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CE Tax&Legal Highlights
August 2018

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Albania

First part of the Fiscal Package 2019

The first part of the Fiscal Package 2019 was recently published bringing in amendments related to VAT and local taxes.

The second part of the Fiscal Package 2019, expected to be published in Autumn, shall include amendments to corporate income tax and some other areas.

Law "On VAT"

As of 01.01.2019, the reduced VAT rate of 6% will be applied to the supply of accommodation and restaurant services provided within accommodation facilities that are certified as "agro tourism entities". The supplies of beverages from these structures will continue to be subject to a standard VAT rate of 20%.

The criteria and certification bodies of the tourism activity are defined under the Decision of the Council of Ministers no. 22, dated 12.01.2018 "On the approval of certification criteria for the agro tourism industry".

Law "On local taxes"

The amendment of the Law "On local taxes system" provides the exemption from the tax of impact on infrastructure of investment of entities that conduct hosting activities, certified as "agro tourism entities".

This amendment will enter into force on 01.01.2019.

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Czech Republic

Demonstrating the Receipt of Intragroup Services: Are you Prepared?

A large number of Czech businesses that are part of multinational groups already have first-hand experience that the Czech tax administration's approach has undergone a fundamental change in recent years as regards tax audits focusing on related party transactions. The lack of any form of communication with the tax administrator (such as on-the-spot inspections) concerning related party transactions is rather an exception at present. Contrarily, regular contact with tax payers or directly a tax audit of intragroup transactions is becoming common practice.

With the information which is available to the Czech tax administration, either based on statutory reporting as part of income tax returns, information exchange with foreign tax administrations or disclosures made by the tax payer itself, the tax administrator already has a wealth of data and a clear objective prior to initiating the tax audit. Our advisory practice indicates that it is very often the audited taxable entity which is taken by surprise by the tax administrator's approach and requirements.

Tax administrators being cautious about "management services"
Among other things, tax offices pay increased attention to intragroup services rendered by the parent or another group company which are referred to as (usually not entirely accurately) "management services". These may involve a broad variety of advisory and ancillary services, ranging from general administrative, financial and legal services to technical and more specialised ones. Such services are frequently ensured for most group entities in a centralised manner. Even though the provision of such services in multinational groups has economic substantiation, tax administrators are rather cautious and distrustful in respect of them in tax audits. An increasingly greater emphasis is given to the detailed demonstration of all relating facts. Tax administrators place demanding requirements on means of evidence, primarily as regards their convincingness, formal elements and authenticity. What was accepted by the tax administrator in the past is usually no longer sufficient at present.

In assessing the tax deductibility of expenses relating to intragroup services, it is usually initially demonstrated that the expenses were incurred by the tax payer in achieving, ensuring and retaining taxable income (Section 24 (1) of Act No. 586/1992 Coll., on Income Taxes). It is the taxable entity that must bear the burden of proof in this discovery stage. Only subsequently, when the evidence supplied by the taxable entity is successful, the transfer pricing of the respective transaction is tested. It is, however, no exception that in the event of the tax payer's failure to bear the burden of proof, the second stage will not take place.

Example: Legal dispute concerning the deductibility of expenses

As an example, a legal dispute has been recently closed which dealt with, *inter alia*, the deductibility of expenses for advisory services provided by the parent company and expenses for legal services provided by an external law office whereby 50% of those expenses was allocated to the taxable entity. The Supreme Administrative Court (the "SAC") rejected the taxable entity's cassation complaint (8 Afs 216/2017-75) and thus acknowledged the

previous decision of the Regional Court in České Budějovice (10Af 5/2016-80) confirming an additional tax assessment exceeding CZK 14 million, which was assessed by the tax administrator using auxiliary tools, due to a failure to demonstrate the services received from a related party.

Although the taxable entity provided the tax administrator with a great deal of evidence including hundreds of various documents, the tax administrator rejected the presented means of evidence emphasising that the taxable entity only provided a general description of services, does not show the specific time spent, the actual cost of provided services or in which amount the respective service contributes to the aggregate value invoiced. The SAC agreed with the tax administrator's course of action and, similarly as the Regional Court, has not found any deficiencies in this respect.

Nevertheless, it may be more important for taxable entities in a similar situation as the tax payer in the above-specified legal dispute that neither the Regional Court nor the SAC give any indication in their decisions as to which means of evidence would be sufficient in such a case.

