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CE Tax&Legal Highlights
September 2018

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Albania

Amendments to the Law on Income Tax

On 18 and 19 September 2018, amendments to the income tax law included in the first part of the fiscal package for 2019 were published in Albania's official gazette. The amendments include changes to the profit tax law that initially were not accepted by the president and were returned to the parliament for approval.

The principal amendments are as follows:

Profit tax rate

From 1 January 2019, the standard profit tax rate will be 5% for taxpayers with turnover of up to ALL 14 million and 15% for taxpayers whose turnover exceeds ALL 14 million. *(Currently, the 5% rate applies where annual turnover is between ALL 5 million and ALL 8 million and the 15% rate applies where turnover exceeds ALL 8 million).*

The 5% rate also will apply for 10 years to agricultural cooperative companies regardless of turnover and legal entities that obtain the status of certified "agro tourism entity" by 2021.

Reporting requirements for approval and distribution of profits

As from 3 October 2018, entrepreneurs and freelancers registered as "physical persons" are no longer required to notify the tax authorities how after-tax profits will be allocated.

Commercial companies still will be required to notify the tax authorities by 31 July each year of the decision of their responsible body to approve the annual results, but the penalty for failure to do so will be reduced to a single fixed payment of ALL 10,000.

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Czech Republic

Currently on ATAD implementation

The proposed amendment to the Income Taxes Act (included in the government package of tax law amendments), whose primary objective is to implement the EU Anti Tax Avoidance Directive – ATAD from 1 January 2019, is awaiting debate in the Chamber of Deputies in the first reading. A question mark is therefore beginning to appear regarding whether or not the proposed amendment will be able to go through the whole legislative process by the year end.

Given the complexity of the new provisions of the implemented directive (especially the definition and calculation of deductibility of interest and financial expenses arising from loans, CFC rules etc.), the Financial Administration is working to prepare methodology to describe the procedures according to the new provisions and definitions in more detail including illustrations on specific examples. At present it is unclear what form the methodology will have or when the Financial Administration should publish it.

We will continue to monitor any further development.

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Tax changes in the taxation of investment funds

In the June issue of dReport, we informed you about the amendment included in the planned change in the taxation of basic investment funds. On 19 July 2018, an act was adopted (with effect from 1 January 2019) which includes a narrowing of the definition of a basic investment fund, and removes from the definition those funds whose shares are admitted to trading only on the European regulated market and do not fulfil the other conditions enumerated by law. These funds will now be subject to the standard corporate rate of 19% and not the current rate of 5%.

As we have reported before, the reason for the change was the Senate's effort to remove from the definition of the basic investment funds the funds that are only registered on a regulated market without actually performing investment activities. Pursuant to the amendment, the benefits of lower taxation can only be drawn by the funds that are active in making investments on financial markets.

The adopted amendment stipulates that the **basic investment funds include the funds listed for trading on a European regulated market**

with no corporate income taxpayer having any investment of 10% or more in the registered capital of the relevant investment fund; in order to meet the condition, investments of related parties that are corporate income taxpayers are considered to be investments of a single taxpayer; the condition is considered to be met even if the permitted investment in the registered capital is exceeded over a period shorter than a half of the taxation period or a period for which a tax return is filed or a period shorter than six months if the taxation period is longer than 12 months and if the fund is not involved in a trade under the conditions stipulated by the Trade Licensing Act.

The above-specified restriction will thus relate to the funds that are only considered to be basic investment funds under the Income Taxes Act due to the fact that they are listed for trading on a European regulated market and at the same time, they are owned within a group or by a limited number of owners, whereby the share of each owner is 10% or more.

The amendment will apply to tax obligations arising after the effective date of the Act, i.e. **from 1 January 2019**.

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The flat expense charge-off for entrepreneurs will not increase

The Chamber of Deputies rejected an amendment intended to restore the cap on the flat expense charge-off ("paušální výdaje") to the past year's level, i.e. in relation to the annual income of CZK 2 million.

As a result, for all income from independent activities, the flat expense charge-off remains only at CZK 1 million per year (income in excess of this amount is taxed on a gross basis). Entrepreneurs and sole traders will need to work out properly whether a more beneficial treatment for them does not involve deducting the actual expenses incurred. Changing the treatment also requires taking into account special obligations related to the change such as additional taxation of receivables, etc.

