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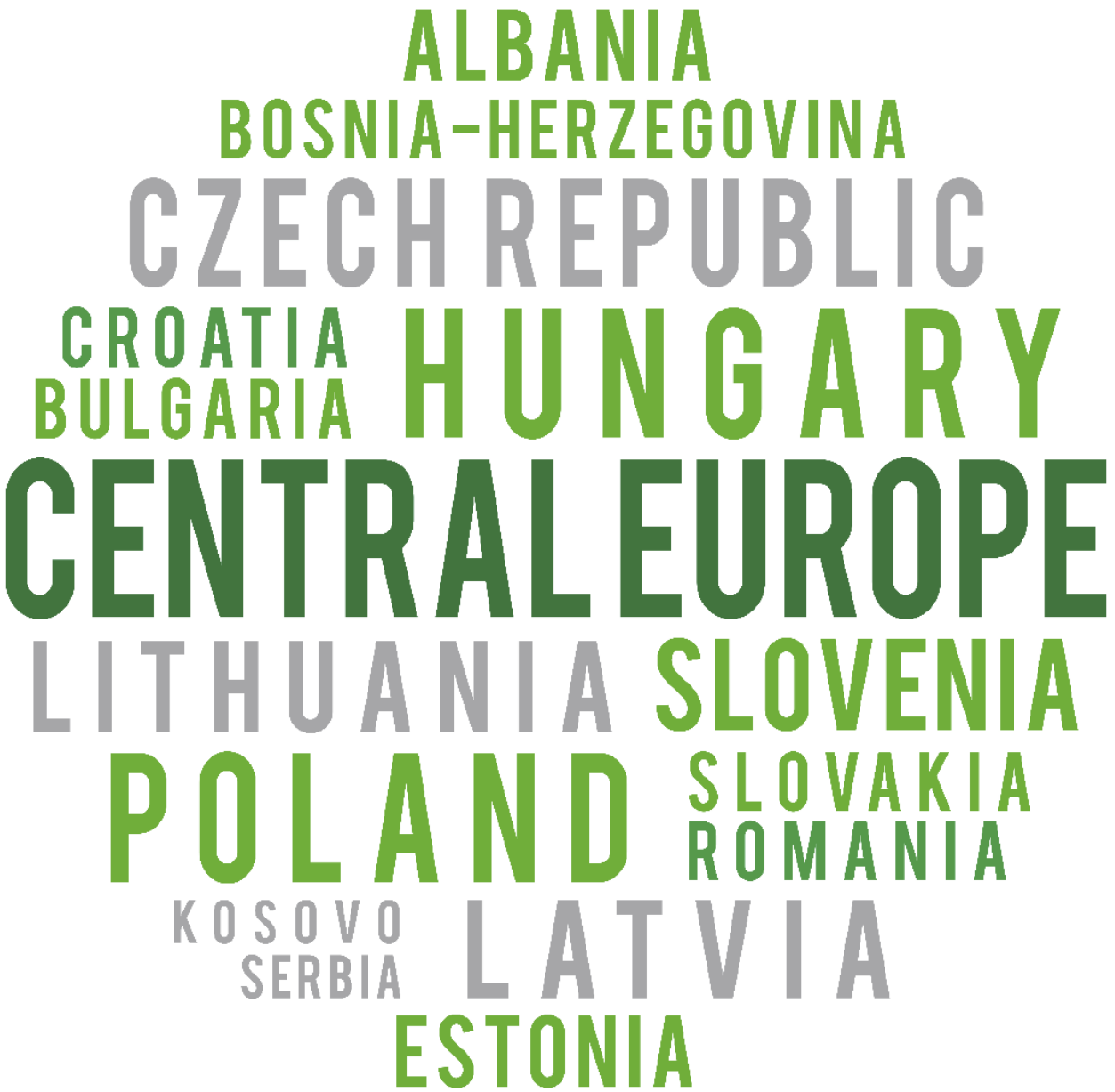
CE Tax&Legal Highlights
February 2018



Tax&Legal Highlights

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Bulgaria

Amendment to Ordinance No. 11 of 2002 on the International Carriage of Passengers and Goods by Road

The changes aim to reinforce the requirements for reliability of the license holder

The amendment introduces an additional element of proof of reliability (good reputation) of an applicant company, which is a core requirement for granting of a transport license. Per the changes, to demonstrate reliability, an applicant company must provide evidence that their transport manager(s) have not been convicted of a crime and have not been deprived of the right to carry out transport activities by an effective court decision. Additionally, reliability is conditional upon the applicant company and the respective transport manager(s) having had no sanctions for serious violations levied against them in one or more Member States.

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Croatia

Imports VAT as reporting category

New Regulations governing payment of VAT on import of machines and equipment through VAT return from 1 January 2018.

On 1 January 2018, a new Regulations on payment of VAT on import of machines and equipment through VAT return (Regulations) entered into force. The Regulations implements VAT Act provisions which allow payment of imports VAT relating to certain categories of machines and equipment through VAT return by reporting relevant VAT liability.

According to the VAT Act, the reporting of VAT liability is allowed to the taxpayers which are entitled to fully deduct input VAT who import machinery and equipment of the value above HRK 1.000.000 (approximately EUR 134.000; per one customs declaration or approval) falling under one of the following Combined Nomenclature (CN) tariff numbers:

CN	Description
Section 84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
Section 85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
8608	Railway or tramway track fixtures and fittings; mechanical (including electromechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing
8802	Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles
8805	Aircraft launching gear; deck-arrestor or similar gear; ground flying trainers; parts of the foregoing articles
8905	Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing stages, buoys and beacons)

The Regulations, which amongst other, govern specifics of issuing a resolution allowing the taxpayer to pay imports VAT through VAT return, were published in the Official Gazette no. 132/2017 of 29 December 2017. They prescribe that the application should be filed to the Customs Authorities Central Office on the prescribed form (Annex 1 of the Regulations), containing in particular information on the taxpayer (name, address, personal identification number (OIB) or the Croatian VAT identification number, EORI number and contact information) and specification and value of the machines (equipment) for which the resolution is issued. The Customs may also request other information deemed as necessary.

