required for country-by-country reporting now available

As we noted in an earlier newsletter, as a general rule, from the fiscal year commencing on or after 1 January 2016, companies that are members of a multinational enterprise ("MNE") with a total annual consolidated revenue of more than EUR 750[1] million will be subject to a new reporting and/or notification obligation.

Form 17T201T

On 13 October 2017, the Hungarian tax authority published its modified data reporting and change notification form on its website. In addition to Hungarian resident ultimate parent companies, this form must also be submitted by all Hungarian group entities that are members of an MNE with a turnover exceeding the above threshold.

If the Hungarian resident group member qualifies as an ultimate parent entity or a surrogate parent entity, the form must include the following information:

a) name, registered address, tax identification number of the Hungarian resident constituent entity;

b) ultimate parent entity, surrogate parent entity or reporting entity status;

c) the last day of the reporting fiscal year.

If the Hungarian group member does not qualify as an ultimate parent entity or a surrogate parent entity, the form must include the following information:

a) name, registered address, tax identification number of the Hungarian resident constituent entity;

b) absence of ultimate parent entity, surrogate parent entity, or reporting entity status;

c) name and tax residence of the reporting entity (indicating the country code).

In most cases, the first reports and/or notifications must be filed for the fiscal year commencing on or after 1 January 2016, within 12 months of the last day of that fiscal year.

As a general rule, however, in future fiscal years notifications must be made no later than the last day of the reporting fiscal year.

Any change in the information submitted must be reported within 30 days of such change occurring, also using the newly published form.

Form 16CBC

On 15 September 2017, the Hungarian tax authority published Form 16CBC, which must be submitted by the following entities:

[1] Or its HUF equivalent, calculated according to the monthly av erage H ungarian Central Bank exchange rate

a) Hungarian resident ultimate parent companies, and

b) the Hungarian resident group entity designated by the MNE's ultimate parent company to file the country-by-country report.

The form is intended for the reporting of data pertaining to the allocation of a company group's profit, tax and business activities in the tax jurisdictions concerned ("country-by-country reporting").

As relatively few MNEs have a Hungarian ultimate parent company, and few Hungarian group entities will be expected to qualify as surrogate parent entities, the above form has a very narrow scope of application.

Both forms must be submitted electronically.

Default fine

Failure to submit notifications and/or reports, late submission, or providing incorrect, false or incomplete information may be subject to a default fine of up to HUF 20 million. We therefore recommend that you pay particular attention to fulfilling this administrative obligation.

For more information on the legislative context for these forms, please consult our newsletter of 11 May 2017.

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Romania

VAT split payment system, mandatory from 1 January 2018

In brief

Ordinance 23/2017 on the VAT split payment system was published on 31 August 2017. The Romanian Government has adopted the necessary legislation in order to establish a system for the VAT split payment which will be optional as of 1 October 2017 and mandatory as of 1 January 2018.

In detail

This system is mandatory from 1 January 2018 for invoices issued and advances as of 1 January 2018. Between 1 October and 31 December 2017, the mechanism is optional. For this purpose, the fiscal body is organising the "Register of persons applying the VAT split payment", which will include the list of taxpayers applying the scheme.

Persons required to apply the VAT split payment system

Taxable persons and public institutions registered in VAT purposes in Romania (i.e. companies, individuals, public institutions and non-resident companies registered directly or through fiscal representatives) are required to apply the VAT split system. Taxpayers applying the system will have the following obligations:

- To open a VAT account at state treasury units or credit institutions. The account that will have a special IBAN that will include the character string "VAT";
- To inform their clients about the VAT account in which they will collect the VAT for taxable supplies of goods / services;
- To perform VAT payments / receipts correctly for VAT related to taxable transactions in / from the separate VAT account;
- To pay / deposit into their own VAT account the tax related to the difference between cash receipts and payments, as well as the tax related to debit / credit cards receipts or cash substitutes, within seven working days as of receipt.

