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CE Tax&Legal Highlights

January 2020

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Albania

Fiscal Package 2020 – Law "On tax procedures"

In the Official Gazette no. 184, dated 31.12.2019 has been published the Law no. 83/2019 "On some additions and amendments to the Law no. 9920, dated 19.05.2008 'On tax procedures in the Republic of Albania', as amended", part of the Fiscal Package 2020.

Compensation of tax credits and liabilities

In special cases, a taxpayer's tax liabilities to the tax administration may be compensated by tax overpayments with the customs authorities and vice versa. An instruction of the Minister of Finance and Economy is expected to determine the special cases and categories of eligible taxpayers eligible and the applicable procedures to benefit.

Installment VAT reimbursement

The tax administration shall have the right to pay in installments the VAT approved for reimbursement to certain taxpayers, with whom it will agree in advance on the payment plan. These amounts will not be subject to interest rates that the tax administration would have to pay in the absence of this provision. A decision of the Council of Ministers is expected to determine the cases when this provision will be applied and the criteria and procedures for its implementation.

On-site verifications without prior notice

The tax administration shall have the right to conduct on-site verifications for the timely detection of violations without prior notice to the taxpayer. These verifications may consist in controls regarding:

- registration of taxable persons,
- use of fiscal devices,
- documentation of goods in storage, use and transport,
- documentation of the transactions of sale of goods or services,
- issuance of tax invoices,
- registration of employees, etc.

Forced collection of unpaid tax liabilities

Forced collection of unpaid liabilities will be carried out by special responsible directories that will be under the structure of the General Tax Directorate. Following, an instruction of the Minister of Finance and Economy is expected to determine certain amendments regarding the order of blocking the taxpayer's bank accounts in accordance with the requests that the tax administration sends to commercial banks as well as on the security charges of the tax liabilities in favor of the tax administration. In addition, a joint instruction of the Minister of Justice and the Minister of Finance and Economy is expected to determine new procedures regarding the confiscated assets of the taxpayers.

Declaration of the tax liability as uncollectible

The Regional Tax Directorates and the General Tax Directorate shall set up special commissions for the assessment of tax liabilities as uncollectible. An

instruction of the Minister of Finance and Economy is expected to determine the functioning of these commissions.

Based on the decisions made by these commissions, declaration of tax liabilities as uncollectible shall be made respectively by order of:

- The Regional Tax Director for amounts up to 1 million ALL,
- The General Tax Director for amounts between 1 and 5 million ALL,
- The Minister of Finance and Economy for amounts over 5 million ALL.

Self-employed natural persons

Until now, if persons over 16 years old were identified as undeclared following an on-site inspection at the place of activity of the self-employed natural person, the taxpayer had to prove within 5 calendar days that such persons were unpaid family members or legally living with the self-employed person, within the meaning of the Civil Code. Now, the tax administration will be responsible to verify in the e-Albania portal through the family certificate of the self-employed person, whether or not the person evidenced at the place of activity fulfills the conditions to be considered as an unpaid family member or cohabitant within the meaning of the Civil Code.

Fiscal Package 2020 – Law "On income tax"

In the Official Gazette no. 184, dated 31.12.2019 has been published the Law no. 84/2019, "On some additions and amendments to the Law no. 8438, dated 28.12.1998 'On income tax', as amended", part of Fiscal Package 2020.

Tax incentives and reliefs

5% corporate income tax for the automotive industry - The automotive industry is expected to be stimulated by the decreasing corporate income tax rate from 15% to 5%. A decision of the Council of Ministers is expected to set out the activities, procedures and criteria to benefit from the implementation of the 5% reduced rate.

New rule for carrying forward of fiscal losses - For taxpayers investing in business projects worth more than ALL 1 billion, the tax loss carry forward period is extended from 3 to 5 years, on basis of the principle that earlier losses are covered first. An instruction of the Minister of Finance and Economy is expected to set out the criteria and procedures for applying this rule.

Sportive sponsorships - Another incentive is provided for companies with a taxable profit more than ALL 100 million for sponsorships of sports teams activities, part of sports federations recognized by the relevant legislation. Currently, these types of sponsorships are recognized as deductible expenses up to 3% of pre-tax profit. Following this amendment, for the purpose of calculating the corporate income tax, qualifying companies may consider as deductible the triple of the value of sponsorships, recognized within the above limit. If any part thereof remains non-deductible, it will not be allowed to be carried over and deducted in the next periods. In order to benefit from this incentive, qualifying companies must follow special procedures to obtain the "sponsorship authorization" from the General Tax Director, which are expected to be set out by an instruction of the Minister of Finance and Economy.

Representative expenses for exporters – For exporters who have realized more than 70% of their revenue from exports in the last 3 years (excluding manufacturers working under inward processing models), the extent of recognition as deductible expenses of representation costs abroad (for participation and presentation in international fairs or exhibitions) increases from 0.3% to 3% of the annual turnover.

Change of ownership

The Fiscal Package 2019 introduced new rules around the payment of tax on "deemed profits" by a legal entity subject of a direct or indirect change of ownership of its capital or voting rights. These rules charge a tax liability to the legal entity subject to the change of ownership when certain conditions are met, even though that person is not a participant in the transaction and does not realize any capital gain from this transaction. These rules provide the obligation to notify the tax authorities for the legal entity subject of the change in ownership, as well as penalties for failure to notify.

The Fiscal Package 2020 introduced a clarification around this provision. Specifically, it provides that the above rules shall not apply where the change of ownership is subject to the provisions of ratified agreements in force for the avoidance of double taxation.

Tax on salary earnings from more than one source

All individuals employed by more than one employer will be required to file an annual income declaration, regardless of whether the total amount of their earnings during the year will not exceed ALL 2 million (threshold for the obligatory filing of the annual income declaration). In the annual income declaration, these individuals shall declare in a single amount respectively (1) the total annual income received from employment, (2) the total annual personal income tax liability calculated by them each month of the year, as well as (3) the total annual personal income tax withheld by the employer for each month of the year. Where appropriate, these individuals will have to pay the difference between amounts (2) and (3) above.

Donating properties/ownership split between family members

The transfer of ownership rights over a building and/or land through donation or waiving of the property rights will be exempt from personal income tax, when such transfer occurs between family members (thus, between the spouses and children) and only once towards a beneficiary.

Fiscal Package 2020 – Law "On value added tax"

In the Official Gazette no. 184, dated 31.12.2019 has been published the Law no. 85/2019 "On some additions and amendments to the Law no. 92/2014 'On value added tax', as amended", part of Fiscal Package 2020.

Reduced VAT rates and exemptions from VAT

VAT exemptions for the reconstruction process - Due to the situation created by the earthquakes in Albania, some new tax incentives have been introduced to the Law on VAT, in addition to the approved incentives that entered into force during December 2019 for the same reason. Specifically, the following supplies shall be treated as exempted from VAT:

- construction services supplied by constructors duly authorized by the General Tax Director, within the reconstruction program for

cases of proclamation of "state of natural disaster" and during the reconstruction period;
- services and goods supplied towards authorized constructors and used by them for the purposes of reconstruction processes specified above;
- materials, equipment, prefabricated buildings, imported for this purpose by state bodies, charities and philanthropic organizations in cases of "state of natural disasters", within the reconstruction program.

Reduced rate for electric vehicles - Fiscal Package 2019 presented the reduced VAT rate of 6% for the supply of electric engine buses with 9 +1 or more seats, as public passenger transport vehicles. This rate was projected to rise to 10% from 01.01.2022.

Fiscal Package 2020 fixes the reduced rate at 6%, without predicting further growth. Whereas, the supply of new vehicles, with zero-km electric engine not previously registered in any other country is entirely exempt from VAT.

New deadline on issuing the self-invoice (reverse-charge)

In case of receiving services from foreign suppliers, for which the "place of supply" is considered to be in Albania, the recipient of the service must issue a self-invoice for the reverse charge of VAT within the 10th day of the following month. Until now, the deadline for this purpose was the 14th of the following month.

Fiscal Package 2020 – Law "On national taxes"

In the Official Gazette no. 184, dated 31.12.2019 has been published the Law no. 86/2019 "On some additions and amendments to the Law no. 9975, dated 28.07.2008 'On national taxes', as amended". The main amendments introduced by this law are presented herein below.

