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CE Tax&Legal Highlights
October 2017

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Latvia

Proposed changes in Latvian VAT Law

The Ministry of Finance has published draft amendments to the Latvian VAT law (further – draft amendments). Proposed amendment to the Latvian VAT Law would introduce reduced rate of 5%, which will be applicable to specific fresh berries, fruits and vegetables characteristic to Latvia, including those that have been washed, peeled and packaged, but not thermally treated. The amendments (if announced according to current draft) will be into force from 1 January 2018 to 31 December 2020.

Please consider that the draft amendments have not been adopted yet, thus there might be changes during discussion process. In case the new reduced VAT rete would be adopted, amendments to the Latvian VAT return forms would also be made.

Damages Directive transposed: Should competition law infringers be scared?

The effectiveness of the fundamental objectives of competition law may be jeopardized if those who have incurred damages due to infringements of competition law are not able to bring actions for damages in an efficient manner. Although Article 21 of the Competition Law provides for the right to claim damages from the infringer, such actions are rarely brought in Latvian courts. Even more rarely the damages are compensated.

The reasons for that are the obstacles in proving the existence of an infringement and ascertaining the amount of damages, which in turn are closely linked to the claimant's limited ability to obtain evidence.

The legislator has undertaken to rectify these problems and deficiencies in the legal framework through amendments to the Competition Law and the Civil Procedure Law. These amendments transpose the provisions of the Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (the "Damages Directive").

The relevant amendments to the Competition Law will enter into force on 1 November 2017 and will transpose the substantive provisions of the Damages Directive, whereas amendments to the Civil Procedure Law are expected to enter into force no later than on 10 November 2017 and will transpose the procedural provisions of the Damages Directive to the national law.

<u>Amendments to the Competition Law</u>
With the entry into force of the amendments to the Competition Law, the regulation regarding actions for damages will shift significantly to the benefit of the parties, who have incurred damages.

Firstly, full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed, that is, full compensation shall cover the right to compensation for actual loss and for loss of profit, plus the payment of interest.

Secondly, undertakings, which have infringed competition law through joint behaviour are jointly and severally liable for the harm caused by the infringement of competition law. However, there are exceptions to the obligation of joint and several liability. Under certain conditions, it does not apply to small and medium-sized enterprises and to infringers, who have been granted immunity from fines under a leniency programme.

Thirdly, in order to avoid overcompensation, compensation for actual loss at any level of the supply chain shall not exceed the overcharge harm suffered at that level. The burden of proving that the overcharge was passed-on shall be on the defendant, who may reasonably require disclosure from the claimant or from third parties. Nevertheless, the indirect purchasers are also entitled to full compensation.

Amendments to the Civil Procedure Law

Firstly, it shall be noted that all actions for damages for infringements of competition law will fall under the jurisdiction of the Riga City Latgale District Court.

Secondly, in view of the asymmetrical access to information inherent in actions for damages for competition law infringements, new provisions dealing with the requests of evidence have been introduced. At the party's request, the disclosure of evidence will be ordered by the court. However, it should be noted that the access to certain types of evidence will be limited. For example, the court cannot at any time order the disclosure of the following evidence: leniency statements or settlement submissions.

Although it is yet unpredictable to what extent and how active will the courts be in exercising their rights to order the disclosure of evidence, the court will also be entitled to impose a fine of up to EUR 14 000 for natural persons and up to EUR 140 000 for legal persons for failure or refusal to comply with the disclosure order or the destruction of the relevant evidence.

Thirdly, and very importantly, an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be irrefutably established for the purposes of an action for damages brought before their national courts.

Finally, it should be noted that the general limitation period set by the Civil Law of the Republic of Latvia - 10 years - will also apply to actions for damages for infringements of competition law. The term begins with the termination of the infringement and is suspended during the investigation of the infringement by the competent authority.

The course of implementation

It is important to note that the deadline for transposing the Damages Directive was 27/12/2016. Better late than never, Latvian legislator will have transposed the Damages Directive almost a year after the transposition deadline.

Weeks before the transposition measures enter into force, persons who have suffered harm caused by competition law infringements should assess the feasibility of bringing an action for damages against an infringer in the framework of the improved legal order. The infringers, however, shall, firstly, stop any activity that infringes the competition law, and, secondly, engage qualified lawyers in case actions for damages are brought against them.

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Poland

Draft of a new Tax Ordinance

After over two years of works of the General Taxation Law Codification Committee, the Ministry of Economic Development and of Finance issued a draft of a new Tax Ordinance. The draft modifies the existing institutions and introduces a number of new solutions to the tax law.