Thorough preparation a necessary prerequisite

Although tax payers may be considered to show uncertainty as to which document will or will not serve as sufficient evidence in a tax audit, the situation is not entirely hopeless. It is highly advisable to prepare for the tax administrator's potential questions in advance. How?

- Collect regularly, already in providing services, all paper documents demonstrating facts relating to the services provided, starting from orders of particular services (including the relevant communication concerning the scope and costs of services and anticipated outputs);
- Collect all outcomes of the services provided (such as presentations, analyses, overviews, calculations etc);
- Collect all documents confirming the receipt of outcomes and the recipient's feedback as regards the services provided;
- Identify specific persons on the part of the provider who are rendering the services to the specific taxable entity, including, for example, as a list of tasks or an overview of the time spent with respect to the services in question;
- Collect all means of evidence demonstrating who prepared the outputs and individual documents and when; and
- Review or reset processes with regard to the circulation and archiving of documents.

It should also be noted that in the event of intragroup services, it is possible or advisable to draw inspiration from similar relations among independent entities. In such situations, business relations are not established automatically. Services without orders or agreements and a pre-arranged scope and cost would not be provided. In return for payment, recipients expect required, previously agreed outputs. This should also be the case of services rendered within a group. It is therefore necessary that the service provider (eg a parent or another service company) already cooperate with the taxable entity before and during the provision of services. Such cooperation is an essential prerequisite of success.

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The echoes of tax inspections on one-crown bonds

The discussion concerning one-crown bonds is continuing. As repeatedly debated in the media, the Financial Administration continues to carry out tax inspections of the companies which issued so-called one-crown bonds through the end of 2012. Proceeds from these bonds issued through the end of 2012 are not subject to effective taxation due to the rounding down to the whole Czech crown. Although at the time it was a routine form of financing, nowadays, the tax authorities in many cases challenge the economic reasons for placing one-crown bonds, treating the issuance of such securities as an abuse of law with all the related tax consequences.

The first ruling of the Supreme Administrative Court on one-crown bonds

In August 2018, the Supreme Administrative Court dealt with the tax inspection of the one-crown bonds for the first time. In this case, the complainant did not contest the amount of the additionally-assessed tax liability but claimed the illegality of the tax inspection as such. The illegality of the tax inspection was inferred by the complainant based on the fact that it had not been initiated on the basis of a "free decision" of the Director-General of the General Financial Directorate, but on the basis of political pressure. According to the complainant, it was not the Financial Administration, but the Chamber of Deputies (especially its Budget Committee) that decided to examine the placements of the one-crown bonds made in 2012.

The Supreme Administrative Court did not concur with this conclusion on the illegality of tax inspections. The Court admitted that the question of one-crown bonds and related inspections was intensively publicly debated and individual political leaders also expressed their opinion. However, according to the court, it was not proved that the Financial Administration had acted directly on the order of the Chamber of Deputies or because of political pressure. On the contrary, the court noted that it is normal for the Financial Administration to initiate a tax inspection not only on the basis of its own activities but also on the basis of public inquiries and facts obtained from other state authorities (e.g. from the Police of the Czech Republic). The conceptual decisions on what issues the Financial Administration will focus in its inspection activity is fully within the remit of the Director-General of the General Financial Directorate.

Up to now, this ruling of the Supreme Administrative Court does not address the correctness of the conclusions of the tax authorities regarding one-crown bonds. Therefore, we will still have to wait for the answer of whether and in which cases the issuance of one-crown bonds can be considered an abuse of law.

Bonds may be subject to taxation in the future

In the context of the tax inspections on one-crown bonds, the Ministry of Finance is also coming back to the proposal to amend the Income Taxes Act, according to which proceeds arising from the one-crown bonds should be subject to taxation regardless of when the bonds were issued. According to the most recent information, this legislative amendment should become part of the governmental package, which will come into effect by 2020 at the earliest.

In early 2017, the government supported the proposal to amend the Income Taxes Act, but even then, it was clear that the then Chamber of Deputies would not be able to pass this amendment before the election. According to the governmental proposal, taxation was supposed to apply on the one-crown bonds purchased by natural persons from their own companies or otherwise linked to the issuers of one-crown bonds.

The proposal for the current legislative amendment is not available yet. However, preliminary information from the Ministry of Finance indicates that, in addition to the one-crown bonds, the taxation should also extend to other types of bonds.

