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CE Tax&Legal Highlights

December 2018

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Czech Republic

Changes in the Implementation of Double Tax Treaties Applicable From 2019 Onwards

On 1 January 2019, the new Treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital that the Czech Republic signed in 2016 with Turkmenistan will start to be implemented.

The principal concepts of the treaty include:

•A time limit for forming a permanent establishment of 12 months for construction projects and 6 months for services;

•Withholding tax on passive income of 10 % at maximum (exceptions apply to interest); and

•Application of the credit method in respect of double taxation.

Furthermore, from the New Year onwards, the most-favoured-nation clause treatment will be applied in relation to the Treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital between the Czech Republic and Chile (specifically Section 11 (7) of the Treaty which makes it possible to apply more favourable terms based on the treaty signed at a later date between Chile and Japan). As a result, from 1 January 2019 onwards, provided all the stipulated conditions are met, the rate of 10% of gross interest will be applied between the Czech Republic and the Republic of Chile for the purposes of Section 11 (2) (b) of the above stated tax treaty.

In this context, the Ministry of Finance has also updated the Summary of Valid Treaties, which is available on its website.

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Public Consultation on Virtual Currencies

We would like to draw your attention to an initiative of the Ministry of Finance (MF) which has raised the topic of cryptocurrencies, or virtual assets, and the blockchain technology.

We have received a document from the MF of approximately 30 pages summarising the MF's findings and views concerning blockchain and related topics. The document aims to solicit the opinions of experts as regards opportunities for the legal regulation of virtual assets and the use of blockchain technology for the record-keeping of book-entry securities. The document comprises a technical part, a summary of applicable legislation in the Czech Republic and abroad and an overview of the MF's further course of

action. Each part summarises the MF's attitude, or expertise, including a question as to whether any objections have been raised by experts.

If you are interested in this topic or would like to comment on it, the respective document is available here. Comments on the MF's document may be lodged until 14 January 2019.

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TaxAlert: Complications in calculating the super-gross salary from January 2019

The President of the Czech Republic signed the amendment to the Income Taxes Act on 11 December under which employers will have to distinguish a country in which an employee participates in a system of compulsory insurance (social security and health insurance) in calculating prepayments for employment income tax starting from 1 January 2019. The same procedure will apply to tax returns from the 2019 taxation period.

Nothing will change for those participating in the compulsory insurance system in the Czech Republic or a non-European country: the super-gross salary will be calculated as equal to the gross taxable income increased by the Czech compulsory insurance contributions paid by employers, or hypothetical Czech insurance contributions. If your employee is insured in another EU Member State, an EEA state or in Switzerland you will have to adjust the calculation: the super-gross salary will include the compulsory foreign insurance contribution paid by employers.

As Member States have different structures of insurance systems (often consisting of multiple sub-systems) it will be complicated to find out what amount of insurance contribution to include. Insurance rates and calculation methods are different as well. Therefore, the change in salary calculation will require much attention and effort.

This amendment is a draft proposed by deputies for which financial administration has not been prepared at all. Some of you may remember a similar situation, which occurred ten years ago; however, at that time, the method of calculation was so difficult to administer that the Ministry of Finance quickly unified determination of the super-gross salary into a form prevailing to date. Again, financial administration may have serious difficulties in reviewing accuracy of prepayments for employment income tax of employees insured abroad but employers should not rely on weaknesses on both sides. We recommend that you undertake all reasonable efforts to set up your tax prepayment calculations correctly.

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Current information on the debate on the tax package

The tax package will not be approved by the end of the year, the tax changes will therefore not be effective from the New Year.

On Tuesday 4 December, the proposed amendments to the original proposal of the tax package (Press of the Chamber of Deputies no. 206) were presented during the second reading in the Chamber of Deputies. 35 amendments were filed in the end and they should be voted on together with the overall vote on the tax package either before the Christmas holidays or next year, further discussion is possible from 21 December.

The amendments do not address technical changes in most cases, but instead they are based on the programme declarations of the parties (e.g. increase in taxpayer relief, child tax credit, cancellation of super-gross salary and solidarity surcharge, decrease in VAT rates – both in general and for specific commodities, such as heat or organic food) etc.

Other important (government) amendments, which partially react to current discussions and practical problems related to the postponement of the effective date of the tax package, are part of the resolution of the Budget Committee.

They include for example:

•New treatment of deductions of research and development expenses

•New definition of the limit for participation in insurance for dependent activities

•Change of the definition of economic activity for VAT purposes related to the issues of statutory executives, more information available here, and

•Postponement of the effective date of the individual provisions of the tax package (in certain cases taxpayers will be able to choose whether they want to follow the old rules next year, or the amended ones).

We monitor the development carefully and after the third reading we will bring you detailed information – what changes were approved by the Chamber of Deputies for the various taxes and when these changes should come into force.

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VAT Act Amendment

On 4 December 2018, the Chamber of Deputies debated an amendment to the VAT Act. A series of motions to amend the Act were presented (which are likely to be subsequently voted on during the course of January) and we specifically draw attention to the proposal to retain the current VAT treatment of payments made to statutory executives and members of statutory bodies and the proposal to temporarily retain the current definition of a finance lease of goods (through the end of 2019).

In addition, the proposed changes include the postponement of the change affecting the public television station and the public radio broadcaster and special rules for determining the tax point in respect of the services of insolvency trustees as well as various alternatives for revisiting VAT rates or reclassifying certain supplies into a lower VAT rate (eg in respect of the delivery of organic food) have been proposed. In view of the date on which the amendment and related motions are to be voted on, it is realistic for the amended Act to become effective as of 1 April 2019.

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GFD's New Guidance Note on the Binding Assessment of Transfer Pricing and the Method of Determining the Tax Base for Permanent Establishments

On 9 November 2018, a new guidance note, D - 32, of the General Financial Directorate ("GFD") was published in the Financial Bulletin of the Ministry of Finance on the binding assessment of the pricing method between related parties and the method of determining a tax non-resident's tax base on activities performed through a permanent establishment (hereinafter jointly as the "binding assessments").

The new guidance note replaces Guidance Note D – 333 and, besides changes relating to the binding assessment of pricing between related parties under Section 38nc of the Income Taxes Act, it also newly incorporates information on how to proceed during a binding assessment in assessing the determination of a tax non-resident's tax base on activities performed through a permanent establishment under Section 39nd of the Income Taxes Act, which was introduced as early as 1 January 2018, yet in respect of which no accompanying methodology has been issued so far.

