CE Tax&Legal Highlights

September 2019

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Czech Republic

Planned Income Tax Changes for 2020

The Chamber of Deputies of the Czech Republic is currently debating two amendments to the Income Taxes Act (Act No. 586/1992 Coll., the Income Taxes Act, as amended), which may come into force in 2020. These amendments, parliamentary press nos. 572 and 509, bring the following proposals for changes.

Change in taxation of interest income arising from bonds issued before 1 January 2013

- The tax base for interest income arising from bonds issued before 1 January 2013 was rounded down to a whole Czech crown (so-called one-crown bonds). Subsequently, this treatment was changed when the tax on total income from one issuer started to be rounded. However, according to the transitional provisions, this adjustment did not affect interest income on bonds issued before 1 January 2013 (so-called one-crown bonds).

- Currently, a special transitional provision is proposed, removing this exemption for bonds issued before 1 January 2013 so that all interest income is rounded down on the level of the tax on total income from one issuer, regardless of the issue date of the bond. In practice, it means that if the amendment is approved, the new rounding procedure will be applied to all bonds.

Change in the method of creation and tax deductibility of technical provisions in insurance

- According to the proposed amendment, insurance and reinsurance companies will newly take into account as tax-deductible expenses the creation of provisions pursuant to the Insurance Act, which is based on the Solvency II Directive and not technical provisions created according to the accounting legal regulations. Thus, technical provisions created according to the accounting legal regulations will no longer be considered as tax-deductible expenses. Another change in approach is that, as technical provisions created pursuant to the Insurance Act are not accounted for, the provisions in insurance will be reflected in the tax base in the form of non-accounting adjustments to profit or loss.

- The transition to the new system is expected to lead to a relatively large impact on the tax liability of insurance and reinsurance companies; therefore, transitional provisions are proposed to split this one-off tax liability into two taxation periods.

Restrictions on the exemption of gambling winnings for natural persons

- Newly, gambling winnings should be exempted from income tax only up to CZK 100,000 (for example Sazka, Sportka, including receipt lottery). Thus, a domestic operator that pays out a prize greater than CZK 100,000 will be obliged to withhold or collect tax on this income. In case of a prize from a similar foreign competition, this income is not reduced by tax-deductible expenses and the natural person has to state it in the tax return.

Modifications following ATAD implementation

- Avoid duplicating the inclusion of so-called capitalised interest in the calculation of the limit for the eligibility of borrowing costs (according to the proposal, it will be possible to apply it for taxation periods from 1 April 2019).
- Addressing the restriction on the deductibility of borrowing costs for partners in partnership companies – e.g. k.s. and v.o.s. (according to the proposal, it will be possible to apply it for the taxation periods from 1 April 2019).
- Setting the taxation treatment for the transfer of assets without change of ownership from another EU Member State to the Czech Republic for securities valued at fair value.
- New rules for taxation of a foreign controlled company in case such a company is held indirectly through a basic investment fund (according to the proposal, it will be possible to apply it for taxation periods from 1 April 2019).

Other changes

- In addition to municipalities and voluntary unions of municipalities, other public corporations such as regions and the state, or better the Czech Republic, are proposed to be considered as parent companies.
- Definition and unification of terminology relating to international treaties (including double taxation law in relation to Taiwan).
- Clarification of the legislation when a taxable entity can claim the tax paid abroad as a tax-deductible expense.

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Expansion of electronic sales records approaching

On Friday 13 September, the Chamber of Deputies overrode the proposal of the Senate and approved the amendment to the Act on Electronic Sales Records. After more than one year in the Chamber of Deputies, the amendment is headed for the President's signature. The expansion of electronic sales records to include the remaining taxpayers can be expected no sooner than 1 April 2020.

The amendment contains the following items:
- The obligation to keep records will generally apply to all the remaining taxpayers from the third and fourth waves (sale of own products, provision of services).

- It introduces relief from the obligation to record sales for taxpayers performing activities in the area of social services, visually impaired entrepreneurs and sellers of fresh-water fish (only in the period from 18 December to 24 December). For technical reasons, the sales of prepaid telephone cards, commercial air transport and sales from gambling have been excluded from the records completely.

- Given the impossibility of review by supervisory bodies, taxpayers will no longer be required to record sales generated outside of the territory of the Czech Republic.