It may be assumed that, in the context of the planned legislative amendments, the following question will arise: to what extent the proposed taxation can be retroactively applied to the already issued bonds. Retroactive application of tax regulations may run counter to basic legal principles and relevant investment protection treaties. Therefore, it is apparent that the debate regarding the one-crown bonds will be continuing. We will inform you about further developments in the practice of the Financial Administration and administrative courts. If you have any questions about tax inspections on bonds, we will be happy to answer them also in person.

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The Czech Ministry of the Interior has Issued Brexit-Related Recommendations to UK Citizens

In relation to the upcoming exit of the United Kingdom of Great Britain and Northern Ireland from the European Union in spring 2019, the Ministry of the Interior of the Czech Republic has issued recommendations addressed to the citizens of the United Kingdom residing in the Czech Republic.

The recommendation proposes a procedure to the UK citizens who are interested in preserving their rights related to their residence in the Czech Republic until the end of the transitional period (i.e. until the end of 2020) after Brexit.

In its call, the Czech Ministry of the Interior strongly recommends that all UK citizens who are not holders of *the Certificate of Temporary Residence of an EU National* apply for the issuance of the *Certificate* and thereby avoid any more complex administrative procedures in the future.

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The financial administration has easy access to information. "Big Brother" can see the income of natural persons too

The times when the financial authorities could discover "forgotten" income of taxpayers only during a specific tax audit are long gone. Thanks to digitalisation and the use of technologies in many areas of activities, the tax office can now find what it needs much more easily – or even receive the information automatically.

An example of an active approach of financial authorities is the case of additional taxation of income generated through Airbnb. Thanks to the data received from Airbnb, the financial administration can easily find out what income taxpayers should tax, and if they have not done so, it can ask them to remedy that. Uber also promises direct cooperation; for both electronic platforms, the tax office profits from the fact that the platforms **record all the information necessary for additional tax assessment**. We could continue in this way in many other areas, including e.g. the mediation of trade via Aukro and similar companies or portals facilitating paid car sharing.

However, sometimes all the financial administration has to do is wait and the information will come on its own: thanks to international initiatives such as FATCA (from the US), the Common Reporting Standard (adopted by the OECD) and the directive on administrative cooperation of the European Union, the financial administration suddenly **receives specific information about the income of natural persons**. Based on practical experience, it then asks employees who have forgotten e.g. about income from an option programme of their Czech employer's parent company to file a tax return and pay the tax owed, including a penalty for additional tax assessment and default interest for late payment.

It therefore becomes increasingly worthwhile not to forget about any kind of income arising from any source – if you are not sure about the correct way to tax your income, we recommend seeking advice from a tax advisor before the tax office contacts you.

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Lithuania

The National Lithuania's Cybersecurity Strategy was approved

On 13th of August the Government of Lithuania approved the National Cybersecurity Strategy, which sets out key national security policies for public and private sectors for five years.

The Strategy implements the Directive (EU) 2016/1148 on security of network and information systems. It foresees strengthening of cyber security and defense capabilities of the state as well as ensuring prevention and investigation of criminal activities in cyberspace. The Strategy also promotes cyber security culture and innovation, international cooperation in the area of cyber security, strengthens close connections between public and private sectors.

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Poland

Change in certain double taxation avoidance regulations applicable to individuals generating income abroad. Multilateral Instrument coming into effect

On 1 July 2018, Multilateral Instrument to Modify Bilateral Tax Treaties (MLI) came into force, modifying certain double tax avoidance principles arising from international agreements concluded by Poland.

MLI provisions will supersede or supplement international treaties concluded by Poland, provided that:

- Poland has indicated or will indicate a treaty as included in MLI (notification);
- the other country being a party thereto does the same; and
- both parties ratify MLI.

Four jurisdictions (Austria, Jersey, Slovenia and the Isle of Man) and Poland were the first to ratify MLI.

Poland accessed MLI on a broad basis, including 78 DTAA treaties and adopting nearly all provisions, among others the intention to amend and unify the double tax avoidance method by adopting the tax credit method.
This means DTAA concluded by Poland and including a tax exemption clause as the method to avoid double taxation shall be modified and the clause shall be replaced with the tax credit method. The amendments shall include DTAA concluded with Austria, Norway, Slovakia, UK and Italy.

New DTA methods and abolition relief
Please note that under the tax exemption method, income taxable abroad is tax-exempted in Poland. However, it is included in the calculation of an effective tax rate applicable to other income (if any) generated by taxpayers and taxable in Poland on general terms.