Although the guidance note is not legally binding, it serves as a clue for tax payers as to how the tax administration will address the issue of transfer pricing between related parties and the determination of the tax base/tax loss in respect of permanent establishments.

Shortening the Deadline for Filing an Application

A major change introduced by Guidance Note D – 32 in respect of binding assessments is the clarification of the deadline for filing the binding assessment application. In line with the previously applicable guidance note, it was possible to file the binding assessment application both during the taxation period for which it was being filed as well as subsequent to its expiry until the deadline for filing the tax return for the period. The new guidance note clarifies the interpretation of the deadline for filing the binding assessment application in that, with effect from 1 January 2018, binding assessment applications may only be filed for the taxation period during which the application is filed and for the subsequent taxation periods.

The change may have a significant impact on applications filed subsequent to 1 January 2018 in compliance with the rules stipulated by the replaced Guidance Note D – 333. However, it still applies that in situations where the payer used the same transfer pricing method or method of attributing profits to a permanent establishment in the preceding periods under corresponding terms, it may be assumed that if an affirmative ruling is issued, the tax administrator will, despite the invalidity of the ruling for prior periods, proceed similarly during tax audits as if the binding assessment had been issued.

Who are the Applications to be Submitted to and who Issues the Binding Assessment Ruling?

The new guidance note also specifies that taxable entities must submit binding assessment applications to the locally competent tax administrator. The application will be examined either by the locally competent tax administrator or the General Financial Directorate depending on the number of domestic entities to which the binding assessment relates. If the application exclusively relates to payers falling within the competence of a single locally competent tax administrator, the ruling will be issued by the respective tax administrator. If the payers in respect of whom the ruling is issued fall within the local competence of multiple tax administrators, the application will be examined by the General Financial Directorate. The same procedure will apply to bilateral or multilateral advanced pricing agreements.

Uncertainty about the Issuing of Rulings Persists

However, the new guidance note fails to eliminate tax payers' uncertainty regarding the deadline for issuing binding assessment rulings as the tax administrator's deadline for binding assessments has not been clarified or determined in any way.

The Administrative Fee Depends on the Number of Transactions or Permanent Establishments

The administrative fee for accepting applications is not newly fixed at CZK 10,000 per application: its amount will depend either on the number of transactions or permanent establishments assessed.

Assessing a Set of Unrelated Transactions

In respect of the binding assessment of transfer pricing between related parties under Section 38nc of the Income Taxes Act, major changes include the approach to assessing a set of closely unrelated transactions with related parties. Pursuant to the previously applicable guidance note, if the tax administrator had issued a negative ruling, the rejection of the application only related to the application itself, ie to all assessed transactions contained therein. Newly, the tax administrator will assess each transaction from among the set separately, independent of the others, with rulings issued on each transaction. These may be affirmative or negative regardless of the ruling on other transactions. The change in determining the administrative fee is also related to this update.

Assessing the Determination of the Tax Base in Respect of Permanent Establishments

With effect from 1 January 2018, Section 38nd of the Income Taxes Act also introduced a "binding assessment of the method of determining a tax non-resident's tax base on activities performed through a permanent establishment". Therefore, Guidance Note D – 32 specifies the methods for this type of binding assessment. In assessing the tax base for permanent establishments, the methods are similar to those in assessing transfer pricing. The primary basis are the tax non-resident's accounting books (tax records), with the tax base customary for tax residents in a similar situation taken into consideration. In determining the tax base, Section 23 (11) of the Income Taxes Act and Article 7 of the respective Double Taxation Treaty are applied, as are the general principles stipulated by the 2010 OECD Report on the Attribution of Profits to Permanent Establishments.

The assessment application must always be filed by the tax non-resident that has formed or will form a permanent establishment in the Czech Republic. If the tax non-resident generates profit in the Czech Republic through multiple permanent establishments whose activities are unrelated, each of them is separately assessed. However, if the activities of permanent establishments are inextricably linked, only one application may be filed and the permanent establishments will be jointly assessed. However, the administrative fee is again charged in a corresponding amount.

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Estonia

Amendments to the Income Tax Act

On 1 January 2019 new version of the Income Tax Act came into force. The law is supplemented with a new chapter, where are provided measures against tax avoidance arising from the Directive 2016/1164.

The new chapter contains four new paragraphs, which are as follows:

- income tax on a transaction for tax advantage;
- income tax on an exceeding borrowing cost;
- income tax on profits of a foreign controlled company;
- exit tax.

Firstly, for the purposes of calculating the corporate tax liability of a resident company, transactions or chains of transactions which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances, and therefore should be ignored. These transactions may consist of more than one step or part.

Secondly, resident company's exceeding borrowing cost is taxed as expenses not related to business. Financial undertakings are excluded from the provision. The following three criteria are taken into account in assessing whether loan interest is excessive or not:

- **Does the exceeding borrowing cost exceed EUR 3 000 000?** If not, then company does not have to pay income tax and there is no need to analyze the following criteria.
- If the exceeding borrowing cost exceeds EUR 3 000 000, **does the exceeding borrowing cost exceeds 30% of the EBITDA**? If not, then company does not have to pay income tax. If the exceeding borrowing cost exceeds 30% of EBITDA, it must be checked whether the company is in profit or loss.
- **Profitability of the entity paying interest.** If the company is profitable, then the income tax will have to be paid on exceeding borrowing cost, that exceeds EUR 3 000 000 and 30% of the EBITDA. If the company has incurred loss and exceeding borrowing cost, what is bigger than EUR 3 000 000 and 30% of the EBITDA, but does not exceed loss, then there will be no income tax on it. If the exceeding borrowing cost, that is bigger than EUR 3 000 000 and 30% of the EBITDA, exceeds loss, income tax is paid on the excess part of the loss.

Thirdly, the portion of the profits of a foreign controlled company resulting from the use of such assets and the assumption of risks associated with key employees of the controlling company, which are derived from seemingly the principal purpose of obtaining a tax advantage, are attributed to the resident company and taxed as profit. The profits of the foreign controlled company attributed to the resident company are calculated in accordance with the market value principle. A foreign controlled company is a permanent establishment or entity, where the resident company by itself or together with its associated enterprises holds a direct or indirect participation of more than 50 percent of the voting rights, or owns directly or indirectly more than 50 percent of capital or is entitled to receive more than 50 percent of the profits of that entity.

