Deloitte.

Tax Newsletter
Deloitte
Central Europe

July 2011

Tax news in Central European countries

Czech Republic

Ministry of Finance report on VAT exemption for cost sharing

The Ministry of Finance has issued a report on the VAT exemption for cost sharing under the VAT Act. The report addresses the application of the exemption in a cross-border context, the legal status of an independent group of persons enjoying the exemption and the type of services that may be exempt from VAT.

Amendments to VAT Act clarified

The Ministry of Finance and the General Financial Directorate (GFD) have published comments relating to changes to the VAT Act that became effective on 1 April 2011. The comments cover the following:

- Tax deduction claims;
- Adjusting the tax base and VAT;
- Correcting the amount of tax in respect of receivables from debtors in insolvency proceedings;
- Tax exemptions for the import of goods;
- Submission of EC Sales lists;
- Supplies subject to the reverse charge mechanism; and
- Tax guarantees and securities.

The comments clarify the language of the amendments, as well as the procedures for applying VAT after 1 April 2011. It should be noted that some of the conclusions of the Ministry of Finance appear to lack support in the VAT Act, in particular, with respect to adjusting the tax base and the VAT on turnover bonuses/discounts.

Remunerating statutory executives and members of board of directors

In its decision of December 2010, the Supreme Administrative Court addressed the entitlement of a statutory executive to the payment of health insurance benefits in a case in which the executive's participation in the health insurance scheme resulted from an invalid employment relationship. The court concluded that the individual is not entitled to health insurance in these circumstances. This decision could mean, inter alia, that employees (directors) who are also statutory executives or members of the board of directors in the same company are not eligible for health or pension insurance benefits even if they have paid their insurance premiums. Because this decision also may have corporate income tax implications, (as the wages of employees could be considered nontax deductible costs of the company), discussions are ongoing among the authorities. However, no official statement has been published so far.

Introduction of gift tax on emission allowances

The Ministry of Finance has posted information on its website relating to the introduction of a 32% gift tax on greenhouse gas emission allowances that were assigned (free of charge) to producers of electricity producers in 2011 and 2012. For more information on the treatment of emissions allowances and the calculation of tax, see: http://cds.mfcr.cz/cps/rde/xchg/cds/xsl/dane_poplatky_12880.html

Estonia

Combating tax fraud on trade of liquid fuels

Amendments to the Liquid Fuels Act that became effective on 1 April 2011 impose additional obligations on companies trading in such fuels. The role of Tax and Customs Board has been enhanced because, in addition to the collection of tax and control of companies, the Board now also issues trading permits.

Traders must provide bank guarantees and meet minimum share capital requirements (trading EUR 32,000 and import EUR 639,000) or contract additional cover from insurance providers. There are minimum guarantee amounts for release to consumption (EUR 1 million) and retail sales of fuel already released to consumption (EUR 100,000). Higher guarantees may be required if deemed necessary to cover any risk to the collection of tax. Changes also have been made to the documentation requirements accompanying sales of such fuels and for verification of the documentation upon sale.

Lithuania

VAT law amended

A number of changes to the VAT Law became effective on 18 December 2010, the most important of which are as follows:

Place of supply of services

As from 1 January 2011, the following derogations from the general rule on the place of supply of services between businesses (general B2B rule) apply:

- The place of transport of goods or ancillary services (loading, unloading, handling and other ancillary services) will not be deemed to be in Lithuania when these services are supplied to a taxable person established in Lithuania or to a foreign taxable person's subdivision in Lithuania and the transport of the goods/ancillary services actually takes place/are actually supplied outside the EU. The place of an agent's services in such transactions is not deemed to be in Lithuania if the transport of goods/ancillary services takes place/are supplied only outside the EU. Where the transport of goods actually takes place both within and outside the EU, Lithuania is not deemed to be the place of supply for the part of services relating to the route outside the EU.
- The place of long-term hiring of a means of transport, when these services are supplied to the taxable person established in Lithuania or to a foreign taxable person's subdivision in Lithuania, is not deemed to be Lithuania if the hired means of transport is mostly used outside the EU.