The companies and public institutions, whether VAT registered or not, will apply the VAT split payment system when performing payment of invoices with VAT issued by suppliers.

Benefits of applying the mechanism as of 1 October 2017

According to the Ordinance, during the period preceding the mandatory application of the measure, namely 1 October - 31 December 2017, taxable persons choosing for the optional application of the VAT split payment will benefit from the following facilities:

- Cancellation of late-payment penalties related to the main VAT obligations, outstanding as at 30 September 2017, under certain conditions;
- Granting of a 5% tax on profit or, as the case may be, the revenue tax on microenterprises related to the fourth quarter of the fiscal year 2017.

Limitations on the use of dedicated VAT accounts

The amounts from this distinct VAT account are to be used for payments such as: payments of the VAT related to acquisitions performed by taxable persons registered for VAT purposes to their suppliers / providers, transfer to another holder's VAT

account, VAT corrections, VAT settlements within the single tax group, as well as VAT payment to the state budget.

The possibility of transferring amounts from VAT accounts to another account by the owner is allowed only with the approval of ANAF, within a maximum of three working days as of the request. As per the current provisions, cash withdrawals of amounts from the VAT account are forbidden.

Penalties

The normative framework provides for specific contraventions and sanctions for non-compliance with the obligations set out in its contents, as follows:

- If the errors were not corrected within seven working days, a penalty of 0.06% per day of VAT value, but not for more than 30 days, will be applied;
- After a period of 30 days, a fine representing 10% / 50% of the amount of VAT is applicable for acts such as: payment of VAT due to the supplier from an account other than its own VAT account, erroneous VAT payment into an account other than the supplier's VAT account, etc.

[Source: Government Ordinance no. 23/2017, published in the Official Gazette no. 706, dated 31 August 2017]

The takeaway

The introduction of the VAT split payment mechanism is mandatory from 1 January 2018.

Under the proposed system, providers will be required to communicate to their beneficiaries information on a dedicated VAT account, opened at State Treasury units or credit institutions, where the beneficiaries will pay the VAT equivalent for each acquisition of goods / services. These limitations are not applicable for individuals not registered for VAT purposes.

Amounts credited to the VAT account can be used by taxpayers only to pay in turn the VAT due to the suppliers, or the VAT to the state budget within the deadlines set by the law. As for cash, card or cash substitutes, taxpayers will be required to pay the corresponding tax amounts into their own VAT account within seven working days as of receipt. Amounts in the VAT account may be transferred by the holders to their current account only with ANAF's prior approval.

Amendments to the customs legislation regulation free zones

In brief

Order No. 2661/11 September 2017 ("Order") of the President of the tax administration agency ANAF, amending and supplementing the technical regulations on the uniform enforcement of the customs legislation in free zones, approved by ANAF president Order no. 2759/2016, has been published.

In detail

The main amendments in the new Order cover the following aspects:

- The responsibilities of titleholders of decisions approving the stock records for storage of non-Union goods in free zones are now listed, namely:
  - to make sure that the goods placed under the free zone customs procedure are not unlawfully removed from customs supervision;

- to fulfil their duties arising from the storage of the goods;
- to notify in writing the customs office of any missing goods;
- to inform the customs office on any changes of the obligations stipulated in the request for approval of the stock records.

- The cases when a decision approving the stock records can be cancelled are now listed, namely:
  - when the decision was made based on incomplete or inaccurate information;
  - when the titleholder of the decision knew or should have known that the information was incomplete or inaccurate;
  - when the decision would have been different if the information had been complete and accurate.
- Also, the Order prescribes measures regarding the approvals and decisions issued by the customs offices pursuant to the provisions in force before 4 October 2016 (i.e. those in Order No. 7394/2007), as follows:
  - construction permits in a free zone will remain valid;
  - decisions approving stock records, issued prior to 4 October 2016, will be reassessed, with the reassessment decisions to be made by the relevant customs offices by 1 May 2019.

