Deloitte.

**CE Tax&Legal Highlights**

October 2018

# Tax&Legal Highlights

## October 2018

# Czech Republic

## Breakthrough in the Existing Practice? A Company's Management may be Liable for Additionally Assessed Tax

**As our experience suggests, the Financial Administration has been exerting significant pressure on tax collection, which is reflected not only in an actual increase in tax proceeds, but also, for example, in the number of tax seizures ordered. However, the Financial Administration sometimes seeks to collect tax in highly unorthodox ways. One such procedure has been reviewed by the Regional Court in Hradec Králové – Pardubice Office (the "Regional Court").**

In the case in hand, tax (including accrued interest and fees) was additionally assessed in respect of an entity following a tax audit on the grounds of its failure to prove the VAT deduction entitlement due to not having submitted sufficient evidence demonstrating the performance of construction work. As the company did not pay the additionally assessed tax, it was subsequently unsuccessfully enforced in distraint proceedings. In most cases, the tax administrator would stop short at this point. However, in this case, the tax administrator proceeded to issue a guarantor's call in which it required that the company's statutory executive pay the tax arrears on its behalf. The tax administrator inferred the statutory executive's liability from the following facts.

**Consequences of a Failure to Act with Due Managerial Care**
According to the tax administrator, the statutory executive erred in that it assumed that it would not be necessary to prove the performance of the construction work in the future. In the tax administrator's view, this error must be necessarily interpreted as a failure to act with due managerial care as the statutory executive was obliged to keep both a copy of the construction log and of the actual documents. As the tax administrator states, this error resulted in the company incurring detriment for which, if it is not settled, the statutory executive is liable and, as a result, he or she may be required to pay the additionally assessed tax.

**A Positively Negative Regional Court Ruling**
The Regional Court revoked the ruling of the Appellate Financial Directorate; however, this was not on account of the incorrectness of the whole structure of the statutory executive's liability. Instead, the Regional Court directly addressed the conditions under which the above stated liability obligation may originate.

Firstly, the Regional Court stated that additionally assessed tax **cannot** be automatically considered to constitute detriment incurred on account of a failure, if any, to act with due managerial care, the reason being that the amount of tax is determined by law and its payment is mandatory. Nevertheless, according to the Regional Court, interest and fees accrued in respect of the tax – ie, default interest or fees, whose amount is, in some cases, as high as the tax itself – could be considered to constitute such detriment. The Regional Court subsequently reviewed whether the statutory executive failed to act with due managerial care in not having stored the documents. The Regional Court arrived at the conclusion that no legislation stipulates such an obligation and, if the Financial Administration wished to infer a failure to act with due managerial care from this "negligence", it would

have to provide a thorough justification thereof. Therefore, the ruling has been revoked for unverifiability.

**Tax Audit Implications**
The Appellate Financial Directorate has not filed a cassation complaint against the Regional Court's ruling. However, sooner or later, the Supreme Administrative Court is bound to address the issue of whether it is at all possible to infer management's liability for additionally assessed tax. Therefore, as the Regional Court has so far confirmed the theoretical possibility of recovering tax arrears from persons who have violated their obligation to act with due managerial care (ie, namely from all members of statutory bodies), it is possible that, in performing tax audits, the whole Financial Administration will, besides proving the facts resulting in the additional tax assessment, also focus on proving the violation of obligations by the entity's management.

Entities, or, to be precise, their elected bodies, should, therefore, consider what obligations may be expected of them by tax administrators in relation to their activities. The statutory body of an entity which, in relation to its activities, is at heightened risk of involvement (albeit unintentional) in VAT carousel fraud should focus on setting effective and efficient control measures in respect of its business partners.

## Contacts Details

**Jiřina Procházková**
**Senior Managing Associate**
Mobile: + 420 777 293 481
Email: jprochazkova@deloitteCE.com

**Anna Kottasová**
**Legal – Senior Associate**
Mobile: + 420 731 531 862
Email: akottasova@deloitteCE.com

## Announcing the Czech Republic's stance towards the EU's proposals for digital economy taxation

**The Ministry of Finance has published on its website a brief summary of the Czech Republic's attitude to the proposals of the European Union concerning the taxation of so-called digital economy.**

The Czech Republic opines that any long-term measures in this area need to be addressed at a global level as part of the OECD; therefore, it does not consider the short-term taxation of profits within the EU by introducing an interim (indirect) tax to be a conceptual solution. Some other countries (including Ireland, Finland etc.) have a similar (i.e. negative) attitude to the presented proposals. We will keep you informed of further developments in this area.

## Contacts Details

**Tereza Tomanová**
**Manager**

Mobile: + 420 731 642 218
Email: ttomanova@deloitteCE.com

## Approaching deadline for an entry of beneficial owners information in the Beneficial Owners Register

**An amendment to Act No. 304/2013 Coll., on Public Registers of Legal Entities and Individuals, effective since 1 January 2018, has introduced the Beneficial Owners Register (the "Register") in which all legal entities recorded in the Commercial Register need to record their beneficial owners by no later than on 1 January 2019. Other legal entities recorded in other public registers (including trusts) have to do so by 1 January 2021. What does this duty entail in practice, how complicated is it and what issues may arise?**

### Who is the beneficial owner?

Under Section 4 (4) of Act No. 253/2008 Coll., on Selected Measures against Money Laundering and Terrorism Financing (the "**AML Act**"), a beneficial owner means an individual who has a factual or legal possibility to exercise a direct or indirect controlling influence in a legal person, trust or other legal arrangement without legal personality status. The beneficial owner always refers to a specific individual (or a group of individuals). The AML Act further specifies the facts that may indicate a beneficial owner. Nevertheless, the existence of such facts does not need to necessarily mean that the given individual is a beneficial owner. It is always necessary to assess whether the individual has the possibility to exercise a controlling influence.

Companies are obliged to identify the beneficial owner and keep up-to-date data for customer due diligence, including the facts constituting the beneficial owner status or other substantiation as to why the individual is considered a beneficial owner.

### Beneficial Owners Register

The Register was established on a basis of a requirement of the 4$^{th}$ AML directive for the retention of data on beneficial ownership in a central register ensuring the availability of up-to-data and accurate information on ultimate beneficial owners to state bodies, Financial Intelligence Units (FIUs) and obliged entities when taking customer due diligence measures. As a matter of fact, it may be easy to disguise beneficial owners in complex corporate relations.

The Register is a non-public register. Information on beneficial owners is not provided along with a copy of an entry in a public register, nor is it published. The Register may be accessed by a limited yet relatively large scope of people including, apart from state authorities, representatives of obligated persons which have a duty to identify and verify beneficial owners as defined in the AML Act (this principally involves banks and other financial institutions).

The entire process is certainly not completed with the first entry of beneficial owners in the Register. The data need to be up-to-date and accurate.

**What does a failure to enter the beneficial owner in the Register result in?**
Sanctions have not yet been defined for a legal entity that does not disclose and enter the information on its beneficial owners in the Register by 1 January 2019. Nevertheless, this may pose an issue when the entity applies for providing financial services as pursuant to the AML Act, financial institutions shall conduct customer due diligence including the beneficial owner identification and verification. When the Register is used for the verification and a discrepancy is identified (or no information is found), this may complicate the provision of a banking product or service.

However, legal entities may encounter other issues in tendering for a public contract or applying for a grant from the EU funds. Pursuant to Act 134/2016 Coll., on Public Procurement, the public contracting authority should obtain data on the beneficial owner from the Register. Therefore, if this information is missing in the Register or is contrary to other declared data on the beneficial owner, the chances of the legal entity's success in the tender procedure will decrease.

Based on an announcement published on the website of the Ministry of the Industry and Trade, the managing body of the Enterprise and Innovations for Competitiveness Operational Programme included a condition in calls published since June 2018, stating that **entities without beneficial owners recorded in the Register as of the date of the grant application will not quality for the grant under the programme**.

**Is it complicated to make an entry in the Register?**
For some legal entities with a simple ownership structure, the identification of their beneficial owner and its entering in the Register will not be a major issue. Nevertheless, in our practice we have encountered companies (not only large ones) with such ownership structures, voting rights arrangements etc. that make it complicated to identify beneficial owners. A seemingly unambiguous term "beneficial owner" has a statutory definition entailing many difficulties. A classic example relates to companies co-owned by foreign legal entities.

Increased attention shall also be paid by companies operating in multiple countries (especially within the EU) in which similar registers and duties may also be in place but the definition of beneficial owners may differ and, consequently, other individuals may be entered in local registers. For example, a beneficial owner in the U.S. refers to a person holding 10% of voting rights, as opposed to 25% in most EU member states.

## Contacts Details

**Radek Musílek**
**Senior Managing Associate**
Mobile: + 420 602 888 790
Email: rmusilek@deloitteCE.com

**Vladimír Cupal**
**Assistant Director**
Mobile: + 420 777 993 483
Email: vcupal@deloitteCE.com

## October Vat news: VAT Act Amendment

**As the discussion of the technical amendment to the VAT Act has been postponed, it may be expected that the relevant changes (eg, in respect of tax base corrections, VAT reduction in the event of irrecoverable receivables, taxation of bonuses to statutory executives and members of statutory bodies, differentiation of financial and operating leases or taxation of vouchers for the purchase of goods/services) will come into effect on 1 April 2019 at the earliest.**

What is more, our information suggests that some of the proposed articles of the amendment are additionally anticipated to be modified in the second reading (eg, the taxation of bonuses to statutory executives and members of statutory bodies should be revisited). Therefore, it is difficult to predict to what extent the VAT Act will be amended.

The amendment should be debated by the Chamber of Deputies in the first reading in late October at the earliest. A similar schedule also applies to the amended Electronic Sales Records Act, based on which the application of a 10% VAT rate to draught beer is proposed.