- The amendment brings back the obligation to include the tax ID on receipts. In line with the ruling of the Constitutional Court, this obligation applies only to situations where the taxpayer's tax ID does not include his or her personal ID number.

- Taxpayers with annual sales of less than CZK 600,000 will be allowed a special regime of sales records. This consists in the possibility of picking up a block of paper receipts at the local Tax Office, giving paper receipts to customers and submitting a quarterly report to the tax authority on the sales recorded under the special regime.

All companies that do not currently record sales and whose activities are not part of the above exceptions should think about how the amendment will affect them. The first step is to carefully analyse all transactions and find out whether they accept cash/bills of exchange/payments using various vouchers (even just exceptionally). If they do, it is necessary to get ready for the obligation to record sales. We will be happy to advise you on this matter and help you find a practical solution for meeting the requirements of the amendment to the Act on Electronic Sales Records in your company.

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Amendment to the Tax Code in the Legislative Process

The amendment to the Tax Code, which was approved by the Government of the Czech Republic at the end of August 2019, promises changes in favour of taxable persons and modernisation of the tax administration. The amendment is presented by legislators under the name of MOJE daně, but in addition to the promised online banking in taxes, the amendment to the Tax Code also contains other process changes. Despite the fact that the amendment to the Tax Code proposed by the Ministry of Finance of the Czech Republic has now been approved by the Government of the Czech Republic, it still has the entire legislative process ahead. Taking into account possible complications, it can be assumed that the amendment may be effective in mid-2020.

At the moment, we have to wait to see how the proposal will change during its legislative way and how long it will take to come into effect. The time and practice of taxable persons will show whether this is a step in the right direction and whether the launch of the technical solution is not rushed.

So what makes the planned change so revolutionary?

Tax authority online

The promised digitalisation of financial administration is a step towards modernising the system used by taxable persons. The vision of financial administration is clear: to make it easier for taxable persons to communicate with the tax administrator while reducing administrative burdens and making many other improvements. In practice, it means the introduction of a portal called MOJE daně, which is to extend the already available tax information box service. The current system allows the taxable entity to obtain selected but very limited information collected in the file and on the taxable entity's personal tax account using the internet. The Ministry highlights the importance of the meaning of the designation MOJE daně which is composed of the words modern (MOderní) and simple (JEdnoduché) and that is what the change should be like.

In addition to information, the new portal should also offer the possibility of active and passive communication with the tax administrator, for example, the possibility to submit tax returns via online forms, which will allow a certain amount of pre-filled data of taxable persons. However, communication should also work in the opposite direction from the tax administrator to the taxable entity in terms of delivery of documents. The Ministry of Finance estimates the launch of the portal in the last quarter of 2020.

Lower sanctions

The amendment to the Tax Code contains a positive significant change for taxable persons, namely the revision of interest related to their new categorisation and its notable decrease. The Ministry of Finance expects the default interest to be reduced by 6% (from the current 14% p.a. plus the Czech National Bank's repo rate to 8% p.a. plus the Czech National Bank's repo rate). This change is also linked to a halving of the interest on the deferred payment.

Prepayments for VAT deduction

The change concerning excessive VAT deductions for value added tax, for which the possibility of prepayments will be newly introduced, should also be helpful. The aim of this amendment is to prevent the phenomenon of retaining the entire excess VAT deduction, even if only a small part of it is examined and disputed by the tax administrator. The amendment includes the obligation to pay the amount of the excess deduction that is not disputed, ex officio. Thus, it will not be necessary to ask the tax administrator for a prepayment for tax deduction. However, following the introduction of prepayments for tax deductions, the amendment plans to extend the deadline for refunding VAT deduction to 45 days, which may have a significant negative cash flow impact. This is an extension of 15 days compared to the current situation to help the tax administrator assess which part of the deduction is disputed.

Changes in deadlines due to electronic submission and abolition of the 5-day "tolerance" limit for filing tax returns

As part of the incentive to use the new system, the financial administration comes with an extension of the deadline for filing income tax returns by one month, in the case of filing the tax return electronically. However, a negative change for taxable persons is the interference with the established deadlines, which represents the abolition of the tolerance limit for filing the tax return, i.e. the current possibility of filing the tax return or paying the tax liability with a certain delay. Under the current rules, although the tax return is filed later (five working days are allowed for tax returns) or the tax is paid later (four working days are allowed for tax returns), the taxable person does not pay any financial penalty. Taxable persons use this tolerance limit either for subjective or objective reasons, when they were not able to file a tax return or pay their tax liability within the statutory period.