As from 1 January 2011, the place of supply of services supplied by a travel agent (in respect of which the special VAT scheme applies) is deemed to be Lithuania if:

- The travel agent is established in Lithuania, except where services are supplied through the travel agent's subdivision in another country; or
- Services are provided through the foreign travel agent's subdivision in Lithuania.

Reduced rates

The reduced VAT rate of 9% on the supply of heating energy and hot water to a residence and the supply of certain pharmaceuticals and medical aid, has been extended through 31 December 2011. The 9% rate also applies to hotel accommodation services.

Exemptions

With a view to implementing relevant provisions of Council Directive 2009/162/EU of 22 December 2009 amending various provisions of Directive 2006/112/EC on the common system of VAT, new exemptions have been added to the Lithuanian VAT Law:

- As from 1 January 2011, a VAT exemption applies to the importation of goods by EU institutions, the European Central Bank, the European Investment Bank or agencies set up by EU institutions to which the Protocol on privileges and immunities of the EU applies; and
- The supply of goods and services to the above institutions is taxed at a 0% VAT rate.

In addition, the zero rate VAT that applied when imported goods were to be transported to another EU member state no longer applies if the goods are reprocessed before being so dispatched or transported.

VAT registration

As from 1 January 2011, taxable persons not registered as VAT payers in Lithuania are not required to register as VAT payers simply because they receive services in Lithuania by a foreign taxable person; and taxable persons established within Lithuania and not registered as VAT payers are not required to register as VAT payers where the supply of services under the general B2B rule is considered to be another EU member state. However, taxable persons that purchase services supplied in Lithuania by a foreign taxable person must calculate, declare and pay Lithuanian VAT on the services. Taxable persons that had registered as VAT payers for the above reasons are allowed to deregister, provided they are not otherwise obligated to register as VAT payers.

Changes to excise duty rules

Changes to the Law on Excise Duty that apply as from 1 January 2011 include the following:

- An increase in the minimum combined excise duty rate for cigarettes to LTL 221 for 1,000 cigarettes; and
- An increase in the excise duty rate on cigars, cigarillos, smoking tobacco and gas oil to LTL 42 per kg for cigars/cigarillos, LTL 139 per kg for smoking tobacco and LTL 1,043 per ton for gas oil.

Changes to Corporate Income Tax Law

The following changes have been made to the Law on Corporate Income Tax:

- The annual corporate income tax return for 2010 and subsequent tax periods must be submitted by 1 June of the following taxable year. However, the deadline for payment remains the same, i.e. the corporate income tax due must paid before 1 October of the following tax period;
- Bad debts incurred in a tax period may be deducted in calculating taxable income if those amounts were included in the taxpayer's income in a previous tax period, or in some cases, even in the tax period in which the debt was ;
- Taxable income of entities that earn more than 50% of their total income from agricultural activities, including income of cooperative societies (cooperatives) from sold agricultural products produced by and acquired from its own members, is subject to a 5% rate;
- Income targeted for funding activities carried out for the public interest is not attributed to the income from economic and commercial activities of non-profit entities;
- Part of the profit allocated for paying annual bonuses to members of the board of directors or supervisory board, or for expenses incurred for the benefit of employees or their family members is not deemed to be distributed profits and can be attributed to allowable deductions; and
- In calculating corporate income tax for 2011 and subsequent tax periods, the positive difference between the acquisition price of shares that were annulled due to a reduction of authorized capital (that were acquired other than for a contribution by shareholders) and funds paid to shareholders can be treated as losses incurred as a result of transferring the shares.

