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Czech Republic

Inconspicuous amendments to the Income Tax Act

A brief summary of additional amendments to the Income Tax Act undergoing the legislative process

In our previous issues of the Tax dReport, we focused on the relatively extensive amendment to the Income Tax Act ("ITA") which is expected to introduce substantial changes to international taxation and other fields starting from 2019. We note that the amendment is just at the initial stage of the legislative process, with comments being now dealt with by the Ministry of Finance. We will keep you informed about any further development.
The amendment has rather overshadowed additional amendments to the ITA that are presently being debated in the Chamber of Deputies. Let us provide you with a summary of the proposed changes:

Proposed limitation of the 'basic investment fund' category
The Senate's amendment is part of the debate within the second reading in the Chamber of Deputies. With effect from 1 January 2019, it proposes narrowing the definition of the 'basic investment fund', which is subject to the more favourable five-percent rate treatment.

Restoring the expense charge-off flat rate for sole traders to the original level
Another amendment to the ITA is in the first reading, restoring the limits of expense charge-off flat rates to the level of 2016. Legislators state that the introduced reduction of expense charge-off flat rates has been incorporated to the bill through an amending motion and as such, the impact of the measure has not been assessed sufficiently. The administrative burden related to the registration of sales, local sales and purchases reporting and other governmental measures introduced for minor businesses and sole traders has increased and thus it would be appropriate not to expand administrative requirements in income taxation.

Taxation of financial compensation for the church
The amendment to the Act on Property Settlement with Churches and Religious Institutions (the "Act") comprises a related amendment to the ITA. With effect from 1 January 2019, the amendment proposes narrowing the existing provision on the subject of taxation to the extent that the income from gratuitous acquisition of property, except for financial compensation, under the Act by community service taxpayers is not subject to tax. All financial compensation paid out to churches and religious institutions would thus be subject to tax in the future.

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Defending One's Tax-Related Rights Is Not a Losing Battle

Although in some cases defence against decisions and procedures of the Tax Administration of the Czech Republic may seem to be a lengthy battle with uncertain outcomes, the recent rulings of the Supreme Administrative Court ("SAC") often indicate the opposite. In early 2018, the SAC issued two crucial rulings substantially revising the tax authorities' practice and setting a positive direction towards taxable entities.

Both rulings of the SAC may be considered significant in terms of tax administration as well as positive for taxable entities. These rulings serve as a certain confirmation for taxable entities that bringing cases before the court does not have to be a losing game.

The first ruling (ruling of the SAC no. 5 Afs 60/2017 – 60) was issued in a case in which a company was denied a VAT deduction by the tax administrator due to the company's alleged involvement in a fraudulent scheme. The SAC subsequently cancelled the judgment of the court and the Appellate financial directorate's ruling because it was not clearly demonstrated that the company knew or could have known about its involvement in VAT fraud. The SAC predominantly criticised the purposive assessment of evidence when both administrative authorities emphasised the evidence counting against the company while disregarding the evidence that was to the company's benefit. The SAC believes that it is always solely the tax administrator's responsibility to demonstrate that the taxable entity knew or could have known about the fraudulent practices concerned. The burden of proof thus cannot be transferred to the taxable entity, nor is it possible to extend incommensurately the requirement for examining the business partners' credibility as indicated by the judgments of the Court of Justice of the European Union and to place inadequate requirements on taxable entities. The SAC also emphasised that taxable entities are unable to examine all potential sub-suppliers involved in a business transaction and thus it is impossible to automatically count against the taxable entity the fraudulent practices of entities other than direct business partners as this would establish liability without fault. On the other hand, the SAC gave a reminder of the rule that the taxable entity should be cautious when suppliers, subject of performance, price or other circumstances raise doubts as to the transaction credibility.

The other ruling (ruling of the SAC no. 5 Afs 78/2017 - 33) relates to the statutory duty to guarantee VAT not paid by the supplier. In the legal dispute in question, the company was invited by the tax administrator to settle as a guarantor the VAT underpayment arising from a debt that was unsuccessfully collected from the supplier as part of enforcement of a judgment by a licensed enforcement agent. The tax administrator believes that a guarantee obligation was established as the respective performance was paid by a VAT payer in a cashless transfer to the supplier's account maintained abroad (Slovakia). Nevertheless, the Regional Court cancelled the tax administrator's decision and this was further confirmed by the SAC. The SAC stated that the tax administrator must bear the burden of proof, demonstrating that the taxable entity knew or could have known about the supplier's intention not to pay VAT. Furthermore, the SAC opines that as such, a cashless payment to a foreign bank account cannot establish a guarantee for the actions of another taxable entity that has failed to pay VAT. Besides, the SAC opines that cross-border payments are not unusual in business relations, complying with the principle of the free movement of capital in the European Economic

Area. Nevertheless, the SAC did not agree with the Regional Court's opinion that the legal title of guarantee is contrary to the law of the European Union.

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The Battle for Professional Secrecy is Over. Or is it...?

The proposed amendment to the Tax Code, about which we have already informed you, was, following heated debates, finally approved by the Chamber of Deputies of the Parliament on 21 March 2018.

The original proposal, which substantially exceeded the requirement of the directive on administrative cooperation in the field of taxation on which it should have been based, was, in the end, adopted in a relatively compromising form.

