

ALBANIA  
BOSNIA-HERZEGOVINA  
CZECH REPUBLIC  
CROATIA  
BULGARIA  
HUNGARY  
CENTRALEUROPE  
LITHUANIA  
SLOVENIA  
POLAND  
SLOVAKIA  
ROMANIA  
KOSOVO  
SERBIA  
LATVIA  
ESTONIA

# Tax&Legal Highlights

**January 2018**

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## Albania

### 2018 fiscal package includes changes to corporate tax rate, VAT rate and incentives for certain sectors

Albania's fiscal package for 2018 introduces amendments to a number of the country's tax laws; the following summarizes the most important changes related to corporate income tax, VAT and local taxes. Unless otherwise stated, the new rules apply as from 1 January 2018.

#### Corporate income tax

- Companies that produce/develop software are subject to a corporate income tax rate of 5% (reduced from the 15% rate that was applicable through 31 December 2017). The Council of Ministers is expected to issue guidance that sets out the rules and procedures for the application of the reduced rate.
- Four and five-star hotels with "special status" are exempt from corporate income tax for a 10-year period starting from the date business activities commence, but no later than three years from the date the hotel obtains special status. To qualify for special status, the hotel must be on the internationally recognized brands, operate under a registered trademark and obtain special status by 31 December 2024.

#### VAT

- All supplies of services at five-star hotels/resorts (but not four-star hotels) that have special status are subject to a reduced VAT rate of 6% (until 31 December 2017, only the supply of accommodations was subject to the reduced rate). The Council of Ministers will determine the conditions, criteria and procedures for the application of the reduced rate.
- The Council of Ministers may issue a special decision that determines the tax period for specific categories of taxpayers, which may be longer than one month, but may not exceed a calendar year.
- The council may grant a VAT exemption for special categories of taxable persons or set different minimum VAT registration thresholds.

#### Local taxes

- **Tax on buildings:** The taxable base for the tax on buildings will be the market value of the building (currently, the taxable base is the surface area, as adjusted based on the location, age and purpose of the building), with the Council of Ministers establishing the methodology for calculating the market value. The tax rates will be as follows: (i) 0.05% for buildings used for habitation; (ii) 0.2% for buildings used for business purposes; and (iii) 30% of the relevant tax rate for an entire construction site for which a builder obtained a construction permit but failed to complete the construction

according to the deadline in the permit. The tax will be calculated as an annual liability and will have to be paid monthly (or in longer periods, depending on the category of the taxpayer). The Council of Ministers may authorize agents to collect the tax.

The following categories of buildings have been added to the list of buildings that are exempt from the tax:

- Residential buildings of heads of households who are retired or who live on social pensions, when the family consists only of pensioners;
  - Residential buildings of heads of households that benefit from social welfare;
  - “Social houses” (i.e. houses owned by or used by municipalities for persons who are on social welfare);
  - Buildings that are protected cultural monuments in accordance with the relevant legislation; and
  - Accommodation facilities in four and five-star hotels with special status, as defined in the tourism legislation.
- **Tax on immovable property:** A central registry, known as the fiscal cadaster, will be set up for the authorities to administer the tax on immovable property. The General Directorate of Property Tax, an institution under the responsibility of the Ministry of Finance, will manage the registry. The rules for the organization and functioning of this directorate will be approved by the Council of Ministers.
  - **Infrastructure tax:** Investments made for the construction of five-star hotels with special status will be exempt from the infrastructure tax (a tax imposed on new constructions).
  - **Appeal:** A local appeal mechanism will be established by each local unit (municipality), under which taxpayers can appeal decisions or actions of the local tax authorities. The rules and criteria for the appeals procedure are expected to be determined through a decision issued by the Municipal Council.

The rules relating to local taxes will become effective on 1 April 2018, except for the exemption from the infrastructure tax with respect to the construction of five-star hotels, which applies as from 1 January 2018.

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## Bulgaria

### New Concessions Act

**The new Concessions Act came into effect on 1 January 2018 and repealed the old Concessions Act and the Public-Private Partnerships Act**

The new Concessions Act seeks to harmonize Bulgarian concessions legislation with corresponding EU laws and to transpose Directive 2014/23/EU, Directive 2014/24/EU and Directive 2014/14. The new law grants concession granting authority to the Council of Ministers, municipal councils and mayors. There are three types of concessions – for construction, for services and for utilization of state and municipal property. The law imposes a maximum term of 25 years for concessions for utilization of state and municipal properties, while concessions for construction and services are not subject to any term limits.

### Amendment and supplementation to the Credit Institutions Act

**The changes aim to improve the regulatory framework of banking supervision by implementation of the recommendations of the report by the Financial Sector Assessment Program**

The changes introduce improvements to the risk management regime, applicable to related party expositions. They also introduce a new obligation on banks to notify the Bulgarian National Bank (the BNB) when they are made aware of circumstances, which could have a negative impact on entities, which own over 50% of the capital of the respective bank.

The amendment creates a mechanism for introduction of guidance, recommendations and other measures of the European Banking Authority into Bulgarian law, as well as a mechanism for the BNB to enact new requirements, criteria and other conditions with the force of law.

### Amendment and supplementation to the Labour Code

**The amendment aims to provide employees with additional protections in cases where their employers do not pay due salaries and compensations**

The changes reinforce the control functions of the General Labour Inspectorate Executive Agency by providing the authority with the right to carry out audits with respect to non-payment of salaries even after termination of employment and to issue binding prescriptions in this respect. In these cases, the authority will impose a term for execution of issued prescriptions. Non-compliance with the term will carry the legal interest. On the basis prescriptions, which have entered into force, employees will have the right to request that the Agency issue an order for immediate execution. This mechanism allows employees to bypass the slow and expensive court procedures and recover unpaid salaries in a much swifter manner.

Employers that owe due remunerations and compensations to their employees are no longer able to participate in public procurement procedures as contracting or sub-contracting parties.

The amendment also facilitates changes in the Commercial Act, which qualify the transfer of a company's going concern to a third party with the lack of unpaid due remunerations, compensations or mandatory social contributions to employees within said going concern. This qualification includes employees, who have had their employment terminated within the last three years prior to the transfer.

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## Czech Republic

### Upcoming Changes in the Income Taxes Act

#### What substantial changes may be expected this year?

As we already informed you in last year's issues of our bulletins, the Ministry of Finance is preparing a draft of a **completely new income taxes act**. The effectiveness of the new act is conditioned by a new IT system of the Financial Administration, the introduction of the institute of self-assessment and individualisations, ie distinguishing tax accounts up to individual natural persons-employees. Given the long term for the realisation of these projects, it is obvious that the act will not be completed in 2018, even though the Ministry of Finance may present some of its main ideas.

In the next few days, however, the Ministry of Finance is expected to put a **draft of a relatively substantial amendment to the current wording of the Income Taxes Act** to the comment procedure; this Amendment should, among other things, implement the so-called ATAD – EU directive laying down rules against tax avoidance practices. The period for the implementation of this directive is set for 31 December 2018. In the comment procedure, a relatively intensive discussion is expected, as the Amendment will bring quite significant changes for companies, those being mainly the following:

- New rules for the tax deductibility of interest and similar charges for all corporate income tax payers – tax deductibility of financial costs should newly be limited to a certain level of adjusted EBITDA (with 30% being mentioned) or by a threshold up to EUR 3 mil. (approx.. CZK 80 thousand);
- Introduction of controlled foreign company rules (so-called CFC rules) – additional taxation of selected income in case of subsidiaries based in states with a low taxation level at the level of a Czech parent company;
- Introduction of so-called exit tax – exit taxation, when a taxpayer moving his tax residence, business activities or assets from the Czech Republic would be taxed based on the market value of assets to be moved.

This Amendment is likely to also comprise other changes in income taxation. We will inform you about the specific wording of the proposed changes once the Ministry of Finance has presented the material to the comment procedure.

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## R&D Deduction – Further Requirements for Taxable Entities?

**In late 2017, a new judgment of the Supreme Administrative Court (hereinafter the “SAC”) was issued, raising further doubts among many taxpayers as to the accuracy of their current approach. Below is a brief summary of the principal points of the judgment.**

TRANSYS, spol. s r.o. (hereinafter the “Company”) lost a legal dispute with the Appellate Financial Directorate on the basis of the SAC’s judgment [10 Afs 77/2017 - 53](#). The subject matter of the dispute related to decreasing the tax liabilities arising from the application of the R&D deductible item in the Company’s additional tax returns and the subsequent challenging of the lawfulness of the R&D deduction by the tax administrator.

In its judgment, the SAC addressed a number of critical matters. The SAC opines that the Company did not have stand-alone expense records and failed to bear the burden of proof in contending that the Research and Development Project (hereinafter the “Project”) as the critical document in applying the tax deduction had been signed before development activities commenced. In both cases, these requirements are explicitly required by the Income Taxes Act and, as indicated by the SAC’s previous judgments, if the taxable entity fails to defend compliance with these conditions, the tax deduction is rejected in full. Among other things, the doubts concerning the late signing of the Project arose from the fact that the internal bookkeeping policy did not contain any information that R&D expenses would be accounted for by the Company, as well as that the Company applied the R&D deduction by means of additional tax returns.

