**CE Tax&Legal Highlights**

November 2019

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# Albania

## Law "On local taxes"

**In the Official Gazette no. 137, dated 07.10.2019 has been published the Normative Act no.3, dated 02.10.2019 "On some additions to the law no. 9632, dated 30.10.2006 'On local taxes', as amended".**

This act provides the exemption from the tax on the infrastructure impact for re-construction, repairs and restauration investments for residential buildings damaged by natural disasters. Conditions, rules and documentation applicable for the implementation of this act are expected to be presented through a Decision of the Council of Ministers. The above legal provisions have entered into force starting from 08.10.2019.

## Instruction of the Minister of Finance "On national taxes"

**In the Official Gazette no. 138, dated 09.10.2019 has been published the Instruction no. 27, dated 09.10.2019 "On some additions and amendments to the Instruction no. 26, dated 04.09.2008 'On national taxes', as amended".**

Following the amendments introduced by Law no. 55/2019 to Law no. 9975 "On national taxes" (published in our Tax News of August 2019) this amending instruction reflects the change of the tax rate on raw materials in a primary form to 10 ALL/kg (previously the tax rate was 25 ALL/kg) for those raw materials classified under chapters 3901 to 3914 of the Combined Nomenclature of Goods, as well as the change of rules for the tax refund for exports. The above legal provisions have entered into force starting from 10.10.2019.

## Decision of the Council of Ministers "On implementing provisions of the Customs Code"

**DCM no. 626, dated 18.09.2019 "On some amendments and additions to the DCM no. 651, dated 10.11.2017 'On implementing provisions of the law no. 102/2014 'On the Customs Code in the Republic of Albania'", as amended, has been published in the Official Gazette no. 137, dated 07.10.2019.**

Through this amending DCM, several articles have been amended and additional articles are introduced, following the amendments published through DCM no. 557, "On Free Customs Zones".

Amongst other, the new articles provide for:

- the activities in free customs zones;
- the entry and exit of Albanian or non-Albanian goods from the free customs zone;
- procedures for the administration of the free customs zone;
- responsibilities and obligations of the free customs zone's administrator and operator;
- documentation on the establishment and territorial area of the free customs zone, etc.

The above provisions have entered into force on 08.10.2019.

## Instruction "On the determination of the fees for the provision of special services and their administration by the customs authorities"

**In the Official Gazette no. 141, dated 18.10.2019 has been published the Instruction no. 10693/2, dated 01.07.2019 "On the determination of the fees for the provision of special services and their administration by the customs authorities".**

Through this Instruction, starting from 19.10.2019 enter into force the new fees for certain customs services, as well as the procedures for their collection, including:

- fees for parking in the premises of the customs authorities;
- fees for goods stored in customs warehouses;
- fees for services towards the economic operator, which require the presence of the customs personnel in environments other than customs or outside the official working hours;
- service charge for weighing transportation vehicles.

## DCM "On some additions and amendments to the DCM "On the approval of the regulation on the development of the territory", as amended.

**The Council of Ministers has adopted the decision no. 693, dated 29.10.2019 "On some additions and amendments to the decision no. 408, dated on 13.05.2015 of the Council of Ministers "On the approval of the regulation on the development of the territory". The decision has been published with the Official Gazette no. 145, dated on 29.10.2019, entered into force after its publication.**

With the aim of simplifying and further clarifying the construction permit procedure, the decision provides for some additions and amendments to the regulation on territory development.

Among others, the decision extends the scope of the competencies of the National Council of Territory also to the approval of the construction permit for the objects or infrastructure works within the coastal area.

Moreover, the decision extends the terms of the accelerated procedure from 10 days to 20 working days, while reduces the terms and ease such procedure in case of applications for construction permit for reparations and restorations of the damaged objects as a result of natural disasters and civil emergencies.

Finally yet importantly, the decision lists all the necessary documents that the applicant should provide in order to be granted with a usage permit.

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# Czech Republic

## Are Tax Liabilities Transferred to the Successor Company in the Event of a Demerger?

**While in the case of demerger by split-up, i.e. demerger where the demerged company ceases to exist, it is clear that the tax liabilities are transferred to the successor companies, it is less clear to what extent the tax liabilities are transferred in the case of demerger by spin-off, i.e. in cases where the demerged company does not cease to exist as a result of the transformation.**

Transformation by demerger involves the transfer of the demerged company's net assets to one or more successor companies. The demerged company then may or may not cease to exist as a result of the demerger.

