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CE Tax&Legal Highlights

December 2019

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Tax&Legal Highlights

December 2019

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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 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 States 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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Poland

Central Register of Beneficial Owners launched on 13 October 2019

13 October 2019 saw the provisions of the Anti-Money Laundering Act (the AML Act) come into force, based on which the Central Register of Beneficial Owners was launched.

In addition to the existing obligations imposed on the obligated institutions (i.a. companies that provide bookkeeping services for other companies in a group – more information below), **the AML Act introduces a new obligation to identify the data concerning the beneficial ownership of each company and report them to the newly established Central Register of Beneficial Owners.**

A beneficial owner is **a natural person who controls a company in Poland either directly or indirectly (i.e. through parent companies).** As of 13 October, all commercial companies and partnerships (other than listed companies and professional partnerships) will have six months to identify and report information on their beneficial owners.

Information about beneficial owners must include:

- their full name;
- citizenship;
- country of residence;
- PESEL number or date of birth – for those who are not holders of the PESEL number;
- information on the volume and nature of the share or rights vested in them.

The same categories of data must be reported with respect to all members of the governing bodies or partners/shareholders authorised to represent the companies.

Therefore, each company should identify its beneficial owners, collect evidence confirming their identification, and submit an electronic notification by 13 April 2020 at the latest. Companies should also plan how to update data on their beneficial ownership, as each change in this respect should be submitted to the Register within seven days.

Reports to the Register will be the responsibility of **those who are authorised to represent the companies**. These persons **will also be filing statements on the accuracy of the information provided to the Register (under criminal liability)**. Additionally, the persons reporting on the beneficial ownership will be liable for damage caused by reporting false data to the Register or by failing to report within the period specified by the AML Act. **Companies themselves may face fines of up to PLN 1 million for not reporting the data** or reporting false data.

The AML Act also imposes a number of other obligations on the obligated institutions. These institutions include not only banks, investment funds or insurance intermediaries. They also include **companies whose activities consist in providing bookkeeping services** (even if only for other companies in a capital group or only as one of the many areas of the companies' operations), as well as letter-box and brass-plate companies.

The obligations under the AML Act include:

1. drawing up and implementing **an internal procedure** regarding counteracting money laundering and terrorist financing;

2. drawing up a **whistleblower procedure** for breaches of the AML Act;

3. carrying out and documenting an **AML risk assessment** regarding the operations of the obligated institution;

4. **applying financial security measures** to the extent and with the intensity to suit the identified risk of money laundering;

5. **archiving documents** and information derived from the application of the financial security measures;

6. **liaising with the General Inspector of Financial Information (GIIF)** to report any circumstances which may raise suspicions of money laundering or terrorist financing offences;

7. **appointing persons responsible for fulfilling the requirements** under the AML Act;

8. ensuring that employees undergo **AML and counter-terrorist financing training**.

Non-compliance with the obligations set forth in the AML Act may result in **high penalties – both for the company** (e.g. a fine of up to EUR 1 million or an injunction to cease performing certain acts), **and for the managers responsible for** compliance with the AML Act (e.g. an injunction prohibiting them from holding an executive post or a fine of up to PLN 1 million).

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The next wave of perpetual usufruct fee updates

The fourth quarter of the calendar year is usually the time when perpetual usufructuaries see the perpetual usufruct fees they have been paying so far terminated, and higher fees offered. For such fee updates to be effective from the following year, they must be carried out by 31 December of the prior year (in accordance with Article 78.1 of the Act on Real Property Management).

Perpetual usufruct fee updates
The annual perpetual usufruct fee is the product of the perpetual usufruct percentage rate and the established value of land property. Whereas the rate changes only if the purpose of the real property is changed, the value of land properties has generally increased dynamically over the years. With perpetual usufruct fees not updated over time in many cases, perpetual usufructuaries have been paying amounts based on the properties' values which were calculated around a dozen or even several dozen years ago, whereas the properties have become worth a few times or even around a dozen times more than originally. Because of this, the updates to the fees ultimately seem inevitable, as the growing land property values are usually a given.

What can be the basis for challenging the fee termination?
What may sometimes raise doubts, is the value of the given real property stated in the appraisal report, together with the report's methodology and the assumptions regarding the property's legal and factual state. **In many cases the reports, drafted by certified valuers, contain mistakes that make it possible to challenge the reports' contents.** Nonetheless, it is very often the case that in verifying the value of the property, perpetual usufructuaries come up with valuation results similar to those in the appraisal report drafted at the property owner's request, and, as a result, do not avail themselves of the remedies at their disposal.

However, even if the value of a given land property has indeed grown to the amount stated in the fee termination notice, there are still ways to successfully counter the fee update. In many cases, property owners make serious formal errors in their updates that may even make it possible to claim the perpetual usufruct fee should be set at the amount applicable so far. Therefore, it is worth analysing all documentation at hand thoroughly before making the decision not to submit a request to determine that the fee increase is unjustified.

What is at stake?
Successfully challenging the update in its entirety may lead to setting the perpetual usufruct fee at the amount applicable so far, **rendering the owner unable to attempt to increase the fee for the next three years. This means that the perpetual usufructuary may enjoy lower fees for three or even five years – the latter being the case by default** if the updated value of the real property is more than double its current value, as under the law perpetual usufructuaries enjoy significantly lower fees for the first two years after the fees are updated.

To challenge the update, perpetual usufructuaries have to submit a request (via the terminating authority) to the local government appeal council (Polish: Samorządowe Kolegium Odwoławcze, or SKO) to determine that the perpetual usufruct fee update is unjustified or justified in a different amount. **They have thirty days from receiving the termination notice to submit such a request.** It is therefore necessary to expeditiously verify the update documentation held by the relevant authority (the property appraisal report in particular), and analyse what the chances of successfully challenging the new perpetual usufruct fee are. Both the perpetual usufructuary and the relevant authority may appeal against the decision of SKO by raising an objection with a common court via SKO. **If formal**

errors are evident, the decision of SKO often ends the whole case, as the relevant authority decides not to object to the decision.

If, however, an objection is raised, the dispute may last for many years. This may also be beneficial for the perpetual usufructuary, as the fee may not be updated while the dispute is going on,

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Amended Act on public offering and conditions governing the introduction of financial instruments. New obligations regarding the remuneration policy, related party transactions, and identifying shareholders

On 16 October 2019 the Sejm amended the Act on public offering, conditions governing the introduction of financial instruments, and public companies, thereby changing twenty other acts. The President has already signed the bill into law, and the new provisions are to come into force fourteen days after they are published in the Polish Journal of Laws.

