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CE Tax&Legal Highlights
December 2017

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Croatia

Amendments to the Personal Income Tax Regulations

The amended Personal Income Tax Regulations are in place from 1 January 2018 and provide certain tax relief measures. Significant measures are outlined below.

Daily allowance and other non-taxable receipts, benefit in kind

- New provisions on daily allowances and field work daily allowances
  - The new provisions state that breakfast included in the accommodation cost is considered part of the accommodation cost, and not a meal that decreases the amount of the non-taxable per diem for business trips. However, meals included in the price of the following events or items will decrease the amount of the non-taxable business trip daily allowance
    - seminars, professional consultations and similar events
    - boat trips
    - airline tickets provided due to a trip interruption
    - entertainment expenses of the employer
  - The prescribed decrease of a daily allowance now extends to the field work daily allowance, which was previously not the case.
  - If an airline is used for business trips abroad, the timing of the business trip for daily allowance assessment purposes is no longer calculated from the time of the airplane departure but from 2 hours before the anticipated airplane departure until the time of airplane arrival to the first airport within Croatia. This means business trips including flights will now last longer for daily allowance assessment purposes.
  - Water and other non-alcoholic drinks provided by an employer to its employees during the working hours free of charge are not considered a taxable benefit in kind. Previously, only water was a non-taxable benefit in kind.
  - The annual non-taxable benefit in kind amount is increased from HRK 400 to HRK 600.
  - Transportation costs relating to education of an employee relevant for the employer's business are not considered a taxable benefit in kind up to a certain level.
- Certain exemptions now apply to the minimum 3% interest rate on loans to employees.
- Accommodation and food employers provide to employees that have a fixed term seasonal employment agreement and perform their work in a location which is not their location of residence or habitual abode is no longer considered employment income. The costs of accommodation and food must be invoiced to the employer and cannot be settled in cash for this exemption to apply.

Business with non-residents and assigned workers/expatriates

- The RPO form applicable to taxpayers receiving income from abroad can now be filed by the employer and not only by the taxpayer.
- When the statement on suspension of personal income tax payments in Croatia is file with the Tax Authorities due to the advance payments being paid abroad, it will be deemed that the income received from abroad is registered with the Tax Authorities. In other words, in these cases no obligation to file the RPO form exists. This provision is aimed at decreasing the administrative burden of taxpayers.
- Provisions relating to the form "Application of tax relief, tax exemption of tax refund" and the tax residence certificate have been amended. The Application form/tax residence certificate are now valid for 12 months from the date of issue, whereas according to the superseded provisions these documents should not have been more than 30 days old.
- A refund of overpaid tax to non-resident individuals employed by a Croatian employer is no longer performed according to the tax assessment issued by the Tax Authorities but by amending the monthly reporting forms (JOPPD) by the Croatian employer.
- The amended Regulations prescribe additional provisions, which regulate how the INO-DOH form is amended.

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Hungary

The government decree on the development tax incentive has been amended

We would like to draw your attention to the fact that on 13 December 2017 the amended government decree No. 165/2014. (VII. 17.) on the development tax incentive (Government Decree) was published, which includes several important modifications partly due to compliance with the EU regulations.

According to the modifications, as of 14 December and 1 January 2018:

- In line with the 2017 November amendments of Act LXXXI of 1996 on Corporate Tax and Dividend Tax (CIT Act), the rules to facilitate product diversification of large companies in the Central Hungarian region and new procedural innovation are introduced by the Government Decree.
- The calculation of grant content is simplified.
- The options of withdrawing the application of tax incentives and the decrease of the incentive amount at present value are introduced (this is important to avoid notification to the EU Commission in case of projects that qualify as one construction project).
- The term of 'relocation' is introduced for the moving of activities from the territory of other parties to the Treaty on the European Economic Area, even in case of the termination of as few as 2 jobs in the original facility.
- The taxpayer shall make a statement that no relocation was performed on group level in the two calendar years preceding filing the application or notification, and he must undertake not to effect such relocation for two calendar years following the completion of the construction subject to the incentive.
- In case of tax debt recorded at the tax and customs authority or penalties on the employment of unreported employees, the taxpayer will not lose eligibility for the tax incentive, only the option to exercise the incentive in the given year.
- New definitions are introduced (obligatory operation period, independent third party.)
- The term 'changes in the circumstances' is extended to include cases where the taxpayer changes the place that was indicated in the application or notification as the project location.
- The provisions on the maintenance of assets is also modified: persons other than the taxpayer are also allowed to operate them.
- In case of projects aimed at job creation, the time while the job was vacant is also added to the obligatory operation period.
- It is now possible to file the application and notification electronically, and paper based filing will be cancelled from 30 June 2018.

These provisions are applicable to grant applications and notifications filed after the effective date.

Should you need more information of the development tax incentive or other state subsidies, please do not hesitate to contact our experts.

What are the criteria to consider when providing the employer's support for housing purposes

The new cafeteria period is commenced on 1 January 2018; therefore you are advised to consider pros and contras for the various cafeteria elements. Employees tend to decide based on the value of the net benefit, but employers should also take other aspects into consideration. We highlight the following:

In our experience employer's tax free housing support is a highly popular type of benefit among both employers and employees even though noncompliance with the relevant legal regulations may have serious implications. Let us address some of these.