Provision of New Information to the Tax Administrator
Persons that are obliged to identify and check clients in line with the Act on Selected Measures against Legitimisation of Proceeds of Crime and Financing of Terrorism (the "AML Act") will newly be obliged to provide the tax administrator, at its request, with data obtained in identifying and checking the client as well as with documents obtained during the process that contain the information, and with information as to the method through which the information was obtained.

Protection of Professional Secrecy
However, only the General Financial Directorate (ie the central liaison office for international cooperation in tax administration) will be able to request the above stated information and documents from attorneys-at-law, notaries, tax advisors, judicial distraint officers and auditors, and it will only be able to do so for the purposes of international cooperation in tax administration. Said professionals will be obliged to provide the information under the same conditions and restrictions as in providing information to the Financial Analytical Office under the AML Act. In so doing, attorneys-at-law and notaries will, to a substantial degree, communicate through relevant professional chambers.

According to the transitory provision, the new obligation will additionally only apply to information that the above stated professionals obtained subsequent to its effective date. The amendment is proposed to come into effect on the day that the act is promulgated in the Collection of Laws.

The transitory provision does not apply to persons liable under the AML Act that do not carry out one of the above stated professions, and the tax administrator will be allowed to contact them with a request for information at any time subject to the condition that the information is necessary for tax administration and that it cannot be obtained from the register maintained by the tax administrator or another public authority.

Breaking Banking Secrecy Restrictions
The amendment also extends the range of information that the tax administrator may request about clients of financial institutions or payment services providers.

The tax administrator will newly have the power to request details about unique identifiers connected with accounts, persons with the account handling authorisation, persons that deposited funds in the account, payment recipients, custody and leases of safety boxes.

The range of information that the tax administrator will be allowed to request from banks and other payment services providers no longer includes information about e-banking (eg the IP address or the phone number of the device used).

In justified cases and subject to statutory conditions being met, public authorities other than tax administration bodies that the law designates as tax administrators will also be able to request information.

More details about the changes will be provided in our upcoming webcast.

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Hungary

NGM position on the anti-money laundering obligations of real estate industry players

During the past month significant developments have occurred in the real estate industry regarding compliance with the anti-money laundering requirements. In January the Ministry for National Economy (NGM) prepared the reviewed national risk assessment and issued a position in response to the request of the Ingatlanfejlesztői Kerekasztal Egyesület (Real Estate Roundtable), and NAV also published its risk assessment and is expected to launch increased supervisory action.

NGM confirmed that the leasing of own or leased property is not subject to the AML Act; however, they stipulated that all companies engaged in the sale of real estate or the intermediation of the transfer or lease of third party property as a business activity qualify as suppliers subject to the requirements. If the management company of a real estate development or management group acts with respect to the real estate owned by the project company of the group, this activity again qualifies as real estate trading.

This means that real estate development and management companies whose activities fall under TEÁOR 6810 and TEÁOR 6831, i.e. they perform real estate agency activity (even for another firm within the group) or the sale of own property as part of their business, are required to fully comply with the anti-money laundering requirements. These requirements included regular client due diligence and continuous transaction monitoring, the development and maintenance of an internal audit and information system, a training programme as well as various other obligations that imposed an administrative and financial burden on the real estate companies.

Increased burden

In practice the first obligation is to perform due diligence when establishing business relations. According to the NGM position, real estate companies subject to the AML Act incur a client due diligence obligation based on each proposal as "in practice a contract is generally signed in case of a request for a proposal and the service is provided".

This client due diligence is a serious burden as it requires companies to take several measures (e.g. they are required to ask for personal ID and make copies, they need to request a beneficial owner's statement and public interest company statement as well as verify, administrate and document the data provided by clients), and in the absence of these measures the transactions – i.e. sale and purchase as well as lease contracts – may not be concluded.

Specific risk assessment

At the same time, NAV confirmed that individual risk assessment introduced by the AML Act has a special role in AML compliance as "client due diligence is risk based under the new AML Act".

Based on the guidance published by NAV, as of 1 February 2017 a summary of the National Risk Assessment on the risks of money laundering and terrorist financing is available for real estate companies.

Based on the industry specific risk assessment disclosed by NAV, in line with Section 65 of the AML Act, real estate companies subject to the AML Act are required to prepare an internal risk assessment policy and the related rules or procedure. This shall be finalised within 30 days following the entry into force of the NGM decree, which is currently available as a draft but may at any time be promulgated. However, companies should not postpone drafting the internal policy until the issuance of the NGM decree as in practice the development of solutions tailored to the supplier in line with the new regulations is a time consuming process. The amendment of the internal policy shall be reported to NAV.

Supervisory procedures

Based on the results of the new supervisory risk assessment under Section 67 of the new AML Act, NAV is obliged to initiate supervisory procedures adapted to the risks assessed. The AML Act expressly provides that NAV's supervisory activity also includes the review of the supplier's internal risk assessment and rules of procedures. This means that NAV will perform targeted reviews at suppliers concerned to check their internal rules of procedure and risk assessment. NAV may commence the supervisory procedures after a 30-day deadline to review compliance with the anti-money laundering regulations, and if they identify no breach, they will approve the internal policy in a supervisory procedure.

