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CE Tax&Legal Highlights
July 2017

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Estonia

Amendments to Income Tax Law related to intra-group loans

The Estonian government's plan to introduce corporate income tax on outgoing loans (so-called pledge tax) was rejected by the parliament. Instead, alternative amendments to the Estonian Income Tax Act were adopted by the Estonian Parliament on 19 June 2017 and the Estonian President announced the Law on 29 June 2017. In accordance with the amended law, the Estonian Tax authority will have the right to tax the loans granted by Estonian companies to their parent or sister companies, in case the loan conditions indicate that in substance the loan may be a hidden profit distribution.

Are you ready for the new General Data Protection Regulation?

The new EU General Data Protection Regulation (GDPR) is coming into effect next year in May, bringing along a number of new obligations for data processors. It is important to bear in mind that GDPR affects absolutely every company, which is dealing with processing of personal data in its everyday business – be it the clients' data or even the data of its own employees. It is also crucial to note that GDPR does not merely concern the companies established in the EU, but also those that process data in the EU – for example, offer their products or services on the EU market.

GDPR brings along the following changes:

1. Stricter consent requirements - the person's consent for processing of his or her personal data is valid only if it has been given in a voluntary, specific, conscious and unequivocal way, in a form of a statement, confirmation or other consent-expressing deed.

2. Right to the erasure of data („the right to be forgotten") – the new Regulation gives person a clear basis to request the data processors to erase all the data concerning said person that they have collected.

3. Special rules with regard to personal data of minors – if a person is younger than 16 years old, then in addition to his or her consent, the consent of the parent or trustee is required. In Estonia, the lowest age limit of 13 years will most likely be applied.

4. Obligation to nominate a Data Protection Officer, if a company is one of the following:

- public sector company;
- processing large amounts of data (i.e. the data of at least 5000 persons per year);
- processing special categories of data;
- employing 250 or more workers.

5. Right to data portability from one service provider to another - a service provider must be able to provide a person with his data in a structured, commonly used and machine-readable format, in order for this data to be transferred to another service provider.

6. Obligation to maintain a record of processing activities - each company shall maintain a record of all categories of personal data processing activities and preserve such records.

7. Obligation to notify about the data breaches – the Data Protection Inspectorate must be notified of incidents within 72 hours. In certain cases, the data subjects must also be notified.

8. Obligation to conduct data protection impact assessments - Where a type of processing (e.g. using new technologies) is likely to result in a high risk, the company shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. 9. Sanctions up to 20 000 000 EUR or 4% of the total worldwide annual company's turnover of the preceding financial year - whichever is higher.

Deloitte has a comprehensive international experience in the field of data protection and is able to help bring the internal processes of your company in compliance with GDPR requirements. We are pleased to offer you the following services:

1. GDPR maturity assessment – whilst conducting the compliance assessment we provide you with an evaluation of whether the internal processes in your company are in compliance with GDPR requirements, including whether the data protection measures that have been implemented so far ensure the appropriate level of security and identify the security gaps.

2. Drafting and reviewing data protection policies – we will help you review and amend the existing data protection policies or draft the new ones. The documentation in scope could range from the design of data protection policies as such, to the review of in-house implementing procedures, guidelines, contracts, checklists and more.

3. Privacy Help Desk service – if your company does not have the in-house experience in the field of data protection, then Deloitte is able to offer you a "help desk" that, in principle, will efficiently answer any legal or practical questions you may have about data protection, ranging from issues around notification requirements through reviews of contractual clauses with your service providers or the identification of special requirements on a specific subject in a country.

4. Data protection impact assessments - if you are planning a new activity which involves the processing of personal data or want to change an existing one, then we can help you assess whether such initiative could entail a data protection risk and if yes, which would be the best way to address this right from the start of the project.

5. Assistance with communication with Data Protection Inspectorate – we identify relevant registration and/or notification requirements applicable to your company, designing the notification approach, drawing up and submitting the relevant notifications and if your company desires to do so, building a notifications maintenance program to ensure that notifications' work is appropriately monitored and managed over time.

6. Data protection training – we organize a data protection training course for the management and/or employees of your company, during which we explain the GDPR requirements and how they affect your company, bearing in mind the specifics of your business.