[Source: Official Gazette No 750 of 19 September 2017]

The takeaway

Decisions approving the stock records for storage of non-Union goods in free zones can be cancelled in specific cases.

Also, decisions approving the stock records, issued prior to 4 October 2016, will be reassessed by the customs authorities.

The European Court of Justice has approved the VAT deduction right in connection to acquisitions from inactive suppliers, in the absence of fiscal fraud and tax revenue losses

In brief

The Decision of the European Court of Justice in Case C-101/16 Paper Consult has been published, clarifying the VAT deduction right in connection to acquisitions of goods and services from suppliers whose VAT number is inactive.

In detail

The Decision of the European Court of Justice in Case C-101/16 Paper Consult was recently published on the CJEU website. The Decision establishes a different approach to that applied by the Romanian tax authorities regarding the VAT deduction right in connection to acquisitions performed from suppliers with inactive VAT numbers.

The VAT legislation valid until 1 January 2017 stated that beneficiaries acquiring goods and / or services from taxable persons established in Romania whose VAT number is inactive cannot benefit from the VAT deduction right in connection to such acquisitions.

As of 1 January 2017, the VAT legislation allows taxable persons the VAT deduction right in connection to acquisitions performed from suppliers during the period when their VAT number was inactive, based on the corrected invoices issued by the supplier after re-registration. The measure does not apply retroactively and only applies to suppliers which re-register for VAT purposes as of 1 January 2017.

Thus, in the opinion of the Court, as long as no fiscal fraud has been proven in a transaction, a taxable person should not be denied the VAT deduction right in connection to an invoice issued by a supplier declared inactive from a VAT perspective, even if the declaration of inactivity is public and easily accessible.

An important argument of the Court in this respect is that the supplier, even if inactive from a VAT perspective, paid to the state budget the VAT amounts related to the contract concluded with the client, so refusal of the beneficiary's VAT deduction right in connection to the contract would represent an infringement of the VAT neutrality principle.

The CJEU also mentions that, since this decision is meant to clarify what concerns the VAT legislation in force, such interpretation must apply retroactively.

[Source: Judgment of the European Court of Justice in Case C - 101/16 Paper Consult, published on Curia.europa.eu on 19 October 2017]

The takeaway

Companies in Romania which have had their VAT deduction right denied for acquisitions performed from inactive suppliers may request that the tax authorities refund those amounts, as long as the principle of VAT neutrality has been respected and they have not been involved in fiscal fraud or tax revenue losses.

VAT split payment system – the approval of transfers from VAT accounts

In brief

Order no. 2927/13 October 2017 (hereinafter "the Order") regarding the application of the VAT split payment system has been published in the Official Gazette. The Order stipulates the procedure and conditions for the approval of the transfer of amounts from taxpayers' VAT accounts requiring tax authority consent.

In detail

The Order details the procedure and conditions for the approval of requests for VAT amount transfers from dedicated VAT accounts to current accounts (under Ordinance no. 23/2017 regarding the VAT split payment mechanism) in specific cases, as follows:

- Amounts resulting from payment corrections, for which the refund is made into an account other than a VAT account;
- Amounts resulting from adjustments of the VAT taxable base, for which the refund is made into an account other than a VAT account;
- Amounts transferred into the holder's current account opened with the same credit institution / Treasury unit, limited to the amounts previously transferred from the current account;
- Amounts transferred into the current account of persons no longer required to have a dedicated VAT account and to pay VAT;
- Amounts representing VAT paid in cash (excluding amounts deducted from cash receipts) or by card from the current account.

Thus, VAT account holders can request the transfer of these amounts from their VAT accounts by submitting an Application by electronic means to the e-guvernare portal, Submitting Statements section, for approval of transfer of the amounts from the VAT account (Form 310). Such requests may also be submitted to the relevant tax office's premises or sent by post. Where appropriate, the application has to be accompanied by supporting documents, in certified copy, such as: statements of account, invoices, payment orders, contracts and any other supporting documents according to the nature of the sums required to be transferred from the VAT account.