Exit tax legislation will apply in Estonia from 1st January 2020. The difference between the market value and the carrying amount of the asset to be exported is subject to income tax when the asset is taken out of Estonia and if the resident company moves the property to another Member State of the European Union or to a permanent establishment in a third country.

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Latvia

Deloitte Latvia releases Transfer Pricing Documentation Tracker

Based on the amendments to the law "On taxes and duties" prepared by the Ministry of Finance and approved by the Cabinet of Ministers in relation to the legal requirements for transfer pricing documentation, Deloitte has prepared a Transfer Pricing Documentation Requirements tracker.

The new transfer pricing requirements are synchronized with activities carried out by the Organization for Economic Co-operation and Development (OECD), and the updated transfer pricing guidelines for taxpayers and tax administrations. The requirements are applicable to related party transactions carried out in the financial year starting on or after 1 January 2018. Furthermore, in the context of the corporate income tax (CIT) reform, related party transactions are becoming increasingly important, and receive additional scrutiny from the tax authority.

The transfer pricing requirements follow the three tiered approach of documentation:

- Country-by-country reporting;
- Master file;
- Local file.

Legislation introduces obligation to prepare or submit a transfer pricing documentation depending on financials of the taxpayer.
Deloitte Latvia has developed a Transfer Pricing Documentation Requirements tracker which allow taxpayer to familiarize with the relevant documentation preparation requirements and deadlines at a high level based on their financial information.

The tool allows to understand the type of documentation to be prepared or submitted according to the new transfer pricing requirements so don't hesitate to try it out – TEST THE TRACKER!

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Lithuania

Ineffective transactions shall not always be considered as one of the counterparties' unfair competition actions

On 12 December 2018 the Supreme Court of Lithuania (LAT) ruled on interpretation and application of legal norms, regulating actions on unfair competition, derivative claim and the responsibility of the head of the company

The court of cassation ruled that transactions concluded by free will even in cases when they are economically ineffective for one of the legal entities, are not considered to be one of the counterparties' unfair competition actions within the scope of prohibited actions pursuant to Part 1 of Article 15 of the Law on Competition of the Republic of Lithuania.

LAT case law has clarified that prohibited actions under the established regulation of Part 1 of Article 15 of the Law on Competition of the Republic of Lithuania, first of all, are linked to two cumulative conditions: first, such actions shall contradict the fair practice of the economic activity and the good customs, and such actions may undermine the ability of another entity to compete.

LAT noted that the legislator has not specified the minimum number of shares that would allow the company to seek damage compensation from the head of the company and the members of the board in the court, therefore, a shareholder, holding at least one share of the company shall be deemed to have the right to file a derivative action to the head of the company and to the members of the board for damages caused to the company.

In addition, the court of cassation stated in this ruling that, in order to prevent the head from civil liability due to the business decision-making rule, the court shall establish that the head acted fairly with the interests of the company – did not violate the duty of care, i.e. properly investigated the information before concluding the dispute transactions, did not act *ultra vires,* etc., nor violated loyalty obligation.

An obligation for legal entities to identify their ultimate beneficial owners was established according to the Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania

The amendment of Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Law) came into force on 1 January 2019

The Law imposes an obligation for legal persons to identify their ultimate beneficial owners and register information about them in the Information System of the Members of Legal Entities (JADIS). Legal persons will be able to fulfil their obligation to disclose the required information after JADIS adopts the amendments of relevant provisions of its regulations and adapts the Information System for registering of such data.

All legal persons established in the Republic of Lithuania, except for legal persons whose sole shareholder is the state or a municipality, shall obtain accurate information on their beneficial owners.

The beneficial owner is a natural person who ultimately owns or controls the customer and / or the natural person on whose behalf a transaction or activity is being conducted. The Law provides a list of individuals who are considered as final beneficial owners.

Non-compliance with the above-mentioned obligations imposed by the Law will result in a fine in the amount of EUR 500 up to EUR 1,800 for persons, and from EUR 2,000 up to EUR 3,500 for heads of legal entities.

Such offence committed repeatedly will incur a fine in the amount of EUR 1,500 up to EUR 5,200 for persons and a fine of EUR 3,500 up to EUR 5,800 for heads of legal entities.

Draft of amended law, implementing the Directive (EU) 2018/843, will improve legal regulation of money laundering and terrorist financing prevention

The Government approved the draft amendment to the Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Draft of amended law) on 20 December 2018 and submitted it to the Parliament

The purpose of the Draft of amended law is to amend and supplement the provisions of Law according to the Directive (EU) 2018/843 OF THE European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Directive), thus, improving legal regulation of money laundering and terrorist financing prevention.

The Draft of amended law includes the following changes: (i) the list of obliged entities is expanded; (ii) the enhanced customer due diligence procedure is applied to customers from high-risk third countries.

Moreover, the Draft of amended law lays down certain supervisory functions for money laundering and terrorist financing prevention measures for self-regulatory bodies and obligation for the Ministry of Justice of the Republic of Lithuania to provide a list of prominent public functions which shall be updated at least once in 4 years. The Draft of amended law will fully transpose the aforementioned Directive.

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Montenegro

Economic Citizenship Program in Montenegro

The Government of Montenegro has adopted the Decision on criteria, method and procedure of electing individuals who may acquire a Montenegrin citizenship by admission in order to implement a special investment program of great economic and business interest for Montenegro, which will start to apply as of 1 January 2019.

The program is designed to last for a limited period of three years and it will be available for up to 2,000 applicants.

The applications will be submitted by a certified agent, while the applicant can obtain a citizenship if s/he has:

- Paid an application fee for himself/herself in the amount of EUR 15,000, or EUR 10,000 for family member (up to four family members), or EUR 50,000 for every other family member;
- Paid EUR 100,000 on escrow bank account for the development of less developed municipalities in Montenegro;
- Paid EUR 250,000 on escrow bank account for the purpose of investing into northern and middle part of Montenegro, or
- Paid EUR 450,000 on escrow bank account for the purpose of investing into northern the Capital City of Podgorica or the Coastal region;
- Has not been sentenced to prison without parole, for the crime that is prosecuted ex officio;
- Has received a positive finding by the agent for capability assessment, including the finding regarding the origin of the money which will be used for investing;

In addition, applicant is obliged to invest into a development project in tourism, agriculture or manufacture.

