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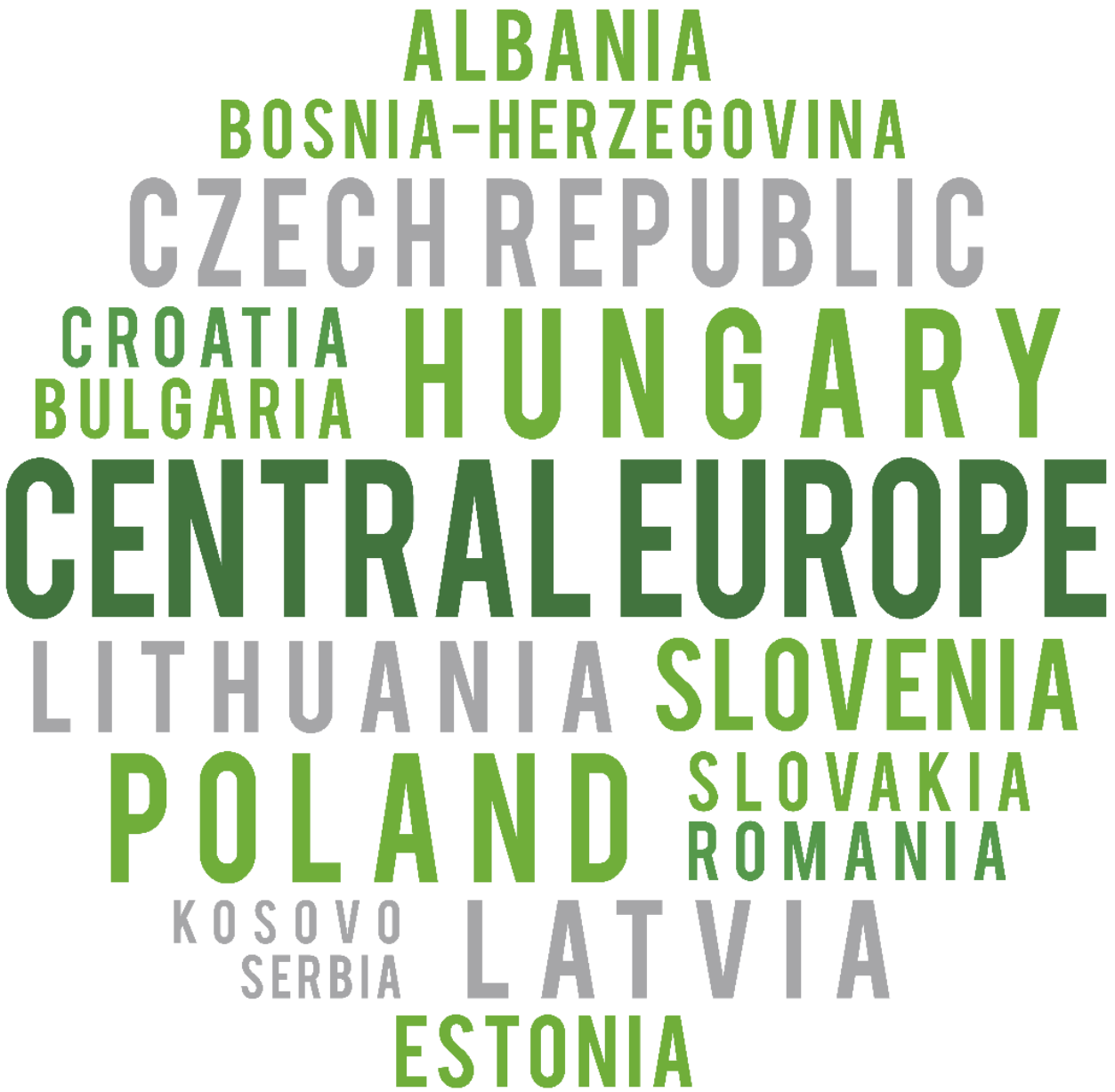
**CE Tax&Legal Highlights**
November 2017



# Tax&Legal Highlights

## November 2017

# Bosnia and Herzegovina

## Amendments to the Companies Act of Republic of Srpska

**The Act on Amendments to the Companies Act ("Act") was published in the "Official Gazette of RS", number 100/17 on 3 November 2017. The Act enters into force on 10 November 2017.**

The most important changes introduced by the Act are as follows:

- It is explicitly regulated that the share capital of each company type can be increased by converting creditor's receivables into company shares, without any limitations in regard to the share capital amount, in accordance with the law which regulates the restructuring and reorganizational process of the debtor in bankruptcy proceedings;

- Increase of share capital of a limited liability company, open and closed joint stock company by converting tax debt into company shares, is prohibited.

## Taxpayers of the Federation of Bosnia and Herzegovina in the period January-October 2017 paid 3.977.813.673 BAM of direct taxes, contributions and fees

**The Tax Administration of FBiH has published that the taxpayers of FBiH in the period from January to October 2017 have paid 3.977.813.673 BAM of public revenue for which the Tax Administration of FBiH is competent, which is 348.769.099 BAM more than in the same period in 2016 i.e. more than 9,61%.**

In October 2017 public revenue in the amount of **406.995.008 BAM** was collected, which is **41.467.093** BAM more (**11,34%**) than in October 2016.

In the period January-October 2017, compared to the same period in 2016, the total amount of paid direct taxes has increased for **181.779.763** BAM (**15.51%**).

From January to October 2017, compared to January to October 2016:

- Corporate income tax was paid in the amount of 305.091.619 BAM, which is 108.064.147 BAM or 54,85% more;

- Property tax was paid in the amount of 139.969.057 BAM, which is 2.855.305 BAM or 2,08% more;

- Other taxes have been paid in the amount of 1.318.469 BAM, which is 58.863 BAM or 4,76% more;

- Income tax has been paid in the amount of 329.335.381 BAM, which is more for 32.134.731 BAM or 10,81%.

In the period from January to October 2017 contributions for the pension and disability insurance, health insurance and unemployment fund have been collected in the amount of **2.619.655.657** BAM, which, compared to the

same period in 2016, represents an increase for **189.185.499** BAM or **7,78**%.