Exemption from the annual vehicle tax for persons with disabilities

The obligation to pay the annual tax on used vehicles shall not apply to vehicles of up to 4+1 seats and cylinders of not more than 2,500 cubic, when these vehicles are possessed by persons with disabilities and used by them for personal needs only.

Penalties for the delay in payment of the annual vehicle tax

Penalty for late payment of annual tax on used vehicles shall be 0.06% of the unpaid liability for each day of delay up to a maximum period of 365 calendar days, as provided in the "Law on Tax Procedures". Previously, the penalty was calculated as 5% of the unpaid liability for each month of delay up to a maximum of 25% for each year.

New determinations around the value of luxury cars

The value of vehicles classified as "luxury" shall be considered to be reduced annually by 10% of the residual value. In the case of the sale of the vehicle, the sale value shall not be less than the depreciated residual value as above.

Revaluation of immovable property

In the Official Gazette no. 182 dated 30.12.2019 has been published the law no. 90/2019 "On revaluation of immovable property". Upon entry into force of this law, all individuals and legal entities who own immovable properties, as well as those who own immovable property in registration process shall be entitled to reevaluate their property at market value until September 30th, 2020.

Revaluation by individuals

Individuals may reevaluate their immovable property at the market value of the property based on an expert act issued by a licensed expert. The market value in this case, however, cannot be less than minimal fiscal prices. Otherwise, the revaluation will be carried out by the State Cadaster Agency at the minimum fiscal prices. The tax that individuals will pay for registering this revaluation is 3% of the difference between the revalued amount as above and the value of property of the previously registered act or the previously revaluated value (for which tax has been paid earlier). The revalued amount will thus serve as a basis for calculating the realized gain in the case of a transfer of the ownership of the immovable property in the future, a gain that will be taxable at the moment of transfer with the effective rate (the existing rate in force: 15%).

Revaluation by legal entities

Legal entities are entitled to reevaluate their immovable properties at market value through an expert act issued by a licensed independent expert. Legal entities will have to pay 5% of the difference between the revalued amount and the registered carrying amount of the immovable property. The difference between the revalued amount and the carrying amount shall not be depreciated for tax purposes.

Revaluation procedure

The revaluation procedures and the fee payable to the State Cadaster Agency for providing this service are expected to be determined by a joint instruction of the Ministry of Finance and Economy and the State Cadaster Agency.

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Czech Republic

Implementation of VAT quick fixes and generalized reverse charge mechanism has been delayed

Changes to the Czech VAT rules to implement certain "quick fixes" agreed upon at the EU level and to introduce a temporary generalized reverse charge mechanism, which were proposed to be effective as from 1 January 2020, have been delayed. It is uncertain when the changes will be officially enacted.

Quick fixes

As from 1 January 2020, the Czech Republic was required to amend its domestic law to introduce new measures provided for in Council Directive (EU) 2018/1910 regarding the existing functioning of the VAT system (i.e. the quick fixes). The measures are intended to have an impact on the application of the VAT exemption with respect to the sale of goods to another EU member state; to change the established method of the allocation of transportation in intracommunity supplies of goods in chain transactions; and to harmonize the rules regarding the taxation of sales via consignment warehouses using the call-off stock simplification.

However, the relevant amendments to the Czech VAT Act are still in the legislative process, and are unlikely to be enacted before April 2020. Until then, VAT payers either may follow the current wording of the VAT Act or they may rely on the direct effect of the EU directive and follow the new rules.

Temporary generalized reverse charge mechanism

Implementation also is delayed with respect to the generalized reverse charge mechanism for domestic business-to-business supplies exceeding EUR 17,500. The Czech Republic received an authorization from the EU Council on 14 November 2019 to derogate from article 193 of the EU VAT directive and to apply the mechanism from 1 January 2020 through 30 June 2022, to combat VAT fraud.

However, according to the Ministry of Finance, before implementing the generalized reverse charge mechanism, it is first necessary to prepare and approve another amendment to the VAT Act and to negotiate an extension of the derogation with the other EU member states for additional years. Therefore, the introduction of the new generalized reverse charge mechanism is unlikely to occur in the near future.

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New Double Taxation Treaty with South Korea and Other Changes in the Area of Double Taxation Agreements

On 20 December 2019, a new Double Taxation Treaty with South Korea became effective. The new agreement applies to income arising in the period commencing after 1 January 2020, or income paid on 1 January 2020 and later, if the income is subject to withholding tax. The new treaty changes the amount of taxation related to withholding tax on dividends and interest and provides also for other areas.

Selected parameters of the new treaty:

• The treaty sets a 5% withholding tax on dividends and interest.

• The treaty sets a 10 % tax on industrial licence fees and 0 % tax on cultural licence fees.

• Extension of the period for the origination of a permanent establishment in the form of a construction site to 12 months, addition of the concept referred to as service permanent establishment (for services provided for a period longer than 9 months within a 12- month-period.

• Gains from alienation of assets – addition of a clause referred to as "property clause" for transfers of securities or ownership interests, based on which the source state is allowed to tax gains from the sale of securities or ownership interests if more than 50 % of the company's assets comprise real property located in the territory of the given state.

Other Double Taxation Treaties

We would also like to point out that a double taxation treaty with Turkmenistan became effective on 1 January 2019. There was also a change in the interest rate in the double taxation treaty with Chile, with the rate being reduced from the original 15 % to 10 % (based on the activation of "the most favoured nation clause").

In 2019, a double taxation treaty was concluded with Bangladesh, Botswana and Kyrgyzstan, however, none of these treaties have been ratified yet.

On 27 November 2019, an act on the double taxation treaty with Taiwan was approved by the Chamber of Deputies, however, the legislative process has not been completed yet.

Changes in the List of Non-Cooperative Jurisdictions

On 10 October 2019, the European Council announced that it had removed the Marshall Islands and the United Arab Emirates from Appendix I of the list of non-cooperative jurisdictions for tax purposes (the "black list"). Simultaneously, the following countries were removed from Appendix II (the "grey list"): Albania, Costa Rica, Mauritius, Serbia and Switzerland. Nine non-cooperative jurisdictions remain on the black list: American Samoa, Belize, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, American Virgin Islands and Vanuatu.

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Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) – Current Status in the Czech Republic

MLI is an international convention modifying a substantial portion of tax treaties and may result in the establishment of a new tax obligations. In the Czech Republic, the ratification process has yet to be completed; however, no revolution in the interpretation of tax treaties is expected as a result of the adoption of so called minimum standards. In other countries, the situation may be different. For example, Slovakia has already ratified the MLI and since 1 January 2020, the instrument has been applied to tax treaties with states where the ratification process has also been completed.

As we have already informed you in previous months, the Czech Republic joined the MLI in 2017 in Paris. However, as part of the convention, the Czech Republic selected to apply minimum standards, i.e. the mildest alternative. The Czech Republic has reserved the right not to apply most of the articles that should amend relevant provisions relating to the affected tax treaties. Moreover, the MLI application depends on the principle purpose test (PPT), which is one of the minimum standards guiding determination of whether a transaction or an organisational structure had a principle purpose other than tax (such as economic). The test corresponds to the institutes of abuse of law (GAAR/general anti-avoidance rules) as adopted through the amendment to the Tax Code as part of the tax package for 2019, or 2020 if the taxation period corresponds to the calendar year. The minimum standard also includes rules for more effective dispute resolution.

By the end of 2019, the MLI has not been ratified, which means that in 2020, it will have no practical impacts on the existing tax treaties that are binding for the Czech Republic.

It should be taken into consideration that the level of accession to the MLI is not identical in all states and as such, it may have a more significant practical impact on the interpretation of treaties and tax administration in other countries. In some cases, the MLI will substantially change the wording of bilateral tax treaties. In many states, the MLI is already effective (e.g. in Slovakia, Poland, Austria, France, Netherlands, Switzerland, Luxembourg and other countries; for an updated list, please refer to the OECD website). We thus recommend verifying possible impacts of the MLI on the wording of treaties concluded with these states if your responsibilities include countries other than the Czech Republic.