Criteria for the development program will be defined in the Decision or directly by the Government on the internet page of the competent authority.

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Poland

VAT changes: No more traditional VAT returns and launch of the Central Invoice Register as of 1 July 2019

The draft amendments to the VAT Act and the Tax Code have been published by the Ministry of Finance. They eliminate the requirement to file some VAT returns, in addition to establishing the Central Invoice Register. It has been proposed that the new legislation come into effect as of 1 July 2019.

SAF_VDEK

The draft amendments do away with VAT-7 and VAT-27 returns, which will be replaced with a new, more complex structure of SAF with the working name of SAF_VDEK. The explanatory memorandum states that SAF_VDEK will contain data derived from both the VAT return and VAT records. At the moment, however, no details are available about the scope of data to be reported using the new SAF structure. According to the proposed amendments to the VAT Act, VAT records will have to contain not only information that is necessary for proper VAT reporting or return preparation but also data allowing the taxation authority to verify whether the related obligations have been fulfilled or not. These provisions are both imprecise and broad-ranging. Considering the above and the fact that a detailed scope of data is to be defined by a regulation and in the XSD structure of SAF, which will be specified on the website of the Public Information Bulletin of the Ministry of Finance, the possibility of a considerable extension of the scope of information to be reported in the new structure as compared to the existing requirements may not be ruled out.

Appendices to the traditional VAT returns, including VAT-ZZ, VAT-ZT and VAT-ZD, are also planned to be eliminated and replaced with appropriate tags in the new SAF structure.

Additionally, the draft amendments address the issue of invoices raised to document sales transactions recorded by fiscal cash registers over which doubts exist at present about whether they should be included in SAF_VAT or not.
According to the proposed regulations, such sales should constitute an element of the daily fiscal cash register report and additionally, the relevant invoice ought to be reported in SAF_VAT for the current period but without an increase in the value of sales or output VAT for the period during which they were included in the daily report.

In the event of submission of SAFs which contain incorrect or incomplete information a financial penalty of PLN 500 may be imposed for each identified irregularity (provided that such irregularity has not been remedied within 14 days of a demand to do so).

Those taxpayers who report VAT on a quarterly basis will be allowed to continue to do it with the same frequency as before but they will be obliged to submit monthly information from their VAT records as well.

It will still be required to file the summary VAT-EU returns.

Central Invoice Register

Additionally, the proposed act provides for the establishment of the Central Invoice Register, which will be based, among other, on SAF_VAT submitted by taxpayers. As stated in the explanatory memorandum, the register is aimed to enable verification of the correctness of VAT invoices raised by taxpayers, in addition to eliminating such illegal practices as the issuing of "empty" invoices or carousel fraud.

What next?

Considering the planned date of the new legislation's entry into force as well as the scope of the proposed changes, taxpayers should begin their preparations for the implementation of the new reporting obligations now. The first step which may be taken at the moment, without any system modifications, is the introduction of controls over tax information quality.

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Limited number of goods that are subject to the requirements of the transport law package

The amended excise law, which reduces the list of goods the transport of which is subject to the monitoring obligation under the transport law package (SENT), come into effect as of 1 January 2019.

The provisions of the act of 9 November, which amends some laws with a view to introducing simpler requirements for business entities under tax and business law (the "amended act"), entered into force as of the beginning of the new year. They amend, among other, the Excise Law of 6 December 2008 (the "Excise Law"). The scope of the amendments introduced to the Excise Law includes revisions of the CN classification used for defining the majority of excise goods, by replacing the one which was in force in 2009 with the one which was still applicable in 2018, in accordance with the explanatory memorandum. However, the amendments to the Excise Law are not limited only to a simple replacement of all the CN codes of 2009 with those of 2018 but they also modify the list of goods that are considered excise goods. What is important, the change of the list determines the obligations in respect of the monitoring of the transport of some goods under the Act of 9 March 2017 on the road and rail goods transport monitoring system (the "transport law package").

What is it all about?

The amendments to Article 86 of the Excise Law and to Appendix 1 thereto replace CN codes 3824 90 91 and 3824 90 97 (from the Combined Nomenclature of 2009), which cover, among other, a wide spectrum of chemicals, with CN 3826 00 (from the Combined Nomenclature of 2018), which includes, among other, biodiesel and its blends. The legislator still requires that in order to be classified as excise goods, these goods need to be intended for heating or driving purposes. In effect, the amendments introduced in this regard as of 2019 should be interpreted as reducing the excise goods list to only a small part of products classified as CN 3824 in 2009.

As far as the transport law package is concerned, the list of goods the transport of which is subject to the SENT monitoring obligation includes products classified within CN 3824. According to the provisions of the transport law package, as enacted on 14 June 2018, goods which are classified within CN 3824 are subject to the monitoring obligation only if they are the excise goods specified in Appendix 1 to the Excise Law, whatever their purpose.

What does it mean?

Under the Excise Law which comes into effect on 1 January 2019, goods which are today classified within CN 3824 have been removed from the list of excise goods, whereas entities trading in such goods, the transport of which was subject to the monitoring obligation until the end of 2018, will be allowed to reduce the scope of the SENT monitoring duties performed by their staff.

What next?

Those entities whose business involves the goods that are classified today within CN 3824 and which fulfil the related SENT transport monitoring duties ought to check whether the same obligations will continue to apply as of the beginning of 2019. It is likely that a number of enterprises which carry on their business in the so called non-excise industries, such as construction or various types of manufacturing, and had to comply with the relevant SENT transport monitoring requirements in 2018, will no longer be subject to any such obligations under the transport law package.

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Support in cloud computing, big data, IoT or AI services

Regulation on a framework for the free flow of non-personal data in the European Union
Regulation (EU) No 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union has come into effect. Its requirements will have to be complied with as of 28 May 2019.

What is the objective and the subject matter of the Regulation?

The primary objective of the Regulation is to support the development of the European economy and innovative technologies which are based on data and their flow by:

a) **improving the mobility of non-personal data within the European Union by prohibiting any data localization requirement within a specific territory**, unless it is justified on grounds of public security.

- Limitations in this regard have been imposed by some member states with respect to providers of financial services, entities from the healthcare industry or the public sector.

- **They are to be removed by 30 May 2021**, whereas any new draft regulations aimed to introduce or modify such limitations will have to be notified to the European Commission.