## The draft Bankruptcy Act was adopted in FBiH

**On October 31 the 125th regular session of the Government of FBiH was held and, among other things, the draft Bankruptcy Act was adopted and sent to the parliamentary procedure.**

It is a new Bankruptcy Act which regulates the pre-bankruptcy and bankruptcy proceedings, the legal consequences of their opening and processing, the reorganization of the bankruptcy debtor unable to pay on the base of the bankruptcy plan and international bankruptcy. Special attention was paid to disciplining the work of bankruptcy trustees as important participants of the process, on whose professional behavior the efficiency and timeliness of this procedure greatly depends.

The new Bankruptcy Act enables a timely initiation of the bankruptcy proceedings, financial and operative restructuring of the debtor, shortening the duration and reducing the cost of bankruptcy proceedings.

The new act contains also a provision that regulates the pre-bankruptcy proceedings, whose aim is financial and operative restructuring of the business entities. In the pre-bankruptcy proceedings an illiquid company can conclude a deal with creditors for the purpose of an easier and more convenient settlement of financial liabilities. Therefore, the bankruptcy of a company is prevented and the company can continue its business activities, while the creditors would be paid faster than in the bankruptcy proceedings, which last longer and are more expensive.

It is prescribed that the Financial and Informatics Agency is authorized to initiate a misdemeanor proceedings against the bankruptcy debtor, i.e. the body authorized for the representation of the bankruptcy debtor if he or his representative body does not submit a proposal to open bankruptcy proceedings within 30 days from the occurrence of payment incompetence.

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# Bulgaria

## Instructions on the format and method for submission of the country reports and notification

**On 25 October 2017, the Executive Director of the NRA issued an Order (Order No. 1410), containing instructions on the format and method for submission of the country reports and notification.**

The key points of the Order are listed below:

The country report should be submitted electronically via an electronic service available on the website of the NRA. A Qualified Electronic Signature (QES) is required for the submission of the country report / notification.

The Order contains the information that is required in the country report / notification.
The electronic services will be available no later than 1 December 2017, for which the NRA will publish a message on its website.

Where the ultimate parent undertaking of the multinational enterprise group (MNE) is a resident for tax purposes in Bulgaria:

The first country report for the reporting period beginning on 1 January 2016 should be submitted no later than 31 December 2017;

Until 31 December 2017, all constituent entities from the group, which are resident for tax purposes in Bulgaria, should submit two notifications - notification regarding the entity submitting the country report for the reporting year 2016 and notification regarding the entity submitting the country report for 2017.

Where the ultimate parent is a resident for tax purposes of an EU Member State:

Until December 31 2017, all constituent entities from the MNE group, which are resident for tax purposes in Bulgaria should submit a notification regarding the entity submitting the country report for 2016;

No later than the last day of the reporting year of the ultimate parent, all constituent entities, which are resident for tax purposes in Bulgaria should submit a notification regarding the entity submitting the country report for 2017.

Where the ultimate parent is a resident for tax purposes in a non-EU jurisdiction with which Bulgaria has no agreement for exchange of information (currently Bulgaria has signed no such agreements with any country) and no surrogate entity within the EU is appointed to submit the report:

Until 31 December 2017, all constituent entities, which are resident for tax purposes in Bulgaria should submit a notification regarding the entity submitting the country report for 2016;

Within twelve months of the end of the reporting year 2017 (according to the rules of the jurisdiction where the ultimate parent is established), one of the constituent entities, established in Bulgaria shall submit the report for 2017. The remaining constituent entities, established in Bulgaria, which do not submit a report, must submit a notification for the reporting year 2017 (the deadline for submission is no later than the last day of the reporting year of the ultimate parent).

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# Lithuania

## Amended reporting rules of multinational enterprise groups country by country report

**On 2 November 2017 the Order No. VA-93 issued by the Director of The State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (hereinafter – STI under MF) has changed a previous Order No. VA-47 regarding the reporting rules for the multinational enterprise (hereinafter – MNE) groups also known as Country-by-Country (hereinafter – CbC) reporting rules in Lithuania.**

The main amendments made to the CbC reporting rules:

- Explanation of terminology;
- Specification that if the financial year of MNE Group starts later than on the 1st of January the CbC report for financial year 2016 should be submitted to STI under MF within 12 months after the end of the financial year. Before the amendments the deadline for submitting the first CbC report was 31 March 2018 irrespectively of whether the financial year of the MNE Group starts on the 1st of January or later;
- Amendment of the term No. 4 in the Annex 3. Based on the amendment of the rules, no adjustments would be required if the accounting policies in different countries were different;
- Addition of Annex 4 "Description of data file";
- Other editorial changes.

## Agricultural companies and cooperative companies will have to provide information about their participants to the administrator of information system on participants of legal entities (hereinafter – JADIS)

**On 16 November 2017, there were adopted amendments to the Law on Agricultural Companies of the Republic of Lithuania and the Law on Cooperative Companies (Cooperatives) of the Republic of Lithuania stipulating that agricultural companies and cooperative companies will be required to provide JADIS with information about the participant of the agricultural company or cooperative, the date of the person's admission to the participants, the size (when the contribution is monetary) and/or value (when the contribution is non-monetary) of the participant's contribution, also the expiration date of membership.**

Agricultural companies will also be obliged to provide JADIS with information about the shareholder, the date of payment of the personal income, the size (when the contribution is monetary) and/or value (when the contribution is non-monetary) of the shareholder's contribution, the date of the transfer of share within the company.

The specified data must be submitted no later than within 5 days from the date of registration of the company or exchange of the data. The new procedure will come into force from 1 May 2018.
The companies, established before the entry into force of the law, will have to submit the specified data by 31 December 2018.