When the tax credit method is applied, taxpayers are obliged to calculated the Polish tax on their foreign income. Then, they can deduct the tax paid abroad on this income. The deduction cannot exceed the amount of tax payable in Poland on that income.

Taxpayers using the tax credit method in Poland are usually obliged to pay taxes that are higher than those paid in the states where the exemption method is applied, if the total tax charge is considered (i.e. including the tax paid in the state of residence and the tax paid in the state of origin).

In order to equalize Polish tax charges for individuals working abroad, arising from differences in DTA methods applied, the lawmakers have introduced the so-called abolition relief to the PIT Act. The relief allows deducting the difference between the tax calculated using the tax credit method and that calculated using the exception method from the Polish tax liability. It is limited, though, to certain income types, such as employment, managerial contracts and contracts of mandate/of specific work, sole proprietorship, freelancer activities, and certain property rights.

In light of the above, taxpayers should expect additional tax charges related to income formerly exempted under DTAA and not included in the abolition

relief, such as income from rent of real property, pension or property disposal.

Importantly, both tax credit method and abolition relief are available only in the form of filing annual tax returns. Thus, taxpayers who have generated only income exempted from tax in Poland under an appropriate DTAA and often did not file annual tax returns in Poland (since they did not generate any taxable income), once a given country joins MLI, will be obliged to prepare such annual tax returns and file them with competent tax offices by the end of April in the year following the fiscal year they pertain to.

Follow up on the taxpayer side

In states that access MLI, provisions thereof shall supersede any bilateral DTAA. At the same time, contents of the latter shall not be amended if more states join MLI. Therefore, taxpayers who do not monitor changes in international tax law on an ongoing basis, being unaware that their respective state has joined MLI, may experience problems with correct fulfilment of their tax obligations in Poland. In many cases they will not realize their obligation to prepare tax returns in Poland (assuming they are not obliged to report tax-exempted income in Poland), or will prepare their annual returns in compliance with then invalid guidelines arising from a respective DTAA.
In order to avoid exposure to adverse consequences of incorrect fulfilment of tax obligations, taxpayers should monitor possible changes in taxation related to new states joining MLI on an ongoing basis.

Additionally, we recommend an analysis of transactions concluded in light of the changes in tax settlement methods.

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New draft Regulation on Polish Investment Zone approved. Quantity criterion significantly relaxed

On Thursday 26 July Permanent Committee of the Council of Ministers approved a new draft Secondary Regulation to the Act on Supporting New Investments (henceforth: "New SEZ Regulation").

An extended list of investments whose quantity criterion shall include the **qualified expense of at least PLN 10 million** (i.e. the lowest obligatory amount as referred to in Article 3.1 of the New SEZ Regulation) shall be an important change related to the obtaining of the Support Decision (henceforth: "SD"). According to the current assumptions, the projected provision should read as follows (the newest amendments bolded):

1. A business which has applied for the aid, depending on the unemployment rate in the county (powiat) in which the project is to be carried out, must satisfy one of the following quantitative criteria:

7) In the county where the employment rate is 250 percent higher than the country average**, in a town that loses its socio-economic functions referred to in Appendix 1 to Table 3 and in a municipality adjacent to such town,** a business shall commit to incur qualified expenses of at least PLN 10 million.

What does this mean?

Consequently, in extreme cases, thanks to the amendment, a large business intending to carry out a new investment in the industrial processing sector will have to commit to invest PLN 10 million instead of the former PLN 100 million of qualified expenses to obtain SD.

In light of the above, investments in towns that lose socio-economic functions or in an adjacent municipality may be critical for a business to qualify for SD. Please note that determining whether a given municipality (in which the investment is to be located) is adjacent to such a town (listed in Appendix 1 to Table 3 of the New SEZ Regulation) will be of importance.

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Act on National Cybersecurity System: new obligations of key utility operators and digital services providers

Businesses in the energy, transport, banking, payment services and healthcare sectors, suppliers of drinkable water or digital infrastructure, classified as so-called key utility operators, as well as digital service suppliers, must prepare to stand up to new challenges, this time regarding cybersecurity.

3 August 2018 The President of Polish Republic signed the Act on National Cybersecurity System, implementing the Network and Information Systems Directive (NIS). Along with GDPR, the Directive is a key element of the Unified Digital Market Strategy pursued by the European Union. The key

assumption of the new regulation is to ensure a unified model of security and resistance, including an effective and consistent system of responding to cyberattacks and cyberthreats.