- **By 30 May 2021, the member states will have to notify the European Commission of any prohibitions that are in place and are justified on grounds of public security** – the notifications will be examined by the European Commission, which may express its comments and formulate recommendations as to modification or elimination of a specific measure, if necessary. The member states will also be obliged to disclose information regarding the localization requirements in place within their territories to the public.

b) encouraging self-regulation by EU codes of conduct (e.g. for cloud computing service providers).

- The said codes ought to comprise:

    - guidelines on best practices in **facilitating the switching of providers and the transfer of data to other providers or own IT systems, with the use of structured formats that are commonly used and machine-readable**, including those based on open standards, where it is required or requested by the service provider that is the data recipient;

    - minimum information requirements aimed to **provide those using such services for purposes of their business operations** – prior to the entry into a data processing agreement – with access to sufficiently **accurate, clear and transparent information concerning: processes** (including those for creating back-up copies of data and their location; technical requirements as well as the available data formats and supports, the required configuration of IT systems and the minimum network bandwidth);**the time**

framework (e.g. the time required prior to initiating the porting process and the time during which the data will remain available for porting); **the fees applicable where a professional user wishes to switch service providers or transfer data back to its own IT systems**;

- **the approach to certification schemes that facilitate the comparison of data processing products and services** for those who use them for purposes relating to their business operations, including quality management, information security management, continuity of business management and environmental management;

- **communication action plans** with a multi-disciplinary approach to **sharing knowledge of codes of conduct among the relevant stakeholders.**

- Service providers have been encouraged by the Commission to develop their codes of conduct by 29 November 2019 and implement them effectively by 29 May 2020.

Additionally, the Regulation lays down the rules governing the competent authorities' access to data for purposes of fulfilment of their official duties and collaboration in this regard across the EU member states.

What is the scope of application of the Regulation?
The Regulation **applies to**:

a) the processing of **electronic non-personal data provided as a service within the European Union to users residing or having an establishment in the Union, regardless of whether the provider is established or not in the Union;** or

b) the processing of electronic non-personal data carried out by a natural or legal person residing or having an establishment in the Union for its own needs.

In practice, **the provisions of the Regulation will apply e.g. to entities which provide cloud computing, big data, IoT or AI services**.

What are non-personal data?

Non-personal data are **electronic data other than the personal data defined by GDPR.** Thus, they will include information which does not relate to an identified or identifiable natural person.

Examples of non-personal data are anonymized data sets used for big data analyses, IT algorithms, machine-generated data or information concerning websites visited by a user, the time spent on each site or the number of visits, provided that such information does not relate to an identified or identifiable natural person.

What is non-personal data processing?

The processing of non-personal data means **any operation or set of operations which is performed on non-personal data or on sets of non-personal data in electronic form, whether or not by automated means**, such as collection, recording, organization, structuring, storage,

adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

The Regulation should apply to data processing in broad sense, encompassing **the usage of all types of IT systems, whether located on the premises of the user or outsourced to a service provider. It should cover different service models from Infrastructure-as-a-Service (IaaS) to Platform-as-a-Service (PaaS) or Software-as-a-Service (SaaS).**

The Regulation on a framework for the free flow of non-personal data versus GDPR

The Regulation on a framework for the free flow of non-personal data does not affect any personal data protection regulations, which means **that all the rights and obligations under GDPR will remain in full force and effect.**

As far as data sets encompassing both personal and non-personal data are concerned, the provisions of the Regulation will apply to the part which comprises non-personal data. Where the personal and non-personal data contained in a set are inseparably connected, the Regulation will be without prejudice to GDPR.

As **in practice doubts may arise** as to the status of specific information, i.e. personal vs. non-personal data, **by 29 May 2019 the European Commission should issue guidance on the interrelations between the Regulation and GDPR**.

How will that work in practice?

Generally, it is hard to disagree with the direction of changes introduced by the Regulation. One should remember, though, that its scope may encompass a range of data that is considerably wider than the one covered by GDPR, as non-personal data may be in fact anything (as long as they are not personal data).

Therefore, laying down consistent rules for such a broad spectrum of data may be quite problematic. For instance, for services which are currently available in cloud computing, the challenges relating to the format and transfer of data from group work and collaboration platforms (e.g. documents, shared resources etc.) are entirely different from those concerning data that describe the cloud infrastructure (such as virtual machine pictures, network topology or database platform data). The Regulation fails to differentiate between these data types, and the establishment of consistent rules for such different information may turn out to be very hard in practice.

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The geo-blocking prohibition comes into effect

Regulation (EU) No 2018/302 of the European Parliament and of the Council on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC entered into force on 3 December 2018.

It introduces a number of prohibitions aimed to prevent discrimination in cross-border trade with customers from other EU member states.

Audio-visual, retail financial and transport services are excluded from the scope of the Regulation.

Prohibition to block or limit the customer's access to the trader's online interface

As the Regulation came into effect, a trader's unjustified blocking or limiting the customer's access to its online interface is no longer possible. It has also been prohibited to redirect customers to a version of the trader's online interface that differs from the one which the customer originally attempted to access. Situations where the customer is redirected by his explicit consent and the version of the interface that he originally attempted to display will remain easily accessible to the customer will be an exception.

Access to goods and services

In principle, traders may not apply different general conditions of access to goods or services without a justification. A foreign customer should be allowed to purchase goods on the same terms as customers residing in the trader's country. The said prohibition will not apply where the provisions of EU or national laws make it impossible for the trader to sell goods or provide services to specific customers or to customers in specific territories.

Means of payment

The Regulation prohibits discrimination of customers from other EU member states by applying certain different conditions of payment. This concerns payment transactions made in electronic form, by means of credit transfers, direct debits or card-based payment instruments within the same payment brand and category.

Polish law

The bill amending the Act on Competition and Consumer Protection, as proposed by the President of the Office of Competition and Consumer Protection, is aimed to bring the Polish law into line with the new regulations adopted by the European Union. It designates the President of the Office of Competition and Consumer Protection as the authority responsible for providing help to consumers, in addition to enforcing those provisions of the Regulation which apply to violation of collective interests of consumers and practices that limit competitiveness. Any other instances of non-compliance with the Regulation will be examined by courts of general jurisdiction.