## The Bank of Lithuania presented its position on the distribution of virtual currencies and initial coin offering

**On 10 November 2017, the Bank of Lithuania has issued requirements that financial market participants should comply with. Nevertheless, this position can not be considered as an official interpretation of the law.**

In its position, the Bank of Lithuania set requirements for financial market participants and indicated that financial market participants providing financial services should not participate in activities or provide services related to virtual currencies. Failure to comply with this requirement may constitute grounds for not issuing a license or revoking a license issued. Financial market participants should also ensure that financial service activities are clearly distinguished from activities in the field of virtual currencies and provide proper and non-misleading information on the nature of the services provided. Financial market participants should ensure that money laundering and anti-terrorist financing legislation is complied with by providing financial services to clients engaged in activities related to virtual currencies.

## Lithuania has changed average monthly salary

On 24 November 2017, the average monthly salary in Lithuania was raised, at present it is 850.80 EUR/Month. Previously, the average monthly salary in Lithuania was 838.70 EUR/Month.

## The part of applicable requirements for purchasers of agricultural land plots has been waived

**On 23 November 2017, amendments to the Law on Acquisition of Agricultural Land were adopted**

Previously required three years of agricultural activity, declarations of agricultural land and crops, a registered farmer's holding, and a diploma in agricultural education were cancelled as a requirements for a natural person. Eliminated requirements for a legal person - 50% of income from agricultural activity and proof of economic viability. It is also foreseen that land purchase and sale transactions must be executed only in the form of bank settlements. The amendments adopted will facilitate the purchase and sale of agricultural land. However, a legal person still cannot purchase more than 500 ha of agriculutural land.

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# Poland

## Legal and water evaluation - a new instrument under the Act: Water Law

**The amending Act to the Water Law, which was passed in the summer, is to take effect beginning from 01 January 2018. The new legislation incorporates many changes to the Water Act and introduces some new instruments that will affect water management in Poland. Among them, there is legal and water evaluation which - we believe - should be analysed in a greater detail, considering its impact on the investment process and, in certain cases, the need to obtain it.**

Legal and water evaluation is a new type of decision under the Water Law Act. It is required in the case of investment projects or activities that may affect the accomplishment of environmental goals, especially in the scope of water protection efforts and improvement of its chemical composition. A list of specific types of projects and activities regarding which investors will need to obtain a legal and water evaluation is to be announced in the form of a regulation. The evaluating decision will be issued at the request of the investor planning to carry out a project that may affect the attainment of environmental goals, and where a specific undertaking may affect the environment to a considerable degree, the investor will be obliged to apply for a decision on environmental conditions instead.

Legal and water evaluations are to be issued by the competent unit within the National Water Management Authority [Państwowe Gospodarstwo Wodne Wody Polskie], which is a new institution introduced into the Polish legal system by the new Water Law Act. The said unit will issue a legal and water evaluating decision if it determines that the undertaking is bound to exert favourable influence on the accomplishment of environmental goals or alternatively if it concludes that it is not going to influence it in any way. If the influence is assessed as unfavourable, the evaluating decision will be issued only where the investor proves that it has undertaken all efforts to mitigate the adverse impact on waters and that there is an overriding public interest and benefits to be derived from the investment which otherwise cannot be obtained from other activities. If it is not the case, the unit will issue a decision refusing to issue a legal and water evaluating decision.
The legal and water evaluating decision expires at the effective date of the regulation adopted by the minister competent for the matters of economy, updating the river basin management plan.

It is yet uncertain in what way the new legal and water evaluation requirements will affect the investment process. When the relevant regulation defining the catalogue of projects and activities that require legal and water evaluations is announced, the situation will become clearer. Nonetheless, entrepreneurs should be aware of this new institution and keep tabs on the situation. In particular, companies are advised to closely examine the secondary legislation as soon as it is promulgated to verify its

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## Green light for cross-border transformation of Polish companies

**On 25 October 2017 the EU Court of Justice issued a decision that would be consequential for Polish enterprises. The CJ's judgement regarding case: C-106/16 concerns non-compliance of the provisions of the Code of Commercial Companies and Partnerships (CCCP) with the EU freedom of establishment rule insofar as the CCCP requires the winding-up of the company in the case of taking the decision to transfer the registered office to a Member State other than the Republic of Poland.**

The mechanisms of cross-border transformations of companies that lead to transfer of the company's registered office to another state have been in place in many EU member states for years now (such as the cross-border transformation of a joint-stock company incorporated under the French law into a joint-stock company of the Belgian law).

Doubts as to the compatibility of the provisions of the Code of Commercial Companies and Partnerships (CCCP) with the EU law have been raised before, especially since the enactment of the amended international private law.

Polish enterprises that - relying on the freedom of establishment rule under Articles 49 and 54 of the Treaty on the Functioning of the European Union - want to follow the example of their foreign counterparts and contemplate the possibility of transferring their registered office to a different EU member state, come up against contradicting domestic regulations.
On the one hand, Article 19.1 of the International Private Law stipulates that upon the transfer of a registered office to another state, a legal person shall fall under the law of such other state. The legal personality acquired in the state of the hitherto existing seat shall be maintained, if the law of each of the interested states provides so. The transfer of the registered office within the European Economic Area shall not result in the loss of legal personality.

On the other hand however, as per Article 270 of the Code of Commercial Companies and Partnerships, a resolution of the shareholders on the transfer of the registered office abroad entails the winding-up of the company. Pursuant to Article 274 of the CCCP, liquidation is opened on the date of incidence of any reason for liquidation, and upon the completion of the liquidation the said company is deprived of its legal personality. What is more, in line with the regulations that govern the liquidation proceedings, generally the liquidation requires that the business activity be gradually

phased out and the company's accounting records and documents be archived (Articles 282-288 of CCCP).

On the basis of the registration-related case which led to the judgement issued by the EU Court of Justice on 25 October 2017, the District and Regional Courts rejected the line of reasoning of the Polish company which had applied for removal of the Polish company from the register of companies on the argument of the transfer of its registered office to Luxembourg and not on the argument of its winding-up and liquidation. The Supreme Court, when analysing the last-resort appeal concerning the case, questioned whether the procedural requirements of the CCCP are proportionate and necessary to protect the values guarded by the national laws relating to liquidation of corporate entities.