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Hungary

Adoption of IFRS accounting seems to be a reasonable answer to HTA audits

According to a recent announcement of Hungarian Tax Authority (HTA) and the Chamber of Hungarian Auditors, HTA will more seriously treat cases where Hungarian members of multinational groups do not keep their books in accordance with Hungarian accounting standards (i.e. in line with US GAAP or IFRS) but adjust such accounting manually to meet the Hungarian requirements.

The announcement emphasises that the accounting practice of Hungarian members of multinational groups often fail to comply with the Hungarian accounting requirements, which makes tax audits more difficult to conduct. The purpose of the announcement is to prevent the application of legal consequences by informing taxpayers in advance.

According to the joint announcement of HTA and the Chamber of Hungarian Auditors, it is a frequently applied, but not acceptable practice, when Hungarian members of multinational groups retrospectively and manually adjust their US GAAP or IFRS accounting to meet the statutory Hungarian accounting requirements (e.g. by the application of supplementary calculations). In the opinion of the tax authority and the chamber, companies shall keep their books in a bookkeeping system that meets the Hungarian statutory accounting requirements (i.e. the standard chart of accounts prescribed by the Accounting Act should be used and the books should be kept in a concise and transparent manner in Hungarian language). If companies deviating from this rule, the HTA may conclude that the tax audit cannot be carried out due to improper bookkeeping.

Pursuant to the Act on the Rules of Taxation, the accounting records of the taxpayers should be appropriate to assess the tax base, as well as tax exemptions and tax benefits. If the accounting records of the company do not comply with the Hungarian accounting requirements, the company may face the following legal consequences:

- The tax authority may call the taxpayer to prepare accounting records in a system that complies with the Accounting Act, and present them to the tax authority.
- The tax authority may assess default penalty due to the breach of the bookkeeping obligations.
- The tax authority may challenge the accounting treatment of certain business transactions, as a result of which the application of certain tax base decreasing items, tax benefits and tax exemptions may be challenged, or certain expenses could be qualified as not deductible expenses for corporate income tax purposes.
- In extreme cases the tax authority may even come to the conclusion that the company’s books and records are inappropriate for the purpose of a tax audit and therefore the tax authority may estimate the tax base.

A solution to the above risk could be the full adoption of IFRSs for the purposes of bookkeeping and preparation of the statutory, standalone financial statements. This option is available to all companies whose direct or indirect parent company prepares its consolidated annual financial statements in accordance with IFRSs. Such transition will eliminate the risk in bookkeeping as the tax authority should accept the IFRS based accounting records.

As opposed to the above, entities having their bookkeeping and financial statements prepared in line with US GAAP are in a more difficult situation. For them a safe solution can be if they keep the accounting records simultaneously in the same accounting system in accordance with both the Hungarian GAAP and the US GAAP. However, this may trigger a significant administrative burden on them.

Consequently, the adoption of IFRSs for statutory reporting purposes or the modification of the bookkeeping practice could be the solution for the companies concerned. However, the IFRS transition requires in-depth planning and preparation, even if the company has already prepared some kind of IFRS reporting package for the parent company's consolidated financial statements. For more information on the adoption of IFRSs please contact Deloitte's IFRS team. Deloitte's IFRS team comprises experienced auditors, tax experts and advisors who – with their up-to-date knowledge and complex services – have already assisted many companies in the IFRS transition process and the subsequent audit and tax issues.

The announcement of HTA and the Chamber of Hungarian Auditors can be found HERE.

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Kosovo

The Republic of Kosovo and the Republic of Netherlands have cancelled their Double Tax Agreement (DTA).

The Double Tax Agreement made between the former-Yugoslavia and Netherlands is not in use and not applicable since 1st of September 2018.

The Tax Administration of Kosovo, has notified that it has received the notification from the Ministry of Finance in Netherlands and the Ministry of Foreign Affairs of the Republic of Kosovo, that the DTA inherited by former-Yugoslavia is not valid and not applicable since the 1st of September. The cancelation of this agreement has been published in the page of Tax Administration of Kosovo on 5th September 2018.

Therefore, for tax purposes related to incomes of the residents of Kosovo and residents of Netherlands in Kosovo, the provisions of Kosovo tax legislation are applicable.