New Tax Ordinance

On 23 October 2017 the Ministry of Economic Development and of Finance issued a draft of the new Tax Ordinance which is set to replace the existing legislation.

It is the effect of over two years of work of a team of tax experts from the General Taxation Law Codification Committee headed by Professor Leonard Etel. The new more extensive law will replace its over twenty-year-old and frequently amended predecessor.

Along with the draft of the new Ordinance, the Ministry of Economic Development and of Finance presented drafts of 42 implementing regulations and provisions. The implementation will involve amendment of over 140 other legal acts.
The draft will be first discussed within the Ministry and will be then subject to public consultation. Afterwards it will move through the legislative process — parliamentary committees, the Sejm and the Senate.

The new law is scheduled to be enacted on 1 January 2019.

Draft's assumptions

The Committee's main assumptions were to focus on:

- restoring the confidence in mutual relationships between the taxation authorities and taxpayers; and
- lowering the costs of tax proceedings (increasing the effectiveness of tax collection).

To this end, the existing institutions will be modified and brand new ones will be established. These include:

- summary proceedings;
- cooperation agreement made by the taxation authorities and the taxpayers of great economic importance;
- discussion of the tax consequences of transactions by the taxpayer and the taxation authorities;
- tax agreement comprising mutual arrangements and concessions concluded as part of tax proceedings between the taxation authorities and the taxpayer;
- referring the case examined in the tax proceedings to mediation;
- protection of reasonable expectations formed based on information on one's rights and duties provided by the taxation authorities.

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A watercraft not to be treated as a tax warehouse

Tax warehouses need to be in located in immovable property. According to the Supreme Administrative Court (NSA), the Excise Duty Act does not allow the possibility of running a tax warehouse under a movable formula (e.g. on a barge) - see: decision of 03 October 2017.

Disputed issue

The issue resolved by NSA concerns a taxpayer conducting business activity in the scope of trading in energy products (marine fuels) which are exempt from excise due to the intended use. The taxpayer uses barges (bunkering boats) in its operations.
As indicated by the taxpayer, bunkering boats are used for the purpose of transporting marine fuel to recipients. They are not self-propelled and need to be moved by pusher-ships. During fuelling up, bunkering boats are berthed in a designated location.

The taxpayer's intention was to start the process of marking and adding dye to marine fuel in the bunkering boat under the excise-suspension procedure. Considering that in accordance with the excise duty law, this procedure is equivalent to manufacturing excise products and by the same token it can only be carried out in a tax warehouse, the taxpayer applied for an individual tax ruling to confirm the assertion that bunkering boats can be treated as a tax warehouse. The taxpayer's argumentation was that since bunkering boats are not self-propelled and are moved with the use of pusher-ships, they could be deemed amphibious containers/ warehouses, which in turn could be seen as a tax warehouse. In addition, as argued by the taxpayer, the Excise Duty Act that regulates the granting of permits to operate tax warehouses and the rules of their operation does not expressly provide that a tax warehouse needs to be immovable property. In the context of the warehouse's location, the regulations of the law only refer to 'places' and 'rooms'.

The Director of the Tax Chamber in Bydgoszcz, and then also the Provincial Administrative Court (WSA) in Gdańsk and NSA did not corroborate the taxpayer's standpoint on the matter.

Position of tax authorities and administrative courts

In the tax ruling decision the Director of the Tax Chamber in Bydgoszcz emphasised the special status of a tax warehouse in the tax law system. This special status is associated with the need to impose the appropriate level of

control and monitoring. If a tax warehouse in the form of a bunkering boat is, for example, at sea, then it is not possible to exercise control and supervision on an ongoing basis. On the other hand, NSA focused in its deliberations on the notion of a 'room' as used in the excise duty regulations with reference to tax warehouses. In line with the argumentation used by NSA, the dictionary definition of the word: 'room' (i.e. a building or its separated part that has a specific purpose) implies that this word directly refers to unmoveable property. As a consequence, NSA indicates that the legislator does not provide for the possibility of operating a tax warehouse otherwise than from immovable property.
It needs to be pointed out that EU Directives do not prohibit the possibility of establishing tax warehouses on barges. According to the EU regulations, member states should individually decide what conditions need to be met in order for an entity to be able to operate a tax warehouse. For that reason other European countries, such as the UK or Denmark, permit establishment of a tax warehouse on a ship or a barge. However, in the opinion of NSA, this solution is inadmissible under the Polish legal regime.