## Contacts Details

**Tomáš Brandejs**
**Senior Consultant**
Mobile: + 420 604 298 952
Email: tbrandejs@deloitteCE.com

## Conceptual changes in provisions regarding vacation time and minimum wage and more than 80 additional proposed changes effective already from 1 July 2019…

**…are brought by the draft amendment to the Labour Code presented by the Ministry of Labour and Social Affairs. It is a more modest act compared to the very ambitious but unsuccessful draft from 2016, but it is still worth our attention.**

**Changes in the regulation of vacation time**
The current regulation of vacation time in the Labour Code has been considered unsuitable for a relatively long time. The newly proposed concept should include the right to vacation time expressed in hours; its calculation will depend on the employee's working hours per week. In line with requirements arising from practice, it should be allowed to transfer vacation time exceeding the legally required four weeks to the next year. Changes will also affect the use of vacation time, its reduction in the event of unexcused absence etc.

**Flexibility?**
Unfortunately, the amendment does not include an explicit regulation of working from home (home office). The Ministry of Labour and Social Affairs responds to the voices calling for the introduction of more modern principles that would bring greater flexibility to our labour market by introducing "job sharing". This would refer to a set-up where two or even more employees share one job position and divide their working time themselves so that they cover the required working hours based on a written agreement between the employer and all the employees sharing the job position.

**Delivery**
Another problem often encountered in practice has been the discrepancy in the deadlines related to the delivery of labour-law documents. The Labour Code should now be made compliant with the delivery conditions of the Czech Post, i.e. the period for picking up a letter stored at the post office (due to failure to deliver it personally to the employee) will now amount to 15 calendar days (instead of the current 10 business days). Employees will also be required to notify their employer in writing about any change of address where their employer can send documents to them.

**Minimum and guaranteed wage**
Another proposal concerns the introduction of a fixed mechanism for the valorisation of minimum wage (as well as the lowest levels of guaranteed wage). The objective of the proposal is to set up a valorisation mechanism so that the minimum wage is increased regularly and its amount can be estimated easily and in good time. According to the proposed amendment, minimum wage should amount to 0.548 times the average gross monthly salary in national economy for the calendar year before last (rounded up to the nearest hundred).

## Contacts Details

**Anna Szabová**
**Managing Associate**
Mobile: + 420 735 718 225
Email: aszabova@deloitteCE.com

## Research and Development Deduction: The Fundamental Ruling

**The Regional Court in Hradec Králové ruled in favour of the plaintiff (ENERGO CHOCEŇ, s.r.o.), revoking the contested ruling and referring the matter back to the Appellate Financial Directorate for further proceedings.**

**The ruling fundamentally clarified the legal term "commencement of the implementation of a research and development project", expressed the impossibility of generalising conclusions for individual taxation periods and, last but not least, expressed the necessity of appointing an expert for selected assessments.**

In a dReport article in July, we discussed the upcoming news in respect of the research and development ("R&D") deduction, which should result in decreasing the tax uncertainty and administrative burden for tax payers. The ruling issued by the Regional Court in Hradec Králové (the "Regional Court"), ref. no. 52 Af 18/2016-181, is further good news for payers utilising, or intending to utilise the R&D deduction. The ruling refers to an additional corporate income tax assessment and the related fine for the 2009 and 2010 taxation periods for failing to bear the burden of proof as a consequence of not submitting all business documentation, failing to meet the formal and material requirements of the R&D project and not substantiating the presence of an appreciable element of novelty and the necessity to clarify technical uncertainty.

**Highlights of the ruling:**

- The payer is not obliged to utilise all costs incurred in relation to R&D. In contrast, they may only deduct costs in respect of which they are able to bear the burden of proof before the tax administrator, taking into account their demonstrability, recording and administrative requirements.
- The Regional Court stated that *"it may be concluded that **the implementation of the R&D project is commenced** upon **the approval of a written R&D project draft** by the authorised person, in which the processor defines the underlying goals, methods and planned costs of the R&D project and other basic details as stipulated by law."*
- Following the approval of the R&D project, the payer must maintain separate accounting records about the R&D project.
- It is solely at the discretion of the payer which activities they will perform prior to the date of approving the R&D project; the costs relating to these activities are automatically non-deductible.
- The Regional Court expressed the impossibility of generalising conclusions for individual taxation periods without demonstrating clear links. This was a response to the generalisation of conclusions whereby the tax administrator inferred from the wording of the internal guideline prepared by the payer that it retrospectively gave rise to the R&D project. It also applied this conclusion to the R&D projects that were, however, related to the period subsequent to the preparation of the guideline.
- In its previous rulings, the Regional Court had already confirmed the above stated necessity of appointing an independent expert, who will themselves assess the sufficiency of the documents submitted and the presence of an appreciable element of novelty and the clarification of technical uncertainty. This is owing to the fact that tax authorities do not have sufficient expertise to be able to assess the appreciable element of novelty, if any, and the clarification of technical uncertainty.
- The Regional Court also addressed the amount of evidence that the payer must submit in order for the appointed expert to be able to prepare the expert opinion for tax authorities. Unless the payer has been demonstrably completely inactive during the tax proceedings, it is fully at the discretion of the expert to assess whether the documents submitted are sufficient for formulating the relevant expert opinion.

Besides the "Fortell", "Abadia" and "Vestra Clinics" rulings, the above stated ruling is the next in line that specifies the not very clear legislative provisions, increases tax certainty for payers and, last but not least, may also be beneficial for assessing contentious issues from the tax administrators' perspective. The full clarification of the as yet not very specific phrase "commencement of R&D activities" hopefully removes the speculations that, during tax audits, R&D activities could be considered to commence, for example, upon the signing of a contract with a customer, receiving an order, or an internal meeting of management regarding the planned activities.

## Contacts Details

**Jakub Vrkoč**
**Senior Consultant**
Mobile: + 420 736 428 819
Email: jvrkoc@deloitteCE.com

# Hungary

## Facts and Myths of PIT and Social Security

### The significance of 183 days in Hungarian work performance and taxation of non-resident individuals

One of the most frequent misconceptions concerning the Hungarian work performance of non-resident individuals is that it is not subject to personal income tax in Hungary if the stay in Hungary of the individual employed by the non-resident company does not exceed 183 days. Since any misinterpretation of the law may impose considerable tax risks, we must ask the question: Is the "183-day" factor the only circumstance to take into account?

First of all, let us see why the "183-day rule" could have taken hold of public opinion

Those who are not familiar with the taxation of work performed in several countries, may pose a number of questions in practice; one of these issues is the concept of tax residence. Tax residence is one of the most important factors that define taxation and, therefore, requires the analysis of a number of circumstances. Tax treaties typically tie the taxation of an individual's income to the country of residence. Establishing residence is a complex process. It is determined for instance by the permanent home (which is not identical to registered address) or the location of the centre of vital interests, which reflects the individual's ties with respect to the countries concerned. Since these questions themselves are interesting we will devote a separate chapter to the question of residence.

The 183-day stay is related to the above in that the Hungarian PIT Act mentions the 183 days in determining the tax residence in two of its provisions. For instance, EU citizens staying in Hungary longer than 183 days in any tax year qualify as Hungarian tax residents under the PIT Act. On the other hand, when other conditions do not apply, tax residence may also be defined by and individual's habitual adobe, which is also determined by the PIT Act using the 183 days of stay in Hungary.

Furthermore, in the case of cross-border work performance, it may be necessary to look at the provisions of the double tax treaties signed by the countries concerned in addition to the PIT Act in order to define the tax obligations arising. Of the provisions of the treaties discussing employment income there is also one section mentioning the 183-day stay for cases where the individual has no tax residence in the state where he/she performs work.

As you can see, the 183-day stay may appear frequently in cases where the issue is the personal income taxation of cross-border work performance. The only questions is whether it is really the 183-day stay that is the decisive factor determining where personal income tax is paid.

To answer this question, we have to look at the provisions of the treaties on the avoidance of double taxation.

Although the relevant provisions of the treaties in place may differ, they basically follow the OECD Model Tax Convention. In addition to establishing that the individual's income may remain taxable in the state of his/her tax residence in the case of a stay in Hungary for not longer than 183 days, the section of the Model Tax Convention which discusses the right to establish tax obligations in connection with employment income sets out further terms,

of which the least known, however highly important question is the one of the economic employer.

The question of the economic employer in Hungarian terms means that it must be established whether the Hungarian host company is to be regarded, in economic terms, as the employer of the non-resident individual irrespective of the fact that the legal employer is the non-resident home company. If the answer to this question is 'Yes', the individual's employment income for his/her activity in Hungary will be taxable in Hungary even in the case of a stay not exceeding 183 days given that both of the above conditions must apply at the same time to avoid taxability in Hungary. For further information and help please refer to the relevant Communication of the Hungarian Tax Authority (Oct 31, 2012).

To illustrate the question, let us take a plant operating in Hungary receiving a German citizen production manager who fulfils a similar role at the German affiliate or parent company and, therefore, will perform work divided between the two countries. In this example, the employee's family remains is Germany and he/she will not stay in Hungary longer than 183 days in the calendar and tax year concerned. It is assumed that the employee will remain a tax resident of Germany under both the internal policies and the double tax treaty signed by both countries.

Although the stay not longer than 183 days is an important factor in this case, it does not automatically relieve the employee of the obligation to pay PIT in Hungary. These circumstances require further investigation.

It must be determined in the first place whether the employee's activity is organically integrated into the activities of the Hungarian company where the work is performed (so-called "integration test"). The employee's activity will be seen as one integrated into the organisation of the Hungarian company if it is the company that assumes responsibility for or the risks related to the employee's work performance.