Contents of the remuneration policy
The amendment imposes an obligation on **general meetings** to adopt remuneration policies for members of their companies' management and supervisory boards **at least on a four-year basis**. Pursuant to the amended Act, the policy does not cover key managers. **The new amended remuneration policies should be adopted by way of a resolution at the forthcoming meetings.**

The Act states that the remuneration policy should contain the following in particular:

- a description of fixed and variable remuneration components, including any bonuses and other pecuniary or non-pecuniary benefits that may be granted for the members of the given company's governing bodies, also expressed as a percentage;

- the term of employment contracts or similar contracts concluded with the members of the given company's governing bodies, together with the terms and conditions of and notice period thereof (the term of the legal relationship between the member and the company, together with the terms and conditions of termination and notice period thereof – if no agreement is concluded);

- an explanation of how the work and pay conditions for employees other than members of the management and supervisory board have been taken into account in establishing the remuneration policy;

- a description of the main features of old age and disability pension schemes and early retirement schemes, if applicable;

- a description of the decision-making process that was involved in establishing the remuneration policy;

- a description of measures taken to avoid conflicts of interest related to the remuneration policy or to manage them;

- a description of how the remuneration policy contributes to the implementation of the company's business strategy, its long-term interests, and its stability.

If members of the company's governing bodies receive variable remuneration components, then the remuneration policy should include clear, comprehensive, and diverse criteria concerning financial and non-financial performance which would govern the process of granting variable remuneration components. It should also describe how such criteria contribute to the implementation of the company's business strategy, its long-term interests, and its stability.

If members of the company's governing bodies receive financial instruments as remuneration, the remuneration policy should furthermore specify the periods in which the rights to obtain remuneration in such form are acquired, and the rules governing the disposal of such financial instrument. It should also describe how receiving financial instruments as remuneration contributes to the implementation of the company's business strategy, its long-term interests, and its stability.

Related party transactions

The amended Act also specifies that the term "**related party**" shall mean a related party within the meaning of the international accounting standards adopted under Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. In light of the Act, **significant transactions** are those the value of which exceeds **5% of total assets** within the meaning of the Accounting Act of 29 September 1994, based on the last approved financial statements of the company. Should no individual transactions with the same related party exceed 5% of total assets in value, their values are summed up. Concluding significant transactions requires **the consent of the company's supervisory board** or – if the company's articles of association contain such a provision – the **general meeting**. If a significant transaction concerns the interests of a certain member of the supervisory board or, where applicable, a certain shareholder,
they should not be involved in deciding whether or not to grant consent for such a transaction. **Companies are obliged to disclose information concerning significant transactions on their websites** at the moment such a transaction is concluded at the very latest.

The disclosure obligations do not cover:

- arm's length transactions falling within the company's ordinary activities;

- transactions concluded with wholly owned subsidiaries; and
- transactions related to the payment of remuneration to members of management and supervisory boards in line with the adopted remuneration policy.

Changes in identifying shareholders
The amended Act also introduces changes concerning the identification of shareholders:

- **Identification of shareholders:** Each public company will now be able to ask the Central Securities Depository of Poland, brokerages or account-holding banks to provide information on shareholders (even those who have only one share).
- **Purpose:** Personal data of shareholders processed under the provisions of this section may be processed solely to enable listed companies to identify its existing shareholders in order to communicate directly with them, with a view to facilitating the exercise of shareholder rights and shareholder engagement with the company.

New squeeze-out and sell-out rules

- The amendment modifies the threshold for the share of voting rights a shareholder (or multiple shareholders) must have to effect a squeeze-out. The threshold will be raised **from 90% to 95%.** The increase will make the situation for shareholders of public and private companies the same.
- Each shareholder with less than 5% of voting rights at a general meeting will be able to demand that their shares be bought back if the company's shares are excluded from trading on the regulated market. Such demands will have to be made within three months of such an exclusion. Should the company be declared bankrupt or a decision be issued dismissing the petition for bankruptcy due insufficient assets, such demands may not be made. The shares will be bought back on a pro-rata basis if limited funds are available. Repurchased shares will be subject to redemption.

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Transfer Pricing

Taxpayers whose tax year ends between October 1, 2019 and December 31, 2019 may be required to prepare tax documentation within 3 months of its end

Taxpayers:

a) who have chosen the option of preparing tax documentation for the financial year starting after January 1, 2018 „in accordance with the old rules" (i.e. by applying the regulations in force from January 1, 2017 to December 31, 2018) and
b) whose tax year ends after September 30, 2019 are required to prepare tax documentation within 3 months of the end of the tax year.

Such understanding of regulations is confirmed by the practice of tax authorities.

Director of the National Treasury Information issued an Individual Interpretation (reference number: 0114-KDIP2-2.4010.421.2019.1.SJ) on 22 November 2019, confirming that in accordance with the wording of § 3 of the *Regulation of March 14th regarding extension of the deadlines for the performance of certain tax documentation obligations* the extension of deadline for preparing tax documentation and performing other specific obligations in the field of transfer pricing to 9 months, calculated from the end of the tax year, applies only for the principal deadlines expiring in 2018 or 2019.

In connection with the above, taxpayers who have chosen the option of preparing tax documentation in accordance with the regulations in force from January 1, 2017 to December 31, 2018 and whose tax year ends after September 30, 2019 (i.e. for which the principal deadline for preparing tax documentation and performing other specific obligations regarding transfer pricing expires in 2020) will be required to prepare tax documentation and perform other specific obligations in the field of transfer pricing within 3 months from the end of the tax year.
This means that they will have to:

- prepare the tax documentation,
- submit a statement on preparing tax documentation to the tax office,
- attach a simplified CIT-TP / PIT-TP form to annual tax return.

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New withholding tax (WHT) rules. Are more changes in store?

To sum up the current situation: certain amendments concerning withholding tax took effect beginning from January 1, 2019. They include the new, extended definition of the beneficial owner concept and introduce the duty of care for the tax remitter to verify the taxpayer's compliance with the conditions for the application of tax relief with respect to payments received in Poland subject to withholding tax; in addition, legislators have also significantly limited the range of situations in which the said tax relief can be applied.

Pursuant to Article 26(2e) of the CIT Act, if the amounts paid to foreign taxpayers exceed the PLN 2M ceiling over a tax year, tax remitters cannot use specific types of WHT relief and are obliged to collect the income tax according to the basic statutory rate. This surplus over PLN 2 million is eligible for certain specific types of tax relief (exemptions, no tax collection or collection at a reduced rate resulting from a relevant double taxation convention) only if the remitter's management board submits an appropriate declaration confirming satisfaction of the conditions for the tax relief application (submitting such a statement is linked with fiscal penal liability for statement veracity) or if the remitter holds a valid WHT clearance opinion (opinion on the legitimacy of applying the exemption) issued by the tax authorities upon request (only with respect to withholding tax exemptions provided for in the CIT Act).