The Customs will keep records of the resolutions issued and each assign with a unique record number the taxpayer is required to enter in the customs declaration upon import of the machinery (equipment).

Since there is no obligation to pay VAT on the prescribed account, the Customs will no longer record VAT charged on the customs declaration in its bookkeeping records. However, the Tax Authorities will be informed on the amount of VAT and any subsequent amendments through the electronic data exchange system.

The Regulations also define the taxpayer who has the right to fully deduct input VAT as legal person or private individual enrolled in the taxpayer's registry who is not obliged to apply the proportional input VAT deduction (so called pro-rata). By strict interpretation of this provision, taxpayers who import these goods and are able to directly allocate this cost to their outgoing taxable supplier, which are obliged to use pro-rata mechanism in relation to their other supplies, would not be eligible for this import simplification.

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Czech Republic

The Proposed Amendment to the ITA Brings Changes for Both Legal Entities and Individuals

The Ministry of Finance has released a proposed amendment to the Income Taxes Act (the "ITA") for consultation, through which the new anti-tax avoidance principles arising from the ATAD Directive (Council Directive EU 2016/1164 of 12 July 2017) should be implemented, including the abolition of the "super-gross salary" and the "solidarity tax surcharge", while, at the same time, increasing the personal income tax rate.

In addition to the changes for legal entities and individuals described below, all payers should be subject to the new anti-abuse rule (or general anti-abuse rule), currently only inferred by the judicature in certain cases. According to the amendment, the Tax Code should specifically provide for the procedure in situations where the main, or one of the main, aims of the transaction is to generate a tax or another benefit in breach of the letter and spirit of the law.

I) Changes for Legal Entities

The new taxation principles primarily affecting large companies with cross-border operations are based on the ATAD. The Directive stipulates **five anti-tax avoidance measures**: the interest limitation rule, exit taxation, general anti-abuse rule, controlled foreign company rules, and hybrid mismatches. The ATAD implementation deadline is 31 December 2018; therefore, the proposed amendment to the Income Taxes Act must become effective on 1 January 2019, at the latest (except for the exit taxation and hybrid mismatches rules, in respect of which the implementation period is extended until the end of 2019, or 2021 for 'reverse hybrid mismatches').

In summary, the amendment proposed with respect to ATAD implementation:

- **New additional rules for the tax deductibility of financial costs** which should newly be limited to 30% of adjusted EBITDA or by a threshold of CZK 80 thousand (approx. EUR 30 million);
- **Introduction of CFC rules** – additional taxation of selected income in case of subsidiaries based in states with a low taxation level at the level of a Czech parent company;
- **Introduction of exit taxation**, when a taxpayer moving his tax residence, business activities or assets from the Czech Republic would be taxed based on the market value of assets to be moved.

II) Changes for Individuals

With effect from 1 January 2019, the proposal should abolish the super-gross salary, or the inclusion of insurance premiums paid by the employer in the tax base of individuals' income from dependent activities. Employees' tax bases should newly only consist of their gross income. The proposal will additionally abolish the solidarity tax surcharge, which complicated the calculation of tax in respect of persons with higher income.

However, the tax rate will increase. Instead of the existing 15% rate, two rates will be introduced: 19% for income of up to CZK 1.5 million a year, and 24% for income in excess of the threshold.

Employees with lower income will, in effect, see a 1.1% decrease in taxation (19% as opposed to the existing 20.1% effective tax rate), with higher taxation applicable to persons with rental income and persons with other income (these were only subject to a 15% tax rate following the deduction of expenses).

Entrepreneurs and other entities with income from independent activities will be compensated for the increased tax rate by the possibility to deduct three quarters of the social security and health insurance contributions made on top of standard expenses (actual or flat-rate expense charge-offs). In theory, their taxation should remain substantially unchanged thanks to the deduction; however, tax calculation and related administration will become more complicated for them.

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A Change in the Treatment of Tax Exemption of Income from Royalty and Interest Payments?

In late January, an important ruling of the Supreme Administrative Court (SAC) was issued under Ref. No. 3 Afs 250/2016. The ruling is related to tax exemption of income from royalty payments and interest on a debt financing instrument.

The common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been introduced by the European Union by way of Council Directive 2003/49/EC (Directive). The Czech Republic implemented this system into its national tax legislation by way of the provision under Section 38 (nb) of Act 586/1992 Coll., on Income Taxes (ITA).

The subject of the assessed case was a negative ruling passed by the Tax Administrator in terms of acknowledging the tax exemption of income from interest on a debt financial instrument for 2011 and 2012 based on an application filed by the taxable entity in July 2013. According to the Tax Authority, and as later confirmed by the Appellate Financial Directorate, the application for tax exemption could not be approved due to the fact that it was filed too late. In terms of the late filing, the authorities stated that a critical precondition to utilise a tax exemption is to obtain a resolution of a constitutive nature. In other words, this means that tax exemptions may be utilised no sooner than after the issuance of the relevant tax exemption resolution, ie not backwards.