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Digital employee files – changes as of 1 January 2019

The Act of 10 January 2018 amending some laws due to the shortening of the employee file retention period and file digitization comes into effect on 1 January 2019. It introduces numerous changes to the way in which records related to the employment relationship are kept and retained.

Effective from 2019, employers will be allowed to maintain employee files also electronically instead of in paper form. However, this does not mean that the employment contract or the employer's termination notice will from now on be prepared in electronic form. Instead, this will be a new form in which such documents may be retained.

Additionally, under the new law, employee files ought to be **retained for the entire period of the employee's service and for ten years of the expiry of that period** (instead of a fifty-year period required thus far). However, a shorter retention period applies to those hired as of 1 January 2019. If certain conditions are met, the shorter retention period may also be applied to employees hired after 31 December 1998, which requires the submission of an information report to the Social Insurance Institution.

What is important, employee files should be kept in such a way as to guarantee their confidentiality, integrity, completeness and accessibility, in conditions which eliminate any threat of damage or destruction.

Details of the new procedures applicable to the maintenance and retention of employee records are to be provided in the new regulation, **the draft version of which, dated 13 September 2018, modifies the requirements for keeping the above-mentioned files**. It has been proposed that such records be divided into four parts and be more complex. What is more, the regulation sets out the conditions (including technical ones) for keeping employee files in electronic form, in particular the conditions to be satisfied to protect them against loss, damage or unauthorized access.

Employers will have to ensure compliance with the proposed regulation within a period of six months.

In view of the above, it may be useful and reasonable for employers to adopt additional procedures to be followed in respect of employee records, addressing such issues as digitization, access to documentation, back-up copy creation, storage, safeguards or control of their effectiveness.

Additionally, the amended act has **changed the default salary payment form, which will be a credit transfer to the employee's bank account as of 2019**. By 22 January 2019, employers are required – in line with their customary practices – to inform their staff who have thus far received their salaries in cash, of the obligation to provide the number of the payment account to which credit transfers will be made or to file a request for their salary payments to be made in cash.

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Romania

The list of dual-use items has been updated

In order to ensure better control of exports, transfer, brokering and transit of dual-use items, an update was necessary concerning the dual-use list provided by the Council Regulation (EC) 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of such items.

Starting with 15th December 2018, the Commission Delegated Regulation (EU) 1922/2018 has entered into force, modifying the Council Regulation (EC) 428/2009.

Among the changes we mention:

- in 3E category (Technology), a third note has been added to the 3E001 sub-category, which is meant to exempt from control "Process Design Kits" also;
- regarding the "electronically steerable phased array antennae", some of such items are now exempted from control, due to their main purpose;
- new sub-entry for telecommunications equipment designed to operate above 397 K (124°C) in 5A001 sub-category.

How will these changes impact you?

If you are currently performing or have the intention to perform export, transfer, brokering or transit operations regarding dual-use items according to the Regulation list, we recommend that you reanalyze this list in line with the new Commission Regulation (EU) 2922/2018.

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EU Regulation: Unlocking e-commerce in the European Economic Area

Regulation (EU) 2018/302 on the prevention of unjustified geoblocking and other forms of discrimination based on citizenship, nationality or domicile headquarters on the internal market entered into force on December 3rd.

The regulation removes geoblocking, which is a discriminatory practice that prevents online customers from accessing and purchasing products or services from a site based in another Member State.

The main legal provisions contained in the Regulation

The Regulation contains provisions on the following subjects:

- **Access to online interfaces**
  The Regulation prohibits blocking or limiting customer access to the trader's online interface on grounds of the customer's citizenship, nationality, domicile or headquarters. At the same time, the client can not be redirected, for the same reason, to a version of the online interface different from the one originally accessed by the client, unless his explicit consent has been obtained.

  However, blocking and limiting access, or redirecting to another online platform, are allowed if their purpose is to comply with a legal provision, and the trader is obliged to provide the customer with a clear explanation.

- **Consumer's access to goods or services**

  The trader cannot apply general conditions for access to the goods and services provided by him / her which are discriminatory with regards to the citizenship, nationality, domicile or headquarters of the customer in cases where the goods are delivered or picked up from an address in a Member State / services are provided electronically or in a physical place located in the territory of a Member State where the trader carries on his business. However, this prohibition does not prevent the trader from offering general conditions of access, including net sale prices, which differ between Member States or within a Member State and which are offered to customers on a specific territory or to specific groups of customers on a non-discriminatory basis.

- **Non-discrimination for reasons related to payment**

  Similarly, the trader cannot apply different conditions based on grounds of citizenship, nationality, domicile or headquarters of the customer, the location of the payment account, the place of the payment service provider or the place of issue of a payment instrument in the European Union as regards the means of payment accepted by it. For the application of this prohibition it is necessary to fulfill all of the following conditions:

  - the payment transaction is made through an electronic transaction by credit transfer, direct debit or a card-based payment instrument within the same payment brand and category;
  - authentication requirements are fulfilled pursuant to Directive (EU) 2015/2366; and
  - the payment transactions are in a currency that the trader accepts.

  However, if there are objective reasons, the trader has the possibility to postpone the delivery of the goods / services until the payment transaction initiation has been duly acknowledged.

At the same time, the trader can request charges for the use of a card-based payment instrument for which interchange fees are not regulated under Regulation 2015/751 and Regulation 260/2012. Those charges shall not exceed the direct costs borne by the trader for the use of the payment instrument.

- **Agreements on passive sales**

  The Regulation shall not affect agreements restricting active sales within the meaning of EU Regulation 330/2010 or those limiting passive sales, provided that transactions constituting passive sales do not infringe the provisions of the Regulation. The provisions on agreements binding traders to such violations are null and void.

  With respect to the provisions of agreements concluded before March 2nd 2018, in accordance with Art. 101 TFEU and any equivalent rules of national competition law, the legal provisions presented shall apply from March 23rd 2020.

The need to adopt the Regulation

With regards to the application of the principle of free movement of goods and services within the European Union, it has been found that obstacles imposed on states are no longer sufficient. Thus, to highlight the full potential of the internal market, as an area without frontiers, it is necessary to impose certain restrictions on businesses as they may hinder the free movement of goods and services by decisions that involve blocking or limiting access to their online interfaces for customers from other Member States that want to carry out cross-border transactions (this practice being known as "**geoblocking**").