Deloitte Legal is the official advisor of the Estonian e-Residency team

The Republic of Estonia is the first country to offer e-Residency, a government issued digital identity that empowers entrepreneurs around the world to set up and run a location-independent business. Deloitte Legal is the official legal advisor to the Estonian e-Residency team. What is e-Residency? How does it work? What are the legal aspects to be aware of? How to take advantage of it? Find out from Merit Lind's interview to LexisNexis, a global provider of legal research and analytics.

E-residency—how does it work? (Head of Law Firm Deloitte Legal Merit Lind interviewed by Alex Heshmaty)

What is e-residency and how does it work?

E-residency is an Estonian government-issued digital identity, which anyone in the world can obtain. It is a digital identity, which gives its owner access to the online services provided by the Estonian Government as well as the private sector alongside the possibility to conclude transactions fast and conveniently by using legally binding digital signatures. A trust services provider ensures the identification, authentication and verification of the e-resident and its signatures on documents.

The main concept of e-residency is giving any person in the world the possibility to apply for a secure digital residency in Estonia without actually living there.

One can apply for e-residency online by filling in a form, adding a scan of a national passport and a photograph, and describing a reason for applying. The reasoning behind the application does not have a significant impact on whether e-residency will be issued or not. One also needs to pay a state fee of EUR 100 upon applying for e-residency. If granted, an e-resident smart ID card will be issued, which can be picked up at the nearest chosen Estonian embassy. After picking up the e-resident smart ID card the person is ready to use it to benefit from any of the required Estonian e-government or private sector online services.

What rights does it entail? Are there any immigration law benefits in being an e-resident?

E-residency will effectively give people the opportunity to be part of Estonia, and for third-country residents an opportunity to be part of the EU, without actually living here. This is a significant development for entrepreneurs. For example, post-Brexit, by using Estonian e-residency, start-ups and other undertakings originating from the UK could consider creating a secondary establishment and thus set up as well as operate their businesses in Estonia to retain their operations in the EU internal market. Also, people from non-EU Member States can also establish and operate their businesses in the EU by using the Estonian e-residency card to set up their company in Estonia. Estonian e-residency as a tool effectively works as a gateway to the European Union for third-country residents.

The e-residency Dashboard reveals that the Finnish people have been the most active in applying for an Estonian e-residency amounting to 2,896 applicants, which makes up 15,33% of the total Estonian e-residents. However, people from Russia (7.63%), the US (5.89%) and Ukraine (5.76%) follow closely. The UK is on the fifth place in terms of where the applicants'

come from with 999 UK originated applicants amounting to 5.29% of the total Estonian e-residents (data collected 19 April 2017).

With regard to immigration law, e-residency is neutral. It does not change the e-residents' actual residency, citizenship or right of entry to Estonia or the European Union. It is not a visa or residence permit. However, to facilitate the e-residency programme, a few changes were introduced to Estonian immigration law at the beginning of 2017. The aim of the amendments was to facilitate and simplify the temporary stay, residence and employment of talented and entrepreneurial people in Estonia. From the e-residency perspective, a few important amendments were the relieving of immigration rules for start-up entrepreneurs coming to Estonia and Estonian start-ups recruiting foreign labour as well as for large investors.

Does it apply to legal or natural persons (or both)?

E-residency applies only to natural persons, however, in most cases e-residency is being applied for with the intention of setting up a company in Estonia. Nearly 1,500 new businesses have been established by e-residents and almost 3,000 companies are owned by e-residents.

Does it entail any EU passporting rights?

To be clear, e-residency does not grant nor change its owner’s citizenship, tax residency, residence or right of entry to Estonia or to the European Union. Therefore, it does not entail any EU passporting rights. However, setting up a company in Estonia online by an e-resident will grant this person access to the EU internal market.

How does it function in practice?

E-residency allows people to establish and run a company online, have access to payment service providers, digitally sign documents (eg annual reports, contracts) within the company as well as with external partners, declare taxes online and much more (as indicated above). Several of the available digital services offered to e-residents have been listed the on the e-Estonia website. It is important to understand the background and impact of each of these. For example, investing through crowd-lending platforms is easier after obtaining e-residency because digital signature capability guarantees conclusion of legally binding agreements online, regardless of the parties' location. Also, to declare the taxes of an Estonian company managed by an e-resident, one can take care of all the formalities online using Estonian e-government services.