Changes to Law on Personal Income Tax

The following changes have been made to the Law on Personal Income Tax:

- Income from self-employed activities, except income from certain professional activities and income from securities (including income from derivative financial instruments) is taxed at a rate of 5%;
- Income from the sale or other transfer of ownership, as well as income from the lease of property (except immovable property) used for the purpose of self-employed activities is treated as income from self-employment. Income from the sale or lease of immovable assets is not treated as income from self-employment;
- In calculating taxable income, a deduction is allowed for the acquisition price of immovable property used for the purpose of self-employed activities, as well as any expenses incurred on the sale or other transfer of the property;
- Bad debts incurred during a tax period may be deducted in calculating taxable income, provided such amounts were included in the taxpayer's income;
- Income received as a gift from a spouse, child (including any adopted children), parent (including adoptive parents), grandparent or grandchild is deemed to be nontaxable income;
- Expenses may be deducted only against income subject to the 15% rate and the deduction is limited to 25% of taxable income;
- Income subject to the 5% tax rate, income received after the expiration or termination of a life insurance or pension funding contract and that does not exceed the amount of the premium/contributions paid under such a contract and income from activities carried out under a business certificate are not taken into account in calculating the annual tax-exempt amount; and

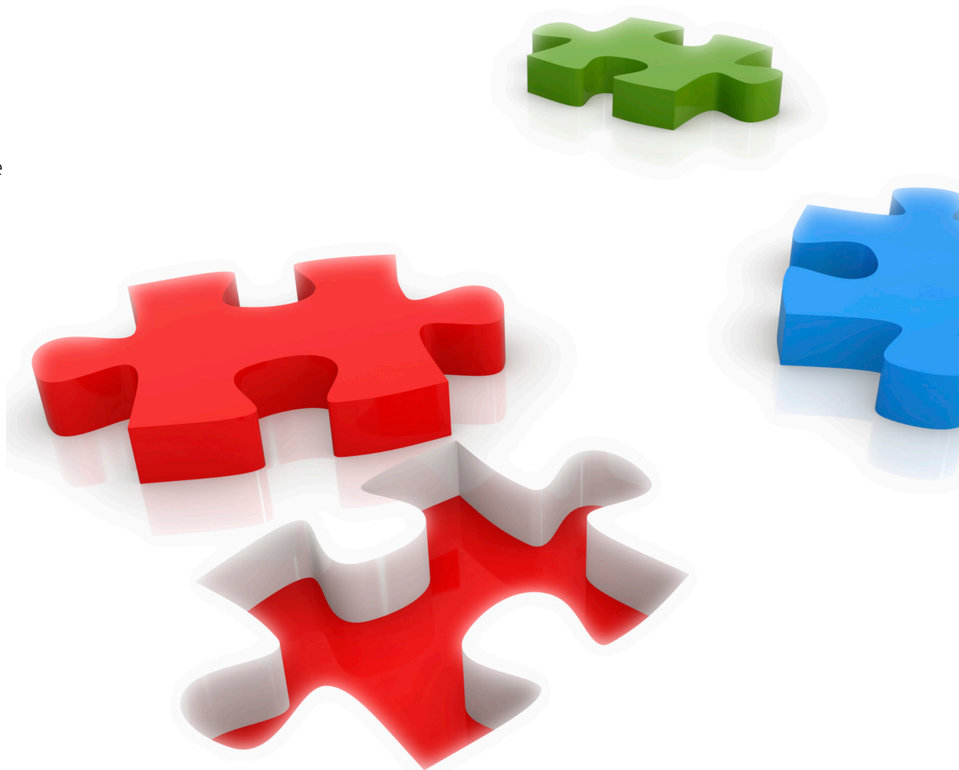
- Capital gains from the sale of immovable property in the EEA that was acquired after 31 December 2010, and gains from the sale of immovable property acquired before 1 January 2011 that was used for self-employed activities are exempt if the property is owned for at least five years before the sale.