If, using the aforementioned test, it cannot be precluded that the employee is integrated in the Hungarian Company's operations, it is recommended to observe the other circumstances indicated in the Communication of the Hungarian Tax Authority (8-point criteria). The points of the criteria should be observed and weighed collectively; no order of importance may be set up among them.

As the points of the criteria include numerous conditions which, in the case of facilities managers, may typically be satisfied in the case of a host company (e.g. the Hungarian company may be entitled to oversee and is obliged to take responsibility for the place of work or provide the employee with the necessary equipment, etc.), it cannot be precluded that the Hungarian host company may be regarded as the employer of the employee in an economic sense, and so the employment income attributable to work days may become taxable in Hungary.

Therefore, based on the above, we may conclude that the stay in Hungary excluding or not exceeding 183 days is an important but not, or not always sufficient condition for establishing whether a non-resident private individual has to pay personal income tax related to their work in Hungary or not.

## Hungarian investments of third country investors will require ministerial approval in strategic sectors from next year

**At its session on 2 October 2018, the Hungarian Parliament adopted Act LVII of 2018 on the Supervision of Third Country Investments**

**Threatening Hungarian Security Interests, which, as of 1 January 2019, may require investors with a registered seat outside EU/EEA member states or Switzerland to obtain ministerial approval for investing in sectors that are supervised by the state for strategic-security reasons as specified in the law. In addition to the public utility sector (electricity, gas, and water management), the new law will affect the financial services, electronic communications and military engineering industries.**

Act LVII of 2018 on the Supervision of Third Country Investments Threatening Hungarian Security Interests was promulgated on 11 October 2018. According to the new regulation, natural persons and legal entities qualifying as "third country investors" will have to obtain, in a newly developed administrative procedure, ministerial approval for investing in sectors concerned (where investment includes acquisition of shareholding, acquiring or operating assets, and taking up activity).

Third country investor under the definition of the law shall mean a citizen of a state outside the European Union, the European Economic Area and the Swiss Confederation, or any legal entity or other organisation registered under the laws of such states. EU/EEA or Switzerland based legal entities in which such third country investors have a majority control as defined in the Civil Code also qualify as third country investors.

The law applies to services belonging under the scope of the Electricity, Gas Supply, Water Management and Electronic Communications Laws, financial services and the operation of payment systems as defined in the law on Credit Institutions and Financial Enterprises, the development and operation of state and local governmental information systems, as well as certain military engineering activities. The above list, however, only gives an outline of the activities concerned by the new procedure. The Government will set forth the detailed, more specific list of all the activities concerned in a separate implementation decree.

"In the public utility sector, the new procedure will probably only apply to legal entities owning or operating, and activities related to, essential system elements and similar equipment, so the new regulation will likely not concern small power plant developments that are so popular nowadays, neither related transactions, nor the electricity and gas trade activity. A more exact definition, however, will be available only later, when the contents of the implementation decree are known" — Dr. Balázs Várszeghi, Partner Associate – Energy Law, Deloitte Legal

The reporting obligation applies to third country investors acquiring, directly or indirectly, over 25% of the shares of (over 10% in the case of publicly traded companies) or majority control under the Civil Code in a Hungarian based company operating in any of the sectors concerned, or if although the acquisition remains below 25%, the total of shares owned jointly by third country investors would exceed 25%. The reporting obligation also applies if a third country investor founds a branch establishment in Hungary for the performance of an activity concerned, or if a Hungarian based company majority owned by a third country investor wishes to start any of the activities concerned. Obtaining the right of using or operating infrastructure, facilities and equipment indispensable for pursuing the activities defined in the law and to be further specified by the Government is also subject to ministerial approval and is effective only once the minister has acknowledged the report.

In the report, the third country investor must present a record of its business operation and enclose all the documents that verify the ownership structure of the third country investor and its legal entity shareholders, as well as the

ultimate beneficial owners. Based on the report, the minister establishes whether the acquisition of the shareholding or the right to operate threatens Hungary's security interests. The minister shall, within 60 (in particularly justified cases within 120) days at the latest from receipt of the report, endorse the acquisition of property or the right to operate by confirming it, or prohibit such act if it is concluded that Hungary's security interests would be threatened as a result of the transaction. It presents a significant restriction that if the third country investor wishes to acquire property indirectly through a legal entity registered in Hungary or an EU/EEA member state, the minister may only prohibit the proposed transaction if the legal entity wishing to obtain direct control and registered in Hungary or an EU/EEA member state does not pursue actual business activities in the state of registration. The acting minister's prohibition may be contested in an administrative lawsuit.

If the acquisition of shares or the pursuing of activity in the sectors defined in the law is subject to an authority license, such license may be granted only once the ministerial approval has been obtained.

In the case of transactions approved earlier, the third country investor is required to supply data to the minister on changes subject to the reporting obligation (e.g. changes to the ultimate beneficial owner).

In the absence of a confirmed ministerial approval of the report it is forbidden to enter the transaction in the share or shareholders' register and the third country investor may not claim its rights (e.g. will not be entitled to dividend) from the company concerned. The unenforceability of the contract aimed at the acquisition of the right to operate shall be established by court based on the minister's petition.

Failure to conduct the procedure found in a subsequent review will be sanctioned with a fine up to HUF 10 million, and if the minister's decisions would have been a prohibition if the procedure had been conducted, the third country investor will be required to sell the Hungarian shareholding concerned. The state has a right of first refusal during the sale.

The law will enter into force on 1 January 2019 and its provisions will apply to contracts consummated, branch establishments founded and activities taken up following that date.

"The adoption of the law is currently surrounded by considerable uncertainty. The complete list of activities concerned is yet unavailable, as are the rules of the minister's review from a "security" perspective. It is also unclear whether it is required to file a report in the case of transactions signed before but closed after the law enters into force. If such obligation applies, the parties concerned must be reminded thereof. For the security of pending or proposed transactions and in order to raise investors' awareness, the Government Decree regulating the implementation of the law in detail should be in place as soon as possible" — Dr. Balázs Várszeghi, Partner Associate – Energy Law, Deloitte Legal

## Contacts Details

**Marcell Nagy**
**Marketing Business Partner**
Tel: +36 1 428 6737
Mobile: +36 30 555 0501

# Kosovo

## Government Introduces New Regulation No. 16/2018 for Customs and Tax Reliefs for disabled persons

**This act will bring reliefs for Tax and Customs for employers that employ persons with disabilities as well for persons with disabilities that exercise independent economic activity.**

The purpose of this act is to define customs and tax reliefs for employers employing persons with disabilities as well as for persons with disabilities exercising independent economic activity under the legislation in force. The provisions of this Regulation apply to all employers.

### Specific Tax Reliefs

All employers employing persons with disabilities are exempt from personal income tax according to the applicable personal income tax law:

- Salaries of persons with disabilities;
- Educational/educative expenses paid by an employer for persons with disabilities;
- Expenditures for pursuing a training program paid by an employer for people with disabilities.

The employer who employs persons with disabilities as well as the person with disabilities exercising independent economic activity are exempt from the payments made during the application of any administrative procedure/administrative services at the Tax Administration of Republic of Kosovo.

To benefit from specific tax reliefs, the employer keeps the decision from the relevant department of the Ministry of Labor and Social Welfare for assessment and work ability and/or opinion of the consortium of University Clinical Center of Kosovo (UCCK) physicians.

### Specific Customs Reliefs

For an employer employing persons with disabilities and for persons with disabilities exercising independent economic activity, Kosovo Customs Authorities will prioritize the review of requests for authorization for suspensive regimes and procedures with economic influence (PWEI), as well as simplified procedures (SP), in accelerated timeframes.

To benefit from specific customs facilities, the employer must submit as evidence a decision from the relevant department of the Ministry of Labor and Social Welfare for assessment and ability to work and/or the opinion of the UCCK doctors' consortium as well as the list of employees from EDI system - electronic declaration where it is proved that people with disabilities are working.

Additionally, according to the Law No. 05/L-078 for Training, professional rehabilitation and employment of persons with disabilities, the definition of a person with disabilities is:

- Persons who have physical, sensory, intellectual or long-term mental impairments that in interaction with different barriers may impede their full and effective participation in society on an equal basis with others.

## Former-Yugoslavia Agreement for Double Tax Elimination with Belgium under renegotiation

**In principle, the Ministry of Finance got the approval for the initiative of renegotiation of the Double Tax Agreement with Belgium.**

The inherited Agreement from former Yugoslavia with Belgium entered into force since 23.02.2010 in the Republic of Kosovo. This Convention, for Avoidance of Double Taxation on Income and Capital, was signed in Belgrade on 21 November 1980.

The current Double Tax Agreement regulates the following:

- Development of the cooperation for the tax issues;
- Protection of the taxpayer from double taxation;
- Prevention of tax evasion;
- Elimination of discrimination;
- Providing administrative assistance;
- Other assignments foreseen with DTA.

## Double Tax Treaty between Kosovo and Switzerland Enters into Force

**The Double Tax Treaty between Kosovo and Switzerland has been ratified by the legislatures of both respective parties and is applicable as from 1st January 2019.**

In what is seen as a measure to further cement economic ties between Kosovo and Switzerland, the legislatures of the respective countries have completed the ratification process of the DTT. The DTT thereby officially enters into force and will be applicable from 1st of January 2019.

This tax treaty is of considerable importance given the strong economic ties between the two countries and Kosovo's considerable diaspora in Switzerland.