Requests for funds transfer approval from the VAT account to another account will be decided upon within a maximum of three working days as of the date of application filing with the relevant tax office. After the relevant tax office performs the checks, the request may be solved as follows:

- For the full approval of the transfer, the tax authorities will issue the decision directly;
- For the partial / full rejection of the transfer, the taxpayer will be able to exercise their right to be heard before the decision is issued. For this purpose, the tax authorities will send the taxpayer an invitation and extend the decision deadline accordingly.

Taxpayers may appeal against decisions within 45 days as of the date of communication of the decision.

[Source: Order of the President of the National Agency for Fiscal Administration no. 2927 / 13 October 2017, published in the Official Gazette no. 813 on 13 October 2017]

The takeaway

Taxpayers will be able to request the transfer from their dedicated VAT accounts of amounts requiring tax authority approval by submitting a request to the relevant tax office.

Depending on the type of amounts, such requests will have to be accompanied by certain supporting documents, to be checked by the tax authorities.

Taxpayers will be able to appeal against decisions within 45 days as of the date of communication of the decision.

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Russia

Russia and Japan sign new Double Tax Treaty

In brief

On 7 September 2017, the governments of Japan and Russia signed the Convention for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (the "Convention")[1], which will replace the previous convention that has been in effect since 1986. The Convention still requires ratification and it may take effect in 2018, although it may also take longer to come into force.

The Convention sets provisions that are standard for bilateral treaties with Russia, e.g. an exemption from withholding tax (WHT) for income from interest[2] and royalties[3], and beneficial WHT rates for income from dividends[4] (tax rates of 10% or 5% if the ownership share exceeds 15%). Capital gains on shares in immovable property could face taxation in the source country.

The Convention already provides for the limitation of benefits (Article 21) and it may soon be introduced into active international treaties in accordance with the BEPS Action Plan[5] (we wrote about this initiative in June)[6]. Therefore, the new rules significantly reduce the likelihood of abuse in international tax planning. Furthermore, many structures created by and deals between taxpayers of Russia and Japan should be revisited, i.e. a reduced WHT rate would be applicable subject to certain strict conditions (e.g. a reduced tax rate on dividends could be accounted for if the recipient company is not a holding or finance company in a group).

In detail

Let us look at the key points of the Convention:

Permanent Establishment

Generally, the definition of a permanent establishment corresponds to the OECD Model Tax Convention.[7]

Provisions have tightened regarding the creation of permanent establishments for preparatory and auxiliary activity. For example, preparatory and auxiliary activity in and of itself would not create a permanent establishment. However, a combination of activities carried out by two companies in the same place or by the same company, or by closely related[8] companies in two places, which, taken together, is not preparatory or auxiliary in nature and represents complementary functions that are parts of a single business process, would create a permanent establishment.

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[1] https://www.minfin.ru/ru/press-center/?id_4=34849&area_id=4&page_id=2119&popup=Y and http://www.mofa.go.jp/press/release/press1e_000050.html.
[2] Currently, WHT on interests paid to Japan is 10%.
[3] Currently, WHT on the majority of royalties paid to Japan is 10%.
[4] Currently, WHT on dividends paid to Japan is 15%.
[5] http://www.oecd.org/tax/making-dispute-resolution-mechanisms-more-effective-action-14-2015-final-report-9789264241633-en.htm.
[6] http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2017-24.html.
[7] http://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-2015-full-version-9789264239081-en.htm.
[8] For the purpose of the Convention, individuals (companies) are defined as closely related by the control principle or if one individual (companies) directly or indirectly has a share of more than 50% in another entity.

Furthermore, an agent would not be independent if they act solely or almost solely on behalf of one or several companies with which it is closely related.