First the employee is liable to certify his housing conditions by providing the employer with all the documents and certificates to the employer. It is, however, the employer's responsibility to review and judge the employee's application for the tax free benefit – either in house or involving a third party professional.

Employers shall take care to hold certificates issued by the credit institution on the disbursement of the support by 31 May following the year of disbursement in case of apartment purchase and 31 May of the second year following disbursement in case of building, extension, modernisation and accessibility projects.

If any of the above is missing, the benefit qualifies as employment income with the tax (and contribution base) being the amount of the disbursed benefit plus 20%. The above are forfeit deadlines, i.e. if they are missed, in case of a potential tax audit the tax authority is likely to insist on reclassifying the benefit as taxable income.

With regard to the popularity of this benefit, such potential reclassification of a high number of employee benefits may carry a significant tax risk for both the employer and the employees. The question is who is responsible for noncompliance. It is important that employees should be well aware of legal implications at the time of opting for this element, and know that they should make all efforts to provide the necessary documents in a timely manner. The employer may also make a mistake, which – in addition to the employer's tax liabilities – could adversely affect employee confidence due to the large subsequent tax burden, administrative workload and high personal income tax and contribution liabilities.

In the light of the above, we recommend that in case of providing the tax free employer's housing support the employers should review their practice in time, when developing or reviewing the cafeteria, but before 31 May at the latest, and take care to avoid adverse tax implications.

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Kosovo

Application of Double Tax Treaty between Kosovo and Croatia

The Agreement on Avoidance of Double Taxation and Prevention of Fiscal Evasion signed previously between Kosovo and Croatia becomes applicable as of January 2018

The Agreement for the Elimination of Double Taxation and Fiscal Evasion has been signed in light of considerable cross border economic activity between the Republic of Kosovo and the Republic of Croatia.

The aims of the Agreement have been to clarify, standardize and confirm the fiscal position of taxpayers operating in both countries. It applies to direct taxes on income and capital in each Contracting State incorporating the list of principal taxes to which the provisions of the Agreement are applicable.

The Agreement also provides that in cases where the provisions of the Agreement contradict provisions of national legislation, the provisions of the Agreement shall have priority.

It is worth noting that Kosovo is currently in the negotiation process with additional countries to conclude Double Taxation Treaties.

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Lithuania

Major changes to the Law on Corporate Income Tax (hereinafter – Law on CIT) which took effect as from 1 January 2018:

- **Commercialization of R&D inventions.** Profit derived from use of intangible assets (e.g. copyright computer program or patented invention) generated through R&D activities is subject to reduced corporate income tax rate of 5%, subject to conditions.
- **Extension of investment project incentive.** Companies are able to deduct 100% of their taxable profit under the investment project incentive (previously, only 50% of taxable profit may be deducted), i.e. resulting to 200% super deduction on CAPEX. In addition, application of investment project incentive is extended for 5 years, i.e. until 2023.
- **Holding threshold** allowing to qualify for participation exemption applied in case of sale of shares **is decreased** from 25% to 10%

Amendments to Lithuania Law on Companies will come into force on 1 January 2018 - the procedure for granting shares to employees foreseen

Amendments to Lithuania Law on Companies will come into force on 1 January 2018. Amendments state the simplified procedure for granting shares to employees in order to motivate them.

Key aspects of granting shares to employees:

- Shares may be granted to employees of company or its parent or subsidiary;
- Shares may be granted to employees free of charge or partly remunerated;
- Shares may be granted only to natural persons;
- Shares may not be granted to shareholder of company or its parent or subsidiary who already owns at least 5 percent of the company's voting shares;
- Shares are granted by issuing new shares (ordinary shares, preferred shares or ordinary shares of employees) or by transferring shares held by the company;
- A special reserve of company's profit for the grant of shares must be composed or the company must have its owns shares (no more than 10 percent of all shares);
- Company must approve Rules of Granting Shares, in which the share issuance procedure will be discussed;
- An important point is that the right to initiate to prepare the Rules of Granting Shares will have not only company's shareholders, who held shares have at least 1/20 of all votes attached to the shares, head of the company, the management board and supervisory board, but also group of company's employees, which comprises not less than 1/3 of all company's employees. Thus, by amendments to the law, employees are encouraged to become more active in the management of the company;

- Rules of Granting Shares will be published on the company's website or company will have to ensure access to it for company's shareholders, employees and/or members of the body and if stated by the Rules other persons in company's registered office. When Rules of Granting Shares states the conditions (constrains) of the granted shares, the document confirming these conditions (constrains) shall be submitted to the administrator of the Register of Legal Person within 10 working days after the date of resolution of the General Meeting of Shareholders on approval of the Rules for Granting Shares.

Other important amendments to the Lithuanian Law on Companies:

- It is stated that only public companies need to notify Register of Legal Persons in case of change of sole shareholder or when all shares of company are acquired by one person i.e. in the Register of Legal Persons there will no longer be any public data about sole shareholder of private limited liability company. However, private limited liability companies remain obliged to notify information system on participants of legal entities (JADIS) about shareholders changes.
- Head of companies, whose shares or part of shares, representing more than 1/2 all votes at general shareholders meeting, are owned by the state or municipality, as well as to subsidiaries of such companies, will be recruited only for a term of 5 years and the same person to be the head of the same group could be elected for no more than two consecutive terms.
- Newly established private limited liability companies are exempted from the obligation to urgently take remedies when company`s equity capital becomes less than 1/2 the authorized capital specified in the Articles of Association. Private limited liability companies from which establishment have not passed 18 months will have to deal with mentioned situation not within 3 months as it is now, but within 12 months from the day the board become aware or should have become aware of the situation.

