



## Tax&Legal Highlights

### Bulgaria

#### Tax legislation changes 2020

On 6 December 2019 amendments to the Corporate Income Tax Act ("CITA"), the Value Added Tax Act ("VATA"), the Personal Income Tax Act ("PITA"), the Excise Duty and Tax Warehouses Act ("EDTWA"), the Local Taxes and Fees Act ("LTFA") and The Tax and Social Security Procedure Code ("TSSPC") were published in the State Gazette.

Most of the changes will enter in force as of 1 January 2020

#### Amendments in the Corporate Income Tax Act ("CITA")

**Rules aimed at neutralising the effects of "hybrid mismatches".  
Their focus is on the financial hybrid mismatches.**

The amendments introduced in the CITA rules on hybrid entities and hybrid instruments are in accordance with the provisions of Council Directive 2017/952 ("ATAD 2"). The new regulations are applicable to the following cases:

- where there is a deduction from the taxable result of the payer of income/amounts due without a corresponding increase in the taxable result of the recipient with the amount of that

income/amount receivable, referred to as "deduction without inclusion";

- where, due to the specific tax status of one of the parties to the transaction (e.g. a transparent entity or a company part of a tax group), the same income is deducted from the results of two companies/entities subject to taxation in different countries, referred to as "double deduction".

A common case of deduction without inclusion subject to regulation is the use of "hybrid instruments". The latter are financial instruments that trigger a tax-deductible expense (e.g. interest expense) for their issuer without leading to a corresponding taxable income for the investor/lender (e.g. non-taxable dividend income) due to differences in their classification for tax purposes in different countries.

The new provisions will only apply to a limited scope of entities, thus, a special definition for "related parties" is introduced and the structured agreements are included for the first time in the regulation.

**Exit taxation. The rules on exit taxation only apply to transfers involving permanent establishments.**

Another part of the amendments in the CITA implements the rules for exit taxation as per Council Directive 2016/1164 of the European Union ("ATAD").

In its current version, the CITA provides for taxation only on transfers between a Bulgarian permanent establishment and another part of the same enterprise located outside the country. The new version of the CITA extends the scope by adding three more types of scenarios that could lead to exit taxation:

- Transfer of assets from a head office in Bulgaria to a permanent establishment outside the country;
- Transfer of assets in cases in which an entity changes its tax residence – does not apply to assets that continue to be effectively connected to a permanent establishment in Bulgaria;
- Transfer of a business carried out from a permanent establishment in Bulgaria to another country.

Taxation could arise only if Bulgaria loses its right to tax the result of the subsequent disposal of the transferred asset.

The result of each transfer will be calculated by subtracting the tax value of the transferred asset from its market value. When the result of the above calculation is positive this amount will be added to the accounting result for the purposes of determining the taxable result. In case the calculation results in a negative value, this amount will also be taken into consideration leading to a decrease in the taxable result.

Special rules are envisaged for temporary transfers (for periods less than 12 months ) as well as for the deferral of the incurred corporate income tax payable – in case certain conditions are fulfilled.

**Other amendments - specific tax treatment for expenses for repair, construction and development of technical infrastructure.**

An explanatory regulation is introduced on the application of the thin capitalization regime in cases of interest costs on loans where the collateral is provided simultaneously by the borrower and its related party. In such

cases, the interest costs corresponding to the part of the collateral provided by the borrower would not be subject to regulation under the thin capitalization regime. If the market price of the collateral provided by the borrower exceeds the principal of the loan, interest costs would be completely excluded from the regulation, even if additional collateral is provided by a related party.

Expenses for the repair of technical infrastructure – public state or public municipal property would be recognized for tax purposes. The accounting cost for construction and improvement of such infrastructure would not be recognized for tax purposes but would be capitalized as a separate tax depreciable asset. A sufficient condition for the specific treatment to be applied is that the costs are related to the business activities of the entity, regardless of whether other entities/individuals may use this infrastructure.

The specific tax treatment for the above items would not apply if there are agreed remunerations in return.

It is envisaged that unrecognized expenses in the period 2015 - 2019 can be recorded as tax depreciable assets as of 01 January 2020.

### **Amendments in the Value Added Tax Act (“VATA”)**

#### **VAT treatment of goods in the continental shelf and EEZ. The requirements would affect exploration activities in the Black Sea.**

The receipt of goods, intended for activities in the continental shelf and the exclusive economic zone, will be subject to VAT under the general rules, including when they are placed under re-export and export. VAT will be charged through the issuance of a protocol for self-assessment by:

- the person for whom these goods have been placed under a customs procedure of re-export and, when brought into the territory of the country, have been temporarily stored, placed in a free zone or under any of the special customs regimes (customs warehousing, inward processing, temporary admission with full relief from import duties and external transit);
- the recipient when the goods arrive directly in the continental shelf and exclusive economic zone from a third country or territory, or from another EU Member State, where there has been no intra-Community acquisition.

Taxpayers are also required to notify the Bulgarian revenue authorities electronically of their intention to levy tax on goods intended for the continental shelf and the exclusive economic zone. They will be entitled to deduct input VAT under the general rules.

The amendments will likely lead to changes in the structure of the sales and purchase ledgers and to a need to align accounting software with the new rules.