What are the terms and conditions of digital residency?

In order to be a suitable applicant a person must be at least 18 years old and not have been convicted of a criminal offence. For example, a person will be denied e-residency, if they have been involved in money laundering. The applicant should also have a reasonable interest in using public e-services in Estonia. An applicant for the e-residency, who comes in the form of an e-resident's digital identity card, cannot be a foreigner who is staying in Estonia on the basis of the International Military Co-operation Act or a person that is holding or applying for an Estonian identity card or residence permit card issued by the Estonian Police and Border Guard Board. One face-to-face meeting is required to collect the card from one of the chosen Estonian

embassies and consulates or the Estonian Police and Border Guard Board service points.

Amendments to the Estonian Income Tax Law

Amendments to the Estonian Income Tax Law were adopted by the Estonian Parliament on 19 June 2017 and Estonian President has announced the Law on 29 June 2017. There are many different changes in the above mentioned law that make the employers' life easier when providing bonuses to the employees, on the other hand there are new income tax rates, as well as the imposed advance corporate income tax to credit institutions, not to mention additional anti-avoidance provisions related to loans issued to other group entities.

Amendments, that will come into force on 1 August 2017:

Amendments to fringe benefit taxation

- In case, where a personal car is being used for business purposes, the parking payments made during the course of performance of the professional duties can be reimbursed by the employer without any tax liability.
- The reimbursement of the accommodation expenses of the employee are exempt from fringe benefit taxes for the employer, in case, where the need for accommodation is related to the business of the employer itself, the expenses are within the marginal rate established by law, the employee's home is at least 50 kilometers far from his place of work and the employee does not own any residential real estate, which would be located closer by. In Tallinn or Tartu the maximum expense per employer in one month shall not exceed EUR 200 and in other parts of Estonia EUR 100.
- The employer's expenses related to the employees' transportation will not be taxable as fringe benefits, in case the transportation by bus, in accordance with the Traffic Act is organized or if the employee lives at least 50 kilometers from the workplace.
- With regard to a person, who has been identified as having full or partial incapacity for work or who has a degree of disability, the expenses for the provision of aids to 50% of the amount of social tax paid during that year shall not be considered as fringe benefit.

Basic exemption deduction

A resident natural person has the right to deduct an additional basic exemption from the income tax period for a resident spouse of up to EUR 2160, if the taxable income of a resident natural person and his spouse does not exceed a total tax liability of EUR 50,400. The provision will be implemented retroactively as of 1 January 2017.

Changes in the taxation of the employees' share options.

The aim is to establish that the period between the issuance of the share option and its realization, in order to receive a fringe benefit, does not have to be 3 years, in case of the transfer of shares of the company or the death of the employee. This way the amount taxable as a fringe benefit would only be the part left from those three year. In case the option agreement is not digitally signed or notarized, the employer has to send the agreement to Estonian Tax and Customs Board within 5 working days.

Amendments that will come into force on 1 January 2018:

New CIT rates on regular profit distributions

Under the Income Tax Act, the CIT rate on regular profit distributions has been reduced from 20% to 14%. Dividends paid to natural persons will be subject to an additional 7% income tax withholding, if such dividends have been received from an Estonian company and are subject to a 14% CIT rate. The income tax rate for all amounts exceeding the last three years' average profit distributions will remain taxable at the regular 20% rate (technically, 20/80 on the top of net distributed dividend).

The first year, when the 14% rate will apply is going to be 2018 and the 14% will be applied as follows:

1) In 2019 to one third of 2018 taxable distributed profit
2) In 2020 to one third of the 2018 and 2019 taxable distributed profit combined.

Tax-exempt dividends received from subsidiaries will not be included in lower tax rate profit distribution calculations, as well as tax on hidden profit.

New Tax regime for credit institutions

• The resident credit institutions and the Estonian branches of the non-resident credit institutions shall have an obligation to pay the advance payments of income tax at the rate of 14% from the profits earned in the previous quarter. The advanced payments will have to be made by the 10th calendar day of the 3rd month of the ongoing quarter.

Increased burden for given loans within group entities.