Significant provisions of the DTT amongst others include the following:

- Business profits of an entity of a contracting state shall be taxed only in such state, provided that the entity does not carry out economic activity in the other state through a permanent establishment.
- Dividend income may be taxed in the state where the distributing entity resides, however it may be taxed only as follows:
    - 5% if the beneficial owner is a company other than a partnership which holds 25% of the equity of the paying entity for a period of at least 365 days;
    - 15% in all other cases.
- Interest arising in a contracting state and paid to a resident of the other contracting state may be taxed only in that other state provided that:
    - The debt arises in relation to a sale on credit of equipment, goods or services;
    - Loan issued by a bank;
    - In respect of a pension fund;
    - Loans between companies;
    - Loans for a contracting state.

  In all other instances, the interest may be taxed in the state in which it arises, but only up to a rate of 5%.

- Royalties arising in a contracting state and paid to a resident of the other contracting state will be taxed only in the other contracting state, unless the beneficial owner carries on business in the other contracting state through a permanent establishment.

## Contacts Details

**Afrore Rudi**
**Tax and Legal Director**
Tel: +383 38 760 329
Mobile: +383 49 590 807
Email: arudi@deloitteCE.com

# Lithuania

## Rules for trade in electricity were amended

**The rules were amended by implementing the law adopted by the Seimas recognizing the threat of Astravyets nuclear power plant (NPP) under construction in Belarus to the national security of the state, environment and public health. The law sets out the prohibition for electricity from third countries with unsafe NPP to enter the Lithuanian electricity market.**

On the 16th of October, amendments to the rules for trade in electricity and the description of the procedure of electricity import and export were approved.

It is stipulated in the new procedure, that from the commencement of technological tests of electricity generation in Astravyets NPP, trade throughput of the interconnections between Lithuania and Belarus will be 0 MW.

The possible consequences of this change- in 2019, once Astravyets NPP is put into operations, it would reduce the supply of electricity, which could potentially increase electricity prices in the Lithuanian price zone.

## Changes in insolvency proceedings of legal entities

**The Government approved the draft law that reforms the regulation of the insolvency of legal entities, with an aim to create a favorable and competitive environment for business and investment, to consolidate the legal regulation of legal entities restructuring and bankruptcy, to increase the efficiency insolvency processes and to reduce losses incurred by creditors.**

The most significant amendments:

- Shortening of the bankruptcy process from approximately 2.3 years to 1.5 years, this would help to free up the resources that could be used for business development in the country;
- E-process introduction, which will allow insolvency process data to be transmitted to an electronic database;
- Insolvency process data will be posted on websites of the courts and the Supervisory Authority;
- Establishment of the insolvency administration municipality - the Insolvency Chambers of Lithuania;
- Ability to terminate bankruptcy proceedings and initiate restructuring proceedings in an expedited manner.

## A new model for the development of renewable energy was approved

**On the 3d of October, the Government approved the amendments to the Law on Renewable Energy, which establishes a new support model for encouraging power plants to generate energy from RES. This will enable to further development of renewable energy, which is one of the key goals of the national strategy on energy.**

The Ministry of Energy states that the chosen model will ensure fair competition and the lowest price, as well as reduce dependence on imports.

The Ministry offers to continue allocating the support through auctions since this approach can ensure the lowest possible price to consumers. Power plants, which use different RES technology for generation of energy, could take part in the auctions.

The most important criterion, which will determine the winners of the new auctions, is the lowest surcharge on electricity market price on the Nordic electricity exchange Nordpool.

Application of these promotion measures is expected to considerably increase the capacity of local electricity generation, which, accordingly, will reduce the country's dependence on electricity import and will enhance energy security. Auctions will be also open for electricity producers from other EU Member States, which have a direct link with Lithuania and have signed bilateral agreements.

It is expected that the new procedure for RES auctions will be approved during the autumn session of the Seimas and will come into force on 1 May 2019.

## It is sought to facilitate the formation and restructuring procedures of land parcels

**The Ministry of Economy has proposed a simplification to facilitate the formation and restructuring procedures of land parcels in free economic zones (FEZ) and industrial parks (IE) in both urban and rural areas.**

On the 10th of October, the proposal was approved by the Government, amendments to the draft law will be submitted to the Seimas.

According to the Ministry of Economy, there are already not enough space for foreign and Lithuanian investors in these zones, which is why it is planned to prepare additional 1079 ha fully developed FEZ and IE areas during the period of 2019-2026. Restructuring procedures are of the same importance as a proper installation of the infrastructure.

It is especially lucrative to business because the changes will allow for the faster formation of land in mentioned zones, for instance, the procedure for dividing or combining the parcels which have common boundary will be much faster. In all cases, a director of an administration municipality will make decisions, irrespective of FEZ or IE territories.

These facilitations will attract new investments in the country's industrial area.

## Contacts Details

**Gintautas Bartkus**
**Partner, Advocate**
**Deloitte Legal**
Tel: + 370 5 255 3000
Email: gbartkus@deloittece.com

**Kristine Jarve**
**Partner**
**Tax**
Tel: + 370 5 255 3000
Email: kjarve@deloittece.com

**Tomas Davidonis**
**Legal Partner, Advocate**
**Deloitte Legal**
Tel: +370 5 255 3000
Email: tdavidonis@deloittece.com

**Lina Minkė**
**Senior Manager**
**Tax**
Tel: + 370 5 255 3000
Email: lminke@deloittece.com

# Poland

## Mandatory reporting of tax-planning schemes

**The amendment to Polish tax provisions adopted by Polish Parliament on 26 October 2018 introduces into the Polish Tax Ordinance Act mandatory reporting of so-called tax-planning schemes (Mandatory Disclosure Rules – MDR). The amendment imposes new obligations not only on advisors (attorneys-at-law, legal counsels, tax advisors), but also on their clients.**

**The amended provisions are to enter into force on 1 January 2019, but tax-planning schemes will have to be disclosed retroactively if the first activity related to implementation of the given scheme was performed after 25 June 2018 (cross-border schemes) or after 1 November 2018 (domestic schemes)**

### What is subject to mandatory disclosure?

Mandatory disclosure concerns tax-planning schemes which have or may have an impact on tax liability and which at the same time meet criteria indicated in the amended provisions - different for cross-border schemes (of which mandatory disclose results from the EU DAC6 Directive) and for domestic schemes (not covered by the Directive).

Subject to reporting will be a wide scope of information concerning the scheme, i.a. its detailed description, applied tax law provisions as well as the expected value of tax benefit. Disclosed schemes will be assigned a so-called NSP - number of the tax-planning scheme.

### In which cases will domestic schemes be subject to mandatory disclosure?

Domestic schemes will be subject to mandatory disclosure if the beneficiary of the scheme will be a qualified entity (revenues, costs or assets of the beneficiary or of its related party exceed EUR 10m, or the scheme concerns items or rights of market value exceeding EUR 2.5m), and at the same time:

1) the main or one of the main benefits that the beneficiary expects to derive from the scheme is a tax advantage (understood very broadly - generally as any reduction in tax liability or postponement in its creation), and additionally the scheme fulfills criteria of at least one of the so-called "generic hallmarks" (broad and imprecise set of features, including i.a. situations when documentation and/or structure of the activities does not need to be substantially customized for implementation depending on the beneficiary, there is an undertaking to comply with a condition of confidentiality as concerns the way in which the scheme can secure a tax advantage, schemes where the intermediary is entitled to receive a success fee, etc.), or

2) regardless of what is the main benefit of the scheme (tax or non-tax-related) - if it meets at least one of numerous other criteria - for example:

(i) has an impact on deferred part of income tax or on deferred tax assets or provisions which is materially relevant to the entity from accounting perspective and this impact exceeds PLN 5m per year,

(ii) concerns non-withholding of tax in the amount exceeding PLN 5m per year, which withholding tax would have been levied if double taxation treaty or tax exemption would not be applied.

**When will cross-border schemes be subject to mandatory disclosure?**

Cross-border schemes will be subject to mandatory disclosure, regardless of whether the beneficiary is a qualified entity, in a situation when:

1) the main or one of the main benefits that the beneficiary expects to derive from the scheme is a tax advantage (understood analogously as in case of domestic schemes) and additionally the scheme fulfills criteria of at least one of the so called "generic hallmarks" (the set of these conditions is to some extent narrower than with respect to domestic schemes), or

2) regardless of what is the main benefit of the scheme - if it meets at least one of numerous different criteria listed in the amendment, for example:

a) the scheme involves tax-deductible cross-border payments to related entities located in tax havens,

b) the same income or property benefits from method of elimination of double taxation in more than one state,

c) there is a non-transparent structure of legal ownership or it is difficult to determine the beneficial owner,

d) the scheme involves a transfer of "hard-to-value intangibles".

**Who will be obliged to report?**

Mandatory disclosure obligation will as a rule burden the intermediary (understood as each person which develops, offers, makes available, implements or manages the implementation of the arrangement – in particular a tax advisor, legal counsel or attorney-at-law), and in specific situations the beneficiary (the person to whom the scheme is made available, who is prepared for its implementation or performed an activity related to implementation of the scheme). In addition to the above, in a situation when the scheme will not be reported neither by the intermediary nor by the beneficiary, the mandatory disclosure may additionally burden a so-called supporting entity (a broad definition including i.a. each person who has undertaken to provide assistance, support or advice regarding development or implementation of the scheme - for example a notary public).

Mandatory disclosure rules are different for the so-called standardized schemes (repetitive, possible to be implemented or made available to more than one beneficiary without the need to change essential assumptions of the scheme) and for non-standardized schemes.

**What obligations will be imposed on beneficiaries?**

The beneficiary will be obliged to report the scheme when:

1) the given scheme is subject to disclosure, and the beneficiary has not been informed by the intermediary that the scheme has already been reported (as described in justification to the discussed amendment – e.g. in cases when the beneficiary has developed and implements the arrangement on his own and does not cooperate with any intermediary);

2) with respect to non-standardized schemes, if the beneficiary will be informed that the intermediary will not disclose this scheme (as it would violate the professional secrecy obligation binding the intermediary, from which the beneficiary did not release it) - in such case, the intermediary shall provide the beneficiary with specific data that is subject to mandatory disclosure.