#### **No mandatory VAT registration threshold for foreign taxpayers**

Taxable persons, who are not established on the territory of the country but perform supplies taxable in Bulgaria, would be required to register for VAT purposes in Bulgaria no later than 7 days prior to the date on which the tax for their first supply in Bulgaria becomes due.

#### **Quick fixes: 4 changes in the treatment of the supplies of goods.**

##### **1. Chain supplies**

This amendment will affect cases where goods are resold among three or more entities in different EU Member States but the goods are only transported between two EU Member States. The new rules aim to identify which supply in a chain transaction should be treated as the intra-Community supply and therefore which of the suppliers is entitled to apply the zero rate on intra-Community supply.

According to the proposed new rules, the transport will be allocated to the supply of goods made to the intermediary operator. An exception to this rule will be cases where the intermediary operator has provided to his direct supplier its VAT number issued by the EU Member State from which the goods have been dispatched or transported. In these cases, the supply from the intermediary operator to his direct customer will be considered as the intra-Community supply.

## **2. Call-off stock**

This regime applies to cases where a supplier from one EU Member State transports its own goods to a warehouse in another EU Member State and knows at the time of transport who the buyer of these goods will be. The ownership over the goods is transferred only when the buyer "withdraws" the goods from the warehouse.

With the adoption of the amendments, these suppliers will not have an obligation to register for VAT purposes in the state where the goods are stored and the acquisition of the goods will be reported by the client, who will have to self-assess VAT.

The amendments introduce an additional obligation to maintain a special register of the goods sent/received under a call-off stock regime.

## **3. VAT number of the recipient**

The amendments make the valid VAT number of the customer in the EU Member State where the goods are delivered a substantive requirement for the application of the 0% VAT rate in cases of intra-Community supplies. The amendment also provides for a mandatory submission of a VIES return as a condition for applying the zero rate.

## **4. Proof of intra-Community supply**

A presumption is introduced, according to which the intra-Community transport of goods is proven when the supplier possesses specific documents listed in the legislation. It should be noted that the list of documents differs from the current documents, described in the Regulation for the Implementation of the VATA, and all Bulgarian companies that ship goods to other EU Member States should check whether the documents they collect in the course of their activity fulfill the new conditions.

A number of other amendments and clarifications are introduced in the VATA with the adopted legislation. The legislation explicitly stipulates that the gratuitous provision of public infrastructure elements, which are state or municipal property, is not a supply for the purposes of the VATA when used by the person for his economic activity.

## **Other amendments**

A change in the calculation of the taxable turnover for the purposes of VAT registration is also envisaged in the case of successive carrying out of a homogeneous economic activity in the same commercial premises by two or more related persons.

## **Amendments in the Personal Income Tax Act ("PITA")**

### **Less requirements for utilizing tax relief**

The requirement for providing documents for utilizing tax deductions for disability and personal contributions for completed insurable periods upon retirement is abolished, including:

- a copy of an official resolution of the National Expert Medical Committee/ Territorial Expert Medical Committee;
- copies of documents sustaining the personal contributions for buying out completed insurable periods.

This regime is applicable starting from fiscal year 2019 and onwards.

### **Added clarification for taxation of received dividends in the form of hidden profit distribution amounts**

The one-off tax owed on dividends for hidden profit distribution amounts is calculated on the gross amounts of hidden profit distribution. Until now, it was only on the gross accrued amounts.

### **Opted out requirement for mandatory reporting by income payers**

For fiscal 2019 and onwards, the income payers would be no longer obliged to disclose information for provided non-taxable income in the form of provided supplementary awards or winnings of insignificant value. The proposed amendment aims at reducing the administrative burden for income payers who provide awards exempted from taxation under the Personal Income Tax Act ("PITA").

## **Amendments in the Local Taxes and Fees Act ("LTFA")**

### **Valuation for tax purposes in cases of violation of the accounting legislation**

The municipal revenue authorities would have the right to determine the tax base of real estate owned by legal entities in cases where it is found that the declared gross book value of the real estate is determined in violation of the accounting legislation. In such cases, the amended tax value would be calculated under the stipulations of TSSPC. The taxpayers will bear the costs for additional valuation (e.g., if the municipality uses the services of experts/licensed appraisers).

### **Other amendments**

The previously existing provisions regulating the declaration of assets acquired through a donation for which no notary validation is required (e.g. forgiven/written-off debts) are reinstated. The tax return filing and payment deadline is again within two months from the taxable event.

By 29 February 2020, the procuring entities should submit data for determining the real estate tax on newly constructed buildings, which are subject to commissioning and which have been completed in rough construction as at 31 December 2019, but have not been entered into commissioning or no use permit has been issued.

Introduced are also certain changes aimed at reducing the administrative burden in cases of termination of the registration of vehicles and in determining the monthly tourist tax liabilities.

## **Amendments in the Tax and Social Security Procedure Code ("TSSPC")**

### **Who is obliged to prepare a transfer pricing documentation?**

Alongside the changes in the CITA, amendments are also made in the TSSPC aimed to refine the criteria for persons obliged to prepare a transfer pricing documentation on an annual basis. According to the new provisions, taxpayers are exempt from the obligation to prepare such a documentation if as of 31 December of the prior year they do not exceed two of the following thresholds:

- BGN 38 mln. asset net book value;
- BGN 76 mln. net sales;
- an average number of 250 personnel for the reporting period.

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