Dividends, interest and royalties

The Convention establishes lower WHT rates in comparison to the rates currently in effect:

- Dividends may be taxed at 5% if the ownership share exceeds 15% of voting shares over a year. Otherwise, a 10% rate is applied. Dividends from a company (partnership, trust, fund, etc.) are taxed at 15% if the company's assets consist of 50% or more, directly or indirectly, of immovable property at any time over the 365 days before the date of the dividend payment.
- Interest is exempt from WHT. Interest that is calculated based on sales, profits, revenue and other cash flows of a debtor or dependent entity, and that fluctuates along with the value of assets or dividends, is taxed at 10%.
- Royalties are also exempt from WHT.

Taxation of real estate and income from property sales

Income from the sale of property may be subject to WHT upon the disposal of:

- real estate
- property attributable to a permanent establishment
- shares and interest in companies (partnership, trusts, funds, etc.) in which 50% or more of the assets, directly or indirectly, consist of real estate at any time over the 365 days prior to disposal.

The Convention makes an exception for shares of companies listed on a recognised stock exchange in which the seller and its related entities/individuals jointly hold no more than 5% of shares.

Limitation on tax benefits

The preamble and Article 21 of the Convention contain general provisions on the limitation of benefits by the principle of the main purpose only when a granted benefit is not the main purpose of the deal or structure.

Besides, a taxpayer would be entitled to benefits from income from dividends, interest and royalties if:

- when a benefit is accorded, the taxpayer is a qualified person (a qualified person may be an individual or a company whose shares are traded on a recognised stock exchange, a pension fund [subject to certain conditions] and some other persons)
- when a benefit is accorded, the taxpayer is not a qualified person but persons that are equivalent beneficiaries[1], directly or indirectly, that own no less than 75% of this person's shares on at least half of the days of any 12-month period that includes the time when the benefit would otherwise be accorded to a resident if they were a qualified person
- the taxpayer is engaged in business activity in one of the contracting states and their income in the other contracting state is generated by this business activity or in

[1] For the purposes of the Convention, equivalent beneficiaries are any person(s) who could be entitled to income from benefits according to domestic laws, the Convention or any other international judicial instrument.

connection to it. The Convention lists types of activity that are not considered business activity, e.g. operating as a holding company or providing group financing.

Mutual agreement procedure

A novelty of the Convention is that the taxpayer would be able to apply to the relevant authority of its own state and to the relevant authority of either of the contracting states if the taxpayer believes that taxation is not being levied in accordance with the Convention. This provision complies with BEPS Action 14 and similar favourable amendments may be introduced to other treaties in the near future. The new provision may significantly increase the percentage of issues resolved by the mutual agreement procedure.

Beneficial owners face increased liability

In brief

On 21 September 2017, the Russian Ministry of Internal Affairs published on its website that a criminal case[1] had been initiated against an undisclosed executive of food producer Cherkizovo for an offence under paragraph two of Article 199.1 of the Russian Criminal Code "Failure to perform an obligation of a tax agent in especially large amount".[2]

The reason given for criminal prosecution was that "illegal offshore schemes were used to pay out dividends to a Cyprus-based shareholder in the agribusiness holding company that acted as a technical conduit company with the goal of illegally reducing the tax rate from 15% to 5%." According to the Investigative Committee, the tax evasion scheme was employed from 2014-2015, resulting in the budget being short of around RUB 300m.

This criminal case is yet another signal to all Russian entities that they must apply a more careful approach to paying dividends to offshore jurisdictions, especially when the receiving entity is not a beneficial owner of the income.

It is likely that tax and investigative authorities will further develop the above practice and collect taxes unpaid to the budget. To this end, both sets of authorities must prove that any tax evasion was coordinated and that there was criminal intent (please see FTS Letter No. ЕД-4-2/13650@ of 13 July 2017)[3]. As for the Cherkizovo case, the investigation collected sufficient evidence to consider the food producer's scheme intentional and therefore not "a technical or other type of error."

Significant changes in the legal regulation of foreign investments in Russian companies

What's new?

On 1 July 2017, Federal Law No. 155-FZ "On Amendments to Article 5 of the Federal Law 'On the Privatisation of Public and Municipal Property' and Federal Law 'On Foreign Investments in Companies of Strategic Importance for the Country's Defence and the Security of the State'" ("Law No.155") came into force.