Furthermore, the tax administrator contested a failure to comply with a number of the Project’s formal requirements. According to the SAC, the Project was prepared at an overly general level, being only specified by means of particular sub-projects arising from particular engagements performed by the Company for specific customers; the SAC opines that these engagements were not mutually interconnected. The SAC agreed with the tax administrator in that the Project activities and objectives were too general and the setup of their assessment was insufficient. What is more, the Company failed to demonstrate that, in practice, evaluation reports were always issued subsequent to the completion of individual sub-projects as defined by the Project.

In this context, it should be noted that the Project is a prospective (i.e. planning) document which must be signed prior to the commencement of R&D activities. Neither the Income Taxes Act nor other legislative sources provide the required scope of specification of the planned activities, including the manner of their assessment. A taxpayer is therefore confronted with a difficult task: to draw up the Project before implementing any activity and, on the other hand, describe the Project with the sufficient level of detail. Taxpayers are thus trapped and the optimum way out is rather difficult to find. Although the SAC agreed with the Company that there is no legal regulation explicitly stipulating the duty to include in the Project a detailed description as regards the development task solution, the SAC does not consider it convincing and assessable to define the Project goals at a general level, allowing one to categorise an unlimited number of future engagements under that goal.

Therefore, it was not even to the Company’s advantage that it had a binding assessment issued by the tax administration in respect of expenses that were subsequently claimed by the Company in the relevant additional tax returns.



The SAC emphasised that in this case, the tax administrator did not examine for the purpose of a binding assessment whether the Project's formal requisites had been actually met. A failure to comply with the Project's requisites took precedence over the tax administrator's decision concerning the binding assessment.

To a certain extent, the judgment referred to above thus contributes to the current contradictory sentiments in society. On the one hand, research and development support is proclaimed at both national and EU levels but on the other hand, tax authorities and courts do not address the substance of the taxpayers' activity even though it can meet the definition of development. It is therefore necessary to answer the question whether the (sometimes exaggerated) adherence to the formal elements of the deduction, which is substantiated by eliminating potential speculations of taxable entities or by misusing the R&D deduction, is in line with the proclaimed support of R&D deductions and meets the requirements for unambiguity, comprehensibility and transparency as the essential elements of the current tax system.

In order to respond to the increasing requirements for applying the R&D deduction on an on-going basis, a sophisticated software solution, the R&D Calculation Tool, has been developed. Click [here](#) if you wish to learn more about the tool's applicability in our clients' environment.

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#### Including VAT in the tax base for the calculation of property acquisition tax

**The Financial Administration confirmed that the tax base for the calculation of property acquisition tax should not include value added tax, not even when the tax payer is the acquirer.**

In mid-2016, the Supreme Administrative Court ("SAC") decided that the tax base for the calculation of property acquisition tax under the provisions effective until the end of October 2016 should not include value added tax ("VAT").

As we have informed you in the past, the Financial Administration then issued a statement that it would accept this decision of the SAC for the purposes of determining the tax base for the period from 1 January 2014 to 31 October 2016, when the payer of property acquisition tax was the transferor. However, the SAC did not deal with situations when the acquirer was the taxpayer. In this respect, the Financial Administration issued a statement on 24 November 2017 which confirmed that the above method would also be applied to cases where the acquirer (most commonly the purchaser) is the taxpayer and even for the period from 1 November 2016.

Based on the above decisions of the SAC and the approach of the Financial Administration, it is possible to file additional property acquisition tax returns for cases where VAT was included in the tax base. The additional tax return may be filed no later than three years of the day when the time limit for filing the tax return elapsed (i.e. currently / until the end of

January 2018, additional tax returns may be filed for cases where the time limit for filing the regular tax return elapsed on 31 January 2015).

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### Application of the Amended Foreigners' Residence Act in Practice

**Effective since 15 August 2017, Act No. 222/2017 Coll., amending Act No. 326/1999 Coll., on Foreigners' Residence in the Czech Republic, has come into force.**

As we have already informed you, the greatest changes introduced by the amendment primarily relate to the transposition of EU directives into Czech law. The majority of EU member states have already transposed the directives to their systems, yet their practical applicability in the Czech Republic has so far been limited.

### Intra-Corporate Transferees' Cards (ICT Card and Mobile ICT Card)

The cards make it possible to assign a non-EU country employee to the territory of the EU/EEA or Switzerland as part of the corporate group. In the Czech Republic, the ICT Card entitles the holder to residence and performance of work.

### Investor card

Furthermore, the amendment introduces new residence institutes: the Investor card, designed for entrepreneurs planning to stay in the Czech Republic for over ninety days and intending to make a major investment in the Czech Republic, i.e. of a minimum of CZK 75 million, and to create at least 20 jobs for Czech and EU citizens.

### Employee Card

The amended act also affects the practical application in respect of employee cards.

### **Institute of an Unreliable Employer**

The amended act has introduced what is referred to as the institute of an unreliable employer. An employer may be designated as unreliable if, for example, they have run a debt to the Czech authorities, their activities do not comply with those registered in the Register of Companies, its registered office is fictitious etc.

Deloitte's view: As the Ministry has stated, no regularly updated list of unreliable employers exists. The employer referred to as unreliable will not be informed of the fact by the Ministry of the Interior but it may constitute grounds for rejecting a foreigner's application filed in relation to the employer.

The fact that the employer had been previously designated as unreliable is not a reason for designating the employer as generally unreliable in the future as well. Therefore, the assessment as to the employer's unreliability is always performed as part of the specific ongoing proceedings in respect of the application, which we see in a positive light.

### **Filing Applications at Representative Offices of the Czech Republic Abroad**

The amended Foreigners' Residence Act gives Czech representative offices greater responsibility in accepting visa and residence permit applications.

Going forward, we will keep you updated about other practical implications of the amended act as well as about other immigration-related news.

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#### **New Treaty between the Czech Republic and Korea Signed**

On 12 January 2018, the Czech Republic and Korea (Rep.) signed a new Double Tax Treaty. Once in force and effective, the new treaty will replace the former Czechoslovakia - Korea (Rep.) Double Tax Treaty from 1992, in relations between the Czech Republic and Korea (Rep.). The details of the changes contained in the new Treaty will be presented in the next issues of Report.

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### Tax Treaty with Taiwan

The negotiations regarding the double tax treaty between the Czech Republic and Taiwan had been ongoing for seven years (the process started in 2010). The long-term negotiation process was attributable, inter alia, to the specific international-legal position of Taiwan which made it impossible to enter into a standard double tax treaty because the Czech Republic does not recognise Taiwan as an independent state since China has been making a long-term claim on its territory.

Each of the parties had slightly different ideas about how to tackle the situation. Taiwan is an important export destination for the Czech Republic, with, for example, large quantities of cars and luxury glass being exported there each year. At the same time, almost 30 Taiwanese firms have made investments in the Czech Republic, specialising namely in the manufacture of electronics.

The parties reached consensus at a meeting on 12 December 2017 through their representative bodies, the Czech Economic and Cultural Office in Taipei and the Taiwanese Economic and Cultural Office in Prague.

Based on the concluded treaty, unilateral measures will be prepared in order to reciprocally implement the provisions of the treaty. The Czech Republic is likely to implement the treaty through the adoption of a special act, the wording of which may also have a direct impact on the legal regulations on income taxation.

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## Estonia

### New lease standard may bring additional obligations

**IFRS 16 is a new lease standard, which requires lessee to recognize right-of-use assets stipulated in lease contracts on its balance sheet as when signing lease contracts, the lessee gains the right to use the leased assets (assets user rights as immaterial assets) and associated liability arises for payments to lessor for using the asset (liability arises from right to use).**

New lease standard may bring additional obligations

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Exception applies to assets with acquisition costs under 5000 dollars (the value is measured as the asset would be new/unused) and to short-term assets (under 12 months). The new standard will be effective as of 1st of January 2019 or later together with possible transitional measures. Currently it is not known when the new standard will be implemented to Accounting Standards Board guidelines (Estonian financial standard). Many Estonian companies already prepare reports based on IFRS (EU), for example subsidiaries of international groups, who prepare accounting according to Estonian financial standard, but group reporting based on IFRS.

The new lease standard will most likely affect a lot of companies operating in Estonia. Even though terms "operating lease" and "financial lease" will be replaced with single term "lease" in financial reporting, then from value added taxation perspective the economic content of the transaction and type of lease remain important. Therefore, in case lease transaction is considered as a financial lease (regarded as supply of goods) according to Estonian VAT Act, then VAT is paid upon the transaction and in case of operating lease (regarded as supply of service) on a monthly basis. The new lease standard may also bring detailed transfer pricing documentation preparation obligation. Estonian regulation No. 53 issued by Estonian Ministry of Finance on 10th November 2006 "Methods for determining the value of transactions conducted between associated persons" (hereinafter the Estonian Regulation) §18 stipulates the transfer pricing documentation obligation for following companies:

- for a resident credit institution, insurance undertaking and company listed on a stock exchange;
- if one transaction party is a person situated in a low tax rate territory;
- for a resident business association or nonresident being active in Estonia via a permanent establishment, having together with its related persons 250 or more employees including related persons, or having a turnover or 50 million Euros or more including related persons in the financial year preceding the transaction, or having a consolidated balance sheet total of 43 million Euros or more.

As companies balance sheets will increase due to new lease standard, then it is essential to monitor whether consolidated balance sheet equals or exceeds the value of 43 million euros. In case the criteria is met, then detailed transfer

pricing documentation needs to be prepared based on requirements stipulated in the Estonian Regulation (§ 18). Thus, it is important to consider and analyze in an early stage how the new standard could affect companies and consult with specialists if necessary.