Penalties

If, however NAV identifies some irregularities, it will impose a penalty proportionate to the breach but up to HUF 400 million, which is 20 times higher than the former maximum amount.

In addition to increased supervisory activity and the increased penalty, the new regulation has introduced the personal responsibility of the supplier's managers and key employees. Accordingly, in case of a breach, NAV may initiate the suspension or withdrawal of the managerial position and the establishment of the person's responsibility. This means that the executive or responsible employee may be required to pay the potential penalty incurred due to non-compliance with the AML regulations.

Cost saving solutions

Rather than suffering the burden of the above mentioned stringent administrative requirements, suppliers could gain a competitive advantage. This can be achieved by way of a simplified due diligence through video chat.

NAV, however emphasises that simplified client due diligence is only allowed if the scope of cases is defined in the internal policy, in line with the internal risk analysis. Supplier based risk assessment, simplified due diligence and the appropriate development of the related processes and systems may result in significant cost savings. Companies are advised to consult a qualified advisor for both defining the cases and procedures of the simplified client due diligence and the related individual risk assessment, as these tasks require significant professional skills and experience, efficient resource planning and specific background knowledge of the industry.

Deloitte has quick and ready made solutions to develop the individual risk assessment, the processes and internal IT systems, and prepare the related documents and policies. If you are interested in Deloitte's solutions to increase efficiency, please contact us.

The pitfalls of electronic procedures and the new procedural practice

The new statutory provisions on electronic communication effective as from 1 January 2018 have caused a number of surprises and difficulties for companies. Pursuant to the Act on the General Rules for Trust Services and Electronic Transactions (Act CCXXII of 2015), since 1 January 2018, communication with courts and authorities has been possible only by means of electronic communication, but experience suggests that neither companies nor courts nor authorities had been fully prepared. In addition to the act on electronic transactions, the new Act on Civil Procedure (Act CXXX of 2016) also entered into force at the beginning of the year, which posed additional challenges for those seeking compliance. This edition of our newsletter draws our clients' attention to the most common risks and practical experience.

In January, the news that, out of some 5,000 statements of claim filed in Budapest early in the year, only a few dozen were not refused caused great uproar. Although this was denied by the courts, it is still undoubtable that a large number of new cases were refused due to violations of the formal requirements set forth in the regulations introduced at the beginning of the year, typically the rules provided in Section 176 of the Act on Civil Procedure. Since the majority of the cases involve easily preventable formal errors, we advise our clients to ensure that their legal counsels acting as their representatives in lawsuits pay close attention to the new formal requirements set forth in the Act on Civil Procedure.

Communication with authorities has also become more troublesome since the beginning of the year. This is due to the fact that, since 1 January 2018, communication with authorities has only been possible by electronic means, but many businesses are not adequately prepared to do so. Experience suggests that, in many cases, even the authorities are unable to effectively communicate through the electronic channels required by law. Therefore, to avoid unpleasant surprises, our clients should contact the relevant administrative authorities by phone in advance whenever possible to discuss the method of communication.

Most of the practical issues relate to communication with the National Tax and Customs Administration (NAV). Under the new rules, companies must communicate with the NAV primarily through the business e-filing system after 1 January 2018, with the concession that companies may communicate with the tax authority through their representatives' e-filing accounts until 31 December 2018.

This came as a surprise to most companies. For example, during the first two months of the year, most businesses filed their requests for legal remedy with the NAV by mail, unaware of the fact that, since 1 January 2018, submissions have been allowed by electronic means only. Despite the incorrect filing method, the NAV is doing its best to process these requests,

acknowledging that many companies did not even have a business e-filing account at the start of the year.

In our experience, communication with the NAV is often stalled because the NAV is unable to accept the documents filed by companies. This often happens for the simple reason that the person filing the documents is not authorised to represent the company before the NAV. For instance, if a document is filed on behalf of a company by an accountant or an attorney who is not registered in the NAV's system as an authorised representative, the NAV will refuse to accept such filing in order to protect tax secrets. This can be avoided by notifying the NAV in advance that the representative is appointed as an authorised representative. Additionally, in such cases the NAV now allows representatives acting as ad hoc representatives to file their submissions in the so-called e-paper format, which the NAV is able to process without the involvement of an authorised representative.

Another notable point is that, if the company does not possess a business e-filing account, the tax authority will send the documents to the e-filing account of the company's representative. The presumption of delivery is deemed to apply when the representative opens the document delivered. This may cause problems if the company does not have a policy in place which would designate the person to whom the documents must be forwarded by the representative (e.g. a person responsible for another function, the attorney acting on the company's behalf, etc.). In such cases, it may easily happen that the deadline the company must meet has already passed when the company's competent employee or the person responsible receives the document. In order to avoid surprises of this nature, we advise our clients to address and, if required, regulate matters concerning the persons to whom the representatives must forward the documents received from the authorities and the deadlines for doing so.

Furthermore, the lack of sufficient regulation of access to the business e-filing system represents an issue for many companies. The reason why addressing and regulating access to the company's business e-filing system is critical is that all communication between a company and the authorities after 1 January 2018 must take place through the business e-filing system. The result is that everyone who has access to the company's business e-filing system may gain insight into certain confidential dealings of the company. This issue may typically be resolved by sharing and regulating access to the business e-filing system.