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The Supreme Administrative Court's view of beneficial ownership in sublicense

At the end of last year, the Supreme Administrative Court (SAC) handed down a judgment on the application of withholding tax to income paid between two Czech tax residents on the basis of the terms of the concluded sub-licensing agreement. In its ruling (10 Afs 140/2018 – 32), the SAC found that the Czech company receiving royalties had been in fact a 'pass-through' element only and the beneficial owner of the royalties was a Russian company (tax non-resident). This non-resident company licensed a Czech company, which further ensured production under a sub-licensing agreement in another Czech company (applicant/complainant).

The Regional Court in České Budějovice and subsequently the SAC concluded that the Czech entity **had only been the recipient of the royalties, but not their beneficial owner**, since it had been obliged to pay fees to the Russian company as a licensor (with which it had a licence agreement concluded) in the same amount as the applicant itself paid to it under a sub-licensing agreement. According to the court, section 19(1) of the Income Tax Act is not fulfilled which defines the beneficial owner as the person receiving payments for his own benefit and not as an intermediary, representative or agent for another person. This should have been obvious to the applicant from the context and it should have therefore withheld and levied the tax at a 10% WHT rate from those fees (pursuant to Article 12(2) of the Double Taxation Treaty between the Czech Republic and the Russian Federation).

The SAC sees no reason to distinguish between the taxation of regular recurring payments, the amount of which is based on the value of production, and the taxation of the so-called one-off (first) payment for granting a licence. The subject of the tax under the Czech Income Tax Act is compensations for the provision of the right to use other economically usable knowledge (know-how) whereby the one-off payment to the licensor (sub-licence) referred to by the complainant as a fee for the conclusion of a licence agreement falls in this category.

Liability is on the tax payer's side

The SAC's decision is relatively short, it does not give the details of the contracts and mutual relationships or what role any reorganisation of the beneficiary of (sub) royalties has played in the case. Basically, the cassation complaint merely copies the original action, which has previously been dismissed by the Regional Court, without the applicant coping in any way with its arguments. The SAC thus concluded that **according to Czech legislation, the Czech company as a payer of income was responsible for the withholding and payment of the tax in the proper amount** and since the applicant was aware that the beneficial owner of the royalties was ultimately a non-resident company from Russia and not the Czech company, it was to withhold and pay the withholding tax in accordance with the relevant Double Taxation Treaty.

In practice, the majority of payers verify this when paying income abroad, but in the context of the relevant judgement, **domestic payments need to be viewed from this perspective - in particular where there are indications or doubts as to whether the beneficiary of the income is their beneficial owner**.

We remind you that in the spring of the last year, the European Court of Justice issued interesting rulings concerning the requirement of beneficial ownership in relation to the application of the withholding tax exemption on the basis of European directives. (More in the article Interpretation of beneficial ownership by the EU Court of Justice) However, it did not decide regarding the concept of beneficial ownership as such, but rather abuse of law. This subject is quite topical even in the surrounding countries. We therefore recommend that you examine the tax aspects of the income paid and set up pertinent measures so that your company is not exposed as a payer to the risk of additional tax assessment.

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News in the Tax Area Effective since January

In December 2019, the President of the Czech Republic signed Press No. 509 of the Chamber of Deputies, which amends certain acts in the tax area, and thus finished the legislative process. The Act was published on 31 December 2019 in the Collection of Laws of the Czech Republic under No. 364/2019 Coll. This means certain regulations have changed since 1 January.

- **Act No. 586/1992 Coll., on Income Taxes, as amended (hereinafter the "Income Taxes Act");**
- **Act No. 593/1992 Coll., on Reserves for Establishing Income Tax Base, as amended (hereinafter the "Reserves Act");**
- **Act No. 353/2003 Coll., on Consumption Tax, as amended (hereinafter the "Consumption Tax Act");**
- **Act No. 187/2016 Coll., on Gambling Tax, as amended (hereinafter the "Gambling Tax Act").**

Income Taxes Act

We have already informed you of the planned changes in our previous article, **Planned Income Tax Changes for 2020**. Let us briefly summarise the following areas:

- ***Change in the taxation of interest income from bonds issued prior to 1 January 2013***

The amendment has annulled the exception (transitional provision) for bonds issued before 1 January 2013, meaning that all interest income is only rounded off at the level of total income tax from one issuer, regardless of the date of issue of the bond. The identical rounding-off method is thus used for all bonds, eliminating the advantageous position of the so-called "one-crown bonds".

The new rules apply to interest income that is realized by a taxpayer after 1 January 2020 from bonds issued prior to 1 January 2013.

- ***Change in the method of creation and tax deductibility of technical reserves in the insurance industry***

Insurance and reinsurance companies consider the creation of reserves under the Insurance Industry Act, which is based on the Solvency II directive, tax-deductible expenses. This, however, no longer applies to technical reserves created in line with accounting legislation. Technical reserves created based on accounting regulations will therefore no longer be considered a tax-deductible expense. The wording of the Act on Reserves has also been modified in this respect. Due to the fact that technical reserves created in line with the insurance act are not accounted for, reserves in the insurance industry will be reflected in the tax base in the form of non-accounting adjustments to the profit or loss.

It is estimated that the transition to the new system will have a relatively large impact on the tax liability of insurance and reinsurance companies. This is why the Act includes certain transitional provisions which should divide this tax burden into two taxation periods.

- ***Limitation to the tax exemption of the gambling winnings of individuals***

Gambling games have been classified into individual income categories. Winnings from lotteries, raffles and receipt lottery are now subject to withholding tax, under which the gross value of the winning (not reduced by expenses) is used as the tax base. The tax exemption only applies to individual winnings that do not exceed CZK 1 million. Taxpayers now have the possibility of including their income from lotteries or raffles, which was subject to withholding tax, in their personal income tax returns, where they can declare the withheld tax similarly as an advance payment if this is advantageous for the taxpayer. The withholding tax applies to winnings from lotteries and raffles obtained by individuals with effect from 1 January 2020.

Income from other types of games is subject to the same tax as other income in personal income tax returns, ie it will not be subject to withholding tax imposed by the organiser of the game (the payer). The tax base is calculated as the difference between the sum of the winnings of the given type of income (the given income category) and the sum of the stakes (deposits) in the game within the given type of income. If the difference between the total income and the total deposits from the respective gambling game (the given income category) does not exceed CZK 1 million for the entire taxation period, the income from the respective gambling games will be exempt from tax. No other expenses than the deposits (stakes) placed into the game, will be deductible from the tax base in the calculation. The new rules will apply to winnings from other types of gambling games that are subject to tax with effect from 1 January 2020.

Consumption Tax Act

We have already dealt with the changes proposed to the Consumption Tax Act in the **tax package article**, among other things. Let us briefly go over the key changes that the amendment introduces.

A major change concerns a significant increase in alcohol tax. Starting from 1 January 2020, the alcohol tax on products containing alcohol listed under nomenclature code 2207 (eg products with an alcohol content of over 80% or products containing alcohol which are used as fuel) and under nomenclature code 2208 (such as whisky, vodka, gin), and in other cases,

is at CZK 32,250/hectolitre of ethanol. The tax has also been increased for alcohol contained in fruit spirits originating from minor distilleries (not exceeding 30 litres of ethanol per producer in the course of one production period), where the alcohol tax has been raised to CZK 16,200/hectolitre of ethanol.

Tax from tobacco products has also seen a major increase: the percentage for cigarettes has grown to 30%. The fixed tax rate is now at CZK 1.61/piece on cigarettes, CZK 1.88/piece on cigars and cigarillos, and CZK 2,460/kg on tobacco for smoking. The minimal tax rate on cigarettes has also been increased to a total minimum fee of CZK 2.9/piece. Tax has also gone up on heated tobacco products, where the tax rate is now CZK 2.46/piece.

As a result of the fact that this act has been passed, tax warehouse operators or beneficiaries entitled to repeated receiving of selected products may now be obliged to change their "tax collateralisation". It is therefore necessary to calculate with this possible increase in the tax collateralisation.

Another interesting piece of news is the raised limit for home beer production (produced by natural persons). If the amount of beer produced in this manner does not exceed 2,000 litres per calendar year and is not sold, the producer is now not considered a taxpayer.