In calculating the personal income tax liability for 2011 and subsequent tax periods, income from agricultural activities will be deemed to be nontaxable income, provided the person earning the income is not required to register and is not registered as a VAT payer that tax period. Additionally, for purpose of calculating the personal income tax liability for 2012 and thereafter, the following rules will apply:

- Only persons not required to register and not registered as VAT payers will be permitted to carry on self-employed activities with a business certificate; and
- Individuals will be permitted to elect to pay a fixed amount of personal income tax on income from the leasing of immovable property where such income does not exceed LTL 100,000 in the tax period.

Other relevant changes

- As from 1 January 2012, taxpayers will be able to request a ruling from the tax authorities on the tax treatment of a planned (i.e. future) transaction. The ruling will be binding on the tax authorities.



Poland

Tooling
Does depreciation constitute tax deductible costs in respect of income taxes?

Tooling, in the form most commonly encountered, involves one enterprise delivering to another enterprise its fixed assets to use for period of completing specified production task free from compensation directly paid by the user.

Agreements of this kind are among the most prevalent in the manufacturing sector, especially in the automotive industry. Particularly often, owing to the characteristics of business activities, they are found in relationships between large automotive corporations and subcontractors specializing in manufacturing various automotive parts and components.

How are these relationships regulated by the provisions of Polish tax law?

The tax consequences of such agreements have aroused a lot of controversy for some time, especially on the ground of the Corporate Income Tax Act (hereinafter referred to as CIT Act).

A particular area of doubt is the question whether the taxpayer allowing third party to use fixed assets (equipment, form the production line, etc.) free of charge is authorized to include in its tax deductible costs depreciation charges made in relation to that fixed assets.

Article 16 section 1 point 63 letter c of the CIT Act forbids to treat as a tax deductible cost a depreciation charges on fixed assets for months in which those assets are delivered for free of charge use.

On the other hand, the doctrine of tax law maintains that, when the equipment is used by a subcontractor to the benefit of an entity that delivers such equipment to use, the above mentioned provision of law should be interpreted in reference to article 16a section 1 CIT Act, pursuant to which depreciation is allowed in relation to, among others, fixed assets used by a taxpayer for the purpose associated with the exercise of its business delivered to use under lease, rental or lease agreement. Consequently, the depreciation write-offs should constitute the tax deductible costs in the entire amount.

How this issue is evaluated by the Polish tax authorities and administrative courts?

Last year there were positions clearly unfavorable to the taxpayer, ie. those in which it was concluded that depreciation of fixed assets delivered for free of charge use does not qualify as tax deductible costs. In particular, in the Judgment of 25th, February 2010 (ref. II FSK 1628-1608), the Supreme Administrative Court (hereinafter referred to as the SAC) said that the company which delivered fixed assets to another entity pursuant to cooperation agreement, failed to fulfill conditions stipulated it Article 16a section 1 of the CIT Act ie. to use the fixed assets. The Court has thus recognized that the company did not use the fixed assets directly for the needs of its business activity, and the fact they have been used by other operators to install products exclusively for the company's own benefit cannot change the fact that the fixed assets are used by entities other than the company.

On June 23rd, 2010, the administrative court delivered two further important decisions.

In judgment ref. No II FSK 259/09 SAC has held that pursuant to Article 16 point 63 of the CIT Act, a taxpayer is not allowed to make write-downs from the initial value of fixed assets and intangible assets for months in which those assets are delivered for free of charge use. According to the court it is not important to whom and for what purpose the assets are transferred.

Furthermore, according to written grounds of a verdict ref. No I SA/Bk 159/10 delivered by administrative court in Bialystok, which was bound by the above-quoted verdict of the SAC of 25th February 2010, since the company provided its own assets to other entities engaged in business activities on the basis of cooperation agreements in order to provide this company, solely, with services of installation of household goods ,the company has not fulfilled the conditions to use the assets.

However, since November 2010 Tax Chambers as the local tax authorities entitled to issue individual tax rulings on behalf of the Minister of Finance issued interpretations favorable to taxpayers. This confirms ambiguous and divergent tax practice in that field.