Another rule worth paying attention to in the future is that the deadlines to be met by companies are extended by the number of days when the authorities or courts suffer outages exceeding four hours. As a result, it may often be the case that even though a company believes it has missed a deadline, there is still an opportunity to file documents or requests by claiming that there had been outages suffered by the authority or court.

Although the future pitfalls of electronic communication cannot be foreseen as yet, experience from the first two months suggests that the regulations which entered into force at the beginning of the year have caused significant difficulties for both authorities and companies. Our law firm's professionals discuss issues involving electronic communication with the authorities on a daily basis and bring up-to-date and practical knowledge to the table to assist our clients in facing their day-to-day challenges.

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Submission of Annual Income Statements

From March 1, natural persons may submit their Annual Income Statement to SRS for receiving overpaid personal income tax for eligible expenses.

Amendments to the Law on Credit Institutions

On March 16, amendments to the Law on Credit Institutions came into force, providing for a reduction in the basis for calculating remuneration for a liquidator or insolvency administrator of credit institutions.

Law on the Official Electronic Address has come into force on March 1

In accordance with the Law on the Official Electronic Address, legal entities registered in the records shall create the official electronic addresses and use it for sending and receiving documents from public institutions as of 1 June 2018.

Amendments to the Notariate Law

Amendments to the Notariate Law, which strengthens the issue of liability of sworn notaries and applies additional restrictions to candidate for sworn notaries, have come into force on March 23.

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Court of Justice of European Union issued the decision regarding the protection of depositors and investors of bankrupt bank "Snoras"

On 22 February 2018 the Court of Justice of the European Union (hereinafter referred to as "the Court of Justice") issued a decision where it provided explanations regarding issues raised by the Supreme Court of Lithuania related with the protection of the depositors and investors of the bank "Snoras".

The Court of Justice stated in its decision that persons who have concluded share and bond agreements with bank "Snoras" and who have transferred the monetary funds to accounts opened in the name of Snoras for the acquisition of these securities, but due to bank's insolvency did not become the owners of shares or bonds, have the right to claim the insurance compensations for depositors and investors from the state company "Deposit and Investment Insurance".
In addition, the Court of Justice mentioned that the former clients of bank "Snoras" themselves have to choose what type of legal protection and compensation they shall require from the state company "Deposit and Investment Insurance".

The rules on capital adequacy requirements of management companies have been changed

On 6 March 2018 on the basis of the ruling of the Board of the Bank of Lithuania the rules on capital adequacy requirements of the management companies have been changed.

According to the modified rules, the management companies will have to provide less information to the supervising authority. For example, it is no longer necessary to provide additional information about issued or received loans. In addition, the provisions on the procedure for calculating operational risk capital requirements have also been amended, which apply to management companies operating for less than 3 years.

Amendments of the rules will come into force from 1 May 2018.

Guidelines on good governance of collective investment undertakings intended for informed investors

On 19 March 2018 on the basis of the decision of the Director of the Supervision Service of the Bank of Lithuania the guidelines on good governance of collective investment undertakings intended for informed investors (hereinafter referred to as "CIUIII") were adopted. Guidelines include possible governance structures of CIUIII, guidance on aspects to be considered when choosing an appropriate governance structure for CIUIII and important peculiarities of separate management structures. The guidelines also briefly discuss decision-making principles, potential situations of conflict of interest and how these situations should be managed.

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Poland

New entitlements of court-appointed agents are to make debt collection more effective

New amendments that, inter alia, are aimed to considerably extend the rights vested in agents of companies appointed pursuant to Article 43 of the Civil Code (CC) and Article 69 of the Code of Civil Procedure (CCP) came into force as from 15th March 2018. The changes seem especially favourable for those creditors that find it difficult to collect their receivables because of unfair hindering practices applied by debtors.

In business dealings it is not uncommon to encounter companies whose representative bodies do not consist of the required number of members or even companies that do not have such bodies at all. These situations occur not only when the shareholders cannot come to an agreement, but also when they deliberately take steps aimed to disrupt the company's management and thus hinder creditors from pursuing claims in court.

According to legal regulations, lack of a management board renders it impossible for the company to make declarations of will (e.g. in respect of contract termination), while in court litigation it results in staying the proceedings *ex officio*. From the creditor's perspective, staying the proceedings entails the need to activate the court procedure of appointing of an agent that will act for the company, and to bear the associated costs. Following the appointment, the creditor must wait while the agent attempts to establish a management board, which - if the shareholders choose not to cooperate - may prove rather futile. Until now, even if the creditor took all these steps and bore the attendant costs, satisfaction of claims was uncertain.

The amending act substantially extends the scope of rights granted to the agents appointed by the court in line with the CC and CCP regulations, and it removes any doctrine and practice related doubts concerning the practical application of the relevant laws.

The court appoints an agent to act for a legal person (Article 42 of the CC) when a body to represent it has not been set up and when the composition of the relevant representative body is inadequate. As a consequence, the new legislation expressly permits appointment of the agent if, according to the rules of representation laid down in the Articles of Association, two management board members acting jointly are required to represent the company and the management board consists of only one person (the so-called non-quorum board).