The method and extent of transfer of tax rights and liabilities related to the transferred net assets are generally regulated by the Tax Code. Section 240 of the Tax Code states that if a legal entity ceases to exist with a legal successor, its tax liability is transferred to the legal successor. Until the end of 2013, this provision additionally stated that if a legal entity ceased to exist as a result of a demerger without a clear indication to what extent the tax liability would be transferred to its legal successors, legal succession concerning tax liabilities would be determined by the tax administrator.

The transfer of the tax liability was therefore more closely defined only in cases where the demerged company ceased to exist as a result of the demerger. Then it was up to the participating companies, or the tax administrator, to specify the distribution of these liabilities in sufficient detail directly in the transformation project (the extent of transfer of tax liabilities is an obligatory component of the demerger project). In practice, it meant that the participating companies could determine what tax rights and liabilities would be transferred to the successor companies.

On the other hand, in the case of a demerger by spin-off, that is transformation without the dissolution of the demerged company, the method of transfer of tax liabilities was unclear. The Supreme Administrative Court even reached a conclusion in one of its rulings that in the event of a spin-off performed while this legal regulation was in effect, the transfer of the tax liability would be possible only if the demerged company ceased to exist. In the event of spin-off where the demerged company did not cease to exist, all the tax rights and liabilities remained with the original taxpayer.

### Situation after the amendment to the Tax Code in 2014

The Tax Code was amended in 2014. The definition of the transfer of the tax liability in the case of demerger by split-up was transferred to Section 240b of the Tax Code and subsequently expanded to include all cases of transformations of legal entities by demerger (not just cases where the demerged company ceases to exist). The Supreme Administrative Court confirmed the transfer of the tax liability from the non-dissolving demerged company to the successor company in the case of demerger by spin-off based on this provision. However, this ruling was issued under specific conditions. It concerned an existing tax liability (albeit one which was conditionally exempt as of the date of the legal effect of the transformation) tied to the contribution of an investment in a company pursuant to legal regulations on exemption from property transfer tax in the event of contribution in kind in a company as effective at that time.

It is therefore questionable whether the transfer of the tax liability in the event of transformation by demerger can be generalised to all cases of spin-off, and whether it is possible in line with Section 240b of the Tax Code to adjust the extent of the transfer of the tax liability from the non-dissolving demerged company to the successor companies in the transformation project at will. This consideration is crucial not just in terms of the liabilities existing as of the effective date of the spin-off due to the "cross-liability" of the companies participating in the transformation for the debts transferred as a result of the spin-off, but also due to the potential transfer of latent tax liabilities as of the effective date of the transformation.

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## What will 2020 bring in the area of VAT? Quick fixes already in January and a VAT decrease for selected supplies in May

**One of the main topics of the traditional autumn seminar on value added tax, which is organised every year by Deloitte, were the new rules in the area of VAT, jointly referred to as "quick fixes". Their primary purpose is to unify certain rules for cross-border transactions with goods within the European Union. What do they bring, specifically? How can preparations be made for them?**

New legislative rules in the area of VAT, quick fixes, will come into effect on 1 January 2020. They are a set of transitional measures that will be applicable until a final VAT system is established within the EU. However, when I read through the quick fixes, and I have been reading them for half a year, I feel that they are rather ambiguous and could be understood to mean anything. Therefore, we keep waiting to see how these rules will actually be interpreted.

**1. Tax exemption with respect to the supply of goods to another EU member state**

The first quick fix states that when supplying goods to another member state, the customer will now have to communicate their VAT ID to the supplier, otherwise it will not be possible to exempt the supply of these goods from VAT. At present, the VAT Act stipulates that an intra-community supply of goods is exempt from tax if it is supplied to a person registered for income tax in another member state, which you can check by verifying their VAT ID. What changes is that now you will need to have proof that the customer has actively communicated the VAT ID to you and in addition, there will be a deadline when the customer has to do so. The question is how to determine this deadline. And there is no clear answer to that, because there are several interpretations.

A relatively comprehensive view is offered by the financial administration, which says that the last date for obtaining the customer's VAT ID is the 15th day of the month following the month when the supply of goods to another member state occurred, which is actually the last date by which the supply has to be reported.

At the same time, to obtain VAT exemption it will be necessary to include a record of the supply in the EC sales list. If the record contains incorrect information, for example a typo, such flaws can be remedied with a proper justification to the satisfaction of the relevant bodies.

<u>Deloitte's point of view:</u> Companies will have to create a system for obtaining VAT IDs from their customers and store evidence of the date when the VAT ID has been communicated to them – meaning communicated actively. It is therefore not enough to discover the VAT ID yourself on the internet. Ask your existing customers to send you their VAT IDs as well, even if you have been doing business with them for years.