The most important conclusions arising form the judgement passed by the Court of Justice:

- The freedom of establishment confers on a company incorporated under Polish law, the right to convert itself into a company incorporated under the law of a different member state, provided that the conditions laid down by the legislation of that other member state are satisfied and, in particular, that the test adopted by that member state to determine the connection of a company or firm to its national legal order is satisfied.
- The provisions of the Treaty concerning the freedom of establishment must be interpreted as meaning that freedom of establishment is applicable to the transfer of the registered office of a company formed in accordance with the law of one Member State to the territory of another Member State, for the purposes of its conversion, in accordance with the conditions imposed by the legislation of the other Member State, into a company incorporated under the law of the latter Member State, when there is no change in the location of the real head office of that company.
- The Polish legislation at issue, by requiring the liquidation of the company, is liable to impede, if not prevent, the cross-border conversion of a company. It therefore constitutes a restriction on freedom of establishment.
- The mandatory liquidation required by the national legislation goes beyond what is necessary to achieve the objective of protecting the interests of the creditors, minority shareholders and employees.
- The fact that either the registered office or real head office of a company was established in accordance with the legislation of a different Member State for the purpose of enjoying the benefit of more favourable legislation does not, in itself, constitute abuse and it cannot be the basis for a general presumption of fraud and cannot justify a measure that adversely affects the exercise of a fundamental freedom guaranteed by the Treaty.
- A general obligation to implement a liquidation procedure amounts to establishing a general presumption of the existence of abuse, and the legislation that imposes such an obligation is disproportionate.

Among the key issues that arise in the wake of the foregoing judgement is the question whether, until the implementation of what seems to be a necessary amendment of the CCCP provisions, the Polish courts, in recognition of the principle of primacy of EU law over national laws, would adjudicate against the CCCP.

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## Implementation of amended provisions of the Act on disclosure of information and exchange of economic data. Changes in the operation of the Economic Information Bureau.

**The amended provisions of the Act on disclosure of information and exchange of economic data came into force on 13 November 2017. They will affect some of the procedures linked with registering contractors with Economic Information Bureaus ("EIB"). In addition, the range of the "services" offered to potential creditors by Economic Information Bureaus has been extended.**

Below please find the most important amendments to the Act which should be generally regarded as favourable for entrepreneurs dealing with unreliable contractors.

**1. Electronic payment notice**
Based on the amendments, a company that is in default with any payments may be sent a payment notice by e-mail and not necessarily by registered letter. However, in order to be able to exercise this option, the contract concluded with the entity in question needs to include a provision to that effect.

**2. Period of storing negative input at EIB**
Under the hitherto binding law EIB was not allowed to store information about indebtedness for a period longer than 10 years from the date of its entry. After 13 November 2017, EIBs will not be able to store such information for longer than 10 years counting from the maturity date of the liability or its recognition (e.g. by the court). Hence, if payment notices sent by your company contain information about the period of storing data in EIB, such information needs to be brought up to date.

**3. Faster transfer of negative input to EIB**
According to the new regulations, the period upon the lapse of which the creditor can transfer negative input concerning overdue liability is shorter by half. Under the new law, such information can be included in the EIB's database even after 30 days from the due date, as opposed to the current legal status based on which the creditor needs to wait 60 days before they can exercise their right in this respect. One should keep in mind though that at least a month must pass since the moment of sending the contractor the payment notice, because only after one month the creditor may add negative input to the database.

**4. Making transfers of periodical information easier**
Until now, provision of sequential payment notices relating to unpaid liabilities under contracts for periodical supplies was troublesome - many creditors had to bear additional costs associated with sending payment notices by registered letter in order to be able to add their debtors to the EIB database. The amendments simplify this procedure. As regards liabilities occurring periodically under the same contract, the economic information may be

updated based on the first payment notice, provided the first payment notice complies with the statutory requirements and warns the debtor about this option. Hence, companies need to remember to include a notification to that effect in the first payment notice.

**5. Debtor's option to raise an objection directly to the creditor**
In line with the hitherto binding regulations, the creditor was obliged to forward the information about the debtor's questioning of the entire liability or its part. According to the new regulations, the debtor also has the right to file a direct objection with the creditor concerning the creditor's intention to provide negative input to EIB. This does not entail lack of the option to make the information public. If the objection is not accepted, as before, the creditor is allowed to transfer to EIB the relevant business information along with the note about the debtor's objection to the liability. The Act allows the debtor to recognize the liability as prescribed (in full or in part, and generally regardless of the legal or actual background situation). If it is the case, the relevant note should also be included in the input transferred to EIB.

Hence, under the new regulations, the debtor has the right to raise objections concerning the transfer of negative input, both to the creditor (before or after the EIB entry), and directly to EIB (after the entry).
The debtor needs to be notified about the option to raise objections in the payment notice, which means that the relevant notification should become part of the standard documentation.

**6. Extended cooperation among EIB databases**
The amended Act introduces a statutory duty for EIBs to exchange information about entrepreneurs. Thus, in order to have an overview of the status of a specific entity, the company will not need to conclude separate contracts with many EIBs - it will be sufficient to cooperate with just one.
Furthermore, within the nearest future, the Economic Information Bureau plans to extend the Report of the Bureau to include all new public databases, taking into account their availability, i.e.:
a) National Official Register of National Economy Subjects (REGON);
b) Central Register and Information on Economic Activity (CEiDG);
c) National Court Register;
d) Register of Public and Legal Dues;
e) Central Records of Restructuring and Bankruptcy, which will be operational as of 01 February 2018.

To recap the above, the companies cooperating with EIB in the scope of their debt collection need to modify their document templates to align them with the new wording of the Act.

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## Draft Act on transparency in public life

**On 25 October 2017, the draft Act on transparency in public life was tabled for interministerial discussions and submitted for public stakeholder consultations. The first draft shows the direction that the planned changes are bound to take. Considering their complexity and potential implications, it is worthwhile to get prepared for the new laws in advance.**

It should be pointed out that the draft Act does not exclusively focus on declarations of financial interests. It also expands on the concept of 'internal anti-fraud procedures', which is currently rather unclear. Please note that lack of such procedures may result in sanctions, i.e. fines or temporary bans on competing for the award of public contracts.

