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Tax&Legal Highlights

November 2018

Albania	3
Bulgaria	4
Croatia	11
Czech Republic	17
Kosovo	26
Lithuania	27
Poland	29
Romania	38
Slovakia	42
Slovenia	47

Albania

Amendments to the legislation on the residence of foreigners

On 03.10.2018, the Council of Ministers has approved some amendments on the legislation on the residence of foreigners. This decision aims to partially approximate domestic legislation with some of the European Union directives such as Directive 2004/114/EC, Directive 2003/86/EC and Directive 2009/50/EC.

The principal amendments are as follows:

Documentation

Foreigners who enter into Albanian territory shall submit to border authorities a certificate regarding their financial means.

Further documentation is also required to obtain the residence permit for the following categories: transferred employees, students, family reunion, humanitarian cases, residence permit in favorable and facilitating conditions.

Visa application

The visa application shall be submitted mainly on-line. With regard to the procedures for the renewal of the residence permit, the foreigner, along with the other documentation shall submit also the certificate of registration in the Civil Register Office which has jurisdiction over the area of residence.

It should be noted that the foreign citizens, after the issuance of the residence permit, with a validity term at least of 1 (one) year, must be registered near the Civil Registry Office of their residence area.

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Bulgaria

Tax legislation changes for 2019

On 27 November 2018 amendments to the Corporate Income Tax Act, the Personal Income Tax Act ("PITA"), the Value Added Tax Act ("VATA"), the Excise Duty and Tax Warehouses Act, and the Local Taxes and Fees Act were published in the State Gazette. Most of the amendments will enter into force on 1 January 2019.

The most important changes are described briefly below:

Corporate taxation

New interest limitation rule will apply alongside the existing thin capitalization rule

The Bulgarian Parliament implemented the requirements of the European Union Anti-Tax Avoidance Directive 2016/1164 ("ATAD") with respect to the interest limitation rule.

The new rule will apply if the net borrowing costs exceed EUR 3 million for the year. Net borrowing costs will be restricted if they exceed 30% of a tax-based EBITDA.

The new rule introduces a broader definition for borrowing costs. For example, unlike the existing thin capitalization rule, it will regulate interest expenses on bank loans and finance leases, which are not guaranteed by a related party.

The existing thin capitalization rule will remain in place and the two rules will be applied alongside.

The 5-year term for carry-forward of interest expenses restricted under the thin capitalization rules is repealed. Thus, any restricted interest expenses under the thin capitalization rule and borrowing costs under the new interest limitation rule will be carried forward indefinitely.

Both rules will not apply for credit institutions.

Special rules for controlled foreign companies

With the implementation of ATAD, special rules for Controlled Foreign Companies ("CFC") were adopted.

The CFC rule aims to re-attribute the income of a low-taxed foreign controlled subsidiary/ permanent establishment to its Bulgarian parent company/ principal. If a Bulgarian taxpayer has a CFC, it should include a proportionate part of the CFC's taxable profits into its Bulgarian taxable profits.

In order to be a CFC, the respective foreign company/ permanent establishment should meet certain requirements (e.g., shareholding, low or no taxation abroad, no substantive economic activity).

The Bulgarian taxpayer should maintain a special register for CFC purposes and present it to the tax authorities upon request. The register must contain certain information about the respective CFC, e.g., non-distributed profit, shareholding/participation, etc. Failure to keep such register or in case of misreporting, a penalty may be imposed.

Tax treatment of operating lease in the accounts of the lessee

Income and expenses related to operating lease contracts recorded in the accounts of the lessee under the new IFRS 16 Leases (effective as of 01 January 2019) will not be recognized for tax purposes. In addition, the assets under the operating lease as per the new IFRS 16 should not be recognized as tax depreciable asset in the tax depreciation plan of the lessee.

Instead, the taxpayer should calculate the respective income and expenses under the National Accounting Standard 17 Leases and recognize them for tax purposes.

Any income and expenses arising as a result of a changed accounting policy due to the first time adoption of the new IFRS 16 will also not be recognized for tax purposes.

Other changes

A taxable person who has not performed any business activity during the current year will be required to submit a corporate income tax return in order to report any obligations for corporate income tax or tax on expenses, or to report voluntary other relevant information (such as incurred losses, etc.).

There is a simplification in the declaration and payment deadlines for the last tax period for corporate income tax, withholding tax, tax on expenses and alternative tax purposes, in the cases of liquidation/ insolvency of a company and termination of permanent establishment. The abovementioned taxes should be reported and paid within 30 days after the date of the de-registration.

No longer corporate income tax return and payment will be due upon registering termination of a company in the Commercial Register.

New requirements for the operators of exempt food vouchers and for the requisites of such vouchers were adopted.

Personal taxation

Less requirements for utilizing tax reliefs

The requirement for providing a written declaration from one of the spouses for non-utilization of certain tax reliefs when the other spouse would benefit from it drops out. The change is valid for the fiscal 2018 and concerns the tax reliefs for young families, for children and disabled children.

Changes in the regime of taxation of winnings/awards as of 1 January 2019

Winnings and awards from games and competitions, which are not provided by an employer or an assigner would be subject to withholding tax. The taxable threshold of this type of income increases from BGN 30 to BGN 100.

New reporting requirement for the income payers regarding 2019

For fiscal 2019, the income payers would be obliged to disclose information for employment income paid, statutory insurance and personal income tax paid to the Bulgarian tax authorities. The new regime requires electronic filing of standardized declarations under the PITA until 28 February of the following year. There is a possibility for corrections of the disclosed information by 30 September of the following year.

In respect of the above there would be no legal requirement for issuing annual income certificates by the Bulgarian employers. Still, the annual certificates could be requested by the employees and the employers would have 14 days for providing.

The above changes are aimed at reducing of administrative burden for individuals.

Changes related to the filing of annual tax returns for 2018 and 2019

The period for filing individuals' annual tax returns would be from 10 January until 30 April of the following year. This change is applicable as of the fiscal 2018.

As of the fiscal 2019, the possibility for utilizing a 5% discount of the outstanding tax under the annual personal tax return (capped at BGN 500) would be possible through electronic filing and payment of the tax until 31 March of the following year. The old regime for utilizing a 5% discount (capped at BGN 500) until 31 January would be applicable for the 2018 tax returns.

Concerning tax returns for fiscal year 2019 and onwards there would be no requirement for the individuals to enclose an annual income certificate for the year issued by a Bulgarian employer.

Self-employed individuals would be obliged to file their annual tax returns for income received in 2019 only electronically.

Value added tax

New rules on the VAT treatment of vouchers

Depending on their characteristics, instruments that fall into the scope of the new definition for vouchers may qualify as a single-purpose voucher (SPV) and a multi-purpose voucher (MPV). The transfer of a SPV will be considered as a supply of the goods or services it relates to. The transfer of a MPV will fall outside the scope of VAT.

Certain types of vouchers (e.g., tickets for cinema and museums, food vouchers) are specifically excluded from the scope of the new rules.

The new rules are applicable to vouchers issued after 31 December 2018.

Reverse-charge upon importation of certain goods

As of 1 July 2019, the VAT upon importation of certain types of goods (e.g., aluminum and zinc) whose value exceeds BGN 50,000 will be subject to reverse-charge and the importer may opt not to effectively pay VAT to the customs authorities at the time of importation.

The goods for which this amendment is applicable are listed in a new Enclosure 3 to article 167a of the VAT Act. To apply this regime, the importer must meet certain conditions such as being VAT registered for at least 6 months prior to the import and having no unpaid liabilities towards the revenue authorities.

Place of supply of telecommunication, broadcasting and electronically supplied services - new threshold

Telecommunication, broadcasting and electronically supplied services provided to non-taxable persons will be taxable in the Member State of establishment of the supplier if the threshold of EUR 10,000 has not been exceeded for a calendar year. Supplies exceeding this threshold will be taxed in the Member State of the recipient.

Abolished requirement for a minimum amount of collateral for traders of liquid fuels

The requirement for the provision of a minimum amount of BGN 50,000 collateral due by companies trading with liquid fuels has been abolished.

Other changes

Companies in the process of liquidation will be allowed to remain VAT registered until their deregistration with the Registry Agency.

The applicability of the rules for local reverse-charge of VAT on supplies of certain agricultural products, scrap and waste related services has been extended to 30 June 2022.

The period in which companies registered for VAT purposes on voluntary basis are required to remain registered is reduced from 24 to 12 months.

Excise duties

Joint liability for excise duty liabilities

Joint liability for the payment of excise duty liabilities is introduced in relation to the use of energy products for fueling of aircrafts and sea going vessels. The joint liability would apply to:

- a person that has consumed the excise products for purposes other than the purposes for which exemption of excise duty was granted;
- an authorized warehousekeeper who has released the energy products but knew or should have known that the conditions for excise duty exemption would not be satisfied;
- a person to whom the excise duty for the energy products was reimbursed but knew or should have known that the conditions for excise duty exemption would not be satisfied.

Energy products exempt from excise duty

The scope of the energy products exempt from excise duty is expanded as follows:

- liquefied petroleum fuels with CN codes 2711 12 11 to 2711 19 00 (propane, butane, ethylene and petroleum) packed up to 5 kilograms.
- energy products that have been used by a person, who has received an end-user certificate.

The exemption would not apply to energy products that have been produced in a tax warehouse and will be used for the production of other energy products and for purposes other than motor fuel and heating fuel.

Other changes

E-shops will be allowed to advertise alcoholic beverages offered on their websites.

Buyers of alcoholic beverages that qualify as collector's items would be required to notify the authorities whenever excise labels are required.

Local taxes and fees

Postponed application of the new ways to calculate garbage fees

The application of the new ways to calculate garbage fees on the basis of wasted garbage instead of the current basis (tax value or gross book value of the real estate) has been postponed for 2022.

New ecological component added in the calculation of vehicle tax

A new ecological component will be applied alongside the property component in calculating the annual vehicle tax. Each municipality should define the ecological coefficients for 2019 until 31 January 2019.

Change in calculation of the tax for cargo vehicles weighing up to 3.5 tones

The tax for cargo vehicles weighing up to 3.5 tones will be calculated the same way as for passenger-cars.

Other changes

Other changes were also adopted, such as administrative simplifications regarding transactions with motor vehicles, amendments to tax relief for main home, higher tax rates for homes located in resorts, etc.