The rights of agents appointed based on that provision were often challenged under the old regime, as the prevailing opinion was that the agents could only take steps with a view to appoint the relevant body and, if need be, to wind up the entity.

Under the new wording of Article 42 § 2 of the CC**, until the body (management board) is established or until it is made up of the required number of members or until a liquidator is appointed, the court-appointed agent for the company represents it and conducts its affairs within the constraints set by the court**. As a consequence, within the scope defined by the court, the court-appointed agent, inter alia,

represents the company by making and collecting declarations of will on its behalf, which in turn renders it possible for creditors to take out-of-court steps (such as e.g. effective contract termination, entering into arrangements, extension of payment deadlines and obtaining additional collaterals), and institute court proceedings against the debtor.

The authority vested in the agent ceases only upon selection or appointment of a new body entitled to represent the entity or alternatively upon the decision (taken by the court or the authorised company's body) to wind up or liquidate the company. Until then, the agent is able to take all the necessary management activities on behalf of the company.

The agent is subject to court supervision. Activities such as acquisition or transfer of an enterprise or its organized part, acquisition, transfer or encumbrance of real property, perpetual usufruct or share in the ownership of real property unconditionally require the court's approval.

The additional rights granted to agents appointed pursuant to Article 42 of the CC also allow continuation of court proceedings. Increasingly often, just before issuing the first-instance decision or in the course of appellate proceedings, the defendant motions for the stay of the proceedings on the argument that all management board members have resigned from their office. This practice enables the losing party to prevent the court decision from becoming final and binding and buys time to remove from the company any assets that the plaintiff may try to recover.

Irrespective of the agent to act for the company appointed under the provisions of the CC, it is also possible to establish an agent in litigation pursuant to Article 69 of the CCP. The amending act introduces a new regime to govern this institution, namely, the possibility to appoint an agent *ex officio* in certain predefined situations, although the general rule that the court takes action in this respect at the request of the adverse party still remains unchanged. Under the new wording of Article 69 of the CCP, the court-appointed agent is authorised to take all steps in connection with the case. The amendments also expressly provide for the possibility to establish an agent if the composition of the company's governing body is inadequate (the so-called no-quorum board).

If it is required to establish an agent to act for the company, the court will need to check whether an agent has not been appointed earlier under Article 42 of the CC. If it proves so, the court notifies the agent about the pending proceedings and the agent appointed pursuant to Article 42 of the CC becomes a party in the litigation. Then, the said agent can take all activities in place of the defendant, which means that the litigation will proceed without interruption and creditors will not be deprived of their rights to be satisfied.

Facing the sudden obstacle in the form of the lack of management board or inadequate composition of the board (especially where the situation lasts for a prolonged period) puts the contractor in highly disadvantageous position, all the more so considering that they have no influence on when the management board is to be set up, if at all.

Hence, the amendments coming into force on 15th March 2018 may contribute to making court proceedings with debtors more efficient and support creditors in their out-of-court actions. They will also help take away some of the means of sabotaging creditors’ pursuit of claims.

Nonetheless, to see whether the new law will really help creditors recover their dues, we will need to wait for the courts to apply the new law in practice. Since the scope of the entitlements granted to court-appointed agents depends on the court's decision, active participation of creditors in the procedure will be of key importance.

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The Revised Payment Services Directive (PSD2) - responsibility for unauthorised transactions

PSD2 is an important step towards the implementation of a Single Euro Payments Area (SEPA). It is also the response to the dynamically developing market for payment services. Apart from regulating the activity of the institutions defined as third party providers (TPP) and the services rendered so far, such as account information services (AIS) and payment information services (PIS), PSD2 will modify the scopes of the liability for unauthorised payment transactions to be borne by payment service providers and payers.

It needs to be pointed out that - as in the case of the previous directive - **the rules concerning responsibility for unauthorised transactions apply to consumer contracts**, whereas in professional trading, the liability may be determined based on the mutual agreement of the parties involved, in line with the general contract practices.

The notion of authorisation of payment transaction under PSD2 is understood in the same way as in the previously binding laws. Pursuant to Article 40.1 of the Act on payment services, "a payment transaction is deemed to be authorised if the payer has expressed consent, in the manner provided for in the contract between the payer and his provider, to execution of the payment transaction. This consent may also apply to a series of payment transactions". **Hence, unauthorised transactions are those carried out without the consent of the payer, and it is assumed that such a classification of a transaction does not depend on the fact whether the transaction is executed with or without the use of a payment instrument**.

Payment service provider's liability for unauthorised payment transactions

PSD2 upholds the rule that the provider of payment services bears responsibility for unauthorised transactions, and the payer becomes liable only in exceptional circumstances**. In the case of an authorised payment**

transaction, the service provider should immediately refund the transaction amount to the payer and only then investigate whether the refund is justified or not. Furthermore, in recital No. 72 of the Payment Services' Directive the legislator observes that in order to protect the payer from any disadvantages, the credit value date of the refund should not be later than the date when the amount has been debited.

Under PSD2 **'immediate refund' is understood as no later than by the end of the following business day, after noting or being notified of the transaction.** This definition of the refund date is new, as the previously binding regime did not provide any specific indication of the meaning of the phrase: 'immediate refund'.