Amendments to Lithuania Law on Companies will come into force on 1 July 2018 – restriction on becoming the members of supervisory and management board

On 21 November 2018 additional amendments to the Law on Companies, which will come into force on 1 July 2018 have been approved.

After 1 July 2018 when appointing new supervisory or management board or individual members of these bodies, auditor or an employee of an audit firm, who participates and/or participated in the audit of the company's financial statements and from which performance 2 years have not passed cannot be elected as a member of supervisory or management board. Also, members of subsidiary's management body could not be elected as members of parent company's supervisory board. Please, pay attention that supervisory and management boards elected until 1 July 2018 perform its functions until the end of its cadencies or until new bodies are elected.

Amendment to Law on Competition

Draft of Law on Competition was passed to Parliament on 25 November 2017 to consider it under an urgent procedure.

By amendment it is sought to reduce the administrative burden for economic entities intending to submit motion of concentration:

- Combined aggregate income will be increased from the current EUR 14.5 million to EUR 20 million and the aggregate income of each of at least two undertaking concerned from EUR 1.45 million to EUR 2 million;
- Only income received in Lithuania should be calculated of all economic entities participating in the concentration (both established in Lithuania and foreign entities;
- The annual financial accounts of each undertaking participating in concentration for only last year prior to concentration should be submitted to Competition Council;
- The associated persons will be related to 1/2 (currently 1/3) and more shares, assets, voting or other rights ownership;
- There will be provision that two or more transactions that are made by the same persons or companies within a 2-year period will be treated as one and the same concentration, that occurs at the time of the last transaction;
- The procedure for the suspension of examination of motion of concentration will be stated.

Also, by this draft it is sought to harmonise the provisions of Law on Competition with best international practises and the European Union acts and to create more effective conditions for the procedure of concentration review.

Amendment were adopted and it came into force on 1 January 2018.

Draft of Law on Advertising, which states additional requirements for signboards and outdoor advertising, has been registered

Draft of Law on Advertising registered in the Parliament on 7 December 2017. By this amendment signboard and outdoor advertising definitions are stated. Outdoor advertising will also be considered an advertisement, which presentation facilities are in the premises (in the shop windows, inner side of the windows and doors), but is visible from the outside and information in the signboard.

It also states cases in which permit to install outdoor advertising is not required:

- When advertisement presentation facilities are in building with roof and rear wall or without borders and it is registered with a real estate register, and on these advertisement presentation facilities presented advertisement is related to activities carried out in that building;
- When advertisement presentation facilities are on premises, but advertisement is visible from the outside;
- When outdoor advertising is presented on vehicle, which is installed as a place for sale of goods or used for its direct purpose for transport of

persons and/or carriage of goods, except the cases when advertisement is presented in special advertisement presentation facilities, which is installed on the vehicle;
- When signboard is installed by notary or bailiff;
- When installed signboard is not bigger than 0,3 m^2;
- When signboard is installed according to requirements set by Government of the Republic of Lithuania authorized institution, on which or in which only name of advertiser and/or name, surname of advertiser or name of place of advertiser's purchased goods or provided services (store, hotel, hairdresser, etc.), or name of purchased goods or provided services (footwear, car repairs, etc.) and/or working time is provided.

Several drafts, related to waste management, have been registered

The Minister of the Environment implements a project, by which unified product, packaging and waste accounting information system (hereinafter – GPAIS) is developed.

GPAIS will help to ensure effective implementation of State Waste Management Plan, efficient monitoring, control of waste generation and management accounting in companies and planning of further development of waste management system. By drafts it is proposed to impose an obligation for economic entities to keep records and submit reports to authorized institution of Ministry of the Environment using GPAIS as well as an obligation for packaging producers, which keep records, to register and to the companies, which collects and/or transports waste, to deliver collected or transported waste to corresponding waste treatment facilities. Records keeping and report submission and its checking through GPAIS should be a faster, simpler and more innovative way for economic entities to comply with its obligation to keep records and submit report, and competent professionals to effectively check the reported data by reducing the time spent on inspection.

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Poland

Changes in PIT, CIT and lump-sum income tax. Material changes in remuneration of individuals

22 November 2017 The President of the Republic of Poland has signed the Act amending the PIT Act, CIT Act and the Act on lump-sum tax on certain income generated by natural persons. Amendments to the PIT Act regard tax-deductible expenses and include copyrights, taxation of share-based or derivative-based incentive schemes, allowance amounts and the tax deduction amount.

Most of these changes (except of certain exemptions and tax/income deductions) shall apply to income generated from 2018 on.

Fifty-percent tax deductible expenses

With respect to creative individuals, the cap amount allowing tax deductible expenses, equal to fifty percent of the generated income, has been increased. Effective from January 2018, the annual tax deductible cap shall equal PLN 85,528, i.e. twice as much as under the current regulations.

