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CE Tax&Legal Highlights
July 2018

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Czech Republic

Change of the wording in the TRIO programme

As of 30 April 2018, the applied research and experimental development programme "TRIO" has a new wording approved by the government of the Czech Republic. It is a programme focused on supporting activities in the area of applied research and experimental development in order to increase the use of results of this area.

The individual projects use and support further development of the potential in the following key technologies:

- Photonics;
- Micro- and nanoelectronics;
- Nanotechnology;
- Industrial biotechnology;
- Advanced materials; and
- Advanced production technologies.

The main changes in the wording of the programme include an extension of the duration of the programme by one year, i.e. until 2022 (inclusive), and an increased budget has been approved that brings the opportunity to announce a fourth public competition. Its announcement is planned for September 2018 with the anticipated competition period in September/October 2018. The basic conditions of the programme remain unchanged.

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Announcement of the sixth public competition of the DELTA programme

On 6 June, the Czech Technology Agency announced the sixth public competition of the Programme for the support of collaboration in applied research and experimental development through joint projects and technological innovation agencies (DELTA programme)

The objective of the DELTA programme is to support projects of international cooperation of enterprises and research organizations in order to increase the amount of specific results of applied research that are expected to be subsequently put into practice. The anticipated results are e.g. an industrial and utility model, functional sample, verified technology, patent or software etc.

Applicants in this public competition may be enterprises and research organizations. However, one of the partners has to be from the country where the foreign partner agency is based (specifically, the countries include the Republic of Korea, the Socialist Republic of Vietnam, the Federal Republic of

Germany, the State of Israel, the People's Republic of China – provinces of Jiangsu and Zhejiang, Republic of China – Taiwan).

The maximum grant percentage per project is 74% total eligible expenses, and the maximum amount of support per project throughout the period of project work is CZK 25 million. **The competition takes place from 7 June 2018 until 7 August 2018.**

News in the application of the research and development deduction... Are better days ahead?

2016 saw the first drop in the use of the research and development ("R&D") deduction in the entire 13-year-long existence of this business support. Taxpayers and the expert public noticed increased activity of tax authorities during tax audits focused on the area of R&D. In the last three years, several court rulings have been issued that established the practice of certain unclear legal provisions, but not all the key ones by far

Taxpayers have become reluctant to use the deduction and the Financial Administration has often been accused of targeted attacks. The Financial Administration responded with allegations of abuse of the support for tax planning, antedating of legally required documents and contesting of activities that companies considered R&D. In this whirl of ill-will where there were essentially only minor changes made to the Income Taxes Act ("ITA") and the explanatory Decree D-288 throughout the period of availability of the support, the Ministry of Finance even considered removing the deduction from the law. As a consequence of this situation, the Government Council for Research, Development and Innovation created a working group whose activity resulted in the presentation of **conclusions that appear viable for all stakeholder groups**, i.e. representatives of the business and expert sphere, the Ministry of Finance and the General Financial Directorate ("GFD").

The representatives of the working group gathered a large amount of data, expert studies, rulings of the Supreme Administrative Court ("SAC") and international comparisons. At present, the ball is in the court of the Financial Administration, which should present the Chamber of Deputies with a draft amendment during the third quarter of 2018 so that the amendment could be approved by the end of 2018. The change in the ITA would also require an amendment to Decree D-288.

So what changes are coming?
The current letter of the law requires taxpayers to prepare and sign an R&D Project before starting work on R&D activities. This causes distortions in practice and the **disputes between taxpayers and the tax administration** regarding whether the R&D Project was really created before the beginning of activities or later often end in a court case. And as confirmed by certain rulings of the SAC (e.g. "ELEKTROPOHONY" or "TRANSYS"), an unsigned or formally unfinished R&D Project is a reason for not recognising the full amount of the deduction and for imposing all sanctions from the additionally assessed tax liability allowed by the Tax Code.

The proposed solution assumes that the taxpayer would have an **obligation to send a notification** to inform the Financial Administration that it performs R&D activities and will claim the R&D deduction in the future. Based on the latest information, the notification would be sent to the Financial

Administration, i.e. it would not be information included e.g. in public registers. The reported information should be limited to (a) the name of the tax payer, (b) name of the R&D project, (c) identification of the statutory representative (or the statutory representative's authorised representative).