The former Double Tax Agreement regulated the following:

- Development of the cooperation for the tax issues;
- Protection of the taxpayer from double taxation;
- Prevention of tax evasion;
- Elimination of discrimination;
- Providing administrative assistance;
- Other assignments foreseen with DTA.

In light of the above, in order to apply the provisions of Kosovo Double Tax Agreements, the following criteria must be met:

- DTA must be effective and applicable;
- The person must be a resident in one or both contracting countries;
- Taxable income must be covered by DTA.

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Lithuania

The Bank of Lithuania launches its regulatory sandbox

FinTech companies as of 15 October 2018 will be able to test their innovative products in a live environment under the guidance and supervision of the central bank of Lithuania by submitting an application to enter the Bank of Lithuania regulatory sandbox.

The Bank of Lithuania developed an innovation-friendly space and it seeks to pave the way for faster and easier access to new financial solutions. Ideas generated in the sandbox could quickly move beyond its limits and increase competition in the financial market and this would bring identifiable benefits to consumers, such as more convenient, safer and cheaper financial services.

The regulatory sandbox is open to both existing authorised financial institutions and market newcomers. Selection of eligible participants will be based on certain criteria, the innovativeness of products or solutions and their benefits to society being the most important among them.

The regulatory sandbox of the Bank of Lithuania would be especially useful in cases when regulation of innovations is insufficient or unclear. Strong cooperation between innovators and the regulator could help understand the impact of financial innovation on consumers, identify emerging risks, determine potential regulatory shortcomings and eliminate or reduce any possible negative effects.

Lithuania seeks to be among the first ones in the world to legalise virtual office

The Ministry of Economy made a proposal to legalise the virtual office, which means enabling the establishment of companies that do not have a physical address of their premises so that they could be able to do communication with public authorities and other entities in virtual space. Following the adoption of this decision, Lithuania would become among the first ones in the world to legalise the virtual office.

Currently, in the process of establishing a business, the office is identified based on the address of the premises. For this reason business founders who possess no immovable property and who wish to set up a business need to contact persons who have premises and obtain their consent to register a business (for a fee or free of charge). In some cases, such a requirement handicaps the process of setting up a business. In the case of a virtual office, only the given address of an online delivery box is required to be indicated in the National Electronic Delivery Information System.

The choice of a virtual location would also facilitate communication with public authorities and other bodies. Communication is often ineffective now because corporate governance bodies are often unavailable at their registered office. In addition, the administrative and financial burden resulting from the use of brokering services or from the sending of documents by registered post to the company’s home address would be reduced.

The legalisation of a virtual office could help address these problems by enabling the communication of public authorities, businesses and individuals by electronic means.

State Data Protection Inspectorate contributes to the implementation of the personal data protection reform in Lithuania

The State Data Protection Inspectorate, contributing to the implementation of the personal data protection reform in Lithuania, prepared and published Guidelines for small and medium-sized business, which would help to apply new legal regulation of personal data protection in practice.

The unlawful decision of the head of the company does not in all cases constitute his/her material liability

The Supreme Court of Lithuania adopted a decision on the interpretation and applicability of the substantive law governing the conditions for the material liability of the head of the company.

The judges have established that the material liability of the head of the company arises when:

- the parties involved in labor relations at the time of the violation of law;
- the occurrence of damage is related to work activity;
- all of the following conditions are established: unlawful act, damages, the causal link between the unlawful act and the occurrence of damage; fault of the infringer.

The head of a legal entity is not materially liable for the sole reason that the court found his/her decision to dismiss the employee as unlawful because the degree of his/her fault is too low to create a precondition for material liability. Thus, the unlawfulness of such decision does not in principle means that the head of the company is guilty of consequences of it. Therefore, the material liability of the head of the company for the unlawful dismissal of the employee will apply only if it is proved that the head of the company acted carelessly in making such decision.

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Poland

Tightening excise regulations. Certain regulations come into effect

On 19 September 2018 certain regulations included in the Act of 20 July 2018 amending the Excise Act and the Customs Duty Act (the "Amendment") came into effect. The other regulations included in the Amendment shall become effective as of 1 January 2019.

What is this all about?