In its appeal, the taxable entity principally referred to the Directive as such, which stipulates that if the taxable entity's company withholds tax at source in a case in which tax exemption should be used, an **entitlement arises for the taxable entity to seek the refund of the tax withheld in this way, within a period of at least two years from the date on which the interest and royalty payments were made (if the tax exemption preconditions have been *de facto* met)**. Given that in the Czech Republic, tax exemptions depend on the issuance of a resolution under Section 38 (nb) of the ITA, the two-year period for refunding withheld taxes may be connected with the point at which the application for tax exemption was filed.

The SAC upheld this opinion of the taxable entity and stated that the importance of decisions on tax exemption lies in the authoritative confirmation of matters based on which the entitlement to tax exemption originates and the fulfilment of which is required in order to achieve the exemption of interest from withholding tax.

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A New Form of the TP Attachment to the Corporate Income Tax Return

Since 2014, taxable entities that meet specific criteria have been obliged to fill in an appendix to the corporate income tax return related to intercompany transactions. Also due to this measure, transfer prices have attracted the attention of the tax administration more significantly. The taxable entity is supposed to fill it in, if it meets at least one of the following criteria: the entity owns assets of at least CZK 40 million; the entity generates turnover exceeding CZK 80 million; the entity's average recalculated headcount equals 50 and, simultaneously, the entity performed a transaction with a related entity abroad, incurred a loss or was granted a promise for investment incentives and, simultaneously, performed a transaction with a related party. In short, these are the preconditions indicating that the taxable entity is obliged to inform the tax administration on its intercompany transactions in detail.
In 2018, the tax administration has issued a new form of the attachment that is to be filled in already for the 2017 reporting period. The attachment has been extended to include additional lines, specifically in Table B where, for the first time, the costs and income from rents will be filled in (Line 4), and in Table C, where the taxable entity will newly indicate whether it provided or received any financial or bank guarantees.

The obligation to file the transfer pricing attachment will newly apply to financial institutions. It is still valid that the attachment is not to be filled in by the permanent establishment of tax non-residents.

All details necessary for the preparation of the attachment to the tax return are described in the instructions provided for the filling of Item 12, Part I of the corporate income tax return.

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Upcoming Amendment to the VAT Act

The Czech Ministry of Finance has presented the first proposed amendment to the VAT Act, which should (barring exceptions) become effective on 1 January 2019. The amendment is set to fully revise the rules for correcting the tax base or the possibility of decreasing VAT in respect of irrecoverable receivables. It introduces special treatment for taxing vouchers for the purchase of goods/services, thereby transposing the relevant EU Directive. Additional transposition of EU rules includes the implementation of new processes for services provided electronically to non-taxable entities. The changes should also specifically affect the financial sector (a new definition of finance leases, application of exemptions to independent groups of entities) and the real estate industry (inclusion of certain work on the property in the compulsory/voluntary adjustment of tax deductions, impossibility of imposing tax on premises rented for housing purposes). Furthermore, the changes with general implications include a stricter approach to issuing tax documents and their delivery.

At present, comments on the amendment to the VAT Act made by experts as well as non-specialists are being processed. The Czech Ministry of Finance should subsequently address these and submit the amendment for the subsequent legislative process.

Supreme Administrative Court Ruling on the Rejection of a Tax Deduction Claim

In its recent ruling 5 Afs 60/2017, the Supreme Administrative Court addressed the possibility of rejecting a tax deduction claim made by a payer in a situation where the supplier declared the relevant tax, yet the subcontractor failed to pay VAT at the very beginning of the entire business chain. The ruling has been recently referred to by the media as ground-breaking as, in certain cases, it benefits the fact that the tax administrator is generally unable to reject the tax deduction at all if VAT was not paid by an indirect, rather than direct, business partner. This would, indeed, be a revolutionary assertion. Nevertheless, the Court has not stated any such thing: it merely rejected the tax administrator's assertions that the payer was demonstrably aware of the failure to pay tax, or should have and could have been aware of it. The other sub-comments made by the court in relation to individual "errors" on the part of the payer are quite apt, yet in no way innovative: they merely uncover the fact that the tax administrator's actions were entirely mistaken and rash and do not in any way advance the view on the issue of proving participation in tax fraud. Nevertheless, we **consider this ruling to be of great use and it will surely be a convenient means of protecting tax payers' rights**.

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The Czech Republic wants to amend the rules for posting employees in the EU

The EU Posting Workers Directive shall be amended, claims the Czech government. Currently, it complicates the life for many employers that post their employees abroad: the employers have to register at the authorities of the respective states, they have to provide the employees with numerous documents (e.g., A1 certificates, copies of employment contracts etc.). In addition, the rules for minimum wage and other labour law obligations need to be obeyed. The Directive is now subject to revision, as part of which the Czech government asks, among others, for excluding international transit. However, employers from other industries may expect the tightening of the rules, requested especially by West European countries. We will keep you informed about any updates.

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Kosovo

Kosovo Implements new Law on Standardization No. 06/L-019

The Standardization Law sets forth rules and principles for developing activities of standardization in the Republic of Kosovo, and the organization and functioning of the Kosovo Standardization Agency.

The Standardization Law was approved by the Assembly of the Republic of Kosovo in accordance with article 65 (1) of the Constitution of the Republic of Kosovo, dated 15.02.2018, and has entered into force fifteen (15) days after the publishing in the Official Gazette of the Republic of Kosovo.

This Law partially transposes Regulation (EU) 1025/2012 of European Parliament and of the Council of 25 October 2012, which establishes requirements for standardization. It is applied to developed standards, adopted and approved by Kosovo Standardization Agency for all sectors of the economy. This does not apply to drafted standards, adopted and approved by companies, agencies and/or organizations, or different specifications for internal needs.