Other changes

In addition to the changes outlined above, the amendment to the Tax Code contains other amendments to the relevant provisions. For example the following new rules were introduced:

- Change in the tax audit to allow the tax administrator to switch at any time from elimination of doubts to the tax audit. In the current legislation, this transition is only possible if longer evidence-taking is anticipated.

- To commence a tax audit, it will now be sufficient to deliver a notification on the commencement of a tax audit; a tax audit is currently commenced at a personal meeting.

- A substantial change for state compensation in the event of unauthorised seizure of tax arrears should be a reduction of 20 percentage points.

- In the case of fines for late filing of a tax report, the limit of the amount to be incurred should be increased. This represents an increase from CZK 200 to CZK 500.

- Introducing the possibility of applying for a personal identifier in the field of tax identification numbers for natural persons is also being proposed, which should replace the currently used birth certificate number.

- It will be possible to combine the statement on the outcome of the audit findings with the completion of the tax audit. Thus, according to the Ministry of Finance, if no additional charges are assessed, the tax audit should be completed more quickly.

- The relation of interest paid by the tax administrator to the compensation of detriment will also be explicitly regulated. The law will only allow for compensation of detriment or reasonable satisfaction for non-material detriment caused to a taxable entity by the tax administrator's behaviour to the extent that no interest paid by the tax administrator arises. The law also explicitly stipulates that the interest paid by the tax administrator is the interest on a refundable excess payment, interest on incorrect taxation and interest on tax deduction.

- The scope of the tax audit will be expanded or narrowed during the course of the audit by the delivery of a notification on the change of scope of the tax audit. The notification received in connection with the tax audit will not contain a statement of reasons and no legal remedy may be lodged against it.

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DAC 6: New Obligation to Report Certain Transactions to Taxation Authorities in Advance

The Chamber of Deputies is currently discussing the governmental draft bill implementing the directive on administrative cooperation in the field of taxation ("DAC 6"). This directive regulates the obligation of businesses to report selected cross-border transactions and other arrangements affecting corporate income tax to taxation authorities in advance. The objective of this EU regulation is to gain better insight into the use of tax regulations and prevent aggressive tax planning.

Cross-border arrangements

According to the Czech draft bill, the reporting obligation will concern only cross-border arrangements, i.e. transactions, corporate measures and other transactions concerning more than one European Union member states or a EU member state and third countries if at least one of the participants of this arrangement:

- Is a tax resident in a different state or jurisdiction than another participant;
- Is a tax resident in at least two states or jurisdictions;
- Does business in another state or jurisdiction via a permanent establishment and this business takes place based on this arrangement; and
- Performs activities in a state or jurisdiction where it is not resident and where it does not have a permanent establishment

Hallmarks

The obligation to report planned transactions to taxation authorities will affect all businesses. Nevertheless, only transactions meeting at least one of the hallmarks will have to be reported. They are legally defined indicators of potential risk of evasion of tax liabilities. An example of a hallmark is the purposive take-over of losses or a situation where the recipient is a resident in a jurisdiction with zero or near-zero taxation.

Certain hallmarks apply only if the main benefit or one of the main benefits involves obtaining a tax advantage.

Obliged person

The reporting obligation will apply directly to businesses or to their advisors setting up the arrangement. If the advisor is, for example, a lawyer or a tax advisor, they are bound by the obligation of confidentiality. In such a case, they cannot under any circumstances report anything to the taxation authorities on your behalf. However, they should inform you that the reporting obligation applies to you. Failure to comply with the reporting obligation may carry a fine of up to CZK 500,000 imposed by the taxation authority to the obliged person.

The reported information will be subsequently shared with financial administration bodies in other EU member states.

Another round of discussion about this governmental proposal can be expected in the Chamber of Deputies. The final form of the act can therefore keep changing. However, it is necessary to keep track of these changes, because the notification obligation may apply to transactions realised as early as after 25 June 2018.