The list of professions allowed to apply the increased tax deductible expenses has been reduced, though. Effective from 1 January 2018, the increased tax deductible expenses apply to income derived from:

1. architectural design of buildings, interior and landscape, urban planning, fiction and poetry, painting and sculpture, music, photography, audio-visual productions, computer software, choreography, violin-making, folk art and journalism;

2. R&D, science and education;

3. acting profession, direction, dancing, circus acrobatics, conducting, singing, playing musical instruments, costume design, stage design;

4. audio-visual productions of directors, stage designers, image and sound operators, editors, stuntpeople;

5. journalism.

The changes affect creative individuals deriving income from contracts of specific work, contracts on copyright transfer and similar ones, and a large group of employees producing pieces subject to the copyright law and receiving a portion of salary for transfer of the related copyrights to employers.

Following the amendments, individuals performing work not included in the statutory list shall lose their title to the increased tax deductible expenses. The problem includes a broad group of employees, such as engineers, designers, translators, analysts, legal and economic advisors, training and marketing specialists. Also, certain products of IT specialists (non-programmers) may fall out of the scope of increased tax-deductible expenses.

Regardless of the formal change in regulations, which comes into effect as of 1 January 2018, tax authorities have frequently questioned the payroll structures based on transferring to employers copyrights to pieces produced under employment contracts.

In light of the change in regulations and the more restrictive approach of tax authorities, we recommend thorough analysis of payroll structures based on transfer of copyrights and, if necessary, introducing changes to current procedures and contracts.

Taxation of share-based or derivative-based incentive schemes

The new regulations include material changes related to incentive schemes, determine certain issues currently decided upon by courts and introduce new taxation rules. On the other hand, gaps in these new regulations will certainly cause uncertainty among taxpayers and tax remitters with regard to their application.

Share-based schemes

Pursuant to the new regulations, with regard to such schemes, the following measures have been applied:

- a definition of an incentive scheme has been introduced, understood as a remuneration system established pursuant to a resolution of Annual General Meeting, addressed to employees or individuals working under civil law agreements (except for contracts concluded in the course of ordinary business activities) by a joint stock company (e.g. an employer or client) or by its parent joint stock company as determined by relevant accounting regulations;

- revenue from participation in incentive schemes is earned only upon sales of shares under these schemes (i.e. only then the 19% tax is charged) if buying shares in companies residing in states with which Poland has concluded double taxation treaties.

The above changes extend the preference, formerly reserved for share-based schemes related to EU or EEA residents, to include many other countries, such as the U.S. and Switzerland. On the other hand, the new regulations taken verbatim disallow the preferential treatment of incentive schemes developed by Polish companies. The above change is unintentional and may be amended by the Government even before the effective date of the new law. Further, in order to qualify for the preferential treatment, incentive schemes need to be established pursuant to a resolution of Annual General Meeting, as opposite to being defined in such a resolution, as sometimes interpreted under the current regulations.

The amendments to the regulations do not eliminate certain issues, such as cases when an incentive scheme cannot be established based on an AGM resolution, since there is no such body provided for in the jurisdiction under which the scheme is being established. Further, no provisions determine taxation principles upon sales of shares whose vesting has produced taxable revenue earned by participants in another state. The new regulations do not determine whether, for a scheme to be qualified for the preferential treatment, its participants must remain employed or bound by civil law contracts for its entire duration, or just when joining a scheme.

The amendments necessitate analysis of the existing schemes for compliance with the statutory definition and the resulting qualification for the preferential tax treatment. Therefore, we recommend focusing on the form of involvement of incentive scheme beneficiaries and on capital relationships among entities participating in each scheme. In particular, changes in income qualification (if any) or in preferential treatment may affect entity's obligations in the capacity of PIT remitter and, eventually, of Social Insurance premium payer.

Derivative-based schemes

Pursuant to the new regulations, under such schemes, revenue from the exercise of derivatives is classified as income from the same source as the obtained benefit, e.g. an employment contract or a civil law agreement.

For the existing schemes the new regulations may result in reclassification of income, and, consequently, a change in its tax treatment and in related Social Insurance charges. Therefore, it is advisable to analyze such schemes on one by one basis.

Changes in PIT allowance limits

Under the new regulations, certain PIT allowances have been increased to the following amounts:

- cash and non-cash benefits obtained from Social Benefits Fund - PLN 1,000 per fiscal year (formerly PLN 380);
- cost of a nanny, nursery, infant club - PLN 1,000 per month for children under 18 (formerly PLN 400 or 200);
- organized vacation for children - PLN 2,000 per fiscal year (formerly PLN 760);
- aid: no limit for Social Benefits Fund; for other sources - PLN 6,000 per fiscal year (formerly PLN 2,280);
- contest awards and promotional sales - PLN 2,000 (one-off; formerly PLN 760).

The above changes may improve tax efficiency of payroll and employee benefits without the need to increase the spending. Employers may be increasingly interested in these issues in light of growing tax attractiveness of certain forms of employee support. Therefore, employers should review currently offered employee support forms and incentive schemes to take the most advantage of the current changes in regulations.

Tax deduction amount

Effective from 2018, the PIT deduction amount shall change.