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Ban on commercial activity on Sundays effective as from 01 January 2018

The Sejm standing subcommittee for labour market issues has accepted almost all modifications introduced by MPs to the citizen-initiated bill on restriction of commercial activity on Sundays.

On 12 October 2017 the standing subcommittee for labour market issues finished its work on the citizen-initiated bill concerning restriction of commercial activity on Sundays. Generally, almost all modifications proposed by MPs are now accepted, and the bill has been transferred for discussion to the Social Policy and Family Committee.

Certain other amendments were suggested during that subcommittee meeting (e.g. extension of the commercial ban to include cash&carry entities), but they were not discussed - the issues in question would be debated and voted on during the Social Policy and Family Committee's session.

What do we know about the ban?
The ban will take effect on **01 January 2018,** and it will apply to **24 Sundays per calendar year**. All outlets covered (retail, wholesale, etc.) **will be able to operate on the second and fourth Sunday** of each calendar month. The ban will also apply in respect of bank holidays, so if a bank holiday falls on 'a commercial Sunday', the ban will be applicable.

The bill introduces a separate regime concerning **24 December and Easter Saturday - commercial activity will be prohibited on those days after 2:00 PM**. As per the new regulations, employees will be entitled to

compensation for reduced working time. It is uncertain whether that provision should be taken to mean that on such days the employer cannot schedule work in a reduced time until 2:00 PM so as not to bear the economic burden associated with the ban (by moving the hours not worked to a different day of the settlement period).

According to MPs, working on Sundays should be understood as working **over the period of 24 consecutive hours between 00:00 on Saturday and 00:00 on Sunday**. This provision is different from the original one which extended the ban until 6:00 on Monday. Restoring the provision to its original wording was advocated during the meeting of the subcommittee.

The ban will apply to trading and **trading-related activities** in points of sale (POS). The draft regulations provide that POS include shops, stores, wholesale outlets, departments stores, commercial centres, etc. As for now, we are unable to confirm whether distribution centres fall outside the scope of the ban or not, considering that the new version of the Act introduces a very general definition of trading/commerce and trading-related activities, and at the same time - a very specific definition of a point of sale.

In line with the new version of the bill:

- a point of sale (POS) is a unit where trading (commerce) **as well as trading-related activities** take place;

- trading (commerce) **is a sales process consisting in exchange of goods or products for money**;

- performance of trading-related activities means **performance of activities that are directly linked with trading, by an employee or a hired individual in a POS** and **performance of activities linked with storage and physical count of goods by an employee or a hired individual in a POS**.

The representatives of the commercial sector point out that the definitions introduced in the modifications proposed by MPs are inaccurate and need to be fine-tuned by the Social Policy and Family Committee.

The list of exceptions from the ban on Sunday trading and entrusting work on Sundays has been amended by removal of the spatial criteria based on which POS could be exempted. Under the current version of the Act, no norms (related to turnover, area, etc.) apply in certain respects, whereas in others, exemptions may be based on the prevailing business activity. The trading ban does not apply to POS if trading is carried out by the entrepreneur in line with Article 1.2 (i.e. the definition of an entrepreneur contained in the Act on freedom of economic activity), where the entrepreneur is a natural person who conducts trading **only in person and in its own name** (regardless of the area of the POS concerned).

The ban will apply to **entrusting employees or hired individuals with work** in trading and in trading-related activities, also free of charge. **An employee** in the meaning of the Act is an individual employed in a POS pursuant to an employment contract, or a temporary worker delegated to perform work in a POS. On the other hand, the bill defines **a hired individual** as a natural person not performing business activity, that provides work in a POS on the basis of a civil law contract, or an individual working based on such a contract and **delegated to work in a POS by a temporary work**

agency. The Act does not refer to (we do not know whether it is intentional or not) the status of individuals employed by an employment agency and delegated to a POS under staff outsourcing.

Finally, the representatives of the National Labour Inspectorate are authorised to conduct **unexpected inspections** of POS any time, during the day or at night. The representative of the Inspectorate made it known in the course of the subcommittee meeting discussions that many more inspections will be conducted in commercial networks after 01 January 2018 to check whether the Sunday trading ban is adhered to.

The Act provides for fines to be imposed by the Inspectorate in the case of ban violations, **ranging from PLN 1,000 to 100,000**. The responsibility for breaching the ban will burden the individual who has defied the ban rather than the organization, and the fine amount will not be conditional upon the proceeds of the breaching POS. When adjudicating on the amount of the fine, the court will exclusively refer to the gravity and scale of the breach, which are not directly linked with the economic status of POS. The bill additionally includes regulations on the criminal liability in case of persistent breaches.