**2. Methods of demonstrating the transport of goods to another member state**

Another change concerns the demonstration of transportation to another member state. The supplier holding evidence of such transportation will transfer the burden of proof to the tax administrator, and the tax administrator will be the one to have to demonstrate that the transportation did not take place.

At first glance, this second "fix" seems positive for the supplier. At second glance, however, some complications start taking shape. The rule governing the obligation to demonstrate transportation is called "2 or 1+1". What does that mean? The supplier has to provide two pieces of evidence. Two groups of evidence are set and the supplier can choose to provide both pieces of evidence from the first group, or one piece from the first and one from the second group of documents.

First group: Documents concerning transportation – signed CMR waybill, bill of lading, invoice for air transportation, invoice from the transportation provider

Second group: Other documents – transportation insurance policy, bank confirmation of payment for the transportation, official confirmation of completion of transportation in the destination state (e.g. from a notary public), confirmation form the storage provider of receipt in the warehouse in the destination state

What is the problem? That these pieces of evidence cannot be prepared by the supplier or the customer and each of these two pieces of evidence have to be prepared by a different person that must be independent of the supplier and the customer. These conditions can be met if transportation is arranged by the supplier – the first piece of evidence could be the CMR sheet signed by the carrier, the second a bank confirmation of payment for the transportation. However, what if the transportation is arranged by the customer? In such a situation, you essentially have only the CMR sheet.

Deloitte’s point of view: Under such conditions, try to secure a set of some other documents prepared by you or the customer to have a sufficient number of them, so that you could tell the tax administrator that while you do not meet the conditions of the regulation, you have not just two pieces of evidence but instead as many as four, for example.

In addition, remember that you will need a written confirmation of transportation from the customer by the 10th day of the following month.

**3. Transport assignment**

The third quick fix focuses on so-called chain transactions, the subject of which is the supply of the same goods between several business partners. In general, the new rule provides that the shipment is automatically assigned to the first supply, i.e. the transaction between a supplier and an intermediary, and thus potentially exempt from VAT. The second supply will then be taxed. However, in the case that the intermediary provides the supplier with his VAT ID assigned to him for VAT purposes in the country of commencement of shipment, the shipment will be assigned to the second supply.

Deloitte’s point of view: In this context, however, we will encounter a new phenomenon. As the fact that the intermediary provides the supplier with the VAT ID from the country of his tax residence does not necessarily mean that the intra-Community supply made by the supplier must be exempt from tax. Can the supplier trust the intermediary that he will actually deliver the goods? He may, but naturally, it will not be enough for the tax administrator. Therefore, given the above-mentioned regulation on the means of evidence of the transport of goods, suppliers will tend to tax the first supply.

**4. Call-off stocks**

The amendment introduces a modification of the rules for call-off stocks and simplification in the case of call-off stocks where the supplier moves his own goods from another member state. A customer who takes goods from such a call-off stock will self-assess his VAT not at the time of entry into stock, but at the time of release from stock, i.e. when the customer actually acquires the right to dispose of the goods as their owner. The law will also explicitly anticipate that the customer may change.

**However, the new rule also brings new obligations:**

- The goods must not be stored in the call-off stock (i.e. in the customer's state) for more than 12 months. On the 366th day, the conditions are breached and the supplier will have to report the relocation of goods to the given member state.
- Goods should not be stolen, lost or destroyed (including technological losses) – in these cases, the goods will be reported in a traditional way, not in the above-mentioned simplified regime. Thus, in case of theft, the supplier will have to report that he had moved the goods to the Czech Republic, for example, and that the goods had been stolen there.
- New code for supplies to another member state for the EC Sales List.

**More news in the area of VAT**

- Transfer of selected services and products to the reduced 10% VAT rate from 1 May 2020
- Catering services including serving soft drinks or draught (keg) beer
- Books, e-books and audiobooks, including lending
- Tap water and water / sewage
- Repair of footwear, leather products, clothing and textile products, bicycles
- Hairdressing and barber services
- Home care for children, elderly, sick and disabled citizens
- Window cleaning and cleaning services in homes

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## Tax package introducing changes in consumption and gambling taxes passed by the Chamber of Deputies

**On 6 November 2019, the Chamber of Deputies passed a bill amending selected tax legislation in relation to increasing the public budget income. The amendments concern, inter alia, consumption and gambling taxes. The bill will now be considered by the Senate.**

**Consumption taxes – significant changes in tax rates**

A significant change relates to an increase in alcohol tax rates. The alcohol tax rate in respect of alcohol contained in products under nomenclature code 2207 (such as products containing more than 80% of alcohol or alcohol products used as fuel), nomenclature code 2208 (such as whiskey, vodka, gin) and in other cases will newly be CZK 32,250 / hl of ethanol. Furthermore, the alcohol tax rate will increase to CZK 16,200 / hl of ethanol in respect of alcohol in fruit distilled liquor arising from growers' distillation in amounts of up to 30 litres of ethanol per grower in a single production period. Changes in tax rates are summarised in the table below.