The maximum limit shall be increased from PLN 1,188 to PLN 1,440; consequently, the annual income of PLN 8,000 (formerly PLN 6,600) shall be progressive tax-exempted.

The income threshold with the 'traditional' tax deductible amount of PLN 556.02 shall be increased as well; at present being PLN 11,000, from 2018 on it will grow to PLN 13,000.

Individuals generating income in excess of PLN 13,000 will not be affected by the amended regulations. Their tax deduction amount will remain flat (PLN 556.02) up to the annual income up to PLN 85,528. For income ranging from PLN 85,528 to PLN 127,000 it will be reduced to zero. No deduction is applicable to annual income in excess of PLN 127,000.

Other changes in PIT and lump-sum income tax

Other amendments included in the new regulations:

- revenue derived from controlled foreign corporations (CFC); the minimum CFC classification criteria are reduced and related to foreign taxes actually paid as opposite to nominal tax rates; thresholds determining reporting obligations regarding CFC income are eliminated;
- a minimum commercial property tax is introduced in order to enhance the relationship between business operations and their actual location;
- the scope of property dealer entities whose revenue is taxable in Poland has been extended;
- depreciation/amortization of inherited or donated assets is not allowed; one-off depreciation/amortization limit has increased from PLN 3,500 to PLN 10,000 and the right to amortize intangible assets to those acquired from other entities has been limited;
- changes regarding debt disposal and spin-off;
- changes in specific allowances and deductions, such as training for medicine doctors, rehab allowance, blood collection related donations;
- with regard to income from leases, the former lump sum rate of 8.5% shall be maintained for revenue up to PLN 100,000, while 12% rate will be charged over that limit.

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Amendments to CIT Act: key changes affecting capital group entities. Act signed by the President of Poland

Entities operating in capital groups should pay special attention to the Act amending the PIT Act, CIT Act and the Act on lump-sum tax on certain income generated by natural persons (henceforth: the "Act") signed by the President of the Republic of Poland on 22

November 2017. The Act implements (partly) 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.

It commences another stage of recovering State Budget proceeds from taxes in Poland, in particular those derived from CIT, through counteracting tax optimization and tightening the tax system to ensure that taxes paid by large international businesses are related to the actual location of their operations.

In this bulletin, we focus on issues of key importance for related parties.

Key changes
Amendments of crucial importance for entities operating in capital groups:

1) Limited deductibility of costs of intangible assets and performances: the Act tightens classification of performances purchased from related parties as tax-deductible expenses with regard to the following services:

1. advisory, market research, advertisement, management and control, data processing, insurance, guarantees and sureties, similar performances;

2. fees and charges for the use or title to use intangible assets;

3. costs of transferring the risk of default related to loans (other than granted by banks and credit unions).

The above expenses shall be classified as tax deductible only up to a 5% limit of an EBITDA-like ratio. The limit shall be applied to these costs if they exceed PLN 3,000,000 per fiscal year. Costs not deducted during a fiscal year shall remain deductible for five subsequent years, subject to the above limit. The limit shall not apply to the above expenses if incurred in a tax capital group.

The deductibility limit does not apply to the period covered by Advance Pricing Arrangements (APA), as well as in the financial year in which the APA have been issued and in the preceding one, to the extent the APA determine the correctness of calculating consideration for these performances.

2) Limited deductibility of debt financing expenses: The Act limits the deductibility of debt financing expenses (including arrangements with unrelated parties) introducing a 30% threshold on the EBITDA-like ratio. The limitation applies to all types of debt financing (including interest, commissions, fees, bonuses, interest portion of lease installments).

The above limit does not apply to the so-called excess debt financing expenses up to PLN 3,000,000 per fiscal year. Debt financing expenses excepted in a given fiscal year can be classified as tax deductible in the subsequent fiscal years (under the limit).

The deductibility limit does not apply to finance sector enterprises. The Act provides a closed list of entities classified as finance sector enterprises (among others, domestic banks and credit institutions as determined by the banking law, credit unions, open-ended investment funds and alternative investment funds incorporated pursuant to the Act on Investment Funds).

Further, pursuant to the Act, if the debt financing costs exceed the financing amount a taxpayer could obtain in the form of such financing by unrelated parties (the so-called market creditworthiness), tax authorities may assess a higher income or a lower loss than declared by a taxpayer.

3) Debt push-down: Under the Act, costs of debt financing obtained to purchase company's shares to the extent reducing its tax base that includes revenue from its continuing operations are not tax-deductible. Consequently, potential operating income of an acquiree cannot be reduced by expenses (interest) related to the purchase of its shares.

4) Amortization of intangible assets: The Act limits amortization charges on intangible assets that can be classified as tax-deductible expenses to the amount of revenue from the sale of these intangible assets previously recognized by a taxpayer. The limit applies to cases when an entity that initially owns intangible assets sells and re-acquires these assets. Similarly, if an owner has sold an intangible asset and continues to use it pursuant to concluded contracts (e.g. licenses), the surplus of any fees and charges related to such use over the revenue from prior sales of the title or intangible asset shall not be classified as tax-deductible expenses.

5) Business combinations and spin-off: The Act assumes amendments to regulations regarding business combination and spin-off, for example referring the taxable revenue and tax-deductible expenses to the issue (market) value of shares as opposite to their face value. Principles of allocating tax-deductible expenses related to shares following a spin-off will change as well (the proportion shall be based on the value of assets as opposite to the face value of the divided business).

