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CE Tax&Legal Highlights
May 2018

ALBANIA
BOSNIA-HERZEGOVINA
CZECH REPUBLIC
CROATIA
BULGARIA
HUNGARY
CENTRAL EUROPE
LITHUANIA
SLOVENIA
POLAND
SLOVAKIA
ROMANIA
KOSOVO
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ESTONIA

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Czech Republic

New Notification Duties for Tax Payers

The Government of the Czech Republic is preparing an amendment to the Income Taxes Act, with anticipated effect from 2019, which still has to undergo the readings in the ParliamentThe amendment primarily aims to implement the ATAD directive of the EU as well as other significant modifications which were added to the amendment subsequent to the standard consultation procedure.

These modifications include an **introduction of the new notification duty for tax payers with respect to income exempt from tax or income non-taxable in the Czech Republic pursuant to international Double Taxation Treaties**. However, this relates to income generated by tax non-residents from sources in the Czech Republic which are subject to withholding tax.

Form and manner of notification

- Notifications should be made in a similar manner as in the case of income which is currently subject to withholding tax. The payer thus has to **identify the income recipient and report data concerning the income paid.**
- Audited entities and entities with a data box will have to make the filing via a data box. Unaudited entities may use a printed form issued by the Ministry of Finance of the Czech Republic or its own output including all statutory requisites.
- Notifications should be made **until the end of the month following the one in which the income was paid**. A payer's failure to comply with this non-monetary duty may result in a penalty of up to CZK 500,000, or higher if the filing was not made in electronic form where the payer was required to do so.

Exceptions

- The above-specified income of the same type not exceeding CZK 100 thousand in a calendar month is to be exempt from this duty.
- For serious reasons, the tax administrator may release a payer from the notification duty for a period of up to five years.

Practical implications of the new duty

Among other things, the notification duty will predominantly apply to dividends, interest and licence fees paid by Czech businesses to foreign parent companies or other foreign entities.

The tax administration was already able to obtain the majority of required data; nevertheless, additional administrative burden is placed upon payers, including the accurate interpretation of Double Taxation Treaties.

The data received by the tax administration should also be used for international information exchange with other jurisdictions.

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Record in the register of beneficial owner data

Starting from 1 January 2018, all legal entities and trust funds have been obliged to record information of their beneficial owners in a public register – register of beneficial owner data. This obligation is newly imposed in connection with the amendment to Act No. 253/2008 Coll., on Certain Measures against Money Laundering and Terrorism Financing ("AML Act") and Act No. 304/2013 Coll., on Public Register of Legal Entities and Natural Persons.

Who is the beneficial owner?

Pursuant to Section 4 (4) of the AML Act, a beneficial owner is the natural person who has, de facto or de jure, the **possibility to directly or indirectly exercise control over a legal entity**, trust fund or another legal organisation without legal personality. **The beneficial owner is always a specific natural person.** The AML Act also states which facts may indicate the beneficial owner. However, the meeting of these criteria does not necessarily have to mean that the person is the beneficial owner. It is always necessary to assess whether this person has the possibility to exercise control.

Companies are obliged to identify their beneficial owner and record current data to discover and verify the identity of the beneficial owner including information about the fact that serves as a basis for being in the position of beneficial owner or another justification why this person is considered to be the beneficial owner.

Register of beneficial owner data

The register of beneficial owner data is a **non-public register.** Information about the beneficial owner is not provided together with a copy of the record in a public register and it is not disclosed. An extract from the beneficial owner data may be obtained by the recorded person. An extract from the beneficial owner register in a limited scope may be obtained by a person who proves interest in terms of preventing criminal acts of handling stolen goods, money laundering, their source criminal acts, and the criminal act of a terrorist attack.

Remote access to the register will be available for courts, law enforcement authorities, tax authorities, the Financial Analytics Office, the Czech National Bank and other state authorities. Remote access will also be available to obliged entities as per the AML Act that will be able to use the data recorded

in the register of beneficial owner data as part of customer identification and due diligence.

Record in the register of beneficial owner data

Legal entities recorded in the Commercial Register must record their beneficial owner in the register by 1 January 2019. Other entities obliged to record their beneficial owner in the register must meet this obligation by 1 January 2021.

The following information about the beneficial owner is recorded in the register:

a) Name and address of permanent residence (as well as temporary residence if applicable);
b) Date of birth and personal number, if assigned;
c) Nationality; and
d) Information about the fact that serves as a basis for being in the position of beneficial owner.

Information about the fact that serves as a basis for being in the position of beneficial owner is supported by the relevant documents. Such a document may be, for example, an extract from a record in a public register or foundation documents.

The record in the register of beneficial owner data is not subject to a fee until 1 January 2019; after this date the fee will amount to CZK 1,000.

What are the consequences of the failure to record the beneficial owner in the register?

Legal regulations do not set a direct sanction for the failure to comply with the obligation to record data on the beneficial owner in the beneficial owner register, but such a conduct may have **a negative impact on the company's business activities.** The failure to record the beneficial owner in the register may lead to the impossibility to participate in public tenders or to obtain a grant from EU funds, and make obtaining bank financing more difficult.

Based on the announcement published on the website of the Ministry of Industry and Trade, the management body of the Operational Programme Enterprise and Innovation for Competitiveness anticipates that calls announced from June 2018 will include a condition that **the applicant for a programme grant cannot be an entity whose beneficial owners are not recorded** in the register of beneficial owner data as of the day of filing the application.

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CbC Reporting: The First International Exchange of CbC Reports is Approaching

The first international exchange of Country by Country ("CbC") Reports will be performed by tax offices in June 2018 for the first time. The Czech tax administration will have available a new instrument to review transfer pricing.

In 2017, an amendment to the Act on International Cooperation in Tax Administration introduced a new notification duty in the Czech Republic as part of the international information exchange, referred to as Country by Country Reporting. This amendment stipulates a duty for groups of companies with consolidated global income exceeding EUR 750 million to file the Country by Country Report to tax administrations on an annual basis, summarising financial information of this group. The duty to file the CbC Report, which is subsequently subject to automated information exchange between individual countries, to the tax authority is usually carried out by the ultimate parent company in the state of its residence on behalf of the entire group.

Groups of companies in the Czech Republic and in cooperating countries most frequently filed the first CbC Reports in December 2017 for the 2016 taxation period. As CbC Reports are filed pursuant to legislation in the relevant country, deadlines as well as the respective taxation periods may vary.

A list of jurisdictions to which the automated information exchange with the Czech Republic applies was published in the February issue of the Financial Bulletin (02/2018): https://www.mfcr.cz/cs/legislativa/financni-zpravodaj/2018/financni-zpravodaj-cislo-2-2018-30918. The first exchange of CbC Reports between those jurisdictions should take place in June 2018. From this date, tax administrations will have available another tool for the monitoring of international group transactions.

In the CbC Report, multinational groups of companies must publish especially the following information:

- In which countries (jurisdictions) the group operates;
- The amount of revenues generated by the group with related and unrelated parties in individual countries;
- The group's profit or loss before tax in individual countries;
- The amount of tax paid;
- The amount of the group's registered capital and number of employees in individual countries; and
- The amount of the group's tangible assets other than cash and cash equivalent in individual countries etc.

For each country, the group must provide a list of entities operating therein, specifying the character of their business activities.

What are the potential implications of exchanging CbC Reports for Czech companies?

Pursuant to available information, the tax administrator will combine data from the CbC Report with information included in the transfer pricing annex to the tax return and other information available to it. Based on this information, the tax administrator will select entities, or transactions, exposed to risk for a possible in-depth analysis.

Various combinations of reported data may be considered exposed to risk: high payments for licence fees, interest and management services to countries in which companies have a low number of assets/employees while reporting high revenues vs. low taxation rate. Tax administrations will certainly focus on situations in which the group's production plants (for which a similar activity may be anticipated) report in individual countries different profitability levels under similar turnover, in consideration of the aggregate taxation rate etc.

In order to eliminate risks, we recommend that companies which are subject to CbC reporting give sufficient attention to the CbC Report. Unless it is available to them, companies should require the CbC Report from the Group well in advance and verify the information included therein. We recommend analysing the report from the viewpoint of the tax administration – how the reported data may be interpreted by the tax administration and what other issues may possibly arise.