PSD2 also introduces a 15-day timeframe for the settlement of complaints of payment service users concerning refunds of the amounts of unauthorised transactions. As per the new regulation, **the payer will be able to dispose of the amount of the unauthorised transaction also while their complaint is being resolved.**

The new EU legislation also introduces rules governing the payment service provider's liability for unauthorised payment transactions. Under Article 73.2 of PSD2, where the payment transaction is initiated through a payment initiation service provider, the account servicing payment service provider shall refund immediately, and in any event no later than by the end of the following business day the amount of the unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

Payer's liability for unauthorised payment transactions
The payer is obliged to notify the provider of payment services of an unauthorised transaction no later than within 13 months of the debit date or - where the payer does not use the specific account - of the transaction date. If the payer fails to make the notification, they bear all the losses and the liability for the unauthorised transactions.

PSD2 restricts the amount of the payer's liability for unauthorised transactions down to the equivalent of the maximum of EUR 50 (from EUR 150 under the previous regime). The above rule does not apply if:

1. the loss was caused by acts or lack of action of an employee, agent or branch of a payment service provider or of an entity to which its activities were outsourced;

2. the loss, theft or misappropriation of a payment instrument was not detectable to the payer prior to a payment, except where the payer has acted fraudulently.

Moreover, once the payer has notified a payment service provider that their payment instrument may have been compromised, the payment service user should not be required to cover any further losses stemming from unauthorised use of that instrument. At the same time however, the payment service user will be liable for any losses linked with unauthorised payment transactions, if they acted fraudulently or failed with intent or gross negligence to fulfil one or more of the statutory obligations.

The same as under the previously binding regulations, PSD2 stipulates that if the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where the payer has acted fraudulently.

Liability in case of failure to use strong customer authentication

If the payment services provider fails to use strong customer authentication procedure, the payer will not bear any financial losses unless the payer has acted fraudulently. Where the payee or the payment service provider of the payee fails to accept strong customer authentication, it shall refund the financial damage caused to the payer's payment service provider.

Even though the amendments introduced by PSD2 in respect of the liability for unauthorised transactions may seem minor, they are bound to be fairly significant from the viewpoint of the operations of the payment services' market. This is so because they will bring about the need to make modifications in contract templates and internal procedures followed by payment service providers. What is more, the new regulations will also impact many legal and business decisions relating to the operations of enterprises.

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Transfer prices - the Minister of Finance signed the Regulation extending the time-frame for preparing transfer pricing documentation

The Polish Minister of Finance – Ms. Teresa Czerwińska – signed the Regulation of 14 March 2018 on extension of the time-frames allowed for performance of some of the tax documentation-related duties.

According to the Regulation, the deadlines for performance of the duties below will be extended until the end of the ninth month following the end of the financial year:

- preparation of tax documentation;
- filing a statement confirming preparation of tax documentation with the tax office;
- attaching simplified CIT-TP/PIT-TP report to the tax return.

The Regulation was promulgated on 15th March 2018 and has been in force since that day.

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Romania

Legislative proposal in connection with the General Data Protection Regulation – Provisions that derogate from the European rules

The Romanian Parliament drafted a legislative proposal regarding the applicable measures for enforcing the (EU) Regulation 2016/679 issued by the European Parliament and the Council on the protection of natural persons with regards to the processing of personal data ("General Data Protection Regulation").

The General Data Protection Regulation will become directly applicable in Romania starting 25 May 2018, and it allows members states to adopt national regulations meant to enforce the European enactment in connection with the specific of the national framework.

Under these circumstances, the Romanian Parliament has drafted a legislative proposal regarding measures for implementing the General Data Protection Regulation ("**Legislative proposal**"), which was registered on 14.03.2018 at the Senate, for public debate.

In summary, the Legislative proposal regulates:

- processing of certain special categories of personal data (i.e. genetic, biometrics and health data) and the national identification number;
- designation and duties of the data protection officer;
- accreditation of certification bodies, applicable framework for corrective measures and other sanctions;
- processing performed for journalistic purposes and the purposes of academic, artistic or literary expression;
- processing of personal data in the context of employment relationships.

The approach of the lawmaker is questionable, with respect to the provisions included under the Legislative proposal, which derogate from the provisions of the General Data Protection Regulation and restrain the possibility to process certain categories of personal data, either for the purpose of performing an automated decision process, or for creation of profiles.

The Legislative proposal prohibits processing of genetic, biometrics or health data for the purpose of an automated decision process or for the creation of profiles, except for the processing performed by public authorities in the conditions determined under the law. Furthermore, the consent of the data subject is not able to surpass this interdiction. It remains to be seen to what extent the provisions of the Legislative proposal will be kept in such form, following the public debates.

Another important change is represented by the legal basis for processing the national identification number, including the collection or disclosure of the documents that contain it. Unlike the current regulation in force, according to the Legislative proposal, the processing of the national identification number is no longer provided in such a restrictive manner. Thus, pursuant to the Legislative proposal, the processing can be justified in all situations provided under art. 6 (para 1) of the General Data Protection Regulation, including legitimate interest pursuit by the controller, with the enforcing of certain safeguards (e.g. appointment of a data protection officer; establishing

of certain retention terms; training of the persons who, under the surveillance of the controller, processes the data; etc.).