Tax procedure

New provisions regarding appealing of tax assessment acts

In addition to the above amendments, effective as from 1 January 2019, the Administrative Procedure Code introduces several changes in the tax appeal procedure related to final instance appeals and territorial competence of the administrative courts.

Companies appealing tax assessment acts before the Supreme administrative court are required to pay:

- a proportional state fee equal to 0.8% of the material interest of the case, but no more than BGN 1,700.
- a fixed state fee equal to BGN 4,500, if the material interest of the case exceeds BGN 10,000,000.

Tax assessment acts, which assess tax liabilities for less than BGN 4,000, will no longer be eligible for appeal before the Supreme administrative court in Bulgaria.

The administrative court competent to review appeals on tax assessment acts will be the court where the permanent address / headquarters of the appellant at the time of the first procedural action was.

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Mandatory transfer pricing documentation proposed in Bulgaria for the first time

Bulgaria's Ministry of Finance on 5 November proposed mandatory transfer pricing documentation requirements. The proposed rules are part of the draft changes to the Tax and Social Security Proceedings Code, published on the ministry's website. Public comments on the draft are due on 5 December 2018. If adopted, the law would apply to transactions entered into after 1 January 2019.

Current documentation framework

Bulgarian taxpayers currently are subject only to a general obligation to prove the arm's length nature of their transactions with related parties ("controlled transactions") during a tax audit. The rules apply to domestic transactions (those between two Bulgarian companies) and cross-border ones. There is no mandatory term to prepare the transfer pricing documentation before a tax audit.

The content of the documentation is provided in the TP Manual (an administrative rather than legal document) published on the National Revenue Agency's website. The documentation consists of a master file (which provides general information about the taxpayer's group) and a local file with transfer pricing analysis of the taxpayer's controlled transactions.

What's new under the proposal?

Starting from 2019, taxpayers would be obligated to prepare the local transfer pricing file every fiscal year if (i) net sales revenue exceeds BGN 16 million, or (ii) the net book value of assets as of 31 December of the prior year exceeds BGN 8 million. Entities not liable to corporate income tax (CIT) or subject to alternative taxes under the CIT Act would be exempt from this requirement.

The local file would be prepared for transactions exceeding certain annual monetary thresholds (BGN 400,000 for goods, BGN 200,000 for services/intangibles/financial assets, and loan transactions in excess of BGN 2 million in loan principal or BGN 100,000 in interest payments). Documentation of controlled transactions with natural persons (except sole traders) is not mandatory.

Entities that are part of a multinational group would also have to provide a transfer pricing master file for the respective year.

The local file would have to be prepared by 31 March of the following year, whereas the master file would be available by 31 March of the year after the following year. For 2019, the local file should be prepared by 31 March 2020, and the master file available locally by 31 March 2021.

The rules explain also how to update the benchmark studies.

The draft does not include a requirement that taxpayers submit the transfer pricing files to the tax authorities. Transfer pricing documentation (both the local file and the master file) would be kept by the local taxpayer and provided to the revenue authorities upon request.

The proposed documentation requirements include sanctions for noncompliance. The level of the fines would depend on the size of the transactions involved, and whether it is a repeat offense, among other factors.

Comments and next steps

The draft law is a logical consequence of the increased interest in transfer pricing matters and a natural follow-up to Bulgaria's declared willingness to implement the elements of the OECD's BEPS project domestically. Parliament is likely to approve this proposal in the coming months, possibly with some small changes after a review of the public comments.

The proposed documentation requirements would impose an additional administrative burden on taxpayers. However, the new rules have a cost-benefit rationale. Transfer pricing compliance covers material businesses and transactions, reflecting higher potential tax risks. This approach makes sense, keeping in mind the size of the Bulgarian economy and its income tax rates.

Taxpayers can expect higher scrutiny during transfer pricing audits. Preparation of the transfer pricing files will help businesses to manage the risk of transfer pricing adjustments and consequently, reduce the risk of penalty interest and sanctions.

In practice, some situations often lead to transfer pricing adjustments and substantial tax assessments. That is the case when businesses are in a loss-making position or when large amounts of service fees (such as management fees or interest charges) are charged within a group. Taxpayers in these situations should prioritize the preparation of their transfer pricing files.

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Croatia

Amendments to the tax legislation from 1 January 2019

The Croatian Parliament voted in the amendments to the Corporate Income Tax ("CIT") Act, Value Added Tax ("VAT") Act, Personal Income Tax ("PIT") Act and Real Estate Transfer Tax ("RETT") Act on 21 November 2018. The amendments will be in force from 1 January 2019.

CIT amendments

The proposed amendments mostly relate to the implementation of the Anti Avoidance Tax Directive ("ATAD") rules, i.e. limitations to the deductibility of financing expenses and controlled foreign company ("CFC") rules. Additionally, there are also important amendments to the definition of a permanent establishment ("PE"), to rules on "Lex Agrokor" receivable write-offs and to withholding tax ("WHT") provisions. We present a summary of these amendments below.

Permanent establishment

The definition of a PE is deleted from the CIT Act and taxpayers are instead referred to the General Tax Act provisions. The General Tax Act provisions take over the existing PE definition but extend it in line with ATAD by, as an example, adding the anti-fragmentation rule.

"Lex Agrokor" receivable write-offs

A write-off of receivables made in line with the regulations on bankruptcy applicable to special interest entities, e.g. the so called "Lex Agrokor" statute, is tax deductible. This provision will also apply to the FY 2018 CIT return.

Financing expense deductibility

Taxpayers that have financing expenses may have an additional restriction on their deductibility, regardless of whether the expenses are to related parties or not. An exemption from the rule applies to taxpayers that have no related parties or to financial institutions. The financing expense definition is wide and includes not only interest but also all other expenses related to obtaining the financing, e.g. exchange rate differences, financing fees, etc. Taxpayers will be able to deduct their net financing expenses for tax purposes at up to 30% of their EBITDA with a de minimis threshold of EUR 3 million. The exceeding amount of the net financing expenses will be tax non-deductible but can be carried forward for up to 3 years. This amount will be reduced for tax non-deductible interest assessed under the thin capitalization rule and/or the related party statutory prescribed interest rate rule.

CFC rules

CFC rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. The parent company is taxed on the attributed income in Croatia where it is resident for tax purposes. A CFC is considered to be any legal entity or permanent establishment located in another country if the following conditions are met:

- the taxpayer or a group of related taxpayers holds more than 50% of the voting rights or more than a 50% share in the foreign entity or if they are entitled to more than 50% of the foreign entity's profits and

- the actual CIT paid by the entity abroad is less than the difference between the CIT which would be payable if assessed by applying the Croatian CIT rules and the actual CIT paid by the foreign entity

If the foreign entity is considered a CFC, the Croatian parent is required to declare its profit in its tax return, if that profit is generated from the following categories of income:

- interest or other income from financial assets
- licence or other intellectual property income
- dividends/shares in profit
- financial leasing, insurance, banking and other financial activities
- sale and purchase of goods and services procured with related parties with little or no economic value added.

An exemption is available if a CFC carries out substantial economic activity through engagement of staff, equipment, property and buildings, as evidenced by relevant facts and circumstances.

Additionally, if the income listed above makes up one third or less of the total foreign entity's income, the foreign entity will not be considered a CFC.

WHT

Fees paid to foreign enterprises for performance of non-resident artists, entertainers and sportspersons will be subject to WHT at a 15% rate. No obligation to calculate personal income tax and social security contributions for the individual performer will be in place if such WHT is paid.

All service fees and all other fees that are subject to WHT (i.e. interest, royalties and dividends) paid to entities in countries that are listed as non-cooperative for tax purposes (i.e. tax havens) and which have not concluded a Double Tax Treaty with Croatia will be subject to WHT at the 20% rate, as opposed to regular 12 or 15% rates.

VAT amendments

Use of company cars for private purposes

The Act clarifies that the use of company cars for private purposes is not to be seen as non-business use to which VAT should be charge, even if input VAT was partially deducted upon purchase or lease, irrespective of the period of deduction.

Simplified triangulation conditions

Conditions for the application of simplified triangulation for the second party involved in the supply chain, when the final destination of goods is Croatia, change. The simplified triangulation will also be available to a non-resident taxpayers who are registered for VAT purposes in Croatia, which is not allowed under the current legislation.

Place of supply of services

A supply threshold is introduced in taxation of telecommunications, broadcasting and electronically supplied services to non-taxable persons.

The main rule for the place of supply of telecommunications, broadcasting and electronically supplied services to non-taxable persons is in the place where the customer has its headquarters, residence or habitual residence.

However, from 1 January 2019, the place of supply of those services is, exceptionally, in the Member State of the supplier, if their value does not exceed HRK 77,000 (VAT excluded) in the current and the preceding calendar year

The purpose of the amendment is to simplify the provision of service for the supply, as the place of supply in these circumstances would be its country and it would not be required to register for VAT purposes in the customer's country.

Nevertheless, the supplier can opt to apply the country of the customer rule immediately and will in this case be bound by this decision for two calendar years.

VAT rates

The scope of the reduced rates is extended, so reduced rate of 5% applies to all prescription and over the counter medicines. Reduced rate of 13% will apply to supply of baby diapers and certain categories of foodstuffs (live animals, fresh or frozen meat, fresh or frozen sausages and similar products, meat or blood, live fish, fresh or frozen fish, mollusks and other aquatic invertebrates, fresh or frozen crayfish, fresh or frozen vegetables, roots and tubers, fresh and dried fruit and nuts, fresh poultry eggs in shell). The rate of 13% will also apply to copyright and similar author's fees paid to authors, composers and performers who are members of the organizations for the collective exercise of rights that are engaged in these activities under special regulations and with prior approval of the central state authority for intellectual property.

From 1 January 2020, the standard rate will be reduced from 25% to 24%.

Deduction of VAT on passenger cars

The threshold of HRK 400,000 prescribed for the deduction upon purchase or lease of passenger cars is abolished so the taxpayers can deduct 50% of VAT charged on purchase or lease of passenger cars and related goods or services, irrespective of the car's purchase value. Passenger cars are considered to be motor vehicles intended for the carriage of persons having, in addition to the driver's seat, a maximum of eight seats.

Application of local reverse charge mechanism

Non-resident taxpayers who are registered for VAT purposes in Croatia will no longer be eligible to apply local reverse charge mechanism from the Article 75 (2) of the VAT Act to their local supplies. In other words, from January 1, 2019, VAT registered non-resident's will have to charge VAT on local supplies. Local reverse charge will still apply to local supplies of non-resident's that are not registered for VAT purposes in Croatia.