#### **Estonian tax authority released new guidelines**

As of January 2018, the Income Tax Act amendments came into force and the Estonian Tax authority will now have more specific grounds to tax the loans granted by Estonian companies to their parent or sister companies, in cases where circumstances indicate that in substance the loan may be a hidden profit distribution.

New Income Tax Act also includes obligation to declare quarterly information on loans granted to the related parties as well as monthly reporting obligation about hidden profit distribution.

The guidelines are, at the moment, only in Estonian and could be found here: <https://www.emta.ee/et/ariklient/tulu-kulu-kaive-kasum/muudatused/varjatud-kasumieraldise-maksustamine-alates-1-jaanuarist>

#### **Tax amendments regarding sole proprietors**

The Law on Amendments to the Social Tax Act and the Income Tax Act announced at the end of the year 2017, will create a more favorable tax environment to the sole proprietors (FIE). For example, the maximum limit on the social security contributions required to be paid by sole proprietor is reduced to a factor of 10 times the minimum monthly salary of a tax year; sole proprietors have the right to deduct the cost of entertaining guests on the same basis as businesses; sole proprietors may deduct the amount of expenses exceeding the current period's business income from the future business income up to nine subsequent tax periods; and the amount of social tax that exceeds the taxable business income will be transferred to the following tax periods.

#### **VAT act states a new threshold for mandatory registration as VAT taxable person**

As of year 2018, the obligation to register as VAT taxable person arises, when taxable supply carried out by a person exceeds 40,000 euros (until the end of 2017 the threshold was 16,000) as calculated from the beginning of a calendar year. Also, some specifications are made on what is considered as taxable supply. The main reason for the change is to support the business activities of relatively high number of small businesses in Estonia by reducing the administrative burden of preparing and submitting VAT returns. Still, taxpayers may voluntarily register as a VAT liable before exceeding the threshold.

## Tax treaty ratified between Estonia and Kyrgyz Republic

Agreements between the Government of the Republic of Estonia and the Government of the Kyrgyz Republic; and between Japan, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income were ratified in the end of December 2017.

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## Hungary

### Regulatory changes pertaining to cross-border transactions

In this newsletter we have summarised the key details of the modifications adopted by European Council in December pertaining to the simplification of the cross-border supply of products and services.

**On 5 December 2017 the European Council adopted the new regulation, which facilitates easier VAT compliance for companies engaged in the online, cross-border supply of products and services.**

#### Electronic trading

One of the greatest achievements of the regulation is that it extends the system of MOSS (mini one-stop-shop) – which currently only applies to distant services – to distance product sales from 2021. This development may greatly reduce the administrative burden of companies supplying to other EU member states.

What is the current procedure?

Under the current regulation the supplier may decide whether to pay VAT according to the buyer's member state on the whole amount or only above the limit prescribed in the given member state (this is typically around EUR 35 thousand). For example, it could be reasonable for a Hungarian supplier to pay VAT at a rate lower than the Hungarian 27%, but several administrative costs are added to that while obtaining a VAT number in the given member state and meeting all the relevant administrative requirements. In the light of the above it is not sure that the other member state's VAT is a reasonable choice below the value limit.

#### What is the system like from our perspective?

Suppliers from the other member state may have a competitive advantage against Hungarian counterparts if they can offer lower prices using their own VAT rate in addition to the costs of supply. They are required to apply the Hungarian rate after exceeding the value limit (EUR 35 thousand), but in practice it is difficult to enforce such a limit.

#### What does the change mean?

As a general rule, the supplier is required to pay VAT according to the member state of the buyer from the first euro on. This could eliminate distortions of competition and ensure balanced positions in terms of VAT.

The new system removes the administrative burden by stipulating that companies under the MOSS are exempted from the VAT registration obligation related to the member states affected by their activities. Accordingly, rather than filing VAT returns by member states, companies are only required to file a VAT return in the member state where they are registered with the actual place of consumption and VAT of the supplies specifically indicated.

The Council believes that by extending the MOSS system to distance sales, companies concerned will be able to save about 95% of costs related to VAT liabilities. At the same time – in harmony with the EU's former intention that transactions should be taxed in the member state of actual consumption –



the member states concerned may expect increasing VAT income due to the more transparent regulation.

In addition to the above, as a way of further simplification, under an EUR 10,000 sales limit start-ups and SMEs may apply the VAT rules of the member state of their registration (instead of those of the member state of consumption), which will further decrease their administrative obligations.

### **What happens to goods coming from third countries?**

Under the current system – greatly simplified – products from third countries are classified as follows:

- no VAT and customs duties are incurred between EUR 0-22
- between EUR 22.1-150 no customs duty applies but the shipment is subject to a 27% VAT
- above EUR 150 the customs duty applies according to the commercial customs tariff + 27% VAT

The regulation also abolishes the import VAT exemption of supplies from outside the EU under EUR 22. The entry of these goods to the EU is currently exempt from import VAT despite the fact that their sale within the EU – irrespective of the value – is subject to VAT, which gives way to significant imbalances and fraud.

#### Distance services

In the field of services the reform has already taken place and VAT is charged based on the place of consumption from the first EUR, without significant administrative charges. However, certain rules (e.g. compliance with the rules of documentation of the buyer's member state) still proved to be an administrative burden. Accordingly, from 2019 companies currently supplying distance services under the MOSS system may apply the VAT rules of the country of their registration basically in all respects (invoicing rules, document storage etc.).

### **New non-refundable R&D grant options also for large companies**

**We wish to draw your attention to two new calls for applications published on 9 January 2018 by the National Research, Development and Innovation Office offering non-refundable grants for the R&D projects of SMEs and large companies:**

**The call for applications entitled Grant for the R&D&I Activities of SMEs and Large Companies (2018-1.1.2-KFI) provides a non-refundable grant between HUF 100-600 million for R&D projects to be implemented in the Central Hungarian region.**

**Under the call for applications entitled Competitiveness and Excellence Cooperation (2018-1.3.1-VKE) a grant of up to HUF 1.5 billion may be requested for R&D projects organised by the consortium of companies and R&D organisations.**

Under the new call (2018-1.1.2-KFI - grant for the R&D&I activities of SMEs and large companies) large companies and SMEs are entitled to non-refundable grants in the Central Hungarian region (Budapest and Pest county).

The aim of the grant is to facilitate the R&D&I activities of innovative businesses through the funding of in-house development of exportable and

marketable new products, services and technologies. The grant budget is HUF 20 billion.

Grant applications are welcome from independent companies or consortia of 3 members as a maximum.

Amount available per application: HUF 100-600 million. The grant is provided at a rate of 25-60% for experimental development and 50-80% for applied research depending on the size of the company and the efficiency of cooperation.

The project receiving the grant shall produce a prototype, marketable product, technology or service that can be utilised at a rate equalling 30% of the grant amount as a minimum within two years. Under the project the experimental development may be individually supported, and other eligible activities include industrial research, procurement of tools, marketing, protection of industrial right as well as infrastructural investments.

Companies shall submit the applications by 14:00 15 May 2018 (if the grant budget is not depleted before), and results are expected to be announced on 31 August 2018.

R&D grants to facilitate the cooperation of Hungarian companies and research and education organisations.

The new call for applications (2018-1.3.1-VKE – Competitiveness and Excellence Cooperation) offers non-refundable grants for R&D projects implemented by way of a consortium in Hungary.

The aim of the grant is to facilitate long-term, sustainable strategic cooperations between Hungarian businesses and research agencies that yield scientific results with business utilisation.

The grant budget is HUF 26 billion.

Maximum 5-member consortia may submit applications if the members have registered offices or branches in Hungary, they are business or non-profit organisations, and higher education institutions or government agencies that qualify as research and education organisations.

The amount of the grant per application is HUF 500 - 1500 million maximum. The rate of the grant for businesses is 25-100% depending on the activity and the size of the company.

The project receiving the grant shall produce a prototype, marketable product, technology or service that can be utilised at a rate equalling 30% of the grant amount as a minimum within two years on the consortium leader's level. The grant may be provided for applied research and experimental development, as well as basic research, coordination activity, marketing, procurement of assets and intangible assets and the protection of industry rights.

Grant applications may be submitted until 28 February 2018, 14:00. Expected date of announcing the results is 18 June 2018.

### Detailed rules of online data reporting have been published

**The draft amendment of the Ministry decree on invoice data reporting has been published on the Government website together with the technical system requirements.**

**There is a short period of six months to prepare for the changes. Deloitte is ready to fully assist its clients in this process.**

The draft amendment of the Ministry decree on invoice data reporting has been published on the Government website together with the detailed technical system requirements. There is a short period of six months to prepare for the changes, and Deloitte is ready to fully assist its clients in this process.

Taxpayers have been waiting for the information that is now available on the government website with respect to the online invoice data reporting obligation. You will find the draft decree which provides the regulatory background for the new obligation, and two further documents addressed typically to developers with all the relevant system requirements. The draft decree precisely lays down the steps of data reporting, responses in case of successful or erroneous data supply, repeated reporting after an error was remedied, as well as protocol to follow in case of a system breakdown.

This Government information confirms that the obligation is effective as of 1 July 2018, which gives us less than six months for preparation. Deloitte is ready to support its clients and has developed a solution (with various functionalities based on individual needs) which ensures compliance with the statutory obligations and provides support services for the implementation and updating of the software.