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Tax on shopping malls and offices

A bill tabled for discussion in the Sejm

The new commercial real estate tax announced several months ago (further called "CRET') is taking shape.

On 04 October 2017 *a draft act amending the Act on personal income tax, the Act on corporate income tax and the Act on lump-sum income tax on certain incomes obtained by natural persons* (further called "**the Draft Act**") was submitted to the Marshal of the Sejm. If the Draft Act is adopted in its current version, the tax burden on many entities operating on the real property market may increase significantly.
What do we know about this tax?

CRET will be charged on office and commercial buildings, such as shopping malls, independent stores and boutiques in the meaning of the Classification of Fixed Assets, if their initial value (not taking into account depreciation reductions) exceeds PLN 10,000,000. The excess of the initial value over the aforesaid threshold will constitute the tax base (example: an office building

with the initial value of PLN 50,000,000 will be subject to taxation based on the amount of PLN 40,000,000). According to the current version of the draft Act, the tax rate is 0.035% of the tax base a month (0.42% a year).

Hence, referring to the example quoted above, CRET on the office building with the initial value of PLN 50,000,000 will amount to **PLN 168,000 a year.**

The rationale underlying CRET is fairly straightforward and as a rule, there are no exemptions safe for the following: exemption of fully depreciated property and property used for the taxpayer's own purposes. As a consequence, the new tax generally will not apply to production enterprises, because in line with the Draft Act, office facilities in production plants are not liable to tax, if they are not subleased. The tax should not apply to service delivering entities that operate from their own office or commercial facilities either.

Importantly, the Draft Act provides for the possibility to deduct CRET from the income tax calculated according to the general rules. In practical terms, it means that CRET should not - as a rule - burden the property, if its owners generate income subject to income taxes.

Problem with unoccupied property

The structure of CRET will adversely affect the owners of property that, for various reasons, generates losses (e.g. vacancies resulting from long- or short-term lack of lessees). In such situations the fixed costs of running business will increase, and, in addition to administrative expenses linked with the maintenance and real estate tax (approx. PLN 22 per sq.m of the building, regardless of whether occupied or not) owners of unleased buildings will have a new tax to pay. If we consider the real property market in Warsaw, we may come to a conclusion that such situations are far from rare. According to estimates, approx. 14% of office space in Warsaw is not leased, which translates into several hundred thousand square meters of vacancies. Other Polish cities are in a similar situation.

CRET is likely to take effect as from **01 January 2018,** which does not leave us much prep time. Verification (from the perspective of the income tax legislation) of the initial value (i.e. the tax base) of buildings seems advisable. As regards unleased buildings, it may also be worthwhile to check the real estate tax settlements, to determine whether there are any overpayments leading to inflated costs of property maintenance.

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The Commission of Public Finance has finished works on the draft bill on amending the Personal Income Tax Law. Currently, the draft legislation is still under review of the Parliament.

Compared to the previous version of the draft, the Commission has introduced important modifications as regards the application of 50% deductible cost of earnings to remuneration of employees transferring copyrights to works executed within their employment duties to their employer, as well as to taxation of employee incentive share plans.

Application of 50% deductible cost of earnings

As regards remuneration of employees creating works within their employment, the above-mentioned amended provisions introduced an increased double limit for application of the 50% cost of earnings, as announced previously. As of January 2018, individuals transferring copyrights to their employers will be able to decrease their revenue by a maximum amount of PLN 85,528 per annum (as compared to the currently binding limit of PLN 42,764).

Nevertheless, the modifications introduced by the Commission of Public Finance have also introduced a limitation as regards the types of business activity income from which can be decreased by the 50% cost of earnings. According to the new version of the draft, as of 1 January 2018, the deduction will be applicable solely to income received from the following types of activities:

1) creative work in the field of architecture, interior architecture, landscape architecture, city planning, literature, fine arts, music, photography, audio-visual arts, computer programs, choreography, making artistic instruments, folk art, and journalism;
2) research & development and academic / educational activity;
3) artistic activity in the field of acting & performing, directing for theatre / entertainment purposes, dancing, circus art, conducting, singing, playing instruments, costume design, scenography;
4) audio-visual production activity of directors, screenplay writers, camera and sign operators, editors, stuntmen;
5) journalistic writing.

Incentive share plans

The new provisions provide for a wider group of companies shares of which can be granted to employees on the basis of incentive share plans with a possibility of deferring the moment of taxation until sale. In the previous draft bill, the tax deferral applied solely to companies seated within EU / EEA (same as it is now). After the amendments, the tax deferral should also apply to companies with their seat in all countries, which Poland has concluded Double Tax Treaties with.