Pursuant to the Regulation of the Minister of Finance of 31 December 2018 (Journal of Laws of 2019, item 1203), Article 26(2e) of the CIT Act is excluded until 31 December 2019.

Plans considered by the Ministry of Finance
In view of the doubts expressed by taxpayers concerning the new regulations, the Ministry of Finance wants to introduce certain amendments. Consultations in that respect were held at the Ministry on November 4, 2019 and during that meeting the representatives of the Ministry presented the assumptions underlying the planned changes to WHT regulations, namely:

1. Limited application of Article 26(2e) of the CIT Act, **i.e. the provision of Article 26(2e) will only apply to 'passive' payments** (dividends, royalties and interest) **made to related entities.**

   This means that payments made to unrelated entities and payments to related entities made in consideration of intangible services, regardless

of the amounts to be paid abroad, could benefit from certain kinds of WHT relief (without the need to submit the relevant management's statement or holding a WHT clearance opinion).

In this regard, the Ministry is still considering whether to introduce a separate definition of a related party for the purposes of WHT, or whether to keep using the current definition formulated for the purposes of transfer pricing.

2. **Clarification of the due care requirement to be complied with in the contractor's verification process**, especially fin respect of payments for intangible services, as well as the grounds for applying specific types of tax relief.

   In this context, the Ministry is considering various options, ranging from returning to the sole requirement of holding a certificate of tax residence to introducing the so-called "whitelist" of payment recipient countries to which certain simplifications and presumptions may apply.

3. **Possibility of obtaining a WHT clearance opinion with regard to payments that benefit from the tax relief under double tax treaties.**

   According to the current regulations, a WHT clearance opinion enables not to collect withholding tax on payments exceeding PLN 2 million, but it only concerns the exemptions provided for in the CIT Act (Article 31(3) and Article 22(4) of the CIT Act).

4. Signature of the statement regarding non-collection of withholding tax **in accordance with the rules of representation of the entity and extension of its validity.**

   At present, all members of the management board are obliged to sign the statement which remains valid for two months counting from the end of the month of its submission. Following that period, the entity needs to file a new statement to confirm that where further payments were made to the taxpayer during the period and tax relief was applied, the conditions of its application did not change. Each new payment to the taxpayer triggers an obligation to submit a new statement.

   Please note that the Ministry does not indicate what new validity period of the statement is being considered.

5. Shortening the WHT refund deadline **from 6 to 3 months.**

   The potential shortening of the deadline may also apply to obtaining of a WHT clearance opinion.

6. Potential changes to the definition of *the beneficial owner*.

   The Ministry has not presented any indications as to the direction of changes in this respect, but the work on the concept is to be continued. At the same time, the Ministry does not intend to set specific conditions to be met by the beneficial owner in the case of holding companies (such as running genuine business activity).

7. Modification of fiscal penal liability rules by eliminating custodial sentences from the list of sanctions for certifying untruth or concealing the truth in the statements made based on withholding tax regulations.

When to expect changes in WHT regulations?
The Ministry of Finance expects that the amendments will most likely be adopted in the first quarter of 2020 and will apply retrospectively as from January 1, 2020. Following the implementation, final tax clarifications with regard to the application of WHT provisions are to be published.
As regards applying the provisions that are binding in 2019, a general tax ruling will be issued, but no specific publication date has been set yet.

Doubts concerning payments to be taxed with WHT
Even though the list of payments subject to withholding tax has not changed for years, discussions in this respect have revived with the tightening of the rules of WHT collection, especially concerning intangible services listed in Article 21(1)(2a) of the CIT Act. The list of payments included in this provision has an open character which makes the assessment whether a given service constitutes a service similar to, e.g. advisory services, very subjective.

Recent individual tax rulings issued by the Director of National Fiscal Information Service indicate, for example, that taxpayers have many doubts when it comes to insurance services which the tax authorities have been recently treating as services similar to guarantees and sureties subject to withholding tax (for example, the individual tax ruling issued by the Director of National Fiscal Information Service on 4.10.2019 No. 0114-KDIP2-1.4010.342.2019.1.AJ). It is also sometimes held that sales agency services are similar to advertising, market research and advisory and therefore fall within the scope of withholding tax (for example, individual interpretation DKIS of 30.08.2019 No. 0114-KDIP2-1.4010.245.2019.3.MR).

Most likely, there will be more doubts and disputes on the subject in the near future.

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Withholding Tax (WHT). Application of the new rules probably postponed till 30 June 2020

09 December 2019 saw the publication of the Regulation of the Minister of Finance amending the Regulation on the exclusion or restriction of the application of Article 26(2e) of the Corporate Income Tax Act. In accordance with the amended Regulation, the temporary exclusion of the application of Article 26(2e) of the CIT Act is extended until 30 June 2020 (within the scope not originally covered by indefinite exclusion).

Obligation to levy WHT
The amendment to the CIT Act (and the PIT Act) that came into effect on 1 January 2019 **obliges the remitter to levy WHT if the payments**

subject to WHT made to one taxpayer exceed PLN 2m (Article 26(2e) of the CIT Act). In such cases, in order not to collect the tax or collect the tax at a reduced rate on the amount above the PLN 2m, the tax remitter, apart from satisfying the prerequisites for a WHT exemption or a lower WHT rate under the CIT Act or a relevant double tax treaty, will need to:

- make the relevant statement, or
- obtain a WHT clearance opinion (only in specific cases).

However, in line with the Regulation of the Minister of Finance, the application of the provision of Article 26(2e) was temporarily excluded - first until 30 June 2019 and then until 31 December 2019 (an indefinite exclusion has also been applied to selected types of payments). **According to the latest draft version of the Ministry of Finance's Regulation, the applicability of Article 26(2e) of the CIT Act is to be excluded further, i.e. until 30 June 2020.**

Consequences for taxpayers
If the draft regulation is approved (needless to say, the legislative process should be closely monitored in that respect), **CIT remitters may continue to apply WHT exemptions and lower WHT rates without the need to make a statement and obtain a WHT clearance opinion, even if their payments do exceed PLN 2m in total over the tax year. Generally speaking, the intended postponement is in line with the overall policy of the Ministry of Finance which aims to temper the regime.**

Other regulations concerning withholding tax (especially the duty to exercise due care and the new definition of a beneficial owner) remain unchanged and in force.

Postponing the introduction of the new WHT regime should allow CIT remitters to **accurately verify their right to apply WHT relief** (WHT exemption / lower WHT rate), in view of the suggestions included in draft clarifications (i.e. the status of the taxpayer and the beneficial owner as well as genuine business activity), **as well as obtain individual tax rulings or WHT clearance opinions - all before the first payments under the new regulations are made in 2020.**

In the explanatory statement accompanying the draft Regulation, the Ministry of Finance also indicates that it has already started working on amendments to the WHT collection rules.