Gambling Tax Act

The tax package also includes a tax rate change concerning the partial tax base from lotteries, which should now be 35% instead of 23%. The original wording of the Amendment counted on an increase in gambling tax for the other partial tax bases as well, however the bill underwent several motions to amend, which led to the cancellation of the remaining tax increases from the final wording of the Act.

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Social Security Insurance Contributions and Changes from 1 January 2020 Onwards

Higher minimum salary, higher average salary and therefore higher maximum assessment base for the payment of insurance. These are just some of the changes brought by 2020. What other adjustments should we expect?

- **The maximal assessment base is CZK 1,672,080**
- **Average salary in 2020 amounts to CZK 34,835**
- **Minimum salary for 2020 has increased to CZK 14,600**
- **Decisive income for an employee's participation in sickness insurance is CZK 3,000, in respect of contracts for work, the limit is recognised income in excess of CZK 10,000**

Changes in prepayments for self-employed individuals:

- Minimum pension insurance prepayment is CZK 2,544;
- Minimum health insurance prepayment amounts to CZK 2,352;
- Minimum sickness insurance prepayment (voluntary) is CZK 126.

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Kosovo

Regulation on electronic payment instruments

The purpose of this regulation is setting out the rules for the use of instruments necessary to conduct electronic payments.

Subject of this regulation are banks and other licensed financial institutions authorized by the Central Bank of the Republic of Kosovo (CBK) to perform electronic payment instruments.

What is more the issuance, possession and use of Electronic Payment Instruments (EPIs), shall be regulated through an agreement in writing between the issuer and the holder. It is important to note that with this regulation, bank customers are allowed to use their cards to make payments for the purchase of goods and services, through all POS terminals, no matter which bank they belong to, without applying any additional costs.

Previously this was not the case, seeing that bank customers paid additional costs for the use of electronic instruments of another bank, which they had no account in.

Another matter is the protection of personal data, which is addressed in this regulation by obligating parties to provide a specific provision within the contract which assures the protection of the related information regarding the payment transactions in accordance with the applicable legislation.

Furthermore the contract must contain a provision which compels the issuer/recipient to maintain the confidentiality of the data of the holder, who uses/accepts the instruments of electronic payments.

This regulation has entered into force on 1st of January.

Regulation on electronic money issuance

The Central Bank of Kosovo has issued another regulation on electronic money issuance which aims to further modernize the financial sector in the Republic of Kosovo.

As per this Regulation, the electronic money in the Republic of Kosovo can be issued by: (i) licensed banks by the Central Bank of Kosovo (CBK); non-banking financial institutions registered with CBK to conduct activity of issuing electronic money; (iii) CBK and (iv) governmental institutions in local and central lever when they do not act in capacity of public authorities.

The CBK shall publish a register with its licensed / registered money issuer in its websites, whereas financial institutions licensed for issuance of electronic money will have to report to the CBK according the format set by the latter.

Pertaining the value of the electronic money, when the issuer issues electronic money for the equal amount to the nominal value of the funds

received by the electronic money holder. The holder of the money is considered the temporary owner who is accepted by the Electronic Money Issuer.

The following financial instruments are not considered as electronic money:

1. Monetary values that are stored in prepaid instruments with a determination to meet specific customer needs and that may be used in a limited way, and

2. The monetary value stored on the payment procedures provided by a network provider or communication service provider to a network subscriber or user:

This regulation has entered into force on 1st of January.

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Poland

First Opinion of the Council for Anti-Tax Avoidance

On 18 December 2019, by Resolutions Nos. 3/2019, 4/2019 and 5/2019, the Council for Anti-Tax Avoidance (hereinafter: the Council) issued its first opinions on the application of Article 119a of the Tax Code, i.e. the so-called anti- tax avoidance clause. The Council's position regarding the grounds for applying the clause is fairly restrictive. At the same time, with respect to the cases reviewed for the purpose of the opinions, the Council has expressed certain doubts over the applicability of the anti- tax avoidance clause to activities performed before its entry into force.

Grounds for applying anti-tax avoidance clause - Council's opinion

The Council's opinion concerns the provisions of the clause in their pre-amendment wording (the amendment took effect as from January 2019). **The Council opines that in order to apply the clause it is enough to meet one of the conditions set out in the legal provisions, namely the condition of artificiality of the mode of actions**. It follows from the anti- tax avoidance clause that, in order to apply it, several conditions must be met cumulatively, i.e. (1) acting primarily to obtain a tax advantage, (2) an artificial mode of action and (3) incompatibility of the tax advantage with the aim and purpose of the provisions of the Tax Code. However, the Council seems to equate the condition of artificiality of the taxpayer's mode of action with the condition of acting with the primary aim of obtaining a tax advantage. Accordingly, in paragraph 25 of the opinion, the Council points out as regards the regulations concerning the applicability of the clause that "*the conditions of acting to obtain a tax advantage overlap to a certain extent with the analysis of the artificiality of the mode of action*". At the same time, the Council believes that the condition of incompatibility with the aim and purpose of the legal provision is 'self-fulfilling' where the other two conditions are met. The Council's position can be regarded as both restrictive and disputable, as it cannot be substantiated using either the literal wording of the provision at issue (which prescribes several separate conditions to be met cumulatively for an activity to be considered as tax avoidance), or the explanatory statement accompanying the introduction of the clause into the tax regime (in the light of which the aim of the clause is to differentiate between aggressive tax avoidance and permitted tax planning).

In practice, if the Council's position is accepted, the anti-tax avoidance clause will be applicable not only - as intended by the legislator - to aggressive tax avoidance. This is so because the Council evaluates individual activities rather than a set of activities taken by the taxpayer (also from the viewpoint of their purpose). **Hence, in the light of the position taken by the Council, the conclusion follows that where it is possible to accomplish business purposes using various methods, the taxpayer should select the one charged with the highest tax burden**. In contrast to that, the explanatory note accompanying the clause indicates that the clause is not aimed to restrict the taxpayers' rights to optimize their settlements so long as they carry out actual business operations.

Tax advantage point

The Council also gives its opinion as to the moment of obtaining the income tax advantage which is referred to in the transitional provision setting the time-frame of the clause applicability. According to the transitional provisions, the clause in question should be applied to tax advantages obtained after its effective date. **The interpretation of that provision advocated by the Council seems to omit the word: 'obtained'** and be based on the notion of 'the arising of the advantages' which is not to be found in the wording of the provision. In effect, the Council concludes that obtaining the advantage in the form of non-tax chargeability occurs at the end of the tax year (as if the transitional provision prescribed that the clause should be applied to the advantages from the period following its effective date). The Council's position is open to doubt in the context of the declarative interpretation of the transitional provision which regulates the moment when the clause is to come into force.

Intertemporal aspect and constitutional standards

The Council voices serious doubts as to the applicability of the clause to activities fully completed before the clause's effective date. Inter alia, the opinion reads as follows: "*it can be argued that the intrusive character of tax law norms into the sphere of constitutionally protected rights and freedoms, which are guarded by the provision of Article 2 of the Constitution of the Republic of Poland (principle of the rule of law, the principle of citizens' trust in the state and in the law it enacts), precludes the possibility of applying a general clause against tax avoidance to a taxpayer, in the absence of a norm regulating it or announcement of its introduction into the binding law at the time of legal transactions*".

The Council also argues that applying the clause to the reviewed case (where all transactions were carried out before the introduction of the clause into the legal system) would lead to assessing the transaction '*against a model that did not exist at the date of the transaction, which may be controversial due to the principle of non-retroactivity of law. As a consequence, taking into account that the intertemporal norm in question has not been declared unconstitutional, it may be justified to interpret Article 7 of the Amending Act in such a way so as to make sense of it in view of the pro-constitutional interpretation'.* The Council, considering that it lacks the powers vested in the courts, declares itself not to have the authority to assess the constitutional doubts raised in the opinion, but nevertheless attempts to interpret the intertemporal provision in a pro-constitutional manner based on which applying the clause to the case reviewed for the purpose of the opinion is disputable.