• Instead of deposit income tax, the Parliament has adopted the additional reporting requirements, as well as the new requirements for taxpayers to prove that intra-group loans are not a hidden profit distribution. Loan agreements between related parties that involve transactions, where the main purpose is not to do business, but to avoid CIT (hidden profit shifting) are taxable. Loans with terms (or extensions) longer than 48 months raise an obligation for the taxpayer to prove (if the tax authority so insists) the payee's ability to pay such loan back and the intention to do so. The tax authority has to give 30 days to respond to such request. The obligation to (quarterly) declare given loans will affect the loans that have been issued or significantly changed after July 1, 2017.

New rules to calculate fringe benefit on company's car

• In case, where an employer is enabling an employee to use the company's car for personal purposes, it will now be possible to calculate the fringe benefit only on the kilowatt basis, regardless of the distance travelled. Also, an obligation to inform the Estonian Road Administration about using a certain car only for business purposes has been added.

Increased basic exemption

• Two formulas for the calculation of basic exemption deductible from a resident natural person's income have been introduced into the law:

1) If the income exceeds EUR 14 400, the amount of basic exemption is calculated according to the following formula: 6000 - 6000/10 800 × (amount of income - 14 400). However, the tax-free income may not be less than zero.

2) The amount calculated, according to the following formula is calculated on the basis of the taxpayer's written application in the calendar month before deducting income tax from the resident natural person, which is calculated according to the following formula: 500 - 500/900 × (payment - 1200). This amount cannot be less than zero. In his application the taxpayer may ask for a deduction of a smaller amount.

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Kosovo

Entry into Force of Administrative Instruction on Transfer Pricing

The new Administrative Instruction MoF-No 02/2017 on Transfer Pricing is the first general guideline that regulates related party transactions in accordance with Article 27 of the Law on Corporate Income Tax No. 05/L-029.

Whilst Law No. 05/L-029, which is in force since 2015, stipulates the requirement for compliance with the arm's length principle for related party transactions, it nonetheless provided only limited compliance guidance for taxpayers.

On the other hand, the new Administrative Instruction on Transfer Pricing has been crafted according to the OECD Transfer Pricing Guidelines and is the first measure to provide extensive details on the proper procedures to document the arm's length nature of related party transactions.

A taxpayer involved in controlled transactions is required to prepare and submit sufficient information to verify that the terms of its controlled transactions are in line with the arm's length principle.

Upon request from the Tax Administration of Kosovo (TAK), transfer pricing documentation must be made available within thirty (30) days of receiving the request.

Transfer pricing documentation prepared according to the requirements set out in the Code of Conduct of the European Union (EU) and its annexes on transfer pricing documentation for associated companies, is deemed to meet the requirements set in this Administrative Instructions.

Taxpayers involved in controlled transactions, including loan surpluses, which in the reporting period in total exceed EUR 300,000.00, are required to complete and submit to TAK a form for notifying annual controlled transactions (Annex No. 2 of the Administrative Instruction).

In determining the total value of the transactions, income and expenses cannot be counter weighted (Net Income cannot be used). The annual notice has to be submitted within the 31st of March of the following year, in conjunction with the annual financial statements and corporate income tax return.

Signing of the Fiscal Package 2.0

The Kosovo Government has approved the Fiscal Package 2.0 that contains twenty two (22) measures to improve the business environment and make domestic producers competitive within the Balkans region.

On 17 July 2017, after much deliberation, the Kosovo government finally approved the anticipated Fiscal Package 2.0 that outlines a series of measures to be implemented in order to improve business competitiveness within the Balkans region.

Among the measures noted, the Fiscal Package foresees the following measures to be implemented within the month of July:

- Removal of Excise tax on mazut fuel for production purposes;
- Issuance of sub-legal act regarding special conditions for the identification, control and marking of flour that is placed in free circulation in the Republic of Kosovo;
- Issuance of sub-legal act for certain conditions under which losses from the breakdown, evaporation or loss of the weight of oil and its products are recognized, and consideration of the possibility of recognizing weight loss for other products as well;
- Creating a transparency portal in order to increase efficiency of business requests for different licenses (transport, export, exploitation etc).

The other additional measures of the Fiscal Package 2.0 will be outlined in future Deloitte Tax & Legal Highlights according to their implementation and entry into force.