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Changes in income taxes in the context of the White List, split payment and prevention of payment system gridlock. Restrictions on the tax deductibility of certain costs.

Amendments restricting the tax deductibility of certain costs will come into force as from 1 January 2020. Potential negative consequences on the grounds of PIT and CIT regulations may occur for payments made to accounts not disclosed in the list of VAT taxpayers (White List repository), payments made outside the split-payment mechanism in a situation where the purchaser is obliged to make the payment, as well as the liabilities not settled within the deadline that results from the regulations on preventing payment system gridlock.

Payments made to accounts not included in the White List repository - transactions with foreign entities
Even though both the National Fiscal Administration and the Ministry of Finance have widely discussed the White List regulations, taxpayers still have many doubts as to the applicability of the new regime. Transactions with foreign contractors registered as active VAT taxpayers in Poland are among the most widely disputed ones.

In line with the new CIT regime, the negative consequences, i.e. lack of tax deductibility, concern payments for service supplies or goods supplies effected based on an invoice by a service/goods supplier **registered as an active VAT payer** and **made by bank transfer to accounts not listed in the White List repository as at the payment order date.**

In view of the above wording it is unclear whether the discussed provision applies where the foreign contractor, registered as an active VAT payer in Poland, does not act in the given transaction as a Polish VAT payer. If this provision does apply, then each payment made **to a foreign entity registered as an active VAT payer in Poland would need to be made to an account recorded in the White List repository** - otherwise, the payment would automatically become non-tax deductible.

In practical terms, adopting the foregoing approach would require **a review and update of internal corporate procedures, among others, to verify case-by-case the company's foreign contractors' active VAT payer status in Poland and to update of all the relevant contracts**.

One should also take into account the individual tax ruling of 04 December 2019, which reads as follows: "*if a foreign contractor is registered for VAT in Poland, but does not act in the capacity of an active VAT payer concerning a given transaction, then Article 15d(1)(2) of the CIT Act will not apply to payments made in respect of that transaction. (…) In this situation, to treat the related expense (documented in the form of an invoice) as tax costs, the CIT payer in Poland, only needs to satisfy the condition of Article 15d(1)(1) of the CIT Act, namely make the relevant payment via a payment account.*"

Hence, it is worthwhile to monitor the policy pursued by tax authorities, and if analogous situations occur in your company's practice, to consider safeguarding the company's tax position by obtaining a relevant individual tax ruling.

Mandatory split payment and compensation
The amended provisions of the VAT Act, which have been binding since 01 November 2019, introduce an obligation to make payments under the split payment mechanism in the cases specified in the Act. At the same time, according to the wording of the relevant provisions, **the split payment obligation does not arise in the case of offsets referred to in Article 498 of the Civil Code.**

It must be highlighted that the exception provided for by the legislator concerns only one form of offsetting used in business trading, the so-called **statutory offset** (as a rule, made when both debts are due).

As a consequence, it is unclear if taxpayers are also obliged to apply the split payment mechanism to contractual deductions, when both parties may freely determine the offsetting point or offset debts that are yet undue.

As a result of introducing the obligation to use the split-payment mechanism in respect of offsets, it seems viable to treat the dues offset that way as tax deductible costs. This is so because pursuant to Article 15d(1)(3) of the CIT Act, **taxpayers will not recognize the expenditure as deductible in the part in which payment for an invoice covered by the split-payment mechanism is made outside of this mechanism**

Taking it literally, the CIT implications depend not only on the VAT treatment of the specific transaction, but also on the fact whether the relevant invoice contains a note: "split-payment mechanism". By implication, it is worthwhile to analyse in detail **the contractual provisions concerning mutual offsets in terms of their impact on tax settlements.**

Failure to comply with the payment deadline in the light of limiting payment system gridlock regulations

The provisions of the Act amending certain acts in order to reduce payment system gridlock, which modify, among others, the Act on income taxes and the Act on payment dates in commercial transactions, also limit the tax deductibility of certain costs.
According to the new regime, payment dates in commercial transactions cannot, as a rule, exceed 30 days when the debtor is a public entity that is not a healthcare entity, and **60 days when the debtor is a large entrepreneur and the creditor - a micro, small or a medium-sized company.**

The status of a company is determined in accordance with the guidelines contained in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014.

According to these guidelines, the category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million (subject to the rules for taking into account the partner and related enterprises).

A large enterprise is an enterprise that is not a micro, small or a medium-sized enterprise. It should be noted that a large enterprise debtor is obliged to provide the other party to a commercial transaction with a declaration of

its status of a large enterprise. The said declaration should be submitted not later than at the moment of concluding the commercial transaction - in the form in which the transaction is concluded. Moreover, the amended regulations impose an obligation on the largest CIT taxpayers **to submit reports on the payment limits they apply to the minister competent for economy**.

Failure to pay a liability previously classified as tax deductible within the time limit specified in the invoice or in the agreement (where the said time limit does not exceed the statutory limit) will result in the necessity to **increase the tax base** (or reduce the loss) in the tax period in which 90 days have elapsed since the deadline for payment of the liability. In the event of a subsequent payment of the liability, the debtor has the right to make an adjustment for the period in which the liability was cleared.

On the other hand, **the unsatisfied creditor will be entitled to reduce the tax base** by the value of the claim for unpaid pecuniary performance included in the due revenues. This reduction may be made in the tax period in which 90 days have elapsed since the payment deadline. If the deduction amount is higher than the tax base, the remainder may be deducted in subsequent years, not longer than for a period of 3 years from the end of the tax year concerning which the right to deduction occurred.

Thus, in view of the above changes, as of next year, the obligation to adjust the tax costs or the right to reduce the tax base may depend on an analysis of the counterparties' statuses, examination of the detailed contractual provisions concerning payment terms and the issue of making statements and potential liability for untrue statements.

In the nearest future these issues will most likely be examined in detail by experts, disputed by taxpayers and further clarified by tax authorities. For that reason we recommend that companies should regularly monitor the developments in this area.

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Romania

Hungarian Competition Authority imposes a fine of EUR 3.6 million for unfair commercial practices

Following similar decisions in other EU member states, the Hungarian Competition Authority (which is also competent in the field of consumer protection) sanctioned with a fine of 3.6 million EUR the behaviour of a social media services provider presenting its services to consumers as "free".

The Hungarian authority imposed the sanction arguing that although consumers did not have to pay a fee for using the service, the personal data provided benefits the business and generates substantial income for the social media service provider.