On the question of the grounds of applying the clause against tax avoidance, the position taken by the Council is pro-fiscal in its character. In practical terms, this approach is bound to make any tax planning much harder, even though tax planning is permitted in the light of the explanatory note to the Amending Act that introduces the clause. **The Council seems to pay more attention to the preventive objective of introducing the clause than to the structure of its provisions** - this is especially visible in the extent to which the Council equates the conditions for applying the clause (the Council's position suggests that if the condition of artificiality of the mode of action is met, the conditions of acting primarily

to achieve a tax advantage and the incompatibility of the tax advantage with the aim and purpose of the tax law are fulfilled automatically). In this context, it seems justified to ask why the rational legislator has introduced a number of separate conditions for the application of the clause and the necessity to fulfil them jointly.

The views expressed by the Council are also significant from the perspective of the applicability of the clause to the activities performed before the effective date of the clause. Even though the Council has not taken a clear-cut position as to the interpretation of transitional provisions, **considering the scale and seriousness of the doubts which, in the Council's opinion, would burden the application of the clause to the activities performed before its entry into force (in particular those whose tax effect has already occurred and is not cyclical), as well as the mandate to resolve doubts in favour of the taxpayer, it should be concluded that the clause cannot apply to such activities**. Accepting the thesis that it is not possible to apply the clause due to intertemporal provisions should result in disallowing an analysis of the given activity in the context of meeting the material conditions set forth in the Tax Code. This is so because intertemporal issues are a prerequisite for the application of any legal institution, including the anti-tax avoidance clause.

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Tax reliefs and grants - most important events of 2019. Summary

The year 2019 marked the introduction of new solutions in the sphere of tax reliefs and grants which taxpayers should find especially significant. Below we present a summary of the issues that are related to specific support instruments and that are most important from the perspective of enterprises.

1. Income Tax Exemption - Polish Investment Zone (PIZ), Special Economic Zones (SEZ)

At the beginning of 2019 the Provincial Administrative Court in Rzeszów passed a precedent judgement in favour of a taxpayer operating in SEZ on the basis of several permits, which allowed the taxpayer to keep common records and use the granted public aid limits chronologically. The approach made it possible to settle SEZ exemptions in a simplified manner.

At the same time, in response to the doubts concerning the interpretation of the range of activities the income from which may be subject to tax exemption based on the Investment Support Decision, the Ministry of Finance issued Clarifications in that respect in October. We have already informed you in previous issues of our newsletter that **according to the Clarifications of the Ministry of Finance, in certain specific situations**

the so-called project approach is necessary. Under the project approach, only the income related to a given initial investment (on account of which the enterprise was granted the Support Decision) can be subject to CIT/PIT exemptions. This interpretation is less beneficial for taxpayers when compared with the option of exempting all income derived from the activities covered by the Decision. More importantly, using the project approach requires a strict separation of the income from fixed assets under a given investment and the remaining income obtained by the enterprise, which in practice may prove impossible, especially in the case of investments aimed at increasing the production capacity of the entire enterprise.

What is especially significant is the fact that even after the publication of the Ministry's Clarifications, the Administrative Courts **were ruling in favour of enterprises** in the cases concerning the project approach (by confirming the possibility not to follow the project approach).

In 2019 the Director of the National Fiscal Administration (KAS) issued two clearance opinions that were favourable for taxpayers insofar as they allowed taxpayers operating in Special Economic Zones to increase or decrease depreciation rates. The taxpayers were thereby able to reduce the taxable income when they could no longer use income tax exemptions. According to the KAS Director, such practices are not deemed to be tax avoidance.
Deloitte specialists acted as advisers in both cases.

Based on the data published by Statistics Poland on the last day of 2019, enterprises declared to have spent the total of PLN 25 billion on R&D (understood as running expenses and capital expenditures on fixed assets linked with R&D carried out by the entity) in 2018. By contrast, the expenditures of 2017 reached mere PLN 20 billion, which translates into 25% growth YOY[1].

2. R&D tax relief
In 2019, similarly to 2018, the taxable base deduction amounted to **100% eligible costs** (the corresponding deduction for entities enjoying the status of a Research & Development Centre generally equalled **150%**).

As early as in October 2018, the legislator slightly modified the definition of research and development work and clarified the provision concerning the eligibility of the costs of expert opinions, advisory and equivalent services as eligible, indicating that such costs may be eligible only if acquired from scientific entities. The previous wording of the regulation aroused interpretative doubts among taxpayers.

Taxpayers are increasingly interested in the R&D relief - **they deducted a total of PLN 1.7 billion** (corporate and personal income tax) in 2018; the relief was used by **over 1,000 taxpayers** in total, i.e. almost **twice as many entities as in the previous year**[2]).

Considering that the level of deduction in 2019 is the same as in 2018 and that the awareness as regards R&D activity is growing awareness among companies, many more entities are expected to benefit from the R&D relief in 2019.

Please be reminded that **the R&D relief is accounted for** in the annual settlement. Thus, taxpayers whose tax year is the same as the calendar

year can use the relief until the end of March 2020 (corporate income tax) or until April 2020 (personal income tax).

3. IP Box (Innovation Box)
"IP Box" (also known as "Innovation Box" and "Patent Box") is a **preferential income tax rate (5%)** which was introduced on 01 January 2019 and which can be applied to the so-called qualified income earned by taxpayers from qualified intellectual property rights.

In view of the fact that the regulation introducing IP Box is a novelty and the mechanism itself is fairly complicated, **the Ministry of Finance published Clarifications in that respect in mid-2019**. The Clarifications confirm that taxpayers using tax exemptions due to running business activity within SEZ or based on an Investment Support Decision may also use the IP Box preferential rate. IP Box will allow those taxpayers to enjoy their tax exemptions for longer, as the amount of income tax subject to exemption becomes lower and the exemption limit available is, effectively, used up slower.

In the second half of 2019 the Ministry was working on **Clarifications II.** The purpose of the document is to discuss the issues of applying transaction prices when evaluating incomes from rights that are eligible for the preferential tax treatment. It is yet unknown when the Ministry will complete its work on Clarifications II.

Deloitte experts actively participated in the consultations that accompanied Ministry's work on Clarifications I & II.

4. Non-refundable grants
New rules for awarding grants under the so-called government grant programme (which supports investments that have significant importance for the economy and which is financed from the national budget) were adopted at the end of 2019. These rules are in many respects similar to those binding in respect of exemptions granted in the Polish Investment Zone and under certain conditions, the two forms of support can be successfully combined. By the same token, companies planning investments can obtain both a non-returnable grant and income tax exemption.

A number of competitions were also announced in 2019 allowing companies to obtain **EU funding** for the execution of **research and development projects** as well as their investments **in research infrastructure and implementation of the results of R&D work**. Fast-Track procedures for submitting funding applications were introduced (dedicated competitions were organised for various industries, such as the plastics, space technologies, fertilizers and heating devices).
Calls for proposals were also conducted **within the framework of Sector Programmes** dedicated to R&D projects in the games, steel and shipbuilding industries.

At the same time, **companies planning investments in R&D infrastructure** (fixed assets for research and development) could submit grant applications in two rounds of a dedicated competition (POIR 2.1. - call for proposals March/April and September/October 2019).

Taxpayers were also able to apply for funding for R&D projects in mazowieckie province under **Ścieżka dla Mazowsza**, i.e. a NCRD competition financed from national funds.

The year 2020 will probably be the last year of Financial Perspective 2014-2020, so it is high time to take advantage of the funding available. A number of competitions related to R&D work and investments are in the pipeline.

1. https://stat.gov.pl/obszary-tematyczne/nauka-i-technika-spoleczenstwo-informacyjne/nauka-i-technika/dzialalnosc-badawcza-i-rozwojowa-w-polsce-w-2018-roku,15,3.html
2. https://www.podatki.gov.pl/media/5425/informacja-dotycząca-podatku-cit-za-2018-r.pdf

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Compulsory dematerialisation of shares - shareholders get ready for registration!

In line with the amended version of the Code of Commercial Companies and Partnerships, beginning from 2021 the shares of all joint-stock companies and limited joint-stock partnerships will no longer be in a written form but instead, will become a register record. Some of the duties linked with share dematerialisation are binding as from 01 January 2020.