You will find more information with respect to VATOnline, the software that helps you meet the online invoice data reporting obligation on our website (<https://www2.deloitte.com/hu/hu/pages/ado/solutions/VATOnline.html>), and we are also pleased to present this solution at a personal meeting. Also, Deloitte is happy to help its clients that develop their own solutions but need assistance with the implementation either in terms of legal interpretation or technical issues.

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## Poland

### Transport package – amendment in progress at the Sejm

**On 5 January 2018, the Sejm received a bill amending the act on the system of monitoring the road transport of goods and some other acts (hereinafter: "draft" or "amendment"), which introduces new regulations in the field of the so-called transport package.**

The planned amendment of regulations is to introduce an extension of the obligation to monitor the transport of goods also by rail transport. Attention should be paid to the other very important modifications introduced in the draft.

#### **Extension of the obligation to railway transport**

The purpose of extension of the obligation to railway transport is to ensure more effective monitoring of the transport of goods sensitive to the state budget revenues. The reason for introducing this regulation was the fact that the number of transported products by rail increased significantly in 2017, as compared to 2016.

The draft introduces a new definition of freight transport. It will be understood as transport on a public road or on the national rail network. In the case of railway transport the definition of a vehicle considers a railway vehicle without a driver (wagon), while the driver will be a train operator - a person operating the railway vehicle with a driver.

In the case of a declaration of carriage of goods by road, the railway freight carrier will be obliged to provide additional data in the application, such as: (i) train number, (ii) unified wagon code, or (iii) location of the railway siding on which the inspection can be carried out, located closest to the place of delivery of the goods or the destination where goods are to be transported within the territory of the country.

However, rail transport will be less flexible when it comes to the possibility of stopping the vehicle, which results from the nature of rail transport. The regulations do not provide for carrying out inspections during transport on the entire railway network, and will be implemented e.g. on railway sidings at the place of delivery of goods or in railway customs offices.

#### **Withdrawal of PKWiU and changes related to classification to CN codes**

The draft assumes the withdrawal from grouping of goods in accordance with the Polish Classification of Products and Services (hereinafter: "PKWiU" as Polska Klasyfikacja Wyrobów i Usług), while remaining in determining the type of goods based on the Combined Nomenclature (hereinafter: "CN"). The amendment is to allow reduction of administrative burdens and interpretation doubts during the application of the provisions of the Act on the transport package (mainly resulting from alternate use of PKWiU and CN).

It is worth noting that according to the current wording of the draft, the transport of goods under codes CN 2905 and 3824 will be subject to the transport monitoring system, provided that these goods are listed in Appendix 1 to the Excise Tax Act, regardless of their purpose.

In line with the justification for the amendment, the above amendment aims to clarify the provisions. The proposed changes were intended to cover only products under CN 2905 and 3824 codes that are excise goods with the monitoring obligation.

Additional changes have been anticipated for products under CN 2707 and 3814 codes which, according to the draft, will not be subject to monitoring if they are transported in unit packaging of not more than 11 liters.

### **Group declarations**

At present, the declaration of the carriage of goods concerns a specific quantity of the same type of goods transported from one sender of the goods to one recipient of the goods, to one place of delivery of the goods, by one means of transport. This means that the declaration cannot cover goods with different four-digit CN codes, e.g. 2710 and 3403. The new form of the declaration will allow sending one declaration to the register in the case of different goods (various four-digit CN items) to one recipient and to one place of delivery in one means of transport. It will therefore be able to declare goods from various CN codes, e.g. 2710 and 3403, provided that the quantity of each exceeds 500 kilograms or 500 liters.

The text of the draft, however, shows that cases where one declaration may include several deliveries with different CN codes will be specified in the Ordinance of the Minister of Development and Finance, issued on the basis of the amended Act.

It will be possible in some situations, taking into account above all the nature of the type of transport, accompanying technical conditions, the specificity of transporting a given good or the type of transaction to be declared.

In addition, for some transports of goods, the obligation to submit a registration request may be excluded. This right will be possible in relation to all or part of the obligations under the Act. For example, the exclusion of the obligation may include supplementing the declaration or updating it.

However, in the case of this exemption, restrictions must be borne in mind. Despite the lack of detailed information on the conditions of its application, it was pointed out that the list of goods that may be exempted will be specified in the regulation of the Minister of Development and Finance, based on the statutory delegation, which was specified in the draft.

### **Medical products**

The amendment provides for extension of the catalog of types of goods that are to be subject to the goods monitoring system, for medicinal products, special foods and medical goods. According to the justification for the amendment, these products are threatened by the lack of availability in Poland in connection with their export abroad, which determines their inclusion in the scope of the Act. A list of such products and goods shall be announced by the minister competent for health matters at least every 2 months, by means of an announcement.

### **What's next?**

The regulation is to enter into force after 14 days from the day of announcement. Currently work is underway in the Sejm, the draft is still in the first reading.

The draft is, among others, a response to postulates of entrepreneurs – the amended provisions introduce many changes and explain significant interpretation doubts. The way in which entrepreneurs will benefit from the new regulations in the future depends on the appropriate preparation.

However, it should be noted that the Act will extend the obligations related to the monitoring of transport to other industries and means of transport. Therefore, we recommend considering the implementation of appropriate procedures or mechanisms for managing the company's risk. Training for employees or amendment of contracts with contractors may be necessary first of all for railway carriers. At the same time, it is very important that companies from the pharmaceutical sector introduce appropriate mechanisms, mainly due to the recent rapid pace of legislative work and relatively short vacatio legis.

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### **Amendment to the Act on Foreigners. Implementation of the ICT Directive on intra-corporate transferees and their mobility in the EU**

On 12 February 2018, the provisions of the amended Act on foreigners implementing in the Polish legislature the provisions of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and stay of third-country nationals as part of an intra-corporate transfer come into force. (Journal of the EU L 157 of 27 May 2014, page 1), hereinafter referred to as the ICT Directive. The provisions of this directive are part of the common migration policy within the EU, and their main purpose is to facilitate – third-country managerial staff, professionals and trainee employees – entry into the EU as part of an intra-corporate transfer (related parties) and moving towards work in related parties in other EU countries (the so-called mobility).

Work on a comprehensive amendment to the Act on foreigners ended at the end of November 2017. The Act of 24 November 2017 amending the Act on foreigners and certain other acts (Journal of Laws of 12 January 2018, item 107) was signed by the President in December 2017 and published in January 2018. In addition to the provisions related to the implementation of the ICT Directive, the amendment also includes other important changes related to the legalization of stay of foreigners in Poland, which come into force as early as next month or from 1 January 2019.

### **Transfer of employees within related enterprises (Intra-corporate transfer) and mobility within the EU**

The ICT Directive was adopted to facilitate mobility for intra-corporate transferees within the EU ('intra-EU mobility') and to reduce the administrative burden associated with working in several Member States. To this end, the Directive establishes a special intra-EU mobility scheme according to which the holder of a valid intra-corporate transfer permit ('ICT permit') issued by one Member State has the right to enter, stay and work in one or more Member States in accordance with with regulations regulating short- and long-term mobility.

EU mobility provisions are implemented for third-country nationals who are employed by international entities located outside the EU and qualify as formerly mentioned personnel (managers, specialists and trainees) and then transferred to affiliates of an international company for temporary work on the territory of EU Member States. After completing the ICT transfer, which lasts a maximum of three years (one year for trainees), the employee must return to the parent company or other affiliate with a seat outside the EU. The ICT Directive should be implemented to the legal orders of individual EU member states until 29 November 2016. Despite this deadline, some Member States are still working on the implementation of mobility provisions (including Belgium, Sweden, Greece and Finland). It is also worth noting that some Member States have exempted from the obligation to implement the Directive: Denmark, Ireland and the United Kingdom.

**Temporary residence permit for the purpose of carrying out work as part of an intra-corporate transfer and for the use of long-term mobility**

As part of the amended provisions of the Act on foreigners, a new category of temporary residence permit has been added for foreigners who work with a foreign employer established outside the EU and their first or longest stay within the framework of an intra-corporate transfer will be a stay (and work) in the host entity Poland. However, obtaining a temporary residence permit requires a number of formal conditions to be met by a foreigner, including possession of relevant professional qualifications and experience necessary in the host entity, or a specified length of service in the parent entity before the transfer (at least 12 months in the case of a managerial or specialist employee and 6 months in the case of working as an employee during internship).

A residence permit for the use of mobility is another new category of permit introduced as part of the amendment. Mobility is understood as the entitlement of a foreigner to enter and stay within the territory of an EU Member State in order to perform work as a manager, specialist or an intern in a host entity based in a given EU country as part of an intra-corporate transfer that results from having a foreigner of a residence permit of ICT issued by another EU country than the one in which he/she uses mobility. Permits to use long-term mobility (over 90 days) are granted for a period not exceeding the period of validity of the ICT residence permit held by another foreign national, issued by another EU country, with the proviso that the internship permit is granted for up to one year.

In contrast to the immigration procedures currently in force for obtaining a temporary residence permit by foreigners in Poland, the receiving unit is the only party to the proceedings. This means that the application for a temporary residence permit is issued by the host entity having its registered office on the territory of Poland to the voivode competent for the headquarters of this entity. Therefore, a foreigner who will be involved in a

transfer within a group of enterprises, is not obliged to appear in person at the office to submit an application for a residence permit, as in the case of other residence procedures. A residence permit should be issued by the competent voivode within 90 days of submitting the application along with the documents required in the process. After obtaining a residence permit, the foreigner applies to enter the territory of Poland based on a special entry visa and upon arrival can apply for a residence card in Poland (with the entry "ICT").