Subsequently, we recommend assessing the outcomes of the analysis in view of the supporting documentation used by the company to prove, during tax audits, the pricing in group transactions, along with transfer pricing documentation if available. Such review may indicate potential areas for debate with the group that may clarify some issues, or a need to provide additional documents or promptly address the situation. Such actions should certainly be performed prior to an audit by the tax office.

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Cancellation of super-gross wage recalled

The Ministry of Finance withdrew its original proposal to cancel super-gross wage and the related conceptual changes in the personal income tax calculation. The proposal was part of an amendment to the Income Taxes Act with the proposed effective date from January 2019, which will now contain only the implementation of the Anti Tax Avoidance Directive (ATAD).

The income of natural persons will therefore continue to be taxed at 15%, with a solidarity tax surcharge of 7% for income exceeding the 48th multiple of the average wage per year. Since the work on the new act on income taxes (which we informed you about several months ago) has been suspended, employers and taxpayers can enjoy legislative peace. It is impossible to rule out last-minute surprises in the form of parliamentary draft proposals during the discussion of the tax amendment for 2019, but they are not expected.

However, we recommend paying attention to the changes in interpretation by the Financial Administration, especially with respect to personal income tax prepayments of tax non-residents and residents working abroad. Tax authorities complicate the reimbursement of amounts overpaid and challenge the method of calculation of tax prepayments, the correct calculation of prepayments therefore becomes a difficult task where it is worth contacting tax specialists for assistance.

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Estonia

As of 1.05.2018, there are changes in the Value Added Tax Act regarding tax-exempt transactions

- Additional five services were added to the list of tax-exempt social services.
- The transfer of a unit of greenhouse gas emissions and transactions related to such securities are taxed at a rate of 20% VAT.
- Some products that have not been subject to tax fraud have been excluded from the list of domestic reverse-charge metals.
- Claims for invoices submitted for a national reverse charge transaction.

As of 1.09.2018 there will be an obligation to disclose the information of the beneficial owner of the company to the commercial register.

The data of the beneficial owner must be submitted together with the application for entry in the commercial register. In case of changes in the submitted data, new data must be submitted within 30 days. If the data of the beneficial owner has not changed, the accuracy of the data is confirmed upon submission of the annual report.

GUIDELINES GIVEN BY AUTHORITIES and COURT CASES

Tax authority releases guidelines on how to remunerate owner, board member(s) and employee(s) and tax the remuneration.

The guidelines can be found: https://www.emta.ee/et/ariklient/tulu-kulu-kaive-kasum/muudatused/kuidas-osauhingu-osaniku-juhatuse-liikme-ja-tootaja

Supreme Court: MTA undertakes to pay interest on offsetting without legal basis

The Supreme Court confirms the obligation to pay interest to the taxpayer for compensating for the damage that a taxpayer may incur if the tax authority's decision required taxpayer to pay a higher tax amount than was stated in the tax law.

Supreme Court: The tax liability cannot be determined on the basis of an indefinable expense statement.

The Supreme Court decided that tax authority cannot assume that the costs incurred are non-business expenses just because the original document is unreadable.

Supreme Court: the importance of the purpose of the acquisition of immovable property

The Supreme Court stated that the lawful use of the apartments in the building could not always lead to the correct outcome in the context of the Value Added Tax Act in distinguishing between residential and non-residential premises. The taxpayer must be given the opportunity to clarify and present evidence to show that the apartment was acquired for use in economic activities.

Circuit Court: depositing funds into group account is comparable to depositing money (at bank) rather than granting a loan

The Circuit Court was in a position that the transactions would correspond not to the ordinary loan, but to the money deposited on the deposit account at commercial bank.

PLANNED LEGISLATION

Planned amendments to Taxation Act

- To clarify the concept of tax debt and expand the composition of public data.
- The regulation will be changed so that in certain cases the tax interest can be considered as a business expense.
- Differentiation between tax audit and individual case audit will be eliminated. There will be one type of tax control.
- Possibility of collecting tax arrears from a person who actually leads a company.
- Submission of additional data in the register of employment
- Changes in the procedure for collecting the tax liability by the agreement.
- In the area of cross-border exchange of information, the anti-infringement regulation will be strengthened.

Planned amendments to Value Added Tax Act regarding vouchers, electronic services and simplified import procedures

The taxation of voucher's has not been harmonized at the level of the European Union (EU) yet, it would be important to regulate this area in order to avoid double taxation or non-taxation.

The requirement that at least 50% of the taxpayer’s turnover has to be taxable with 0% of VAT is abolished. Instead, a requirement for impeccable business reputation is added.

It is planned to simplify the procedure for taxing the turnover of electronic communications services and electronic services. For this purpose, a threshold of EUR 10 000 for services rendered for cross-border services is established, from which the place of supply of services is deemed to be the consumer's country of residence. Until the limit is reached, the company has the right to comply with the rules of its Member State of incorporation.

Planned amendments to Income Tax Act to include several anti-avoidance measures

Main amendments come from the EU Anti-Tax Avoidance Directive and include rephrasing and broadening the scope of general anti-avoidance clause, thin capitalization rules, exit taxation and controlled foreign company rules.

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Kosovo

The New Law No. 06/L-016 on Business Organization has entered into force.

This Law regulates the following:

- **The types of Business Organization through which Business Activity may be conducted in Kosovo and other entities required to register with the Kosovo Business Registration Agency;**
- **The organization, competencies and functions of the Kosovo Business Registration Agency;**
- **The requirements, conditions and procedures of registration and deregistration of each type of Business Organization;**
- **The rights and obligations of Shareholders, Authorized Representatives, owners, directors, managers, and third parties in relation to Business Organizations.**

This Law has been published in the official gazette of the Republic of Kosovo on 24 may 2018 and shall enter into force on the day of publication.

With the entrance into force of this Law, the following laws are repealed:
- Law No. 02/L-123 on Business Organizations and
- Law No. 04/L-006 on Amending and Supplementing the Law No. 02/L 123 on Business Organizations.

All Business Organizations currently registered with the Kosovo Business Registration Agency (KBRA) and Business Organizations registered in the transitional period shall be required to conform with the requirements of this law within three (3) years of adoption of the sub-legal act on registration procedures.

KBRA, in cooperation with other state administration bodies, shall contact all existing Business Organizations to ensure that the data included in the registry are updated. All existing Business Organizations shall be required to comply with this requirement or otherwise they shall be included in a passive list of Business Organizations after the expiration of the three (3) year period.

Provided not to be in violation of this Law and until the issuance of new sub-legal acts for the proper implementation of this law, the following applicable sub-legal acts shall remain in force: Administrative Instruction no. 03/2015 on Determination of Fees for Services provided by the Business Registration Agency

The Government and the Ministry of Trade and Industry shall issue sublegal acts within a period of one year form the date of entrance into force of this Law.

The Law No. 06/L-036 on Amending and Supplementing the Law No. 04/L-219 on Foreigners has entered into Force.

The purpose of this Law is to amend and supplement the Law No. 04/L-219 on Foreigner (Official Gazette No. 35 dated on September 2013).

This Law has been published in the Official Gazette of the Republic of Kosovo on 3 May 2018, and entered into force fifteen (15) days after its publication.

This Law has been drafted in accordance to the following directives:

- Directive 2014/66 / EU of the European Parliament and the Council on conditions of entry and residence of third-country nationals in the framework of an intracorporate transfer;
- Directive 2014/36 / EU of the European Parliament and the Council on conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers;
- Directive 2016/801/EU of the European Parliament and the Council dated 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects, and au pairing;
- Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No. 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No. 1683/95 and (EC) No. 539/2001 and Regulations (EC) No. 767/2008 and (EC) No. 810/2009 of the European Parliament and of the Council.

With this Law, it is foreseen that the application for renewal of the residence permit shall be submitted not prior but within 30 days prior expiration.

The term "Certificate for employment notification" is being replaced with the term "Short work permit for foreigners". Additionally to the existing categories eligible for short work permit are as well:

- Doctors or medical specialists of various medical fields;
- Teachers and lecturers of foreign cultural, educational and scientific institutions and,
- Board Members and Executive Directors of foreign branches.