**Entities covered by the new Act**
In line with the wording of the draft Act, its provisions affect the operations of enterprises, public finance entities and individuals who are in charge of public finance entities.

**Why should public finance sector entities and enterprises learn more about the new laws?**
The draft Act introduces severe penalties to be imposed on the aforementioned types of entities in case they do not follow anti-fraud procedures. At the same time, the criteria upon the fulfilment of which such penalties can be inflicted are rather unspecific. As per the draft, the application of internal anti-corruption procedures is understood as: "taking organizational, technical and personnel-related measures aimed to counteract creating an environment conducive to the commission of offences". Further, the Act only provides examples of what such "measures" could be like, leaving open the catalogue of potential courses of action.
Anti-corruption procedures are primarily aimed to prevent corruption, paid extortion and bribery in managerial positions. At the same time, the achievement of that objective is ensured through introduction of legal regulations entitling authorities to impose penalties if an entity does not take any actions in that respect or if the entities' actions are deemed insufficient or unsatisfactory.

Hence, the draft act seems to leave the administrative authorities a lot of room for interpretation as regards the activities to be taken by entrepreneurs and public finance units to ensure that their anti-corruption procedures are considered sufficient or satisfactory.

**Severe penalties**
The draft provides a wide spectrum of penalties to be imposed on breaching entities or individuals. A case in point is the situation when an enterprise does not introduce internal anti-corruption procedures or the procedures applied are seen as simulated or ineffective. In such a situation, when the latter of the cumulative premises is fulfilled, i.e. the individual acting for or on behalf of an enterprise is charged (as indicated above, e.g. with bribery or paid protection), such an individual will be liable to a pecuniary penalty ranging from PLN 10 000 to 10 000 000.

Furthermore, the draft Act extends the competencies of the head of the Central Anti-Corruption Bureau. Namely, upon initiation of inspection, the Head of the Central Anti-Corruption Bureau will be able to motion for punishment of the entrepreneur if they consider the anti-corruption

procedures in place to be simulated or ineffective. Should the entrepreneur fail to pay the fine in the amount motioned for, the case will be transferred to the Office of Competition and Consumer Protection that can impose penalties in the form of administrative decisions. If the Office of Competition and Consumer Protection imposes a penalty on the enterprise, the enterprise will be additionally punished with a ban on competing for the award of public contracts, binding for a period of 5 years from the date of the decision to impose the penalty becoming final.

**How to protect yourself?**
Entrepreneurs and public finance sector entities should evidence that they exercise due care in implementation of their anti-corruption procedures. Therefore, analysis of the currently used procedures and their effectiveness will be necessary. If no such procedures are in place or if they are incomplete, the entity should consider preparing a comprehensive set of procedures based on the experience gathered so far and the industry specifics - especially when the enterprise participates in public procurement procedures.

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## Amendments to the Act on the social insurance system

### The Council of Ministers approved draft amendments to the Act on the social insurance system

The Council of Ministers has approved the draft act amending the Act on the social insurance system. The new law does away with the annual limit of the retirement benefit and pension contributions' assessment basis. In 2017 the amount over which we do not pay retirement benefit and pension contributions equalled PLN 127,890. According to the draft Act (provided it is passed it its current wording), the amendments in this respect will take effect as from 01 January 2018. The draft Act was tabled for the Sejm discussions on 31 October (No. 1974) and on 03 November it was transferred for committee readings (to the Social Policy and Family Committee).

As per the currently binding provisions of the Act on the social insurance system, the annual assessment basis for retirement benefit and pension contributions in a calendar year cannot be higher than thirty times the predicted average remuneration in the national economy concerning that calendar year. If the modification suggested by the government is approved, the retirement benefit and pension contributions, both in the part financed by the employee and in the part financed by the employer, will be due on the entire remuneration of the employee, i.e. also on the revenue in excess of the current assessment basis limit (i.e. PLN 127,890). By implication, if the

amendments take effect, then as of 01 January 2018 the rules of calculating retirement benefit and pension contributions will be analogous to the rules in respect of sickness and casualty insurance the assessment basis of which is not subject to any restrictions.

The introduction of the amended legislation will result in decreasing the net remuneration of almost 350 thousand employees whose remuneration exceeds the amount of the said annual limit and increasing the effective rate of public and legal dues (applicable to the income in excess of the limit) from 34.89% to 42.40%.

From the perspective of the employer, the change entails considerably higher general payroll expenses. This is so because the contributions paid by the employer on the remunerations in excess of PLN 127,890 PLN will go up more than five times, from 3.75% (assuming that the casualty consideration is 1.2%) to the level of 20.01%. For the employer this translates into more than 13% increase of the payroll costs as regards remunerations exceeding the amount of the current annual assessment basis for the retirement benefit and pension contributions.

**Further steps**

The changes, if they are not modified or repealed in the course of further legislative work, will be significant for the entities whose employees receive monthly salaries of more than PLN 10,600 gross. The payroll costs associated with the employment of such individuals will be significantly higher. These entities should revise their payroll structures and wage grids to evaluate the impact of the amendments on their costs.

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## Act on transparency in public life may complicate the lives of employers

**The Government Legislative Centre has published a modified draft Act on transparency in public life which, in a sense, constitutes a response to the fast-track public stakeholders consultations. Even though the title given to the Act does not suggest it, the Act will considerably affect the businesses of employers, also those operating in the private sector.**

The draft Act on transparency in public life (hereinafter referred to as: "the Act") will primarily regulate the issues of access to information on public

matters, lobbying, limits on carrying on business activity and filling certain positions by officeholders, and the officeholders' duty to submit declarations of financial interests. At the same time however, the Act also focuses on counteracting corruptive practices, and these regulations will considerably affect employers, also those operating in the private sector.
When analysing the provisions that are especially significant from the viewpoint of employers, one needs to give special attention to the whistleblowing regulations and the obligation to apply internal anti-corruption procedures. The latter is discussed in our alert entitled: "Draft Act on transparency in public life", so now we would like to focus on the matter of protection of whistle-blowers.