The scope of application of local reverse charge mechanism to the supplies between domestic taxpayers (Article 75 (3) of the VAT Act) is extended is extended, and from 1 January 2019 will also apply to the supply of concrete steel and iron and products thereof.

Additional monthly reporting obligation

All taxpayers registered in VAT register will be obliged to electronically submit, together with VAT return, ledger of incoming invoices. The ledger's format and content will be prescribed by the VAT Regulations, whose amendments are expected.

VAT on import as reporting category

The reporting of VAT liability on import of machinery and equipment worth more than HRK 1,000,000 and categorised in the prescribed Combined Nomenclature codes through VAT return will be available only upon import of tangible fixed assets.

Registration for VAT purposes

In case of doubts about the justifiability of the VAT identification number assignment, the Tax Authorities may request the applicant to provide the insurance instrument (collateral) for a period of up to 12 months. If the taxpayer fails to submit the insurance instrument, the Tax Authorities will terminate the VAT identification number.

Small enterprise

A small enterprise is defined as legal entity with head office, permanent establishment, and private individual with residence or habitual residence in Croatia whose value of goods delivered or services performed in the previous or current calendar year does not exceed HRK 300,000. In other words, newly established companies that exceed the threshold of HRK 300,000 have to register for VAT immediately and not from 1 January of next year as it was prescribed before.

Taxpayer's responsibility

The Customs or the Tax Authorities will be allowed to request from the taxpayer acquiring the used means of transport from another Member State, prior to its registration, provision of insurance instrument for the fulfilment of VAT obligation arising from the acquisition of the used means of transport.

RETT amendments

RETT is to be reduced from 4% to 3%.

PIT amendments

Amendments to the Personal Income Tax Act, Social Security Contributions Act and General Tax Act will be applicable from 1 January 2019. Amendments to the Personal Income Tax Regulations have already become effective from 1 December 2018. We present a summary of these amendments below.

Personal Income Tax Regulations – applicable from 1 December 2018

Based on the amendments to the Personal Income Tax Regulations, an award for work results (e.g. bonuses) can be paid up to HRK 5,000 per employee per annum as non-taxable receipt. The provision regulating the payment of annual non-taxable payments in the amount up to HRK 2,500 such as Christmas bonus, Easter bonus, holiday allowance, etc. has remained unchanged. This means that the total non-taxable award that can be paid to an employee increased from HRK 2,500 to HRK 7,500 annually.

Personal Income Tax Act – applicable from 1 January 2019

- Based on the amendments to the Personal Income Tax Act, there will be an additional decrease of the tax burden for taxpayers with higher earnings. Namely, the tax base taxable at 24% is increased from HRK 17,500 to HRK 30,000 on a monthly basis. The tax base above HRK 30,000 will be taxable at a rate of 36%. The change is also reflected in the annual tax band rates.
- The novelty is that the benefit in kind based on granting and option purchase of shares which the employers and payers of income provide to employees is no longer considered as employment income. Such income is now considered as capital income, which is taxed at a rate of 24%. This novelty will potentially encourage companies to introduce a system or extend the existing system of rewarding employees through granting or optional purchase of shares.

- Some changes to the Personal income Tax Act led to an increase in the tax burden for one part of taxpayers, i.e. private accommodation providers who pay tax per bed or accommodation unit. Based on these changes, the amount of flat-rate tax per bed or per accommodation unit in the camp is determined by cities and municipalities. Such tax cannot be less than HRK 150 or higher than HRK 1,500.
- In relation to income realized abroad, such income will be treated as it is envisaged by the sourcing country. For example, if a benefit in kind is considered as gross income in the country of source and in Croatia as net income due to the Croatian local legislation, such income will no longer have to be grossed up for tax purposes in Croatia, as it was the case so far.
- Taxpayers realizing income from abroad, which is considered as self-employment income in Croatia, are not required to keep business books according to the Croatian legislation anymore.
- In case of granting a loan to an employee (or non-employed individual), the difference between favourable interest rate (lower than 2% p.a.) provided and the interest rate of 2% p.a. is considered as benefit in kind (3% p.a. up to now).

Mandatory social security contributions

The amendments to the Social Security Contributions Act further simplify the contribution system from an administrative and financial perspective by abolishing two types of contributions payable on top of salary (employer's contributions). Specifically, the contribution for unemployment of 1.7% and contribution for injury at work of 0,5% are abolished. The contribution rate for health insurance contribution is increased from 15% to 16.5%. Thus, the total cost of social security contributions decreased from 37.2% to 36.5%.

For the board member employed with the company the employer is obliged to pay the social security contributions. The novelty is that the lowest base for calculation of social security contributions for the employed board member on an annual level is prescribed. In case there is a difference between the social security contributions paid on the base on which the board member is registered with the relevant authorities and the lowest prescribed base for the board member (average salary x 0.65) on the annual level, the board member is obliged to settle the social security contributions difference.

General Tax Act

Based on the changes to the General Tax Act, in cases where the taxpayer is resident both in the Croatia and abroad, it will be considered that the taxpayer has a permanent residence in the country where his family resides. For the taxpayer-single person for which his or his family's residence cannot be determined, it is considered that his residence is in the country from which he engages in work activities or in which he predominantly resides. In this way the local legislation was harmonized with the OECD model tax convention.

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Czech Republic

Current Situation as Regards the Tax Package Approval Procedure

The second reading of a bill amending various tax laws (the so-called Tax Package, Parliamentary Document No. 206) is to be included in the programme of the 24th session of the Chamber of Deputies, taking place from 4 December 2018. As we have already informed you in previous issues and in our regular webcast, it is unlikely that the original bill will be passed by the year-end. The possible effect of changes specified in the original bill is being addressed at present. The motions to amend which have been considered and are available on the website of the Chamber of Deputies (the deadline for their submission was 14 November) do not clearly indicate a comprehensive approach. The Ministry of Finance is preparing and debating (for example with the Chamber of Tax Advisors of the Czech Republic) a proposal for postponing the effective dates of individual provisions, with the preliminary indication that selected changes would only come into effect after the Act has been passed (or from the next month following the publication in the Collection of Laws), with other ones becoming effective for the next taxation periods subsequent to the Act taking effect. We have been closely monitoring the latest developments. A summary of details concerning the Tax Package (including the effective dates of relevant provisions) will be published after the second reading.

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GFD's New Guidance Note on the Binding Assessment of Transfer Pricing and the Method of Determining the Tax Base for Permanent Establishments

On 9 November 2018, a new guidance note, D - 32, of the General Financial Directorate ("GFD") was published in the Financial Bulletin of the Ministry of Finance on the binding assessment of the pricing method between related parties and the method of determining a tax non-resident's tax base on activities performed through a permanent establishment (hereinafter jointly as the "binding assessments").

The new guidance note replaces Guidance Note D – 333 and, besides changes relating to the binding assessment of pricing between related parties under Section 38nc of the Income Taxes Act, it also newly incorporates information on how to proceed during a binding assessment in assessing the determination of a tax non-resident's tax base on activities performed through a permanent establishment under Section 39nd of the Income Taxes Act, which was introduced as early as 1 January 2018, yet in respect of which no accompanying methodology has been issued so far.

Although the guidance note is not legally binding, it serves as a clue for tax payers as to how the tax administration will address the issue of transfer pricing between related parties and the determination of the tax base/tax loss in respect of permanent establishments.

Shortening the Deadline for Filing an Application

A major change introduced by Guidance Note D – 32 in respect of binding assessments is the clarification of the deadline for filing the binding assessment application. In line with the previously applicable guidance note, it was possible to file the binding assessment application both during the taxation period for which it was being filed as well as subsequent to its expiry until the deadline for filing the tax return for the period. The new guidance note clarifies the interpretation of the deadline for filing the binding assessment application in that, with effect from 1 January 2018, binding assessment applications may only be filed for the taxation period during which the application is filed and for the subsequent taxation periods.

The change may have a significant impact on applications filed subsequent to 1 January 2018 in compliance with the rules stipulated by the replaced Guidance Note D – 333. However, it still applies that in situations where the payer used the same transfer pricing method or method of attributing profits to a permanent establishment in the preceding periods under corresponding terms, it may be assumed that if an affirmative ruling is issued, the tax administrator will, despite the invalidity of the ruling for prior periods, proceed similarly during tax audits as if the binding assessment had been issued.

Who are the Applications to be Submitted to and who Issues the Binding Assessment Ruling?

The new guidance note also specifies that taxable entities must submit binding assessment applications to the locally competent tax administrator. The application will be examined either by the locally competent tax administrator or the General Financial Directorate depending on the number of domestic entities to which the binding assessment relates. If the application exclusively relates to payers falling within the competence of a single locally competent tax administrator, the ruling will be issued by the respective tax administrator. If the payers in respect of whom the ruling is issued fall within the local competence of multiple tax administrators, the application will be examined by the General Financial Directorate. The same procedure will apply to bilateral or multilateral advanced pricing agreements.

Uncertainty about the Issuing of Rulings Persists

However, the new guidance note fails to eliminate tax payers' uncertainty regarding the deadline for issuing binding assessment rulings as the tax administrator's deadline for binding assessments has not been clarified or determined in any way.

The Administrative Fee Depends on the Number of Transactions or Permanent Establishments

The administrative fee for accepting applications is not newly fixed at CZK 10,000 per application: its amount will depend either on the number of transactions or permanent establishments assessed.

Assessing a Set of Unrelated Transactions

In respect of the binding assessment of transfer pricing between related parties under Section 38nc of the Income Taxes Act, major changes include the approach to assessing a set of closely unrelated transactions with related

parties. Pursuant to the previously applicable guidance note, if the tax administrator had issued a negative ruling, the rejection of the application only related to the application itself, ie to all assessed transactions contained therein. Newly, the tax administrator will assess each transaction from among the set separately, independent of the others, with rulings issued on each transaction. These may be affirmative or negative regardless of the ruling on other transactions. The change in determining the administrative fee is also related to this update.