| Products | Original rate | Amended rate |
|---|---|---|
| Alcohol in products listed under nomenclature codes 2207, 2208 and in other cases | CZK 28,500 / hl of ethanol | CZK 32,250 / hl of ethanol |
| Alcohol in fruit distilled liquor arising from growers' distillation in amounts of up to 30 litres of ethanol per grower in a single production period | CZK 14,300 / hl of ethanol | CZK 16,200 / hl of ethanol |

Another increase in tax rates will relate to tax on tobacco products when the percentage portion for cigarettes newly increases to 30%. The fixed portion of the tax rate will newly amount to CZK 1.61 / piece for cigarettes, CZK 1.88 / piece for cigars and cigarillos and CZK 2,460 / kg for smoking tobacco. Furthermore, the minimum tax rate for cigarettes should also increase to the aggregate minimum amount of CZK 2.9 / piece. In respect of heated tobacco products, the tax rate should increase to CZK 2.46 / piece. Changes in tax rates are summarised in the table below.

| | Original rate – percentage portion | Amended rate – percentage portion | Original rate – fixed portion | Amended rate – fixed portion | Original rate – minimum | Amended rate – minimum |
|---|---|---|---|---|---|---|
| Cigarettes | 27% | 30% | CZK 1.46 / piece | CZK 1.61 / piece | CZK 2.63 / piece | CZK 2.9 / piece |
| Cigars, cigarillos | | | CZK 1.71 / piece | CZK 1.88 / piece | | |
| Smoking tobacco | | | CZK 2,236 / kg | CZK 2,460 / kg | | |

The passage of this act may result in an obligation to change tax collateralisation arising for tax warehouse operators or authorised recipients in respect of recurrent receipts of selected product. Therefore, it is necessary to calculate an increase in tax collateralisation, if any.

Interestingly, the limit for beer produced by an individual in facilities for home production of beer will increase as well; newly, if the amount of beer produced in this manner does not exceed 2,000 litres on a calendar year and the beer is not sold by the producer, the producer will not be considered a taxpayer.

**Gambling tax – change in tax rate**

The tax package also includes a change in tax rate in respect of a partial tax base for lottery tax that should newly amount to 35%, rather than 23%. The original wording of the act intended to increase gambling tax rates also for other partial tax bases; however, several amendments have been made to the bill, ruling out other increases in tax rates from the bill.

**Further development**

At present, the bill will be considered by the Senate. The Senate may pass, reject or return it with amendments to the Chamber of Deputies. If the bill is rejected or amended by the Senate, the Chamber of Deputies will once again take a vote on the bill. Nevertheless, the wording of the act is anticipated to take effect from 1 January 2020.

If you wish to obtain more details from us, please do not hesitate to contact us.

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# Poland

## Withholding tax (WHT). Consultations on the direction of changes in the new withholding tax rules

**On November 4, 2019, we had the pleasure to participate in the meeting organized by the Ministry of Finance as part of consultations regarding the considered changes in the withholding tax (WHT) rules in Poland, i.e. the rules for collecting withholding tax on payments made abroad in respect of interest, royalties, dividends and the purchase of broadly understood intangible services. As part of the meeting, the main assumptions of changes to WHT regulations considered by the administration were presented.**

**The most important assumptions of the changes under consideration:**

1. **Limitation of the obligation to payment and the subsequent refund of withholding tax (or submission of the applicable management declaration) only to payments to related parties and only to payments of a passive nature (dividends, royalties and interest).** In this regard, the Ministry is considering whether to introduce a separate definition of a related party for the purposes of WHT, or whether to keep using the current definition used for the purposes of transfer pricing.

2. **Specifying the due diligence requirements in the contractor's verification process** (especially for the payments for intangible services). In this context, the Ministry is considering various options, from a return to the requirement to have a certificate of tax residence only to introducing the so-called "whitelist" of payment recipient countries to which certain simplifications and presumptions may apply. Work in this area will be continued.

3. **Extending the possibility of obtaining an advanced opinion** in withholding tax to cases of payments benefiting from preferences arising from double tax treaties (and not only Directives as per the current legislation).

4. **Limiting the number of persons signing the statement to apply preferential treatment** - the statement regarding not collecting withholding tax will be signed by the head of the entity in accordance with the rules of representation of the entity (and not by all members of the management board) and it shall have a longer validity period.