The proposed provision assumes that the Financial Administration would consider the project (activities and expenses) to be initiated as of the effective moment of sending the notification. Activities performed (and expenses incurred) before the sending of the notification would not be investigated by the Financial Administration and the taxpayers would not be able to include them in the deduction. This would solve one of the major and crucial disputes in the current system, i.e. the preparation of the R&D Project before starting the work on it.

The R&D Project as we know it today would have to be **prepared no later than by the day of filling the tax return** where the taxpayer first claims the R&D deduction. This provision reacts to the practice abroad and to the criticism from business and the expert public that a great deal of information is unknown before the beginning of development activities, which leads to disputes with tax administrators regarding the sufficiency and correctness of the description included in the R&D Project.

According to the Financial Administration, taxpayers also often make errors in the method and sufficiency of the description of project assessment. The conclusion of the draft is to eliminate the set-up of the frequency and method of required audits. It will be completely up to the taxpayer to set up the audit system and the tax authorities will be able to audit compliance with the set rules only based on the specification determined by the taxpayer in the R&D project.

The draft amendment presupposes that a person responsible for signing the R&D project would still be required. The proposed amendment of the current wording of Section 34c of the ITA expects the introduction of a possibility of having the **project approved also by the authorised representative**.

As for the **indication of place of signing** the project, it is proposed to omit this requirement due to its strictly formal nature, and only the date of approval of the R&D Project would therefore be included.

In September 2017, the Information issued by the GFD stated that "The taxpayer is required to include a list of names of all persons who will provide expert management of the project". The issued Information deepened the doubts of businesses even further. In today's turbulent times characterised among other things by a high level of employee fluctuation, it is impossible to have a complete list of employees who will take part in the development in the following year(s) before the beginning of activities. The amendment suggests amending Decree D-288 **to allow changing the number of persons and changing the list of names of persons providing expert management of the project**.

The historically often debated **(non-)inclusion of vacation compensation** in the R&D deduction (e.g. the proposed conclusions of our colleagues' contribution to the Coordination Committee no. 451/22.04.15 that was not approved by the GFD) is not expected to be allowed in the amended text. An open (and in the opinion of this article's authors a fair) option is for the

taxpayer to include the vacation compensation only in the percentage in which the employee was involved in R&D in the relevant period compared to the total number of hours worked.

The authors of the article believe that **the proposed measures could be the first essential step towards reducing the tax uncertainty of taxpayers that want to increase their competitiveness and use tax deduction for this purpose.** It is clear that the changes will require a more detailed expert interpretation for the individual cases occurring in practice. We will bring you more information as soon as any development of the planned amendment is known.

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Hungary

No sanctions in online reporting

The amendment of the invoicing decree entered into force on 1 July 2018, making the online data supply of invoicing programmes compulsory since last Sunday. Minister of Finance Mihály Varga confirmed in a communication on 30 June that taxpayers cooperating in the transfer as partners do not need to expect any sanctions if the invoicing program they use is not yet capable of performing data supply at the aforementioned date.

He asked the National Tax and Customs Administration in an official statement to refrain from applying the legal ramifications before 31 July 2018 in the case of those taxpayers where the performance of real time data supply is in progress, but who are unable to launch it before the regulation becomes effective. The exemption from sanctions is bound by the Minister to two conditions: the taxpayer must be registered in the Online Invoice system, and missing invoice data must arrive at the tax authority by 31 July 2018; so there is a possibility for subsequent data supply by 31 July. In his statement, the Minister of Finance would like to draw attention to the economic goals hoped to be reached by the introduction of online data services: lightening the administrative burden of taxpayers, and further legalisation of the economy.

The exemption from sanctions was also confirmed by the National Tax and Customs Administration in an official communication on their website on 1 July. Considering that at the majority of entities, the necessary IT developments are still in progress, and that several legal interpretations need to be clarified, the aforementioned announcement is an important step in the process. Therefore, it is still not too late for the fine-tuning of improvements, as taxpayers have four more weeks to implement the transfer without any penalty.

Labour lawsuits: employers increasingly favoured by courts

Enterprises are more prepared when terminating employees' employment relationships. Probably this is the reason for courts deciding in favour of employers in an increasing number of labour law cases, inspecting the reasons for and the circumstances of termination more thoroughly than in previous years – in this newsletter we provide an overview of labour courts and the Curia's latest judicial practice.

The central question in lawsuits regarding the termination of employment relationships is almost always whether the reason on which the employer has based the termination of the employment relationship is clear, real, and reasonable. In addition, employees increasingly argue that the termination of their employment relationship was abusive.