For granting permanent residence permit previously was required to have consecutive temporary residence permit of five (5) years, now to this provision has an exception in cases of marriage with the citizen of the Republic of Kosovo or with a foreigner with a permanent residence, a consecutive residence permit of three (3) years is required.

This Law also foresees that the Department of Citizenship Asylum and Migration (DCAM) shall issue the decision for granting residence permit for work propose even without obtaining the confirmation from the Employment Agency of the Republic of Kosovo (EARK) until the annual quota is provided.

This Law also defines the categories of the foreigners who will not be issued the decision for deportation.

The term "Order" used in the basic Law is being replaced with the term "Decision". Additionally, the Articles of the Basic Law about fines issued by the Labor Inspectorate, and Police as well, are being reformulated.

New Administrative Instruction MF-No. 02/2018 On the Use of Fiscal Electronic Devices and Systems enters into force

This Administrative Instruction sets out the rules and procedures for selection, administration, installation and use of fiscal electronic devices and software for purposes of carrying out economic activity in the Republic of Kosovo.

The new Administrative Instruction features limited changes from the previous sub-legal act and carries over most of the provisions contained therein. Changes are focused in the area of technical specifications of fiscal electronic devices which now also have to include Crypto Card secure medium for secure encryption.

In this respect, the changes pertain mostly to authorized providers of fiscal electronic devices whereas these devices continue to be subject to regular technical inspections every 24 months after installation.

The introduction of this AI sees the abrogation of the two pervious Administrative Instructions MoF-No. 01/2015 and MoF-No. 01/2017 that formerly regulated the use of electronic equipment and fiscal systems.

The provisions of the AI are mandatory for the Tax Administration of Kosovo and all other entities involved in the process of fiscalisation.

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Latvia

Latvia moves towards synchronization with OECD transfer pricing documentation standards

On April 24, the Cabinet of Ministers approved amendments to the law "On taxes and duties" that implement fundamental changes to Latvian transfer pricing compliance requirements.

Along the Country-by-country report, which is already mandated by the law "On taxes and duties", the new transfer pricing requirements bring the local legislation in line with the three-tiered approach to documenting controlled transactions implemented by BEPS Action 13 and the new iteration of the OECD Transfer Pricing Guidelines. After an approval from the Latvian parliament, the new compliance requirements will be applicable to controlled transactions carried out in reporting period starting on or after 1 January 2018.

The new transfer pricing requirements will no longer apply to taxpayers, who transact with companies that are exempt from CIT or employ CIT rebates.

Furthermore, mandatory documentation submission requirements come into force for taxpayers meeting the monetary thresholds mentioned herein.

Compulsory yearly submission to the tax authority Within 12 months after the end of the reviewed financial year		**Compulsory yearly preparation** within 12 months after the end of the reviewed financial year, submission is within 1 month after the request from tax authority	
Master file	**Local file**	**Master file**	**Local file**
> 50m EUR **> 5m EUR** **or** **> 15m EUR**	**> 5m EUR**	**> 5m EUR**	**> 250t EUR**

Tax payer turnover Sum of related party transactions

For transactions that are carried out between two Latvian taxpayers who transact within a single supply chain with another related foreign company, or companies/persons located in offshores, the tax authority can request to prepare and submit the Local file in full or certain parts of it within 90 days. The submission date can be prolonged by 30 days if the taxpayer submits a motivated request to the tax authority.

Implementation of penalties for non-compliance

Along with the new requirements for transfer pricing documentation preparation, penalties for non-compliance with the new rules have also been implemented.

The amendments to the law "On taxes and duties" include a penalty of up to 1 percent (but no more than EUR 100,000) from the controlled transaction amount for which the documentation had to be prepared. It is intended that

the penalty will apply in situations when the taxpayer does not comply with either the submission deadline or the content requirements which makes it impossible to verify the conformity to the arm's length principle for the controlled transactions.

Introduction of APA roll-back option

Taxpayers craving certainty (insurance) with regard to previously conducted controlled transactions are now offered the roll-back option when concluding an Advance Pricing Agreement (APA) with the local tax administration.

Along the changes to the law "On taxes and duties" regarding transfer pricing compliance, a new provision has been included for taxpayers who crave some certainty with regard to the transfer pricing policies applied to controlled transactions carried out in prior years. It is now possible to enter into an Advanced Pricing Agreement (APA) with the local tax authority to verify the arm's length nature of the transaction price for previous years if the controlled transaction amount exceeds EUR 1,430,000. It should be noted, however, that the amendments to the existing regulation for the introduction of APA roll-back option are subject to approval by the Latvian parliament.

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Lithuania

Changes on authorisation process for e-money and payment institutions in Lithuania

In order to implement the PSD2 Directive and EBA Guidelines under PSD2 Directive, the Bank of Lithuania (Regulator) currently considers draft amendments to Rules for the Licensing of Electronic Money and Payment Institutions. The amendments, if adopted, will apply to both newly established and already operating e-money and payment institutions (EMI and PI).

The amendments will introduce new and additional reporting requirements for EMIs and PIs. Most significant amendments are briefly summarized in this alert. Firstly, the amendments establish shorter term for reporting and submitting information notices to the Regulator (5 working days instead of currently applicable 15 days). Secondly, the amendments expand the list of information and documents to be reported to the Regulator.

Lithuanian Parliament (Seimas) has adopted two innovative Laws on Payments and Insurance that have transposed EU directives PSD2 and IDD

Lithuanian Parliament decided to promote more innovative and safer financial services and increased protection of insurance service customers by adopting two new Laws on Payments and Insurance.

The Seimas adopted the new recast Law on Insurance. The law aims at supplying honest, fair and professional services by insurance distributors to insurance service customers under optimum conditions and serving their interests. A consumer will be granted a possibility of getting more comprehensible information and consultations of a better quality. The Seimas also adopted the Law on Payments, which aims at promoting innovation in payments, competition, Fintech development, as well as enhancing the payment security, strengthening consumer protection. The Law provides for new payment intermediation services, - a consumer through its intermediary will be able to initiate a payment order from his or her own account at any payment service supplier.

New legislation will entitle the Bank of Lithuania to block websites illegally offering investment, insurance or financial services. This is particularly relevant where illegal ICOs are concerned

The Parliament of the Republic of Lithuania has voted in favour of the amendment of the Law on the Bank of Lithuania.

In accordance with the draft law, the Bank of Lithuania, having reasonable grounds to suspect that investment, insurance or other financial services are offered illegally on a particular website, will be entitled to instruct the hosting provider to remove and eliminate access to such information. The Bank of Lithuania will be entitled to provide such mandatory instructions to the hosting provider after receipt of a permission of the Regional Administrative Court of Vilnius Region (to be issued within 3 business days).
If the draft law is signed by the President, it will come into force as of 1 June 2018.

New rules regarding data subjects' consent storage term adopted

On 10 May 2018 Order of the Chief Archivist of Lithuania Regarding rules of the general documents storage term was approved.

The Chief Archivist stated that consent on personal data processing shall be stored one year after the expiration of the period of storage of the personal data for which consent was given.

Vilnius Regional Administrative Court restricted the right of three persons to occupy managerial positions in the public or private sector for four year

On 1 May 2018 Vilnius Regional Administrative Court's decision imposing personal liability on the cartel participants entered into force.

In 2017 the Competition Council referred to the Vilnius Administrative Court asking to impose sanctions on other five managers of the companies for their involvement in competition law breaches based on The Law on Competition, which stipulates that for the involvement in a prohibited agreement concluded between competitors or in the abuse of a dominant position, the manager of an undertaking may be restricted of the right to be the manager of a public and (or) private legal person, or a member of the collegial supervisory and (or) governing body of a public and (or) private legal person for a period of three to five years. On 1 May 2018 Vilnius Regional Administrative Court restricted the right of three managers to occupy managerial positions in the public or private sector for four years. Decision, imposing personal liability on the cartel participants was the first such in the Lithuanian case.

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Poland

Implementing the act on supporting new investments is gaining momentum. The Senate passed the new regulations without amendments.

On 16 May 2018, the Senate passed the act on supporting new investments- the last step of the legislative process is the president's signature.

What changes have been made in comparison to the governmental project?