What are the risks and whether it can be minimized? Given the above-cited positions of administrative courts, including the Supreme Administrative Court, we believe that despite the favorable individual interpretations there is still a risk that the tax authorities may tend to question depreciation write-offs on the so-called tooling equipment among tax deductible costs. The risk is even more significant due to the fact that it may refer not only to current fiscal years but also to all years open for tax inspection (as general rule it is in Poland five years back).

In our opinion, there are mechanisms which can be pursued to minimize or eliminate the risk in question. However, it requires a detailed analysis of specific facts, which should be followed by implementation of appropriate solutions.

Romania

Corporate income tax changes

A number of changes to the Romanian Fiscal Code and corresponding Methodological Norms for its application became effective starting with 1 January 2011:

- The special fiscal regime applicable to micro-enterprises was reintroduced so that such enterprises now can choose to pay a 16% tax on profits or a 3% tax on revenue. The option may be exercised by 31 January of the following fiscal year by an enterprise, provided it meets the requirements to qualify as a micro-enterprise and it has not previously been subject to such regime. To qualify as a micro-enterprise, a company should have up to nine employees, its revenue for the previous year should not exceed EUR 100,000 and it must have private ownership. Companies engaged in banking, gambling and management consulting activities continue to pay tax at the standard 16% rate.
- As a result of the minimum tax being abolished as from 1 October 2010 and dividing the year 2010 in two fiscal periods, new rules have been introduced for losses recorded in 2010. Tax losses recorded in the periods January-September 2010 and October-December 2010 may be carried forward for seven consecutive years, while the period October-December 2010 is actually considered a separate fiscal year in the meaning of seven consecutive years.
- In computing the corporate income tax/loss for the year 2010, and taking into account the abolition of the minimum tax as of 1 October 2010:
  - Only taxpayers that owed minimum tax for 2010 should prepare and file two tax returns for 2010;
  - When determining the fiscal result for each period (January-September 2010 and October-December 2010), expenses that are subject to limited deductibility should be computed with reference to the corresponding base determined for each period. The deductible legal reserve should be determined for each period separately.
  - Tax losses recorded before 2010 and carried forward can be offset against profits of the following years, by considering 2010 as a single fiscal year. However, losses incurred in the period January-September 2010 can be carried forward and offset against profits in the following years, the period October-December 2010 being considered the first year in this respect.
- A new provision is introduced with details on how a Romanian taxpayer (that carries out business activities through a permanent establishment in another country) can benefit from the "exemption method" under an applicable tax treaty concluded between Romania and the other state. Under the exemption method, the profits obtained by the permanent establishment abroad are exempted from taxation in Romania, under the availability of a justifying document obtained from the relevant tax authorities and attesting the payment of the tax abroad. For applying such method, the income and expenses derived by the permanent establishment abroad are considered as non-taxable/non-deductible for profit tax purposes at the level of the Romanian taxpayer.
- Dividend tax paid to the state budget with respect to dividends distributed but not effectively paid until the end of the year can be refunded if the recipient entity satisfies all the conditions provided by the Fiscal Code (e.g. regarding the participation percentage and holding period) at the time the net dividend is paid.

Withholding tax changes

- As from 1 January 2011, dividends paid to a legal person resident in an EU or EFTA member state are subject to a general tax rate of 16% (previously 10%), unless the rate is reduced under an EU directives or the applicable tax treaty.
- New provisions have been introduced to define what constitutes a royalty payment.

Changes to transfer pricing rules

An internal circular issued by the National Agency for Fiscal Administration provides information on unscheduled tax audits on related party transactions in companies that reported losses during fiscal years 2008 and 2009. The tax authorities will examine whether the companies have carried out any intercompany transactions during the relevant period, and if so, will analyze the types and values of such transactions. If the company is found to be engaging in significant transactions with affiliated entities, the tax authorities will initiate partial or general tax audits in which they will request the submission of transfer pricing documentation.