Our experience suggests that most entities already have sufficient labour law experience for the reasoning of the termination to be clear enough (i.e. the notice of termination does not only mention the reason for the termination of employment relationship in general). When proving the authenticity of the reason mentioned in the reasoning of the notice of termination, the employer must prove that the reason for termination is true to reality (e.g. in case of referring to restructuring, the position of the employee has indeed been

terminated). When proving reasonability, labour courts expect employers to prove that the maintenance of the employment relationship was no longer reasonable, and as a result of the mentioned reasons, there is no need for the employee's work.

The following are the conclusions of three recent lawsuits concerning the termination of employment relationship.

Restructuring

The validity and reasonability of the termination of the interest in further employment is easier to prove in cases where the employer refers to the restructuring of its operations or the termination of the position of the employee, as in these cases, the termination of the interest in further employment is mostly evident. However, disputed situations do occur in such cases, as well.

In a recent judgement, the Curia of Hungary decided that the function of a position in the work organisation is determined by the tasks mentioned in the job description. Therefore, if an employer changes the management of an organisational unit after its creation with respect to the different function, the previous job is terminated despite the partially remaining tasks.

The Curia has also concluded that in the present case, the fundamental function of the organisational unit changed after the restructuring, and the special professional qualifications and experience of the new employee, which the previous employee did not have were indispensable in the new position.

Failure to cooperate

Often significantly more difficult are cases where the employer mentions the reason for the termination of the employment relationship as inherent to the employee's person or behaviour. In such cases, it can be decided based on all the circumstances of the case whether the employer's interest in further employment has been terminated as a result of the employee's ability or action.

Experience shows that in such cases, too, labour courts are much stricter with employees and are more lenient with employers. Recently, for example, in several cases, employees' cooperation liability has become the focus of labour lawsuits, and the labour court and the Curia of Hungary established a strict requirement benchmark against employees in every case.

In one recent case the employee who was on sick leave became fit for work and received a medical certificate about it, but only gave the medical certificate to the employer two weeks later, during which period he did not go to work. The employer terminated the employment relationship with immediate effect. After that, the employee obtained a medical certificate proving that he had been incapable of work during the two-week period. According to the Curia's opinion, the delay with the medical certificate was unreasonable and the employee committed a fundamental breach, serving as the basis for the termination of the employment relationship. With this decision, the Curia clarified the frequently experienced problem arising from breach of cooperation between employees and employers. Therefore, despite the employee's retrospectively presented medical certificate, the employer has the right for a real and reasonable termination, after considering the circumstances.

Loss of confidence

The Curia has decided based on the principle of obligation to cooperate in a labour law case represented by our firm. The basis of the argument regarding the authenticity and reasonability of the termination of the employment relationship was the question whether the employee could have endangered the legitimate economic interest of the employer, and whether the employee's behaviour could have resulted in the loss of confidence toward the employee on the part of the employer. The employee recommended an external service provider as a potential contracting partner to the employer in which he had profit share. The employer terminated the employee's employment relationship with reference to loss of confidence and endangerment of their business interest. According to the court's opinion, the employee failed to cooperate when he did not indicate to the employer that he had business shares in the external service provider he had recommended. According to the court's decision, this threatens the employer's legitimate business interest and leads to loss of confidence, even if the employer did not suffer any damage due to the employee's behaviour.

Summarising the above:

The occasional decisions of the Curia and the lower-level courts published from time to time suggest a direction where employers use more substantial notices of termination, and labour courts are more supportive of employers' business interests.

However, in labour lawsuits, it is still difficult for employers to prepare comprehensive reasonings that include all aspects of the reason for termination. For this, it is essential that the termination of the employment relationship be appropriately prepared, as in a lawsuit, employers may only prove why the employee's work was not needed with regard to the reasons expressly listed in the notice of termination. The Curia published a comprehensive report on the legal consequences of the termination of employment relationships on 6 June 2016.

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Lithuania

A new version of the Law on Legal Protection of Personal Data came into force

On 16 July 2018 a new version of the Republic of Lithuania Law on Legal Protection of Personal Data (hereinafter referred to as the LPPD) came into force. A new version of the LPPD will supplement the provisions of EU General Data Protection Regulation. The LPPD provides that there are two supervisory authorities in Lithuania – the State Data Protection Inspectorate and the Inspector of Journalist Ethics.