Assessing the Determination of the Tax Base in Respect of Permanent Establishments

With effect from 1 January 2018, Section 38nd of the Income Taxes Act also introduced a “binding assessment of the method of determining a tax non-resident’s tax base on activities performed through a permanent establishment”. Therefore, Guidance Note D – 32 specifies the methods for this type of binding assessment. In assessing the tax base for permanent establishments, the methods are similar to those in assessing transfer pricing. The primary basis are the tax non-resident’s accounting books (tax records), with the tax base customary for tax residents in a similar situation taken into consideration. In determining the tax base, Section 23 (11) of the Income Taxes Act and Article 7 of the respective Double Taxation Treaty are applied, as are the general principles stipulated by the 2010 OECD Report on the Attribution of Profits to Permanent Establishments.

The assessment application must always be filed by the tax non-resident that has formed or will form a permanent establishment in the Czech Republic. If the tax non-resident generates profit in the Czech Republic through multiple permanent establishments whose activities are unrelated, each of them is separately assessed. However, if the activities of permanent establishments are inextricably linked, only one application may be filed and the permanent establishments will be jointly assessed. However, the administrative fee is again charged in a corresponding amount.

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Effect of a new Czech and Korean double tax treaty

The new version of the double tax treaty between the Czech Republic and the Korean Republic is currently under discussion. The new double tax treaty shall replace the initial version of the treaty dating back to 1992 and substantially changes some areas. The new version provides a wider definition of a permanent establishment and changes the withholding tax rates on interest and dividends.

Service permanent establishment

The amended double tax treaty contains the definition of a service permanent establishment, which arises when services are performed on the territory of another contracting state for a period longer than nine months in any twelve-month period.

Taxation of passive income

Newly, the maximum tax rate of withholding tax on dividends shall be 5 percent for both legal and natural persons. According to existing rules, the dividends may be taxed at a 5 percent tax rate provided the recipient of the dividends holds at least a 25 percent capital share in the company distributing the dividends. The maximum tax rate of withholding tax on interest will be settled at 5 percent.

The withholding tax rate on royalties will stay unchanged, ie 10 percent. Zero percent withholding tax rate applies to any payments received as consideration for the use of, or the right to use, any copyright on literary, artistic or scientific work, including cinematograph films, films or tapes for television or radio broadcasting.

New rules for taxation of Capital Gains

A new paragraph (no. 4) of Article 13 *Capital Gains* introduces a provision for the taxation of gains derived by a resident of a contracting state from the alienation of shares or comparable interests. If more than 50 percent of their value is derived directly or indirectly from immovable property situated in the other contracting state, the gains may be taxed in that state.

Replacement of articles

Certain articles of the double tax treaty from 1992 were cancelled without replacement, ie Article 14 concerning the taxation of independent personal service or Article 21 concerning the taxation of the income of professors. The corresponding renumbering of articles was performed.

Additional option for elimination of double taxation

Another amendment concerns the elimination of double taxation. According to the new provisions, a Korean company shall be authorised to apply the offsetting method to the tax on dividends withheld by the Czech Republic. This benefit shall be available only if the recipient company holds a share of at least 25 percent in the share capital or voting rights.

New article in the treaty

A new Article 26 *Entitlement to Benefits* sets the rules for the revocation of benefits provided pursuant to the provisions of the double tax treaty if the relevant transaction was performed without any economic substance and with the only objective to obtain benefits.

The amended version of the Czech and Korean double tax treaty was concluded on 12 January 2018. The Senate of Parliament of the Czech Republic approved the ratification of the treaty on 17 October 2018. The negotiation about the treaty is on the schedule of the Chamber of Deputies of Parliament of the Czech Republic starting on 4 December 2018.

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A New Draft Act to Prevent the Double Taxation of Transactions with Taiwan

The Czech Republic has not concluded the standard international double tax treaty with Taiwan, as it has with the majority of other countries (as the Czech Republic does not acknowledge the territory of Taiwan as a state, it cannot conclude the contract).

In practice, this may have so far been to the detriment of Taiwan as a business partner as certain types of income generated by Czech firms and individuals coming from Taiwan had to be taxed in the Czech Republic regardless of whether the same transaction has already been taxed in Taiwan, and vice versa. As a result, several years of discussions have been held between the representatives of the two countries and, to prevent double taxation, the draft of a special act has been prepared, unilaterally introducing measures that typically form the content of international treaties. It is expected that Taiwan will introduce similar measures in respect of the Czech Republic.

The draft ensures the objective division of the right to collect income tax between the countries in situations where the source of the income is in one country and the recipient has residence in the other country. In practice, this includes, for example, income generated from construction, assembly and research activities, provision of technical advisory, use of patents, interest, equity investments etc. Furthermore, this also includes, for example, income from dependent activities, income of artists or athletes, and income from the use of copyright.

Based on the proposed legislation, double taxation will be eliminated in the Czech Republic through "simple credit". In practice, this means that Czech residents generating income in Taiwan will have tax calculated in the Czech Republic from total income reduced by tax paid in Taiwan; however, the maximum amount that may be deducted must be proportional to the Taiwanese partial tax base. Exemption may be applied to personal income from dependent activities performed in Taiwan, with the income exempt from taxation in the Czech Republic if it has already been taxed in Taiwan.

The basic principles of eliminating double taxation are set to be as follows:

- Personal and corporate income will be primarily taxed in the country of the person's tax residence. It will only be taxed in the other jurisdiction under the conditions expressly defined by the provisions of the act.

- Profit from the business activities based in one jurisdiction directly performed in the other jurisdiction through a permanent establishment may be subject to taxation in the other jurisdiction, with the draft act also taking into account “service permanent establishments” (if the activities performed in the territory of the given jurisdiction exceed 9 months in any 12-month period).

- Income from real estate and its use or rental may be taxed in the jurisdiction where the assets are located.

- Profit from the sale of shares or other equity investments whose value is directly or indirectly derived from more than 50% of real estate located in the other territory will be taxed by the source country (the “real estate clause”).

- In essence, it will be possible to tax dividends, interest and licence fees in both jurisdictions. If the recipient is a beneficial owner residing in the other country, the tax in the jurisdiction of the income’s source must not, under the rules of the given territory, exceed the following thresholds: •Dividends – 10% of the gross amount of dividends.

- Interest – 10% of the gross amount of interest. The rule does not apply to certain types of interest – eg, on loans for the acquisition of goods or equipment, and on loans guaranteed by governmental institutions (these are only taxed in the country of the interest recipient’s residence).

- Licence fees – 5% of the gross amount of licence fees for industrial, commercial or scientific equipment and 10% of the gross amount of other licence fees.

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The Court’s New View on the Utilisation of Clinical Studies as Part of the R&D Deduction

The Supreme Administrative Court (the “SAC”) has found against Vestra Clinics s.r.o. (the “Plaintiff”) in the matter of the possibility of utilising clinical studies as deductible items for research and development (“R&D”). Although the Court confirmed that clinical studies do meet the definition of R&D (as is, after all, indicated in Guidance Note D-288 and the Frascati Manual), the SAC ruled that the Plaintiff’s activities constitute the following of clearly defined instructions as prescribed by the clinical trial report, without

containing any elements of novelty or clarifying scientific uncertainty.

The Court identified the elements with the clinical trial ordering party – the producer of the pharmaceutical – rather than with the Plaintiff. The SAC concludes that the Plaintiff merely carried out a specialised service for the ordering party: it did not bear the economic risk of the tested pharmaceuticals' failure or affect the instructions, course or conclusions of the clinical trials and thereby did not meet the conditions for utilising the R&D tax deduction.

The Plaintiff, as a non-governmental health-care facility (a CRO), performed Phase-3 clinical studies, ie the systematic testing of pharmaceuticals on patients with the aim of demonstrating and verifying their curative effects and identifying any undesirable effects. In doing so, the Plaintiff is not an entity developing the pharmaceuticals: the ordering party (a pharmaceutical company) only makes use of its technical facilities and the high level of expertise of its employees (physicians) in order to carry out this development phase.

Following an analysis of the Pharmaceuticals Act, the SAC concluded that clinical studies are, generally by their very nature, activities that may be subordinated under R&D as they comprise the two defining traits of R&D – the existence of an element of novelty and clarification of scientific uncertainty. However, the SAC added that for the activities to be utilisable as part of the R&D deduction, the negative condition stipulated by the Act must also be fulfilled: ie, that the activities carried out in implementing the project must be performed by the payer itself rather than purchased as a service.

What the Frascati Manual and the Horizon 2020 Programme Say

According to the SAC, the actual research activity was performed by the ordering party (the pharmaceutical company), with the ordering party having developed the pharmaceutical, including the instructions according to which the testing phase was carried out by the Plaintiff. Therefore, as the Court ruled, the Plaintiff did not carry the increased level of business risk – it was borne by the ordering party. If the result of the clinical trial had been negative, the development of the pharmaceutical would not have proceeded to the next phase: ie, the pharmaceutical would not have been produced. According to the SAC, in this situation, the risk investment made by the clinical trial ordering party, rather than that of the Plaintiff, would have been marred.

The SAC thus refused to regard the clinical trial of a pharmaceutical performed by a CRO to constitute an independent R&D project whose input is a new active substance and the deliverable includes new findings on its actual effectiveness and safety. In its ruling, the SAC states that it regards clinical trials of pharmaceuticals to be eligible for a deduction only in relation to the development and subsequent commercial use of the pharmaceuticals as part of a single project. This is despite the fact that, globally, clinical studies are, as a rule, conducted by CROs (instead of pharmaceutical companies), which is also true of the Czech Republic.

Given this fact, it may be inferred that the authors of the Frascati Manual (the OECD's underlying document for identifying R&D activities) as well as,

say, the authors of the documents for the Horizon 2020 programme – the principal EU programme supporting R&D activities (where the documents expressly state that Phase 1-3 clinical studies meet the definition of R&D) based the documents on the fact that clinical studies are, as a rule, carried out by CROs rather than pharmaceutical companies themselves. It may also be inferred that in preparing Guidance Note D-288, lawmakers based their work on the Frascati Manual and, as a result, made it possible for Phase 1-3 clinical studies to be utilised in a deduction as they meet the definition of R&D (which, after all, the SAC confirms).

Considering countries that have included the R&D deduction in one form or another in their legislation, you will find that the legislation of many of the countries (eg, France) makes it explicitly possible to utilise specialised activities and costs incurred on Phase 1-3 clinical studies as part of the deduction. In view of the matters outlined above, it is evident that the lawmakers or authors of the documents were interested in supporting the activities and were aware that not all phases preceding the roll-out of a new pharmaceutical are typically performed by a single entity. Subsequently, it is not relevant which entity implements this phase of clinical studies and whether it is implemented independently or as part of a greater whole (eg, along with the development of the pharmaceutical).