5. **Shortening the tax refund deadline** within the return mechanism up to 3 months (instead of the current 6 months). Potentially shortening the deadline would also apply to obtaining of an advanced opinion in WHT.

5. **Changes to the definition of the beneficial owner**. The Ministry has not fully presented the directions of these changes; works in this area is to be continued. The changes could be aimed at bringing this understanding closer to the legal doctrine developed under double taxation treaties. Unfortunately, the Ministry does not expect

to specify the conditions of the beneficial owner for holding companies (despite repeated demands in this respect).

6. **Modification of fiscal penal liability rules** by eliminating the penalty of prison sentence from the catalogue of sanctions for giving wrongdoing or concealing the truth in statements made pursuant to the provisions on the withholding tax.

**Next steps**
The Ministry predicts that the amendments to the regulations under consideration will most likely be adopted in the first quarter of 2020. The possibility of introducing these changes retrospectively from January 1, 2020 is under analysis.

According to the Ministry, 2019 should be treated as a transitional period and a general tax ruling should be issued with regard to the application of the provisions during this year. In particular, such general interpretation could include criteria for the fulfilment of due diligence requirements.

After the regulations are changed, the Ministry will issue the final version of tax explanations regarding the principles of withholding tax collection. At the same time, the Ministry emphasized that it is still open to further proposals for legislative changes in the field of withholding tax.

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## Quick fixes – Countdown to changes in VAT concerning intracommunity transactions begins. New regulations come into force as of 1 January 2020

**In a months' time a EU VAT reform commonly referred to as 'Quick Fixes' concerning certain cross-border transactions is to come into force in all EU countries. The amendments will be focused on VAT on intracommunity supplies of goods (ICS), cross-border chain transactions, and call-off stock arrangements.**

Taxpayers do not have much time to spare and the fact that legislators are still working on amendments to the Polish VAT Act which are to transpose some of the above changes are still in progress (the remaining modifications have been incorporated into EU regulations and will be applied in Poland directly) makes the situation even more difficult. However, draft Explanatory Notes published on the European Commission's website may be of assistance.

### Quick Fixes - 4 pillars

Just to remind you - quick fixes are designed to simplify the EU VAT settlements until the introduction of more thorough changes to the VAT Directive (planned to take effect as from 2023) under the so-called VAT definitive system.

In short, the new regulations will focus on **the following four areas of VAT**:

- EU cross-border chain transactions;
- changes in the operation of call-off stock arrangements across the EU;
- modification of the requirements for documenting EU cross-border movements of goods as part of intracommunity supplies;
- modification of the VAT registration requirements for buyers and recognition of intracommunity supplies in the recapitulative statement (condition to apply the 0% rate on ICS).

The changes above result from amendments to Council Directive (EU) 2018/1910 of 4 December 2018 and the EU implementing regulations (2018/1912 and 2018/1909).

### *1. Chain transactions within the European Union*

Quick Fixes introduce simplified and clearer rules so that parties to chain transactions should find it easier to determine (uniformly across the EU) how to tax their supplies of goods when the intermediary in a chain transaction is responsible for organising the transportation of goods. Under the new regime, among other things, the intermediary will need to provide his VAT ID number for the purposes of the transaction. In addition, Quick Fixes lay down certain new requirements that may necessitate introducing new procedures (e.g. for communicating the EU VAT number and the VAT treatment of transactions), if the entity carries out such transactions and plans to use the new relief.

Importantly, the new regime will not be applicable to analogous transactions with non-EU countries, which - in some cases - may be a considerable impediment to building a uniform model of supplies and VAT settlements in chain transactions.

### *2. Changes in the functioning of call-off stock arrangements within the EU*

The amendments aim to simplify the applicable regime by harmonising the VAT treatment of transactions carried out through call-off stock within the EU. The new regulations introduce uniform requirements in the scope of declaring the movement of goods from one EU country to a warehouse in another EU country, as well as the sale of goods from a warehouse (thus allowing suppliers of goods to avoid the obligation to register for VAT in the other EU country).

Furthermore, the new VAT rules set the maximum period over which goods may be kept in stock-off in order to enjoy the relief (12 months) and determine the scope of using the relief (as compared with the VAT law applied now to consignment warehouses in Poland, the new EU rules do not exclude the possibility to use simplified measures in respect of trade commodities). Quick fixes also specify how to record such transactions in the VAT register and the recapitulative statement.

If the new requirements are not met, the taxpayer may need to register for VAT purposes in the EU state of the call-off stock. Therefore, we recommend checking if the new regime applies to the transactions that the company plans for the future or regularly carries out.