6) Contributing an enterprise or its organized part: The Act extends the so-called small tax circumvention clause regarding contribution. The amendment will enable tax authorities to undermine tax neutrality of contribution of an enterprise if it lacks economic substance, regardless of anti-tax avoidance measures included in the Tax Ordinance.

7) Controlled Foreign Companies (CFC): The Act amends regulations regarding CFC. An effective tax rate shall be introduced as a CFC evaluation criterion (as opposite to the current nominal rate); interest in the capital / voting rights in CFC shall be increased (from the current 25% to 50%) and the share of passive income in total income of CFC shall be reduced (from the current 50% to 33%). Further, the list of passive income types has been extended and includes: (1) income from insurance, banking and other finance sector operations; (2) income from related party transactions if no or insignificant added value is generated on these transactions. These changes may result in an extended list of entities classified as CFC.

8) Tax capital groups (TCG): The Acts simplifies the procedure of establishing tax capital groups: (1) the average share capital ratio is reduced; (2) the minimum parent's share is reduced; (3) the minimum group profitability is reduced. As a result, establishing of a TCG shall be easier. At the same time, certain limitations regarding TCG are introduced: (1) in the case of breaching the terms of TCG operation, it will be dissolved and its member companies obliged to settle their income tax for prior years; (2) transfer pricing regulations (except for the documentation obligation) will apply to transactions concluded within TCG. In practice, TCG operation may be charged with additional risk.

9) Classifying State Treasury entities as unrelated parties: The Act disallows application of transfer pricing regulations and the documentation obligation in relation to entities classified as "related parties" only based on the fact that their shares are held by State Treasury or local authorities.

10) No obligation to document transactions included in Advance Pricing Arrangements. The obligation to prepare transfer pricing documentation for transactions included in APA is eliminated for the period covered by these APA.

The above changes come into effect in January 2018.

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Tax Ordinance reform: new bodies

The Ministry of Development and Finance has presented draft Tax Ordinance that provides for bodies formerly absent from the Polish tax law. These bodies are to implement key assumptions underlying the work on the draft, adopted by the General Tax Law Codification Committee, which is the restoring of confidence in relations between tax authorities and taxpayers.

Below please find a brief description of draft provisions related to the new bodies. Bearing in mind the legislation path preceding the effective date of the act, though, these provisions may be altered or eliminated.

Simplified procedure
Authors of the draft have pointed out that certain types of tax-related cases are simple in terms of nature and actual status; therefore, there is no need to carry out in-depth legal analyses or complex evidentiary proceedings. In light of the above, if a ruling may be issued based on evidence provided by a party, including a motion to institute proceedings, and on facts known to the public or ex officio to the competent body, or determinable based on documents or records held by the body; and if the projected assessment amount does not exceed PLN 5,000, a simplified procedure will be allowed upon taxpayer's consent (or motion).

Such proceedings, similarly to other simplified procedures, will be less formal. Among others, the evidentiary proceedings will be limited and a decision may be issued without any factual or legal justification.

Cooperation agreement
The new Tax Ordinance shall provide for a cooperation agreement to be concluded by and between an taxpayer of economic significance and a competent tax authority, under which:

- the tax authority undertakes to adjust the form and frequency of tax and customs audits of the correctness of the taxpayer's tax settlement and to provide it with consulting support without undue delay, expressing its opinions on material tax issues indicated by the taxpayer;

- the taxpayer undertakes (among others) to maintain relevant internal control procedures regarding the correctness of tax settlement as agreed with the tax authority and to disclose any important information regarding its business to the tax authority without undue delay.

The agreement, to be concluded upon taxpayer's motion, is to ensure taxpayers' compliance with tax regulations based on mutual trust, transparency and understanding of taxpayer's business specifics by competent tax authorities.

Pursuant to the draft justification, the Tax Ordinance will include only framework regulations regarding the cooperative compliance. Based on the idea, the Tax Ordinance (along with secondary legislation thereto) shall include only key provisions, with the final form depending on practices developed by tax administration.

Consulting tax impact of transactions
Under the procedure, an applicant and tax authorities can agree tax impact of acts performed by the applicant to prevent a dispute (if any).

A tax impact decision may refer in particular to transactions resulting in transfer of ownership or usufruct title to assets, granting loans or credit facilities, restructuring or joint ventures.

The consulting is limited to tax impact of transactions concluded prior to the application date.

Tax agreement including mutual decisions and concessions, concluded by and between a taxpayer and tax authority under tax proceedings
According to the current version of the draft, tax agreements concluded in the course of tax proceedings between tax authorities and taxpayers are voluntary and can be entered into both upon taxpayer's motion and consent.

These agreements may include mutual concessions and legally binding decisions regarding the factual status of a given case, nature or value of transactions, acts or events, tax allowance etc.

They may not include, though, decisions or concessions directly regarding the assessed amounts.

Mediation
Pursuant to the current draft, mediation can be carried out if a tax agreement may be concluded, both upon taxpayer's motion and consent.

One or more hearings will be held under mediation proceedings, participated by a competent tax authority and a taxpayer, in a mutually convenient time and place. Mediators can assist the parties to develop the contents of a tax agreement, if they manage to conclude any.