Who Carries the Business Risk?

In the case in hand, the result is a situation where, on the one hand, it has been confirmed that clinical studies constitute R&D, but, on the other hand, an argument is put forward referring to the use of “risk capital” during the product’s development and its indivisibility from the whole being developed. However, it would be a mistake to assume that the Plaintiff did not carry the risk of a business failure. Its risk capital does not consist of the costs of bringing the development of the pharmaceutical into Phase 3, but, from its perspective, if it had selected inappropriate patients, carried out an erroneous analysis and made an incorrect expert assessment of the effects of the pharmaceutical administered by the physician, or selected and used inappropriate assessment methods, the investment would have been marred considering the costs incurred. At this point, it should be noted that while the Plaintiff’s business risk does not consist of the failure to roll out the pharmaceutical, it would be at risk of losing a contractual partner and its professional reputation on the market if it made an error during the clinical research into the pharmaceutical’s effectiveness and safety.

If the situation is misread, there is a risk of generalising the conclusions and applying them, say, to the automotive industry, whereby it could be asserted that if the payer only develops a certain component for a brand new engine, it does not bear the business risk of the failure of the entire item being developed (in this context, the engine). However, in business practice, it is entirely customary that multiple entities gradually participate in the development of a single whole, with by far not all of them bearing the business risk of achieving the target parameters. However, the situation described clearly shows how sophisticated the product or process being developed is. Distinguishing chains of development phases and assessing them from the business risk perspective could, in practice, result in the restriction of using the institutes of a deductible item by a whole series of firms performing undisputed R&D activities.

A Surprising Interpretation Given the Existing Legislation

In respect of the argument of acquiring the activities as a service, which is not, from the perspective of law, a tax deductible expense, it can also be objected that the interpretation is outside the boundaries of the existing legislation. By defining the impossibility of including a purchased service in R&D, the lawmakers had a completely different situation in mind: if the pharmaceutical company purchased the results of the Plaintiff's work, the purchase would not be tax-deductible on the pharmaceutical company's part. However, in this context, the Plaintiff did not purchase the service: it supplied it itself in the form of new expertly acquired findings which the ordering party ordered from it, as is customary in the industry.

Through this ruling, the SAC presented its view on the eligibility of R&D activities for a deduction, concluding that the Plaintiff lacked both the possibility of creatively affecting the instructions, course and assessment of the clinical trials, as well as the elements of novelty and business risk connected with testing a proprietary pharmaceutical.

The authors of this article believe that the ruling brings new insight into the definition of R&D activities eligible for a deduction which does not, however, decrease tax payers' legal uncertainty. With regard to utilisation, the results of Deloitte's latest survey indicate that uncertainty arising from ambiguous conditions of this aid constitutes the most significant barrier for almost 60% of businesses.

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Kosovo

Kosovo enacts protectionist customs duties on imports from Serbia and Bosnia and Herzegovina

The Government of Kosovo has enacted 100% customs duties on imports from Serbia and Bosnia and Herzegovina

On 21 of November, Kosovo's Government imposed a 100% Customs Tariffs on products from Bosnia and Serbia. Initially, the tariff was set at 10% but has been quickly raised to 100% due to rising trade tensions between the respective countries.

Furthermore, based on this decision, Kosovo Customs are obligated to prohibit the imports of products that do not contain a reference to the Republic of Kosovo and instead contain references such as "Kosovo Metohi", "Kosovo Unmik", "Kosovo 1244", "Kosovo Rezoluta 1244" also those which includes only the name of the city without the name of the Republic of Kosovo, or those that are against the Constitution of the Republic of Kosovo.

Nevertheless, the above customs duties do not apply for products from international manufacturers that are produced in Bosnia and Serbia.

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Lithuania

The Supreme Administrative Court of Lithuania allowed ministers to make mistakes

The Supreme Administrative Court of Lithuania delivered the judgment in a landmark case in which Deloitte Legal represented the defended – the ex-minister of the Interior.

The judges have established that the fact that administrative courts have amended and annulled an order regarding the imposition of professional liability on the head of the institution under the Ministry of the Interior, does not constitute a prerequisite for instant liability of the minister of the Interior.

Advocate, Partner-in-Charge of Deloitte Legal Lithuania Gintautas Bartkus notes that the judgment establishes the indicators of the presence or absence of guilt which in their substance resemble the standard of *bonus pater familias*.

The minister may not be guilty, if:

- the decision of the minister was related to the discretionary powers instead of an enforcement of unambiguous requirements of the law;
- the minister's orders were coordinated with lawyers and other specialists;
- the minister based the decision on conclusions and findings provided by other institutions and committees;
- the minister's actions were not *ultra vires*;
- the procedural requirements were not breached.

State Data Protection Inspectorate has prepared guidelines on the implementation of appropriate organizational and technical data security measures

State Data Protection Inspectorate has adopted guidelines which will not only help organizations to ensure compliance with the General Data Protection Regulation, but will also aid in preparing for the upcoming inspections by the State Data Protection Inspectorate. Regardless of the size of the organizations or the sector they operate in, it is expected that they will implement the minimum personal data security and privacy requirements set out in the guidelines.

Seimas will review the new draft legislation of the Law on Trade Marks

On November 6, the draft project of the Law on Trade Marks which implements the European Parliament and Council directive (EU) 2015/2436 of 16 December 2015, was submitted to Seimas for revision.

The new regulation on trademarks sets out these changes:

- It is no longer required to depict the trade mark graphically. After new legislation comes into force any form of trade mark will be eligible for registration as long as it is possible to clearly and precisely identify the subject matter of legal protection.
- Third parties may submit to the State Patent Bureau written observations, explaining on which grounds the trade mark should not be registered *ex officio*.

- Establishes grounds for registration of collective marks as well as certification marks.
- Establishes compulsory pre-litigation procedure in the State Patent Bureau.
- Lays down the rights of trade mark proprietors and restrictions to these rights, in relation to customs surveillance measures applied on the infringing goods, in particular in transit.

The Law on Trade Marks comes into force on January 1st, 2019.

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Poland

New VAT rates. Draft act published

The expected draft act on VAT rates has been published on the Governmental Legislation Centre website.

What is this all about?

The expected draft act on VAT rates has been published on the Governmental Legislation Centre website (<https://legislacja.rcl.gov.pl/projekt/12317902>). The draft act concerns amendments to the VAT Act and Tax Ordinance. The planned amendments involve introducing new tables determining which goods and services are to be taxed with 5% VAT or 8% VAT. Further, they provide for introduction of so-called binding rate information, thanks to which taxpayers will be certain that the VAT rates applied are correct.

What changes are projected?

From Polish Classification of Goods and Services (PKWiU) to Combined Nomenclature (CN)

The classification of goods for VAT purposes shall not be handled with PKWiU as before, but in principle, we will be used the Combined Nomenclature (CN). Thus, each time VAT regulations refer to statistical classification, the one arising from CN will be binding, as opposite to the current solution referring to PKWiU.

The above principle is limited to goods. Classification of services will continue to be based on PKWiU.

New VAT rates: goods

The amended Act shall replace certain appendices to the VAT Act with new ones. Appendix 3 and Appendix 10 are the most important ones to be replaced. This means new tables listing goods charged with 8% VAT (Appendix 3) and with 5% VAT (Appendix 10) will be introduced.

The new tables include less items than the old ones (the current Appendix 3 includes 105 items, while the new one only 17; the current Appendix 10 includes 35 items, while the new one 22), meaning that the new tables include much bigger groups to make the classification of goods for VAT purposes easier.

New VAT rates: services

The above tables include also changes regarding services. The amended Appendix 3 and 10 shall define services charged with 5% and 8% VAT, respectively.

Classification of most services shall follow PKWiU, with certain ones being classified in a descriptive manner (without reference to any PKWiU group).

The number of service items has increased (from 45 to 54 items in Appendix 3).

Binding rate information

Along with the new rate tables, the binding rate information shall be introduced (BRI), which is to help taxpayers make sure that the VAT rates applied to their goods or services are correct.

BRI shall be issued upon a motion of a taxpayer or a client, based on the Public Procurement Law. The motioner is to provide a detailed description of a commodity or service in order to receive a decision indicating its classification based on CN or PKWiU. A motion can be accompanied with documents regarding the commodity or service in question (photos, plans, workflows, catalogues, certificates, manuals, etc.).

A BRI issued for a taxpayer shall be binding for tax authorities with regard to the case. Additionally, BRI issued for other taxpayers (published in Biuletyn Informacji Publicznej) shall have a protective effect, similar to that of individual tax rulings.

A motion for BRI shall cost PLN 40. According the draft, a motioner will be obliged to pay a charge for research or analyses, if necessary. BRI shall be issued within three months and published in Biuletyn Informacji Publicznej to be available for other interested parties.

Changes regarding reverse charge and joint and several responsibility

The amendments assume a comprehensive transition from PKWiU to CN in terms of VAT on goods, which means the change will include not only the VAT rate tables, but also the scope of the reverse charge and of "sensitive" goods, to which the principle of joint and several buyer's responsibility is applicable. Consequently, the former Appendix 11 to the VAT Act (the reverse charge goods) and Appendix 13 (among others "sensitive" goods) shall be replaced by new ones, referring to CN instead of PKWiU.

What is the effective date of the amendments?

The Act shall come into force on 1 April 2019. As of that date, binding rate information can be motioned for.

On 1 April 2019, based on a special transition provision, the 5% rate shall be applied to selected goods and services, among others books, brochures, leaflets and similar materials, children books, printed musical notes and other printed materials, maps, atlases and publications issued in the electronic form.

The rates arising from the new tables shall be applied to goods and services performed beginning from **1 January 2020**.

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Mandatory reporting of tax-planning schemes. Change of Polish tax law provisions

The amendment to Polish tax provisions adopted by Polish Parliament on 26 October 2018 introduces into the Polish Tax Ordinance Act mandatory reporting of so-called tax-planning schemes (Mandatory Disclosure Rules – MDR). The amendment imposes new obligations not only on advisors (attorneys-at-law, legal counsels, tax advisors), but also on their clients.

The amended provisions are to enter into force on 1 January 2019, but tax-planning schemes will have to be disclosed retroactively if the first activity related to implementation of the given scheme was performed after 25 June 2018 (cross-border schemes) or after 1 November 2018 (domestic schemes).