Individual income tax and social security changes
Effective 1 January 2011, the following changes were made to the Fiscal Code, Fiscal Procedure Code and Pension Law:

- Consolidation of relevant regulations on social charges in the Fiscal Code and income tax applicable in the case of employment income;
- Exclusion of certain benefits in kind (e.g. meal tickets, gift vouchers, etc.) from social charges levied on employees;
- Introduction of thresholds for the computation of the base of social charges;
- Consolidation of the salary tax and various social charge forms in a single declaration (Form 112) to be submitted to one authority;
- Introduction of compulsory e-filing of Form 112 as from July 2011;
- Possibility to carry forward annual net losses from shares transactions performed outside Romania for a period of seven years;
- Introduction of a new deadline for submission of the annual income tax return: 15 May of the year following the year the income was earned (previously 25 May);
- Introduction of procedures to examine the individual wealth to determine whether the wealth arises from taxed income and the possibility to adjust an individual's income if so required, based on several indirect methods (source of income, spending method, treasury flow method, etc.).

Value Added Tax changes

Various changes to the VAT Act apply as from 1 January 2011, including the following:

- The limitation of the right to a VAT deduction on the acquisition of vehicles and fuel has been extended to 31 December 2011;
- Changes to the conditions under which goods granted free of charge for advertising purposes or increasing sales are not deemed to be supplies of goods for consideration;
- Services provided free of charge by a taxable person will be treated as supplies of services effected for consideration only if they are used for purposes other than for carrying out the business activities of the taxable person;
- Changes to the procedural aspects of the small enterprises exemption regime.

Slovakia

Act on Social Security and persons from working in Slovakia

An amendment to the Social Security Act expands the definitions of employee and employer for social security purposes. The changes, which apply as from 1 January 2011, raise a question as to whether insurance payment or reporting obligations for social security purposes are created for an "economic employer" with respect to individuals from non-EU countries that have not entered into a social security agreement with Slovakia and who perform dependent activities in Slovakia under an assignment agreement. Based on an opinion of the Social Insurance Company, if such an employee carries out dependent activities under an assignment agreement in an employment contract with a foreign employer and is paid from abroad, there is no obligation to participate in the Slovakian social security system. Instead, the rules in the country where the employer has its registered office apply.

Regulation 883/2004 of the European Parliament and of the Council and Article 13

The European Commission (EC) has published the second part of its Practical Guide on Article 13 of Regulation 883/2004 of the European Parliament and of the Council on the Coordination of Social Security Systems, which is aimed at individuals performing activities in two or more EU Member States.

The Practical Guide introduces a 5% threshold under which, if an employee carries out activities on more than one member state and some activities do not exceed 5% of the employee's working time or 5% of his/her total remuneration, the employee will not be considered for social security purposes under Article 13 of the regulation and, thus, he/she will not be considered an employee working in more than one member state. Such an employee will be regarded as an employee working only in one member state and will be subject to the social security rules of that member state.

Health Insurance Act, capital gains and other income

Amendments to the Health Insurance Act, which became effective on 1 January 2011, expands the types of income that are subject to health insurance payments. The only exception is income that is not subject to taxation (except for dividends), is tax-exempt (except for dividends paid to employees having no interest in equity) or is subject to withholding tax.

What is remarkable is the reference to the Income Tax Act, since the amendment imposed an obligation to make payments only on income that is not subject to withholding tax. Income subject to withholding tax under article 43 of the Income Tax Act (such as winnings/prizes, interest income and yields from securities, interest income on bank accounts) is exempt from health insurance payments.

The insurance rate applicable to other income and capital gains is 14%. No advance health insurance payments are made in respect of the above income, and individuals are obliged to file an annual health insurance reconciliation report.