The mediation must be held within two months of the date of a decision referring a given case to mediation. It will be held by mediators included in the record maintained by the Head of National Tax Administration, who will be obliged to remain unbiased and neutral in the course of the proceedings.

Pursuant to the draft, documents and information previously not included in the case file, and delivered to mediators by tax authorities or taxpayers, shall not be included in the file. Similarly, neither the tax authorities nor the taxpayer can refer to conciliation, concession offers or other statements made in the course of mediation.

According to the draft, the new Tax Ordinance shall come into effect on 1 January 2019.

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Sunday trade ban as of 1 March 2018

The Parliament has passed the act restricting trade on Sundays, holidays and on certain other days. The ban shall come into effect on 1 March 2018

The ban shall apply both to retail and wholesale trade. In the first year, it will apply (on average) to two Sundays a month (the first and third one). In 2019, the ban will be extended to three Sundays a month, **and in 2020,** in principle, no trade will be allowed on Sundays.

The ban shall not apply to Internet shops and platforms since a notification of the European Commission is required in this respect.

Despite the ban, small sole-proprietorship shops can be open on Sundays provided their owners will do the selling; further, the ban does not include flower and candle shops at cemeteries; fuel stations; bakeries; ice-cream shops; pharmacies and drug wholesalers; shops located at bus and railway stations, airports, seaports; selling souvenirs and devotional items; and shops located at hotels, hospitals, sanatoria, cultural, sports, educational, tourist and leisure facilities (the list of exceptions includes 23 items).

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What can render loan-related promissory notes invalid?

Providing information that allows identification of a collateralized agreement on a promissory note is a common practice. For example, it may read: Promissory Note to Loan Agreement no. 123/2017. In light of recent rulings, can the practice produce adverse legal effects for its users and result in a promissory note being considered invalid?

Promissory notes are a popular form of collateral for loan agreements, allowing banks to easily collect amounts owed by debtors in default.

An unconditional promise to pay a certain amount of money **is a necessary component of a promissory note**. Since the note is by its nature

unconditional, the payment cannot depend on any uncertain future events. A note that makes the payment depend on a condition or mutual performance is, therefore, invalid.

Providing information that allows identification of a collateralized agreement on a promissory note is a common practice. For example, it may read: **Promissory Note to Loan Agreement no. 123/2017.**

In light of recent rulings, the practice can produce adverse legal effects for its users, resulting even in a promissory note being considered invalid. Such information has been recently analyzed by the Warsaw Appellate Court, which has decided that since it referred to an agreement concluded by the parties, i.e. to another document, **it made the promissory note conditional**, thus rendering it invalid. Based on the opinion, the court canceled an appropriate payment order issued by a lower instance court.

Had the opinion been maintained by a higher instance, it would have had an enormous effect on common business practices, since, as indicated above, nearly all promissory notes bear such information.

A cassation appeal (prepared by a lawyer cooperating with Deloitte Legal) was made against the decision of the Appellate Court. A decision issued by the Supreme Court has been completely different from that of the Appellate Court. With regard to the above issue, the Supreme Court has indicated that the **reference to the loan agreement made in the title of the promissory note had no effect on the note itself**, since it did not affect the correct promise of payment included in the document, and thus did not render it invalid. According to the Supreme Court, such information, whose sole purpose is to indicate the performance received or receivable by the maker from the remitter, is irrelevant from the viewpoint of the promissory note law and does not affect the unconditionality of payment of the promised amount.

Thus, the Supreme Court decided that **validity of a promissory note is unaffected by additional information put on its face**, if the information is a pure description of its economic background and does not undermine the obligation to pay.

Although the opinion expressed by the Appellate Court has been denied by the Supreme Court, we recommend prudence when putting any additional information on the face of promissory notes. Since doubts regarding the validity of the note have been raised, it is better to provide such additional information in a separate document.

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Romania

National gross minimum salary, increased by the Government

Starting with January 1st 2018, the national gross minimum salary is set to rise from RON 1,450 to RON 1,900 per month, according to Government Decision no. 846/2017, published in the Official Gazette no. 950 on 29.11.2017.

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The minimum gross salary is for a full time work schedule of 166,666 hours, on average, per month, in 2018, representing RON 11.40/hour. As until now, this amount of the national gross minimum salary does not include any increments and other allowances.

The increase of the national gross minimum salary per country guaranteed in payment occurred in the context of the transfer from the employer to the employee of the mandatory social contributions.

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Obligations to declare to the Environmental Fund - year–end checks: electrical and electronic equipment, batteries and accumulators, packaging

The economic operators placing on the market electrical and electronic equipment („EEE"), portable batteries and accumulators ("B/A") owe a new contribution of 4 Ron / kg (EEE and B/A), or 20 Ron / kg (for lighting equipment), for the difference between the quantities of EEE, B/A placed on the market and the quantities ascertained by the Environmental Fund Administration (EFA) as placed on the market (until 31 December 2017);

These contributions are paid annually. Therefore, operators who placed these products on the market in 2017 should declare the quantities by 25 January 2018 at the latest, in order to avoid additional payment obligations at the time of control by the Environmental Fund Administration.