In addition, the LPPD establishes:

- the competence of the supervisory authorities;
- the procedure of the examination of breaches which will be carried out by the supervisory authorities;
- the procedure of the imposition of administrative penalties which will be carried out by the supervisory authorities;
- the order for issuance of the State Data Protection Inspectorate permits for the transfer of personal data to third countries or international organizations;
- the peculiarities of the processing of personal code, the processing of personal data and freedom of expression and information, the peculiarities of the processing of personal data in the context of labor relations;
- the child's age when he or she can provide consent for data processing in relation to information society services.

Exemplary rules on exercising the rights of the data subject came into force

On 11 July 2018 an exemplary rules on exercising the rights of the data subject came into force. It should be noted that EU General Data Protection Regulation establishes the obligation to implement data subjects' rights and accountability principle to the data controllers. The State Data Protection Inspectorate prepared the exemplary rules on exercising the rights of the data subject in order to help the data controllers properly implement their obligations established in EU General Data Protection Regulation.

Amendments to the Labor Code of the Republic of Lithuania

On 16 July 2018 the amendments to the Labor Code of the Republic of Lithuania (hereinafter referred to as LC) regarding the right of employees to private life and the protection of personal data came into force. These amendments were prepared in order to harmonize the LC requirements for the processing of personal data of employees with the requirements of EU General Data Protection Regulation. In addition, it needs to be noted that in the new version of the Law on the Legal Protection of Personal Data of the Republic of Lithuania, which came into force on 16 July 2018, there is a separate article regulating the peculiarities of processing of personal data in the context of labor relations.

Amendments to the Code of Civil Proceedings of the Republic of Lithuania

On 11 July 2018 the amendments to the Code of Civil Proceedings of the Republic of Lithuania (hereinafter referred to as the CCP), related to the forced debt recovery procedure, were published. According to them:

- On 1 December 2018 the amendment which will reduce the amounts which can be deducted from the debtor's salary or other earnings will come into effect;
- On 1 October 2018 the amendment, which will establish that the recovery from a dwelling belonging to a debtor, in which he lives, is allowed only if the amount being recovered exceeds 4,000 euros, i.e. the amendment is doubling the amount of debt comparing with the version of CCP which is currently in force, will come into effect.

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Poland

Transfer pricing: Country-by-Country Reporting

21 June 2017 saw the publication of the Regulation of the Minister of Development and Finance of 13 June 2017 on the detailed scope of data transmitted in the country-by-country report and the way it should be filled in, in the Poland's Journal of Laws. The Regulation implements Council Directive 2011/16/EC of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

Application of the new Regulation

This is an implementing regulation to the Act of 9 March 2017 on the exchange of tax information with other countries under the **Country-by-Country Reporting** (CbCR). The Act imposes reporting obligations on Polish members of large capital groups. **The Regulation governs the CbCR issues — provision of information about a group of entities.**

Elements required under the Regulation:

The Regulation indicates what kind of information should be included in the country-by-country report. This includes:

1. the objective of filing the country-by-country report (filing, updates, adjustments);
2. specification of the period covered by the country-by-country report;
3. specification of the name of the group of entities;
4. information about the currency of the amounts referred to in the country-by-country report;
5. name of the reporting entity with information whether it is the parent, entity designated to file the report or a different type of entity;
6. identification data of the constituent entities (such as name of the entity, tax identification number, address, tax residence);
7. information about the key types of business activities of the constituent entities divided into: research and development; holding or managing intellectual property; purchasing or procurement; manufacturing or production; sales, marketing or distribution; administrative, management or support services; provision of services to unrelated parties; internal group finance; regulated financial services; insurance; holding shares or other equity instruments; dormant; other (which ones);
8. information about constituent entities — the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction;
9. additional information or explanations specifically regarding the sources of data used in preparing the country-by-country report, currency exchange rates used, information about the business activities (if it falls outside the scope specified in point 7), notification of any data not being provided by the parent or any other information that would help interpret the data included in the country-by-country report.

Moreover, the Appendix to the Regulation provides a detailed instruction how to fill in the report. In particular, it specifies issues regarding tax jurisdiction, information about the group of entites, sources of data used to prepare the report, method of calculating the number of employees and the type of business activity.

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Goods transport falling within the scope of the transport law package will be subject to the GPS route monitoring obligation

On 15 June 2018, the Sejm passed amendments to the Act on the monitoring of road transport of goods (parliamentary paper no. 1794, the "amendments"), which impose new obligations on carriers as part of the transport law package.