Early in August, the President signed the amendment to the Excise Duty Act. This has been the most comprehensive amendment thereto since 2016. The key changes that will affect entities trading in excise products include:

Electronic monitoring of exempted products and harmonized products with the zero excise rate

The overall purpose of the Amendment is to improve the control of tax authorities over excise products (i) exempted from the excise duty due to their intended use and (ii) harmonized excise products subject to the zero excise rate. The electronic monitoring of these products is the most radical of the introduced changes. Effective 1 January 2019, the printed delivery document shall be replaced by e-DD, generated in EMCS PL2 system. Deliveries of products that at present must be accompanied by printed delivery documents shall be registered in EMCS PL2, which shall be adjusted for monitoring purposes. Coal is the only exemption, as effective 1 January it shall be included in the statement of purpose system instead.

Business users

Further, the Amendment introduces a new Business User concept, dedicated to entities that use the excise products subject to the zero rate in the course of their business operations. After 1 January 2019, only entities granted the Business User status will be able to purchase these products in packs larger than 5 litres or 5 kilograms without paying the excise duty at the rate of PLN 1,882/1,000 litres (PLN 14.72/GJ for gaseous products) indicated by the lawmakers as appropriate in such cases. In order to obtain the Business User status, an entity must submit an excise registration form, indicating among others addresses of its business locations and determining the type and the projected monthly average use of a given excise product.

Excise duty on losses and on excessive use

Under the Amendment, losses incurred during production of beer, wine, fermented beverages and intermediate products are excluded from the definition of losses. The changes are intended to satisfy the taxpayers manufacturing this sort of products, who indicated that reconciliation of such losses was time-consuming and required hiring additional staff, depending on the production scale, thus increasing the operating expenses. Further, in order to adjust Polish regulations to the EU law, the excise duty exemption regarding losses includes amounts in excess of allowed standard loss levels up to the actual loss amount if their natural occurrence related to product characteristics can be proven. These amendments are effective as of today. Further, as in the case of exceeding the allowed use standards for energy

products subject to the zero excise rate, if an entity can prove that the use has been compliant with the intended purpose, which allows the application of a preferred rate, it will be able to apply the rate to products used once the standard use level has been exceeded. This amendment, though, shall come into effect on 1 January 2019.

The Amendment includes a series of other changes, effective as of today. They include (i) clarifying competencies of bodies deciding on excise refund with regard to intra-Community Delivery of Goods or to export of products the excise on which has been already paid; (ii) disallowing releases of harmonized products with the zero excise rate from depots upon a release permit; (iii) limiting the excise band exemptions in duty free areas or in customs depots to those finally sold to travellers going abroad and (iv) allowing electronic submission of requests for excise bands or legal marking.

Further, the lawmakers introduced a PLN 0 excise rate for natural gas bearing code CN 2711 11 00 and 2711 21 00 intended for engines, provided a positive decision of the European Commission regarding the compliance of the public aid with the common market is obtained.

What does this mean?

The lawmakers introduced the changes to simplify procedures faced by business entities trading in excise products through reducing administrative burden, costs and time spent to fulfill obligations arising from excise regulations. The electronic monitoring, though, seems to be aimed at improved control of transactions subject to exemption or to the zero rate. Exempted shipments are allowed only for entities indicated in the System as ones entitled to receive specified products exempted or subject to zero rate in a given location. Consequently, entities using harmonized excise products under the zero rate, such as organic solvents or antiknock agents shall be obliged to register for excise-related purposes if they have failed to do so by now. Pursuant to the new regulations, they have thirty days of the Amendment's effective date to get registered (i.e. by 20 October). Entities that registered for excise-related purposes prior to the Amendment's effective date shall be obliged to file an update form to include the extended scope of information to be delivered upon registration after 19 September.

Follow-up

Businesses should certainly analyze the effects of the Amendment on their existing excise-related obligations. Those who have not used EMCS yet need to develop appropriate procedures, train employees and fulfill the related registration obligations. Considering the adjustment of the existing ERP systems to allow full electronic communication with EMCS and automated generation of e-DD forms may pay off as well.

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Act on Collective Persons' Liability: amendments included in the newest draft of 5 September 2018

On 5 September 2016 the Ministry of Justice published another draft of the Act on Collective Persons' Liability. The former one had been released for consultation in May 2018. The introduced changes include both procedures and guidelines regarding collective person's liability. Further, collective persons are offered possibilities to be released from the liability.