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New Inspection Method

In recent years, the auditreview practices of the HTA have been subject to amendment. There is now a focus on the taxpayers' compliance with the law via several smaller-scale reviews, using the available data (online cash registers, EKÁER). Currently, the National Tax and Customs Administration only initiates formal inspections when the chances are high for violating the law. In such cases, the authority usually succeeds.

According to the statistics of the tax authority, in 2018, 92.5% of tax inspections were shorter and less thorough than the "traditional" reviews. The number of such reviews increased by 36% in a year, while the rate of "traditional" tax inspections relating to the closed period only reached 7.5% in 2018. Three out of four traditional tax audits were successful; this rate is decreases to 14% in the case of tax administration procedures.

"The statistics indicate a change in the practice of the tax authority. Selection is performed automatically, using software assisted tools, with analysis of the available data, relieving inspectors of the task. The HTA reviews taxpayers' compliance with several smaller-scale inspections. If a breach is suspected, then the HTA launches a large-scale tax inspection in order to pinpoint the deficiency. This process is successful in most cases" - as pointed out by **Dr. Harcos Mihály**, leading attorney of Deloitte Legal's tax litigation practice. He added: 90% of identified breaches are related to corporate income tax.

The tax authority uses the available, continuously growing data assets to determine inspection directions and identify high-risk taxpayers. The most significant element of this is the real-time invoice data-reporting obligation, which, together with the online cash registers' data provision, allows the tax authority to oversee all major domestic transactions. The Electronic Public Road Transportation Control System (EKÁER) is also an important tool for the HTA as it decreases tax evasion attempts by controlling the flow of goods. "In the future, further expansion of software-based and automated tools may be expected; for example, the concept of reducing or abolishing the limit for invoice data reporting has emerged recently"- added **Dr. Schütt Attila**, manager of Deloitte's Tax service line.

The HTA carried out 177,107 inspections in 2018, and identified net tax difference of HUF 257.7 billion as a result. The amount of tax and default fines and late payment charges exceeded HUF 198 billion. The HTA is now aiming to prioritize voluntary compliance. The review/audit of the activities of large taxpayers and high-risk entities serves this aim.

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New transfer pricing regulation focusing on correct methods used to calculate profitability

Transfer pricing remains a focal point in the audit procedures of the Hungarian tax authority (HTA). As of 1 January 2018, taxpayers are required to prepare their transfer pricing reports according to the provisions of NGM decree no. 32/2017. (X.18.) (hereinafter: "NGM decree"). This decree requires a detailed presentation of taxpayers financial data.

The decree sets forth that the transfer prices applied in the given transaction be calculated based on the arm's length prices defined by the selected transfer pricing method. A summary of the financial data applied during the selection is required. Additionally, how the financial data may be linked to the data in the taxpayer's financial statements must be clarified. The current legislation does not contain specific information regarding the method selected or the level of specification required. However, the published version of the decree sets forth that the arm's length price shall be reviewed on a transaction basis irrespective of the method applied. No modifications may be applied. Furthermore, the HTA sets forth that the method applied for assessing the data for indicators must be included in the local clarify document. Thus, the individual segment, profit center and relevant cost center, G/L accounts (income, expenses) and engagement codes are required.

Increased burden of documentation

"The preparation of detailed financial data may become a complex, time-consuming task for taxpayers. This primarily depends on the transfer pricing method used in the given transaction in the local document, and the level of detail in the internal records available to the taxpayers." – **Hedvig Tóth**, Deloitte Transfer Pricing Team leader emphasized.

In Deloitte's experience, the most widely used transfer-pricing method – except for financial transactions – remains the transactional net margin method (TNMM), which is based on the review of the profitability data of the tested party associated with the transaction. The financial data required for defining the profitability level indicator for the purposes of the TNMM method (e.g. operating profit on operating costs or related revenue, etc.) – in line with the guidance issued by the tax authority – shall be disclosed as part of the transfer pricing documentation by transaction or consolidated transaction.

How will this play out in practice?

In practice, this means that companies will be required to disclose financial data in a segmented manner rather than at a company level. What does this mean?

In Deloitte's practice, companies struggle the most with defining costs only indirectly associated to the transaction. The difficulty lies in the requirement of providing reports from ERP systems that are not directly available, as well as the creation and use of related allocation mechanisms.