In the above situations, the beneficiary will report within 30 days from the day following the day in which the scheme will be made available, from the day following the day of preparation for implementation of the scheme or from the day of performing the first activity related to implementation of the scheme - depending on which of these events occurs first. Making available of the scheme is understood very broadly and includes i.a. providing the beneficiary with information about the arrangement in any form, including by e-mail, phone or in person.

Regardless of the obligation to report (which will usually burden the intermediary), in each situation when the beneficiary will apply a scheme, it will be obliged to provide the Chief of National Fiscal Administration with so-called information on application of the tax-planning scheme, within the deadline for filing the tax return concerning the settlement period in which the beneficiary performed any activities that are part of the scheme or obtained a tax benefit resulting therefrom. The disclosed information will include i.a. the NSP of the scheme and the amount of the tax benefit resulting from the scheme, obtained in the given settlement period. Therefore, each application of a tax-planning scheme will be compulsorily disclosed by the beneficiary to the fiscal administration.

The abovementioned information will be submitted under penalty sanction for perjury for making a false statement and will be signed by a taxpayer being a natural person, and in the case of taxpayers being legal persons - by all members of the taxpayer's managing body.

**What are the sanctions for non-reporting?**

The amendment foresees fines for failing to fulfill obligations related to reporting of the tax-planning schemes. The court may also order, in such cases, a penal measure of prohibition to perform specific business activity.

In the case of intermediaries, entities that employ intermediaries or that actually remunerate intermediaries, the revenues or costs of which exceeded in the previous financial year PLN 8m, the provisions impose an obligation to implement a so-called internal procedure determining the rules of conduct in the field of reporting. The amendment also introduces fines up to PLN 2m (in specific situations – up to PLN 10m) in case of non-implementation of internal procedure by obliged entities.

It should be noted that taking into account the broad definition included in the amendment, entities obliged to implement internal procedure will include not only tax advisors, legal counsels or attorneys-at-law, but in specific cases also other entities (i.a. banks or financial institutions, but also companies having internal tax departments).

**When will the reporting obligation come into force?**

The relevant provisions are to enter into force on 1 January 2019, whereas the reporting obligation will be partly retroactive – obligation to report will also cover schemes with regards to which the first activity related to their implementation was performed:

1) in the case of domestic schemes – after 1 November 2018,

2) in the case of cross-border schemes – after 25 June 2018.

Information about retroactively disclosed schemes will have to be reported by the end of June 2019 (if the disclosing entity will be the intermediary) or by the end of September 2019 (if the disclosing entity will be the beneficiary).

## Contacts Details

**Jakub Żak**
**Partner**
Tel: +48 22 511 06 52
Email: jazak@deloittece.com

## New changes in income taxes and the Tax Ordinance on the way

**The draft of significant changes in tax regulations planned from January 1, 2019.**

**In the autumn of 2017, we signaled that as a result of legislative initiative of the Ministry of Finance, tax regulations will undergo fundamental transformations from January 1, 2018 when the largest amendment to the Corporate Income Tax was to come into force. Recent weeks show that January 1, 2018 was not the end of fundamental changes of tax regulations. Subsequent bills, designed to significantly change tax regulations from January 1, 2019 were published by the Ministry of Finance at the end of the summer holidays. These projects concerned not only the income tax from legal persons, but also transfer pricing and the Tax Ordinance. After further modifications, on September 25, 2018 these projects were addressed to legislative work in the Parliament (hereinafter: "Amendment").**

**1. Changing the principles of collecting withholding tax (so-called Withholding Tax)**

**2. Taxation of unrealized capital gains - so-called Exit Tax**

**3. Obligation to inform about „tax schemes"**

**4. Significant changes to the tax anti-avoidance clause**

**5. Preferential taxation rules of the so-called IP Box**

**6. Changes in transfer pricing**

## 7. Other changes

Below, we present some of the planned changes in tax regulations that the Amendment is to introduce – and which changes, in your opinion, may potentially turn out to be crucial for the activities of most entities:

### 1. Changing the principles of collection of withholding tax (so-called Withholding Tax)

The draft amendment introduces into the Polish tax law significant changes to the previously applied principles of collection of withholding tax – i.e. the principle of direct application of preferences / exemptions in the field of withholding tax while meeting the documentary requirements provided for in the Corporate Income Tax Act (so-called *withholding tax relief at source*).

In the light of the Amendment, from January 1, 2019, the basic mechanism for charging withholding tax **for payments exceeding PLN 2 million (in relation to the one recipient in a given tax year) will be the principle of obligatory collection of withholding tax at basic rates** provided for in the Act on corporate income tax (i.e. 20% / 10% in relation to payments indicated in Article 21 of this Act and 19% in relation to payments indicated in Article 22 of this Act), with the possibility of a subsequent request for reimbursement of the above-mentioned tax by the tax office - so-called "withholding tax refund on demand". It should be noted that **the waiting time for the withholding tax refund will be 6 months**, but it will be possible to extend it - which may result in a significant cash-flow deterioration.

The Amendment assumes the possibility to apply the existing principles of settling
the withholding tax (i.e. the possibility for the payer to apply withholding tax preferences / exemptions) in the situation of:

• **submission by the payer to the tax authority of appropriate declarations** regarding the fulfillment of formal requirements and diligence **in verifying** fundamental conditions for applying tax preference in the withholding tax, or

• **obtaining the so-called opinion on the application of the withholding tax exemption**, which allows - in relation to a certain category of payments (subject to Article 21 of Act No 3 and Article 22 of Act No 4 of the CIT Act) - to settle on the current basis, i.e. the taxpayer's use of withholding tax preferences at the time of payment.

In addition to the above changes in the principles of collection of withholding tax
the Amendment also introduces:

• **clarifying the definition of the actual owner** – by introducing a *"warrant to take into account the broader context accompanying payments to foreign entities in assessing their status as recipients of receivables"* to confirm whether these foreign entities: (i) carry out a real economic activity in the country of residence, (ii) incur economic risks related the loss or loss of value of a given receivable; and (iii) they are able to decide independently on the intended use of a receivable.

• additionally, in the case of the Act on Corporate Income Tax, the Amendment provides for **a change of the special clause against the abuse of tax exemptions resulting from the regulations implementing EU directives (Article 22c of the CIT Act).**

**2. Taxation of unrealized capital gains - so-called Exit Tax**

The draft amendment introduces into the Polish tax law a mechanism known colloquially as **"exit tax".**

Exit tax pertains to situations that **cause Poland to lose its right to tax the values specified in the CIT Act**, generated before the transfer of assets / change of residence. The loss of Poland's right to tax may result, in particular, from the stipulations of agreements to avoid double taxation.

Events that give rise to tax obligations in reference to the planned regulations are:

• **transfer of an asset outside Polish territory**, as a result of which Poland loses

(*in whole or in part*) the right to tax income from the sale of that asset, **or**

• **change of tax residence** by a taxpayer subject to unlimited tax liability, which means that Poland loses the right (*in whole or in part*) to tax the income from the possible disposal of the taxpayer's property.

It should be noted that taxation will be independent of whether the asset is actually disposed of or not by the taxpayer. This means that **the tax may occur even if the taxpayer does not achieve any real benefits** from the asset.

Income subject to CIT / PIT taxation in Poland in accordance with the new regulations will constitute an excess of the market value of the transferred asset over its "tax value". The deadline for submitting the declaration and payment of tax is the 7th day of the month following the month in which the event causing taxation occurred.

The proposed tax rates for PIT taxpayers are to be **3%** or **19%**. In the case of PIT taxpayers, the provisions on tax on unrealized profits, as a rule, do not apply when the market value of the asset or the sum of their market values **does not exceed PLN 4 million**. In the case of CIT taxpayers, a single rate of 19% will apply, regardless of the value of transferred assets.

**3. Obligation to inform about "tax schemes"**

The amendment also introduces extensive regulation and assumes the need to **report to the Head of the National Treasury Administration (KAS) the so-called "Tax schemes"**. The assumption is that the regulations constitute an implementation of the Council Directive (EU) 2018/822 as of 25 May 2018 - nevertheless, in practice, the obligations imposed by the Amendment will be **much more far reaching than those resulting from EU regulations**. The Directive applies only to cross-border schemes, while the amendment also introduces the obligation to report national schemes.

The **"tax scheme" definition contained in the Amendment is extremely wide** - the scheme will be the so-called "Arrangement" (i.e. *"an activity or a set of related activities, including a planned activity or a set of planned activities of which at least one party is a taxpayer or who have or may have an influence on the occurrence or lack of occurrence of tax obligation"*) having "recognition features" specified in the provisions of law. This may mean the necessity to provide the Head of KAS with information on a lot of transactions made by taxpayers.

The obligation of reporting may be imposed on a "**promoter**", i.e. on an entity that "*formulates, offers, makes available, implements or manages the implementation of the arrangement*". Aside from promoters, reporting obligations may lay on "beneficiary", that is, entities to whom the arrangement is made available or implemented, or which are prepared to implement the arrangement or have made any act to implement such an arrangement. The amendment also imposes **a number of duties on "supporting"**, i.e. persons involved in the implementation of the arrangements, for example, **financial directors, accountants, employees of financial departments**, notaries or employees of banks servicing a given entity.