Standardization may have one or more objectives for adaption of a product, process or service. Such objectives are not limited with diversity checking, use, compatibility, interexchange, health, safety, environmental protection, product protection, mutual agreements, economic performance and trade.

Moreover, the Standardization Law regulates issues such as following: Kosovo standardization principles; Kosovo Standardization Agency as body of Ministry of Trade and Industry (functions, responsibility, structure, organization, representation, membership, financing, transparency etc.).

Kosovo Passes New Law on Immovable Property Tax No. 06/L-005

This Law establishes the tax on immovable property and sets out the fundamental rules and procedures for the administration of the immovable property tax by the Municipalities and the Ministry of Finance.

The Assembly of Kosovo has passed the new Law on Immovable Property Tax No.06/L-005 which will enter into force on 1st October 2018 and be effective for the 2019 tax year.

The new Law envisages a gradual increase of the taxable value of parcels from the first year starting with 20% of the appraised value in the first year, rising 20% yearly until the fifth year upon which the taxable value will be 100% of the appraised value of the immovable property.

The Law stipulates that the revenues collected from immovable property tax will be allocated for the account of Municipality in the territory of which the immovable property is located.

In this light, the Law also foresees that the respective Municipal Assembly shall set property tax rates for all property categories until the 30th of November of the year before the year of the imposition of the tax. The tax rates set must be within the levels defined as follows:

- For agricultural units of parcels, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to zero point five per cent (0.5%);
- For agricultural units of objects, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to zero point five per cent (0.5%);
- For forest units of parcels, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to zero point three per cent (0.3%);
- For residential units of parcels, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to one per cent (1%);
- For residential units of objects, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to one per cent (1%);
- For commercial units of parcels, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to one per cent (1%);
- For commercial units of objects, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to one per cent (1%);
- For industrial units of parcels, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to zero point eight per cent (0.8%); and
- For industrial units of objects, tax rates may vary at a scale from zero point fifteen per cent (0.15%) to zero point eight per cent (0.8%);

In terms of appraising the value of immovable properties, as per Article 18 of the Law, general appraisals are foreseen once every three to five years based on a rolling schema and procedure set forth by sub-legal act.

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Lithuania

Lithuanian Supreme Court emphasized the importance of companies' obligation to disclose registered seat information to the Commercial Register (JAR)

On 3 January 2018 the Lithuanian Supreme Court (the Court) has, in the civil case No 2-68-3-08960-2016-1, assessed the importance of information on the legal persons' registered seat in the JAR to the delivery of procedural documents during the court proceedings.

Paragraph 2 of Article 122 of the Code of Civil Procedure states that all procedural documents have to be delivered to the legal persons at the address registered with JAR, unless the legal person indicates another delivery address or documents are being delivered via e-channels. The Court has emphasized that such regulation on the delivery of procedural documents to legal persons is based on the nature of legal persons and the principle of disclosure of information on incorporation and registration of legal persons with the JAR.

The Court found that the above-described legal regulation sets an obligation upon legal persons to disclose the key information set by laws to the JAR. One of the essential elements of information registered with the JAR is the data on the legal person's seat (its address). Information on the legal person's seat is of significant importance, since it ensures the possibility of contacting the legal person, and also helps securing the interests of creditors.

The Court has also noted that a legal person not only has to disclose information to JAR but also ensure the possibility of accepting the procedural documents as well as other correspondence at the address of the seat. Failure to disclose the information on its actual seat to JAR means that a legal person deliberately assumes the risk of not being notified on the ongoing court proceedings and waives its right to be heard.

Considering the above-described case law, which emphasizes the importance of information on legal person's registered seat in the JAR, legal persons should verify that data on their registered seat submitted to JAR is up-to-date and, if necessary, take measures to update the data as well as ensure the possibility of accepting the procedural documents and other correspondence at the address of the registered seat.

The Court clarified what information can be treated as confidential during public procurement

On 4 January 2018 the Lithuanian Supreme Court (the Court) adopted a ruling in a civil case No e3K-3-16-378/2018 (the Ruling) on the concept of confidential information in the public procurement.

In the Ruling the Court has reminded of its previous clarifications on the different categories of confidential information based on its nature and importance:

- Trade secrets is one of several types of confidential information, as the legal category of confidential information is broader than that of trade secrets;

- Information which does not fall under the category of trade secrets may fall under the scope of definition of confidential information and thus be protected;
- Data, constituting the content of confidential information, is not always deemed to be trade secret.

In the light of the above, the Court has further clarified, that the supplier's right set in Article 6 of the Law on Public Procurement to protect the non-public information specifically indicated in the tender offer covers only such data that qualifies as a trade secret. This means that only the protection of the most important and commercially sensitive information may be based on the purposes of regulation of public procurement legal relations. The mere fact that certain information related to the supplier and its activities is normally not easily available does not mean that it also has to be protected in the procedures of the public procurement, unless it corresponds to the concept of a trade secret.

When defining the concept of a trade secret the Court has, in its previous case law, clarified that to be deemed as a trade secret, the information has to meet the following criteria: 1) the information has to be secret (non-public); 2) the information must have a real or potential commercial (trade) value for not being known to third persons and may not be easily available; 3) the information has to be secret due to the wise efforts of its owner or other person to whom the information was entrusted by its owner. Therefore, only such information that conforms to the above-discussed criteria can be considered confidential and protected in the context of public procurement.

New case law on seller's duty to guarantee the quality of the product and on the protection of buyer's rights

On 7 February 2018 the Lithuanian Supreme Court (the Court) has, in the civil case No e3K-3-5-915/2018, examined the obligations of the seller during the product's warranty period and other questions, related to consumers' remedies.