As stated in the explanatory memorandum to the amendments awaiting the President's signature, they are aimed to improve the efficiency and effectiveness of the monitoring of the transport of goods subject to the requirements of the transport law package through the use of geolocation information. The law which sets out the new obligations is to come into effect as of 1 October 2018. The amendments provide for a "grace period" ending on 1 January 2019, during which neither carriers nor drivers will be penalised for a failure to fulfil their duties.

According to the new provisions, a carrier will be obliged to ensure that up-to-date geolocation information of the vehicle is transmitted for SENT-registered goods for the whole route. In the event that the device used for sending geolocation information is found to be out of service for more than one hour, as a rule, the driver will be required to immediately stop the vehicle in the nearest parking lot or lay-by. The transport service may be resumed only when:

- the device used for sending geolocation information is again in working order;
- the goods have been loaded onto a different vehicle with a geolocation device that is in working order;
- a geolocation device that is in working order has been installed in the vehicle; or
- customs seals have been affixed on the vehicle or on the goods or a convoy decision has been made.

How will geolocation work?

In accordance with the amendments, with a view to sending up-to-date geolocation information the carrier will be allowed to use one of the following two device types:

- a **geolocation device** defined as telecommunication terminal equipment using satellite positioning and data transmission technologies (such as a smartphone or a tablet) on which software made available by the Head of the National Revenue Administration for goods transport route monitoring has been installed;
- **an external positioning system** defined as a system used by the carrier to collect geolocation information for the vehicle that is sent from the satellite positioning and data transmission equipment installed in the vehicle.

If the obligation to send geolocation information is not fulfilled, a fine of PLN 10 000.00 may be levied on the carrier, while the driver of the vehicle used for transporting goods may be subject to a fine from PLN 5 000.00 to PLN 7 500.00. Fortunately, the legislator has introduced a transition period during which the above penalties will not be imposed. This does not mean, though, that carriers will be released from their obligations at that time. In the event of a roadside inspection which reveals e.g. that an appropriate geolocation device is not installed in the vehicle, it is most likely that the transport will be allowed to be resumed only after the carrier and the driver's duties have been performed.

What next?

Although the amendments impose new obligations mainly on carriers, careful preparation for their implementation is in the interest of all those engaged in SENT-compliant transport of goods (both sellers and buyers) to guarantee that supplies are made on time. Such preparation may include for example:

- implementation of appropriate risk management procedures and mechanisms in the organisation;
- changes to logistics processes;
- provision of appropriate training to staff;
- modification of transport service contract clauses.

Our prior experience related to the application of the provisions of the transport law package shows that the above-mentioned measures should be employed as early as possible so as to ensure that the risk of violation of the applicable laws which may lead to delays in supplies or to imposition of financial penalties is reduced to a minimum.

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Bill amending legislation on transfer pricing

15 July 2018 saw the publication of a bill amending the Personal Income Tax Act, Corporate Income Tax Act and certain other acts ("Act") governing specifically transfer pricing issues. The law is set to become effective as of 1 January 2019 and will apply to transactions executed in the fiscal years beginning after 31 December 2018. The bill provides that the new regulations may apply to transactions started after 31 December 2017, however, the decision has been left to the taxpayers.

The objective of the regulation is to simplify tax laws and reduce the red tape and administrative burdens placed on businesses, specifically the small and medium ones. The bill covers not only changes in the legislation on transfer pricing documentation, but also on the arm's length principle, the definition of related parties, transfer price adjustments, etc. This way it provides for a comprehensive regulation of transfer prices by creating a separate chapter in the CIT and PIT Acts.

The key changes brought by the bill are:

1. **Change in the definition of related parties** — parties are considered to be related if one party exercises a significant influence over at least one other party.

2. **Raised documentation thresholds**, which — once exceeded — make it necessary for the transfer pricing documentation to be prepared. The way the thresholds are set is being changed as well — the bill provides for general thresholds at PLN 10 million for commodity transactions and debt financing and PLN 2 million for intangible and other transactions.

3. **New terms and conditions for the Master File.** Under the new regulations entities obliged to prepare Master File 1 will be the taxpayers required to prepare local transfer pricing documentation that are constituents of a group which:

- prepares consolidated financial statements;
- in the prior financial year generated a consolidated revenue in excess of PLN 200 000 000 or equivalent,

4. The bill also governs charges for **low value adding services**. If the charge is not more than five percent of the cost (for acquisition) and not less than five percent of the cost (for provision), the authorities will refrain from calculating the amount of the mark-up.