What is subject to mandatory disclosure?

Mandatory disclosure concerns tax-planning schemes which have or may have an impact on tax liability and which at the same time meet criteria indicated in the amended provisions - different for cross-border schemes (of which mandatory disclosure results from the EU DAC6 Directive) and for domestic schemes (not covered by the Directive). In case of domestic schemes, obligation to report will cover schemes irrespectively of taxes they concern (among others, will cover schemes referring to CIT, PIT or VAT).

Subject to reporting will be a wide scope of information concerning the scheme, i.a. its detailed description, applied tax law provisions as well as the expected value of tax benefit. Disclosed schemes will be assigned a so-called NSP - number of the tax-planning scheme.

In which cases will domestic schemes be subject to mandatory disclosure?

Domestic schemes will be subject to mandatory disclosure if the beneficiary of the scheme will be a qualified entity (revenues, costs or assets of the beneficiary or of its related party exceed EUR 10m, or the scheme concerns items or rights of market value exceeding EUR 2.5m), and at the same time:

1. the main or one of the main benefits that the beneficiary expects to derive from the scheme is a tax advantage (understood very broadly - generally as any reduction in tax liability or postponement in its creation), and additionally the scheme fulfills criteria of at least one of the so-called "generic hallmarks" (broad and imprecise set of features, including i.a. situations when documentation and/or structure of the activities does not need to be substantially customized for implementation depending on the beneficiary, there is an undertaking to comply with a condition of confidentiality as concerns the way in which the scheme can secure a tax advantage, schemes where the intermediary is entitled to receive a success fee, etc.), or

2. regardless of what is the main benefit of the scheme (tax or non-tax-related) - if it meets at least one of numerous other criteria - for example:

(i) has an impact on deferred part of income tax or on deferred tax assets or provisions which is materially relevant to the entity from accounting perspective and this impact exceeds PLN 5m per year,

(ii) concerns non-withholding of tax in the amount exceeding PLN 5m per year, which withholding tax would have been levied if double taxation treaty or tax exemption would not be applied.

When will cross-border schemes be subject to mandatory disclosure?

Cross-border schemes will be subject to mandatory disclosure, regardless of whether the beneficiary is a qualified entity, in a situation when:

1. the main or one of the main benefits that the beneficiary expects to derive from the scheme is a tax advantage (understood analogously as in case of domestic schemes) and additionally the scheme fulfills criteria of at least one of the so called "generic hallmarks" (the set of these conditions is to some extent narrower than with respect to domestic schemes), or

2. regardless of what is the main benefit of the scheme - if it meets at least one of numerous different criteria listed in the amendment, for example:

a) the scheme involves tax-deductible cross-border payments to related entities located in tax havens,

b) the same income or property benefits from method of elimination of double taxation in more than one state,

c) there is a non-transparent structure of legal ownership or it is difficult to determine the beneficial owner,

d) the scheme involves a transfer of "hard-to-value intangibles".

Who will be obliged to report?

Mandatory disclosure obligation will as a rule burden the intermediary (understood as each person which develops, offers, makes available, implements or manages the implementation of the arrangement – in particular a tax advisor, legal counsel or attorney-at-law), and in specific situations the beneficiary (the person to whom the scheme is made available, who is prepared for its implementation or performed an activity related to implementation of the scheme). In addition to the above, in a situation when the scheme will not be reported neither by the intermediary nor by the beneficiary, the mandatory disclosure may additionally burden a so-called supporting entity (a broad definition including i.a. each person who has undertaken to provide assistance, support or advice regarding development or implementation of the scheme - for example a notary public).

Mandatory disclosure rules are different for the so-called standardized schemes (repetitive, possible to be implemented or made available to more than one beneficiary without the need to change essential assumptions of the scheme) and for non-standardized schemes.

What obligations will be imposed on beneficiaries?

The beneficiary will be obliged to report the scheme when:

1. the given scheme is subject to disclosure, and the beneficiary has not been informed by the intermediary that the scheme has already been reported (as described in justification to the discussed amendment – e.g. in cases when the beneficiary has developed and implements the arrangement on his own and does not cooperate with any intermediary);
2. with respect to non-standardized schemes, if the beneficiary will be informed that the intermediary will not disclose this scheme (as it would violate the professional secrecy obligation binding the intermediary, from which the beneficiary did not release it) - in such case, the intermediary shall provide the beneficiary with specific data that is subject to mandatory disclosure.

In the above situations, the beneficiary will report within 30 days from the day following the day in which the scheme will be made available, from the day following the day of preparation for implementation of the scheme or from the day of performing the first activity related to implementation of the scheme - depending on which of these events occurs first. Making available of the scheme is understood very broadly and includes i.a. providing the beneficiary with information about the arrangement in any form, including by e-mail, phone or in person.

Regardless of the obligation to report (which will usually burden the intermediary), in each situation when the beneficiary will apply a scheme, it will be obliged to provide the Chief of National Fiscal Administration with so-called information on application of the tax-planning scheme, within the deadline for filing the tax return concerning the settlement period in which the beneficiary performed any activities that are part of the scheme or obtained a tax benefit resulting therefrom. The disclosed information will include i.a. the NSP of the scheme and the amount of the tax benefit resulting from the scheme, obtained in the given settlement period. Therefore, each application of a tax-planning scheme will be compulsorily disclosed by the beneficiary to the fiscal administration.

The abovementioned information will be submitted under penalty sanction for perjury for making a false statement and will be signed by a taxpayer being a natural person, and in the case of taxpayers being legal persons - by all members of the taxpayer's managing body.

What are the sanctions for non-reporting?

The amendment foresees fines for failing to fulfill obligations related to reporting of the tax-planning schemes. The court may also order, in such cases, a penal measure of prohibition to perform specific business activity.

In the case of intermediaries, entities that employ intermediaries or that actually remunerate intermediaries, the revenues or costs of which exceeded in the previous financial year PLN 8m, the provisions impose an obligation to implement a so-called internal procedure determining the rules of conduct in the field of reporting. The amendment also introduces fines up to PLN 2m (in specific situations – up to PLN 10m) in case of non-implementation of internal procedure by obliged entities.

It should be noted that taking into account the broad definition included in the amendment, entities obliged to implement internal procedure will include

not only tax advisors, legal counsels or attorneys-at-law, but in specific cases also other entities (i.a. banks or financial institutions, but also companies having internal tax departments).

When will the reporting obligation come into force?

The relevant provisions are to enter into force on 1 January 2019, whereas the reporting obligation will be partly retroactive – obligation to report will also cover schemes with regards to which the first activity related to their implementation was performed:

1. in the case of domestic schemes – after 1 November 2018,
2. in the case of cross-border schemes – after 25 June 2018.

Information about retroactively disclosed schemes will have to be reported by the end of June 2019 (if the disclosing entity will be the intermediary) or by the end of September 2019 (if the disclosing entity will be the beneficiary).

Can services be “paid for” with personal data? Analysis by EDPS

Social digitalization enforcing new business models based on the processing of personal data, made available by consumers in exchange for digital contents or services, provides substantial challenges, not only with regard to consumer rights, but also their privacy. EU bodies see the need to revise the current regulations and fill gaps in the existing consumer rights protection system. Therefore, intense works are being carried out to prepare “A New Deal for Customers” legal package.

Referring to the current discussion on consumer-related regulations, European Data Protection Supervisor (EDPS) issued Opinion 8/2018 addressing amendments to Directive 2011/83/EU on consumer rights, among others in relation to the proposed approach to personal data monetization. Importantly, the key assumption of the presented opinion is the need to sufficiently protect consumer rights and to prevent dishonest market practices through ensuring compatibility of regulations protecting consumer rights with those regarding personal data protection.

The amendment assumes extending the scope of the Directive by new classes of contracts, i.e. “contracts for the supply of digital content which is not supplied on tangible medium” and those regarding provision of digital services not only for cash consideration, but also “where the consumer provides or undertakes to provide personal data to the trader”. Therefore, under the Directive, consumers disclosing their personal data in exchange for digital services are to be provided the same protection as those paying cash.

According to the European Commission, in light of the growing value of personal data for entrepreneurs, such services as ability to store the data in cloud or use social media cannot be treated as free of charge. Consumers should have the same right of being informed or withdrawing from the contract, regardless of the form of payment required (in cash or in personal data). Further, EDPS has indicated that presentation of services whose provision requires disclosure of personal data as free of charge is misleading, as it ignores actual consequences on the side of consumers as

a result of providing their personal data and distorts the decision making process, thus adversely affecting both consumers and competitors.

EDPS points out that although personal data are frequently treated as a commodity (and therefore monetized), EU legislation should not consider them only as a form of “payment”, since the proposed legislative approach may reduce their role to a means of exchange, thereby ignoring their key importance for the protection of person’s fundamental rights. Personal data protection is the key component of the right to privacy. At the same time, definitions included in the draft amendments and treating personal data as “currency” are misguided, turning the attention away from their true nature.

As far as protection of data owned by parties to contracts on provision of so-called “free services” is concerned, EDPS stresses the necessity to comply with GDPR. Possible fraud related to the treatment of personal data as a currency is another important issue EDPS has addressed. There is a risk of misinterpreting GDPR, among others assuming that the necessary legal basis to process consumer data is provided if a contract on provision of digital services is performed. Actually, the data can be processed only upon data owner’s consent. Consequently, EDPS indicates the need to enable consumers to execute their rights arising from GDPR and thus determines the relation between consumer rights and the data protection right. Data controller is obliged to allow data owner’s withdrawal of the consent to process their data at any time. Also, the provisions of the consumer law cannot be interpreted in a manner limiting the rights of data subjects, indicating the fact that a 14-day period allowing withdrawal from a contract should not limit their right to withdraw the consent for their personal data protection at any time.

The Opinion points out that consumers are data subjects whose position is threatened if control over their own data is limited by actions performed by stronger entities. Moreover, as stressed by EDPS, personal data protection is guaranteed both by GDPR and by the Charter of Fundamental Rights and Treaty on the Functioning of the European Union.

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Key amendments to the waste law in 2018

Awareness regarding environmental obligations of business becomes increasingly important. New competencies of Inspectorate of Environmental Protection and high fines for non-compliance with environmental regulations provide additional incentives to undertake necessary measures.