Contribution to Handling Emergency Stocks of Crude Oil and Petroleum Products

Beginning on 1 January 2011, a new obligation is imposed on entities that import crude oil and selected petroleum products to Slovakia from third countries or those that transport such products to Slovakia from other EU member states. By a specified deadline after the end of each calendar month, such entities must report the amount imported into Slovakia and pay a fee, the amount (from EUR 16.23 per ton to EUR 18.62 per ton or EUR 16.23 per 1,000 liters) of which is based on the imported quantities and the type of product. If such products are exported from Slovakia, the entity can request a refund of the fee paid at the time of import. The request should be supported by relevant documents. Affected entities involved should consider the VAT effects of the new fee, mainly with respect to determining the tax base on importing and acquiring goods from other EU member states.

Contacts

Albania
Olindo Shehu
+355 (4) 2277 929
oshehu@deloitteCE.com

Bulgaria
Georgi Sarakostov
+359 (2) 8023 118
gsarakostov@deloitteCE.com

Croatia
Sonja Ifkovic
+385 (1) 2351 915
sifkovic@deloitteCE.com

Czech Republic
Miroslav Svoboda
+420 246 042 924
msvoboda@deloitteCE.com

Estonia
Mait Riikjarv
+372 6406524
mriikjarv@deloitteCE.com

Hungary
Istvan Veszpremi
+36 (1) 428 6907
iveszpremi@deloitteCE.com

Kosovo
Olindo Shehu
+355 (4) 2277 929
oshehu@deloitteCE.com

Latvia
Janis Cupans
+371 (6) 7074171
jcupans@deloitteCE.com

Lithuania
Tatjana Vaiciuliene
+370 (5) 2553004
tvaiciuliene@deloitteCE.com

Montenegro
Tamara Dmitrovic
+381 (11) 3812 163
tdmitrovic@deloitteCE.com

Poland
Tomasz Walczak
+48 (61) 860 21 40
twalczak@deloitteCE.com

Romania
Pieter Wessel
+4021 2075 242
pwessel@deloitteCE.com

Serbia
Marijana Vujosevic
+381 (11) 3812 149
mvujosevic@deloitteCE.com

Slovakia
Miroslav Tain
+421 (2) 582 49 361
mtain@deloitteCE.com

Slovenia
Barbara Guzina
+386 (1) 3072 922
bguzina@deloitteCE.com

These materials and the information contained herein are provided by Deloitte Central Europe and are intended to provide general information on a particular subject or subjects and are not an exhaustive treatment of such subject(s).

Accordingly, the information in these materials is not intended to constitute accounting, tax, legal, investment, consulting, or other professional advice or services. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

These materials and the information contained therein are provided as is, Deloitte Central Europe makes no express or implied representations or warranties regarding these materials or the information contained therein. Without limiting the foregoing, Deloitte Central Europe does not warrant that the materials or information contained therein will be error-free or will meet any particular criteria of performance or quality. Deloitte expressly disclaims all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, noninfringement, compatibility, security, and accuracy.

Your use of these materials and information contained therein is at your own risk, and you assume full responsibility and risk of loss resulting from the use thereof. Deloitte Central Europe will not be liable for any special, indirect, incidental, consequential, or punitive damages or any other damages whatsoever, whether in an action of contract, statute, tort (including, without limitation, negligence), or otherwise, relating to the use of these materials or the information contained therein.

If any of the foregoing is not fully enforceable for any reason, the remainder shall nonetheless continue to apply.

***

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in 140 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte's 170 000 professionals are committed to becoming the standard of excellence.

Deloitte's professionals are unified by a collaborative culture that fosters integrity, outstanding value to markets and clients, commitment to each other, and strength from diversity. They enjoy an environment of continuous learning, challenging experiences, and enriching career opportunities. Deloitte's professionals are dedicated to strengthening corporate responsibility, building public trust, and making a positive impact in their communities.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/pl/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

© 2011 Deloitte Poland