The governmental project has been changed at the parliament stage in the following scope:

1. Settling state aid obtained on the basis of two or more decisions on support, permits or both.

3 new paragraphs have been added to article 13 of the act. Paragraph 6 and 7 implements the rule of chronological settling of state aid in the case of two or more decisions on support, or decisions on support and permits (in such a case, settling state aid occurs in accordance with the order of issue). An analogical rule will be implemented into article 12 of the Act on Special Economic Zones. What is important, at the same time the legislator has decided not to change the provisions in the acts on income taxes in the scope mentioned above.

The role of the amendments is to sanction the existing practice of chronological settling of state aid resulting from more than one permit, which was a common practice executed through individual interpretations. It seems that the legislator has finally confirmed that companies in a given zone should calculate one result from exempt activities, regardless of the amount of permits it has.

The provisions will come into force at the moment the Act on supporting new investments comes into force, not from the new tax year: this additionally confirms the legislators' intent that the new regulations do not change the existing approach to calculating the tax result. Regardless of this, there are significant doubts if the individual tax interpretations will remain in force; in regards to income settled after the act comes into force (attaining new interpretations is worth considering).

There is also another question: if a business entity who in the second/next permit has other PKWiU codes (scope of the investment) than in the first/previous permit, shall he be entitled to state aid regarding second/next permit after using the state aid limit from the first/previous permit? Alternatively, will he be able to use the state aid limit from the first/previous permit despite the lack of PKWiU identity defined in the permit? Within this scope, it is worth looking at the common practices of tax authorities and courts.

Paragraph 8 was also added to article 13, stating that:

Settling state aid given to a business entity on a basis of a decision is only applicable to a decision on the basis of which the investment is fullfilled and business activity is conducted on its basis.

At first glance, it seems that introducing chronological settling of state aid, the legislator also introduces a project-based settling. From the legislator's rationality principle and the Ministry of Finance motives for amendment, it is possible to derive that it is applicable to a situation where the Company benefits from a permit/decision, while not realizing the investment that was the basis for its issue. It is important to state that the editing of the amendment allows for a broad scope of interpretation, which can lead to interpretational doubts in the future.

The regulation will also be added in almost identical wording to the article 12 of the act on special economic zones, and (what is alarming) will only apply to permits issued after the act on supporting new investments comes into force.

2. New rules on returning state aid in the case of revoking the permit/decision on support.

In regulations regarding accordingly PIT/CIT , new rules of returning due tax in the case of revoking the decision/permit on support, which will be enforceable form 1 January 2019. The amount of due tax will be calculated in two ways, dependent on the permits a business entity possesses:

- In the first case, when the business entity has only one permit/decision on support, the tax due shall amount to the amount of unpaid tax from the income incurred from business activity that is defined in the revoked permit or decision, along with interest- **in this case there are no changes;**

- In the second case, when the business entity has more than one permit/decision or jointly: a decision on support and a permit, the due tax shall be the amount of maximum state aid defined in the permit in the revoked decision- **here the change is significant.**

This does not implement the requirement to return the aid from all permits, only from the revoked permit. Determining the amount is a direct consequence of lack of a project approach while calculating the CIT exemption. Because we are discussing one tax result, revoking a given permit will be connected with the requirement to return a defined amount of the exemption limit (which means that we lose the limit amount we acquired in connection to a given permit, without the need to define from which part of the business the exempt income was generated).

However, regulating this issue in such a manner may cause a cauctionous approach from entrepreneurs and withholding the use of a new decision/permit, which is difficult in the case of a long period of upkeeping employment specified in the permit. Moreover, entrepreneurs that currently have a problem with realizing permits should consider suppressing them (which is possible until the Company does not start using state aid in connection with the permit's limit).

3. Realizing investments on lands where there are mineral deposits.

In article 3 of the act on supporting new investments the legislators have added the expression „ undeveloped”:

Support cannot be granted in situations when the investment is located in areas where there are undeveloped mineral deposits, with the exception of investments including these deposits.

Wording the provision in this way is meant to erase any doubts about locating investments in post-mining territories, which was a significant issue in regards to investments located in Upper or Lower Silesia.

4. Additional tax avoidance clause

The legislator has not changed the drafted provisions concerning the loss of relief in a situation where the right to it is obtained by entering into an agreement or any other legal transaction or multiple, connected legal transactions, executed mainly for obtaining an exemption from income taxes.

This additional clause (in regards to the clause defined in the Tax Ordinance) stirs up many doubts if any action considered leading to tax evasion results in the loss of tax relief. An official interpretation of the indicated provisions will be crucial. Moreover, it seems that the wording of these provisions should be different; the legislator's intention was to cover activities that cause income that would have been taxed on a regular basis, is subject to a tax relief due to mock actions of the taxpayer. In an unfavorable interpretation, it could be stated that even issuing an application for state aid could be considered an action to obtain a tax relief, therefore it is an action covered by the clause. However, this would lead to ludicrous conclusions, so this understanding of the clause is incorrect.

Executory provisions

The final wording of executory provisions is still unknown. They will regulate, i.a., issues regarding minimal expentiture on investments or maximum state aid in a given muncipality. Also, a decree regulating the procedure of issuing decisions on support has not been published yet. This means that there is no complete information yet.

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Will the individual interpretations issued thus far continue to protect? Amendment of the Tax Ordinance

At the moment, legislative work on amending the Tax Ordinance is underway regarding the matter of interpreting tax law. The amendment is set to introduce individual interpretations regarding transactions and actions between related parties only within the scope of a new institution: based on a class proposal filed by all engaged entities. The planned amendment shall also relate to individual interpretations issued to date, regarding transactions with related parties, which (if not completed) shall expire by operation of law when the act comes into force.

Group interpretations

The proposed regulations introduce a mandatory requirement to enter a class proposal to issue an individual interpretation when the factual circumstances or a future event regarding it concerns a transaction or other action between related parties, or those that will become related parties.

Situations where the requests for an individual interpretation scope covers repeatable transactions or other actions with non-related parties- for which individual interpretations will be issued based on the exisitng rules, if the terms of these transactions or other transactions between related parties are not different from terms for non-related parties.

In comparison to the previous request to issue an individual interpretation, a class proposal will require many detailed information on planned transactions or actions, including:

- Indicating acquired and planned advantages, including tax advantages resulting (directly and indirectly) from performed transactions or other actions;

- Indicating transactions and other actions done, in progress or planned on which achieving (both directly and indirectly) advantages mentioned above is based;

- Indicating the value of the company, its organized part or property right covered by the factual circumstances or a future event in the case where the market or nominal value on the date the class proposal was entered is jointly at least 10 000 PLN;

- In the latter, it will also be mandatory to indicate the value of the main advantages covered by the factual circumstances or future event.

Excluding protection i.a. in cases where:

- No expected or achieved advantages have been indicated in the proposal;

- No transactions or actions on which achieving advantages is dependent have been indicated in the proposal;

- Indication the value of the company, its part or the property right in the application differ from its real value by at least 25%.

In connection with the difficulties in defining the abovementioned elements and their values, the institution of updating the application in the indicated scope has also been introduced in the project- that is, indicating the correct values during the process of issuing an individual interpretation or after it has been issued.

Expiration of previous individual interpretations

It is still significantly relevant that the proposed regulations also influence individual interpretations already issued.

After the amendments come into force, the entities for which individual interpretations regarding the factual circumstances or a future event covering transactions or other actions with related parties were issued, should **within 6 months** from the date when the amendments come into force, supplement the application with the new elements specified above. If an applicant fails to do so, the interpretation will expire by operation of law when the amendments come into force. In this context, it raises the question of protection given by interpretations already issued and those that will be issued in the aforementioned 6-month period.

It is also necessary to consider that after supplementing the factual circumstances or a future event, the tax authority (in regards to the individual interpretation) may change it or state that in a given situation the clause against tax evasion is applicable.

The draft of the law is currently in the stage of public consultation, and only a 14 day vacatio legis period is specified. The explanatory memorandum the need for a fast implementation of the amendments is visibly indicated. Considering the schedule of the lower chamber of the Polish Parliament (Sejm) it is possible that the regulations will come into force in August or September of this year. Therefore, it may be advised to review already issued individual interpretations. Moreover, it is important to note that the wording of the proposed amendments may still change.

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Surveillance of employees has been regulated. What methods of surveillance will be allowed and when?

