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CE Tax&Legal Highlights

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New Corporate Income Tax Law No. 06/L-105 approved in Parliament and decreed by the President.

The new Corporate Income Tax Law replaces Law No. 05/L-029 that has been in force since 1 September 2015.

The new Law on CIT foresees a number of important changes to corporate taxation, including the following:

- The basis and rate of taxation of insurance companies would be changed from a 5% tax on gross premiums to a 10% tax on income
- The carryforward period for tax losses would be reduced from six (6) years to four (4) years;
- The annual turnover threshold for taxation on real taxation is reduced from an annual turnover of EUR 50,000 to EUR 30,000;
- Withholding tax on payments made to non-business persons including farmers and collectors of recycled materials has been reduced from 3% to 1%.

The new Law has been published in the Official Gazette of the Republic of Kosovo on 27th of July 2019 and it will enter into force within 15 days.

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Romania

Regulation of the alternative transportation activities

On July 4, 2019, the Government's Emergency Ordinance no. 49/2019 ("GEO 49/2019") regarding the alternative transportation activities entered into force. GEO 49/2019 regulates the activity of digital platforms, which offer ride-sharing services, but also the activity of the drivers that offer transportation services registered on such platforms.

The scope of GEO 49/2019 is the management, authorization and control of the alternative transportation business with vehicle and driver made available through digital platforms.

According to the Ordinance, **the alternative transportation activity** is defined as carrying persons, with the help of a vehicle, based on **an alternative transportation contract** concluded between the passenger and the **alternative transportation operator** owner of the vehicle, who are liaised by a **digital platform operator** through a digital platform.

GEO 49/2019 mentions a series of obligations both for the alternative transportation operators and for the digital platform operators.

Conditions applicable to the digital platform operators

The obligations with which the digital platform operators must comply include:

- obtaining the **technical permit** issued by the Ministry of Communications and Informational Societies ("MCIS") for the digital platform – MCIS has the obligation to issue through order of the minister the norms and procedures for obtaining the technical permit, within 35 days since GEO 49/2019 entered into force – i.e. July 4;
- the contribution to the state's budget through an annual tax, amounting to 50,000 lei;
- the registration of a branch in Romania, in case the digital platform operator is a non-resident legal person. GEO 49/2019 specifically refers to the branch as a form of the digital platform operator's presence in Romania, appearing to limit the options in relation to the possibility to choose other forms of organization in according to corporate law.

The liaison of the alternative transportation by a natural or legal person through a digital platform that does not have the technical permit issued by MCIS represents an offence and is sanctioned with:

- an administrative fine between 50,000 lei and 100,000 lei, and
- the interdiction to carry out any kind of economic activities on Romanian territory, liaised through freestanding software programs, for a period of 2 years from the date the sanction is applied.

The imposition of such a sanction appears to be excessive and disproportionate, limiting in a significant way the operator's right to perform any commercial activities that are related to software programs.

In order to obtain the technical permit from MCIS, the digital platform needs to comply with a series of technical and organizational conditions, such as:

- the platform needs to have the technical capacity to register the proposed route and to be able to continuously monitor the rides, to offer data to the platform operator, such that it allows the issuing of the annual financial statements, as well as to issue and transmit to the passenger the electronic invoice;
- the platform needs to respect the legislation regarding data protection and the digital platform operator needs to implement complex methods and procedures in order to ensure cyber security and data protection.

The digital platform operators need to offer through the digital platforms information regarding the applicable tariff, the vehicle's license number and the route. All the information and all the available documents on the digital platform need to also be available in Romanian.

The digital platform operators need to provide to the passengers a platform for communication, available non-stop for the reporting of incidents regarding the performance of the ride and the possibility to report any incident directly to the digital platform operator.

Conditions applicable to the alternative transportation operators

In turn, the alternative transportation operator can carry out this activity only after obtaining the following documents:

- the alternative transportation authorisation, which is issued to each alternative transport operator;
- the certified copy of the alternative transportation authorization and the alternative transportation badge, which are issued for each car used by the alternative transportation operator.

The mentioned documents are issued by the territorial agency of the Romanian Road Transport Authority ("**RRTA**") from the district in which the alternative transportation operator has its establishment (or, if the case, the Bucharest-Ilfov area). They attest the fulfilment of the conditions set out by GEO 49/2019 by both the driver and the vehicle used for the performance of the alternative transportation activity.

From a tax perspective, all revenues obtained from carrying out alternative transportation activities would be taxed as per the Romanian legislation.

In case of direct payment from the passengers of the value of the services, either with cash or through credit/debit cards, the alternative transportation operators (car owners) have the obligation to use electronic cash registers, whereas in case the alternative transportation services are paid exclusively on-line through the digital platform, the issuance of invoices to the passengers is mandatory.

Natural and legal persons carrying out operations that fall under the GEO 49/2019 benefit from a transition period up until 1 November 2019.