**Failure to comply with reporting obligations will entail substantial fines (liability under the provisions of the Fiscal Penal Code).**

**4. Significant changes to the anti-avoidance clause**

The planned changes presented in the Amendment also encompass the modification of the wording of the provisions of the anti-avoidance clause ("GAAR") resulting in **a change in the logic pertaining to the application of the provisions of the clause**.

In the current legal state, GAAR refers generally to activities that are not sufficiently motivated by economic / business considerations. At the same time, there is generally no restriction on the co-existence of tax advantages in such situations.

The proposed amendment means that the clause may be applied already in a situation where, **despite the existence of significant business reasons, the activity will also result in a significant tax advantage**. Then the given activity will be considered as being done mainly to achieve a tax advantage, irrespective of its economic justification. Such a modification may significantly change the way of applying discussed regulations, minimizing the significance of economic goals, which may be even very important in planning the given activity, but they will not protect the taxpayer against application of GAAR. In practice, this means that it is necessary to analyze each significant amount of transactions from the perspective of a clause against tax avoidance - if the taxpayer has the opportunity to choose several ways to achieve the expected economic effects, and the chosen method will be more favorable than others in terms of tax, then this situation may potentially lead to the application of the clause against tax avoidance by tax authorities.

In addition, the legislator in the content of the Amendment has decided to introduce into the text of the Ordinance **an additional tax liability** (in the amount of 10 to 40%), which will be imposed by a decision by the tax

authorities, in the event of a decision, inter alia, on the provisions of the anti-avoidance clause.

**5. Preferential taxation rules of the so-called IP Box**

The amendment also introduces **preferential taxation** at the rate of 5% CIT (analogically PIT) of income generated by intellectual property rights (so-called IP BOX, Innovation Box).

The bill provides for in the Act of Corporate Income Tax the introduction of a **favorable tax solution for entrepreneurs who earn income from the commercialization of intellectual property rights created or developed by them,**

**the so-called. Innovation Box**. The project also provides for the possibility of commissioning the performance of research and development works to other entities, both unrelated and related.

The prerequisite for using the proposed preference is **the requirement for the taxpayer to conduct research and development activities directly related to the creation, commercialization, development or improvement of qualified intellectual property rights**. A taxpayer who wants to take advantage of the proposed preferences will be obliged to keep **detailed accounting records** in a way allowing calculation of the tax base, including the relation of the incurred costs of research and development with the reached income from IP rights resulting from the work carried out.

With proper structuring of the business conducted, where intellectual property is a significant carrier of value, the use of IP Box preferences may therefore bring **measurable tax advantages by reducing the effective income tax rate**.

**6. Changes in transfer pricing**

**We would like to point out that a separate document will introduce changes in transfer prices, rebuilding current regulations.**

The most important include the following areas:

- New definition of related entities, including the introduction of the term of 'exerting significant impact' (also applies to persons who do not formally perform any functions in companies - the need to analyze the reporting line on the formation of links)
- Change in transaction thresholds determining the obligation to prepare documentation and comparative analyzes
- Direct introduction of the obligation to apply the market price principle and extending the catalogue of available methods of transfer pricing calculation - the need to adjust the applied cooperation principles to available tax methods
- Introduction of detailed rules of restructuring assessment - the need to comprehensively analyze the issue of 'exit fee' / the possibility of structured risk management estimation / challenge of 'exit fee'
- Extension of the scope of the required economic analysis to indicate and justify a particular level of the market price - the need to create

a model of transfer pricing calculation, which does not create the risk of the lack of possibility of defense
- Omission or re-characterization of transactions - the need to closely link an intra-group transaction to business needs / economic realities
- New, extended reporting duties
- Available simplifications - the opportunity to focus on the most important business and value issues.

## 7. Other changes

Planned changes presented in the Amendment also include:

- Introducing an incentive to leave capital for development in companies by increasing the tax attractiveness of own financing by introducing the possibility of increasing the costs of obtaining revenues by the equivalent of debt financing costs - despite the fact that these costs were not actually incurred by the taxpayer (so-called **notional interest deduction**).
- Introduction of changes with respect to the rules of taxation **of expenses related to the use (operation) in the company of passenger cars** - also leased.
- Introducing the possibility of using **copies of tax residence certificates** by taxpayers, in the case of payments not exceeding PLN 10,000 per calendar year (for a single entity).
- Introduction of **an alternative method of taxing eurobonds**. The Amendment provides for the tax exemption of interest and discount obtained by non-residents (both PIT and CIT taxpayers) from bonds issued and admitted to trading on a regulated market or introduced into an alternative trading system within the meaning of the Act of 29 July 2005 on Trading of Financial Instruments with maturity not shorter than one year.
- Introduction of regulations on **the taxation of virtual currencies** (the so-called cryptocurrencies). What is important, the above regulations assume, inter alia, that revenues from trading in virtual currencies will be qualified in accordance with revenues from cash capital (Article 17 of the PIT Act) or capital gains (Article 7b of the Act on Corporate Income Tax) - but for these revenues specific tax rules will be determined and these revenues will not be combined with other revenue from cash capital / capital gains (a separate "basket").
- Introduction of **changes in tax loss settlement rules** by adding the possibility of a single reduction of income obtained from a given source in one of the following five tax years, for the amount of tax loss from this source, not exceeding PLN 5 million.
- Introduction of **a reduced (9%) CIT rate** for small taxpayers whose tax revenues do not exceed EUR 1.200,000 and for start-up taxpayers..

## Contacts Details

**Ewa Grzejszczyk**
**Partner**
Tel: +48 22 511 08 11
Email: egrzejszczyk@deloitteCE.com

**Anna Rączkowska**
**Director**
Tel: +48 22 511 03 39
Email: araczkowska@deloittece.com

**Maciej Guzek**
**Director**
Tel: +48 618 82 43 16
Email: mguzek@deloittece.com

# Romania

## New rules governing the financial insurance sector

**On October 1st, 2018 the Law no. 236/2018 on insurance distribution entered into force. The law transposes the provisions of Directive (EU) 2016/97 and repeals Law no. 32/2000 on the activity and supervision of intermediaries in insurance and reinsurance.**

**The regulations issued by the Financial Supervisory Authority (FSA) prior to October 1st, 2018 will continue to apply until the new regulations will be enacted, except for contradictory provisions, where Law no. 126/2018 shall prevail. The FSA is expected to issue in the near future implementation rules for the application of the Law no. 236/2018.**

**We summarized below some of the key aspects provided by Law no. 236/2018.**

### Scope

The new law applies to the following individuals and legal entities:

- established or which intend to establish in Romania in order to take up and pursue insurance distribution activity;
- carrying out or which intend to carry out the insurance distribution activity in Romania;
- with the registered office or the residence in Romania and which intend to be established or to take-up and pursue the insurance distribution activity in another Member States.

The law regulates several aspects in relation to:

- the distribution of insurance and reinsurance products;
- the organization and functioning conditions for the insurance and/or reinsurance distributors;
- the supervision of the insurance distribution activity and other related activities;
- the registration of the intermediaries, including their authorization and licensing by the FSA.

The law provides several exemptions from its application in relation to ancillary insurance intermediaries carrying out insurance distribution activities in certain conditions, as well as in relation to the insurance or reinsurance distribution activities carried out in third countries.

### Key aspects:

- **Changes in terminology:** The new law classifies the insurance market players in the following categories:
    - "insurance distributors", respectively:(i) insurance undertakings, (ii) insurance intermediaries (primary and secondary), (iii) ancillary insurance intermediaries; and
    - "reinsurance distributors", respectively: (i) reinsurance undertakings and (ii) reinsurance intermediaries (primary and secondary).

The notions of "insurance agent", "insurance broker", "assistant in brokerage" or "subordinated insurance assistant" are no longer provided in the new law.

- **Stricter organisational and reporting requirements**: insurers shall approve, implement and regularly review their internal policies and procedures regarding the compliance by their employees with the professional competence requirements and with the moral probity requirements by the persons within the management structure, and shall create an internal function to ensure the proper implementation of the endorsed policies and procedures.

- **The insurance distributors cannot**:

    - be remunerated or remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their clients;

    - make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a client when the insurance distributor could offer a different insurance product which would better meet the client's needs;

    - accept or receipt fees, commissions or other monetary or non-monetary benefits paid or provided by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.

- **Within the pre-contractual stage, the insurance distributor shall provide its clients with extended information on:**

    - **conflict of interests** referring, *inter alia*, to: (i) the qualifying holdings of the insurance intermediaries in a given insurance undertaking and *vice-versa*, (ii) the nature and type of remuneration received in connection with the insurance contract, (iii) the nature of advice, (iv) the names of the insurance undertakings with which it does (or may) conduct business.

    - **advice** referring, *inter alia*, to: (i) the performance of the suitability tests of the recommended products on the basis of the information obtained from the clients and (ii) the provision of objective information about the insurance product by using an insurance product information document (PID) drawn up by the manufacturer of the insurance product on the basis of the information and characteristics provided by the new law.

    - **the selling of a package of products (i.e. when an insurance product is offered together with an ancillary product or service which is not insurance)**, which includes: (i) an adequate description of the different components of the package, as well as separate evidence of the costs and charges of each component (in case there is the possibility to buy the different components separately), and (ii) an adequate description of the different components of the package and the way in which their interaction modifies the risk or the insurance coverage (where the risk or the insurance coverage resulting from such a package offered to a client

is different from that associated with the components taken separately).

- **Means of providing information**: there are imposed specific conditions regarding the provision of pre-contractual information: (i) by using a durable medium (other than paper), (ii) by using a website and (iii) in the case of telephone selling.

- **Product governance requirements**: before marketing and distributing the insurance products to clients, the insurance undertakings and the primary intermediaries that manufactures insurance products shall maintain, operate and review a process for the approval of each insurance product (e.g. identification of the target markets, assessing all relevant risks to such identified target markets etc.).