Who will be affected?
The new regulatory challenges apply to:

1) Key utility operators
The group includes businesses that provide services in the following sectors: **banking, financial market infrastructure, energy, transport and healthcare,** i.e. the ones whose security is of key importance for the society and national economy.

Authorities competent to supervise cybersecurity issues shall decide which businesses operating in the above sectors shall be considered the key utility operators. With this respect, individual **administrative decisions** regarding each business shall be issued.

Authorities competent to supervise cybersecurity issues include ministers in charge of each economy sector, except for the sector of banking and financial market infrastructure, which will be supervised by PFSA.

Appropriate classification decisions shall be issued **by 9 November 2018.** The entities designated as key utility providers shall have **very little time to achieve compliance with the new statutory obligations (three to six months** of the decision delivery date).

2) Digital service providers
Digital service providers shall be understood as **Internet trading platforms, providers of cloud services and browsers.**

What will the new statutory obligations involve?
The Act focuses on providing security of information systems of critical businesses ensuring confidentiality, accessibility, integrity and authenticity of the processed data and services offered by these systems.

Among others, key utility operators shall be obliged to:

- **Implement a security management system within their operation systems**

The system will involve implementation of appropriate organizational and technical measures (policies, procedures, processes) supporting IT security, systemic risk management, collection and analysis of information on threats, susceptibility identification and incident management.

- **Implement handling procedures and notify competent bodies about incidents**

The notification should take place within 24 hours of incident detection and should include its description, its effect on the provision of key utilities by other operators, its reason and course, as well as information about preventive and correcting measures undertaken. Incident handling information should be provided to the appropriate supervising body on an ongoing basis. Businesses must be aware that sometimes disclosure of confidential information, including trade secrets, to supervisory bodies may be necessary.

Supervisory bodies may decide to publish information regarding a given incident.

Implement a procedure of classifying incidents as serious or significant - thresholds regarding their effects on each key utility shall be determined by a regulation issued by the Council of Ministers;

- with regard to digital service suppliers, the requirements are defined in Regulation 2018/151.
- **Establish internal structures in charge of cybersecurity** (which may mean establishing separate organizational units or assigning new tasks to current employees; please note, though, that these units will be of interdisciplinary nature), or concluding an agreement with a specialized cybersecurity service provider.
- **Cooperate with supervisory bodies**.
- **Carry out a security audit** of the information system used to provide the key utility (at least once every two years).
- Provide users with appropriate information allowing them to understand cyberthreats and appropriate preventive measures.

Similar obligations apply to digital service suppliers. Further, if they provide services to key utility operators, they will be obliged to provide them with information regarding incidents.

The Act on National Cybersecurity System shall pose a challenge for entities obliged to comply with it, both in terms of providing appropriate organizational measures (strategy, management information, operational risk management procedures), implementation and proper functioning of preventive measures, detection and response, as well as ensuring continuous employee awareness building, security tests of each organization, ensuring readiness for threats and appropriate response to incidents, to include effective cooperation and communication, collection and analysis of evidence and post-hacking procedures.

Key utility operators and digital service providers who fail to comply with the Act can be fined with the amount of up to PLN 200,000 (in extreme cases, up to PLN 1 million).

Additionally, in May, the European Central Bank published Threat Intelligence Based Ethical Red Teaming Framework (abbreviated as TIBER-EU Framework), which supports the financial sector and key utility operators in of carrying out security tests.

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Romania

New rules governing the financial services and activities

Law no. 126/2018 on markets in financial instruments that transposes in the Romanian legislation the EU Directive no. 65/2014 on markets in financial instruments (MiFID II) entered into force in July 2018. We summarized in this legal alert some of the key important provisions of the Law no. 126/2018.

Law no. 126/2018 on markets in financial instruments that transposes in the Romanian legislation the EU Directive no. 65/2014 on markets in financial instruments (MiFID II), entered into force in July 2018.

MiFID II and the EU Regulation no. 600/2014 on markets in financial instruments (MiFIR) were approved in 2014, and entered into force on 3 January 2018.

Since their approval, the EU legislator, together with the European Securities and Markets Authority (ESMA), have developed an extensive and comprehensive legal framework in this area, such as implementing regulations, guidelines, technical standards and opinions (together referred to as MiFID II Legal Framework).