Compulsory dematerialisation of shares - practical implications

- all compulsory announcements are to be published on the entity's website;
- the entity is obliged to enter into an agreement with a bank or brokerage house of its choice for keeping the register of shareholders and to bear the attendant costs;
- only an entity entered in the register of shareholders can be a shareholder, and the registration certificate issued each time for a specified period of time by the entity keeping the register of shareholders serves as the proof of entry;
- the sale or any share encumbrance is effective as from the moment of entry in the register of shareholders, and not as from the moment of concluding the relevant agreement;
- the entity pays dividends, as a rule, through the entity keeping the register of shareholders;

- the correctness of the disposal or encumbrance of shares is verified by the entity keeping the register of shareholders.

Compulsory dematerialisation of shares - important dates

- as from 01 January 2020 – duty to maintain the website with a separate place for communication with shareholders and announcements and disclosures in the National Court Register
- until 30 June 2020 - signing an agreement with an entity that will maintain the register of shareholders (to be selected by the general meeting) and the first call for the submission of share documents (the entity is obliged to call shareholders to submit share documents five times in total)
- 1 January 2021 - the share certificates expire

Compulsory dematerialisation of shares - sanctions

Failure to call the shareholders to submit shares is subject to a fine of up to PLN 20 thousand. This fine is imposed on the entity's representatives.

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Remuneration policies in public entities

On 30 November 2019 the Sejm amended the Act on public offering, conditions governing the introduction of financial instruments to organised trading, and public companies, thereby changing twenty other acts. One of the significant changes introduced is the obligation on general meetings to adopt remuneration policies for members of their companies' management and supervisory boards at least on a four-year basis.

As per the Amending Act, the remuneration policy does not apply to key managers of the company who are not appointed to the management board. The remuneration policy should be adopted by 30 June 2020.

The Act specifies that the remuneration policy in public entities should contain the following elements:

- 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 termination 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 boards 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, to its long-term interests, and to 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. They 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 a 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.

The supervisory board is obliged to draw up annual remuneration reports containing a comprehensive review of the remuneration paid to the members of the management and supervisory boards, including the benefits granted to their family members. These reports will be liable to certified auditor's review. First reports of this kind are to be submitted for 2019 and 2020.

This means that listed companies are obliged to adopt a remuneration policy for members of management and supervisory boards, if such policy has not previously been in place in the company or has not been introduced by a relevant resolution. Please note that both the remuneration policy and the reports of the supervisory board will be public and are to be published on the company website.

Both existing and new policies should be reviewed from the viewpoint of:

1. the policy's consistency with the actual situation (e.g. if the policy provides that the management board members are remunerated on the basis of employment contracts, it needs to be verified whether actually all management board members are employed on that basis);
2. the adequacy of the terms and conditions of employment of the members of the management board / supervisory board to the actual manner in which they perform their duties (depending on the forms of employment - e.g. employment contract, managerial contract, resolution, etc.);
3. the consistency of the manner in which individual members of the management board are employed (e.g. whether in the case of members of the management board / supervisory board - the form of

their remuneration is analogous to that applicable to persons performing their duties in similar conditions);
4. the correct formulation of the policy - in particular whether it contains all statutory elements;
5. the correct formulation of the policy regarding variable components of remuneration (e.g. bonuses) and remuneration in the form of financial instruments;
6. the correctness of other documentation related to the employment of members of the management / supervisory board (e.g. management board by-laws, supervisory board by-laws, employment contracts, managerial contracts, resolutions, etc.).

It is also worthwhile to analyse tax (personal income tax) and insurance (social and health insurance) aspects related to the company's structure of employment of management and supervisory board members.

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Romania

The Government Decision regarding the quota for work authorizations that can be issued for foreigners, for the year 2020, was published

On December 23, 2019, the quota for work authorizations that can be issued for foreigners during 2020 has been established to 30.000. Similar to last year, there is no individual quota for each type of work authorization provided by the law, as these are released based on the requests received.

The work authorizations are mandatory for foreign citizens (other than those from the EU/EEA member states or Switzerland) for working purposes, as per the provisions of Ordinance no. 25/2014 regarding the employment and assignment of foreign individuals on the Romanian territory.

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The new Law no. 243/2019 on alternative investment funds will enter into force in January 2020

Law no. 243/2019 on alternative investment funds, amending and supplementing certain normative acts (AIF Law) was published in the Romanian Official Gazette no. 1035 as of 24 December 2019, Part I, and will enter into force on 24 January 2020.

AIF Law establishes a new specific legal framework with respect to the alternative investment funds (AIFs), more detailed than the previous one, which introduces new requirements regarding their authorisation and functioning. As against the regime of the alternative investment funds managers (AIFMs), regulated by a common EU legal framework (through Directive 2011/61/EU on alternative investment fund managers), AIF Law is part of a national strategy for diversifying this type of collective investment undertakings that aims to address the requirements of the Romanian investors and the particularities of the Romanian market.

Scope

The AIF Law regulates the set-up and functioning of the AIFs in Romania, as collective investment undertakings other than the collective investment undertakings in transferable securities (OCIU), and applies to:

- OCIU incorporated in Romania, which, before the entering into force of Law no. 74/2015 on alternative investment funds managers (AIFM Law), were required to apply for the registration with the Financial Supervisory Authority (FSA), according to Law no. 297/2004 on capital markets (Law no. 297/2004);
- OCIU incorporated in Romania, which, before the entering into force of AIFM Law, were not required to apply for the registration with the FSA, according to Law no. 297/2004;

- financial investment companies (FIC);
- Fondul Proprietatea S.A. (Property Fund).

The set-up and authorisation of the AIFs

AIFs are subject to the FSA's authorisation and may be incorporated as follows:

- contractual AIFs (CAIFs), without legal personality (according to the provisions on simple companies of the Romanian Civil Code); or
- investment companies AIFs (ICAIFs), structured as joint stock companies (according to Law no. 31/1990 on companies).
- CAIFs and ICAIFs may be structured by several compartments (sub-funds), each of them subject to the FSA' authorisation requirements and whose assets are segregated and cannot be subject to any claim from the creditors of another sub-fund.
- The functioning of CAIFs – key aspects
- CAIFs may be managed by: (i) a Romanian AIFM, (ii) an AIFM from another Member State (notified to the FSA), (iii) an AIFM from a third country (according to the provisions of the AIFM Law);
- CAIFs may issue several classes of units, which may be admitted to trading on a Romanian trading venue, in compliance with the applicable legal provisions;
- The fund unitholders gain rights and obligations within the value and the proportion of the CAIF' assets held by them;
- an AIFM which manages the CAIF' assets is its legal representative, and is liable severally or jointly with the CAIF's depositary towards the fund unitholders or other third parties for any breach of the AIF Law, the FSA regulations or any other breach related to the CAIF's management;
- AIFM may hold, on behalf of a CAIF, shares in the share capital of a limited liability company or a joint-stock company, as the case may be, and such shares shall not be included in the AIFM' assets and shall not be subject to any claim from the AIFM' creditors.

The functioning of ICAIF – key aspects

- ICAIF may be managed by: (i) a Romanian AIFM, (ii) an AIFM from another Member State (notified to the FSA), (iii) an AIFM from a third country (according to the provisions of the AIFM Law), (iv) a board of directors and directors/supervisory board and directorship, when the ICAIF is internally managed or self-managed;
- ICAIFs internally managed or self-managed will be authorised under the provisions of the AIFM Law;
- ICAIFs issue nominative shares, and their subscribed share capital is paid in full on their incorporation date;
- ICAIF set-up through public subscription or by raising capital from at least 150 retail investors are required to apply for the admission to trading on a trading venue, within 90 days from obtaining the authorisation from the FSA.

Key rules regarding the issue and repurchase of fund units or shares

- Depending on the possibility to repurchase their fund units or shares, AIFs may be classified as follows:
- open-ended, the shares or fund units of which are, at the request of any of their shareholders or unitholders, repurchased or redeemed prior to the commencement of their liquidation or wind-down in accordance with the procedures set out in their rules or articles of incorporation, prospectus or offering documents; or
- closed-ended, the shares or units of which cannot be repurchased or redeemed in a similar way before their liquidation or wind-down.
- An open-ended CAIF must repurchase its units at least annually. The offering document and the rules of the FIAC may provide the possibility to distribute to the investors, on certain dates or during a

calendaristic period, the earning cumulated during a pre-settled period.