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Guidelines adopted by the European Data Protection Board

On June 4, 2019, the European Data Protection Board ("EDPB") updated the Guidelines 1/2018, the Guidelines 1/2019 and the Guidelines 4/2018, which offer information regarding the interpretation and implementation of the requirements and criteria of the General Data Protection Regulation ("Regulation").

The aim of these Guidelines is to help member states, supervisory authorities and national accreditation bodies to establish a consistent, harmonised baseline for the accreditation of bodies that issue certifications in accordance with the Regulation. Therefore, they can act as a mechanism to demonstrate compliance with the Regulation and are issued (or updated) in order to provide more detailed and useful information on how to enforce the Regulation's provisions.

These will take effects in different industries and sectors and are aimed to further develop into best practices for key players in the respective markets.

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New amendments regarding Companies' Law no. 31/1990 and Government's Ordinance no. 26/2000 regarding associations and foundations

On July 21st, 2019 Law no. 129/2019 ("Law 129/2019") regarding the prevention and the fight against money laundering and financing of terrorism, entered into force, as well as the amendments of other normative acts, which, among other changes, it modifies Companies' Law no. 31/1990 and Government's Ordinance no. 26/2000 regarding associations and foundations.

The main amendments brought to Companies' Law no. 31/1990 concern the elimination of the bearer shares. After the entry into force of Law 129/2019, the issuance of new bearer shares and the carrying out of transactions with the existing bearer shares is prohibited. Furthermore, the bearer shares issued prior to Law 129/2019 entering into force will be converted into nominal shares, and the shares that will not be converted will be automatically annulled after the expiry of an 18 months period from the date Law 129/2019 entered into force, having as consequence the corresponding reduction of the share capital. The non-compliance of the joint-stock companies and the partnership limited by shares companies with the converting obligation will result in the companies' dissolution.

Another new provision brought by Law 129/2019 consists in the introduction of the obligation to file, by the legal entities for which the registration in the Trade Registry is mandatory, a statement regarding the real beneficiary of the companies, to be registered with the Companies' Real Beneficiary Register. This statement must be filed annually or any time a change occurs regarding the real beneficiary.

Furthermore, within 12 months from the moment Law 129/2019 enters into force, the companies registered until that moment, with the exception of national companies, as well as the companies fully or in majority owned by the state, will file the statement regarding the identification data of the real beneficiaries, through the legal representative, in order to be registered in the Companies' Real Beneficiary Register, kept by the National Trade Register Office.

The lack of registration of the statement mentioned above will be sanctioned with a fine between 5,000 and 10,000 lei. If in 30 days from the date when the sanction was applied, the representative of the legal entity does not register the statement regarding the identification data of the real beneficiary, at the National Trade Register Office's request, the court, or if the case, the specialized court will be able to announce the dissolution of the company.

Furthermore, through Law 129/2019 the following amendments were brought to the Government's Ordinance no. 26/2000 regarding associations and foundations, which focus on the increase of transparency in relation with such entities' registration:

The registration request of associations will have to include, in addition to the previous provisions:

- the certified for conformity copies of the original documents proving the identity of the associates, as well as
- the affidavit in authentic form of the person writing the registration request, which contains the identification data of the real beneficiaries of the association, as mentioned in the field of

prevention and fight against money laundering and financing of terrorism.

The same documents must also be included in the requests for obtaining legal personality by the foundations.

The new regulation states that annually or, as the case might be, every time a modification occurs regarding the identification data of the real beneficiary, the association or the foundation has the obligation to communicate to the Ministry of Justice the identification data of the real beneficiary, in order for the update regarding the real beneficiaries of the associations or foundations to be registered.

The amendments of the Governance's Ordinance no. 26/2000 also include express mentions concerning the amendment of the articles of association, of the bylaws or the real beneficiary of the association or foundation, as well as regarding the merger and spin-off of such entities.

In conclusion, the provisions of Law no. 129/2019 bring important amendments in the field of corporate law, companies, as well as associations and foundations, having the obligation to conform to the new stipulations.

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Serbia

New Rulings of the Ministry of Finance – Value Added Tax

1. The tax treatment of the supply of online advertising services for third party goods.

Conclusion from the Ruling: When the VAT-payer advertises the sale of goods of third parties on his website, i.e. portal and organizes the delivery of goods sold to the buyers, that supply is considered to be a supply of services which the VAT-payer performs to the owners of goods, i.e. sellers. The compensation for the supply of goods which has been paid by the buyers to the sellers of goods (the recipients of services of advertising delivery) is not considered to be the compensation for the supply which the VAT-payer performs to the owners of goods - sellers.

The above-mentioned ruling is particularly significant for VAT-payers who perform services of online advertising, as well as for VAT-payers who are being advertised in that way.

2. VAT zero rate for transportation services related to the importation of goods

Conclusion from the Ruling: A VAT-payer – transporter of goods subject to VAT upon importation does not have an obligation to attempt to confirm whether the competent customs authority has included in the VAT base the transportation expenses arising until the first destination in the Serbia. Any such confirmation, delivered by the importer, that the competent customs authority did not include the transportation in the VAT base for computing the VAT for import of goods does not have an impact on the tax treatment of these services of transport.