Moreover, it should be mentioned that the monitoring in the context of employment relationships, by means of electronic communications and video surveillance, is regulated under the same matter. The latter measure (i.e. video surveillance) represents a more intrusive process than the monitoring performed through electronic measures (such as the monitoring of Internet traffic). The Legislative proposal sets up additional conditions for these types of monitoring, such as:

- important and well-grounded justified activities to be envisaged;
- the interest of the employer prevails over the interests, rights and liberties of the data subjects;
- informing the employees prior to the monitoring;
- consulting with the syndicate;
- other forms or modalities less intrusive have not proven their efficiency;
- the retention duration of the data is proportional with the purpose of the processing and does not exceed 30 days, except for the situations in which the law provides otherwise, or the cases in which there are well grounded cases.

With respect to sanctions applicable to public authorities and bodies, those are derogatory from the ones applicable to private entities, as, for the former, the lawmaker has provided a warning or fine of up to 200,000 Lei, proportional with the offence committed.

In order to access the entire text of the Legislative proposal, please visit the site of the Romanian Parliament (Senate), at the following link:

https://www.senat.ro/legis/lista.aspx.

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Serbia

The Ministry of Finance has published three new Rulebooks

- **Rulebook on amendments and changes to the Rulebook on the contents of the tax return for the calculation of corporate income withholding tax on income and fees realized by nonresident and resident legal entities that will enter into force on April 1, 2018;**
- **Rulebook on amendments to the Rulebook on PP OPO tax return that entered into force on March 17, 2018; and**
- **Rulebook on amendments to the Rulebook on PPP PD tax return that entered in force on March 17, 2018.**

Rulebook on amendments and changes to the Rulebook on the contents of the tax return for the calculation of corporate income withholding tax on income and fees realized by nonresident and resident legal entities

One of the most important changes is that a payer of income is no longer obliged to submit a tax return in case where, in line with the provisions of a double tax treaty, the tax is paid in another country, provided that at the time when the taxable supply occurs a payer of income has an evidence that a non resident legal entity is a resident of the country with which the double tax treaty was concluded and that it is the beneficial owner of income in accordance with the Law on Tax Administration and Tax Procedure.

Rulebook on amendments to the Rulebook on PP OPO tax return

The Rulebook prescribes the following changes:

- Tax Authority jurisdiction for submission of non-residents tax return via tax proxy is more precisely defined;
- Data on the taxpayer is additionally defined;
- In the Income types catalogue, the titles **Dividends and participation in profit** and **Investment unit income** are added;
- The title Income from own immovable property is changed to **Income from immovable property** and all types within this group are listed without "own";

This Rulebook prescribes the new self-assessment tax return – **PP OPO form**.

Rulebook on amendments to the Rulebook on PPP PD tax return

The Rulebook prescribes the following changes and amendments:

- In PPP-PD form codes for entrepreneurs are added;
- In the Income types catalogue, the title (type of income) **Salary, or personal salary, with the relief under the Article 21dj of the Law and Article 45g of the Law on mandatory social security contributions** is added;
- **Salary of the employee assigned for professional development and training purposes for the needs of the employer is added**;
- Financial support for the medical treatment of the employee in the country or abroad is added;

- Salary reimbursement during the maternity leave, child care leave and special child care leave paid out in accordance with the Law on financial support to families with children is added as new type of income;
- The title Income from own immovable property is changed to **Income from immovable property** and all types within this group are listed without "own";
- **New types of income, for the income above the prescribed non-taxable amount under the Article 9 of the Law on Personal Income Tax, are added**.

Rulebook on "arm's length" interest rates on intercompany loans

Pursuant to Article 61, para 3 of the Corporate Income Tax Law (Official Gazette RS no 25/01…112/15 and 113/17), the Ministry of Finance has adopted the Rulebook on interest rates for 2018 that are considered to be at "arm's length".

Pursuant to Article 61, para 3 of the Corporate Income Tax Law (Official Gazette RS no 25/01, 80/02, 80/02 – oth. law, 43/03, 84/04, 101/11,119/12, 47/13, 108/13, 68/14 – oth. law, 142/14, 91/15 – authentic interpretation and 112/15 and 113/17), the Ministry of Finance has adopted the Rulebook on interest rates for 2018 that are considered to be at "arm's length".

The Rulebook prescribes the following "arm's length" interest rates for credits, i.e. loans between related parties:

Banks and financial leasing entities

- 3,10% short term loans in RSD;
- 4,10% long term loans in RSD;
- 3,19% loans in EUR and dinar loans denominated in EUR;
- 2,45% loans in USD and dinar loans denominated in USD;
- 3,12% loans in CHF and dinar loans denominated in CHF;
- 3,70% loans in SEK and dinar loans denominated in SEK;
- 1,15% loans in GBP and dinar loans denominated in GBP;
- 3,33% loans in RUB and dinar loans denominated in RUB;

Other legal entities

- 5,84% short term loans in RSD;
- 5,58% long term loans in RSD;
- 3,10% short term loans in EUR and dinar loans denominated in EUR;
- 3,42% long term loans in EUR and dinar loans denominated in EUR;
- 12,97% short term loans in CHF and dinar loans denominated in CHF;
- 8,21% long term loans in CHF and dinar loans denominated in CHF;
- 4,41% short term loans in USD and dinar loans denominated in USD;
- 4,16% long term loans in USD and dinar loans denominated in USD.
- This Rulebook will enter into force on the eight day following its publication in the "Official Gazette of the Republic of Serbia".