It also occurs when certain traders apply different general conditions of access to their goods and services with respect to such customers from other Member States, both online and offline. Although such different treatment might, in some cases, be objectively justified, in other cases, some traders' practices deny or limit access to goods or services by customers wishing to engage in cross-border transactions, or some traders apply in this regard different general conditions of access, which are not objectively justified.

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Serbia

Amendments to the Corporate Income Tax Law introduce new tax incentives

Amendments to the Serbian Corporate Income Tax Law introduce tax incentives for the knowledge based industry - R&D deduction, IP box and tax credit on investments in start-up companies.

1. R&D Deduction

R&D deduction is introduced - expenses directly related to R&D activities performed in Serbia are tax deductible in the double amount.

Research and development are defined in line with the IAS 38. R&D deduction is not applicable on research expenses arising with the aim of finding and developing oil, gas or mineral resources in the extractive industry.

Bylaw which would regulate in more detail the application of the tax incentive is expected in the coming period.

2. IP Box regime

Tax incentive for taxpayers who derive royalty income is introduced. Namely, qualified income, realized by the owner of the IP, based on the compensation for the use of registered IP, except compensation for the transfer of all rights on the IP, may be excluded from the tax base in the amount of 80% of such qualified income (also applicable to the income from patents), if the taxpayers opts for it.

It is expected that a bylaw will be adopted, which would closely define the application of this incentive and calculation of qualified income.

3. Tax credit for investments in start-up companies

A tax incentive is introduced for taxpayers which invest in start-up companies (newly established companies performing innovative business activities). Taxpayer which is not a start-up company, investing in a start-up company, has a right to a tax credit in the amount of 30% of such investment.

Tax credit may be used by the taxpayer:

- who before investment, independently or with all related entities, did not own more than 25% of the shares (voting rights) in the start-up company in which it invests,
- only based on fully paid in monetary investments that increase the capital of the start-up company,
- provided that the taxpayer did not decrease its investment continuously for a period of three years from the date of the investment – tax credit can be used for the first time in the tax period following the period in which this condition was fulfilled.

Maximum amount of the tax credit that can be used from one investments amounts to 100,000,000 dinars, while maximum amount of tax credit, which can be used in one tax period amounts to 50,000,000 dinars (exceptions exist for related entities). Carry forward of tax credit allowed for up to 5 years.

Certain conditions need to be fulfilled for a company to be deemed as a start-up company (that no more than 3 years have passed since its establishment,

that its predominant business activity is innovative (as defined by the law governing innovative activities), etc.).

4. Lower taxation of capital gains derived from disposal of IP

A new tax incentive is introduced which provides that only 20% of capital gains will be included in the tax base, if derived from the transfer of full property rights on registered IP and patents. On the other hand, only up to 20% of the capital loss realized from the transfer these rights can be offset against capital gains from the sale of other right in the same year.

Other Amendments to the Corporate Income Tax Law

Amendments to the Serbian Corporate Income Tax Law, apart from the new tax incentives, also encompass change of the method for calculation of tax depreciation and suspension of limit for deductibility of marketing expenses.

1. Tax depreciation

New rules for calculation of tax depreciation apply to fixed assets acquired as of 1 January 2019, while existing provisions, with certain amendments, are applicable for depreciation of existing fixed assets. The main amendments are:

- fixed assets in all five depreciation groups will be depreciated using the straight-line method,
- if the tax depreciation is higher than the accounting one, only the amount of accounting depreciation will be tax deductible.

It is expected that two rulebooks will be adopted, which should provide more details on the calculation.

2. Suspension of limit for deductibility of marketing in tax balance

Marketing expenses are deductible in full amount (subject to the general rules on deductibility).

3. Other amendments

- Taxpayer's, i.e. concession provider's, income realized from the transfer of nonmonetary assets without consideration which was, under the concession contract, performed by the private partner, are not included in the tax base in the tax period in which they were recorded, under condition that the estimated value of the concession amounts to at least 50 million euros.
- Capital gains arising from the transfer of immovable property to the concession provider, performed by the private partner under the concession contract, are not included in the private partner's tax base in the tax period in which they were recorded, under condition that the estimated value of the concession amounts to at least 50 million euros. Capital losses arising from the aforementioned transfer of immovable property cannot be offset against capital gains.
- Taxpayer's income, in tax period in which it was recorded, realized from the cancellation of taxpayer's debt towards users of public funds, insolvent banks and towards chambers of commerce, is not included in the tax base when respective debts are included in the pre-prepared reorganization plan confirmed by the effective decision in accordance with the law governing bankruptcy.

- Effects of changes to the accounting policies arising from the first application of IAS, i.e. IFRS and IFRS for SME, based on which, in accordance with accounting legislation, the adjustments of certain positions of the balance sheet are performed, are recognized/deductible as income/expenses, starting from the tax period in which respective adjustments were performed. Such income and expenses are recognized/deductible in the tax balance in equal amounts in five tax periods.

Amendments to the Law on Personal Income Tax

Main amendments to the Serbian Personal Income Tax Law encompass amendments to the tax treatment of employee share plans (wherein, such benefits would be exempt from salary tax subject to certain conditions) as well as exemption from salary tax of employer's expenses related to recreation of employees.

1. Taxation of securities, stock options and shares acquired from the employer or employer's related entity

New provisions introduce an exception from the general rules regarding the taxation of securities acquired from the employer or employers related entity. Hence, securities, stock options and shares of the employer and employer's related entity that the employee receives free of charge or at a discounted price from the employer or employer's related entity are exempted from salary tax if certain conditions are met.

Namely, above mentioned exemption will not be applicable in following cases:

- If the employee alienates such securities before the expiration of 2 years from the moment the employee acquires full ownership rights – employer will be obliged to calculate, withhold and pay the tax at the moment of alienation

- If the employer or employer's related entity redeem such securities – employer will be obliged to calculate, withhold and pay the tax at the moment of redemption

- If the employment terminates before the expiration of 2 years from the moment the employee acquires full ownership rights (except in certain cases such as retirement and disability) - employer will be obliged to calculate, withhold and pay the tax the last day of employment.

2. Expenses for recreational activities and team building

Amendments to the PIT Law prescribe that the following will be exempted from salary tax:

- Employer's expenses with regard to creating and maintaining conditions for recreational activities of employees at the work place (building and/or acquisition of the equipment for recreation)

- Reimbursement of expenses to employees for collective recreational activities

- Reimbursement of expenses for organizing sports events and activities of employees organized in order to improve health and/or build better relationships among employees, or employees and the employer.