Key assumptions underlying the new draft:

1. Key liability principles remain unchanged: the act shall apply to all legal persons, commercial companies co-owned by State Treasury and Polish branches of foreign companies.
2. The fact of committing an offence (without the need to identify the offender) shall be sufficient to hold a company liable. Legal proceedings against such an entity can be instituted if there is a reasonable suspicion of committing an offence and if justified by social interests.
3. Entities that committed an offence as a result of purposeful act or omission, or of failure to take care required under given circumstances despite the offender expecting or being able to expect the possibility of the offence, shall be held liable.
4. A collective person shall not be held liable if, at least once every two years, it undergoes a verification by an audit firm in terms of implementing internal procedures that ensure its compliance with the law and of assessing the risk of committing an offence related to its business operations (audit of compliance and risk), and if a body has been assigned in its organizational structure to supervise the compliance with principles and provisions that regulate its business operations, unless such verification or operation of the assigned body is unreliable or carried out by individuals lacking necessary qualifications, or is feigned.
5. Under a new solution, no proceedings are instituted, or, if instituted, they are cancelled, if a collective person's registered office is located abroad and no proceedings can be effectively instituted against it, no penalty or other measures can be imposed.
6. A whistleblower is not granted the right to restore employment or to claim damages if he/she has perpetrated an offence related to business operations of a collective person, unless such an individual has disclosed all material circumstances of the offence to the collective person and to prosecuting bodies.
7. The related penalties have not been changed and range from PLN 30,000.00 to PLN 30,000,000.00.
8. If an ownership title to an enterprise of a collective person or to most of its assets is transferred free of charge or for a price

materially different from the market value of the enterprise or its assets, the acquirer of the enterprise or of most of its assets and the collective person shall be jointly and severally obliged to pay a fine or compensatory damages for the offence committed prior to the ownership transfer date.

9. Additionally, the Amendment provides comprehensive regulation with regard to proceedings instituted against a collective person in order to avoid further amendments to other acts (the Act on Collective Persons' Liability shall include comprehensive regulations regarding such proceedings).

Protection

Liability of a collective person depends to a large extent on maintaining due care. Lack of due care can be classified as regarding selection or organization. Implementing an effective compliance program aimed at ensuring compliance of entity's organization with the law shall be the best method to prevent liability.

Effective fraud prevention and detection that would allow collective persons to avoid liability is possible only in the form of implementing appropriate procedures and monitoring systems. Therefore, collective persons that prepare for the effective date of the amended act, should:

1. develop appropriate internal rules, guidelines and procedures to prevent fraud and to help their employees to adopt correct attitudes (including whistleblowing) if a fraud occurs;
2. introduce appropriate changes to operating systems used to allow monitoring of operations performed both by the entity and by individuals in charge of each process;
3. introduce obligatory regular training for employees and counterparties in order to build an appropriate model of conduct, thus improving legal and actual security of each collective person.

As already mentioned, the new draft act introduces an additional condition that allows avoiding liability for an offence committed due to irregularities in an entity's organization. The draft clearly indicates that an **entity which at least once every two years undergoes verification of internal procedures that ensures its compliance with the law and assessment of the risk of offence related to its business operations, performed by a firm specialized in compliance and risk audits**, shall not be held liable. **Thus, as of the act's effective date, audit of communications, documentation and internal processes aimed at fraud detection shall become of key importance for all** internal fraud prevention and moreover, shall release an entity from liability under the act, if an offence is committed as a result of irregularities in its business operations.

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Enhanced oversight of non-public securities trading

The Council of Ministers completed the work on a draft act amending certain acts in relation to enhanced oversight and investment protection on the financial market.[1] The draft introducing organizational changes in the Polish Financial Supervision Authority, establishing the Fund for Financial Education and implementing changes to trading in bonds of security, certificates issued by closed-end investment funds and corporate bonds, was accepted on 4 September 2018[2] and submitted to the Parliament.

Pursuant to the draft, the above debt securities, regardless whether traded on the public market or in non-public trading systems, cannot be issued in the printed form. All corporate bonds, bonds of security and closed-end investment fund certificates shall undergo **registration in the deposit of securities** and regulations regarding dematerialized securities shall apply to them.**[3]** The lawmakers believe that the solution will improve transparency of debt securities issued and security of investments.