- With the purpose to decrease its share capital, an ICAIF may perform, only once during a financial year, share capital returns pro rata with the shares held by the investors, subject to the approval by the Extraordinary General Meeting of Shareholders (EGMS). By way of exception, such share capital returns may take place at any time, if the following conditions are cumulatively met:
    - the approval of the EGMS is issued;
    - the return is made exclusively from the own sources of the ICAIF;
    - the ICAIF has recorded profit in the last three financial years, according to its annual audited financial statements.
    - An ICAIF may also repurchase its own shares with the purpose to decrease its share capital if:
    - the approval of the EGMS is issued;
    - the repurchase is made exclusively from the own sources of the ICAIF.

For ensuring the investors' protection, the issue and/or repurchase of the fund units may be temporarily suspended upon the FSA's decision or upon the AIFM or self-managed ICAIF's initiative, if the exceptional cases presented in the AIF' rules or articles of incorporation occur, or in other exceptional cases which were not reasonably anticipated on the AIF's incorporation date. The suspension may be prolonged as long as the conditions that determined the suspension are still met.

Types of AIFs specifically regulated by the AIF Law

Besides the two types of AIFs resulted from their form of incorporation (i.e., CAIF and ICAIF), the AIF Law expressly defines two other major categories, AIFs addressed to the retail investors and/or professional (RAIFs) and AIFs addressed exclusively to the professional investors (PAIFs). The fund units or shares of a PAIF may be distributed exclusively to professional investors, except for the private capital PAIFs (subject to specific conditions under the AIF Law).

In addition, depending on their investment policy, RAIFs and PAIFs are classified in more sub-categories expressly regulated by the AIF Law (e.g., diversified AIFs, AIFs specialized in real-estate investments, monetary AIFs).

For each of these sub-categories, the AIF Law imposes specific obligations regarding the permitted investments, the calculation of the asset value, transparency obligations, as well as informing and reporting requirements. In order to ensure an extensive protection for the retail investors, the transparency, informing and reporting obligations, as well as the rules regarding the investment policy and the investment limits imposed to RAIFs are stricter as opposed to those imposed to PAIFs.

Significant transitional measures

Within 3 months from the date of the entering into force of the AIF Law, the FSA shall issue secondary regulations for the application of the AIF Law.

Within 6 months from the date of the entering into force of the AIF Law, subject to the withdrawal of their authorisation, OCIUs incorporated under the previous legislation are required to:

- amend their incorporation and functioning documentation and their activity according to the AIF Law;
- apply for the authorisation of the amendments of the said documents and submit the relevant documentation in this regard.

The authorisation applications of the OCIUs still in progress at the date of the entering into force of the AIF Law will be withdrawn and supplemented according to the AIF Law.

The AIF Law brings also important changes for FICs and the Property Fund. Thus, these entities are now qualified as RAIFs under the AIF Law and their withdrawal from trading from the regulated market operated by the BSE is conditional upon the withdrawal of their authorisation by the FSA. Moreover, within 6 months from the date of the entering into force of the AIF Law, several legal provisions regulating these entities will be repealed, such as:

- Law no. 133/1996 regarding the transformation of the Private Property Funds (Fondurile Proprietăţii Private) in FICs, published in the Romanian Official Gazette, Part I, no. 237 as of November 1, 1996, as further amended;
- Article 2861 of Law no. 297/2004, which provides the interdiction of a person to hold alone, or by acting in concert, more than 5% in the share capital of a FIC.

Sanctions and administrative measures

According to the AIF Law, conducting activities or operations that are specific to an AIF, without holding the necessary authorisation is considered criminal offence and is sanctioned with imprisonment from 3 months to 1 year or with a fine.

In addition, breaching the AIF Law provisions may lead to severe sanctions for the AIFMs, ICAIF self-managed and/or the members of their governing bodies. In case of individuals, the fines may range up to LEI 50,000, and in case of legal entities, the fines may range up to 5% of the turnover registered during the previous financial year. Depending on the breach, the FSA may decide also to withdraw the AIF's authorisation.

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Emergency Ordinance no. 1/2020 regarding certain fiscal and budgetary measures, as well as modifying and completing some normative acts

On January 9, 2020, it was published in the Official Gazette no. 11/09.01.2019, the Emergency Ordinance no. 1/2020, which brings a series of changes to the following normative acts:

- **GEO no. 114/2018 regarding the establishment of certain measures in the area of public investments, as well as the establishment of certain fiscal and budgetary measures, modifying and completing some normative acts and the extension of certain deadlines;**
- **Law no. 411/2004 regarding privately managed pension funds;**
- **GEO no. 28/1999 regarding the obligation of the economic operators to use electronic cash registers;**
- **Law of electricity and natural gas no. 123/2012;**
- **GEO no. 33/2007 regarding the organization and functioning of the National Energy Regulatory Authority;**
- **Law 227/2015 regarding the Fiscal Code.**

I. GEO no. 114/2018 regarding the establishment of certain measures in the area of public investments, as well as the establishment of certain fiscal and budgetary measures, modifying and completing some normative acts and the extension of certain deadlines

- The provisions regarding the bank assets tax are repealed – starting from 2020, this tax is no longer due;
- As regards the bank assets tax due for year 2019, it shall be declared until the 25th of August 2020 inclusively. The additional amounts, related to the first semester of 2019 shall be paid no later than 25th of August inclusively, whilst the minus differences shall be reimbursed/compensated according to the Fiscal Procedure Code;
- For the year 2020, the bank assets tax shall not be computed and shall not be due.

II. Law no. 411/2004 regarding privately managed pension funds

- The minimum amount of share capital required for the administration of a pension fund is EUR 4 million;
- The operating fees established by the Financial Supervisory Authority that will be collected from the companies that are handling the privately managed pension funds will not exceed 10% of the total management fees received by the administrators.

III. GEO no. 28/1999 regarding the obligation of the economic operators to use electronic cash registers

- Until the 31st of December, 2020, the economic operators who deliver goods and provide services through commercial vending machines that operate on the basis of card payments, as well as acceptors of banknotes or coins, as the case may be, have the

obligation to equip the respective machines with electronic cash registers as provided in Government Ordinance no. 28/1999.

IV. The Law of electricity and natural gas no. 123/2012

- Until 30th of July 2020, producers that are carrying out extraction or sale of natural gas extracted from the Romanian territory have the obligation to sell at a price of 60 lei/MWh, under the conditions regulated by NERA. This measure is applied only if the market price monitored by NERA, taking into account the quantities and prices recorded on each market segment, is above the value of 68 lei/MWh.
- Until 30th of June, 2020, according to NERA regulations, it shall be recovered those differences resulted from the acquisitions costs related to the years 2018 and 2019 registered by the suppliers and were not recovered through the agreed prices.
- Failure to comply with the above provisions will result in a fine between 2% and 10% of the turnover recorded in the previous year prior to the application of the contraventional sanction.

V. GEO no. 33/2007 regarding the organization and functioning of the National Energy Regulatory Authority

- Starting with January 2020, the level of the tariffs and contributions will be established annually by order of NERA President.
- The annual contribution received by NERA from the license holders in the field of electricity and natural gas, amounting to 2% of the turnover, is repealed.

VI. Law 227/2015 regarding the Fiscal Code

- The level of the excise duties applied to excisable products stipulated in appendix no. 1 of the Fiscal Code will be updated, from January 1st of each year, with the increase of the consumer prices of the last 12 months, calculated in September of the year before the one of application and officially communicated by the National Institute of Statistics until the date of October 15th.
- The exception to this is represented by cigarettes, in which case the updated level of the excise duty will be applied from April 1st of each year.

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BREXIT at midnight: Customs, VAT and Excise implications

On January 31, 2020, 00:00 The United Kingdom of Great Britain and Northern Ireland leaves the Customs Union and the Single Market of the European Union.

The BREXIT agreement was approved by the European Parliament, the Council of the European Union and the Parliament of the United Kingdom.

Transition period

The withdrawal agreement provides for a transitional period until 31 December 2020, in which the current European Union legislation continues to apply.

Consequently, with regards to customs duties, VAT and excise duties, the Union law (Union Customs Code, VAT and Excise Directive) applies to goods that move from the customs territory of the United Kingdom to the customs territory of the Union, provided that the movement started before the end of the transition period and ended thereafter.