In case of such incentive share plans, if they meet conditions provided in the provisions, the taxation should be deferred until the moment of sale of shares acquired under those plans (i.e. they are taxed as capital gains at 19%).

Further steps

The proposed modifications, if they are confirmed and passed as a law, may have a big impact for entities, which apply the above-mentioned solutions.

In case of companies using the 50% cost of earnings deduction to remuneration of their employees due for transfer of copyrights, it is recommended that they analyse in detail to what extent the proposed amendments are going to impact their remuneration structure and the possibility of applying the 50% cost of earnings. As for entities that have incentive share plans in place, they also need to analyse the possible consequences of the new provisions with respect to them as tax remitters, as well as to their employees participating in those plans.

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Romania

New criteria for assessing the fiscal risk in case of optional VAT registration and cancellation of VAT number

New procedures for optional VAT registration, but also for cancellation of the VAT number were implemented through Order no. 2856/2017.
he normative act, applicable starting October 2017, also contains the new criteria for the assessment of fiscal risk, criteria that remind us of the 088 form for assessing the intention and ability to perform economic activities.

The new VAT registration procedure, provided in ANAF Order no. 2856/2017, applies to taxable persons requesting optional VAT registration or to those that had their VAT number canceled due to high fiscal risk and request re-registration.

The new order also presents the criteria set for fiscal risk assessment, but the score assigned to each criterion is not public.

According to the procedure, taxable persons with scores of less than 51 points have a high fiscal risk, but taxpayers cannot evaluate themselves.
Companies applying for optional VAT registration will be assessed in view of 15 criteria, including: headquarters, accounting services, number of employees, existence of a bank account, acts of associates / administrators (e.g. insolvency, bankruptcy, fiscal inactivity, contraventions or offenses).

Companies applying for re-registration after their VAT number has been canceled due to high fiscal risk will be assessed in view of five criteria, namely: headquarters, number of employees, accounting services, fiscal residence of administrators and inconsistencies from ANAF records. These criteria will be applied by ANAF also for cancellation of the VAT number of the companies with high fiscal risk.

According to the order, the significant inconsistencies recorded at the level of statements 394 and 390 will be analyzed. However, tax authorities have not yet detailed what significance procedures and thresholds will be used to determine "significant discrepancies".

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New obligations for exporters on declaring origin of goods

New regulations and rules on declaring origin of goods in trade between the European Union and third countries will come into force. Among these, the most important is the obligation of registration of exporters in the Registered Exporter System (REX). In specific cases, deadline for required registration is December 31, 2017.

In the context of trade between the EU and GSP countries
On December 31, 2017, customs authorities of EU Member States will complete the process of registering European exporters in the Registered Exporter System (hereafter "REX").

After this date, European exporters wishing to issue a proof of origin for export of goods worth more than EUR 6,000 per transport, to GSP countries, for the purpose of bilateral cumulation, will have to obtain REX exporter status. Certificates of preferential origin EUR 1 or form "A" can no longer be used.

In the context of trade within the Agreements governing preferential trade between the EU and partner countries
Exporters wishing to prove the origin of goods whose value exceeds EUR 6,000 per transport, exported from EU to partner countries, will have to obtain the status of registered exporter in REX, if the applicable FTA stipulates this obligation.

Until present, the abovementioned obligation is expressly provided for only in the FTA between the EU and Canada, with effect from January 1, 2018 and in FTA between EU and Vietnam.

Therefore, in the context of new levers of surveillance and control of origin, there is a possibility that in the future, this obligation could be also introduced in other free trade agreements concluded between the EU and the partner countries.

In the context of trade within the governing preferential trade Agreement between the EU and the overseas countries and territories
Exporters wishing to prove the origin of goods whose value exceeds EUR 10,000 per transport exported to overseas countries and territories will have to register in the REX, until January 1, 2020.

National technical norms and transitional provisions for approved exporters
According to new national norms in force (Order no.2792/2017), Romanian companies authorized as "approved exporters", which export goods to GSP countries accompanied by a proof of origin, are required to register in the REX until December 31, 2017.
Also, companies certified as approved exporters in Romania have the obligation to register in the REX, if they intend to carry exports to Canada, Vietnam and Overseas countries and territories.

What to do?
If you trade goods for which you issue proof of origin, we recommend that you review the impact of the new rules above on your activity.

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New national regulations on excise duties

The Order of the minister of public finance, which stipulates the procedure and the conditions under which the tax warehouses, registered consignees, registered consignors and authorized importers, are authorized, was recently published.