"Please note that even though there is no detailed legal regulation pertaining to these calculations, taxpayers should endeavor to comply with their prime cost calculation principles and other national and international principles (e.g. the OECD Transfer Pricing Guidelines). The HTA requires the preparation of reliable (consolidated) transaction level data in order to ensure transparency." – **Balázs Prágay-Szabó**, manager of Deloitte Transfer Pricing Team explained.

For the purposes of defining the profitability data, taxpayers should aim to include or, if required, adjust potential one-off items related to the transaction, outside of the ordinary course of business.

Intensified review? or audit? of loss making entities

The tax authority has always focused on loss making entities. However, as a result of the current definition of profitability data on a transaction level, this tendency will increase. This is why it is especially important that the individual transactions/activities be defined by the given transaction/transaction type, and along consistent principles between the different periods, as the tax authority is only able to localize the source of potential losses on this basis during a review. The primary targets of these reviews are typically transfer prices, i.e. assessment of whether they were defined in line with the arm's length price principle, and whether the loss realized by the given company may be traced back to their inappropriate definition.

As of 1 January 2019, Act CLI of 2017 includes the provision that in the case of taxpayers reaching a net sales revenue of HUF 60 billion in two consecutive tax years, while realizing a zero or negative after-tax profit, a tax audit is obligatory. Based on the reasoning to this provision, in the case of these taxpayers, it may happen that they deliberately want to avoid compliance with their tax obligations. These reviews are expected to include a detailed transfer-pricing audit where necessary.

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Importance of R&D analysis, in particular for IT sector

IT is one of the fastest growing sectors. Technological advance requires continuous development and design of broad application solutions. It is fairly clear that many types of work performed by this sector entities may be classified as R&D under the applicable criteria.

What qualifies as R&D in the IT sector?

Any work involving development of new algorithms in computer science, development of operating systems, among others programming languages, data management, communication and programming tools is considered R&D in the IT sector. At the same time, certain activities cannot be considered R&D. These include designing websites and applications, or software using the existing tools, as well as routine debugging.

From the perspective of tax exemptions, such as **R&D allowance** or **IP BOX (Innovation Box)**, correct definition of business operations and verification whether it complies with the definition of R&D as provided in CIT and PIT Act (Article 4a.26 and Article 5a.38, respectively) is of key importance. Under the definition, R&D must be carried out on a regular basis, with the purpose to grow the knowledge base and thus allow new uses of the developed solutions. Correct definition of the R&D framework underlies identification of eligible expenses, which determine the amount of deductions from the tax base when using the R&D allowance.

Theoretically (in particular in the IT sector), ongoing **operations involving the development of software and supporting tools**, brand new from the business perspective and allowing new, so far unknown functionalities, or proprietary software versions customized to a given client, qualify as R&D. Generally, interpretation practice indicates that such types of development carried out in IT entities is considered to be R&D.

However, from the viewpoint of project-life based R&D analysis, **doubts arise** regarding the timeframe, i.e. which stage of the ongoing work should be considered the commencement and completion of R&D activities.

R&D: doubts regarding IT project implementation

Ii is easier to analyze inn case of **working on a new concept**: usually, based on the observation of market standing, client needs or a specified order, the author starts building the concept from scratch. The work involves a number of risks and uncertainties, related either to the manner of implementing the idea, or achieving the desirable outcome, which helps qualifying it as R&D.

The implementation stage, though, following the completion of the testing and modification, may give rise do doubts. In practice it means the completion of R&D work. However, the nature of activities involving for example integration with the existing software and system components (which may require substantial modifications of the implemented solution and return to the stage of product development, iterations and testing) may allow different interpretation. Due to fairly creative nature of the implementation stage performed in such a manner, bearing substantial risk of failure, doubts occur as to whether such activities, by no means considered routine and involving material innovation, are unfit to qualify as R&D. Since the implementation work is inconsistent in nature, it seems fair and justified to meticulously analyze the stage and separate routine activities from those qualifying As R&D. Further, the growing specialization of technological processes, including those performed in the IT sector, quite frequently requires cooperation of many independent entities to contribute specialistic knowledge and work together for a time being during the project life, both in the concept development and implementation stage. In light of the above, during verification of the performed operations for compliance with the R&D definition, the type and nature of work carried out by each project participant must be checked, which may, consequently, broaden the scope of R&D activities performed.