**Whistleblowing in Polish**
The draft Act introduces the concept a whistle-blower to the Polish legal regime, as modelled on the solution already functioning in many countries (inter alia the UK, Israel, or Canada). The essence of the institution is to provide special legal protection to the individuals who cooperate with the judiciary by reporting inside information about the potential criminal offence committed by an entity with whom the whistle-blower has an employment contract or a different contractual relation.

In accordance with the draft act, the public prosecutor will be able to award the whistle-blower status to an individual who provides a credible report as to a suspected criminal offence, where the said criminal offence is included in the list given in the Act. This applies both to corruption-related offences, such as active and passive bribery or paid protection, and to other economic offences, such as fraud, acting to the detriment of an entity, money laundering, disposing of property in the face of threat of enforcement.

Importantly, not only an individual who is formally employed by the offending entity but also a person engaged on a basis other than an employment contract will be eligible to receive the whistle-blower status. In addition, the following individuals can become whistle-blowers as well: (I) a natural person performing their profession as an independent trader or on their own behalf, or running business as part of performance of such profession, bound by a contractual relationship with the allegedly offending entity, and (II) an entrepreneur bound by a contractual relationship with the allegedly offending entity.

Considering that the list of individuals that may enjoy the status of a whistle-blower seems rather broad, the application of the concept, especially concerning entrepreneurs who are contractors of the allegedly offending entity, may raise certain questions.

Can't be dismissed without the public prosecutor's consent
The whistle-blower status is associated with serious restrictions in the scope of termination or change of the contractual relationship between the whistle-blower and the alleged offender.

From the employers' perspective, the inability to terminate the employment contract with the whistle-blower or to change the terms of the employment contract to less advantageous ones, in particular changing the location, hours of work or the financial conditions, are of key importance. The restrictions above will be lifted if the public prosecutor who has awarded the whistle-blower status agrees to the employer taking such measures. To obtain the public prosecutor's consent, the employer will need to submit the relevant application and justify it accordingly.

**Whistle-blower protection may span years**
In line with the Act, a whistle-blower is protected not only during the period of enjoying the whistle-blower status (generally, during the criminal proceedings), but also for a year as of the date of discontinuation of the proceedings or completion of the proceedings and the final and binding decision in respect of the perpetrator of the offence. Taking account of the fact that economic and corruption-related proceedings are often complex and tend to take years, the period of protection may also prove to be fairly long.

**Serious consequences of breaching whistle-blower protection**
The Draft Act provides that a whistle-blower whose employment contract is terminated without the consent of the public prosecutor on account of their reporting of the employer's offence (as listed above), is entitled to receive compensation equal to twice the amount of their annual remuneration paid in respect for the last occupied position. The whistle-blower whose terms of employment are unfavourably changed without the consent of the public prosecutor may expect a similar compensation too.

Certain doubts may arise as to the understanding of the concept of terminating the employment contract with the whistle-blower on account of their reporting of commission of an offence listed in the Act, in view of the regulations applied to compensation payments. In view of the laws above, it seems that the right to compensation should be restricted to the situations when the actual reason for terminating the contract was the fact of the whistle-blower reporting irregularities at the employer. By implication, the whistle-blower is not entitled to compensation when the actual reason for contract termination without the consent of the public prosecutor is related to other circumstances, e.g. gross infringement of the employee's duties.
As a side note, one needs to point out that the relation between the claim for compensation provided for in the Act and the employee's claim on account of termination of the employment contract which can be made under the Labour Code is rather unclear. To be more specific, it is not certain whether the compensation provided for in the Act is an independent and additional claim that the employee is entitled to apart from the compensation prescribed by the Labour Code, or alternatively, whether the compensation under the Act excludes employee's claims based on the Labour Code (e.g., reinstating claims, compensation on account of employment contract termination).

**Complications for the employer**
Even though the introduction of the concept of a whistle-blower into the Polish legal regime seems fair and understandable, if the Act enters into force in its current form, undoubtedly it may make the lives of employers difficult. There are several reasons for that:

The Act introduces a new, so far unknown category of protected employees into the Polish labour law system. The scope of that protection is exceptionally broad, because the consent of the public prosecutor is required not only to terminate the employment contract with such an employee (including unfavourable termination of the terms of work and payment), but also to dismiss the protected employee without notice (e.g. in the case of gross breach of the basic employee's duties). At the same time, the implications of breaching the protective umbrella may be grave for the employer, considering the high compensation provided for in the Act.

The draft Act does not exclude the possibility of terminating the employment contract with the whistle-blower but in fact, the practical cooperation between

employers and law enforcement authorities will be crucial. This is so because one cannot exclude the possibility that an employee who has obtained the whistle-blower status, feeling confident and smug about their wide-ranging protection, will commit acts that are the basis for terminating the employment contract for just cause. Since terminating the employment contract for just cause is not possible upon a lapse of a month of the employer becoming aware of the circumstances justifying contract termination, and simultaneously, the public prosecutor has 30 days to give consent to terminate the contract with the whistle-blower (as provided in the draft Act), in practice, terminating the whistle-blower's employment contract for just cause may prove difficult or virtually impossible.
On the other hand, considering how lengthy criminal proceedings tend to be, whistle-blowers will likely enjoy their protection for years, which may make their dismissal difficult even in situations when such dismissals are objectively justified (e.g. when the employee does not fulfil their duties properly, in the case of reorganizations, etc.).

The final version of the Act has not been approved yet. Let us hope that the law enforcement authorities will show good judgement and use their new competencies taking into account the specifics of company operations.

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# Romania

## Combined Nomenclature for 2018

**The European Commission has recently published in the Official Journal the Combined Nomenclature applicable starting 1 January 2018. As a consequence, starting this date, it will be necessary to use the new CN codes for customs operations, Intrastat declarations and for operations performed on the basis of the customs and fiscal authorizations issued based on the CN codes in 2017.**

The new Combined Nomenclature may include new classifications for your company's products. If you import / export goods to / from the European Union as of January 2018, you will need to use the new CN codes in the goods declaration process.