Additional obligations of waste collecting and processing entities

In September 2018, an important amendment to the Act on Waste of 14 December 2012 came into effect (the act amending the Act on Waste and certain other acts of 20 July 2018; Journal of Laws of 2018, item 1592).

Amendments to the waste law affect mostly entities whose business activities require a waste collection or processing permit.

In such cases, waste management may take place **only on sites owned, used under perpetual usufruct or leased by the waste holder**. Both in case of use and lease, a notarized deed is required. Additionally, such sites **should be included in a local zoning or land development plan**.

Permits for waste collection and processing shall be issued only to entities not previously fined for certain offences, including for an environmental offence, and with regard to whom no decision cancelling such permit was issued over last ten years (the restrictions include also shareholders and management board members of waste management entities).

One of the crucial changes involves **obliging the waste holder** who must obtain a waste collection or processing permit **to provide financial collateral to cover possible costs of removing the waste from locations not intended for such purposes and costs of fulfilling a replacement obligation of removing waste and redressing adverse effects of business operation and environmental damage should a permit be canceled**. The collateral amount shall be calculated as **the maximum total mass of all kinds of waste to be kept at the same time in a collection site, expressed in Mg, multiplied by a rate for 1 Mg of the waste (pursuant to the draft regulation, the rates shall range from PLN 100 for neutral waste to PLN 600 for hazardous waste)**.

This article discusses only selected aspects of the amendments. The amending act introduces a series of other restrictions and obligations regarding waste managers, such as the obligation to implement a visual control system in the waste collection site and additional important duties regarding fire prevention.

The amending act includes detailed transitional provisions. The key one obliges the current holders of waste collection or processing permits, waste generation permits for collection or processing and holders of integrated permits to file motions for their update to comply with the new regulations within one year of the amending act effective date, i.e by 5 September 2019.

Entities carrying out operations without the required waste collection permits or non-complying with permit terms may be fined with an amount of PLN 1,000,000. Twice as much may be charged for a recurring offence.

New register of waste holders

In 2018, a new register of waste holders was established, divided into first marketers of products, first marketers of products in packaging and waste managers (henceforth the “**register**”). The centralized register is maintained by Province Marshalls and publicly available at <https://bdo.mos.gov.pl/web/>. The register includes businesses whose operations generate waste, including first marketers of cars, electronic and electric appliances, batteries, lubricant oils, pneumatic tyres, packaging or packaged products. The obligation to register may apply to importers, entities purchasing goods in intra-Community transactions and waste transporters.

The above activities do not need to be performed on a continuous basis or as a core business to give rise to the registration obligation. A **one-off promotion campaign involving giving out products with batteries, or purchase of products in outer packages for further distribution may be sufficient to oblige an entity to register.**

Based on our practice, lack of precision in environmental obligations often gives rise to uncertainty regarding the obligation to register. Sometimes a through analysis of a factual status solves the problem. Otherwise, we recommend requesting a binding ruling from a competent body. It is important to carry out evaluation on case-by-case basis, since **according to new regulations, carrying out business operations without being registered is punishable with a fine of up to PLN 1,000,000.**

Apart of the register entry, carrying out business operations that generate waste results in other obligations, such as ensuring recycling of the marketed waste. Failure to fulfil the obligation results in payment of so-called product fee, which may be charged in arrears for several years.

New competencies of Inspectorate of Environmental Protection and high fines for non-compliance with environmental regulations

In September 2018, a number of amendments to the Act on Inspectorate of Environmental Protection (the act amending the Act on Inspectorate of Environmental Protection and certain other acts of 20 July 2018, Journal of Laws of 2018, item 1479) came into effect. Along with new, toughened environmental regulations, **competencies of the Inspectorate of Environmental Protection have increased.** It is empowered to carry out both planned and non-planned inspections, e.g. if pollution is suspected. Drones can be used for inspection purposes. **Non-planned inspections may be carried out around the clock, also without a prior notice.** Those who hinder such procedures are subject to a fine of up to PLN 100,000. During an inspection, Provincial Inspector of Environmental Protection **may issue a decision suspending business operations** that put at risk human health or life, or pose environmental hazard.

Along with the amendments extending the empowerment of the Inspectorate, additional fines for a breach of statutory obligations have been introduced to several environmental acts, or the existing fines have been increased.

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Romania

CJEU decision on annual leave. Impact over domestic regulations

Court of Justice of the European Union (“CJEU”) ruled that, in certain conditions, the right to annual leave may be lost if the employee refuses without justification to exercise this right.

On 6 November 2018, the Court of Justice of the European Union (“**CJEU**”) rendered decision c-684/16, on the interpretation of art. 7 of Directive 2003/88/EC concerning certain aspects of the organisation of working time and of Article 31 Para. (2) of the Charter of Fundamental Rights of the European Union, regarding the annual leave.

The dispute in the main proceedings and the questions referred for a preliminary ruling

The dispute in the main proceeding was triggered by the fact that a German employer, Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV, refused to grant one of its workers, upon termination of employment, a financial compensation for the untaken leave days. The employer’s refusal was based on the German legislation pursuant to which the annual leave must be granted in the course of the calendar year when it is accrued – the possibility of carrying forward the annual leave in the following year being permitted only in the event of compelling operational grounds or for personal reasons pertaining to the employee.

Given the above context, the Federal Labour Court decided to stay the proceedings and refer to the CJEU the following questions for a preliminary ruling:

1. Whether EU law precludes national legislation from providing that the entitlement to an allowance paid in lieu of annual leave upon termination of employment lapses in cases where (i) the worker did not request to benefit from annual leave during a certain reference period and (ii) domestic regulation does not require an employer to specify unilaterally and with binding effect for the employee, when that leave has to be taken by the employee within the reference period.
2. If the first question is answered in the affirmative, is the domestic court required to disapply the national legislation in breach of EU law, even in disputes between private persons.

Grounds and CJEU ruling

a. With respect to the annual leave

CJEU ruled that if:

- The employer is able to prove that it enabled workers to exercise their right to paid annual leave in a concrete and transparent manner and
- The worker refuses to take annual leave voluntarily, being aware of all the consequences arising thereof;

EU law does not preclude national legislation from providing the loss of annual leave or payment of an allowance in lieu of untaken paid annual leave at the end of the employment relationship.

Moreover, CJEU detailed the conditions that need to be met for the right to annual leave/payment of an allowance in lieu of untaken paid annual leave to lapse, namely:

- The employer to enable the worker, in a concrete and transparent manner, to take annual leave;
- To this end, the employer must provide the worker with specific information in good time with regard to his right to benefit from annual leave, to ensure that the purpose of the annual leave is attained (i.e.: enable the worker to rest).

Notwithstanding the above, CJEU reminded that, according to its consistent case law (which remains applicable hereinafter), the right to paid annual leave must be regarded as a particularly important principle of EU social law, the implementation of which by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88 itself.

Consequently, a practice that would allow the lapse of the right to annual leave without the worker having been provided with the possibility to actually exercise it, would undermine its very substance and, as such, is prohibited.

- b. With respect to the domestic court's obligation to disapply the national legislation in breach of EU law

CJEU ruled that in the event that it is impossible to interpret national legislation in a manner consistent with EU law, the national court hearing a dispute between private persons is required to disapply the national legislation.

In this framework, we mention that the above cited CJEU ruling was based on the fact that the right to annual leave is enshrined under the Charter of Fundamental Rights, primary source of law, which contains a clear, unconditional and sufficiently precise provisions and, thus, can have direct effect.

The impact of the CJEU ruling over national legislation

Art. 146 Para (1) of the Labor Code, as amended and supplemented, enshrines the rule pursuant to which the annual leave must be taken every year.

By way of exception, Para (2) of the same article provides that in the event the employee, for justified reasons, cannot take the annual leave during the year in which it was accrued, the employer is under the obligation to grant the employee the untaken leave days, with his consent, in a reference period of 18 months, calculated from the start of the year following the one in which the right to annual leave was accrued.

In light of the above cited CJEU case law, it is necessary to determine whether art. 146 of the Labor Code may be construed in the sense that the right to annual leave lapses at the end of the calendar year during which it was

accrued provided the employer guaranteed the employee the right to perform the annual leave (e.g.: specific and timely information, notification with regard to the number of untaken leave days) and the employee refuses to benefit from annual leave without having any objective justification.

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Amendments made to the immigration law concerning the right to stay and work in Romania for non-EU/EEA/Swiss citizens

Law no. 247/2018 for modifying and completing some normative acts regarding the regime of foreigners in Romania was published on November 7, 2018. The changes are in force starting November 2018 and cover the conditions to acquire residency and to work in Romania.

The main purpose of the law is to transpose the EC 2016/801 Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, for which Romania had as implementation deadline the year 2018.

Through the implementation of the Directive, new categories of foreigners are defined and regulated:

- Trainee – for the purpose of gaining new knowledge in a professional environment as per the training agreement
- Researcher – for the purpose of research and development in a scientific project approved by the Ministry of Research and Innovation
- Au pairs– for the purpose of carrying out light domestic work and childcare activities for a temporary period for a host family

The minimum salary threshold for foreign citizens working in Romania is reduced from the national average the case of highly skilled workers, the minimum salary threshold is reduced from four to two gross average salaries.

Other changes brought by the Law no. 247/2018:

- The liability of the host entities having legal agreements with foreign citizens to notify the immigration authorities
- The Governmental fees for issuing the work permits for employment/ assignment purposes are reduced by half
- The general conditions regarding the cancellation and revocation of the right to stay in Romania for foreigners admitted to Romania who are exempt from obtaining a visa are being clarified

- New contraventions are introduced, regarding the prevention of employees of the General Inspectorate for Immigration from exercising control at employers' headquarters or not making available requested documents.

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Reauthorization of the temporary storage and customs warehouse require a customs global guarantee

In order to obtain reauthorization, the economic operators holding authorizations for temporary storage or customs warehousing will also have to obtain an authorization for using a global guarantee. The deadline for reauthorization is the 1st of May, 2019.

According to a notification issued by the General Customs Directorate, granting an authorization for operating temporary storage perimeters, as well as a customs warehouse authorization, including their re-evaluation, cannot take place unless an authorization for using a global guarantee is obtained.

The authorization for using the global guarantee is intended to cover the amount of import taxes concerning the customs debt and of other taxes related to the goods import, regarding two/more operations, declarations or customs regimes, except the Union/common transit regime.