- **Specific requirements regarding the insurance-based investment products**: the new law imposed, *inter alia,* additional requirements in connection with the identification of conflict of interests between insurance distributors and their clients, pre-contractual information provided to the clients, performance of the suitability tests of the products, disclosing to clients all the costs related to the recommended products.

- **Sanctions**: the new law imposes stricter sanctions and administrative measures for non-compliance with its provisions. In case of insurance undertakings and primary intermediaries, **the pecuniary fines may amount up to RON** 5,000,000.

- **Transitional provisions:**

  - Within a maximum of 120 days from the date of October 1st, 2018, the credit institutions and the investment firms carrying out the activity of banc-assurance, or respectively acting in the capacity of assistants in brokerage, have the possibility to carry out insurance distribution activity in accordance with the new provisions as primary intermediaries and shall notify the FSA in this respect. After the elapse of this legal deadline, the credit institutions and the investment firms that have not submitted such notification may carry out insurance distribution activity only as secondary intermediaries.

  - The professional competence requirements under art. 10 para. (1) in the new law will apply starting with February 23rd, 2019.

## Contacts Details

**Andrei Burz-Pînzaru**
**Partner with Reff & Associates, member of the Deloitte Legal network**
+40 728 328 928
aburzpinzaru@reff-associates.ro

**Andreea Serban**
**Managing Associate, Reff & Associates, Member of the Deloitte Legal network**
+40 726 310 463
andserban@reff-associates.ro

## Amendments to Tax Code – The final form of the law

**The amendments to the Tax Code proposed by the draft emergency ordinance of 29 September 2018 were published in the Official Gazette. The most relevant are: 5% VAT rate to certain services, regulations for taxpayers applying IFRS and updates on the applicable deductions for early reporting and/or payment of income tax and social contributions.**

Emergency Ordinance no. 89/2018 includes, with some changes, the provisions of the draft published by the Ministry of Finance on 29 September 2018, provided in the Deloitte tax alert of October 3rd, 2018.

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

### Corporate Income Tax

Specific rules are introduced for taxpayers applying IFRS 9 – Financial instruments standard starting with 2018:

- tax treatment applicable to reserves generated from the fair value valuation of financial instruments through other comprehensive income (FVTOCI) at the moment when the respective instruments are sold/ transferred;
- tax treatment applicable to certain amounts booked as retained earnings following changes triggered by the adoption of new IFRSs.

### VAT

5% VAT rate for the following categories:

- accommodation in the hotel or in similar facilities, including rental of camping sites [currently taxable with 9%];
- restaurant and catering services, with the exception of alcoholic beverages (other than beer) [currently taxable with 9%];
- the right of usage of sporting facilities (activities classified under NACE 9311 and 9313), for the purpose of performing sports and physical education (other than those already exempted);
- services consisting in allowing access to fairs, amusement and recreational parks (activities classified under NACE codes 9321 and 9329).

The amendments would enter in force starting with 1st of November 2018.

### Income tax

The deadline for submitting the individual annual tax returns by electronic means for which a 5% income tax deduction can be granted is modified from 31st of July 2018 to **15th of July 2018**.

The method of applying the deduction is clarified – the annual income tax to be paid is to be diminished (and not the "income tax paid"). In other words, the authorities will apply the deductions within the final tax decision.

**Other fiscal-budgetary measures proposed**

A deduction of 10% will be granted for the full payment of the following, due as per tax decisions:

- income tax due for the year 2017,
- social security contributions due for the period 2016-2017,

*if paid by 15th of December 2018, the legal deadline being 30th of June 2019.*

- health insurance contributions due for the period 2014-2017, if paid by 31st of March 2019, the legal deadline being 30th June 2019.

**Contact details**

**Dan Bădin**
**Tax & Legal Partner in Charge**
+(40) 21 207 53 92
dbadin@deloittece.com

**Vlad Boeriu**
**Partner – Indirect Tax**
+(40) 21 207 53 41
vboeriu@deloittece.com

**Raluca Bontaș**
**Partner – Income Tax**
+(40) 21 207 53 92
rbontas@deloittece.com

**Alexandra Smedoiu**
**Partner – Direct Tax**
+(40) 21 207 98 30
asmedoiu@deloittece.com

## Starting January 1st, 2020, foreign companies will not be able to perform more than 3 customs operations per year, unless they are established in the European Union

**A draft amendment of Order no. 2460/2016 on customs representation norms was published on the Romanian General Customs Directorate website.**

On October 23rd, 2018, a draft Order amending the Norms on the application of the right of customs representation no. 2460/2016 was published on the General Customs Directorate website.

Currently, companies not established in the European Union (e.g. from Turkey, Switzerland, Serbia, etc.) can carry out frequent customs operations (more than three operations per year) only by indirect representation. A company is deemed to be established within the European Union if it has (1) its headquarters in the EU customs territory or (2) a central administration or (3) a permanent establishment where human and technical resources are permanently present and where customs operations are conducted totally or partially.

According to the draft Order, as of January 1st 2020, these companies would no longer be able to carry out more than three customs operations per year in the EU, without being established in this territory.

For example, an exporter established in Switzerland intending to export goods from Romania could no longer be mentioned in box 2 of the export customs declaration, even if the indirect representation method will be used. In this context, the application of the VAT exemption for exports of goods becomes debatable for the Swiss exporter, specifically given the current approach of the tax authorities.

Most importantly, besides export operations, the planned restriction will also affect release for free circulation, bonded warehouse, inward and outward processing customs regimes if done by non-EU established entities.

**What does this mean for you?**

If you frequently import/ export goods to/ from the European Union and your company is not established in this territory, you will not be able to do such operations after December 31st, 2019, according to the draft order.

We recommend reviewing the impact of these changes early on your business.

### Contact details

**Mihai Petre**
**Senior Manager**
+40 730 585 665
mipetre@deloittece.com

**Cosmin Dincă**
**Senior Consultant**
+40 725 353 530
cdinca@deloittece.com

## The Combined Nomenclature in force in 2019

**The European Commission has published the Combined Nomenclature ("CN") applicable starting January 1st, 2019. Consequently, starting January, you will need to use the new CN codes for customs and excise operations, Intrastat declarations and for operations performed on the basis of a customs and fiscal authorizations issued on CN 2018 tariff codes.**

Among the changes in the new CN, applicable from 1st of January 2019, new tariff codes have been introduced or the existing ones have been modified for:

- Fresh, chilled sea products suitable for human consumption of CN heading 0308 30;
- Light oils and preparations of heading 2710 12;
- Aluminium sheets and strip of heading 7606 12 for bodies, lids and beverage cans defined by a new Additional Note 2 to Chapter 76.

**What does it mean for you?**

The new CN may include new classifications for your products. If you import / export goods into / out of the EU starting 1st of January 2019, you will need to use the new CN codes in your import / export declaration processes.

The amendment of the Combined Nomenclature has implications not only for customs operations, but also for operations with excisable products and the Intrastat statistical reporting, namely the tariff codes of goods traded between EU Member States.

In addition, the holders of the customs and tax authorisations that include reference to tariff codes issued in accordance with NC 2018 (e.g. for suspensive customs regime) will be subject to the new rules.

**What to do?**

To avoid any administrative and operational inconveniences as of 1st of January 2019 (e.g. extended stay of goods in customs), we recommend that you adjust the codes as soon as possible.

## Contact details

**Vlad Boeriu**
**Partner**
+40 21 207 53 41
vboeriu@deloittece.com

**Daniela Neagoe**
**Manager**
+40 21 207 53 93
dneagoe@deloittece.com

## Excisable products: On December 31, 2018 certificates for engross trading of energy products and alcoholic beverages/processed tobacco with no storage will lose their validity

**According to a draft order published on the website of the General Customs Directorate, the deadline for economic agents to re-authorize under the new conditions will be extended (initially the re-authorization deadline was set for November 9, 2018).**

At the time of publication, Order no. 1960/2018 provided the date of November 9, 2018 as the deadline by which economic agents authorized to distribute and trade energy products/alcoholic beverages/processed tobacco, in a wholesale system without storage, can be re-authorized under the new conditions (i.e. holding of storage facilities).

According to a draft amendment to Order no. 1960/2018 published on the General Customs Directorate's website, the re-authorization deadline will be extended until December 31, 2018.

Economic agents who will submit requests for re-authorization within the aforementioned term will be able to operate until their settlement, but no later than 30 days from the filing of the application.

We encourage you to make sure that by 31 December 2018 you have taken the necessary steps to obtain the new certificates. After this date, customs authorities are expected to check if you fulfil the new conditions.

## Contact details

**Mihai Petre**
**Senior Manager**
+40 730 585 665
mipetre@deloittece.com

**Cosmin Dincă**
**Senior Consultant**
+40 725 353 530
cdinca@deloittece.com

# Serbia

## Treaties for the Avoidance of Double Taxation

### Treaty for the Avoidance of Double Taxation with San Marino entered into force

On October 8, 2018, the Treaty between the Government of the Republic of Serbia and Government of the Republic of San Marino for the Avoidance of Double Taxation and prevention of tax evasion regarding income taxes has entered into force and will become applicable on January 1, 2019.

The aforementioned means that residents of Republic of Serbia and Republic of San Marino could, as of the next year, rely on the provisions of this Treaty when it comes to determination of the tax treatment of transactions they undertake. Besides, these transactions should not be the subject of the special regime of taxation which applies on transactions with persons from jurisdictions with preferential tax systems.

### The Draft of the Treaty for the Avoidance of Double Taxation with Algeria has been finalized

The Draft of the Treaty between the Government of the Republic of Serbia and the Government of the People's Democratic Republic of Algeria for the removal of double taxation regarding income and property taxes and prevention of tax evasion and avoidance, has been finalized in order to undertake the necessary steps to sign the Treaty in the near future.