On 10 May 2018, the lower chamber of the parliament (Sejm) passed a regulation on data protection, and on 16th May the Senate passed it without amendments. New regulations in the Labour Code are also included, introducing the institution of employee surveillance.

The provisions entered into force on the 25th of May 2018, which is related to the implementation of the EU Regulation 2016/679 of the European Parliament, and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), in short referred to as GDPR.

The planned changes in the Labour Code introduce a regulation specifying the scope of data that companies can demand from candidates and employees, or regulations concerning the processing and protection of biometric data have not been the subject of the Sejm's proceedings yet. In addition, the provisions will include regulations giving employers the specific right to process personal data of candidates or employees, based on their consent (previously a doubtful issue).

What forms of surveillance will be allowed?

The provisions directly allow using **video surveillance** in a workplace (CCTV) and surveillance of electronic mail. Other forms of surveillance are also possible (but not directly named). This means especially employee Internet activity, and using GPS in company cars or reviewing text messages. It seems that searching employees is also possible to prevent stealing employer's property.

This is a significant expansion of possible surveillance methods in comparison to those previously proposed by the government. Initially, the draft introducing the General Data Protection act proposed only video surveillance. However, after criticism, the government decided to introduce changes. This is a good step, because as of now there are other forms of surveillance, asides from video surveillance. It is necessary to remember that with new technology developments, many new methods will continue to arise.

When can surveillance be used?

Video surveillance will be possible when it is necessary for employee safety, property protection, production control or protecting trade secrets. On the other hand, monitoring e-mails (and other surveillance forms) can be used when it is necessary to ensure correct use of tools given to employees and monitoring workhours. The employer will decide if such surveillance is necessary.

However, the wording of the new regulations causes many doubts.

Protecting trade secrets as a reason for e-mail surveillance is not specified directly, which is confusing. Breaching trade secrets is most often discovered by checking employee e-mails. Usually, this way company secrets are leaked, and it is impossible to discover using video surveillance.

Allowing video surveillance for production control, at the same time stating that video surveillance cannot be used to control employee work is also

doubtful. Up until now, based on general rules on protecting personal interests, it was stated that CCTV could not be used to control employee effectiveness. In a practical sense, this meant that CCTV had to cover a large area and couldn't be focused on individual workplaces. Again, reasons for such changes are not mentioned. However, it seems that the previous „guidelines" should remain in force.

It is also confusing that video surveillance cannot be used to verify employee workhours, as this is possible through monitoring of e-mails. It seems that video monitoring is more natural in this case,because it confirms that an employee is at his/her workplace during workhours. Again, no explanation from the legislator is provided.

Where can cameras be installed?

Cameras can be installed not only in the workplace, but also on the area surrounding it. Places exempt from surveillance are toilets, bathrooms, changing rooms, canteens, smoke rooms and rooms made available to work unions. There, it will be possible to install surveillance only in special circumstances, and if the cameras do not influence employee dignity and other personal interests, as well as the independence of work unions. This, in particular, will be executed by using techniques making it impossible to identify people using these rooms.

Up until now, it was common that cameras were not installed in toilets, bathrooms or changing rooms due to employee privacy. However, putting smoke rooms on the list is incomprehensible, unless the legislator considered the sensitive nature of information on addictions.

For how long will it be possible to store surveillance footage?

Surveillance footage can be stored for a maximum of **three months**. However, if they are considered proof in proceedings, the storage period will be lengthened until the final termination of proceedings. After this time, recordings containing personal data should be destroyed.

This is a significant change in comparison to the previous regulations, which stated that the recordings could be stored until the goal they were stored for is reached. Therefore, there are grounds to claim that recordings can be stored even for 10 years, which is the period of expiration for a stealth crime.

How can e-mails be monitored?

Monitoring e-mails, as well as other forms of monitoring must consider correspondence confidentiality and other personal rights. This means that surveillance will only be limited to business correspondence. The employer will not be able to read e-mails marked private. In addition, if during the verification of e-mails some e-mails turn out to be private and are not tagged as such, the employer must stop reading immediately. This rule will not change even if the workplace regulations strictly forbid using company property for private reasons..

Searching employees should be done in a manner that does not disturb their dignity. In particular, it should be done in a closed room, without other employees. A person of the same sex as the searched employee should conduct it.

How can surveillance be introduced?

The decision to introduce surveillance will be made by the employer. The rules of surveillance, however, should be specified in the workplace regulations, the collective labour agreement or notice (if a given company does not have a collective labour agreement and is not required to have workplace regulations). The employer should indicate the goals, scope and methods of surveillance.

The employees should also be informed of surveillance in a manner acceptable in the workplace, no later than two weeks before launching. Depending on the common practice, the information can be sent by e-mail, through intranet or on an information board. Newly hired employees should be given this information before being allowed to work.

Additionally, rooms and areas covered by cameras should be visibly marked before launching surveillance. The employer will also be obliged to provide information also to third parties entering the workplace.

What does this mean for employers?

Employers will be obliged to review their existing rules of surveillance and verify if they are in accordance with the new data protection regulations. This may mean the necessity to adapt technical parameters, as well as modifying the internal rules concerning surveillance.

The legislator did not provide a transition period to adapt to the new rules (no transition period regulations). This indicates that the changes should be done **immediately**.

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New Act on Money Laundering. Beneficial Owner Register.

Obliged entities (including most of the financial sector) do not have a lot of time to adapt to the requirements of the new act from 1 March 2018 on money laundering and terrorist financing, which implements the IV AML directive. The transition period ends at the end of May 2018.

Some provisions will enter into force later. This concerns creating a **central register of beneficial owners,** to which many commercial entities (such as general partnerships, limited partnerships, limited liability partnerships and joint-stock companies with the exception of public joint-stock companies) will have to report the names of persons controlling them. Regulations on the central register of beneficial owners will enter into force on **1 September 2019**.

The concept of creating a central register of beneficial owners is meant to be a universal and free tool enabling access to up-to-date information on beneficial owners. The accuracy of such data is particularly important because

identifying a beneficial owner is one of the basic criteria in the AML process. For the first time, entrepreneurs will be obliged to actively provide information about persons that have a strong influence on the company.

The rule of full transparency and the right to privacy

A controversial issue is **the full transparency of the register**. This means that **everyone has access to the register of beneficial owners.** Some are of the opinion that this is excessive and may infringe the right to privacy of the persons that are in the register. The Polish act takes a step further in comparison to the IV AML directive, which states that access to the register is available to supervisory organs, obligated entities and entities that have a legal interest in the information. This solution has been adopted in many EU countries. However, the polish legislator has stated that creating a transparent register is justified by broader functions, such as providing a widely understood protection of market participants by enabling access to information about contractors. A solution that could contribute to protection of privacy is searching by inserting the name of a person instead of typing in the PESEL (Personal Identity Number) which enables access to information on all significant equity interests in different entities.

Updating information is the most important

It is worth noting that the EU legislator has defined general rules on how beneficial owner registers function, leaving matters such as technical issues, verification rules and data updating to member states. Ensuring accuracy of data in the register is a center issue influencing its usability. The Polish act makes it mandatory for obligated entities to update data. It is also worth looking at solutions adopted by other countries, such as the possibility of notifying irregularities by users, which can contribute to preserving the best quality of information in the register.

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Act on transparency in public life. What does it regulate and why is it controversial?

The draft of the act on transparency in public life demands a new approach to corruption risk from the management board and supervisory board. It implements the necessity to undertake specific steps leading to preventing corrupt practices and encourages steps to evade penalties in cases where corruption has occurred.

The draft presented by the Minister- Coordinator of Special Services, has caused many controversies. Although the draft has not been submitted to the Sejm yet, it has sparked a debate between representatives of various industries.

It was the authors' goal to regulate different areas, i.a access to public information, financial statements for persons exercising public functions,

limitations to commercial activity, lobbing and means to prevent corrupt practices. Although the name of the draft does not suggest it, the document will influence not only entities from the public sector, but also entities acting in the private sector. The draft makes it mandatory for entrepreneurs from "medium size enterprise" up to use internal anti-corruption procedures in cases when a person acts for (or on behalf) of an entrepreneur and commits a corruption crime specified in the draft. They are, for example, active bribing (in both the public and private sector), influence peddling, crimes with disrupting public tenders, bribery in trading refundable drugs.