### *3. Modification of the requirements for documenting EU cross-border movements of goods in intracommunity supplies*

The new EU Regulation also provides a standardised list of documents that the supplier needs to collect in order to allow the tax authorities to conclude that exportation of goods from Poland in fact, has taken place under ICS and that the goods have been supplied to a buyer in another EU member state.

The new rules and requirements laid down by the EU Regulation as regards the documents and the entities entitled to issue them in some aspects exceed what is currently recognized as sufficient to confirm ICS in many countries, Poland included. What is more, the said requirements may differ depending on who (the supplier or the buyer) is responsible for arranging the transportation.

Importantly, the EU Regulation does not need to be transposed into the national legislation and will be applicable directly in all EU member states. At the same time, neither the EU Regulation nor the draft Polish VAT Act directly stipulate that the currently binding rules of documenting intracommunity supplies of goods no longer apply. The Explanatory Notes prepared by the VAT Expert Group at the European Commission may be of assistance in this respect. As we have already mentioned, the Notes are not yet in their final form, but they may suggest plausible interpretative directions.

### *4. Modification of VAT registration requirements for buyers and recording intracommunity supplies in the recapitulative statement (condition for applying the 0% rate on ICS)*

According to the new VAT rules, in order for the Polish supplier to use the 0% VAT rate in a ICS transaction, the buyer of goods must provide his VAT number obtained in an EU country other than Poland for the transaction, and the transaction must be mentioned in the recapitulative statement.

Conversely, based on the judgements of the CJEU, under the previous legal system EU countries sometimes allowed the possibility of applying the 0% rate even if the buyer did not have a VAT registration in another EU country, but could prove that he actually acted as a VAT taxpayer in that country. The lack of the VAT registration was seen as a failure to meet a formal condition which did not automatically exclude the right to apply the 0% VAT rate.

As per the new regulations, it will be possible to apply the 0% VAT rate in ICS only if the VAT number of the buyer (from a country other than the country where transport begins) is reported (material condition).

At the same time, the new regulations introduce specific requirements in connection with reporting that VAT ID number in the recapitulative statements, non-compliance with which - as per the wording of the regulation - will deprive the taxpayer of the right to use the 0% VAT rate.

**Amending Act in a new version**

The changes brought about by the new wording of the VAT Directive need to be transposed into the Polish VAT regime.

Initially, the Polish VAT Act was to be amended by the Draft Amending Act of 11 June 2019. However, **a new Draft Act (of 07 October 2019)** has recently been published and it appears to differ slightly from the previous version. Among other things, it clarifies certain issues linked with allocation of a movable supply in chain transactions or loss of goods in call-off stock.

The Draft Act should take effect as from 01 January 2020, but it has recently been approved by the Committee for European Affairs at the Ministry of Foreign Affairs, and recommended for further legislative work at the Standing Committee of the Council of Ministers. What is more, the schedule of the Sejm and Senate’s meetings in the new parliamentary term is yet unknown.

**Draft Explanatory Notes of the European Commission**

In September 2019 the European Commission published Draft Explanatory Notes to Quick Fixes prepared by the Expert VAT Group at the European Commission. Their objective is to clarify certain issues linked with applying the new rules, provide guidance and potential interpretative directions.

Among other things, the Explanatory Notes discuss the rules of applying the new provisions of the EU Regulation (2018/1912) concerning the documentation of ICS. In line with the wording of the draft, if the ‘new’ documentation requirements contained in the EU Regulation are not met, the VAT payer does not automatically lose the right to the 0% rate on ICS, but may use other possibilities to prove that the goods have been exported to another EU country. Although only the draft version of the Explanatory Notes is available, and the Notes themselves do not constitute a source of law, they will probably be of assistance to taxpayers and tax authorities in EU countries when construing the new regulations.

**What should taxpayers be aware of?**

Taxpayers should analyse the planned regulations covered by the so-called Quick Fixes and the transactions that will be subject to them. In particular, they should check whether their transactions fall within the scope of the new regulations and whether they comply with all the obligations imposed. For example:

- Do the procedures in place at the company guarantee the application of the 0% rate to ICS?

- Do they allow the company to benefit from the call-off stock arrangements?
- Will it be required to register in the destination country?
- Wil it be necessary to change the VAT treatment of chain transactions?

In some cases, the changes may have a significant impact on the current VAT settlements, procedures applicable to transactions, rules of documenting them, and their VAT treatment.