In accordance with the provisions of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ("Unfair Commercial Practices Directive"), a commercial practice shall be unfair if:

(a) It is contrary to the requirements of professional diligence, and
(b) It materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed.

In assessing the misleading claim of the data-business driven structure, transparency towards the consumers is a key element. The scope of the Unfair Commercial Practices Directive is to prevent the traders from hiding the commercial intent behind the commercial practice and, from this perspective, the information about the processing of personal data may be considered as material. The Hungarian authority also highlights that most consumers are not aware of the importance or value of the personal information they provide online and the promotion of services as "free" in such cases is likely to contribute to this confusion.

In this context, failure to inform the consumers with respect to the use of their personal data and presenting the services as "free" while in reality, the business model attracts and further sells targeted advertising based on collecting detailed information about the consumers is an important feature of the commercial practice.

Although lack of transparency towards consumers may be sanctioned separately under data protection rules (i.e. GDPR), the case reminds about the interplay between consumer and data protection and the assessment made on a case-by-case basis when determining whether a commercial practice may qualify as being a misleading omission of material information.

Furthermore, it must be noted that this interplay between consumer and data protection rules, as well as the relate concept of "*data as a price*", represents an ongoing concern for the European legislator. In this context, both the Digital Content Directive no. 2019/770 and the New Deal for Consumers imitative meant to update the entire consumer protection legal farmworker at the level of the EU, expressly state that a digital service provided in exchange for the consumer's personal data is not considered "*free*".

In this context, even though until this point the Romanian Consumer Protection Authority did not turn its attention to digital services provided to consumers in exchange for personal data, we do not exclude similar sanctions on the Romanian market, following the trend evident in the other EU member states.

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Berlin DPA fine of 14.5 million EUR highlights the importance of storage limitation principle

Berlin Data Protection Authority ("DPA") imposed a huge fine of 14.5 million EUR (5th biggest fine in the EU and highest in Germany) against a real estate company for the failure to observe the storage limitation and data privacy by design principles.

More specifically, the company was found to store data, which was no longer necessary for the purposes for which it was processed, by using a storage system that did not provide mechanisms for deleting data that was no longer used. As such, the DPA mentioned that it is not sufficient to determine retention periods for the personal data processed, but also to implement technical mechanisms enabling the removal or destruction of such data.

The issue at hand is particularly sensitive as the company collected and stored different types of data, including sensitive data, such as information on tenants' personal and financial characteristics: social security and health insurance data, financial data (available bank statements, salary statements).

The company has initially been investigated on the above-mentioned matters early 2017, and remediation measures have been implemented until 2019. Based on the findings of the DPA in 2019 such remediation measures were not effective and large quantities of personal data were still stored in a non-compliant manner for unlawful periods of time.

Such aspects have been essential in determining the amount of the fine. The DPA stated in its press release that such practice is quite frequent, as data cemeteries are encountered often in its investigative activity.

This case plays a particular importance with respect to archiving personal data and reminds the importance of verifying data minimization and data retention principles in practice, with respect to each processing activity and irrespective the business activity of each company.

Our assistance

Data privacy by design and data retention principles may prove to be quite difficult to be implemented in practice, as they require both legal and IT related competences. In particular, data retention needs to take into consideration specifics of the archiving rules in Romania, existing data retention terms and actual business needs of the company.

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Registration as AISP and PISP in Romania is finally possible. The new NBR Regulation on payment institutions and account information service providers was published.

On 19 December 2019, the Regulation of the National Bank of Romania no. 4/2019 on payment institutions and account information service providers was published in the Official Gazette of Romania and became effective on the same date.

The Regulation transposes the guide of the European Banking Authority on this subject and with its entry into force, Romania has a full legal framework that regulates traditional payment services, but also the innovative services of account information and payment initiation.

The local or international fintechs will be able to be authorized or registered in Romania for rendering payment initiation services and account information services, which paves the way for the development of the local fintech market.

On 19 December 2019, the Regulation of the National Bank of Romania no. 4/2019 on payment institutions and account information service providers (**NBR Regulation**) was published in the Official Gazette of Romania.

The NBR Regulation adjusts the rules for the authorization of payment institutions that render traditional payment services with the new PSD 2* requirements.

It also regulates the authorization and respectively the registration conditions of the new players on the payment services market in Romania, namely the payment initiation service providers (**PISPs**) and account information service providers (**AISPs**), elaborating the provisions of Law 209/2019.

The Regulation builds a local legal framework, which is harmonized to the European authorization framework as it transposes into national legislation the Guide of the European Banking Authority (**EBA**) on the information to be provided for the authorization of payment institutions and e-money institutions and for the registration of account information service providers (**EBA Guide**).

Because the main novelty element is the possibility of AISP registration and PISP authorization, we present below the key requirements that companies must consider for rendering these kind of services.

The key requirements for PISPs

PISPs are subject to authorization procedures as payment institutions; the main requirements are:

- **Initial capital:** at least the LEI equivalent of EUR 50,000.
  If additional payments services are envisaged to be rendered, other than account information services, the company should hold an initial capital at the highest level of the thresholds applicable to each specific payment service.
- **Insurance:** PISPs must determine, at least annually, the minim level of professional indemnity insurance or other comparable guarantee by observing the conditions, criteria, indicators and formula publicly communicated by the National Bank of Romania (**NBR**).

  To establish these, the NBR will take into consideration the indications provided in the EBA Guide on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee.
- **Requirements for the persons responsible for the management and administration of payment services activities:** the NBR Regulation provides that the responsibilities of managing and administrating the payment services activity can only be held by natural persons who, on one hand must have a good reputation, and on the other hand must have knowledge, skills and experience suitable for rendering such an activity.
  In addition, the NBR also asses if the persons responsible for the management and administration of the activities grant sufficient time in order to perform such attributions.
- **Operational, business, governance, security, AML Requirements.** The content of a PISP authorization file is not much simplified compared to that of a traditional payment institution and should include the following essential elements:
  i. application for authorisation;
  ii. programme of operations – must include amongst others the opinion of the National Authority of Consumer Protection on the draft framework agreements for providing payment services to natural persons, if the obligation to conclude such agreements exists;
  iii. draft of the contracts for the operation of services, including outsourcing agreements, as the case may be;
  iv. a description of the group to which the applicant belongs;
  v. the documentation related to the PISPs management, to the persons that have a holding in the applicant’s capital whether directly or indirectly with the mention of those that have a qualified holding and their management;
  vi. business plan;
  vii. structural organization;
  viii. governance arrangements and internal control mechanisms;
  ix. a description of the procedures on monitoring, handling and following up on security incidents and security-related customer complaints;
  x. a description of the process for filing, monitoring, tracking and restricting access to sensitive payment data;
  xi. business continuity arrangements;
  xii. a description of the principles and definitions applicable to the collection of statistical data on performance, transactions and fraud;
  xiii. security policy;

xiv. internal control mechanisms to comply with obligations in relation to money laundering and terrorist financing;
xv. documentation of how the applicant has calculated the insured amount for the special PISP professional indemnity insurance.