Consequently, no customs formalities will be carried out during the transitional period, and the movement of goods between the United Kingdom and the European Union will be considered as intra-Community supplies and purchases.

Customs duties

After the end of the transitional period, customs tariffs (in case that a free trade agreement between the EU and the United Kingdom will not be concluded in the next 11 months), controls and other regulations regarding the export and import of goods will apply.

From a customs duties' perspective, it is imperative to plan the customs operations that will be carried out after the transitional period. For example, make sure that after the transition period:

- You have registered with the EU customs authorities in case of companies that have not carried out customs operations before and currently have operations with the United Kingdom.
- You have concluded customs representation contracts and you have identified the customs offices through which the import/ export operations will be carried out.
- You have identified the tariff classification of traded goods in order to know in due time the customs implications and customs debt that has to be paid at the time of import (customs duties, VAT, excise duties and other non-tariff barriers).
- You have determined the origin of the goods imported from the United Kingdom in accordance with the customs rules of origin.

VAT

From a VAT perspective, supplies of goods between the UK and the EU will be treated as exports and imports.

A possible immediate impact will be for UK companies that have direct VAT registration in Romania. Consequently, they will have to appoint a tax

representative in Romania in the next period or otherwise, the VAT code may be cancelled.

Excises

Excise Movement and Control System (EMCS) will be available for excise goods moving from the customs territory of the United Kingdom to the customs territory of the Union or vice versa, provided that such circulation has begun before the end of the period transition and end after this period.

After the end of the transition period, supplies of excise goods will involve export and import operations. Thus, the movement under suspension of excise duty from the place of import into the European Union to final customers implies obtaining the registered consignor authorization.

Consequently, stakeholders have a short period of only 11 months to prepare the BREXIT implications. If you have business relationships with partners in the UK, we recommend mapping the transactions from a customs and VAT perspective to ensure business continuity.

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Rulebook on content of tax balance sheet and other issues relevant for the assessment of corporate income tax

On 28 December 2019 Rulebook on content of tax balance sheet and other issues relevant for the assessment of corporate income tax ("Official Gazette of RS", No. 20/2014, 41/2015, 101/2016, 8/2019 and 94/2019, hereinafter: "Rulebook") has been published. The reason behind adoption of the Rulebook was the need for harmonization with the provisions of Corporate Income Tax Law (hereinafter: "the Law"), which are applicable to determination of corporate income tax liability starting from tax year 2019.

On 28 December 2019 Rulebook on content of tax balance sheet and other issues relevant for the assessment of corporate income tax ("Official Gazette of RS", No. 20/2014, 41/2015, 101/2016, 8/2019 and 94/2019, hereinafter: "Rulebook") has been published. The reason behind adoption of the Rulebook was the need for harmonization with the provisions of Corporate Income Tax Law (hereinafter: "the Law"), which are applicable to determination of corporate income tax liability starting from tax year 2019.

Rulebook comes into force on 1 January 2020, and is applicable on corporate income tax calculation for 2019.

In accordance with the Rulebook, previous item 25 – Marketing and advertising expenses, has been excluded from tax balance sheet form, as, starting from preparation of tax balance sheet for 2019, the limitation for deductibility of such expenses will no longer be applicable.

Overview of amendments (additions), per tax balance sheet items, is provided below:

Item 36: includes research and development expenses which are deductible in double amount, in accordance with Article 22g of the Law, i.e. the amount of expenses stated in summary of documentation that the taxpayers, which applies Article 22g of the Law, submits with tax balance sheet.

Item 40: includes the amount of capital gain tax paid abroad (item 2 of Annex 2 of PB1 form), in relation to which the taxpayer has recorded expense in its books. This amount is to be stated only if the taxpayer has opted to use the right prescribed by Article 53b of the Law, i.e. only if the taxpayer opts to use tax credit related to capital gain tax paid abroad.

Item 43: includes the amount determined due to reduction in percentage of usage of fixed assets for R&D purposes, which increases tax base, calculated in accordance with Article 3 of Rulebook on R&D expenses.

Item 44: includes the amount which increases tax base in tax period when the application for innovation registration is rejected by competent authority, in accordance with Article 4, Paragraph 5 of Rulebook on conditions and methods of exempting the qualified income from the corporate income tax base ("Official Gazette of RS", No. 50/2019, hereinafter: "Rulebook on qualified income").

Item 50: includes the amount of qualified income which, in accordance with Article 25b of the Law, is exempt from taxation, and stated within item 5 of OKP form, prescribed by Rulebook on qualified income.

When it comes to appendices of the tax balance sheet, Rulebook introduces new Annex 2 of PB1 form, which is used to determine tax credit related to capital gain tax paid abroad, in accordance with article 53b of the Law.

Rulebook on content of corporate income tax return

On 28 December 2019 Rulebook on content of corporate income tax return ("Official Gazette of RS", No. 30/2015, 101/2016, 9/2019 and 94/2019, hereinafter: "Rulebook") has been published, due to the need for harmonization with the provisions of Corporate Income Tax Law (hereinafter: "the Law"), which are applicable to determination of corporate income tax liability starting from tax year 2019, as well as amendments to the Rulebook on content of tax balance sheet and other issues relevant for the assessment of corporate income tax (hereinafter: "Rulebook on tax balance sheet").

Rulebook comes into force on 1 January 2020, and is applicable on corporate income tax calculation for 2019.

Below is an overview of new tax return items, as defined by the Rulebook:

Item 5.4.8. Annex 2 PB1 – includes the amount of corporate income tax reduction, in accordance with Article 53b of the Law, as stated within item 5 of Annex 2 of PB1 form, which is prescribed by Rulebook on tax balance sheet (i.e. tax credit related to capital gain tax paid abroad).

Item 5.4.9. PK 5 – includes the amount of corporate income tax reduction, determined in accordance with Article 50j of the Law, and stated within item 5 of PK 5 form (the amount of tax credit related to the investment in startup which perform innovative business activity).

Item 5.6. – beside the amount of tax calculated due to loss of right to use tax incentive in accordance with the Law, tax liability which arise from the loss of right to apply tax consolidation is also included within this item.

Item 6.4.4. PK 5 – includes carried forward tax credit, as stated within item 6 of PK 5 form (tax credit related to the investment in startup which perform innovative business activity).

Rulebook on transfer pricing and methods that are applied according to the arm's length principle in determination of transaction prices between related parties

Rulebook on transfer pricing and methods that are applied according to the arm's length principle in determination of transaction prices between related parties ("Official Gazette of RS", No. 61/2013, 8/2014 and 94/2019, hereinafter: "Rulebook"), as well as method for calculation of depreciation basis, in case when fixed asset is acquired from related legal entity, is published on 28 December 2019, in accordance with Law on Corporate Income Tax (hereinafter: "the Law").

Rulebook on transfer pricing and methods that are applied according to the arm's length principle in determination of transaction prices between related parties ("Official Gazette of RS", No. 61/2013, 8/2014 and 94/2019, hereinafter: "Rulebook"), as well as method for calculation of depreciation basis, in case when fixed asset is acquired from related legal entity, is published on 28 December 2019, in accordance with Law on Corporate Income Tax (hereinafter: "the Law").

Rulebook comes into force on 1 January 2020, and is applicable on corporate income tax calculation for 2019.

Rulebook introduces to rule according to which, in case that taxpayer acquires fixed assets from its related entity, whereas tax depreciation of such asset is determined in accordance with Article 10b of the Law (rules for determination of tax depreciation of the assets acquired after 1 January 2019), total amount of transfer pricing adjustment in that tax period, as well as in following four periods, is to include 20% of difference between transfer price of the asset and its arm's length price. That is, instead previous rule, according to which tax base was lower amount between transfer price and arm's length price, for the assets acquired from related legal entities after 1 January 2019, depreciation will be calculated on acquisition price, as recorded in taxpayer's books, while the adjustment for difference between transfer price and arm's length price will be performed in 5 tax periods, following the acquisition.

Within transfer pricing documentation, taxpayer is obliged to disclose the amount of difference between transfer price of the asset and its arm's length price, in each tax period in which the adjustment is to be made, as explained above.

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