Forthcoming Deadline for Public Debt Forgiveness

The deadline for benefiting from public debt forgiveness is fast approaching, and the Tax Administration is advertising the set deadline of 01 September 2017.

As per the Law on Public Debt Forgiveness Nr. 05/L-043, supplemented by Law Nr. 05/L-119, business entities and natural persons can benefit from public debt forgiveness for all unsettled debts with the TAK for the period until 31st December 2008 if they fulfill the relevant criteria as set out by the aforementioned legislation.

In addition to total debt forgiveness for the period until 31 December 2008, entities will also benefit from the forgiveness of fines, penalties, interest and any other debts arising from non-payment of the basic debt for the period 01 January 2009 to 31 December 2014.

To benefit from debt forgiveness, entities must perform the full debt settlement for the period from 01 January 2009 until 31 December 2014. The full payment of the principal can be made until 01 September 2017.

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Latvia

Payroll Taxation

The main focus of the tax reform is to change the current regime of the corporate income tax (CIT), however there will also be several changes regarding payroll taxes. It is proposed that the new rules enter into force starting January 1, 2018, therefore the new laws have been developed quite urgently and provisions have been amended multiple times. On July 11 amendments regarding payroll taxes have been considered by the Cabinet of Ministers and it is planned that new regulation will be considered by Parliament at the final hearing on July 27.

The current personal income tax (PIT) on salaries at rate 23% will be replaced by progressive tax. It is set at the following rates:

- 20% rate on income up to 20 000 EUR per year;
- 23% rate on income over 20 000 EUR per year;
- 31.4% effective rate on income over 55 000 EUR per year that consist of 23% personal income tax and allocation of 11% solidarity tax to personal income tax.

The total rate of social security contributions will be increased from 34.09% to 35.09%. The employers' part of social contribution will be 24.09%, while the employees' - 11%. The threshold for social security contributions is set in amount EUR 55 000.

Solidarity tax will remain and is applied on annual salary income in excess of EUR 55 000. The split of solidarity tax is as follows:

- 24.09% - paid by the employer and will be directed to employee's pension and health insurance (10.5%) and solidarity tax payment into general social budget (13.59%);
- 11% - withheld from employees' salary and is allocated to personal income tax.

Deloitte Latvia will keep updating on CIT reform.

Proposed changes to the Latvian VAT Law

The Ministry of Finance has published draft amendments to the VAT law (further – draft amendments), which will enter into force as of January 1, 2018. However, the draft amendments have not been adopted yet, thus there might be changes during the discussion process. The proposed amendment to the Latvian VAT Law relates to the following areas:

- **VAT registration threshold for taxpayers registered in Latvia;**
- **Domestic reverse charge mechanism applicable to certain supplies of goods and services.**

According to the current Latvian VAT Law, taxpayers have the right not to register to the Latvian VAT payer register if the total value of performed supplies of goods and services for the last 12 months has not exceeded EUR 50 000 (provided that other conditions are met). Under the draft amendments, the threshold will be reduced to EUR 40 000.

The domestic reverse charge mechanism applies to the following goods and services:

- Construction services

Currently reverse charge VAT is applicable to supply of certain type of construction services. Draft amendments extend domestic reverse charge VAT application to all types of construction services, project designing and supply of construction products.

- Electronics

Currently reverse charge VAT is applicable to supply of certain type of electronics (mobile phones, laptops, tablets). Draft amendments extend domestic reverse charge VAT application also to the game consoles.

- Metal products

The draft amendments introduce a new article to the Latvian VAT Law providing that domestic reverse charge mechanism will be applicable to the supply of metal products and related services. Cabinet of Ministers Regulations (further - Regulations) will provide list of products to be considered as metal products and services to be consider as related services subject to domestic reverse charge VAT. Draft Regulations are not yet available.

- Household appliances

The draft amendments introduce a new article to the Latvian VAT Law providing that domestic reverse charge mechanism will be applicable to the supply of household appliances and electrical household devices. Regulations will provide list of goods to be considered as household appliances and electrical household devices subject to domestic reverse charge VAT. Draft Regulations are not yet available.