### **Short-term mobility**

In order for a foreigner to benefit from short-term mobility within the territory of Poland (up to 90 days of stay in the period of each 180-day interval), the entity hosting the given employee as part of the transfer within the group in another EU country (which has issued the ICT permit) should submit a notification in Polish to Head of the Office for Foreigner Affairs in Poland with information that the foreigner intends to use mobility and work within the territory of Poland for the given hosting entity. In the case of the short-term mobility procedure, no residence permit is issued by the local voivodship office, and the foreigner may legally enter and stay within the territory of Poland based on a residence card (with the "ICT" note) issued by another EU member state.

### **Other important changes concerning the legalization of stay of foreigners in Poland**

The amended regulations introduce the possibility for foreigners to apply for a temporary residence permit and work from the beginning of 2019, if the purpose of their stay in Poland is to perform work **in the profession desired for the Polish economy**. To grant this type of temporary residence permit, the starosta's information about the lack of meeting staffing needs (the so-called local labor market test) will not be required. The list of professions desired for the Polish economy will be specified in the ordinance to the act by the minister competent for labor issues in agreement with the minister of economy, taking into account the needs of the labor market for professions for which there is a deficit of employees in the entire country. Foreigners who have a permit to stay and work in occupations desired for the Polish economy, will be able to stay out of work for a maximum of three months and no more than twice during the period of validity of the permit (without the threat of withdrawal of residence permit). However, the biggest benefit of having this type of temporary residence permit will be the possibility of applying for a permanent residence permit after 4 years of residence in Poland on the basis of a temporary residence permit and work in the profession desired for the Polish economy.

Another change introduced to the Act on foreigners is the establishment of a legal framework enabling control and management of migrations of foreigners to Poland for purposes related to the performance of work and running a business – the possibility of imposing limits in the future on issued residence permits for foreigners in connection with work, business activity or as part of an intra-corporate transfer. Regulations providing the possibility of imposing limits by way of an ordinance by the minister in charge of internal affairs shall come into force from 1 January 2019.

The amendment to the act is also aimed at improving some of the existing immigration procedures, taking into account the practical experience of offices and foreigners in the application of the current regulations. Certainly, the introduction of new duties for foreigners in Poland should be noted, the



most important of which seems to be the introduction of the **requirement of knowledge of the Polish language** in the case of foreigners applying in Poland for a long-term resident's EU residence permit.

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### Introduction of a new daily reporting obligation. On 13 January the regulations of the Act on STIR (Teleinformation System of the Clearing House) came into force

On 13 January 2018, the provisions of the Act amending certain acts in order to counteract the use of the financial sector to tax fraud (the "Act") published on 29 December 2017 in the Journal of Laws, entered into force. The provisions of the new act are introduced by STIR ("IT System of the Clearing House"). The changes provided for in the Act are related not only to the introduction of a new obligation to report daily on the opened and closed accounts of qualified entities, or transactions carried out with their use, but also with changes to the existing regulations. We encourage you to familiarize yourself with the preliminary analysis of the regulations that we present below.

First of all, indicate what is the statutory definition of "qualified entity". According to the analyzed regulations, this category is understood very broadly. It covers the owner of an account being an entrepreneur, a legal person, an organizational unit without legal personality, or a natural person conducting a profitable activity on his own account, not being an entrepreneur.

One of the main assumptions of the STIR mechanism itself is the receipt and processing of data (on bank accounts opened and closed and transactions on these accounts), enabling the determination of the so-called risk indicator, which is a set of unpublished parameters, used to determine if the qualified entity does not use the activities of banks and credit unions (SKOK; Cooperative savings and credit unions) for purposes related to tax fraud. These data will be automatically transferred by banks and credit unions to STIR on a daily basis – for the previous day. If risks are identified – also through STIR – appropriate information will be forwarded to the Head of the National Tax Administration, which, using the return communication – will be able to transfer the decision to block the account to the appropriate bank or trade union.

The risk indicator will be determined on the basis of data received from banks, credit unions and those received from the Central Register of Entities of the

National Register of Taxpayers (CRP KEP) and is to be determined at least once a day. Banks and credit unions will be obliged to submit data on opened accounts to the clearing house without delay, but no later than by 12:00 on the day following the opening of the account. They will also be required to immediately submit daily transaction statements on the accounts of qualified entities, however, no later than 15:00 on the day following the transaction. STIR is to be a two-way system, transferring information to the Head of the National Tax Administration, as well as its provisions to banks and credit unions.

The first reporting that will be carried out (by banks and credit unions) will, however, include a much broader scope of information. In the case of information reporting:

- 1) on opening and closing qualified accounts, along with the first report it will be necessary to send information on accounts opened before the Act enters into force and on the day of its entry into force and on accounts open from the day of entry into force of the Act until the day preceding the information transfer. In the case of savings and current accounts and savings accounts of natural persons – the first transfer will also cover closed accounts between 1 January 2016 and the date of entry into force of the Act;
- 2) on transactions – along with the first transfer of transaction statements – the statement includes data obtained from 1 January 2016 to the day preceding their transfer (in the case of accounts opened before the entry into force of this Act and kept as of the date of entry into force of this Act and on accounts open from on the day of entry into force of this Act by the day preceding the day of submitting the statement).

Under the provisions of the Act, the following accounts are excluded: qualified entities maintained by the National Bank of Poland (for example, budget accounts); cooperative banks operated by an associating bank; banks run by other banks; cooperative savings and credit unions operated by the National Credit Union or by another bank; Treasury; National Health Fund; Social Insurance Institution and the Bank Guarantee Fund.

It is also worth noting that the Act introducing STIR amends many acts, primarily due to the introduction of a new method (and scope) of reporting data by banks and credit unions to the Head of the National Tax Administration, as well as a new legal institution - blocking a bank account, based on a decision Head of the National Tax Administration. The decision on blocking is made by the Head of the National Tax Administration on the basis of the results of the risk analysis carried out automatically by the STIR mechanism. It is worth emphasizing that the premise here is the mere suspicion that the account entity (account owner) may use the bank account for activities related to tax fraud or activities aimed at such extortion. This provision may specify a blocking time of up to 72 hours, however, in certain cases – the blocking may be extended up to three months. Such an extension will, however, be effective provided that a decision on the extension of the block to the bank or credit union is forwarded during the period of the invalidity of the invoice. Regulations in this regard, in accordance with the transitional provisions contained in art. 27 of the Act, will come into force after 4 months from the day of announcing the Act. Attention should also be paid to the remaining provisions regarding the blocking of certain claims (e.g. the seizure of maintenance and disability maintenance allowances awarded

by way of damages, the seizure of claims made in order to enforce tax or customs duties.

In addition, if the bank or credit union (SKOK) fails to provide the information and statements to the clearing house or transfers them contrary to the information available, it does not block the account, it is subject to a penalty imposed by the head of National Tax Administration, up to PLN 1,000,000. The same is the case for a clearing house that does not comply with the obligation to conduct STIR, to determine and pass the risk indicator and to mediate in the exchange of information and demands between the Head of National Tax Administration and banks and credit unions.

#### **STIR – calendar:**

- Entry into force of the regulations - 14 days after the announcement;
- Commencement of transmission of information on opening / closing an account - no later than 30 days (banks) / 60 days (credit unions and cooperative banks) from entry into force of the provisions;
- First transfer of daily information about transactions – no later than on the last day of the 6<sup>th</sup> month (banks) / 8<sup>th</sup> month (credit unions and cooperative banks) from the day of entry into force of the Act;
- Exception: Information and statements of data obtained prior to the entry of the Act – may be reported until the end of the 9<sup>th</sup> month after the entry into force of the Act, if the financial institution has them in a format that does not allow their automatic processing.

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#### **The Sejm accepted the Senate's amendments to the law on the prohibition of trade on Sunday and on holidays**

##### **On January 10<sup>th</sup>, the Sejm accepted all the Senate's amendments to the act on limiting trade on Sundays and holidays**

The Senate has clarified certain exemptions from the prohibition provided for in the Act, including the definition of florists, bakeries, confectioneries and ice-cream shops by indicating that only those commercial establishments will be considered to be dominant in the trade of flowers, bakery and confectionery, respectively. A similar narrowing has not been introduced in relation to petrol stations.

The description of the exclusion of a trade prohibition in relation to retail outlets where the trade is run by an entrepreneur who is a natural person only in person by adding that the entrepreneur must conduct this activity on his own behalf and on his own account is supplemented.

Some other exclusions and grounds for criminal liability have also been clarified.

The act is to enter into force on 1 March 2018. In 2018, trade will be allowed in principle on two Sundays a month, in 2019 on one only. From 2020, the prohibition on trade will cover virtually all Sundays of the year. The statutory restrictions on the opening time of commercial establishments on Christmas Eve and on Holy Saturday will also be introduced. On these days, the stores can only be open until 2pm.

The Act has been sent to be signed by the President.