A key aspect to be considered is that almost the entire MiIFID II Legal Framework has direct applicability in all Member States and does not need any transposition.

Hence, the regulated entities falling under the scope of MiFID II Legal Framework have to follow a broad and dynamic legislation in order to fully comply with all the new requirements.

MiFID II Legal Framework aims to develop more transparent, competitive and integrated financial markets across the EU, by ensuring a less volume of trading outside the regulated markets, better investors' protection (especially for retail investors) and an extensive financial stability.

We have summarized in this legal alert some of the key provisions of the Law no. 126/2018.

Scope of Law no. 126/2018

The new law applies to investment services companies (in Romanian SSIF), market operators, data reporting services providers, central securities depository, central counterparties, investment firms from another Member States operating on the Romanian territory directly or through a branch, and third country investment firms performing investment services and activities in Romania by establishing a branch.

Law no. 126/2018 regulates various topics related to the financial instruments and financial services and activities, such as the authorization and functioning conditions for the regulated entities falling under the scope of law, investors' protection rules, competence areas of the supervisory authorities, data reporting services and access to clearing and settlement arrangements.

Supervisory authorities

The Financial Supervisory Authority (FSA) is the Romanian competent authority that will apply the provisions of Law no. 126/2018, MiFIR and the entire MiFID II Legal Framework.

However, the National Bank of Romania (NBR) will have special supervisory competences under the new law insofar as the investment services and activities performed by the Romanian credit institutions, as well as by the Romanian branches of credit institutions from another Member States are concerned.

Accordingly, the NBR will grant the authorization for the provision of investment services and activities by credit institutions, only after the consultation of the FSA.

Moreover, the NBR will have full supervisory competences on the investment services and activities performed by credit institutions in relation to some categories of financial instruments that are not traded on the regulated markets, such as money market instruments, derivatives related to money market instruments, currencies or interest rates.

The NBR and FSA will work closely on the common supervision of the credit institutions performing investment services and activities by implementing common regulations and cooperation protocols.

What is new under this legal framework?

- **Stricter governance requirements**: stricter requirements regarding the assessment of the suitability of the members of the management body; stricter control of remuneration of staff (bonus criteria) to prevent non-compliance with the obligation to act in the best interest of clients;
- **Extended investors' protection rules:**
  - prohibition of the promotion of financial services and activities through external services providers, such as "call center" services;
  - prohibition of the marketing, selling and distribution to retail clients in certain conditions of several categories of speculative products, such as binary options, derivatives traded on electronic trading platforms, and CFDs;
  - investment firms are prohibited to accept or retain pecuniary and non-pecuniary benefits (inducements) from third parties for independent advice and discretionary asset management services;
  - periodic disclosure requirements for investment firms about the cost and charges of the services and activities provided, including information on the cost of advice, the cost of the financial instrument sold or recommended and how the client may pay for it, and an itemized breakdown of the costs upon client's request;
  - specific requirements when an investment firm offers a package of products or services: evidence of the costs and charges for each component of the package and explanation on how their interaction changes the risks, as well as a performance of the suitability/appropriateness test at the level of the package;
  - investment firms have the obligations to publish annually, for each class of financial instruments, the top five execution venues in terms of client orders in the preceding year and information on the quality of execution and are prohibited to receive any remuneration, discount or non-

monetary benefits from routing orders to a particular venue for avoiding the non-compliance with the rules on conflict of interests or inducements;

- trading venues have the obligation to make periodic reports including details about price, costs, speed and likelihood of execution for each financial instrument.

- **New concepts of algorithmic trading and high-frequency algorithmic trading are introduced along with related special requirements;**
- **New trading venue:** organized trading facility (OTF) for bonds, structured products and derivatives in order to capture the "dark pool" systems and operators;
- **Introduction of position limits for commodity derivatives:** established by the FSA based on a computation methodology provided by the ESMA regulations;
- **Extended market transparency and transaction reporting:** establishment of new entities providing data reporting services, such as approved publication arrangement (APA), approved reporting mechanism (ARM), and consolidated tape provider (CTP), each of them being subject to a prior authorization from the FSA;
- **Extra-judicial mechanism for consumers' complaints:** Investment firms have the obligation to adhere to the competent bodies for alternative resolution of disputes organized by the FSA or at the level of the banking sector.

Sanctions

Law no. 126/2018 imposes strict sanctions and administrative measures for non-compliance with its provisions and MiFID II Legal Framework' provisions, that may be applied by the FSA; in case of legal entities, the pecuniary fines may amount up to RON 22,000,000 or 10% of the last financial year net turnover.