The Court found that the laws do not require the defect of the product to be apparent at the time of its transfer to the buyer – it is sufficient that at that time there are reasons for the defect to emerge or occur in the future during the warranty period. This is especially relevant in the context of complex and technologically sophisticated goods, since it may take more time for their defects to expose.

The Court has also emphasized that the current legal regulation foresees the presumption of seller's liability for the quality of the sold goods, which may only be denied if the seller proves that the defects of the goods have occurred due to improper use of the goods by the buyer, third party fault or force majeure. Furthermore, in this case the Court has formed an important rule on the burden of proof, according to which the buyer's breach of the rules on the use or storage of the good eliminates seller's liability. Such breach has to be proved by the seller, though. When examining the questions related to the remedies of the consumers, the Court has ruled that even the non-essential defects of the goods may serve as a proper ground for the consumer to terminate the contract and request for repayment of the product's price. As the laws do not provide for the hierarchy in the legal remedies that may be taken by the consumers, the consumer is free to choose the most appropriate legal remedy established by laws, insofar as this does not conflict with the principle of proportionality. The question whether the remedy chosen

by the consumer meets the principle of proportionality is decided by court on a case-by-case basis.

The Lithuanian Supreme Court: tenant's right to renew the lease is not imperative

On 7 February 2018 the Lithuanian Supreme Court (the Court) has, in its civil case No e3K-3-23-611/2018, ruled on the interpretation and applicability of legal provisions governing tenant's pre-emptive right to renew the lease agreement.

The Court found that the article of the Civil Code establishing the tenant's right to renew the lease agreement entitles the tenant to use its pre-emptive right against third persons to conclude a new lease agreement with the same lessor rather than sets an additional protection to the tenant. This means that the tenant may as well choose not to use such right of his. He can do this not only at the expiration of the lease agreement but also at the time of its conclusion, by setting a waiver in the agreement itself.

Considering the above, the Court has formed the following rule on the interpretation of law: a tenant's pre-emptive right to renew the lease agreement is not imperative, therefore, the parties are free to negotiate and to agree in advance that the tenant waives his pre-emptive right to renew the lease agreement.

New disclosure obligations for partnerships

Partnerships will have to disclose information on their partners to the administrator of the information system of stakeholders of legal persons (JADIS).

On 1 June 2017 the amendments to the Law on Partnerships were adopted, based on which general and limited partnerships will have to submit to the administrator of JADIS information on the partners of the partnership, the amounts (in case of monetary contributions) or value (if contributions are non-monetary) of their contributions as well as dates when a partner joined and left the partnership. The above data will have to be submitted within 5 days after registration of the partnership or, respectively, change of the data. Liability for submission of the above-listed information to the administrator of the JADIS will lie with the general partners appointed to perform the duties of management bodies.

New rules will come into effect as of 1 January 2019. Partnerships established by 31 December 2018 will have to submit the data to the administrator of JADIS until 31 August 2019 (if the data has not changed from 31 December 2018 to 30 June 2019).

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Poland

Mandatory electronic filing of financial statements. The President signs the Act

On 12 February 2018, the President signed the Act changing the Act on the National Court Register, which also introduced amendments to the PIT Act, the CIT Act and the Accounting Act. The adopted amendments introduce the requirement of electronic filing of financial statements for entities obliged to keep their accounting records in accordance with the Accounting Act and those who keep full accounting records.

The financial statements should be signed with a qualified electronic signature or ePUAP trusted profile. Both the logical structure and the format of reporting files will be determined in the regulation of the Minister of Finance and made available online on Public Information Bulletin website of the Ministry of Finance. Additionally, during the meeting of the Extraordinary Committee for Deregulation on 24 October 2017, it was indicated that the proposed changes would most probably be implemented by adding a new structure to the so-called Standard Audit File-Tax (SAF-T). Moreover, the Ministry of Finance will also determine whether electronic filing of financial statements will cover only one or several files corresponding to each of the reporting elements (e.g. reflecting a profit and loss account or a balance sheet). If this solution is introduced in Poland, the Ministry will be able to get a comprehensively view of the financial position of companies. What is more, thanks to the electronic form of financial statements the authorities will be able to crosscheck information disclosed in the statements with that provided in other SAF-T formats.

The key changes:

- PIT payers keeping the accounting records and CIT payers will file financial statements in electronic form (i.e. separate and consolidated statements except for consolidated financial statements prepared in accordance with the International Accounting Standards);

- Taxpayers not registered in the National Court Register will provide financial statements directly to the Head of the National Revenue Administration (entities registered in the National Court Register will file financial statements to the National Court Register);

- The National Court Register will keep a repository of financial documents for each entity required to submit financial documents to the National Court Register;

- The documents kept in the repository will be sent to the Central Register of Fiscal Information kept by the Head of the National Revenue Administration.

Significantly, the European Securities and Markets Authority (ESMA) must determine the format of financial statements prepared in accordance with the International Accounting Standards before local regulations are implemented.

The Act also introduces a significant change to the Tax Code (Article 274(a).1), whereby tax authorities may demand the rationale for the failure to submit the financial statements or request such documents. Consequently, pursuant to Article 262.1.2a of the Tax Code, any entity that fails to comply with the requests of the tax authorities may be punished with a fine of PLN 2,800, which may be reimposed.

The Act was signed by the President on 12 February 2018. The provisions on electronic filing of financial statements will come into force on 1 October 2018 and will also apply to financial statements for 2018.