5. For intra-group financing, the authorities will not apply interest, if:

- the interest has been determined based on a certain base rate and margin set out in an announcement of the Minister of Finance;
- no additional fees for the loan servicing are expected;
- the term of the loan is not more than five years; and
- the total borrowed and lent amounts between related parties (calculated separately) is not more than PLN 20 000 000.

6. The deadlines for filing a statement on the preparation of local transfer pricing documentation and information about transfer prices will be extended from three to **nine months after the end of the fiscal year**. The deadline for preparing the Master File will be even longer, i.e. 12 months after the end of the fiscal year.

7. The obligation to maintain **the Master File** may be fulfilled by providing documentation prepared by another entity in the group, also in English. This

way, taxpayers which receive such documentation from the group will not be obliged to prepare it on their own.

8. Compulsory CIT/TP or PIT/TP forms are being replaced by **electronic forms** (TP-R) which will ensure greater effectiveness in the selection of taxpayers to be inspected.

9. The bill also governs **transfer pricing adjustments** made by the taxpayers and resulting from differences between the assumed and actual profitability and specifies the terms and conditions for such adjustments.

We do encourage you to read the full text in which the above issues are discussed in more detail. Please find below a link that will take you to the regulations.

Bill amending the TP legislation:

http://legislacja.rcl.gov.pl/docs//2/12313855/12522183/12522184/dokument350017.pdf

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A new obligation under the transport law package. Medicines and medical devices at risk of becoming unavailable in Poland are subject to transport monitoring regulations

The amendments to the Act on the Monitoring of Road Transport of Goods and some other legal acts, which came into effect on 14 June (Journal of Laws of 2018, item 1039, the "amendments"), introduce changes to the transport law package (SENT).

Among other things, they impose the obligation to monitor the transport of a group of medicinal products, foodstuffs for particular nutritional uses as well as medical devices (the "medicinal products"). The transport monitoring obligation is supposed to apply to medicinal products which are at risk of becoming unavailable in Poland because of their illegal export in the so called reverse supply chain.

As pointed out in the explanatory memorandum and in the course of the legislative process, the principal objective of the aforementioned extension of the list of products subject to the transport law package is to prevent their illegal export to other EU member states, which leads to shortages of specialized or innovative medicines, especially life-saving ones, at pharmacies and hospitals in Poland.

For the time being, in accordance with the provisions of the pharmaceutical law, an authorization needs to be obtained from the Chief Pharmaceutical Inspector to export and/or sell medicines and/or medical devices at risk of becoming unavailable in Poland to an entity located outside the territory of the country. Following the adoption of the amendments, as part of a transaction which requires an authorization of the Chief Pharmaceutical Inspector, the obligations set out in the transport law package will apply to the transport of such products, which means that it will also be necessary to register such transport in a dedicated SENT IT system.

A list of medicinal products, foodstuffs for particular nutritional uses and medical devices which are at risk of becoming unavailable in Poland and which are affected by the amendments is published in an official announcement of the Minister of Health. The most recent announcement was published on 11 May 2018 (Official Gazette of the Ministry of Health 2018.39).

Additionally, the amendments impose an obligation to provide the Chief Pharmaceutical Inspector with a complete, up-to-date list of means of transport, including their registration numbers, that will be used to carry out the activities falling within the scope of the aforesaid authorization, within thirty days of the new legislation coming into effect. This obligation applies to a wide range of business entities engaged in wholesale and production/import of medicinal products.

Goods transport monitoring – general principles

The regulations which provide for the monitoring of goods transport by road came into effect as of 18 April 2017. Before, they applied mainly to excise goods, such as fuel, denatured alcohol or dried tobacco ("sensitive goods"). In September 2017, the list of goods subject to the transport monitoring obligation was extended to include some oils and vegetable fats.

The transport law package sets out a number of obligations for entities engaged in the business of selling or buying sensitive goods, carriers as well as drivers of the vehicles used for purposes of transporting such goods – depending on the transaction flow, such obligations have to be discharged by all or some of these entities.

Originally, the transport law package applied to road transport only but as it was amended, the monitoring obligation was also imposed on rail transport.

The key obligation arising from the transport law package is to register the transport of sensitive goods in the SENT system developed as part of the Electronic Tax and Customs Services Platform ("PUESC"). As a rule, registration is required before goods begin to be transported within the territory of Poland. Severe sanctions may be imposed for violation of the monitoring regulations, including a financial penalty for non-registration, representing 46% of the value of goods transported but no less than PLN 20,000.00. Even if an obvious error is made in the registration form where goods are shipped from a bonded warehouse, a penalty of PLN 2,000.00 may be levied.