In order for the exemption to be applicable, collective recreational activities of the employees would need to be prescribed in the employer's general act and all of the employees would need to be entitled to the recreational activities of the same type, quality and volume. Exceptionally, recreational

activities can be provided to a certain number of employees if that is justified with the proper medical documentation.

As for the sports events i.e. activities of the employees, tax exemption will be applicable if such activities are carried out based on the employer's decision and if a significant number of employees has the right to participate and participates in such event.

3. Income from providing accommodation services

Amendments of the PIT Law introduce specific rules with respect to the taxation of income derived from providing accommodation services – i.e. income an individual receives from providing accommodation in home craft facilities and domestic country households for up to 30 days and in the accommodation facility regardless of the days.

Law on amendments to the Law on Mandatory Social Security Contributions

The most important amendment is cancellation of employer's mandatory social security contributions for unemployment.

The changes regarding unemployment social security contributions prescribe that the liability for the payment of unemployment social security contributions lies with the insured person only. Therefore, employers are not liable to calculate, withhold and pay unemployment insurance paid on top of the salary at the rate of 0.75%.

New Customs Law

The most significant changes are:

- **exchange of information (including submission of customs declarations) between customs offices and businesses, as well as storage of those, which should be completely done electronically;**
- **security (collateral) for collection of customs debt – an obligation to provide mandatory security has been envisaged for coverage of potential and actual customs debts for the majority of customs procedures.**

1. Electronic exchange of information

With the application of the new CL all exchange, as well as storage of information, such as customs declarations, requests or decisions, between customs offices and between customs offices and businesses should be done by means of systems for electronic information processing, that is, electronically. In other words, doing business will become paperless, which, among other things, assumes withdrawal form submission of paper declarations.

The new CL, at the same time, envisages possibility for the use of other means for exchange and storage of information, except for the systems for electronic information processing, if such electronic systems are not operative yet. Additionally, it also provides for the possibility to use other systems for exchange and storage of information, except for the systems for electronic information processing, in special cases when that is justified by the type of transport used or when electronic information processing is not appropriate for the given customs formalities.

In both cases, the new CL gives authority to the Government of the Republic of Serbia to regulate the said cases in more detail.

In any instance, it is expected that this change should result in development of new and upgrade of existing information systems that companies in the Republic of Serbia are already using.

2. Security (collateral) for collection of customs debt

The new CL prescribes mandatory collateral for coverage of potential and actual customs debts in the manner that, in situations where placement of collateral is mandatory, customs authority shall determine an exact amount of the collateral at the level equal to the actual amount of import or export duties which corresponds to the customs debt and other duties which are collected at import or export, if such amount can be determined at the time when the collateral is requested.

On the other hand, if it is not possible to determine the correct amount, the collateral is being determined at the highest possible amount of import and export duties, assessed by the customs authority, and which corresponds to the customs debt and other duties which are collected at import or export, that arose or could arise.

In addition, a mandatory collateral has been established for the majority of customs procedure, as well as for temporary storage of goods. That said, the mandatory collateral that should cover potential and actual customs debts, in the form of guarantee, has been prescribed for special customs procedures: storage procedures (including customs warehousing and free zones), special use procedures which encompass temporary import and special purpose use, and processing procedures encompassing inward and outward processing.

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Slovakia

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

Notice of the Ministry of Foreign and European Affairs of the Slovak Republic on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting was published in the Collection of Laws.

The Notice of the Ministry of Foreign and European Affairs of the Slovak Republic on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting was published in the Collection of Laws. The Convention will take effect for the Slovak Republic on 1 January 2019. The Convention amends certain bilateral double taxation avoidance treaties to which the Slovak Republic is a party in accordance with the reservations and notifications raised at ratification. The impact on individual double taxation avoidance treaties in accordance with the reservations and notifications of the parties will be published by separate notices of the Ministry of Foreign Affairs.

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Amendment to the Social Insurance Act Implementing Annual Reconciliation of Social Security Premiums. The Amendment also Amends the Income Tax Act.

The proposed amendment to the Social Insurance Act was adopted and will be effective from 1 January 2019.

The National Council of the SR adopted an amendment to Act No. 461/2003 Coll. on Social Insurance, as amended, introducing, inter alia, a contribution allowance for an employee who carries out work under a work performance agreement (dohoda o vykonaní práce), or an agreement for general services (dohoda o pracovnej činnosti) and an annual reconciliation of social insurance premiums and other changes stated below.

Social insurance contribution allowance

With regard to the introduction of a social insurance contribution allowance for an income of up to EUR 200 per month for pensioners working under an agreement, legislation was adopted effective from 1 July 2018 incorporating into Act No. 461/2003 Coll. on Social Insurance, as amended, the necessary principles for the application of a deductible item on contributions (DIC) of EUR 200.

The DIC will apply to both the employee and the employer – which means that a person working under an agreement with the DIC with income of up to EUR 200 per month and the person's employer will pay no pension insurance premiums (old-age pension insurance and disability insurance) and the employer will also pay no premiums to the solidarity reserve fund. However, a person working under an agreement with the DIC will be covered by pension insurance throughout the term of the agreement, ie from the agreement commencement to the termination date.

Annual reconciliation

The amendment also introduces a legal regulation of the annual reconciliation in social insurance. It lays down the basic principles of annual reconciliation, procedures in annual reconciliation and for identifying the result of annual reconciliation.

The Social Insurance Agency will carry out the annual reconciliation. The result of the annual reconciliation is obtained by comparing the assessment bases recognised for the payment of premiums by advance payments with those identified during the annual reconciliation from the data available to the Social Insurance Agency at the annual reconciliation date, taking into account the maximum annual assessment base.

The annual reconciliation should reflect the duration of insurance and the periods in which the obligation to pay premiums is excluded when setting the maximum annual assessment base. The purpose is to reduce the maximum annual assessment base for the annual reconciliation to correspond to the period in which the premium was payable (relative maximum annual assessment base), as premium advance payments under each insurance relationship are proposed to be paid up to the maximum annual assessment base in the reconciliation period, regardless of the insurance period. The maximum annual assessment base will be proportionately decreased if the insurance did not last for the whole calendar year and also for self-employed persons when their obligation to pay premiums was excluded.
The first annual reconciliation by the Social Insurance Agency will be performed in 2022 for 2021.

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