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#### New requirements on the remuneration of insurance distributors are approaching. Work on the implementation of the IDD Directive is entering the last phase

**On 28 December 2017, President Andrzej Duda signed the Act of 15 December on insurance distribution, which implements the Directive of the European Parliament and of the Council (EU) into the Polish legal order. The new regulations enter into force on 23 February and are to serve primarily to improve the situation of clients who are to be provided with protection at the same level, regardless of the differences between the various insurance distribution channels.**

The new regulations are to serve primarily to improve the situation of clients who are to be provided with protection at the same level, regardless of the differences between the various insurance distribution channels. The new law imposes on every insurance distributor, not only an agent and a broker, but also an insurance company and its employees, an obligation to behave honestly, fairly and professionally, in accordance with the best interests of clients.

In particular, the new regulations introduce unknown in the past requirements as to the remuneration of insurance distributors and persons with whom the activities related to insurance distribution are performed. The way these entities are remunerated may not be inconsistent with the obligation to act in accordance with the best understood interest of clients. This means, in particular, that **no insurance distributor can make arrangements (e.g. regarding remuneration or sales targets) that could be an incentive to propose a contract to a client, while another contract would better meet the needs of that client** [2].

Any commission, fee, salary or any other payment, including an economic advantage of any kind, or any other incentive or encouragement, both financial and non-financial, offered or transferred in connection with the insurance distribution business is considered remuneration.

At the same time, extensive information obligations related to the remuneration method were imposed on insurance distributors. Before concluding an insurance contract or insurance guarantee, both an insurance agent, an agent offering supplementary insurance, an insurance broker and an insurance company is obliged to inform the customer about the nature of remuneration received in relation to the proposed contract conclusion. Information provided by the agent and broker must in particular indicate whether the broker receives a fee paid directly by the client, a commission included in the amount of the insurance premium, or other type of remuneration or remuneration combining different types of remuneration. If the broker receives a fee, he must also inform the customer about its amount or, if applicable, the method of its calculation.

In the case of life insurance contracts with an investment element, the client should also receive information on the amount of the distribution cost indicator related to the contract proposed to the client.

It should also be pointed out that the insurance company is required to store documents regarding the agent's remuneration and the insurance broker's documents regarding its remuneration, for a period of 10 years from the date of termination of the agency agreement or respectively termination of cooperation with the client.

It is worth taking a look now at the method of remunerating agents and persons performing activities related to insurance distribution in order to adapt them to the introduced changes before they enter into force.

[1] Directive of the European Parliament and of the Council (EU) 2016/97 of 20 January 2016 on distribution of insurance (OJ L 26, 2.2.2016).

[2] Article 7 paragraph 2 of the Act of 9 November 2017 on insurance distribution (in the version adopted by the Sejm).

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## Romania

### VAT split payment – The final form of the law

**Only the companies having VAT debts or in insolvency will mandatory apply the VAT split payment system starting with 1 January 2018, according to the final form of the law on the VAT split payment, published in the Official Gazette.**

Two categories of taxpayers – companies having VAT debts or in insolvency – will mandatory apply the VAT split system starting with 1 January 2018.

The final provisions of the new VAT payment system are mentioned in Law 275/2017 for approving Government Ordinance 23/2017 regarding the VAT split payment that was published in the Official Gazette, Part I, no. 1036 of 28 December 2017 and entered into force on 31 December 2017.

In brief, the final form of the Ordinance states that:

- The VAT split payment will be mandatory starting with 2018 only for companies which have / will have outstanding VAT debts (with the exception of those having enforced procedures suspended) or which are under insolvency proceedings.
- The taxpayers registered for VAT purposes (regardless if they apply the VAT split system or not) must pay the VAT corresponding to acquisitions of goods/services performed from suppliers applying the VAT split system in their dedicated VAT account.

[Deloitte tax alert](#) of 19 December 2017 presents and explains the application of the VAT split payment system.

For further questions, please contact us.

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### New changes regarding contributions and taxes due to the Environment Fund

**New methodological rules for calculating the contributions and taxes due to the Environmental Fund came into force on December 28, 2017, according to Order of the Ministry of Environment no. 1503/2017 for modifying and completing the methodology of calculation of taxes and contributions due to the Environment Fund.**

The new order replaces the methodology for calculation of contributions and taxes due to the Environment Fund. Among the main changes, we mention the following:

- Environmental Fund Administration inspectors may not consider a transaction that has no economic purpose or may reclassify the form of a transaction/ activity to reflect its economic content at the time of the tax audit;
- The traders that does not take physical possession of the wastes, in addition to the economic operators recyclers/ collectors have also the obligation to calculate and withhold at source the contribution of 3% of the revenues from the sale of ferrous and non-ferrous metal wastes;
- Sample documents that can be used in order to determine the weight and packaging, tires, EEE, batteries and accumulators placed on the national market for proving the traceability of waste are listed;
- Specific conditions to be met for packaging waste that is subject to intra-Union or extra-Union transactions in order to be considered as recycled/ recovered are mentioned;
- In the case of meeting the annual targets for recovery of waste taken from other waste generators, it is no longer necessary to prove the traceability of packaging waste from the waste generator to the final recovery operator, but only from the economic operator with which the service contract was concluded to the final recovery operator;
- A series of requirements to be met by recovery/ recycling operators for the acceptance of packaging waste as recovered/ recycled are introduced;
- An economic operator within the meaning of the Methodology is defined as a manufacturer, importer, warehouse, transporter or trader of goods, including a service provider.

For further questions, please contact us.

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**The national average gross salary applicable for 2018 was published**

**The value of the national average gross salary used for establishing the budget of the state social insurance for the year of 2018 is 4,162 lei.**

The national average gross salary for the year 2018 is 4,162 lei, according to law no. 3/2018 for establishing the budget for the state social insurance for the year of 2018, published in the Official Gazette no. 5 from 3rd January 2018.

This indicator is utilized, for example, in order to determine the eligibility of the non-EU citizens as highly skilled workers. One of the conditions to be met is to have a minimum salary of at least four times the national average gross salary.

For further questions, please contact us.

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## Serbia

### **New Ministry of Finance Rulings – Value Added Tax**

#### **Determining the VAT debtor for the supply of goods and services in the field of construction**

The delivery with installation of refrigeration equipment that represents an integral part of the refrigerated warehouse, performed by a VAT payer to another VAT payer within the construction of a refrigerated warehouse, is considered to be supply of goods in the field of construction as an activity listed in the activity code 41.20 – Construction of residential and non-residential buildings.

However, when it comes to servicing refrigeration equipment that forms an integral part of the refrigerated warehouse, the tax debtor for such a supply is a VAT payer performing the supply.

(Ministry of Finance Ruling no. 430-00-240/2017-04 as of September 26, 2017)

### **New Ministry of Finance Rulings – Value Added Tax**

#### **The right of tax exemption for the supply of BITCOIN digital currency**

The provision of Article 25 para 1 item 1) of the VAT law that prescribes tax exemption without the right to deduct input VAT on transactions, including mediation, concerning legal means of payment (legal tender), cannot be applied for the supply of bitcoin digital currency since bitcoin digital currency does not represent the legal means of payment in Serbia.

(Ministry of Finance rulings, no. 413-00-168/2017-04 as of October 27, 2017)

### **New Ministry of Finance Rulings – Value Added Tax**

#### **Determining the VAT debtor for the supply of services involving cutting and transport of trees for the purpose of clearing the land for future railway construction**

When a VAT payer provides to another VAT payer services involving cutting and transport of trees in order to clear the land for the construction of a railway (i.e. within the preparation of the construction site for the construction of the railway), whilst the construction site is defined as a land or facility, marked separately, on which the construction, reconstruction and removal of facility or maintenance works are carried out, such supply is considered to be supply of services in the field of construction as an activity listed the activity code 43.12 – Preparation of the construction site.

(Ministry of Finance ruling no. 413-00-225/2017-04 as of October 26, 2017)

### **New Ministry of Finance Rulings – Value Added Tax**

#### **The right of a VAT payer to correct the amount of VAT in the new invoice in case VAT was computed for services provided abroad**

In case a VAT payer issued an invoice for the supply of goods or provided services stating a higher VAT amount than prescribed by the VAT law, the VAT payer has the right to correct (reduce) the amount of computed VAT in the tax period in which the VAT payer issued a (new) invoice with corrected VAT amount, that is:

- with a lower VAT amount (e.g. if a VAT payer supplied goods or services for which a reduced VAT rate of 10% is prescribed by the VAT law, but mistakenly issued an invoice with 20% VAT and subsequently issued a new invoice with 10% VAT) or,
- without VAT (e.g. if for supplied goods or services for which the tax exemption with the right to deduct input VAT is prescribed by the VAT law, a VAT payer mistakenly issued an invoice with 20% VAT and subsequently issued a new invoice without VAT, or if for goods or services supplied abroad the VAT payer mistakenly issued an invoice with 20% VAT and then issued a new invoice without VAT).

(Ministry of Finance ruling, no. 011-00-1038/2017-04 as of November 27, 2017)

#### **New Ministry of Finance Rulings – Value Added Tax**

##### **VAT treatment of import of machine that was temporarily exported for repair within the warranty period**

On the import of machine that was temporarily exported for repair within the warranty period, VAT is computed on the tax base that consists of the fee that a VAT payer paid or should pay for the repair of machine in question. Computed VAT is paid in accordance with the VAT law. If repair of the machine that was temporarily exported for repair within the warranty period is performed free of charge and the competent customs authority does not determine the value of the machine during importation in line with customs regulations, the VAT is not computed and paid on import of such machine given that it is considered that there was no increase in the value of the machine in accordance with the VAT law.

In addition, the provision of Article 6, paragraph 1, item 2) of the VAT law and the Rulebook on the procedure for the replacement of goods within the warranty period is not applicable for imports of goods.