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Transfer Pricing - extension of the deadlines for transfer pricing documentation

On Friday, February 16, 2018 Polish Ministry of Finance announced to be working on approx. 6 months extension of the deadlines for transfer pricing documentation and CIT-TP/PIT-TP forms regarding transactions made by taxpayers in 2017 and 2018.

According to the Announcement of the Ministry, the proposed regulation intends to extend these deadlines until the last day of the ninth month after the end of the tax year (currently the deadline is the date of filing annual tax returns). In practice, taxpayers whose tax year ended December 31, 2017 would be required to prepare documentation and submit an appropriate statement confirming preparation of the tax documentation to the tax office, and attach CIT-TP/PIT-TP form to the annual tax return by September 30, 2018.

Currently the internal consultation with respect to the draft regulation are carried out. The Ministry plans to issue the document in February 2018.
The objective of the extended deadlines in the first two years after implementation of the new requirements is to address taxpayers' needs and simplify the tax system.

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The Bill on employees' capital pension scheme (PPK) is already available on the website of the Government Legislation Centre. The new law will come into effect as of 1 January 2019.

The Government Legislation Centre published the long-awaited Bill on employees' capital pension scheme on its website.

Implementation schedule
The effective date of the act is planned for 1 January 2019.

When the Act enters into force, the obligation to conclude agreements for the management of employees' capital pension schemes ("PPK") with fund management companies ("TFI") will apply to employers with the headcount of at least **250 people** and then successively to:

- employers with the headcount of at least **50 people** - from 1 July 2019;
- employers with the headcount of at least **20 people** - from 1 January 2020;
- all employers (including micro-enterprises employing up to 9 people) from 1 July 2020.

Importantly, the obligation to conclude a PPK management agreement will also apply to entities that only cooperate with persons under civil law contracts (with the exception of self-employed individuals) and do not employ staff on a standard basis, or even those paying remuneration only to members of supervisory boards for performing their functions and for whom the entity pays compulsory contributions for retirement and disability insurance.

The obligation will also apply to foreign employers hiring Polish staff, contractors or members of supervisory boards, who are obligatorily covered by pension and disability insurance in Poland. In practice, it will apply to all EU companies which employ people in Poland, when the law also applies to micro-enterprises (probably as of 1 July 2020).

The employer will select PPK
The employer will be required to conclude a PPK management agreement with only one TFI, but it will be able to choose from among PPKs established and managed by various TFIs (also private entities).

All available PPKs will be published on the website of the State Development Fund. In practice, an entity already employing staff will have 90 days from the date when the new law comes into force for the selection and signing of a PPK management agreement. (For new employers it is 90 days from hiring the first employee). The employer will be obliged to consult the company's trade unions or other organization representing its employees before selecting the PPK.

If the employer does not enter into a management agreement with the fund management company on time, the State Development Fund will demand that such management agreement be concluded within the next 30 days. Such demand will be sent based on information provided by the Social Security Institution on the last day of February each year. After the lapse of the deadline, the employer will be allocated to a fund management company **by force of law** (even without any agreement), in which the State Development Fund holds a majority interest. The agreement will be effective from the day following the lapse of this additional 30-day period.

Importantly, the Act provides for a fine of **PLN 1,000 to PLN 30,000** for a person "obliged to act on behalf of the employing entity" for evading the obligation to conclude the PPK management agreement on time. Persistent evasion from this obligation may not only lead to a fine (calculated according to the provisions of the criminal law), but also to additional two years of imprisonment or restriction of liberty.

Employees participating in PPK
Employees will automatically join the PPK. The employer is obliged to conclude a PPK management agreement with a fund management company for and on behalf of each employee (including contractors and members of supervisory boards who receive remuneration) within **7 days after the lapse of a 90-day period from the date of employment.** If it fails to do so, a legal relationship resulting from the PPK management agreement between the employee and a fund management company with which the employer has concluded a PPK management agreement or a fund management company controlled by the State Development Fund shall be deemed established by law on the first day after the lapse of the deadline or as of the date the PPK management agreement is deemed concluded.

The Act provides for a forced transfer payment from previous PPK of the employee to the PPK of the current employer, unless explicitly refused by the employee. One person may have PPK accounts with various fund management companies.

Every employee may decide not to make contributions to the PPK by submitting a written declaration to the employer. The declaration does not terminate the PPK management agreement, but only suspends the employer's obligation to pay contributions to PPK for such an employee. The declaration is to be valid from the next month after its submission, so **the employer will have to pay contributions to the PPK for at least one month.**

The declaration is valid for 2 years, therefore payment of PPK contributions for employees who resigned from participation in the PPK after the Act entered into force should restart on **1 April 2021**, and then every two years (1 April 2023, 1 April 2025 etc). A person who has previously decided against payment of contributions to PPK can change the decision at any time by submitting a written declaration.

Importantly, the Act introduces a criminal provision for persuading employees not to joint PPK. A person authorized to act on behalf of the employer or acting on its initiative will be subject to a fine, restriction of liberty (up to 12 months) or imprisonment of up to 2 years.

The amount of contributions to PPK
The basic contribution financed by the **employer** will amount to **1.5% of monthly remuneration** and can be increased by a voluntary contribution to 2.5% of the remuneration (to be decided by the employer). The basic contribution of the **employee** will amount to **2% of the remuneration** (the monthly net income of the employee will be reduced by the same amount) and can be voluntarily increased by the employee by another 2% of the remuneration.

PPK versus PPE
The Act on PPK will not apply to employers running the Employee Pension Scheme (PPE) and paying a basic contribution of at least **3.5% of the remuneration** as of the date when the Act enters into force. Such employer will not be obliged to enter into agreements with fund management companies. Currently, the Bill does not specify the minimum period of the Employee Pension Scheme agreement valid before the effective date of the Act. The requirement that a given employer should have run the Employee Pension Scheme for at least six months was discussed before, but it was not introduced.