The economic operators can obtain this authorization by request, using the Central System of Customs Decisions, developed within the EU level. The time limit for obtaining it is of 120 days starting with the day of the application request.

If you currently hold an authorization for using the temporary storage regime or customs warehouse regime, the time limit for reauthorization is the 1st of May, 2019. In order gross salary to the national minimum gross salary. In

to obtain the reauthorization, you will also have to apply for an authorization for using a global guarantee. We encourage you to consider in advance the implications of these changes on your activity and to make sure that you have obtained the necessary authorizations in time.

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Slovakia

Information on the Deduction of R&D Expenses (Costs) under the Income Tax Act from 1 January 2018

The Financial Directorate of the Slovak Republic published information on the deduction of R&D expenses (costs), which contains definitions of terms related to R&D and illustrative examples.

The information contains definitions of terms related to R&D and examples. An additional deduction may be applied by a taxpayer who:

- Carries out an R&D project;
- Does not apply the tax relief in the taxation period under Article 30b of the ITA;
- Does not carry out an R&D project as a holder of a certificate of competence to carry out an R&D project for the purposes of selling intangible outputs of R&D; and
- Is not a holder of a certificate of competence to carry out R&D and carries out a project for its own needs, or for the purposes of selling intangible outputs of R&D, or if it carries out the project as contract R&D as an intragroup service.

The list of taxpayers that have been granted the certificate is available at the Central Information Portal for Research, Development and Innovation www.vedatechnika.sk.

The R&D expenses (costs) from 1 January 2018 eligible for the additional deduction are:

- 100% of expenses (costs) incurred for R&D in the taxation period for which a tax return is filed; and
- Expenses amounting to 100% of the positive difference between the average total expenses (costs) incurred in the taxation period for R&D included in the deduction and the total expenses (costs) incurred in the immediately-preceding taxation for R&D included in the deduction and the two immediately-preceding taxation periods for R&D included in the deduction.

With effect from 1 January 2018, an increase in R&D expenses (costs) may be deducted as a year-on-year increase using average expenses (costs) that take into account the two immediately-preceding taxation periods (the 2017 and 2016 taxation period for 2018), unlike the legal situation until 31 December 2017, when this increase could only be determined in two consecutive taxation periods (eg 2016 for 2017). The general formula for year-on-year deduction of R&D expenses under Article 30c (2) of the Income Tax Act effective from 1 January 2018 is:

Deduction of expenses = [(R&D expenses for the current taxation period + R&D expenses for the preceding taxation period) / 2] - [(R&D expenses for the 1st preceding taxation period + R&D expenses for the 2nd preceding taxation period) / 2].

The additional deduction cannot be applied to R&D expenses (costs) for which full or partial support from public funds was granted and to services, licences other than software licences used directly to carry out an R&D project and intangible R&D outputs acquired from other persons, except for expenses on:

- Services related to the implementation of an R&D project and intangible outputs of R&D acquired from the Slovak Academy of Sciences or legal entities performing R&D established by central state administration authorities, public and state universities;
- Intangible R&D outputs acquired from persons who have been granted a certificate of competence to carry out R&D;
- Certification of own R&D outputs produced by the taxpayer; and
- Expenses (costs) for administrative, financial, legal and personnel activities, entertainment, security services, cleaning, training, market research, information collection and processing, standard SW development, activities of innovative nature that do not include a valuable element of innovation etc.

If there is a change in an R&D project as regards the application of a deduction of R&D expenses (costs), it is necessary to distinguish whether there has been a change in the project's conditions, or whether a new project has been begun, ie whether the main project objective has changed:

- If the main objective of the project has not changed, an amendment to the original project must be prepared;
- If the taxpayer has changed the main project objective, such a project will be considered a new project, for which the entire project documentation must be prepared.

The full wording of the information can be found on this link:

https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Zverejnovanie_dok/Aktualne/DP/2018.10.16_ulava_dan.pdf

Methodological Instruction on the Application of a Tax Bonus for Interest Paid on Housing Loans

The Financial Directorate of the Slovak Republic published a methodological instruction on the application of a tax bonus for interest paid on mortgage loans, which may be applied for the first time in the 2018 taxation period.

The Financial Directorate of the Slovak Republic published an instruction on the application of a new tax bonus for interest paid on housing loans, which may be applied by taxpayers for the first time for the 2018 taxation period. The tax bonus applies to interest paid on loans concluded after 31 December 2017. In addition to the legislative framework, which regulates the tax bonus in Article 33a of Act No. 595/2003 Coll. on Income Tax, as amended, it also contains specifications for the individual conditions of the entitlement, such as the taxpayer's age and average monthly income:

The taxpayer must be at least 18 years old and not more than 35 years old on the date of filing the loan application; and

The taxpayer's average monthly income, calculated from their taxable income included in the tax base and partial tax base for the calendar year preceding the calendar year in which the loan agreement was concluded, amounts to a maximum of 1.3 times the average monthly salary determined by the Statistical Office in the year for which the taxpayer's average monthly income is determined. This condition is assessed only once – at the moment of conclusion of the loan agreement, which is then deemed to be met over the next 5 years.

The methodological instruction also regulates the conditions for the application of the tax bonus for co-debtors, stating that for multiple co-debtors, the age condition must be met by all of them and the average monthly income must be measured as a multiple of the number of co-debtors and the basic value of the application limit, ie 1.3 times the average monthly salary in the economy for the calendar year preceding the calendar year in which the loan agreement was concluded.

A taxpayer who is a debtor in one loan relationship and a co-debtor in another loan contract for which another debtor applies a tax bonus, is not entitled to claim a tax bonus.

The tax bonus may be applied over five consecutive years, starting with the month in which the loan interest started to accrue. In this calendar year, the taxpayer will apply the pro-rata portion of the tax bonus based on the number of months in which the loan accrues interest and the same procedure applies in the last year of the entitlement to claim the bonus. The tax bonus amounts to 50% of interest paid in the relevant taxation period up to EUR 400 per year. If the interest accrues only in several months in the taxation period, the application limit will be reduced on a pro-rata basis depending on the number of months.

A taxpayer may claim the tax bonus after the end of the taxation period with an employer that is a taxpayer, or via a tax return. The entitlement must be formally documented by a confirmation issued by a bank upon request, which must be submitted by the taxpayer to their employer by 15 February of the year following the taxation period for which the taxpayer wishes to apply a tax bonus, or it must be attached to a tax return. A template of the confirmation is included in the methodological instruction.

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New Draft Guideline on the Determination of the Contents of Transfer Pricing Documentation

The Ministry of Finance of the Slovak Republic issued a first draft of a new guideline on the determination of the contents of documentation pursuant to Article 18 (1) of Act No. 595/2003 Coll. on Income Tax, as amended.

The Ministry of Finance of the Slovak Republic issued a first draft of a new guideline on the determination of the contents of documentation pursuant to Article 18 (1) of Act No. 595/2003 Coll. on Income Tax, as amended. The deadline for submitting comments on this draft guideline was 9 November

2018. The new draft guideline includes, inter alia, the following changes compared to the effective guideline:

- The content of the simplified documentation is standardised in a form; and
- A benchmarking analysis obligation is introduced for a wider range of companies, depending, inter alia, on the value of the transaction (the draft proposes EUR 10 000 000 per transaction/group of transactions).

It is proposed that the first application of the guideline will be when submitting the documentation for the taxation period beginning after 31 December 2017. We will keep you informed about developments in this area in subsequent editions of Tax and Legal News.

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Insurance Tax as a New Form of Indirect Tax in Slovakia

From 1 January 2019, the Slovak Republic will introduce an insurance tax on non-life insurance if the insured risk is located in Slovakia. The insurance tax rate is 8%. Taxable persons are primarily insurance companies, but in special cases, an entity other than an insurance company may also be a payer of this tax.

From 1 January 2019, the Slovak Republic will introduce a new form of indirect tax: insurance tax. The insurance tax will apply to non-life insurance.

The insurance tax applies to non-life insurance if the insured risk is located in Slovakia. The insurance tax will apply to paid insurance premium for the insurance period starting after 31 December 2018, irrespective of the insurance contract date. The current special levy of a portion of insurance premium for non-life insurance will continue to apply to insurance contracts concluded after 31 December 2016 if the insurance period started before 1 January 2019.

The payers of insurance tax will mainly be legal entities that do business in the insurance sector, ie insurance companies with their registered office in the Slovak Republic, insurance companies from other EU Member States or the EEA, and branches of foreign insurance companies from third countries. Insurance provided by a foreign insurance company from a third country which provided insurance with the insured risk located in Slovakia without establishing a branch will be taxed in a special way. **A foreign insurance company** means an insurance company with its registered office outside the EU or EEA. To ensure efficient tax collection in such cases, a person other than the insurance company is liable to pay tax, namely:

- A policyholder who paid an insurance premium to a foreign insurance company that has no branch in the Slovak Republic.
- A legal entity to whom insurance costs are charged, while the insurance was concluded with a foreign insurance company without a branch in the Slovak Republic. For example, group insurance where the parent company concludes insurance with a foreign

insurance company for the whole group and then allocates the costs to individual group companies.

The taxation period is a calendar quarter and the tax is payable by the end of the calendar month following the end of the taxation period. The tax return must be filed electronically.

The insurance tax rate is 8%. The zero tax rate is applied to motor third party liability insurance, which is subject to a separate levy.

The Tax Insurance Act allows a taxpayer to decide which day will be considered the **origin date of the tax liability**. The method chosen must be used for at least eight consecutive calendar quarters.

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Slovenia

VAT Act amendments adopted

Slovenian Parliament adopted amendments to the VAT Act, which shall enter into force on 1 January 2019.

The amendments to the VAT Act include:

- implementation of provisions of Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers;
- implementation of provisions of Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, namely in the provision of telecommunications services, broadcasting services and electronically supplied services to non-taxable persons.
- abolishment of the statement on the choice of taxation for real estate transactions and the notification of the choice for the taxation of investment gold.
- changes regarding the determination of pro-rata percentage.

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CIT Act amendments adopted

In order to transpose certain provisions of Council Directive (EU) 2016/1164 of 12 July 2016 into national legislation Slovenian Parliament adopted amendments to the CIT Act as well.

Slovenian Parliament adopted amendments to the CIT Act, which include implementation of certain provisions of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. The amendments include implementation of general anti-abuse rule and controlled foreign company rules and shall enter into force on 1 January 2019.

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