Recently, the Order no. 2482/2017 on the procedure and the conditions under which the tax warehouses, registered consignees, registered consignors and authorized importers, are authorized, entered into force. It establishes the membership structure and competence of the Commissions for authorization of the operations of products subject to harmonized excise duties. More precisely:

- authorization is carried out by the regional directorates general of public finance, through the regional commissions for the authorization of operators of products subject to harmonized excise duties;
- by exception, authorization of tax warehouses for exclusive wine production carried out by taxpayers, other than large and medium-sized taxpayers, small distilleries as well as small independent beer factories, is made through the territorial commissions for the authorization of operators of products subject to harmonized excise duties, set up at the level of the territorial structures of the regional directorates general of public finance;

What to do?

We recommend that you review the impact of the legislation changes on your activity.

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Decision of the Court of Justice of the European Union on deduction of VAT invoiced by inactive taxpayers

The Court of Justice of the European Union ("CJEU") allows the deduction of VAT incurred by taxable persons on purchases made from inactive taxpayers. The decision is general and mandatory and its effects are not limited in time. Thus, the decision can also be applied for operations performed prior to its issuance.
Moreover, we believe that CJEU decision opens the right to deduct VAT also for other cases where VAT deduction was blocked because the supplier had its VAT number cancelled.

On 19 October 2017, the CJEU decided in case C-101/16 Paper Consult SRL to grant the VAT deduction right to taxable persons that performed purchases from taxpayers declared inactive by the National Agency for Tax Administration (ANAF).

Background
At the end of 2010, Rom Packaging SRL (Rom Packaging), a company established in Romania, was declared inactive for failing to submit the tax statements imposed by law and removed from the register of taxable persons registered for VAT purposes by ANAF.

Based on an agreement from 2011, Rom Packaging supplied services to Paper Consult SRL ("Paper Consult"), a company established in Romania. The VAT related to the acquisition of services was deducted by Paper Consult and paid by Rom Packaging to the state budget.

Based on the Tax Code, ANAF considered that Paper Consult was not entitled to deduct the VAT related to the purchased services as Rom Packaging was an inactive taxpayer at the signing date of the agreement.

Paper Consult appealed, considering that the decision by which ANAF declared Rom Packaging as an inactive taxpayer does not concern it and cannot be a reason for cancelling the VAT deduction right. In return, exercising the VAT deduction right depends exclusively on complying with the conditions provided by art. 178 of the EU VAT Directive (Directive 2006/112/EC on the common system of VAT).

Domestic provisions in force until 31 December 2016
Beneficiaries who purchased goods and/or services from inactive taxpayers were not entitled to deduct VAT related to those purchases, regardless of whether the respective taxpayer was reactivated and would register for VAT purposes later on.

Domestic provisions in force starting with 1 January 2017
Starting from 1 January 2017, the Tax Code allows VAT deduction in relation to purchases made from inactive taxpayers after they are reactivated and re-registers for VAT purposes.

The amendment was introduced following EU-Pilot procedure 8399/16 opened by the European Commission, which imposed the Romanian authorities to grant the VAT deduction right. However, the provision is applicable in the case of re-registration for VAT purposes after 1 January 2017, retroactive application not being available.

For entire article, please click here.

Romania has received EU Council's approval to increase the VAT exemption threshold to EUR 88,500 (RON 300,000)

The UE Council has authorized Romania to increase the VAT exemption threshold for small enterprises from EUR 65,000 to EUR 88,500. The measure derogates from the provisions of the VAT Directive and is valid only for a period of three years (1st of January 2018 to 31st December 2020).

The EU Council has approved the increase in the VAT exemption threshold applicable to small enterprises by EUR 23,500, reaching up to EUR 88,500. However, the equivalent in national currency of the new threshold is only RON 300,000 because it is calculated based on the valid exchange rate at the date of Romania's accession to the European Union (i.e. RON 3.3817).

Currently, the VAT registration threshold is set at EUR 65,000, equivalent to RON 220,000, as an approval obtained by Romania in 2014 that was due to expire at the end of 2017.

Thus, Romania obtained the extension of the derogation from art. 287 of the VAT Directive (providing for a threshold of only EUR 35,000), but also an increase of the VAT exemption threshold.

The purpose of the VAT exemption threshold applicable to small enterprises is not to burden them with additional VAT obligations as it is presumed that the budget revenue that they may generate is low. The increases from the EUR 35,000 threshold provided by the VAT Directive for Romania are granted as a derogation for a limited period, as they should be treated as an exception designed to support entrepreneurs during the start-up period.