The Act on PPK will **automatically apply** to employers who run Employee Pension Schemes when they:

1. discontinue accruing and paying basic contributions to the Employee Pension Scheme;

2. reduce basic contributions to the Employee Pension Scheme to less than 3.5% of the remuneration;

3. are late with payment of basic contributions to the Employee Pension Scheme for more than 90 days;

4. liquidate the Employee Pension Scheme.

The Bill on PPK provides for the amendment of the Act on the Employee Pension Scheme (PPE) to enable:

1. participation in PPE for individuals employed under an agency contract, contract of mandate, service agreement, persons receiving remuneration for performing their functions on supervisory boards (not mandatory - their participation in the PPE is to be decided by the amended workforce agreement);

2. transfers from PPK to PPE (and vice versa);

3. reduction of costs and fees charged by a financial institution to 0.6% of the total funds managed per annum;

4. independent voluntary contributions to PPE by participants who are no longer employed by the employer (if provided for in the workforce agreement).

In accordance with the Bill, if the Employee Pension Scheme does not cover individuals employed under civil law agreements and members of supervisory boards (from 1 January 2019), the employer who will run the PPE **will be obliged to create a PPK for those individuals** within the deadlines for concluding PPK management agreements with fund management companies and to enter into individual PPK management agreements for those employees (supervisory board members).

Investment activities of PPK
The bill does not specify eligible investments of fund management companies running PPK. It requires that at least four investment funds (or sub-funds) be managed, following different investment policies. Contributions will be allocated to selected funds, depending on the age of participants. If a participant approaches the retirement age, his or her contributions should be allocated to low risk funds.

The State Development Fund will be able to influence investment decisions of fund management companies in which it holds majority interest. The Polish Financial Supervision Authority will supervise the activities of other fund management companies (including foreign ones - but only to the extent specified by the Act).

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Romania

Implementation of the New Customs Code - European Commission's conclusions

In a report published at the end of January on the implementation of the new Customs Code, the European Commission announced, among other things, the amendment of the exporter's definition from the customs legislation's perspective.

On 22 January 2018, the European Commission issued a report to European Parliament and European Council on how the provisions of the Union Customs Code, that came into force on 1 May 2016, were implemented, and how has exercised its powers to adopt delegated acts, in the period elapsed since the Code entry into force.

The report describes how the deadlines for implementing the IT systems defined in the Union Customs Code have been met and a summary on the amendments brought to the new customs legislative package since its entry into force until now.

The European Commission reminds that, by 2020, the exchange of information between economic operators and customs authorities will be entirely electronic. To achieve this goal, a total of 17 electronic systems are currently being developed (e.g. to obtain the AEO status or to issue proof on the customs status of goods).

According to the report, the following amendments are to be made to the European customs legislative package:

- The amendment of the exporter's definition provided for in Article 1 (19) of the Delegated Regulation;
- The extension of the one-day period during which goods may be temporarily stored in places other than temporary storage facilities;
- Amendment to the rules of origin so that a preferential tariff treatment can be granted to processed products that have been obtained from imported goods that themselves qualified for preferential tariff treatment under the inward processing procedure.

The electronic transport document can be used as a transit declaration

The electronic transport document can be used as a transit declaration for air transport is one of the main changes to the EU Convention on the Common Transit Procedure.

Decision no. 1/2017 of the EU-EFTA Joint Committee on Common Transit brings a number of amendments to the Convention of 20 May 1987 on the Common Transit Procedure concluded between the Member States of the European Union and the EFTA States (Switzerland, Iceland, Liechtenstein and Norway).

Among the amendments, the most important are:

- Possibility to use the electronic transport document as a transit declaration for air transport (provisions applicable from 1 May 2018 at the latest);
- Possibility to submit a transit declaration before the estimated date for presentation of the goods at the customs office of departure

(applicable from the moment of the NCTS modernization installation as set out in the Annex to Implementing Decision (EU) 2016/578);

- The possibility of using a customs declaration with reduced data requirements for placing goods under the common transit procedure, applicable to the carriage of goods by rail and to the carriage of goods by air, if an electronic transport document is not used as a transit declaration.

What does this means for the economic operators?

We recommend that you review the amendments to the Convention on the Common Transit System in order to identify the benefits that it can bring to your supply chain.

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The companies intending to import, export or produce controlled substances that deplete the ozone layer must register before 8 May 2018

Companies which, in 2019, intend to import or export ozone-depleting substances or which intend to produce or import these substances for essential laboratory and analytical uses, must obtain a license, according to the Notice issued by the European Commission.

The European Commission issued a Notice, published in the Official Journal of the European Union under No. 57 / 15.02.2018, addressed to companies that are subject to Regulation (EC) No. 1005/2009 on substances that deplete the ozone layer, and which intends to import or export to or from the European Union substances listed in Annex I to the Regulation, or to produce or import these substances for essential laboratory and analytical uses.

Following the withdrawal of the United Kingdom from the European Union on 29 March 2019, companies situated in one of the other 27 Member States will need a license to import controlled substances from the United Kingdom or to export controlled substances to the United Kingdom.

Furthermore, companies in the United Kingdom, which intend to carry out these activities before the withdrawal of the United Kingdom from the European Union, continue to need licenses until the 29 March 2019.

According to the Notice, the following activities are to be subject to quantitative limits:

- Production and import for laboratory and analytical uses;
- Import for free circulation in the European Union for critical uses (halons);
- Import for free circulation in the European Union for feedstock uses;
- Import for free circulation in the European Union for process agent uses.