(Ministry of Finance ruling, no. 430-00-541/2017-04 as of December 22, 2017)

#### **New Ministry of Finance Rulings – Value Added Tax**

##### **Determining the VAT debtor for the supply of services involving excavation, loading and removal of soil from the construction site**

When a VAT payer performs earthworks – excavation, loading and unloading of soil from the construction site, to another VAT payer, the VAT payer performs the supply of services in the field of construction for which the VAT debtor is a VAT payer - recipient of services, since this is an activity listed in the activity code 43.12 - Preparation of Construction sites.

However, for the supply of service of removal of soil from the construction site, the obligation to compute and pay VAT in accordance with the VAT law has a VAT payer that performs such supply.

(Ministry of Finance ruling, no. 011-00-489/2016-04 as of January 12, 2017)

#### **New Ministry of Finance Rulings – Value Added Tax**

**Obligation to compute and pay VAT when a VAT payer – recipient of transport service related to export of goods claims from a VAT payer – transporting company, the remuneration in the amount of the value of goods destroyed during the transport**

When a VAT payer – recipient of transport service related to export of goods claims remuneration from a VAT payer who is obliged to perform the transport of goods, for value of goods destroyed during the transport in the road accident that happened abroad, such remuneration is considered to be compensation for damages.

(Ministry of Finance ruling, no. 430-00-00597/2017-04 as of December 12, 2017)

#### **New Ministry of Finance Rulings – Corporate Income Tax**

**Tax treatment of fees for software development (design and implementation), software maintenance, software license that a resident legal entity pays to its related legal entity from Germany**

In case of so-called mixed contracts (in relation to which the payment is made based on software license as well as based on the provision of services), a resident legal entity should request from a non-resident legal entity issuance of two invoices instead of a single invoice, whilst one of those invoices should refer to payment based on provision of services (e.g. maintenance, upgrading, or distribution of software) and the second to software license fee.

As regards the tax treatment (in accordance with the Double Tax Treaty), the fee that is payable under the software license as well as other software related transactions are in accordance with Article 7 and 13 of the Double Tax Treaty treated in the following way:

It is a royalty fee - subject to withholding tax:

1. Software license fee;
2. Software deployment license fee.

It is not a royalty fee (it is not subject to withholding tax) but profit from business (subject to verification by applying Article 9 of the Law on Tax Procedures and Tax Administration):

1. Software purchase fee;
2. Software implementation fee;
3. Software maintenance fee (condition: existence of a basic license agreement);
4. Software upgrade fee (condition: existence of a basic license agreement);
5. Software distribution fee (condition: existence of a basic license agreement).

It is assumed that the taxpayer should pay attention to the fact that the amounts on each individual invoice are realistically determined – not resulting in the situation in which e.g. the amount of the invoice for the provision of the service is unrealistically high in relation to the amount of the software license invoice that is in that case unrealistically low, which the competent tax authorities, if necessary and in accordance with the regulations, will most likely not accept).

(Ministry of Finance ruling, no. 413-00-249/2017-04 as of December 14, 2017)

### **New Ministry of Finance Rulings – Corporate Income Tax**

#### **Tax treatment of fees paid by a resident legal entity to a resident of the United Kingdom and Northern Ireland based on the use of a service with constantly updated information relating to financial market**

The fee paid by a resident legal entity to a resident of the United Kingdom and Northern Ireland based on the use of a service that allows access to constantly updated information related to financial market, has a character of business profit that is taxable only in the United Kingdom of Great Britain and Northern Ireland.

In this particular case the fee in question does not fall within the definition of royalty fees referred to in Article 12 (royalty fees) para 3 of the DTT – particularly not in the part of definition according to which royalties include the fee that is paid out for the use or the right to use information having an industrial, commercial or scientific character (which implies that the payment of the fee is made for the transfer of expert knowledge or know-how under which, in general, the payment is made for notices that constitute publicly unavailable industrial, commercial and scientific information as a result of previous experiences and that may have a practical application in the companies' businesses or whose disclosure can have some economic benefit).

In contrast to the above-mentioned concept of transfer of know-how in this specific case, the payment is made for a transaction that allows a user (resident legal entity) to download (via electronic means) digital product (publicly available information from the financial market, over which the fee recipient, a non-resident legal entity has no intellectual property right) for his own use with the notion that payment (essentially) is made to obtain the data (rights) transferred in the form of a digital signal, and not for its use or the right to use (in which case it could be a question of royalty).

At the same time, the respective fee can not represent a royalty fee, either on the basis of the use or the right to software usage ("E ..." service) because referring to "E..." service relates exclusively to the web site through which information from the financial market can be accessed (which will continue to remain on that website) whereby the user (resident legal entity) makes a payment for access to information rather than for the software royalty (software usage) by means which the information is downloaded.

(Ministry of Finance ruling, no. 413-00-00167/2017-04 as of December 14, 2017)

## New Ministry of Finance Rulings – Corporate Income Tax

### The use of residual loss from a previous tax period of a transferor’s company that ceases to exist, due to a change in status, by acquirer’s company in a tax period that is shorter than a calendar year

In case that a transferor’s company (that ceases to exist due to a status change, as in this specific case) in the tax balance sheet made for the period 1 January – 30 September 2017 determines the profit and decreases it for the corresponding amount of unused loss from previous tax periods, the right to use potential residual loss (starting from the tax period in which the status change is made and registered) is transferred to the acquirer’s company.

(Ministry of Finance ruling, no. 011-00-653/2017-04 as of October 3, 2017)

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## 2017 non-taxable threshold for annual income tax purposes and adjusted non-taxable amounts in Serbian currency (RSD) for 2018

### 2017 non-taxable threshold for annual income tax purposes

Based on the published data on average annual salary per employee paid out in 2017 in the Republic of Serbia from January 26<sup>th</sup>, 2018, the non-taxable threshold relevant for determining 2017 annual personal income tax filing liability is set at **RSD 2,375,136**. Annual income taxpayers for 2017 are natural persons, both tax residents and tax non-residents, whose annual net income for 2017 exceeded the afore-mentioned threshold.

Non-taxable amount, taxable amounts and personal deductions relevant for 2017 annual income tax are presented in the table no. 1.

Table no. 1:

Description	Amount in RSD
Non-taxable amount	2,375,136
Income taxable at 10%	4,750,272
Income taxable at 15%	Above 4,750,272
Personal deduction for a taxpayer*	316,685
Deduction for a dependent family member*	118,757

\* Total amount of deductions cannot exceed 50% of income to be taxed

### 2018 adjusted non-taxable amounts in Serbian currency (RSD)

In accordance with the Law on amendments to the Personal Income Tax Law (**hereinafter: the Law**), published in the "Official Gazette of the Republic of Serbia" no. 113/17 and adjusted amounts in Serbian currency (RSD) published in the "Official Gazette of the Republic of Serbia" no. 7/18, adjusted non-taxable amounts in Serbian currency (RSD) for the year 2018 have been prescribed.

The Law entered into force on January 1<sup>st</sup>, 2018 and the new non-taxable salary amount is applied in salary tax calculations and payments starting from the salary paid out for January 2018, whereby the non-taxable salary amount of RSD 11,790 ceases to apply ending with the payment of salary for December 2017.

**The non-taxable salary amount, which is applied in salary tax calculations and payments for full-time employees starting from the salary for January 2018, is RSD 15,000.**

Table no. 2 displays some of the non-taxable amounts for the purposes of personal income tax, which will be effective from February 1<sup>st</sup>, 2018.

Table no. 2:

Description	Amount in RSD
Commuting costs	3,837
Per diem for local business trip	2,303
Travel costs on a business trip	6,716
Private car for business purposes / business trips	
Anniversary award for employees	19,183
New year's and Christmas' present for employees' children, until the age of 15	9,592
Voluntary premiums for health insurance and pension contributions	5,757

### 2018 maximal monthly social security contribution base and 2017 maximal annual social security contribution base

#### 2018 maximal monthly social security contribution base

In accordance with the new Law on amendments to the Law on Mandatory Social Security Contributions (hereinafter: the Law) published in the "Official Gazette of the Republic of Serbia", No. 113/17, the new method of determining maximal social security contribution base (hereinafter: the SSC base) has been prescribed.

The Law entered into force on January 1<sup>st</sup>, 2018, and the new data on the maximal monthly SSC base is determined in accordance with Article 15 of the Law, whereby the new maximal monthly SSC base amount was published in "Official Gazette of the Republic of Serbia", no. 2/18, which is applicable as of January 6<sup>th</sup>, 2018.

The maximal monthly SSC base, which is applicable as of January 6th 2018, is RSD 329,330. The maximal monthly SSC base shall be applicable until the end of 2018 December.

**2017 maximal annual social security contribution base**

The maximal annual SSC base for the year 2017 is RSD 3,793,175 (“Official Gazette of the Republic of Serbia”, No. 2/18 and 7/18).

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## Slovakia

### Information on the Amendment to Act No. 595/2003 Coll. on Income Tax, as Amended

The Financial Directorate of the Slovak Republic published information on the amendment to the Income Tax Act.