On 30 July 2017, Federal Law No. 165-FZ of 18 July 2017 "On Amendments to Article 6 of the Federal Law "'On Foreign Investments in the Russian Federation' and Federal Law[4]

[1] https://xn--b1aew.xn--p1ai/news/item/11168499/
[2] Article 199.1 of the Russian Criminal Code stipulates that the amount of taxes and/or levies considered "especially large" for three financial years in succession exceeds either RUB 15m, provided that unpaid taxes and/or levies account for more than 50% of the taxes and/or levies payable, or RUB 45m
[3] For more details, please see our report from August 2017: http://www.pwc.ru/en/tax-consulting-services/legislation/tax-flash-report-2017-39.html
[4] "The Law on Strategic Companies".

'On Foreign Investments in Companies of Strategic Importance for the Country's Defence and the Security of the State'" ("Law No.165") came into force.

We review in more detail below the provisions of these laws and what is most important to know.

What do the changes in Law No. 155 mean?

- The term "offshore company" is now legally defined.
- Offshore companies cannot take control of companies of strategic importance.
- The right to conclude transactions with strategic companies is limited for foreign states and international organisations and their controlled companies, as well as for offshore companies and their controlled companies.
- The Government Commission must preliminarily approve any transactions in which offshore companies or companies under their control acquire over 25% of shares in the share capital of a strategic company or put themselves in a position in which they can block the decisions of the governing bodies of such companies, or if they acquire over 5% of shares in the share capital of a strategic company that is a user of federal-level subsoil areas.
- Offshore companies cannot acquire public and municipal property. However, this restriction is not applicable to owners of properties that are authorised constructions or properties that were not there on the public or municipal land before the owners purchased the land plots.

What is an offshore company?

An offshore company, according to Russian law, is a legal entity incorporated in a state or territory[1] that provides a beneficial tax regime and/or does not require the disclosure and submission of information when conducting financial transactions.

What do the changes in Law No. 165 mean?

- The concept of a "foreign investor" has expanded.
- The list of activities of strategic importance for the country's defence and the security of the state has expanded.
- The scope of the Law on Strategic Companies has expanded.
- An open list of the obligations that the Government Commission can impose on investors has been issued. The Government Commission can now require that an applicant perform any obligations related to the country's defence and the security of the state.
- New types of liability are introduced if a foreign investor or group of persons fails to disclose to the Russian Federal Antimonopoly Service an acquisition of at least 5% of shares in the share capital of a strategic company.
- A foreign investor or a group of persons holding at least 5% of shares in the share capital of a strategic company incorporated in the Crimean Republic or in Sevastopol, a federal-level city, shall submit to the Russian Federal Antimonopoly Service the relevant information within 90 days after 31 July 2017 if they have not done so already.

[1] The complete list of such states and territories is in Order of the Russian Ministry of Finance No. 108n of 13 November 2007 "On Approving the List of Countries and Territories That Provide a Beneficial Tax Regime and/or Do Not Require the Disclosure and Submission of Information When Conducting Financial Transactions (Offshore Zones)".

Who is a foreign investor now?

According to Law No. 165, foreign investors are both Russian citizens holding another citizenship and entities controlled by foreign investors, including those established in Russia.

Law No. 165 has expanded the list of persons treated as foreign investors.

What types of activities are now treated as those of strategic importance for the country's defence and the security of the state?

- The use of nuclear materials or radioactive substances when performing activities involving the use of nuclear power for defence purposes, including development, processing, testing, transportation (carriage), operation, storage and disposal of nuclear weapon and military nuclear power plants.
- Activities of economic entities that operate e-trading platforms in accordance with the Russian law on the contractual system for the procurement of goods, work and services for state and municipal needs.
- The new version of the Law on Strategic Companies also includes clarifications and amendments regarding the establishment of activities of strategic importance for the country's defence and the security of the state.