## Rulebook on recognized expenditures for investments in the field of culture

Minister of Culture and Information has adopted Rulebook on investments in the field of culture recognized as expenditure (hereinafter: "Rulebook"), related to application of Corporate Income Tax Law.

The Rulebook comes into force eight days after being published in the Official Gazette of the Republic of Serbia, whereupon the previously applicable Rulebook on recognized expenses for investments in the field of culture ("Official Gazette RS", no., 9/02) ceases to apply.

Compared to the previously applicable solution, the new Rulebook provides a modernized legal framework for the matter at hand, specifically through updated activity codes for the entities – recipients of the investments and by expanding the list of admissible investments including investments through the use of information and communication technologies.

For all matters related to the application of the Rulebook and the determination of admissible expenses, feel free to contact our colleagues from the Tax & Legal department.

### Investments recognized as expenditure for tax balance purposes

Investments in the field of culture are recognized as expenditure if they contribute to:

1) creating of conditions for performing and developing cultural activities;

2) discovering, collecting, researching, documenting, studying, evaluating, protecting, preserving, presenting, interpreting, using and managing cultural goods;

3) encouraging international cultural activities and cooperation;

4) encouraging education in the field of culture;

5) encouraging scientific research in the field of culture;

6) encouraging young talents in the field of cultural and artistic work;

7) application of information and communication technology (digital guides, upgraded and virtual reality, 3D animations etc.), generic services, unique software solutions aiming to present cultural heritage and contemporary art and to make it accessible to the general public;

8) encouraging amateur and artistic cultural creativity;

9) encouraging children's creativity and creativity for children and young people in culture;

10) encouraging cultural and artistic creativity of persons with disabilities and the accessibility of all cultural content of persons with disabilities;

11) encouraging development of creative industries;

12) encouraging cultural and artistic development of socially sensitive groups.

Abovementioned investments in the field of culture are recognized as expenditures if the investment is made in cultural institutions, artistic associations, faculties, academies, art schools and other domestic legal entities, registered under the following subgroups of activities, in accordance with Decree on Classification of Activities (Official Gazette of RS, no. 54/10):

1) protection and maintenance of immoveable cultural heritage, cultural and historical sites, buildings and similar touristic monuments (91.03);

2) the activity of libraries and archives (91.01);

3) the activity of museums, galleries and anthologies (91.02);

4) artistic creativity (90.03)

5) production of cinematography, audio-visual and television program (59.11);

6) recording and publishing soundtracks and music (59.20);

7) publishing book, magazines and other publishing activities (58.1);

8) activities related to botanical and zoo gardens and other natural reserves (91.04).

Investments in the field of culture, made in cultural institutions, artistic associations, faculties, academies, art schools and other domestic legal

entities registered for abovementioned activities, are recognized as expenditure if these were invested in reconstruction of the existing or construction of new cultural facilities, conservation and restoration of cultural heritage, as well as preservation of elements of intangible cultural heritage inscribed in National register of intangible cultural heritage, program activities, production and equipment used in cultural and artistic activities.

## Contacts Details

**Pavle Kutlesic**
**Manager**
Tel: +381113812173
Email: pkutlesic@deloitteCE.com

# Slovakia

## Information on the Issuance of a Tax Residence Certificate to Taxable Persons with Unlimited Tax Liability in the Slovak Republic

**The Financial Directorate of the Slovak Republic published information on the issuance of tax residence certificates to taxable persons with unlimited tax liability.**

The Financial Administration of the Slovak Republic issues a "Tax Residence Certificate" to taxable persons with unlimited tax liability if the applicable international double taxation avoidance treaty is applied. The place of a taxable person's tax residence is assessed in accordance with the Income Tax Act and in accordance with the provisions of the relevant double taxation avoidance treaty.

The Financial Administration of the Slovak Republic may issue a tax residence certificate also in relation to the countries with which the Slovak Republic has not concluded an international double taxation avoidance treaty. In this case, the place of a taxable person's tax residence is assessed solely in accordance with the Income Tax Act.

Before issuing the tax residence certificate or certifying tax residence on a foreign form, the tax authority thoroughly examines the facts in accordance with the Income Tax Act and the relevant double taxation avoidance treaty.

To speed up and simplify the administrative process when determining the scope of a natural person's tax obligations in the Slovak Republic, the tax authority submits to this natural person the "Definition of the Scope of Natural Person's Tax Obligations in the Slovak Republic Form" for completion and requests the natural person to document the information provided in the form. The form must be completed completely and correctly as the information determines the tax authority's assessment of tax residence.

A natural person as a taxable person may submit a completed and signed "Definition of the Scope of a Natural Person's Tax Obligations in the Slovak Republic Form" as an annex to a request. If the completed form is not attached to the form, the tax authority will request the taxable person to complete it and document the facts.

The Financial Administration of the Slovak Republic uses two document templates to certify tax residence: "Tax Residence Certificate for Treaty States" and "Tax Residence Certificate for Non-Treaty States". Both templates are available in three languages (Slovak, English, German) and the tax authority completes them in Slovak.

If the tax authority's tax obligation assessment process shows that the taxable person does not meet the criteria for determining a place of tax residence in the Slovak Republic under the Income Tax Act and the relevant international double tax avoidance treaty, if applicable, or if the taxable person is unable to document the declared facts, the tax authority will notify the taxable person in writing that a tax residence certificate will not be issued or that a foreign tax residence form will not be confirmed. The tax authority is not authorised to confirm that a taxable person is not a tax resident of the Slovak Republic.

## Contact Details

**Valéria Morťaniková**
**Senior Manager, Tax**
Mobile: +421 917 627 421
Email: vmortanikova@deloitteCE.com

**Katarína Povecová**
**Manager, Tax**
Mobile: +421 917 858 604
Email: kpovecova@deloitteCE.com

## The Government's Amendment to Act No. 222/2004 Coll. on Value Added Tax, as Amended

**The Ministry of Finance of the Slovak Republic submitted a draft amendment to the VAT Act effective from 1 January 2019. The draft amendment to the VAT Act will be discussed by the relevant committee of the National Council of the Slovak Republic.**

**The most important proposed changes are presented below:**

- ***Cancellation of the tax guarantee concept*** – decisions on the deposit of a tax guarantee issued up to 31 December 2018, where a 12-month period since the date of the guarantee deposit has not expired, will be cancelled, and the guarantee or its part, which was not used to pay tax arrears, must be returned by the tax authority by 28 February 2019.

- ***Change in the definition of turnover for VAT purposes/coefficient for the proportional deduction of tax*** – it is proposed to replace the terms "revenues" and "income" with the term "value of supplied goods and services" as a result of which the fair value of supplied goods and services will be included in the turnover, ie the consideration at the time of their supply. The said change will also affect the provision on the calculation of the coefficient for the proportional deduction of tax. Following changes effective on 1 January 2019, the method of calculating the turnover and the coefficient for the proportional deduction of tax for 2018 will be regulated under transitional provisions.

- ***Supply of goods/services when using vouchers*** – the definition of a voucher and rules for the application of VAT when using such a voucher are to be added to the Act. According to the new rules, vouchers will be classified as "single-purpose vouchers" or "multi-purpose vouchers" depending on whether the amount of tax payable and the place of supply of goods/services to which the voucher applies, is known at the time of the voucher issue. The new rules for the tax treatment of vouchers for VAT purposes will apply to vouchers issued after 31 December 2018.

- ***Modification of rules for providing telecommunication services, radio and television broadcasting services and electronic services to a person other than a taxable person*** – the new rules will mainly apply to occasional providers of the said services and they will be able to decide whether the place of supply

of these services is the Member State of establishment of the service recipient or the Member State of their establishment, provided they comply with statutory requirements.

- ***Changes to the supply and lease of real estate*** - the relevant provision of Article 38 of the VAT Act is to be amended significantly. The first major change is new conditions for applying a tax exemption upon the supply of a building or its part, according to which for the first 5 years the taxation will apply not only to new buildings, but also to older buildings for which a change in purpose has been permitted, and to reconstructed buildings, provided that in both cases the costs of the construction work amount to at least 40% of the value of the building before the start of construction work. Another change is the limitation of the right to choose taxation upon the supply of a residential building or its part that qualifies for tax exemption. The same limitation will apply to the right to choose when leasing residential real estate, ie the lessor will be required to apply a tax exemption regardless of the status of the recipient.
- ***Adjustment of deducted tax for investment property*** – a new provision is to be introduced, imposing a payer's obligation to adjust deducted tax for investment property with a cost over EUR 3 319.39 if the extent of its use for business and other-than-business purposes has changed.

- ***Modification of the domestic reverse-charge for selected agricultural crops and metal goods*** – it is proposed to abolish the transfer of the tax liability to the recipient in situations where the supplier issues a simplified invoice (eg a receipt from an electronic cash register) upon the supply of the above goods.

**The draft amendment to the VAT Act also specifies in more detail certain provisions of the VAT Act, including the following:**

- ***Registration obligation upon the sale of a business or part of a business*** – the reference to the Commercial Code is deleted as the supply of a business or its part is a term defined by the European Union and should not therefore be governed exclusively by Slovak legislation.

- ***Free supply of goods*** – the payer is required to pay VAT on a free supply of goods if the payer applied a VAT deduction upon the purchase of the goods or part thereof, but the tax base will only include the costs related to the part of the goods which increased in value after the purchase and to which VAT deduction was applied

## Contact Details

**Katarína Mikovínyová**
**Senior Manager, Tax**
Mobile: +421 915 736 043
Email: kmikovinyova@deloitteCE.com