The exception is valid from 1st of January 2018 until the end of 2020 or until the VAT Directive is amended.

Romania has motivated the request with the mitigation of VAT burden on small enterprises and the relief of the tax administration of the task of monitoring the collection of a low amount of revenues from a large number of small enterprises.

The decision is already transposed in a draft law sent to the Parliament, where it has been adopted by the Senate and is due to receive the final vote from the Chamber of Deputies.

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Rulebook on Tax Return forms for determining personal income tax paid via Tax Assessment- PPDG-1R, PPDG-2R and PPDG-3R

Rulebook on Tax Return Forms for determining personal income tax paid via Tax Assessment was published on October 6th, 2017 (hereinafter: the Rulebook) in the "Official Gazette RS" no. 90/2017. The Rulebook will enter into force on January 1st, 2018.

Rulebook on tax return forms determining the personal income tax paid via Tax Assessment ("Official Gazette of the Republic of Serbia" No. 49/14, 28/15, 30/15 and 28/16) and Rulebook on tax returns forms for determining Personal Income Tax ("Official Gazette of the Republic of Serbia", No. 7/04, 19/07, 20/10, 23/10 - correction, 8/11, 74/2013, 24/14 and 27/14 - correction) will cease to exist, except in the cases of filing a PPDG-1S tax return in accordance with the Rulebook on Tax return for determining Taxes and mandatory social security insurance by Self-Assessment on the income from Independent Activities ("Official Gazette of the Republic of Serbia", No. 101 / 16 and 7/17).

This Rulebook prescribes and defines the submission and the content of the tax returns in detail for determining taxes as follows:

- Taxes and mandatory social security contributions on income from self-employment to which tax is paid by way of lump-sum taxation (PPDG-1R form);
- Annual income tax (PPDG-2R form);
- Tax on capital gains (PPDG-3R form).]

Novelties on submission of the PPDG-1R, PPDG 2R and PPDG-3R tax returns

When submitting a tax return in electronic form, the individual is obliged to sign the tax return electronically in accordance with electronic signature regulations.

Furthermore, the new Rulebook prescribes that entrepreneurs who have acquired the right to lump-sum taxation based on independent activity from January 1st 2018, and who have selected lump-sum method of taxation, need to submit PPDG-1R tax return exclusively in electronic form.

On the other hand, there is no obligation of submitting PPDG-1R in electronic form for entrepreneurs who pay personal income tax and social security contributions based on performing independent activities for lump sum income until December 31st, 2017. In addition, there is no obligation for those who have no changes in terms and scope of business or trade and other conditions affecting the amount of tax liability in the lump-sum taxation starting from January 1st, 2018. On the contrary, if these changes occur until December 31st, 2017, there is obligation to file tax return PPDG-1R electronically starting from January 1st 2018.

Previous PPDG-1R, PPDG-2R and PPDG-3R forms are replaced with the new tax returns forms enclosed to the Rulebook.

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Information on the Child Tax Bonus at the Beginning of the School/Academic Year

FDSR published information on the child tax bonus at the beginning of the school/academic year.

In 2017, the tax bonus per child is EUR 21.41 a month. The employer decreases employee tax prepayments during the tax period by this amount. Employees can also claim the child tax bonus from the employer during the tax period for a child that is continually preparing for their future occupation by full-time secondary school or university study (until the month in which the child is 25). The right to a tax bonus arises for an employee in the month the study starts. The conditions for claiming and documenting the right to a tax bonus are (i) employee's taxable income from employment is at least EUR 217.50 a month; (ii) an employee supports a child in their household, and (iii) the right to the tax bonus is documented by the school attendance certificate.

The fulfilment of the conditions to claim a tax bonus must be assessed by the employer separately for each calendar month. If an employee is late in documenting the right to a tax bonus, the employer may only start paying the tax bonus from the following month. If an employee claims the tax bonus by signing a Statement to Claim Non-Taxable Portion per Taxpayer and Tax Bonus and fails to document the fulfilment of the conditions, the employer will not pay the employee the tax bonus and the employee may only claim such a bonus after the end of the tax period in the Request for Annual Tax Reconciliation or in the tax return.

Employees are advised to claim the child tax bonus from the employer during the tax period when they fulfil the qualification conditions and to document to the employer the right to the tax bonus in time, rather than wait until the end of the tax period.

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Information on Taxable Persons Not Established or Not Founded for Business, Tax and Accounting Issues

FDSR published Information on Taxable Persons Not Established or Not Founded for Business from the Tax and Accounting Perspective.