How is the scope of the Law on Strategic Companies expanded?

The Law on Strategic Companies will not apply only to transactions related to strategic companies in which an acquirer is an entity controlled by Russia, a Russian constituent region or an individual who is both a Russian citizen with no other citizenship and a Russian tax resident. The law is applicable to such transactions if the acquirer (the controlling party) can directly or indirectly dispose of over 50% of the total number of votes attributable to voting shares in the share capital of the controlled party.

What new types of liability for failing to provide information are introduced?

According to Article 14 of the Law on Strategic Companies, the failure to disclose to the Russian Federal Antimonopoly Service the acquisition of at least 5% of the shares in the share capital of a strategic company by a foreign investor or group of persons entails liability in the following way: the loss of voting rights at the strategic company's General Meeting of Shareholders (Participants) for a foreign investor or group of persons through legal action brought by the Russian Federal Antimonopoly Service until such persons are notified by the Russian Federal Antimonopoly Service that the requirements of Article 14 of the Law on Strategic Companies have been appropriately met.

In addition, the votes held by a foreign investor or group of persons are not taken into account when determining the quorum of the General Meeting of Shareholders (Participants) of such an entity and counting the votes at the General Meeting of Shareholders (Participants) of such an entity.

Next steps

The entry into effect of the above-mentioned amendments and changes is essential for government regulation of foreign investments in Russia and imposes additional restrictions on some foreign investors.

It should be noted that additional guarantees serving the interests of Russia are established when foreign investments are made in companies of strategic importance. Therefore, businesses are required to comply with additional requirements.

We would be delighted to help you analyse whether the new legal requirements are applicable to your practical situations, discuss the risks involved and propose a strategy for risk mitigation as part of the implementation of your project.

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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.

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Ukraine

Simplifying procedure for obtaining of work permits for foreigners in Ukraine

Law on elimination of barriers to foreign investments became effective

On September, 27 2017 the Law of Ukraine[1] designed to eliminate barriers to foreign investments became effective.

The law includes, among others, provisions that significantly simplify the process of hiring of foreign individuals by Ukrainian legal entities.

According to the new Law, from now on there will be no requirements to the qualifications of perspective foreign nationals to be employed in Ukraine. Practically it means that Ukrainian legal entities will be able to hire foreigners regardless of availability of higher education or the length of their previous professional experience.

At the same time, there are certain categories of foreign nationals who can benefit from the simplification of the employment procedure in Ukraine (e.g. graduates from top tier world universities, highly paid professionals, shareholders and/or beneficiaries (controllers) of Ukrainian legal entities, etc.).

PwC Ukraine will additionally issue a newsletter addressing the respective changes in more detail shortly.

Changes in the suspension procedure of VAT invoice registration

VAT payers are now able to prevent suspension of VAT invoice registration

Starting from 13 October 2017, VAT payers (e.g. companies, private entrepreneurs) have the right to submit to the tax authorities information on the types of their business operations as well as codes for goods and services that they purchase and supply on a regular basis ("Taxpayer's Data Table") before the tax authorities suspend their VAT invoice registration.

The Taxpayer's Data Table is to be reviewed by the fiscal authorities within 5 business days after they receive it. However, a table submitted by qualifying agricultural producers should be taken into account automatically.

Still, the authorities retain the right to disregard the information provided by the taxpayer if they have evidence as to the unreliability of such information.

In our view, the introduced amendments are positive overall, since an advance submission of the Taxpayer's Data Table with explanations may prevent the suspension of the VAT invoice registration.

* The Order by the Ministry of Finance of Ukraine "On Approval of Changes to the Criteria for assessing the risk level sufficient for suspension of registration of VAT invoice/adjustment calculation to VAT invoice" No. 776 dated 18 September 2017, which came into effect on 13 October 2017

[1] The Law of Ukraine "On introduction of changes to certain legislative acts of Ukraine regarding elimination of barriers to foreign investments" No 2058-VIII, dated 23.05.2017

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