What next?

As the new regulations have already come into effect, entities engaged in trading in medicinal products which are at risk of becoming unavailable in Poland, and required to obtain the Chief Pharmaceutical Inspector's authorization for their export from the country or sale to a foreign entity should take a number of steps in order to bring their operations into line with the new law, to include mitigation of the risk of sanctions being imposed on them for inadequate performance of their obligations under the transport law package. These may include:

- an analysis of the portfolio of products and transactions with a view to identifying those which may be subject to the new obligations;
- implementation of appropriate risk management procedures and mechanisms in the organization;
- changes to logistics processes;
- provision of appropriate training to staff;
- modification of transport service contract clauses.

Our prior experience related to the application of the provisions of the transport law package to sensitive goods shows that the above-mentioned measures should be employed as early as possible so as to ensure that the risk of violation of the applicable laws which may lead to delays in supplies or to imposition of financial penalties is reduced to minimum.

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Romania

The posting of workers in the framework of the provision of services: Main amendments brought to Directive 96/71/EC

Directive 96/71/EC on the posting of workers in the framework of the provision of services was amended by Directive 2018/957/EU, published on July 9, 2018, in order to ensure that a fair balance is struck between the freedom to provide services within the European Union, loyal competition, respectively the social protection of workers by promoting social justice.

One of the main amendments imposes on employers the obligation to grant/guarantee to posted workers the remuneration (and not only the minimum wage) regulated in the host Member State by means of both statutory and administrative provisions and, where applicable, by collective agreements or arbitration awards which have been declared universally applicable. In what follows, we will present the amendments brought to Directive 96/71/EC.

The entry into force of Directive 2018/957/EU amending Directive 96/71/EC (the „Revision Directive")

The Revision Directive was published in the Official Journal of the European Union L 173 of 9.07.2018. Member States have the obligation to transpose its provisions into national law until 30.06.2020, date by which Directive 96/71/EC remains applicable in the version prior to the amendments made by the Amending Directive.

At the same time, according to the settled case law of the Court of Justice of the European Union, Member States are required during the transposition period of the Revision Directive (i.e. 30.06.2020) to refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive.

The main amendments brought by the Revision Directive refer to:

- Establishing the rule according to which **posted workers must, during the posting period, benefit from the working and employment conditions laid down in the host Member State** by means of both statutory and administrative provisions **as well as, where applicable, by collective agreements or arbitration awards which have been declared universally applicable**[1]**;**
- Imposing employers the obligation to grant/ensure posted workers:
    - The remuneration (and not only the minimum wage) regulated in the host Member State by means of both statutory and administrative provisions and, where applicable, by collective

[1] In the absence or in a addition to a collective agreement system or arbitration awards of general application, Member States may base themselves on either collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.

agreements or arbitration awards which have been declared universally applicable.

The concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and **means all the constituent elements of remuneration rendered mandatory** by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable.

With respect to allowances specific to posting, according to provisions currently in force, they are considered to be part of the remuneration insofar as they are not granted with the purpose to reimburse expenditure incurred on account of the posting (e.g. expenditure on travel, board and lodging). In this respect, the Revision Directive states that if it is unclear from the manner of establishing the working conditions[2] which elements of the allowance are allocated to the reimbursement of expenditure incurred on account of the posting and which are part of the remuneration, the posting allowance shall be presumed to be granted as reimbursement of expenditure (and therefore cannot be taken into account when determining the remuneration).

- The accommodation conditions, as regulated in the host Member State by statutory and administrative provisions and, where applicable, by collective agreements or arbitration awards, which have been declared universally applicable.

- Establishing the rule according to which the level of reimbursement of expenditure to cover travel, board and lodging expenses, respectively of posting allowances for posted workers who are temporarily sent from their regular place of work in the host Member State to another place of work, will be the one set by the legislation of the host Member State;

- **Establishing the principle of equal treatment between temporary agency workers posted by a temporary employment agency and workers recruited directly by the user undertaking located in the territory of the host Member State.**

  Thus, temporary agency workers must, during their posting, guarantee temporary posted workers the working conditions applicable in the territory of the host Member States in accordance with Article 5 of Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work (enshrining the principle of equal treatment between temporary agency workers and workers who are recruited directly by the user undertaking);

  The aforementioned rules also apply where, in the context of the transnational provision of services, temporary workers made available to a user are sent to work temporarily in the territory of a Member

[2] By normative acts, administrative acts, collective bargaining agreements, individual labor agreements / posting letters etc.