Rulebook on various types of services that are subject to withholding tax

The Minister of Finance has adopted the Rulebook on the different types of services based on which a non-resident legal entity generates income that is subject to withholding tax that will come into force on April 1, 2018.

In accordance with the new Rulebook, withholding tax should be paid on income realized by a nonresident legal entity for the following services:

• **market research** - these services are considered to be: collecting information from the market related to the delivery of data to a resident legal entity, which are used for the planning, organization and control of the business process; processing and analysis of collected data; determining market characteristics and measuring market potential; analysis of market shares; sales analysis; competition analysis; testing new and existing products on the market.

Market research services are not considered to be advertising and propaganda services;

• **accounting and auditing services** - these services include services related to the preparation of financial statements, as well as the audit of financial statements; as well as

• **other services related to legal and business counseling** – these services are considered to be services relating to any form of legal and business counseling, in particular tax consultancy services, lawyers' services, management services to a resident legal entity, as well as any type of advice and consultation in relation to the business of a resident legal entity.

Services in this field are not considered to be services relating to seminars, lectures, workshops, as well as intermediation services relating to the trade of goods and services.

Rulebook on amendments and changes to the Rulebook on the conditions and procedure for exercising the right to refund paid excise duties

The Minister of Finance has adopted the Rulebook on amendments of the above-mentioned Rulebook.

One of the more important changes include the clarification of already existing practice, i.e. that the right to refund excise tax paid on oil derivatives and biological products referred to in Article 9 of the Law on Excise can be realized by the buyer - the end consumer who uses the mentioned oil derivatives and biological products both as energy fuel or as a raw material in the process of producing excise or non-excise products.

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Slovakia

Cybersecurity Act

This act transposes Directive (EU) 2016/1148 of the European Parliament and of the Council and creates a legislative framework to ensure cyberspace security.

The National Council of the SR passed, and the president signed the new Cybersecurity Act ("Act"), which transposes Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union ("Directive") into Slovak law. The Act creates a legislative framework regulating cyberspace security (networks, information systems, internet, private networks) and ensures compliance with the requirements of the European Union in this field stipulated in the Directive.

The Act defines the following terms:

- **Cybersecurity:** means the ability of networks and information systems to resist any action that compromises availability, authenticity, integrity or confidentiality of data and services accessible via these networks or information systems,
- **Threat:** means any identifiable circumstance or event having an adverse effect on cybersecurity,
- **Cybersecurity Incident:** means an event having an adverse effect on cybersecurity (due to breach of network security, information system or breach of security policy) with a resulting loss of data confidentiality, data destruction or breach of system integrity, limitation or denial of access or the compromising of activities of an essential or digital service and a threat to information safety).

There are several public authorities active in the cybersecurity area, ie the National Security Authority, ministries and other central government bodies. The Act regulates their organisation, operation, their status and stipulates that the National Security Authority acts as the CSIRT – Computer Security Incident Response Team which, in compliance with the Directive, is competent to address cybersecurity incidents. Efficient cybersecurity management, coordination, records and control of the public administration is to be undertaken by the Single Cybersecurity Information System administered and operated by the National Security Authority.

The Act further stipulates conditions for operating essential and digital services (the classification of these services is given in the annexes to the Act), the status and responsibilities of the operator of these services, including stipulating the conditions for the fulfilment of the notification duty, reporting and resolving cybersecurity incidents and the penalties for violation of the Act.

The Act enters into effect on 1 April 2018, with some parts of the Act taking effect on 25 May 2018.

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Methodological Guidance of the Ministry of Finance of the Slovak Republic No. MF/020525/2017-724 on the Mutual Agreement Procedure was published on 26 February 2018

The Ministry of Finance of the Slovak Republic published Methodological Guidance No. MF/020525/2017-724 on the Mutual Agreement Procedure. The Methodological Guidance is available here: link

We informed in Deloitte News February 2018 that the Ministry of Finance of the Slovak Republic had submitted Methodological Guidance No. MF/020525/2017-724 on the Mutual Agreement Procedure for inter-departmental review. The above Guidance was published on 26 February 2018 and is available here: link

The Methodological Guidance deals with issues arising from resolving cases where the contracting states may be in dispute over the interpretation of individual provisions of a double taxation treaty ("DTT"). Such a situation could result in double taxation, despite the existence of a valid DTT. In the Slovak Republic, the body competent to address such cases by agreement under the DTT is the Ministry of Finance of the Slovak Republic.

The Methodological Guidance applies to mutual agreement procedures under the DTT and also deals with the Arbitration Convention and the formal and substantive elements of a given procedure in the SR. It addresses the object and purpose of a mutual agreement procedure and the start and end thereof. It describes the elements of an application for starting a given procedure, and stipulates the time limits, and recommended actions to be taken by a taxpayer to assist the procedure and the allocation of costs related to the procedure.

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