Of course, each case will be different, which may require a highly individualized approach. Anyway, from the perspective of a project that may involve large R&D potential, such an analysis is highly reasonable. Therefore, it seems appropriate to precede each analysis with a broad view of the potential project scope over its entire life cycle, and only then restrict the analysis of R&D activities to specific fields. Practice indicates that **only this approach allows good understanding of the nature of operations, analysis and verification of each implementation stage** in the context of the statutory R&D definition, resulting in a correct specification of eligible costs underlying the settlement of R&D allowance.

R&D activities carried out by businesses: more than just a tax allowance

Considering the scope of R&D activities carried out in the context of **R&D allowance** or **IP Box (Innovation Box)**, we cannot forget other incentives and preferential treatment offered to innovative businesses.

First and foremost, at present most businesses may obtain co-funding of operating expenses, mostly under **Submeasure 1.1.1 of POIR Szybka Ścieżka (Intelligent Development Operational Program, Fast Pathway)** (general and specialist topics, e.g. Plastics), as well as under sectoral measures, e.g. **Measure 1.2 POIR GameINN** (a competition intended for game and videogame producers), as well as expenses for the purchase of R&D infrastructure (**Measure 2.1 in POIR**).

At the same time, taxpayer’s activities involving the participation of its employees in many cases allow the employees to calculate **50% tax deductible expenses**, which translates into higher net salary, while employer’s costs remain fairly unchanged.

Thus, R&D activity carried out or planned by a business should be analyzed in light of the large choice of tax incentives and co-funding available, to allow turning it into both increased opportunities and competitive advantage.

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PSD2: changes awaiting payment service providers after 14 September 2019

On 14 September 2019, regulatory technical standards regarding strong customer authentication [1], supplementing PSD2 Directive, came into effect. They changed the manner of authentication related to payment transactions, introducing a two-step strong customer authentication standard.

Strong customer authentication (SCA) means authentication based on at least two components of the following classes:

- knowledge (something only the user knows, such as a code or password);
- possession (something only the user possesses, e.g. a mobile application);
- inherence (something the user is, e.g. biometrics in the form of a fingerprint);

that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data.

Payment service providers use strong customer authentication where a payer:

- accesses its payment account online;
- initiates an electronic payment transaction;
- carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

As a result, banks modified their login procedures to achieve compliance with the new requirements.

Please note that payment service providers shall be allowed not to apply strong customer authentication, where the payer initiates a contactless electronic payment transaction provided that the following conditions are met:

(a) the individual amount of the contactless electronic payment transaction does not exceed EUR 50; and

(b) the cumulative amount of previous contactless electronic payment transactions initiated by means of a payment instrument with a contactless functionality from the date of the last application of strong customer authentication does not exceed EUR 150; or

(c) the number of consecutive contactless electronic payment transactions initiated via the payment instrument offering a contactless functionality since the last application of strong customer authentication does not exceed five.

Please note that on 18 August 2019 Polish Financial Supervision Authority announced its plan to allow the supervised payment service providers not to apply the SCA requirements with regard to:

- Internet card-based payments and
- contactless payments in terminals.

Thus, PFSA joined the group of the European regulators (including those from the UK, Germany, France and Italy) who decided to take a similar step. Certain payment service providers are allowed not to use the strong customer authentication based on the opinion of the European Banking Authority (EBA) of 21 June, in which, having evaluated the readiness of the European market to adopt the new requirements, it allowed national oversight bodies to extend the time certain providers needed to achieve compliance with the new regulations, on certain conditions. In order to use the exemption, payment service providers need to submit an appropriate motion to the Commission, along with a migration plan. In such cases, other supervisory measures related not using SCA, shall not be applied to these providers. The solution, though, is not perfect, since even in such cases, the risk related to not using SCA after 14 September 2019 as required by PSD2 and RTS shall be borne in whole by the obligated payment service providers.

[1]. Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication.