The NC modification brings changes not only for customs operations, but also for reports in the Intrastat statistical system. More specifically, in the case of tariff codes used for goods traded between Member States of the European Union.

In addition, the holders of customs and tax authorizations issued based on codes valid in 2017 (e.g. authorizations for the use of suspensive customs regimes) are also affected.

What to do?

To avoid any administrative and operational inconveniences as of 1 January 2018 (e.g. extended stay of goods in customs), we recommend that you adjust these CN codes as soon as possible.

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## On October 3 2017, Article 29 Working Party , in view of ensuring harmonized application of the Regulation regarding Protection of Personal Data starting by 25 May 2018, adopted the following guidelines:

- **Guidelines on the application and setting of administrative fines for the purpose of the Regulation 2016/679**
- **Guidelines on personal data breach notification under Regulation 2016/679**
- **Guidelines on automated individual decision-making and profiling for the purposes of Regulation 2016/679**

Guidelines on the application and setting of administrative fines for the purpose of the Regulation 2016/679
The document discusses the framework and the manner of applying administrative fines in accordance with the provisions of the European Regulation no. 2016/679, which is intended to help supervisory authorities to identify the most appropriate criteria to impose appropriate administrative fines and also to reach a decision on applying various other sanctioning measures (such as temporary or permanent limitation of processing).

Thus, if there is a breach of the Regulation, the competent supervisory authority should identify the most appropriate measures in relation to that situation, taking into account, inter alia, the following principles:

- Infringement of the Regulation should lead to the imposition of "equivalent sanctions".
- Like all corrective measures chosen by the supervisory authorities, administrative fines should be "effective, proportionate and dissuasive".
- The competent supervisory authority will make an assessment "in each individual case".
- A harmonized approach to administrative fines in the field of data protection requires active participation and information exchange among supervisory authorities.
- The Guidelines establishes how general conditions should be interpreted in order to impose administrative fines under the Regulation and a number of different elements that should also be considered, taking into account the criteria set out in these conditions, as follows:
- the nature, gravity and duration of the infringement;
- the intentional or negligent character of the infringement;
- any action taken by the controller or processor to mitigate the damage suffered by data subjects;
- the degree of responsibility of the controller or processor taking into account technical and organizational measures implemented by them pursuant to Articles 25 and 32;
- any relevant previous infringements by the controller or processor;
- the degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- the categories of the personal data affected by the infringement;
- the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
- where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
- adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42;
- any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

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## Customs duties reduced by 50% on imports of GoPro Hero cameras and similar products

**Recently, the European Commission repealed a Regulation that classifies GoPro Hero cameras at a tariff code that stipulated a 7% duty on imports into the European Union. As a result of the reclassification, the applicable customs duty was reduced by 50%.**

Recently, the Order no. 2482/2017 on the procedure and the conditions under which the tax warehouses, registered consignees, registered consignors and authorized importers, are authorized, entered into force. It establishes the membership structure and competence of the Commissions for authorization of the operations of products subject to harmonized excise duties. More precisely:

- authorization is carried out by the regional directorates general of public finance, through the regional commissions for the authorization of operators of products subject to harmonized excise duties;
- by exception, authorization of tax warehouses for exclusive wine production carried out by taxpayers, other than large and medium-sized taxpayers, small distilleries as well as small independent beer factories, is made through the territorial commissions for the authorization of operators of products subject to harmonized excise duties, set up at the level of the territorial structures of the regional directorates general of public finance;

**What to do?**

We recommend that you review the impact of the legislation changes on your activity.

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## Amendments to the Fiscal Code

**The Law no. 227/2015 regarding the Fiscal Code has been amended by the Emergency Ordinance no. 79/2017, published in the Official Gazette no. 885/10.11.2017.**
**The changes will enter into force starting with 1 January 2018. The main amendments include:**

- **Limited deductibility of interest and other costs economically equivalent to interest for corporate income tax purposes**
- **Amendments of the conditions applicable to the microenterprise regime**
- **Decrease of the salary income tax to 10%**
- **Mandatory social security contributions rates due by the employee and the employer for salary income were amended**
- **Amendments of the mandatory social security contributions rates and of the computation base cap related to independent activities. Moreover, we believe that CJEU decision opens the right to deduct VAT also for other cases where VAT deduction was blocked because the supplier had its VAT number cancelled.**

The amendments and new provisions brought by the Emergency Ordinance no. 79/2017 related to corporate income tax and microenterprise are the same as the proposed provisions detailed in our Tax Alert issued on 3 November 2017. Considering their importance, we reiterate them, as follows:

**Title II Corporate income tax**

The Corporate Income Tax title transposes the EU Directive 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (Anti-Tax Avoidance Directive).

The Directive implements certain recommendations included in the BEPS Action Plan. The amendments will enter into force starting with 1 January 2018:

Limited deductibility rules for interest and other costs economically equivalent to interest

- The current deductibility rules provided by article 27 from the Tax Code on the interest and foreign exchange net losses are repealed. Instead, new rules on the limitation of deductibility of interest and other costs economically equivalent to interest are introduced in line with the Directive.
- The deductibility limitation does not cover only interest expenses and foreign exchange net losses any longer, but also items defined as "borrowing costs".
- Hence, exceeding borrowing costs (the difference between borrowing costs and interest income and other economically equivalent income) higher than the deductible limit of EUR 200,000, will be subject to limited deductibility up to 10% of the base computation.
- The base computation is determined as the difference between income and expenses recorded as per the accounting rules, out of which the non-taxable income are subtracted, and the corporate income tax expenses, exceeding borrowing costs and tax depreciation amounts are added back.
- If the base computation is negative or zero, the exceeding borrowing costs are non-deductible in the respective tax period, with the possibility of reporting them without time constraint over the next tax years.
- By exception, exceeding borrowing costs may be fully deductible if the taxpayer is an independent entity (does not form part of a

financial accounting consolidated group and has no associated enterprise nor permanent establishment).
- Starting with 1 January 2018, the tax value of assets will not include interest costs and other economically equivalent costs.
- Interest and foreign exchange net losses carried forward as per article 27 in force as at 31 December 2017 will be subject to deductibility as per the rules which will be introduced starting with 1 January 2018.