The above changes are intended to come **into effect on 1 January 2019**; assuming efficient proceeding through the Parliament, the deadline seems viable. Transitional provisions shall be of special importance for market participants, to include **mortgage banks and closed-end investment funds**. Instruments issued in a printed form prior to 1 January 2019 and not cancelled by that date, as well as those not having a printed form, but registered on prior terms, shall remain valid and governed by the current regulations.

However, if these instruments are not **redeemed until 31 December 2019**, their issuers shall be **obliged to provide additional information**.**[6]** Effective from 2020, at the end of each half of a given calendar year, issuers shall be obliged to present the National Deposit of Securities (KDPW) with detailed information on issued non-dematerialized bonds, bonds of security and investment certificates as at the last day of the six-month period the information pertains to. The first report should be provided to KDPW **on 31 March 2020 at the latest** and be updated at later dates.

National Deposit of Securities will be obliged **to collect and publish** information regarding non-redeemed bonds, bonds of security and certificates, amounts of liabilities arising from these securities and data that allow determining the scope and timeliness of their performance, provided by issuers with registered offices in Poland.**[5]** The solution is to improve the security of investment and market transparency, to include more effective operation of the Polish Financial Supervision Authority.

Please note that failure to provide the required information or to duly perform the information obligations shall be punishable by a **fine of up to PLN 2 million**, with **authorized representatives of an issuer** being held liable.

The same penalty shall apply to individuals providing fake data or concealing actual information.

Issuers, though, will be able to **get released** from these information obligations (and to avoid the above sanctions) if the debt instruments in question are registered at the National Deposit of Securities. The scope of the release shall depend on the range of instruments registered.

Importantly, the planned changes regarding dematerialization of non-public debt securities reflect the consistent approach adopted by the Polish lawmakers. The Council of Ministers is preparing amendments to the **Code of Commercial Companies**, which include obligatory **dematerialization of shares (stock certificates, founders' certificates, subscription warrants and other income or asset sharing titles) in all joint stock companies.**[6] Shares in non-public companies are to be registered in the new register of shareholders, maintained by an entity authorized to maintain security accounts. At present, the draft is being analysed by the Council of Ministers. The projected effective date is **1 January 2020.**

Endnotes:

[1] The draft act and description of the legislation process available at: http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=2812

[2] Communication of the Government's Information Centre available at: https://www.premier.gov.pl/wydarzenia/decyzje-rzadu/projekt-ustawy-o-zmianie-niektorych-ustaw-w-zwiazku-ze-wzmocnieniem-nadzoru.html

[3] Article 5, 6.3) and Article 13.3) of the draft act amending certain acts in relation to enhanced oversight and investment protection on the financial market.

[4] Articles 38 and 39 of the draft act amending certain acts in relation to enhanced oversight and investment protection on the financial market.

[5] Article 9.4 of the draft act amending certain acts in relation to enhanced oversight and investment protection on the financial market.

[6] The work on the draft act amending the Commercial Code an certain other acts can be monitored at: http://legislacja.rcl.gov.pl/projekt/12294656/katalog/12410412#12410412.

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Employee Equity Schemes approved by Government

The Standing Committee of the Council of Ministers approved the draft Act on Employee Equity Schemes (EES), the version of 4

July 2018, without any additional amendments. Now, the draft shall be transferred to the Parliament. Its effective date falls on 1 January 2019.

Employees of largest corporations (with the headcount of **at least 250 people** as at 31 December 2018, including contractors and supervisory board members) shall be automatically included in the system after three months, beginning from **1 July 2019**, unless they provide their employees with written resignation. EES shall apply not only to employees, as the current Employee Pension Schemes (EPS) do, but also to individuals working on contract of mandate and to supervisory board members. Employers shall be obliged to conclude EES management contracts with financial institutions prior to that date.

The draft assumes that should employees initially resign from participation in EES, they shall be **automatically reassigned** to it after four years only. If they decide to join it earlier, though, they may apply for reassignment at any moment.

EES shall be **funded partly by employers, and partly by employees**, their participants. The basic contribution shall amount to 3.5 percent of the pay underlying the calculation of old age and disability pension. Out of the amount, 2 percent shall be contributed by participants and 1.5 percent by employers. The contribution covered by employers shall not be included in the pay underlying the calculation of statutory old age and disability pension premium. It will be treated as an additional benefit and taxed accordingly. The basic contribution shall be calculated on the participant's pay (underlying the calculation of the old age and disability pension premium) and deducted from payroll after tax. The current version of the draft provides for a lower contribution for those with the lowest income.