According to the draft, using organizational, technical and staff measures are considered internal anti-corruption measures used to prevent creation of an environment to commit corruption crimes by persons acting for (or on behalf) of an entrepreneur. Some of the given examples are creating and implementing an anti-corruption code of the company, creating an internal procedure and guidelines on received gifts and other advantages, procedures on informing about corrupt propositions and procedures on informing about corrupt actions.

High penalties for lack of procedures

The draft introduces high fines for lack of internal anti-corruption procedures, or if the procedures are mock or ineffective, and the person acting for or on behalf of the entrepreneur has been charged with a crime specified in the draft. In such a case, the entrepreneur may be charged with a **pecuniary fine from 10 000 PLN up to 10 000 000 PLN**. A fined entrepreneur will **not be able to apply for a public contract for a period of 5 years.**

According to the draft, the procedure to fine the entrepreneur is launched when a person acting for or on behalf of the entrepreneur is charged with a corruption crime specified in the draft. In this case, the Chief of the Anti-Corruption Bureau initiates an investigation to determine if the entrepreneur uses internal anti-corruption procedures. If the investigation discovers that procedures are unused or do not exist, are mock or ineffective, the Chief of the Anti-Corruption Bureau submits an application to fine the entrepreneur.

If the entrepreneur does not pay the fine, the Chief of the Anti-Corruption Bureau submits an application to fine the entrepreneur to the Chief of the Office of Competition and Consumer Protection, who initiates proceedings. The result of the investigation by the Chief of the Anti-Corruption Bureau and the amount of the fine are binding for the Chief of the Office of Competition and Consumer Protection.

The penalty is imposed by a decision of the Chief of the Office of Competition and Consumer Protection and the entrepreneur may appeal it within one month to the District Court in Warsaw- court of competition and consumer protection. In some cases, the Chief of the Office of Competition and Consumer Protection may refrain from imposing a penalty (for example, if the infringement is slight).

What causes the most doubts?

Many controversies surround the fact that the draft does not specify how the effectiveness of internal anti-corruption procedures will be estimated. There is some concern over the fact that even the most advanced internal and expensive procedures may be deemed ineffective if even one corruption case occurs. The draft also states that when defining the amount of the pecuniary penalty, the impact of the infringement and mitigating circumstances will be

taken into consideration. However, it does not directly specify if implementing anti-corruption procedures will be taken into account, although it may seem justified, as no system can fully protect against corruption. The practice of considering implemented anti-corruption procedures as a significant mitigating circumstance is present in the United States. The American anti-corruption act (US FCPA) mandates implementing procedures, but does not require them to be effective. Within this scope, the Polish draft seems much more restrictive.

Additionally, the new regulations implement not only the requirement to prevent corruption, but also an incentive to inform of such actions. An entrepreneur should notify the law enforcement authorities that he has reasonable grounds to believe that a crime has been committed.

Protecting whistleblowers

The draft also includes other regulations regarding corruption crimes, such as the institution of „whistleblower", meaning a person or entity employed by the entrepreneur (the draft does not limit this to employment contracts), who uncovers potential crimes to the law enforcement authorities. To encourage such actions, the draft provides legal protection of whistleblowers by forbidding termination of contract or aggravating conditions of employment without a consent from the prosecutor. At the same time, an entrepreneur violating these rules will be obliged to pay compensation amounting to twice the amount of the whistleblower's yearly remuneration.

Time is running out

It is worth noting that work on the draft of the act is still underway. It can be expected that before submitting it to the lower chamber of the Parliament (Sejm), as well as at the parliament stage, it may be subject to significant changes. The last accessible version from 8 January 2018 (on which this article is based) should not be treated as final, especially considering the fact that as of June 2918, the project has not yet been processed by the Parliament. Regardless of this, it is likely that within a short time companies and their supervisory boards will need to deal with the issue of handling corruption risk and ensuring the appropriate procedures are in place on time. Considering the complexity of the proposed changes and the amount of fines, this may be a time-consuming task.

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Romania

The first EU regulations on virtual currency exchanges and wallets

On April 19, the European Parliament approved a directive whereby, among others, provides for the first time at European level a legal framework for virtual-fiat currency exchange platforms and custodian wallet providers.

In addition, the approved directive regulates expressly remote and electronic client identification, thus facilitating the digitalization of customer on-boarding across Europe.

On April 19, the European Parliament adopted a legislative resolution approving a directive to amend the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing – also known as "AMLD IV".

In the approved text of the directive to amend AMLD IV, among others, virtual-fiat currency exchange platforms and custodian wallet providers have a legal framework for the first time at European level. In addition, it expressly regulates remote and electronic client identification, thus facilitating the digitalization of customer on-boarding across Europe.

Key aspects for the crypto industry

1) Partial regulation of virtual-fiat currency exchange platforms and custodian wallet providers:

- Virtual-fiat currency exchange platforms and custodian wallet providers will be subject to AML obligations and will have to adjust their business processes to meet their new regulatory obligations;
- Virtual-fiat currency exchange platforms and custodian wallet providers will be subject to registration formalities, but each Member State will determine the registration procedure and the obligations deriving from registered status. An indication on the type of obligations crypto exchanges may expect is that the registration obligation has been regulated in the same article as licensing and registration formalities for fiat currency exchanges. Thus member states may consider applying a similar regime;
- Virtual currencies and custodian wallet providers have a legal definition which is technologically neutral and which provides clarity on how are crypto currencies defined in Europe.

2) Express EU legal provisions regarding remote and electronic client identification:

- The approved text of the directive expressly mentions that the customer's identity may be verified by electronic identification means and relevant trust services, as defined in eIDAS Regulation, or on any other secure, remote or electronic identification process regulated, recognized, approved or accepted by the relevant national authorities;
- The proposed changes bring more clarity on remote and electronic means accepted for client identification purposes and create necessary legal grounds for more conservative national authorities;

- Notably, the text of the directive does not refer only to qualified trust services as a permitted client identification method. However, each entity under customer due diligence obligations will have to prove its specific AML risks are balanced by reference to the client identification method used.

When it applies

In order to enter into force, the Council of the European Union has to approve the text of the directive as well. However, the Council is expected to approve it, as the two institutions have already agreed the text of the directive during inter-institutional negotiations. Once published in the Official Journal of the European Union, the directive will enter into force within 20 days. Member States have to transpose it into national law in 18 months as of its entry into force. We expect that the changes will be applicable starting with the end of 2019.

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Origin of goods – new certification rules in trade between the EU and India, Angola, Congo, Nepal and other GSP countries

Until June 30, 2018, exporters from India, Angola, Congo, Nepal and other GSP countries need to register in the EU Register of Exporters (REX system). After this date, FORM A certificates can no longer be used to certify origin for goods traded between such countries and the European Union.

Registered exporter system (REX) is the self-certification origin tool applied inside the Generalised System of Tariff Preferences (GSP) where the EU unilaterally grants tariff preferences to less developed countries, starting with January 2017.

India, Angola, Congo, Bhutan, Burundi, Chad, Comoros, Kiribati, Mozambique, Nepal, Solomon Islands, Yemen, Zambia Certain GSP countries have postponed application of the new REX origin rules, until 30th June, 2018.

Therefore, exporters from the above countries can issue FORM A certificates in trade with originating products with the EU only until June 30th 2018.

After this date, certification of origin will need to be performed by a "statement on origin" only if such exporters are registered in the EU REX system.

What to do?

If you import goods originating from the above countries, in order to benefit from tariff preferences upon their importation in the EU (reduced or nill customs duties) after June 30th, 2018, we recommend to ensure that your suppliers are registered in the REX system and can still provide you with a proof of origin.

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Self-evaluation form - an alternative to ANCEX's denial when exporting dual-use products

The General Directorate of Customs issued a circular to all subordinate institutions introducing a positive measure on dual-use items. As such, exporters can present at the time of customs clearance a self-assessment form as an alternative to the dual-use advice request issued by ANCEX ("ANCEX denial"), thus reducing the time of customs clearance.

In Romania, the Department for Export Controls (ANCEX) is the national authority that controls dual-use product operations, issuing licenses for the export of dual-use products.

In the case of products that are not included in the control lists but are suspected of belonging to the dual-use category, ANCEX denial is required - for example for steel pipes, fans, car parts, various items of plastic.