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## Higher excise duty as of 01 January 2020. New draft legislation

**On 14 November 2019, the Sejm received a bill amending the Excise Duty Act which provides for an increase in the excise duty rates on ethyl alcohol, beer, wine, fermented beverages and intermediate products, as well as tobacco products, cigars and cigarillos, cigarettes and smoking tobacco. The excise duty on innovative products, which is to be effectively applied as from July 2020, will go up too.**

### New excise rates

The Draft Act provides that as of 1 January 2020, excise duty rates on certain excise goods are to be increased on average by approximately 10%. According to the assumptions underlying the draft, cider and perry with alcoholic strength not exceeding 5% should be excluded from the indexation - the preferential excise duty rate is to help in the development of this sector of the Polish economy and agriculture. No increase of the excise rate on liquids to e-cigarettes is foreseen either.

- for ethyl alcohol - from PLN 5704 to PLN 6275 per hectolitre of 100% vol,
- for beer - from PLN 7.79 to PLN 8.57 per hectolitre oPlato,
- for wine and fermented beverages - from 158 to 174 PLN per hectolitre,
- for intermediate products (including port wine) from PLN 318 to PLN 350 per hectolitre,
- for cigarettes - from PLN 206.76 per 1000 cigarettes and 31.41% of the maximum retail price up to PLN 228.10 per 1000 cigarettes and 32.05% of the retail price,
- for smoking tobacco - from PLN 141.29 per kilogram and 31.41% of the maximum retail price to PLN 155.79 per kilogram and 32.05% of the retail price,
- for cigars and cigarillos - from PLN 393 to PLN 433 per kilo,

- for dried tobacco - from PLN 229 to PLN 252.25 per kilogram.

The excise rate on innovative products will also go up, although they will be effectively taxed according to new rates later, i.e. as from 01 July 2020. Innovative products will be subject to the rate of PLN 155.79 per kilogram and 32.05% of the weighted average retail selling price of smoking tobacco.

**What does it mean in practice?**

Although the increase of the excise tax rates was expected, they are now higher than the government's earlier announcements – according to the draft state budget for 2020 that excise duty rates were to go up by about 3%. Raising the excise duty primarily means an increase in the price of the products concerned to be paid by consumers by approximately 12-14%, as the higher excise duty - which is part of the VAT taxable base - will also impact the amount of the VAT included in the price of goods.

Higher rates will also affect payers of the excise duty on products that are subject to the increase. In fact, the entities that conduct businesses involving such products will need to increase their excise collateral. Furthermore, the introduction of new rates will result in the need to adjust the accounting and recording systems used by entities that keep electronic records or submit electronic declarations; special care should be taken when issuing invoices and correcting invoices to document supplies of these products.

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## Amendments to the laws on Advanced Pricing Agreements

**New regulations concerning advanced price agreements (Act of 14 October 2019 on the settlement of disputes concerning double taxation and conclusion of advanced price agreements (Journal of Laws of 2019, item 2200) came in force on 29 November 2019.**

Generally, the new regulations correspond to the previously binding provisions of Section IIa of the Tax Code. As a rule, the new APA regime is beneficial for taxpayers and may contribute to making the APA procedure more friendly to taxpayers.

The most important changes in the APA procedure are as follows:

- the possibility for a foreign investor to file the APA application;
- limitation of the grounds for inadmissibility of decisions on advanced pricing agreements;

- the possibility to roll back the APA to cover the period from the beginning of the applicant's tax year in which the application is filed (roll-back period).

The changes introduced in the APA procedure are the result of the long-standing practice of applying the APA provisions.

### APA - an overview

An advance pricing agreement (APA) is a formal transfer pricing agreement between a taxpayer and a tax authority in which the authority accepts the choice and the mode of applying the transfer pricing method used in transactions with related parties. Such an agreement takes the form of an administrative decision. In the case of bilateral and multilateral agreements, the decision is preceded by an agreement concluded with a tax authority competent for the related entity. APAs are concluded with the Head of the National Tax Administration (KAS).

### Benefits arising from APA

- During the term of an advanced pricing agreement, the tax authority does not assess the tax payable (tax loss) insofar as the income (loss) reported by the taxpayer is determined in accordance with the agreement;

- Safeguarding the individuals responsible for conducting the taxpayer's affairs (mainly management board members) in the scope of correct application of transfer prices in transactions with related parties (within the scope of the transactions covered by the APA);

- APA releases the taxpayer from the obligation to prepare local transfer pricing documentation (as regards APA-covered transactions), which results in the lack of obligation to submit the statement confirming that the prices applied in transactions concluded with related parties meet the arm's length principle – thus, APA significantly limits the possibility for tax authorities to apply severe penal and fiscal sanctions;

- cancellation of the limit resulting from Article 15e of the Corporate Income Tax Act (in relation to transactions subject to that limit).