The collected funds shall be **paid to participants once they turn 60**: 25 percent as a one-off benefit, and the remaining 75 percent in at least 120 installments.

Companies that **register EPS by 1 July 2019 will not be obliged to establish EES**, if the former provides for a contribution of at least 3.5 percent of the pay and the number of participants reaches at least 25 percent of the total headcount.

Little time is left to decide which scheme to choose. Since they differ in terms of costs, administrative duties and participation principles, both pros and cons of each should be analysed in details to allow for the most beneficial choice and appropriate planning of its implementation.

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Definite-term employment contracts to become indefinite soon

The period of 33 months of the effective date of regulations amending the principles of concluding definite-term employment contracts shall end on 22 November. As of that date, all valid definite-term employment contracts concluded prior to 22 February 2016 shall be automatically transformed into indefinite-term ones.

Thus, employers should take time to analyze the existing contracts and decide upon their future. **September is the last month when such contracts can be terminated** prior to their transformation, i.e. upon **one-month notice**. Pursuant to definite-term contract termination rules amended in 2016, the notice period depends on years in service, the same as previously provided for indefinite-term contracts. For the purpose of calculating years in service with the current employer in relation to such contracts, employment prior to 22 February 2016 is not included (as determined in transitional provisions). Therefore, notices handed in September shall come into effect at the end of October.

Different treatment is applied to **contracts concluded after 22 February 2016**. For such contracts, **all years in service are included**, also those before 22 February 2016. Therefore, such contracts might have already passed the 33-month definite-term employment period and they might have been already transformed into indefinite-term ones.

Termination of indefinite-term employment contracts requires **indicating reasons** that justify the lay-off. Further, the plans to terminate such contracts **may necessitate consulting** with labour unions. Failure to do so constitutes a formal breach which, should an employee institute proceedings at the labour court, may result even with a sentence restoring their employment.

Additionally, if the total period spent with the current employer exceeds 36 months, an employee is entitled to a **three-month notice period**. Even if an employer indicates a shorter notice period, such contracts shall be actually terminated after the statutory one, and employees shall be entitled to remuneration for the "lost" notice period.

Therefore, it would be advisable to identify such cases beforehand to avoid future termination mistakes.

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Serbia

Rulebook on work permits

New Rulebook on work permits ("Official Gazette RS" no. 63/2018) has been published with regard to the Law on Employment of Foreigners and the recent amendments to the Law. Rulebook is in force as of 25 August 2018.

Rulebook closely prescribes the method of issuance and extension of the work permit, method of proving the fulfilment of conditions and necessary documentation for obtaining a work permit, as well as the form and substance of the work permit.

The most significant novelties are with respect to the labour market test which can now be initiated 60 days prior to the issuance of the work permit, or 10 days at the latest and necessary documentation that would need to be submitted to the National Employment Agency for the purpose of obtaining a work permit.

Regarding the documentation, when applying for intercompany movement work permit, the National Employment Agency determines if the legal entity from abroad that is assigning a natural person within intercompany movement is the founder of Serbian legal entity requesting the work permit, and if not, may request additional documentation that proves the relation between foreign and Serbian legal entity or it may decline the work permit application.

Additionally, for every work permit it would be needed to submit a notarized copy of the passport (front page and page with the approved temporary residence permit).

Social Security Agreement between Serbia and China

Draft of the Law on Ratification of Social Security Agreement between Government of Serbia and Government of People's Republic of China has been published. The Social Security Agreement has been signed in Belgrade on June 8th 2018, in Serbian, Chinese and English language.

The Agreement will be in force once both parties ratify the Agreement, on the first day of the forth month upon the month in which the parties notify each other regarding the ratification.

The Agreement will be applicable on the legislation regulating pension and disability insurance and insurance for unemployment. Health insurance is not encompassed with this Agreement.

What is also important is the application of the legislation of one party to the employee assigned from to perform work on the territory of the second party. Namely, the period of the application of the legislation of the first party is **60 months,** and can be extended for additional **24 months** if the competent authorities come to a mutual agreement.

These provision will have impact on immigration procedures in Serbia, more precisely on the duration of the work permit for assignment and intercompany movement.

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