The key requirements for AISPs

As opposed to PISPs, AISPs do not have to be authorized as payment institutions, but are only subject to a registration process.

However, the AISP registration requirements are relatively similar to those necessary for the PISP authorization, the documentation being however to some extent simplified. The main differences compared to the requirements applicable to PISPs are:

- **Initial capital:** there is no initial capital requirement for AISPs.
- **Insurance:** the method of calculating the insured amount reflects the smaller risk attributable to this type of services, however the calculation will be based on the conditions listed by NBR and EBA.
- **Documentation on the group to which AISP belongs:** as opposed to PISPs, AISPs are not required to provide certain documentation such as detailed information on the group to which they belong or to the persons that have qualified participations.

Considering that the activity of AISPs entails lower risks, we expect that the NBR will evaluate the fulfilment of the requirements less strictly, but also the AISPs must be properly prepared in order to win the authorities' trust.

What is the procedure if an entity wants to render both payment initiation and account information services?

The EBA clarifies that in the event when both services will be performed, that entity must be authorized as a payment institution and implicitly comply with the requirements provided for PISP.

Conclusions

By its entering into force, the NBR Regulation brought a much needed supplementation to the legal framework that governs payment transactions as the new players on the payments market can begin the authorization or the registration process with the NBR, as the case may be. Consequently, we expect that the first licensed AISPs and PISPs will appear in the first half of the following year.

* The Directive 2015/2366 of the European Parliament and of the Council on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

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Serbia

Amendment of customs declaration upon release of goods

The Customs Authorities issued a Ruling no. 148-I-030-01-537/2019 as of 21st November, 2019, which pertains to amendment of customs declaration after the goods have been released, including the possibility of imposing liability for misdemeanor penalties in that case. Said ruling may be of interest to importers which have, in the period after the new Customs law came into force, been required or will be required to submit amended customs declarations.

At the request of the declarant, within three years as of the date of acceptance of the declaration, an amendment to the declaration may be approved after the goods have been released in order for the declarant to fulfill his obligations with regard to the placing of goods under a particular customs procedure. Also, the existence of potential liability for misdemeanor penalties shall not be immediately assumed (especially if the amendment of the declaration results in the change of the amount of customs debt) when the declaration is amended. That is, liability for misdemeanor penalties should, if there are certain indications, be proved in each specific case.

Said ruling is especially important for importers who have multiple purchases of goods from abroad during a year, most often from related parties, which at the same time, through issuance of credit or debit notes covering a certain period of time (e.g. 6 or 12 months) make adjustments of the previously invoiced prices. In such cases, the question of subsequent amendment of previously submitted and accepted customs declarations arises.

In view of the above, we are of the opinion that it is still questionable in which cases may the declarant, at his own initiative, amend the declaration after the goods have been released, as well as how this possibility coincides with cases in which the so-called "incomplete customs declaration" was submitted. In other words, we are of the view that there is still ambiguity in relation to the list of situations, which in practice may fall under the formulation "for the declarant to fulfill his obligations with regard to the placing of goods under a particular customs procedure.

On the other hand, we would like to note that the fact that assertion of potential liability for misdemeanor penalties shall not be immediately assumed, but needs to be proved by the Customs Authorities, should be seen as a step in positive direction. Namely, in accordance with the Customs Law, voluntary disclosure of the customs declaration does not eliminate the possibility of initiating misdemeanor proceedings by the Customs Authorities.

However, we are of the view that the fact that in such cases the Customs Authorities should have the burden of proof in ascertaining if the declarant had an intention to influence the amount of the customs debt, e.g. by stating incorrect or incomplete information in the declaration, is of significant importance for importers and in their favor.

Law on amendments to the Law on Corporate Income Tax has been adopted

Law on changes and amendments to the Law on Corporate Income Tax (the Law) has been adopted by the National Assembly of the

Republic of Serbia on 6 December 2019, and will apply starting from corporate income tax calculation for 2020, or for tax periods commencing in 2020, except for rule referring to deductibility of expenses for banks incurred in line with the legislation on conversion of house loans indexed in CHF, which will be applicable for 2019 corporate income tax calculation.

Country by country reporting – compliance with requirements of OECD BEPS Action plan 13

One of the most important novelties in the Law is the introduction into the Serbian tax legislation of country-by-country reporting.

Namely, (only) those resident taxpayers who are considered to be the ultimate parent entities of international groups of related legal entities will be obliged to submit to the relevant tax authority the annual report on controlled transactions of the international group of related legal entities (i.e. country-by-country report), which will contain data (overview of tax jurisdictions in which group members are located, the sum of income per jurisdiction, number of employees, etc.) for the business year for which that entity is obliged to prepare its financial statements. The obligation to prepare the CbC report will come into force from 2020 and the annual reports will be submitted within 12 months of the end of the period for which such report is prepared.

A bylaw is expected to be adopted that will provide additional information on the type of data which the report should contain, as well as the information regarding the format of the CbC report (which is expected to be aligned with the format prepared at the OECD level).

The purpose of the CbC reports is to be exchanged automatically with other tax jurisdictions. Considering that Serbia has not concluded any agreement on automatic exchange of CbC reports, such an exchange is not possible at the moment. However, such agreements are expected to be concluded in the coming period, allowing full implementation of the recommendations of the BEPS Action Plan 13 and alignment with OECD requirements.

An overview of the basic definitions related to country-by-country reporting is found below:

1. An international group of related legal entities is a group of entities that are related by ownership or control in terms of IAS or IFRS, and whose total consolidated revenue, reported in the consolidated financial statements for the period preceding the reporting period, is at least EUR 750 million in RSD equivalent at the middle exchange rate of the National Bank of Serbia at the date of adoption of the consolidated financial statements, and

    1) one or more group members are required to prepare, present, submit and disclose consolidated financial statements in accordance with IAS or IFRS, or would be obliged to do so if they were a legal entities whose shares are traded on a regulated market in the Republic or outside the Republic, and

    2) in which at least one legal entity is a resident of another tax jurisdiction as compared to other members of the international group, or at least one legal entity is a resident of one tax jurisdiction and is subject to taxation in another tax jurisdiction on the basis of conducting business through a permanent establishment.