**The Income Tax Act was amended with effect from 1 January 2018 and the most significant changes for individuals are as follows:**

- The definition of a taxable person with an unlimited tax liability was extended to include an individual residing in the Slovak Republic. An individual is considered to reside in the Slovak Republic if they have available accommodation which is not only for occasional use, and the individual's intention to remain permanently in the given place of residence is apparent, taking into account all related facts and circumstances, including the individual's personal and economic ties to the Slovak Republic.
- There was an amendment to the taxation of employee transport to and from the place of work if the transport is arranged by an employer. Such an in-kind consideration provided by the employer to its employees is subject to tax in the amount of the difference between the costs documentably incurred by the employer and the amount paid by the employee to the employer for the transport provided. The rate is either 60% or 30% of the costs documentably incurred by the employer (after meeting statutory conditions).
  - 60% if the total payment from employees is lower than 60%.
  - 30% of the amount of costs documentably by the employer where the predominant activity is multi-shift production and the transport mode is used by at least 30% of the total average number of employees.
- The employer must use motor vehicles classified under the Product Classification code 29.10.3, which covers motor vehicles for the transport of ten or more people (buses), excluding trolleybuses and electric buses.
- For individuals – healthcare providers, in-kind benefits provided by a holder in the form of the value of a meal provided at a professional event intended exclusively for educational purposes are tax exempt. The value of accommodation and transport is not considered as participation in continuous education. Such in-kind consideration will be fully tax exempt from 1 January 2018.

**The most significant changes in the corporate income tax introduced by the amendment to the ITA with effect from 1 January 2018 are:**

- There were significant changes in business combinations (in-kind contributions, mergers by acquisition, mergers by formation of a new company, or divisions of companies or cooperatives). Domestic business combinations will only be possible at fair value for tax purposes as of 1 January 2018.
- The amendment introduces exit tax, ie tax levied when a taxable person's assets are transferred abroad (eg when assets are transferred from Slovakia to a permanent establishment abroad), or when a taxable person leaves Slovakia or relocates their business activities abroad.



- An additional deduction of R&D expenses (costs) under Article 30c of the ITA has been increased from 25% to 100%. In addition to the 100% additional deduction, a 100% increment in R&D expenses (costs) may also be deducted in aggregate for all R&D projects, and the amendment provides for the calculation of such an increment.

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## Amendments to the Value Added Tax Act

**Act No. 334/2017, amending the VAT Act, was published in the Collection of Acts of the Slovak Republic on 23 December 2017. The amendments to the VAT Act are effective from 1 January 2018.**

In connection with the approved amendment to the VAT Act, the official bulletin of the Slovak Ministry of Finance published a new VAT return template and updated guidance on its completion. Updated guidance on the completion of the VAT transactions statement was also published.

In connection with the approved amendment to the VAT Act, the Financial Directorate of the Slovak Republic published several updated methodological instructions and guidelines:

- **Methodological instruction on tax deduction under Article 49a and on the adjustment of deducted tax under Article 54a of the VAT Act and methodological instruction on the adjustment of deducted tax for non-current assets under Article 54 of the VAT Act** – non-current assets includes structures other than buildings, and the new definition of non-current assets only applies to a structure other than building if the payer deducts VAT from such a structure after 31 December 2017.
- **Methodological instruction for invoicing under the VAT Act** – contains new information on appointing a tax representative under Article 69aa of the VAT Act, and issuing a summary invoice for rent and supplies of electricity, gas, water and heat and information on simplified invoices. Explanatory Notes to the VAT Invoicing Rules were republished with methodological instruction.
- **Methodological instruction on the transfer of a tax liability when supplying construction work** under Article 69 (12) (j) of the VAT Act – the change only concerns general information about goods and services where the domestic transfer of a tax liability is applied to the recipient of the supply, ie responds to the cancellation of the tax base limit of EUR 5 000 specified on an

invoice for the supply of selected agricultural crops and metals such as iron and steel and articles from such metals.

- **Methodical instruction on the filing of EC Sales Lists under Article 80 of the VAT Act** – reflects the changes to the filing of the EC Sales List by persons registered under Article 7 and Article 7a of the VAT Act. In connection with the amendment to the VAT Act, new guidance on the completion of the EC Sales List will be published. The EC Sales List template will remain unchanged.
- **Guidance on a Tax Authority’s Proceedings on a VAT Refund in the Event of a Notice to Remedy Deficiencies in a Filed Tax Return, Amended Tax Return, VAT Transactions Statement and Additional VAT Transactions Statement after 1 January 2018** – the guidance is updated due to a change in Article 68a of Act No. 563/2009 Coll. on Tax Administration (the Tax Code), valid from 1 January 2018.

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## OECD Transfer Pricing Country Profiles – the Slovak Republic

As we informed in [Deloitte News December 2017](#), the OECD has updated several transfer pricing country profiles, prepared by tax authorities of the respective countries, including the Slovak Republic.

It examines current legislation and describes to what extent laws comply with OECD Transfer Pricing Guidelines.

### We would like to draw attention to the following published information:

- With respect to the benchmark analysis, Slovak tax authorities prefer to use domestic comparable companies to foreign ones. If domestic comparable companies cannot be used, the taxable person may use the data of foreign companies.
- Slovak tax authorities do not use any “secret comparables” in the transfer pricing process, ie data not accessible to taxable persons (eg obtained by tax authorities during a tax audit).
- The Slovak Republic applies the principles outlined in OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereinafter the “OECD TP Guidelines”) to the pricing of intragroup transactions, in addition to the approach stated in Section D.2 Simplified determination of arm’s length charges for low value-adding intra-group services.
- The tax authorities of the Slovak Republic do not apply secondary adjustments (referred to in Chapter IV, Section C.5 of the OECD TP Guidelines - Secondary Adjustments) when adjusting prices between related parties.

- See: [link](#) for more information about the transfer pricing profile of the Slovak Republic.

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## Slovenia

### Personal Income Tax Act (hereinafter `PIT Act`) amendments

**Effective as of 01.01.2018, certain amendments to Slovene PIT Act apply, which are relevant for individuals assigned to and from Slovenia. A special determination of tax base for assignment income received as of 01.01.2018 has been introduced together with certain changes regarding the tax treatment of costs reimbursed with relation to temporary assignments.**

#### Amendments regarding the tax treatment of costs reimbursed during assignments

Meal allowance and reimbursement of costs of commuting to and from work are non-taxable for personal income tax purposes in Slovenia up to prescribed amounts, provided they are properly documented. These reimbursements are standard for Slovenia. The reimbursement of costs related to assignments, which are not to be included into the individual`s employment income tax base, are newly regulated, namely:

- Reimbursement of meal costs

A time delimitation of 30 days has been determined, distinguishing short temporary assignments from long temporary assignments. Meanwhile the amount of meal cost reimbursement per working day, which shall not be included into the tax base was already determined in the legislation and applies for short temporary assignments, a higher amount of non-taxable reimbursement for long temporary assignment has been stipulated with the amendments.

An exception applies for the drivers performing work in international road transport, wherein short assignments may last up to a maximum of 90 days continuously.

- Reimbursement of transport costs

It is newly stipulated, that the following reimbursements are not to be included into the individual`s tax base:

- Costs of transport between usual place of residence in the period of assignment and the place of work, while assigned.
- Costs of transport from home country residence to the place of assignment at the beginning of assignment and the costs of transport from the place of assignment to home country at the end of the relevant assignment.

- Reimbursement of accommodation costs

Costs of accommodation during the assignment, which are reimbursed by the employer to the assignee, are not to be included into individual`s tax base, provided the assignment period does not exceed 90 days continuously. In case the assignment exceeds 90 days, such reimbursements are considered as taxable income of the assignee.

Special tax base for assignment income

Under certain conditions, stipulated by law, the individual assigned abroad or to Slovenia is entitled to a special tax base, namely, 20% of his gross salary received for work in the period of his assignment can be excluded from the tax base, however the amount excluded cannot exceed 1.000 EUR monthly.

**Transnational Provision of Services Act entering into force**

**Please note that as of 01.01.2018 the Transnational Provision of Services Act is effective in Slovenia, implementing the provisions of Directive 67/EU/2014 of the European Parliament. The respective Act regulates the cross-border provision of services for employees posted to Slovenia from other EU Member States or vice versa, considering the employees shall remain included in the social security system in their home country (i.e. A1 form should be obtained).**

Further to the Transnational Provision of Services Act, please note that numerous challenges are encountered on a daily basis when trying to put the respective Act into the practical use and determining the nature of each arrangement (i.e. shall it be considered as posting of employees, wherein the respective Act applies, or shall the respective arrangement be considered as a business trip).

Consequently, the Slovene Ministry of labour, family, social affairs and equal opportunities provided a table, which shall serve as an assistance when determining the nature in each particular case, please find it below.

Criterion	Posted workers	Business trip
<b>Type of work</b>	The cross-border services provided are within the framework of the activities specified in corporate statute or corporate contract of the company, which is posting the employee.	The work performed by the employee is important for the existence and the continuous performance of the company's activities, however it does not represent direct service provision of the respective company.
<b>End user of the relevant service</b>	Company ordering the service.	Employer.
<b>Employer`s revenue</b>	The employer expects a contractually agreed payment for the work performed by the posted employee.	The employer does not expect any direct payment for the work performed by the employee sent on a business trip
<b>The market of the country concerned</b>	The company enters the market of foreign country directly and competes with other companies on the respective market.	The company is not directly entering the foreign market and is not competing with other companies on the respective market.

In line with the respective table, please note that the guidelines provided by the Ministry are set only as an example, thus any different circumstances/criterion shall be observed individually, in order to determine whether the respective cross-border services provided shall be treated as a business trip or posting of an employee.

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