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Excise duty exemption for Lubricating Preparations. Draft Regulation amending the Regulation on Exemptions from Excise Duty was published yesterday

The draft Regulation of the Minister of Finance amending the Regulation on Exemptions from Excise Duty (henceforth: "Draft") is available on the website of the Government Legislation Center. The draft introduces excise duty exemption for lubricating oils coded CN 27102090 and lubricating preparations coded CN 3403 (henceforth jointly: "Lubricants") used for purposes other than broadly defined propulsion, heating or as engine lubricants.

What is this all about?

Following the effective date of the Act Amending the VAT Act and Certain Other Acts of 4 July 2019 (Journal of Laws of 2019, item 1520, henceforth "Fuel Package 2.0") as of 1 September 2019, lubricating oils coded CN 27102090 are subject to the excise duty rate of PLN 1,180/1000 liters, while lubricating preparations coded CN 3403, except for lubricant paste, shall be included in the same excise rate as of 1 November 2019. Introducing the amendment, the lawmakers intended to equalize the taxation of Lubricating Oils and Lubricating Preparations. Therefore, along with applying the same excise rate, the lawmakers allow the same exemptions as currently available for Lubricating Oils to be applied to Lubricating Preparations.

The draft allows an exemption from Article 6.2 of the Regulation of the Minister of Finance on Exemption from Excise Duty (Journal of Laws of 2018, item 2525; henceforth: "Regulation on Exemption") also for Lubricating Preparations, if their intended use differs from propulsion or heating, or being additives to engine fuel, or as lubricant oils used in engines, or in production of engine fuel, heating oil, additives to engine fuel or to lubricant oils used in engines. The effective date as projected in the Draft falls on 1 November 2019.

Please note that the effective excise rate has been applied to the lubricating oils coded CN 27102090 as of 1 September 2019. The regulation introducing an exemption regarding these products (if the regulation remains unchanged) shall come into effect as of 1 November 2019. Therefore, until the end of October, Lubricating Oils bearing the code CN 27102090 cannot be excise exempted, if their intended use is different than broadly defined propulsion, heating or engine lubrication.

What does this mean in practice?

The draft does not change any formal terms qualifying for the exemption, thus making the provision of a document of supply the sole condition underlying the exemption. As of 1 January 2020, following the replacement of paper documents of supply with their electronic form, generating an e-DD communication and sending it to the EMCS system will be a condition allowing the use of the exemption.

Importantly, the lawmakers do not intend to change any transaction schemes to which the exemption applies. Thus, for intra-Community purchases of Lubricating Oils and Preparations, moving the goods to a tax depot (owned or hired) shall be the prerequisite allowing the use of the exemption, which may involve a change in the delivery pattern of these goods vs. the one applied at present.

When the exemption is applied based on the intended use, companies will be obligated to keep consumption records of these products on terms determined in excise-related regulations.

Follow-up

Entities that purchase Lubricating Preparations in Poland and intend to use the exemption shall be obligated to register for excise purposes (those already registered shall update their forms) and obtain access to the EMCS System, which is necessary to confirm the delivery of these products in the System. Therefore, appropriate preparation (developing procedures and training employees) would be necessary to allow the electronic monitoring.

Entities that make intra-Community purchases of Lubricating Preparations and do not use tax depot may consider changing the procurement model and commence cooperation with a tax depot, in order to be able to use the discussed exemption. Alternatively, should they decide not to use the exemption, a special tax regime, intended for intra-Community purchases, shall be applied, which will require the performance of certain measures prior to the submission of returns and tax payment.

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Slovakia

Learn more about a service permanent establishment

The Financial Directorate of the Slovak Republic issued a methodological instruction to ensure a uniform approach of the tax authority to the assessment of taxability and the method of taxation of income from the provision of services and the origination of the so-called "service permanent establishment" of taxable persons with a limited tax liability in the Slovak Republic. Given the specific (often intangible) nature of services, it is necessary to eliminate the risk of non-taxation of income from such activities, especially by defining the conditions upon which such income may be taxed in the Slovak Republic.

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Proposed marked increase in minimum wage

The minimum wage is to be calculated by a new method from 2021.

The new regulation would introduce two basic means of determining the minimum wage, i.e. by an agreement between the representatives of employers and employees, or automatically by calculating the average monthly salary of employees in the Slovak economy. The automatic calculation would only be applied if the representatives of the employees and employers do not reach agreement.

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