2. A resident taxpayer shall be considered to be the ultimate parent entity of an international group if:

    1) directly or indirectly has ownership or control over one or more legal entities, members of an international group, that creates an obligation to prepare, present, submit and disclose consolidated financial statements in accordance with the requirements of IAS or IFRS, or, which would have such an obligation when it would be a legal entity whose shares are traded on a regulated market in the Republic or outside the Republic, and,

    2) there is no other legal entity within the international group which directly or indirectly owns or controls that entity, and which has the obligation referred to in the preceding paragraph.

Harmonization with the Law on Conversion of Housing Loans indexed in Swiss francs (CHF)

The amendments are as follows:

1. The decrease of receivables toward housing loan beneficiaries is tax deductible at the bank's level in the amount determined in accordance with the Law on Conversion of Housing Loans.2. Taxpayer – a bank is entitled to a tax credit in the amount of 2% of the remaining debt determined in accordance with Article 4, paragraph 2 of the Law on Conversion of Housing Loans indexed in Swiss francs (i.e, the debt whose conversion was made). The taxpayer uses the tax credit for two consecutive tax periods, in the amount of 50% of the tax credit calculated, while the unused tax credit amount can be carried forward, but not longer than ten years.

Introduction of tax incentives for investment funds

The amendments are as follows:

1. Revenue of resident taxpayer, established in accordance with the regulations governing investment funds, realized on disposals of assets covered by the capital gains provisions of the Law, shall not be included in the tax base.

2. Taxpayer, established in accordance with the regulations governing investment funds, does not determine capital gain or loss, in accordance with the Law.

Other amendments

Other amendments include:

1. The right to use tax credit related to withholding tax on service fee paid in other country for services performed in that other country.

2. The manner of applying the tax incentive referred in Article 50a of the Law, for fixed assets – taxpayer use tax incentive starting from the tax period in which accounting profit was made, not taxable profit.

3. The provisions regarding tax consolidation are specified, thus it is clearly stated that legal entities that cease to meet the requirements for tax consolidation before the expiry of the five-year period, or have opted to cease applying tax consolidation, need to include in the tax return, which is filed for the tax period in which the conditions for tax consolidation cease to exist, the amount of the incentive used.

Amendments to the Personal Income Tax Law have been adopted

Draft Law on changes and amendments to the Law on Personal Income Tax (the Law) has been adopted in National Assembly of the Republic of Serbia on 6 December 2019, and will enter into force 8 days from publishing in the Official Gazette RS, i.e. on the 14 December 2019.

Key proposals refer to:

- Introducing test of independence for entrepreneurs;
- Tax relief for qualified newly employed individuals;
- Tax exemption for digital nomads income;·
- Introducing special rules for taxation of repatriates and new immigrants income
- Tax relief for newly founded companies which perform innovation activities and their founders
- Defining acquisition price for the purpose of determining the capital gains;

Amendments to the Law on Personal Income Tax

1. Taxation of entrepreneurs income – independence test

Amendments to Article 85, in particular the newly added item 17, prescribe that income of the entrepreneur or lump-sum entrepreneur is considered to be other income when realized on the basis of performing activities for a fee from the same principal, or a related person with the principal, and if s/he fulfills 5 out of the 9 criteria prescribed by this Article (which determine his/hers

dependence from the principal). Such fee would be taxed in full, without the

possibility of deducting standardized costs, and with the tax rate of 20%.

The criteria applies on determining:

Who decides on working hours, vacations, absence of entrepreneurs and whether or not the compensation for absence or vacations is reduced from the total fee;

Whether the entrepreneur usually uses the principal's premises to perform assigned tasks,

Whether the principal organizes professional training and development of the entrepreneurs;

Whether the principal has hired an entrepreneur after advertising the job position publicly or through services of a head-hunting agency; Whether the principal provides material, tools, equipment or other tangible or intangible assets (excluding specialized assets) or the principal manages the work process of the entrepreneur except for such management that is usual for any business relation;

At least 70% of the total revenue generated over a 12-month period is from one principal;

The entrepreneur performs activities which are part of principal’s business activity and the contract does not contain a clause defining that the entrepreneur bears the usual business risk;

The contract contains a partial or complete ban for the entrepreneur to perform services under the contract with other clients, except in the case of a partial ban on the provision of services to the principal’s direct competitors;

The entrepreneur carries out activities for which s/he receives a fee for the same principal continuously or intermittently for 130 or more working days for a period of 12 months beginning and ending in the respective tax year.

The income defined in this Article shall not be included in the income from

self-employment, which is generated by the taxpayer on the actual income from self-employment.

In addition, transitional provisions state that the fee paid out to the entrepreneur or lump-sum entrepreneur until and including March 1 2020 will be considered as income from independent activities regardless of the relationship nature between the entrepreneur and the principal (determined either via independence test or substance over form principle).

2. Tax relief for the qualified new employees

The new Article 21ž stipulates that an employer who establishes an employment relationship with a qualified new employee is entitled to exemption from paying calculated and withheld salary tax for the salary paid as until December 31,2022 new employee is considered to be a person who was not insured as an employee or insured as independent entrepreneur as the founder/member of a company which is employed in such a company in 2019 (meaning also persons which were insured as entrepreneurs) and who acquires the status of an insured employee or becomes insured as independent entrepreneur as the founder/member of a company which is employed in such a company in the period from 1 January to 30 April 2020.

Persons which had a status of of beneficiary of old-age, temporary old-age or invalidity pension, in the period 1 January 2019 until 30 April 2020, will not be deemed as qualified new employee.

It is envisaged that the tax deduction will be applied as follows:

- 70% of payroll taxes paid between January 1 and December 31, 2020;
- 65% of payroll taxes paid between January 1 and December 31, 2021;
- 60% of payroll taxes paid between January 1 and December 31, 2022;

This Article will be of great importance for the entrepreneurs that do not fulfill criteria prescribed in the Article 85 paragraph 1 point 17 and are not considered to be independent, but choose to enter into employment relationship as of 1 January 2020.

3. Tax exemption for digital nomads income

The new Article 9b specifies an exemption from taxation of the income of a non-resident taxpayer who spends less than 90 days in Serbia in 12 months beginning or ending in the respective tax year if that income is derived from a non-resident principal who does not perform the business activity or other activity in the territory of Serbia.

The exemption shall also apply to income derived from a non-resident principal who performs an activity in the territory of Serbia, provided that the service provided to a non-resident legal entity does not serve its business activity in the territory of Serbia.

4. Tax base for repatriates and new immigrants

The new Article 15v is added to define the salary tax base for the repatriates and new immigrant taxpayer (hereinafter taxpayer).

The taxpayer is entitled to a 70% salary tax base deduction if s/he meets certain conditions.

Article 15v further defines:

- who is considered to be a repatriated and new immigrant,
- the amount of deduction that can be used,
- what conditions s/he has to meet to apply the deduction and for which period.