In order to carry out import or export operations for such substances, companies must register in the ODS Licensing System (https://webgate.ec.europa.eu/ods2) before 8 May 2018, the license form and the quota application form will be available online as part of the licensing system from that date.

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Serbia

New Ministry of Finance ruling – Value Added Tax

Tax treatment of ''cash back'' services

In case that a VAT payer, at the request of a individual, performs payment in cash from the cash register to that individual, based on the use of a payment card on the payment terminal installed in the VAT payer's facility, whereby the individual has paid with its card the fee for the supply of goods or services provided by a VAT payer before receiving the cash, the "cash-back" service is considered to be an VAT exempt supply of services.

(Ministry of Finance ruling, no. 011-00-630/2017 as of September 05, 2017)

New Ministry of Finance ruling – Value Added Tax

Tax treatment of transport services related to import of goods within customs warehousing proceedings

When a VAT payer provides a transport service related to import of goods to another VAT payer in the sense of Article 12 of the VAT law – business entity with the seat in Serbia, the place of supply of such service is Serbia. A zero VAT rate is prescribed for the supply of such services under the conditions that the value of the transport service is included in the tax base for computing VAT on import of goods, and if the provider of the transport service possesses a document on executed transport service (CMR, CIM, manifest, etc.) and an invoice or other document which serves as invoice issued in accordance with the VAT law.

However, in case that the value of a transport service is not included in the tax base for computing VAT for import of goods, in specific case the value of the transport service related to import of goods for which the procedure of customs warehousing has been approved, the VAT shall be computed in accordance with the VAT law.

(Ministry of Finance ruling no. 430-00-00818/2017-04 as of December 22, 2017)

New Ministry of Finance ruling – Value Added Tax

The right to deduct VAT computed on import of goods

A VAT payer has the right to deduct VAT calculated by the customs authority on import of goods by a VAT payer, paid for by a conversion of Serbia's claims from calculated VAT into a permanent share in the capital of that VAT payer, if other conditions for deduction of the input tax prescribed by the Law have been fulfilled.

(Ministry of Finance ruling, no. 413-00-276/2017-04 as of February 1, 2018)

New Ministry of Finance ruling – Value Added Tax

Taxation of cross-border rental of equipment

In case that the customs authority, from 1 April 2017, computed VAT based on temporary import of movable goods according to the contract concluded with a nonresident entity that is not a VAT payer in Serbia, the subject of

which is the rental/leasing of such goods, a VAT payer – service recipient is not entitled to deduct the VAT paid as input tax.
A VAT payer who has paid VAT calculated by the customs authority may apply for a VAT refund.

(Ministry of Finance ruling, no. 011-00-00610/2017-04 as of February 6, 2018)

New Ministry of Finance ruling – Corporate Income Tax

Recognizing expenses in the tax balance due to foreign currency exchange losses and the effects of the currency clause

When a taxpayer states expenses based on currency exchange losses and the effects of a currency clause arising from the conversion of advanced payments paid in a foreign currency and in dinars with contracted currency clause for the purchase of certain goods and services, such expenses are recognized for tax balance purposes.

(Ministry of Finance ruling, no. 430-00-770/2017-04 as of January 10, 2018)

New Ministry of Finance ruling – Corporate Income Tax

Recognizing expenses in the taxpayer's balance based on impairment of share in the capital of a subsidiary company

When a taxpayer records expenses based on the impairment of shares in the capital of a subsidiary, which were not recognized in the tax period in which they were disclosed, such expenses are admissible for tax balance purposes in the tax period in which the taxpayer and his subsidiary cease to exist due to status change (through a merger).

(Ministry of Finance ruling, no. 011-00-1114/2017-04 as of December 28, 2017)

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Slovakia

Amendment to the Labour Code

The amendment is intended to improve employees' working conditions.

In the November edition of Deloitte News, we provided information about the upcoming amendment to the Labour Code (the "**Amendment**"). The Amendment was signed by the President of the Slovak Republic. The Amendment is intended to improve employees' working conditions.

The Amendment introduces a wage benefit for work on Saturdays and Sundays. In addition to the standard wage, employees must receive a wage benefit of at least 50% of the minimum hourly wage for work on Saturdays and at least 100% of the minimum hourly wage for work on Sundays. If an employer requires regular work on Saturdays or Sundays due to the nature of the work and the operating conditions, a lower wage benefit for work on Saturday (a minimum of 45% of the minimum hourly wage) and work on Sunday (a minimum of 90% of the minimum hourly wage) may be agreed in a collective or employment contract.

In addition to the standard wage, an employee must receive a wage benefit of at least 40% of the minimum hourly wage for night work (currently: 20% of the minimum hourly wage) and at minimum of 50% of the minimum hourly wage for high-risk work. If an employer requires regular night work due to the nature of the work and the operating conditions, a lower wage benefit for night work (a minimum of 35% of the minimum hourly wage) may be agreed in a collective or employment contract.

According to the amendment, "wages" also means financial performance provided by an employer to employees for work during the summer holiday period, paid in June, or during the Christmas holidays, which is paid in December of the respective calendar year. Hence, the Amendment introduced an option for employers to pay 13th and 14th salary to employees.

The Amendment becomes effective on 1 May 2018.

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Publication of Electronic Corporate Income Tax Return Form for 2017

Electronic corporate income tax return forms for 2017 were published on the official website of the Financial Administration of the Slovak Republic on 6 February 2018.

Electronic corporate income tax return forms for the 2017 taxation period were published on www.financnasprava.sk. Taxable persons may now file forms electronically.

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