Transitional provisions

Within maximum 6 months from the date of entry into force of Law no. 126/2018, the SSIFs, credit institutions, investment advisors, market operators, regulated markets and alternative trading systems have the obligation:

- to amend and/or to supplement the initial file submitted with the FSA for obtaining their initial authorization or, as the case may be, the registration with the public registry held by the FSA, and to submit it again for notification/authorization with the FSA, according to the regulations issued by the FSA; and
- to amend and/or to supplement their internal policies in order to comply with the provisions of Law no. 126/2018, MiFIR and the MiFID II Legal Framework.

The credit institutions performing investment services and activities in relation to structured deposits or distribution of fund units have the obligation to comply with the provision of the new law within maximum 6 months from the date of its entry into force.

The regulations issued by the FSA before the entry into force of Law no. 126/2018 will continue to be applied until new FSA regulations will be

approved, except the case of contradictory provisions when Law no. 126/2018 will be applied with priority.

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European Commission amends the exporter definition from a customs perspective

More than two years after the entry into force of the New Union Customs Code, the European Commission amends the exporter's definition from a customs perspective. The new definition should be less restrictive and limits the conditions to be met in order to act as an exporter to the essential requirements of the functioning of the export customs regime.

On 30 July 2018, the Regulation amending the UCC Delegated Act (Delegated Regulation (EU) 2015/2446) was published in the Official Journal of the EU. The Regulation makes the necessary technical changes to the UCC Delegated Act to better adapt legislation to the needs of economic operators and customs administrations.

The definition of the exporter provided for in the new Customs Code was problematic because it set out as an exporter only one person who had to meet 3 cumulative requirements: (1) to be established in the customs territory of the Union, (2) to have a contract with a third country consignee and (3) to have the competence to determine whether the goods will be transported outside the customs territory of the Union.

As a result of numerous complaints from the EU business environment, the European Commission changed the definition of exporter. More specifically, according to the new definition, "exporter" means:

(i) a person established in the customs territory of the Union who has the competence to establish and establishes that the goods are to be removed from the customs territory of the EU;

(ii) where point (i) does not apply, any person established in the customs territory of the Union who is a part to the contract on the basis of which the goods are to be removed from the customs territory in question."

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Guidance on Classification of a Professional Sportsman's Income from Collective Sport

The guidance defines the difference between individual and collective sports and possible legal forms of performing professional collective sports activity including the type of income under which such activity is to be categorised.

The Financial Administration has published a methodological guidance on the classification of a professional sportsman's income from collective sport. The guidance primarily aims at distinguishing between individual and collective sports and classifying sports activities according to the types of income under the Income Tax Act (the "ITA"). The act provides that if a natural person conducts sport individually, in their own name and on their responsibility, such activity qualifies as individual sport. The opposite of such sport is collective sport where the sportsman performs sport in a team that is defined by mutual cooperation of the team members and the sportsman is subject to the orders and instructions of the sports organisation under whose name he acts. Thus, a sportsman cannot perform the same sports activity in his own name, too.
The guidance sets the imperative that sports organisations and sportsmen evaluate themselves whether the activity they perform as a professional sportsman meets the criteria of employment. The main characteristic is a superior-subordinate relationship between the sports organisation and the sportsman and the performance of activity in the organisation's name and under its instructions and orders.

A professional sportsman can perform a collective sport for a sports organisation under:

- an employment or equivalent relationship in a departmental sports centre, the income from which qualifies as income from employment as per Article 5(1)(a) of the ITA;
- a contract to perform sports professionally and the income qualifies as income from employment as per Article 5(1)(m) of the ITA; or
- other legal relationship and the performance of a sports activity meets the criteria of employment and, after 31 December 2018, will be classified as income from employment, in the same way as the performance of activity under a contract on the professional performance of sport.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) was ratified by the Slovak Republic on 30 July 2018.

The Slovak Republic has ratified the MLI, and stated its reservations about the Convention. It also expressed its wish to include 64 double tax treaties in the MLI. The MLI is a specific output of the BEPS OECD/G20 project and another significant step in the international fight against tax avoidance. As the first multilateral convention of its type, the MLI is ground-breaking in terms of international tax law, and enables countries to amend existing

treaties on the avoidance of double taxation without lengthy bilateral negotiations.

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