Regarding the packaging contribution, you should pay close attention to the following situations identified in practice:

- check if you declare to EFA all types of packaging (primary, secondary, tertiary - pallets)
- ensure that the final recycler will provide you a proof of the quantities of packaging waste recycled on your company's behalf (even if packaging waste is exported / intra-Community delivered)
- if you have concluded a picking contract, consider who is the person responsible for the packaging added to the products
- circulation of reusable packaging is performed by implementing a specific procedure of these packages, including the deposit-system. Otherwise, the packaging will be considered placed on the market at each transaction.

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Slovakia

Personal Data Protection Act

A new act is intended to harmonise Slovak legislation on personal data protection with the GDPR and the Police Directive.

The summer edition of Deloitte News informed you of the forthcoming Personal Data Protection Act (the "Act").

As noted, the Act is intended to align Slovak legislation on personal data processing with Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data (the "GDPR") and Directive 2016/680 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

The Act is intended to ensure uniform personal data protection legislation, so that data subjects may exercise their rights. The Act also regulates the rights and obligations of controllers and processors, and the security of personal data processing. The Act provides for the responsibilities and procedural powers of the Personal Data Protection Office of the SR as a supervisory authority.

Similar to the GDPR, the Act imposes high sanctions. The Personal Data Protection Office of the SR may impose an administrative fine of up to EUR 20 million, and for an enterprise, up to 4% of the total global annual turnover.

The proposed effective date of the Act is 25 May 2018.

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IFRS Model Financial Statements 2017 – Early Application of IFRS 15

Deloitte's Global IFRS Office has published Appendix 2: Early Application of IFRS 15 Revenue from Contracts with Customers to the Model Consolidated Financial Statements for the year ended 31 December 2017. The appendix supplements the IFRS model financial statements with IFRS 15 disclosures and is intended to

help companies that have opted for the early application of IFRS 15 in 2017.

Deloitte's Global IFRS Office has published Appendix 2: Early Application of IFRS 15 *Revenues from Contracts with Customers* to the Model Consolidated Financial Statements for the year ended 31 December 2017. The appendix focuses on the disclosure requirements in IFRS 15, which will be effective for annual periods beginning on 1 January 2018 and is intended to help reporting entities that have opted for the early application of IFRS 15 in 2017. Appendix 2 does not illustrate all the disclosures in IFRS 15, which will depend on the specific facts and circumstances of the reporting entity. To read the publication in English, please see: ***Appendix 2: Early application of IFRS 15*** on our website ***www.iasplus.com***

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Amendment to Act No. 461/2003 Coll. on Social Insurance, as Amended

The most significant changes introduced by an Amendment to Act No. 461/2003 Coll. on Social Insurance, as amended.

The most significant changes introduced by the Amendment to Act No. 461/2003 Coll. on Social Insurance are:

1. Changes effective from 1 January 2018:

- **Changed deadlines for an employer's reporting obligations** – the deadline for an employer's registration in the Social Insurance Agency's Register of Employers is the date preceding the date on which it employed at least one employee. The original deadline for the employer's registration was within 8 days of the date on which it employed at least one employee.
- **Entitlement to an unemployment benefit** – persons who were insured for unemployment for at least two years during the last four years before being registered as jobseekers are entitled to employment benefit. The period for which the unemployment benefit is provided is six months. This means that as of 1 January 2018, there is only one condition and one length of the benefit period.
- **Pension insurance of state-insured persons** – the following persons automatically become state-insured persons for pension insurance purposes, without the need to file an application: persons taking care of a child aged under 6, if entitled to parental allowance; persons taking care of a child aged 6 – 18 with long-term poor health; persons receiving care allowance; and persons providing at least 140 hours of personal assistance per month to severely disabled individuals under a personal assistance contract.

- **Sickness insurance** – if sickness insurance is terminated for employees during the first 10 days of their incapacity to work, they become entitled to a sickness benefit on the date following the termination of sickness insurance.
- **Accident insurance** – the accident insurance rate has been unified at 0.8%. Insurance payments will no longer differ based on the categorisation of employers in safety classes.
- **Increased pensions –** pensions paid as at 1 January of the calendar year or awarded from 1 January to 31 December of the calendar year are increased by the percentage of y/y growth in consumer prices for pensioner households identified for the first half of the preceding calendar year. Under a transitional provision, during the period from 1 January 2018 to 31 December 2021, pensions will increase as stated above, by a minimum of a fixed 2% of the average monthly amount of the relevant pension benefit reported by the Social Insurance Agency as at 30 June of the preceding year, without an increase of the minimum pension.

2. Changes effective from 1 July 2018:

- **Rules for making insurance payments to the Social Insurance Agency from agreements of pensioners** – work agreements of pensioners who retire early will be treated as agreements of pensioners, ie no sickness insurance and unemployment insurance will be paid from the agreements of pensioners who retire early.
- The agreements of pensioners will be governed by similar rules as those applied to temporary workers – students. Pensioners working under an agreement will be able to determine an agreement to which they will apply an exemption from the payment of pension insurance, ie no pension insurance payments are made from the determined agreement unless the assessment base exceeds EUR 200 in the given month). If the assessment base from the agreement to which the exemption has been applied exceeds EUR 200 in any month, pension insurance will only be payable from the amount exceeding this limit.

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