Before submitting an application for APA, an entity that wants to obtain an advanced pricing agreement may request the Head of the National Fiscal Administration to clarify doubts regarding the conclusion of such an agreement in the individual case, in particular the scope of the necessary information and the likely date of issue of the advanced pricing agreement.

### Summary of changes

<u>Possibility for a foreign investor to file APA application</u>

The new Act provides for the possibility for a foreign investor (natural person, a corporate entity or an organisational unit without legal personality) that is interested in establishing a related entity in Poland to file an APA application for this newly established entity. The said application may be submitted before the commencement of the transaction where the application concerns a future controlled transaction. However, if the domestic related party is not established by the date on which the advanced pricing agreement can be issued, the Head of the National Fiscal Administration will suspend the APA procedure. The Head of the National Fiscal Administration will resume the suspended procedure immediately upon receipt of information about the establishment of the domestic related entity or the final decision not to establish it.

Possibility to roll back the APA to cover the period from the beginning of the applicant's tax year in which the application is filed (roll-back period).

Advanced Pricing Agreement is issued for a period of up to 5 years. Under the previous APA system, at the taxpayer's request, APA could take effect from the date of submitting the application at the earliest, but according to the new regulations APAs may cover the period from the beginning of the applicant's tax year in which the application is filed.

In addition, a rule has been introduced whereby APA expires at the end of the applicant's tax year.

<u>Restriction of the grounds for inadmissibility of decisions on advanced pricing agreements concerning certain transactions</u>

The restriction of the ban on issuing APA decisions with respect to transactions subject to tax proceedings, tax audits, customs and tax investigations or proceedings before administrative courts (previously, Article 20c(2) of the Tax Code) is especially beneficial for taxpayers. Currently, this restriction concerns any period during the two tax years directly preceding the tax year in which the application is filed. Please note that the above restriction only concerns transactions covered by one of the above mentioned proceedings and not control/proceedings against the applicant such.

<u>Deadline for submitting application for APA renewal</u>

According to the new APA regulations, the application to extend the period of the advanced pricing agreement may be filed not later than six months after the end of the APA validity period. Under the previous legal regime such an application had to be submitted not later than six months before the end of the validity period.

<u>Formal requirements</u>

The scope of the information to be included in the application has not changed significantly as compared with the previous status. According to the explanatory statement accompanying the Draft Act, the terms used in the description of the elements of the application have been aligned with the terminology of the transfer pricing regulations introduced by the Amending Act of 23 October 2018 and the regulations defining the elements of transfer pricing documentation. The aim of the harmonization of the terms and aligning the scope of the information required in the local transfer pricing documentation and the APA application is to facilitate the process of preparing APA applications - as a result, companies will be able to use the information already included in the local transfer pricing documentation in their APA applications. The formal requirements for submission of APA applications have been adapted so as to allow filings by foreign investors.

An important change in this respect is that submitting an APA application no longer requires the related party's consent to provide documents and explanations in the course of the procedure. Until now, securing such consent called for obtaining the signatures of the authorised representatives of the related party which often (in the case of foreign related parties) prolonged the process of preparing an APA application.

In addition, an obligation has been introduced to attach copies of some parts of the APA application in an electronic editable format. This is aimed to streamline the procedure by making it possible to verify and process editable data (especially in the case of comparative analysis).

Verification of data contained in APA

Until now, the parties' compliance with the advanced proving agreement could only be checked by way of a tax audit (not to be confused with the ban on the tax authorities' assessment of the tax payable for the duration of the APA in so far as the income (loss) claimed by the taxpayer is determined in accordance with the APA). The new Act permits verification within the scope of inspection activities conducted by the Head of the National Fiscal Administration (with exceptions, as referred to in the following paragraph), which is a much less distressing and less formalised process (by way of the so-called verifying activities).

A tax audit to check the compliance with the advanced pricing agreement can be carried out in the case of APAs issued at the request of a foreign investor for the benefit of a related entity established in the territory of Poland and where there is a justified suspicion of non-compliance with the APA by related entities.

Transitional provisions

As per Article 123(1) of the new Act, the new regulations (set out in the Act of 14 October 2019) apply to APA proceedings and the proceedings related to renewal of APAs initiated but not concluded before the effective date of the Act.

In the case of pending proceedings, the Head of the National Fiscal Administration may request the applicant (Article 123(2)) to supplement the submitted application with information required under the new regulations (e.g. information on tax agreements or tax ruling decisions concerning the controlled transaction, including transfer pricing agreements concluded with or issued by tax administrations of other countries).

The Act also amends Article 15e of the Corporate Income Tax Act by repealing section 16. For more information on this subject, please refer to our August alert. The comments and information presented in the August Alert remain valid in relation to the provisions of the Act of 14 October 2019.

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