The information of the Financial Directorate of the SR describes the taxation of income from the activity of taxpayers not established or founded for business, and gives examples. The information also defines the obligations of taxpayers not established or founded for business from the tax perspective, in particular the obligation to apply double-entry bookkeeping, prepare financial statements and file them with the Financial Statements Register.

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Amendment to the Commercial Code

The National Council of the Slovak Republic has approved an extensive amendment to the Commercial Code, which awaits approval by the President.

The Ministry of Justice of the Slovak Republic has submitted a draft amendment to the Commercial Code (the "Amendment") that has been approved by the National Council of the Slovak Republic and awaits signing by the President. The Amendment underwent extensive changes during the legislative process.

The Amendment introduces the following main changes:

- **Trade secret violation**: the Amendment extends the definition of trade secret violation, additional terms are defined, and specific legal remedies introduced to protect trade secrets (emergency measures, corrective measures, publication of the decision on the merits).

- **Controlling entity's liability for controlled entity's bankruptcy**: The liability of the controlling entity to the controlled entity's creditors for damage caused by bankruptcy of the controlled entity is introduced if the conduct of the controlling entity substantially contributed to the bankruptcy. The controlling entity is released from this liability if it documents that it acted based on available information and in good faith for the benefit of the controlled entity.

- **Termination of a commercial company**: the application for a deletion of a company from the business register (except for winding up without liquidation and with a legal successor) of a company must be accompanied by the approval of the tax

administrator, ie the tax and customs office and the approval of the Social Insurance Agency, unless the company is not listed in the register of debtors of the Slovak Insurance Agency.

- **Merger, amalgamation, division of a company:**

  - **Definition of the decisive date** is added (from which date the actions of terminating companies are deemed from the accounting perspective to be actions taken to the account of the company), and such date can be set retrospectively earliest at the first day of the accounting period in which the draft merger or amalgamation agreement, or division project is prepared, provided that the financial statements prepared as at the date preceding such a date have not been authorised by the competent body;

  - **Conditions for the successor and terminating companies are added**: on the merger, amalgamation or division effective date, the amount of liabilities of the successor company may not exceed the amount of its assets, the companies may not be in liquidation, subject to a declaration of bankruptcy, restructuring proceedings, may not be subject to proceedings concerning their dissolution, and may not be dissolved by court. If members of the statutory body of a company do not comply with the above conditions, they are liable to creditors for damage;

  - For terminating companies, the obligation is introduced to **notify the competent tax administrator** that a draft merger agreement has been prepared, 60 days before the general meeting that is to decide on approval of the draft agreement;

  - After receiving the decision of the shareholders of the participating companies on the merger, amalgamation or division and before filing the application for the registration of a merger, amalgamation or division, **the auditor must prepare a report** stating that if the position of the participating companies as at the decisive date is maintained, the amount of liabilities of the successor company will not exceed its assets. If the terminating company is not required to be audited under the Accounting Act, the auditor must confirm in the report that the receivables and payables of the terminating company correspond to economic reality on the date preceding the decisive date. This procedure does not apply where an independent expert report is prepared containing these facts upon merger of joint stock companies or limited liability companies, where requested by any shareholder of the merged companies or where at least one of the companies is in crisis;

  - A requirement is introduced in the Commercial Code that all companies must file an application for a record of the merger, amalgamation and division in the business register within 30

days of approving the merger, amalgamation or division agreement.

- **Share transfer:** a change is introduced that a shareholder cannot transfer its share to another shareholder or other party if such a company is subject to dissolution proceedings, has been dissolved by a court or based on a court decision if the company has been declared bankrupt or its restructuring is permitted. The company is only obliged to append the approval of the tax administrator to a proposed record of a change in the shareholder in the business register upon share transfer if such a shareholder or transferee is listed in the register of tax debtors;

- **Capital funds from contributions:** a company may create a capital fund from shareholders' contributions where stipulated in the memorandum of association or articles of association. This may be created upon incorporation of the company if approved by the founder, or during the company's existence if approved by the general meeting.

If the Amendment is signed by the President, it will take effect from 1 January 2018, except for sections that will take effect on 1 September 2018. The sections concerning the conditions of merger or amalgamation and division of companies will take effect upon promulgation of the Amendment in the collection of laws.

However, if a draft merger or amalgamation agreement or division project is approved before the Amendment takes effect and the application for a record of the merger, amalgamation or division of a company in the business register is filed within 90 days of the effective date of the Amendment, the existing regulations will apply. Other cases will be governed by the Amendment.

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