State other than that in whose territory they usually perform their mission;

- Emphasizing the obligation for Member States to publish on the single national website the information on working and employment conditions applicable in their territory (including related to the elements of remuneration, without undue delay and in a transparent manner).

  If Member States fail to comply with the above obligation, account will be taken of this when establishing the sanctions applicable to infringements of acts adopted by the Member States for the purpose of transposing Directive 96/71/EC, as amended and supplemented;

- The establishment, in order to ensure the freedom to provide services within the territory of a Member State, of the fact that **Member States may**, subject to the principle of equal treatment, **impose working and employment conditions on matters other than those covered by Directive 96/71/EC, only insofar as it concerns public policy provisions;**

- Impose on employers the obligation to observe, in relation with posted workers, the working and employment conditions applicable in the host Member State where the posting exceeds 12 months (18 months by way of exception), except for the provisions concerning (i) the procedures, formalities and conditions for the conclusion and termination of employment agreements, including non-compete clauses, respectively (ii) supplementary occupational retirement pension schemes;

- Establishing the rule according to which, where a Member State finds[3] that an undertaking is improperly or fraudulently creating the impression that a worker is covered by the provisions of Directive 96/71/CE, the concerned Member State will take all necessary measures to ensure that the worker will benefit from the relevant law and practices.

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[3] By applying the criteria regulated under Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

Serbia

Adoption of the changes and amendments to the Rulebook on the form and contents of VAT records and on the contents of the VAT calculation breakdown

One of the major changes includes the clarification of the basis for entering information into the POPDV form, specifically that only an invoice (for performed supplies, changes in the fee etc.) or a similar document represents the basis for the entering of information. An exception to the stated rule pertains to information on supplies for which the recipient is the tax debtor and for advance payments, regardless of the type of supply. In these cases, information should be entered into the POPDV form based on all possible sources. The aforementioned change should alleviate the obligation to enter information regarding supplies for which no invoice or similar document was received, except in cases involving the aforementioned exceptions.

Additionally, the changes and amendments to the rulebook in question specify that from July 1 2018 until June 30 2019, the competent tax authorities will disregard incorrect information stated in the POPDV from when such information is of no relevance for the determination of the tax liability.

New bylaws regarding the implementation of the Law on Value Added Tax have been published

Rulebook on the method and procedure for claiming the zero VAT rate

Zero rate for exports of goods

The rulebook specifies that in situations in which exported goods have cleared customs in one tax period, while the customs authorities' certify that goods have left the territory of Serbia in the subsequent tax period, the taxpayer who exported the goods is entitled to a VAT zero rate in the period in which he obtains the export declaration.

On the other hand, if the export of goods is carried out in one period, but the customs authorities' do not certify that goods have left the territory of Serbia in the tax period which immediately follows, the taxpayer who is exporting goods is required to calculate VAT and to file an amended tax return in the period in which exported goods have cleared customs.

The taxpayer is entitled to deduct VAT calculated in this manner in the period in which he procures an export declaration.

Zero rate for entry of goods into a free zone

Instead of the requirement of possessing an invoice from the supplier of goods and a certified copy of the customs declaration, the rulebook specifies that the taxpayer performing the supply of goods, or the recipient of goods, the tax debtor according to the VAT Law, meets the requirements for the zero VAT rate if he possesses:

- the invoice from the supplier of goods entering the free zone, certified by the competent customs authority, or alternatively

- the certified copy of the declaration confirming that the goods have entered the free zone in accordance with customs regulations.

Rulebook on determining cases in which there is no obligation to issue an invoice and on invoices in which certain data can be omitted

Amendments to the bylaw in question specify that a VAT payer should issue an invoice even in cases involving supplies which are not VAT taxable, such as transfers of a going concern, supplies performed abroad and other transactions not VAT taxable.

Additionally, amendments to the bylaw provide that an invoice should also be issued:

- for a supply without compensation for transfers of a going concern, if the acquirer is a VAT payer or becomes a VAT payer through such a transfer and continues to perform the same commercial activity,
- for supply that is part of realization of a public-private partnership contract with elements of a concession,
- for supply without compensation that according to the VAT Law is considered to have been carried out abroad.

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