For entire article, please click here.

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# Slovakia

## Information on the Tax Bonus for a Child Studying Abroad

**The Financial Directorate of the Slovak Republic published information on the tax bonus for a child studying abroad.**

An employee may claim a child tax bonus from their employer as a tax benefit under Article 33 of Act No. 595/2003 Coll. on Income Tax if the child is dependent, ie the child is continuously preparing for their future occupation by full-time study at a secondary school or university. Continuous preparation of a child for an occupation also means study abroad if the Ministry of Education, Science and Research and Sports of the Slovak Republic (hereinafter the "Ministry of Education") decides that its scope and level is equivalent to study at a school in the Slovak Republic.

An employee may claim a child tax bonus for a student (16 or older) from an employer by signing a "Declaration on the Application of the Non-Taxable Portion per Taxable Person and Tax Bonus", which must be duly documented. In the declaration, the employee must provide information about the child and provide the employer with a confirmation of school attendance valid for the relevant school/academic year. If the child is studying abroad, the employee is required to provide the employer with a decision on the equivalence of the study with study in the Slovak Republic in addition to a study confirmation at the start of the study. Decisions are issued by the Ministry of Education - Centre for the Recognition and Issuance of Education Documents. It is not required to provide the employer with the decision if the child studies at a school listed as an "equivalent" recognised school, which the Ministry of Education publishes annually on its website www.minedu.sk.

If an employee provides a document in a language other than the state language, the employer may ask the employee to provide a translation of the document. If the employer believes the translation is not correct, the employee may be requested to provide an officially certified translation for inspection and may make a copy of the original document.

The Financial Directorate's information gives practical examples of the application of the tax bonus. The tax bonus also covers the holiday period, the Erasmus programme (if equivalent) and students attending multiple schools as part of mobility between universities.

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## Adoption of IFRS in the EU

**On 31 October 2017, the EU adopted new IFRS 16 Leases and Clarifications to IFRS 15 Revenue from Contracts with Customers. On 3 November 2017, the EU adopted Amendments to IFRS 4 Insurance Contracts: Applying IFRS 9 with IFRS 4. On 6 November 2017, the EU adopted Amendments to IAS 12 Income Taxes: Recognition of Deferred Tax Assets for Unrealised Losses and Amendments to IAS 7 Statement of Cash Flows: Disclosure Initiative.**

On 10 November 2017, the European Financial Reporting Advisory Group (EFRAG) updated the report on the IFRS approval status, ie standards, interpretations and amendments.

1. On 31 October 2017, the European Commission approved for use in the EU new IFRS 16 – Leases. This standard provides a comprehensive model for the identification of lease contracts and their recognition in the lessor's and lessee's financial statements. There will be a significant change in the lessee's accounts: the lessee will be required to report almost all leases in the balance sheet. This standard replaces IAS 17 – Leases, IFRIC 4 – Determining Whether an Arrangement Contains a Lease, SIC 15 – Operating Leases – Incentives and SIC 27 – Evaluating the Substance of Transactions in the Legal Form of a Lease. The standard was published in the Official Journal of the European Union on 9 November 2017. IFRS 16 is effective for annual periods beginning on or after 1 January 2019 and early adoption is permitted. IFRS 16 is to be applied retrospectively.

2. On 31 October 2017, the European Commission approved for use in the EU Clarifications to IFRS 15 – Revenue from Contracts with Customers. The objective is to clarify IFRS 15 requirements regarding the identification of contractual performance obligations, principal vs. agent and licencing. Two extra practical expedients to the transition to IFRS 15 were also provided. The clarifications were published in the Official Journal of the European Union on 9 November 2017. The Clarifications to IFRS 15 are effective for annual periods beginning on or after 1 January 2018 and early adoption is permitted. IFRS 15 is to be applied retrospectively.

3. On 3 November 2017, the European Commission approved for use in the EU Amendments to IFRS 4 – Insurance Contracts: Applying IFRS 9 with IFRS 4. The objective is to deal with different effective dates of IFRS 9 – Financial Instruments and IFRS 17 - Insurance Contracts. The amendments were published in the Official Journal of the European Union on 9 November 2017. The Amendments to IFRS 4 are effective for annual periods beginning on or after 1 January 2018.

4. On 6 November 2017, the European Commission approved for use in the EU Amendments to IAS 12 - Income Taxes: Recognition of Deferred Tax Assets for Unrealised Losses. The objective is to clarify the recognition of deferred tax assets from unrealised losses on debt instruments (assets) measured at fair value. The amendments were published in the Official Journal of the European Union on 9 November 2017. The Amendments to IAS 12 are effective for annual periods beginning on or after 1 January 2017 and early

adoption is permitted. Amendments to IAS 12 are to be applied retrospectively.

**On 6 November 2017, the European Commission approved for use in the EU Amendments to IAS 7 - Statement of Cash Flows: Disclosure Initiative**. The objective is to improve information provided to users of financial statements about a reporting entity's financing activities. The amendments were published in the Official Journal of the European Union on 9 November 2017. The Amendments to IAS 7 are effective for annual periods beginning on or after 1 January 2017 and early adoption is permitted. Amendments to IAS 7 are to be applied prospectively.

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## Amendment to Act No. 563/2009 Coll. on Tax Administration (The Tax Code)

**An amendment to the Tax Administration Act which introduces a number of changes was published in the Collection of Laws. The amendment amends the tax secrecy obligation and introduces the tax reliability index and other new measures to combat tax evasion.**

The Act has been published in the Collection of Laws and will become effective on 1 January 2018. The most significant changes include: amendment to the tax secrecy obligation, the tax reliability index, introduction of summary protocol and reduced price of a request to issue binding opinions. The full wording of the amendment to the Act is available here.

We addressed the amendment to the Tax Administration Act in detail in Deloitte News July - August 2017 on page 19, which is available on the above link.

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