Since last week, exporters are allowed to submit a self-assessment form at the time of customs clearance as an alternative to ANCEX's denial. This self-assessment form was previously proposed by ANCEX in Guide for Completing the Consultation Request and should be completed taking into account the technical specifications of the products to be exported as well as the final destination/ use of the products.

What does this mean for you?

By introducing this self-assessment form at the time of customs clearance, customs clearance time will be reduced with the few days required for preparation and submission of the advice request until the ANCEX denial is issued.

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Serbia

International taxation

Serbia is one of the first countries to ratify the Multinational Convention, as the National Assembly of the Republic of Serbia has adopted the Law on ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, on 19 April 2018.

Multilateral Convention amends the provisions of the existing bilateral Double Tax Treaties, in case the Multilateral Convention has come into force for both contracting states which have notified the Double Tax Treaty under the Multinational Convention. Serbia has notified 64 Double Tax Treaties, both ones that have already come to force and ones which have not been ratified yet.

Serbia has still not deposited its ratification document with the OECD, therefore, Multilateral Convention will come into force for Serbia at the expiry of three months from the date the ratification document is deposited with the OECD, which is expected to happen shortly.

More detailed information on the Multilateral Convention will be provided in the coming period.

Amendments to the Law on Value Added Tax, Law on Tax Procedure and Tax Administration and Excise Law

National Assembly of the Republic of Serbia has adopted amendments to the Law on Value Added Tax (hereinafter: VAT Law), the Law on Tax Procedure and Tax Administration (hereinafter: Tax Procedure Law) and Excise law.

The Law on Amendments to the VAT Law entered into force on 28 April 2018, with the majority of the amendments being applied as of 1 July 2018, with the exception of the amendment to the Article 53 - VAT refund to a non-resident taxpayer, which shall apply as of 1 January 2019.

Law on Amendments to the Tax Procedure Law has come into force and applies as of 28 April 2018, except for the amendments regarding the new business functions of the Tax Authority (including providing tax services), introducing the unified information system of the local tax administration and abolishing the authority of the Tax Authority in the area of foreign exchange which are applicable as of 1 January 2019, as well as amendments related to the obligation to inform the Tax Authority of all premises where the taxpayer stores goods and/or performs business activities, which are applicable as of 27 August 2018.

The Law on Amendments to the Law on Excise is published in the Off. Gazette RS No. 030/2018, from 20.04.2018. and will enter into force on 28 April 2018.

Further below is an overview of the most important changes encompassed by the above stated laws.

1. **Amendments to the VAT Law**

Newly adopted amendments of the VAT Law have extended the implementation of the legal provision governing tax point for services stated in the Article 5, paragraph 3, Item 1) of the VAT Law, providing that VAT liability arises at the moment when the invoice is issued for transfer, assignment or lease of copyrights and other related rights, patents, licenses, trademarks, as well as other intellectual property rights but also for the

services provided in direct connection with them assuming that they are provided by the same supplier.

In Article 24, paragraph 1, item 5a) is added which states that VAT should not be paid for the supply of goods that are entered into the free zone, transport and other services that are directly related to the entry and supply of goods in the free zone and which are performed to a non-resident person who has concluded a contract with the VAT payer - free zone user to incorporate these goods into goods intended for dispatches abroad.

In addition, in Article 53, paragraph 1, item 4) of the VAT Law was amended and a new provision was added which states that the VAT refund is to be allowed for a non-resident taxpayer who performs supplies of goods and services in the Republic of Serbia if a tax debtor for such supply is deemed to be a registered VAT payer - recipient of goods or services.

2. Amendments to the Tax Procedure Law

2.1 Refund of value added tax

Pursuant to the amendments to Article 70 of the Tax Procedure Law, in case when a taxpayer is entitled to a VAT refund, such refund will be granted in the total amount of VAT refund, decreased by the amount of other tax debts of the taxpayer (for any type of tax).

2.2 Expanding the liability of natural persons and persons responsible for calculation and payment of tax

Amendment to the Article 31 of the Tax Procedure Law stipulating the secondary tax liability, extends the liability of natural persons and persons responsible for calculation and payment of tax for all types of tax, and not solely for withholding tax, as it was prior to the amendments.

2.3 Amended tax return

New paragraph has been added to Article 40 of the Tax Procedure Law which stipulates that the taxpayer cannot file an amended VAT return for the tax period for which it has already file a tax return, in which he will amend its choice for a refund, regardless of the amount of the refund.

Also, provisions of Article 40 of the Tax Procedure Law were further specified, os that the taxpayer will be obliged to file amended tax return at the latest until the expiry of the statute of limitations, when he determines that the filed tax return contain an omission which results in incorrectly assessed tax liability.

Furthermore, pursuant to the amendments, amended tax return cannot be filed in case tax police has started taking actions with the purpose of detecting tax frauds.

2.4 Providing information

Pursuant to the amendments to the Article 45 of the Tax Procedure Law, apart from the taxpayer, the Tax Authority may request information which are of importance for undertaking the activities within the competence of the Tax Authority from other persons, companies, banks and government bodies

2.5 Addendum to the Minutes of the Tax Authority

Amendments to the Article 128 of the Tax Procedure Law introduce an addendum to the Minutes of the Tax Authority – namely, in case the tax inspector, after delivering the Minutes of the tax audit to the taxpayer, becomes aware of new facts of information which influence the facts of the

to the taxpayer. The taxpayer will have 8 days from the date of receiving the addendum to file comments to the Minutes.

2.6 Electronic filing of the property tax return

Pursuant to the amendments to the Article 38 of the Tax Procedure Law, as of 1 January 2019, taxpayers will be able to file the property tax return electronically.

2.7 Write off of penalty interest

Article 76 of the Tax Procedure Law, which provides for possibility of write-off of 50% of penalty interest for taxpayer which has been granted a deferral of payment of tax debt and which settles both the deferred tax liability and the current liabilities in a timely manner, has been amended so that the write-off is not available in case the tax debt was assessed in a tax audit.

2.8 New structure of the business activities of the Tax Authorities

Instead of current structure where the Tax Authority performs desk audits, field audits and activities with the goal of detecting tax frauds, after the amendments which will come into force as of 1 January 2019, the Tax Authority will provide tax services, tax audits and activities with the goal of detecting tax frauds.

Therefore, the Tax Authority will provide tax services which encompass, among others, providing legal assistance to taxpayers, receipt and processing of tax returns, etc.

Upon amendments to the Tax Procedure Law, the difference between desk and field audit is no longer made, but all audits are defined as "tax audits" and are subject to unified rules.

2.9 National Bank of Serbia

As of 1 January 2019 Tax Authority will no longer be authorized to issue licenses for exchange operations nor will it be authorized to supervise exchange operation, but these areas will be taken over by the National Bank of Serbia.

2.10 Delivering tax documents electronically and sending reminders to the taxpayers

Amendments to the Tax Procedure Law also refer to possibilities of delivering tax document electronically as well as electronic communication between the Tax Authority and taxpayers. Additionally, the amendments provide legal grounds for the Tax Authority to send reminders to taxpayers, in written form, electronically or via SMS, prior to sending official notices.

2.11 Filing of request for initiation of criminal or offense procedures

In accordance with the amendments to the Tax Procedure Law, when a tax inspector during a tax audit determines irregularities, tax inspector will either file a request for the initiation of offense procedure of will file a report to the tax police on reasonable doubt that a tax fraud might have been committed.

If the report is filed to the tax police, the tax inspector will not file the request for initiation of the offense procedure, but such request will be filed by the public prosecutor, if required. In case the tax police does not file a criminal charge against the taxpayer it will inform the Tax Authority that will consequently file a request for the initiation of the offense procedure.

2.12 Groundless request for tax refund

Article 173a of the Tax Procedure Law has been amended so that in case the amount of request tax refund is unjustified and does not exceed the amount of 1,000,000 dinars in a 12 month period, such case will be subject to offense procedure and not to criminal charges.

2.13 Informing the Tax Authority

Amendments to the Article 25 of the Tax Procedure Law clarify that the taxpayer is obliged to inform the Tax Authority on all important data which are not filed the Serbian Business Registers Agency, which includes data on all business premises in which the taxpayer stores goods or performs business activities, unless such data has already been provided to the Tax Authority. Pecuniary fine ranging from 100,000 to 2,000,000 dinars is prescribed for a legal entity that does not provide such data to the Tax Authority.