The above-mentioned ruling is particularly significant for VAT-payers - transporters who deal with the transport of goods into Serbia.

3. The determination of the place of supply of service of training of employees

Conclusion from the Ruling: When a foreign entity, i.e. person who has neither a seat nor a permanent establishment in Serbia, and under the assumption that the foreign person is not a VAT-payer in Serbia, performs a service of training of employees to a business entity which is registered for performing representation in insurance as its business activity, with seat in Serbia, the place of supply of that service is in Serbia in this particular case. Namely, that is because the place in which the recipient of service has a seat is considered to be place of supply of this service, regardless of whether the training of employees is actually conducted in Serbia or abroad.

The above-mentioned ruling is particularly significant for VAT-payers who send their employees on various types of courses and trainings outside of Serbia, considering that in certain situations the place of supply for these services will not be the place where the service has actually been performed (i.e. where the courses and training have actually taken place).

New Rulings of the Ministry of Finance – Corporate Income Tax

1. Correction of corporate income tax base for expenses arising due to the difference in compensation that should have been paid to a related party

Conclusion from the Ruling: A taxpayer can in his financial records, and in line with applicable IAS and IFRS provisions, record expenses (or the reductions of income) regarding the difference in compensation that should have be paid to a related party. In that case, the amount of that compensation is determined in accordance with the "arm's length principle" and a taxpayer is, therefore, not obliged to make a correction of a tax base for corporate income tax in tax balance on that basis.

The above-mentioned ruling is particularly significant for taxpayers who have transactions with related parties, considering the fact it indicates that self-initiated financial adjustments that have been performed in order to achieve compliance with the "arm's length principle" are acceptable for the tax balance purposes.

2. The payment of a withholding tax on the income generated by the increase of participation in the capital of resident legal person

Conclusion from the Ruling: When a taxpayer, as a licensee, does not have an obligation to pay for royalties to a non-resident legal person – licensor, who, on that basis, in the amount of that royalty, increases his participation in the capital of a taxpayer, licensor has generated an income, on which basis a withholding tax should be computed and paid.

The above-mentioned ruling is particularly significant for taxpayers who are licensees supplied by a non-resident legal person.

3. Withholding tax on data storing services

Conclusion from the Ruling: The compensation which a resident legal person pays to a non-resident legal person for data storing on the servers of a non-resident legal person abroad, while this data is being transmitted to the designated (electronic) addresses, is considered to be a royalty subject to withholding tax.

The above-mentioned ruling is particularly significant for taxpayers who pay compensations for the data storing services.

4. Withholding tax on compliance check services

Conclusion from the Ruling: The compensation which has been paid by a resident legal person to a non-resident legal person on the basis of the compliance check service of “Chinese GMP certificate of the production of a certain raw material with European GMP certificate” is not considered to be a compensation from the services on the basis of which a non-resident legal person generates an income taxable by the withholding tax.

The above-mentioned ruling is particularly significant for taxpayers who are obliged to perform certain compliance checks within their business activity.

New Rulings of the Ministry of Finance – Personal Income Tax

The taxation of a capital gain in case when the final price is not known at the moment of sale

Conclusion from the Ruling: While determining the tax on capital gain the circumstance that the final price for the contribution in capital is not known at the moment of sale will not be relevant. As such, the tax liability could be

determined on the basis of data about capital gain generated which the competent tax authority determines based on all available evidence.

The above-mentioned ruling is particularly significant for capital gain taxpayers when the final price for the contribution in capital is not known at the moment of sale.

Rulebooks for the implementation of tax incentives introduced with the latest amendments to the Corporate Income Tax Law and Personal Income Tax Law

Rulebooks come into force on 20 July 2019, and introduce, among other, new forms to be filed with the tax balance sheets, in case one of the incentives from the Corporate Income Tax Law is applied.

The Minister of Finance has published 5 rulebooks which define more closely the conditions and the administrative requirements for the application of tax incentives as adopted with the December 2018 amendments to the tax laws:

1. Rulebook on conditions and manner of obtaining the right to deduct expenses directly related to R&D activities in tax balance sheet in the double amount (Article 22g of the Corporate Income Tax Law);

2. Rulebook on conditions and methods of exempting the qualified income from the corporate income tax base (Article 25b of the Corporate Income Tax Law);

3. Rulebook on conditions and manner for obtaining tax credit for investments in the share capital of newly established company performing innovative business activity (Article 50j of the Corporate Income Tax Law);

4. Rulebook on tax exemption from salary tax with respect to organizing recreational, sport and other activities for the employees (Article 18a of the Personal Income Tax Law)

5. Rulebook on tax exemption from salary tax with respect to the acquisition of free shares received from the employer or employer's related entity (Article 18 of the Personal Income Tax Law).

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