This provision is intended for repatriates.

5. Tax relief for newly-established companies

The new Article 21e prescribes that a company, a newly established legal entity carrying out an innovative business activity within the meaning of the Law on Corporate Income Tax, registered with the business register, is entitled to exemption from paying calculated and withheld salary tax on the founders salary.

The tax exemption applies up to the amount of 150,000 RSD for the employee-founder, for a period of 36 months from the day the company was founded.

Article 21e also further specifies the additional conditions that must be fulfilled for this tax exemption to be applicable.

This incentives applies as of 1 March 2020.

6. Acquisition price for capital gain purposes

Amendments to Article 74, paragraph 8, more precisely define the acquisition price of shares, acquired from the employer or the employer's related entity, free of charge or at a preferential price. In particular, if these shares are subject to salary tax, the acquisition price will be the sum of the documented preferential price and the basis on which the salary tax has been paid.

The acquisition price of shares or stocks in non-resident companies, in the case of remunerated transfers, will be the market value on the day when the person making the transfer became a tax resident of Serbia.

7. Other provisions

It is explicitly stated that only documented public transportation cost reimbursement will be exempted from salary tax. RSD amounts contained in the Law were adjusted.

Law on changes and amendments of the Law on Mandatory Social Security Contributions has been adopted

Law on changes and amendments to the Law on Mandatory Social Security Contributions (the Law) has been adopted in National Assembly of the Republic of Serbia on 6 December 2019, and it will enter into force 8 days from publishing in the Official Gazette RS, i.e. on 14 December 2019.

Key proposals refer to:

- Defining SSC base for qualified new employees;
- Defining SSC base for the repatriates and new immigrants;
- Reduction of the contribution rate for pension and disability insurance borne by the employer;
- Defining the SSC base for founders of newly founded companies that carry out innovative business activity.

Changes and Amendments to the Law

1. SSC base for qualified new employees

New Article 45dj prescribes the exemption from paying pension and disability insurance contributions due by employee and employer in case of employing a qualified new employee for the salaries paid out until 31 December 2022.

Qualified new employee is a person who did not have the status of an insured employee or insured as independent entrepreneur as the founder/member of a company which is employed in such a company in 2019 (meaning that exemption applies to persons that have been insured as entrepreneurs in 2019) and who acquires this status from January 1 to April 30, 2020.

Persons which had a status of beneficiary of old-age, temporary old-age or invalidity pension, in the period 1 January 2019 until 30 April 2020, will not be deemed as qualified new employee.

The same Article sets out additional conditions that must be fulfilled for this tax exemption to apply.

The employer is exempted from the obligation to pay contributions for pension and disability insurance due by employee and employer in the following manner:

- 100% contribution - for salary paid from January 1 to December 31, 2020;
- 95% contribution - for salary paid between January 1 and December 31, 2021;
- 85% contribution - for salary paid from January 1 to December 31, 2022.

Pension and disability insurance contributions covered by the incentive will be paid from the funds of the Republic of Serbia.

This incentives corresponds to the incentive prescribed by the Personal Income Tax Law.

2. SSC base for the repatriates and new immigrants

New Article 15a foresees that both employee and employer SSC base will be reduced by 70%, for the repatriates and new immigrants, in accordance with the PIT Law.

3. SSC rate for pension and disability

In accordance with the amendments to Article 44 the rate of pension and disability insurance contributions paid by employers or other payers is reduced from 12% to 11.5%.

4. SSC base for founders of newly founded companies that carry out innovative business activity

Article 45d prescribes that the newly founded company i.e. employer will be able to apply the exemption for social security in total on the founder’s salary.

The exemption is applied to salary paid out to the founder, who is employed with the company, for the period of 36 months and up to RSD 150,000.

Upon adoption, amendments to the Law will apply from 1 January 2020, except for the provisions relating to repatriates and new immigrants and provisions relating to the exemption applied to the salary of founders of

entities who perform innovation activity, which will apply from 1 March 2020.

Amendments to the Law on Tax Procedure and Tax Administration have been adopted

Law on Tax Procedure and Tax Administration (the Law), has been adopted by the National Assembly of the Republic of Serbia on 6 December 2019, and will enter into force within 8 days of its publication in the RS Official Gazette, i.e. on 14 December 2019.

The most important changes are presented below:

- A taxpayer –natural person is obliged to submit the decision from the Pension and Disability Insurance Fund of the Republic of Serbia on determined right to refund the pension and disability insurance contribution along with the request for refund of overpaid or incorrectly paid contributions for pension and disability insurance.
- It is stipulated that in case of a taxpayer's bankruptcy carried out by reorganization, the manner of tax claim settlement and the measures of realization of the reorganization plan cannot be set contrary to the provisions of the Law and other tax legislation.
- It is determined that a by-law will be adopted which will regulate the procedure, manner, deadlines, content and form of the return by which a taxpayer will submit the information on all business premises and premises in which he conducts business to the competent Tax Administration. The by-law should be adopted 60 days from the day the Law enters into force.
- The Business Registers Agency may not modify data pertaining to a business entity founder, if a new founder is at the same time the founder of another business entity whose TIN has been temporarily suspended in accordance with this law, due to illegal business activities or outstanding tax liability.
- The volume of data that banks shall submit to the Tax Administration is increasing, thus, it is stipulated that, at the request of the Tax Administration, the bank is obliged to submit in electronic form data on current account turnover and balance and data on saving deposits of taxpayers - legal entities, entrepreneurs and individuals, deposits of taxpayers - legal entities, or the numbers of current accounts and saving deposits of taxpayers - individuals as well as the name of the banks that keep them.
- The following provisions regarding the submission of tax acts have been amended:
- It is envisaged that a tax act may be submitted electronically via Tax Administration portal, as well as for informing a taxpayer via a unique electronic mailbox.
- A tax act may be delivered to the natural person electronically if the taxpayer agrees to this manner of delivery. In situations when the tax act is delivered via Tax Administration portal, such document shell be

considered delivered on the day of posting it to the portal of Tax Administration. A tax act that is passed by the competent authority of the local self-government unit may be submitted in a form of an electronic document via single electronic mailbox in accordance with the regulations governing electronic documents.

- Tax Administration options were expanded in relation to the previous measures of securing tax payments, stating that in addition to the existing ban on the disposal of movable and immovable property, the Tax Administration may establish a ban on the funds disposal concerning taxpayer's business accounts, monetary and non-monetary claims, as well as a ban on funds disposal concerning current and savings accounts.
- Certain changes have been made to the penal provisions in order to align them with other changes to the Law (such as anticipating penalties for banks that do not submit required information to the Tax Administration, etc.).

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