2.14 Local Tax Administration

Amendments to the Tax Procedure Law provide grounds for establishing unified information system of the local tax administrations, which would contain data relevant for assessing property tax and other public charges, as well as data on collection of such revenues, and all with the purpose of unifying the work and increasing the effectiveness by doing the administrative work electronically.

It is expected that the unified information system will be set up as of 1 January 2019, as of which date the local tax administrations will be obliged to connect with that system, which the Tax Authority will take over the running of the unified information system at the latest as of 1 January 2020.

3. Amendments to the Excise law

The most significant amendments to the Law on Excise are related to the additional clarification of the provisions of Article 39b, which significantly increases the legal security of taxpayers.

Namely, to the paragraph 1 of the above-mentioned Article, a part of the provision is added that unambiguously states that the Buyer - final consumer has a right to refund the excises paid on the listed petroleum derivatives and bioliquids even when listed petroleum derivatives are used as energy fuel or as a raw material.

Additionally, in paragraph 3, point 4), and in accordance with the above, the terminology of this provision has been harmonized in sense that the amended provision states that a right of refund excise paid on petroleum derivatives listed in Article 9, paragraph 1, item 3), 4), 5) and 6) of this Law, which are used as energy fuels or as a raw material, is entitled to a entity who uses these petroleum derivatives for industrial purposes

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Slovakia

Amendments to the Act on Employment Services and Act on Residence of Foreigners ("Amendments").

The Amendments introduce new conditions for the employment of third-country nationals.

Under the amendments, posting third-country employees to Slovakia from a non-EU employer will no longer be permitted. The goal is to reduce the large number of employees posted from third countries to work in Slovakia. Based on the new amendments, third-country employees will only be able to work for a Slovak employer under an employment contract or intra-corporate transfer agreement. Posting third-country employees to Slovakia will only be possible from a EU employer/company.

The Amendments are effective as of 1 May 2018.

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Methodological Guidance of the Ministry of Finance of the Slovak Republic on the Taxation of Virtual Currencies

The Ministry of Finance of the Slovak Republic published Methodological Guidance No. MF/10386/2018-721 on the Taxation of Virtual Currencies.

The methodological guidance No. MF/10386/2018-721 was published to ensure uniform interpretation of the taxation of income from the sale of virtual currencies. Income (revenue) from the sale of a virtual currency is subject to tax and is not tax exempt and therefore constitutes taxable income. The sale of a virtual currency means, for taxation purposes, any exchange, for example, exchange of a virtual currency for assets or exchange of a virtual currency for a service or its transfer for consideration, including an exchange for a different virtual currency. For a taxable person whose virtual currency is not included in its business assets, income from the sale of a virtual currency is other income under Article 8 of Act No. 595/2003 Coll. on Income Tax, as amended (hereinafter the "ITA"). Taxable income may be reduced by documented expenses incurred when generating income, but if the expenses are higher than the income earned, the difference is disregarded. For a taxable person that determines its tax base under Article 17 (1) of the Income Tax Act, income from the sale of a virtual currency is taxable income that can be reasonably considered as income from financial

assets. Such taxable persons should determine their tax base or tax loss based on the accounting profit/loss or the difference between income and expenses. The resulting profit/loss, or the difference between income and expenses is transformed into a tax base pursuant to Articles 17 to 29 of the Income Tax Act. Given the above, tax-deductible expenses may be applied to income from the sale of a virtual currency in accordance with Article 19 of the Income Tax Act up to the amount of income from sales commensurately in accordance with Article 19 (2) (f) of the Income Tax Act.

Information on the Obligations of a Taxpayer Paying Profit Shares to a Shareholder Who Is a Slovak Resident in 2018

The Financial Directorate of the Slovak Republic published information on the obligations of a taxpayer paying profit shares to shareholders (tax residents of the Slovak Republic) reported for a taxation period starting on 1 January 2017 or earlier.

Income of a taxable person with unlimited tax liability in the Slovak Republic who is a natural person – shareholder with a share in a company's share/registered capital and who obtains profit shares reported for a taxation period beginning on or after 1 January 2017 is subject to a withholding tax of 7%.

The tax base for the withholding tax on profit shares (dividends) is paid income gross of expenses and the taxpayer is the company that pays the profit shares. The company is required to pay the withholding tax to the Tax Authority by the 15th day of the month for the previous calendar month, unless the Tax Authority determines otherwise at the taxpayer's request. The taxpayer is also required to send to the Tax Authority the "Taxpayer's Notice on Withholding and Paying Withholding Tax Pursuant to Article 43 (11) of the Income Tax Act" by the same deadline.

The withholding tax withheld and paid by the taxpayer is considered as a settled tax liability of recipients of profit shares - natural persons, and the income is not reported in the tax return.

Information on the Obligations of a Taxpayer Paying Shares in Profit or Assets for Distribution to a Member of a Land Association with a Legal Personality Who Is a Slovak Resident in 2018

The Financial Directorate of the Slovak Republic published information on the obligations of a taxpayer paying shares in profit or assets for distribution to a member of a land association with a legal personality who is a resident of the Slovak Republic in 2018 for a taxation period starting on 1 January 2017 and later.

Income of a taxable person with unlimited tax liability in the Slovak Republic who is a natural person – member of a land association with a legal personality and who obtains profit shares reported for a taxation period beginning on or after 1 January 2017 is subject to withholding tax of 7%, provided that the shares in profit and assets for distribution exceed EUR 500 from one land association with a legal personality in the relevant taxation period.

The tax base for the withholding tax on shares in profit and assets is paid income gross of expenses and the taxpayer is the land association with a legal personality that pays the shares in profit or assets. The association is required to pay the withholding tax to the Tax Authority by the 15th day of

the month for the previous calendar month, unless the Tax Authority determines otherwise at the taxpayer's request. The taxpayer is also required to send to the Tax Authority a "Taxpayer's Notice on Withholding and Paying Withholding Tax Pursuant to Article 43 (11) of the Income Tax Act" by the same deadline.

The withholding tax withheld and paid by the taxpayer is considered as a settled tax liability of recipients of profit shares - natural persons, and the income is not reported in the tax return.

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Read more

Slovenia

Inclusion of distance sales into Intrastat reporting and increase of exemption thresholds

Statistical Office of the Republic of Slovenia has published new rules that apply to data collection for the Intrastat purposes as of 1 January 2018 onwards.

With the introduction of new rules, the scope of transactions that are subject to Intrastat reporting was broadened and now also includes distance sales. Therefore, the reporting units must include the value of goods sold at distance in their Intrastat reports for the reporting periods from January 2018 onwards.

The reporting units are obliged to report distance sales of goods to and from Slovenia as follows:

- Distance sales from Slovenia

A supplier, who is VAT registered in Slovenia and performs distance sales of goods to customers in other Member States, who are non-taxable persons, is liable to account for Slovene VAT on such sales until the value of the sales reaches the threshold, which applies in that other Member States. Once the value of the supplier's distance sales exceeds the threshold, the supplier is obliged to VAT register in that other member state and account for VAT at the rates applicable there.

Such supplier, who is simultaneously included into Intrastat reporting due to exceeded Slovenian threshold for dispatches of goods, is obliged to include the value of distance sales in the Intrastat report as dispatches of goods from Slovenia to other EU member states.

- Distance sales to Slovenia

In accordance with existing local VAT rules, a supplier from other EU Member State, who performs distance sales of goods to Slovenia in excess of 35.000 EUR in one calendar year, must generally register for VAT in Slovenia and account for local VAT.

Foreign suppliers, which exceed both the threshold for VAT registration in Slovenia (i.e. 35.000 EUR) as well as the threshold for Intrastat reporting (i.e. 140.000 EUR), are as of 1 January 2018 obliged to include the value of such sales in its Slovene Intrastat report as arrivals of goods to Slovenia.

Increase of exemption threshold

An additional change was introduced in terms of the threshold for inclusion in Intrastat reporting. Namely, as of January 2018, the exemption threshold for dispatches of goods was increased to 220.000 EUR (previously 200.000 EUR) and 140.000 EUR for arrivals of goods (previously 120.000 EUR).

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