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Poland

Country-by-Country Reporting — Ordinance of the Minister of Economic Development and Finance on the detailed scope of data to be included in the information about a group of entities

On 21 June 2017 the Ordinance of the Minister of Economic Development and Finance of 13 June 2017 on the detailed scope of data to be included in the information about a group of entities was published in the Journal of Laws. The Ordinance implements the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

Scope of the new Ordinance
This is an implementing ordinance to the Act of 9 March 2017 on the exchange of tax information with other countries, concerning the **Country-by-Country Reporting** (hereinafter: CbCR). The Act imposes reporting obligations on Polish entities that are members of large capital groups. **The Ordinance regulates matters related to CbCR — providing information about a group of entities.**

Elements required according to the Ordinance:
The Ordinance indicates what information should be included in the information about a group of entities. It is as follows:

1. **the aim of submitting the information about the group of entities** (submission, update, adjustment);
2. **indication of the period** covered by the information about the group of entities;
3. **name of the group of entities;**
4. **indication of the currency** in which the values included in the information about the group of entities are expressed;
5. **name of the reporting entity,** with an indication of whether it is the parent entity, entity appointed to report or other entity;
6. **unique identification data of the members of the group of entities** (such as: name of the member of the group, tax identification number, address, tax residence);
7. **indication of the business activities undertaken by the entities in the group,** divided into: research and development; possession or management of intangible assets; purchases or orders; production or processing; sales, marketing or distribution; administrative, management or support services; provision of services to independent entities; intra-group financing; regulated financial services; insurance; ownership of shares or other proprietary rights in entities; dormant or other activities (need to be specified);
8. **data about members of the group of entities —** generated revenues, profit (loss before taxation), income tax paid, income tax due, share capital, undistributed profit from previous years, number of employees, current and non-current assets — divided by the country or territory;
9. **additional information or explanations** concerning the sources of data used to provide the information about the group of entities, exchange rates applied, information about activities (if it does not fall within the scope of point 7), notification regarding non-submission of data by the parent entity and other information, useful for interpreting data about the group of entities.

In addition, the Annex to the Ordinance contains detailed instructions on how to complete the CbCR, in particular clarifying the concepts of tax jurisdiction, information about the group of entities, sources of data used for the CbCR, the method of calculation of the number of employees or the type of economic activity.

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Excise duty revolution on the e-cigarette market

On 21 June 2017, a bill amending the Excise Duty Act of 14 June 2017 was published on the website of the Governmental Legislation Center. The bill assumes introduction of two new classes of excise goods: liquids for e-cigarettes and so-called innovative tobacco products that will be subject to excise duty.

What will change?
As assumed in the published bill, the following items shall be subject to excise duty:

- Liquids for e-cigarettes defined as solutions used in electronic cigarettes (importantly, both containing nicotine and nicotine-free, including the glycol or glycerin base), as well as

- Innovative tobacco products including:
  a) Mixture containing fresh or dry tobacco;
  b) Mixture referred to in section a) and, separately, liquids for e-cigarettes other than tobacco products and dry tobacco that do not undergo combustion.

Both items shall be classified as excise goods not listed in Appendix 2 to the Excise Duty Act, subject to non-zero excise rate, which among others means that they will be subject to the excise suspension procedure in Poland and their manufacturing should be performed at excise warehouses.

The new products will be subject to general excise duty regulations, such as those regarding tax chargeability, the subject of taxation, tax returns, registration of entities or excise duty on product losses. Further, the bill assumes that these products shall be subject to the obligation to bear excise stamps.

In the bill, the excise rate applicable to e-cigarette liquids has been set as PLN 0.7 per 1 ml of liquid, whereas the rate applicable to innovative tobacco products amounts to PLN 141.29 per kilogram and 31.41% of the weighted average selling price of the smoking tobacco. Further, the bill introduces increased excise rates for such products manufactured outside excise warehouse.

It also defines the concept of manufacturing of these excise goods. In relation to e-cigarette liquids, the manufacturing includes production, processing and bottling, whereas in relation to innovative tobacco products, it includes production, processing and packaging.

Exemptions
Exemptions projected in relation to the new excise goods include:

- Intra-community purchase of products personally by an individual for own use (not for resale);

- Import of products in personal luggage by a person aged 17+;

- Import of products placed in a package sent from a third state by an individual and intended for another individual staying in Poland.

The above exemptions are limited, mostly by volume.

Planned effective date
The intended amendments may materially affect both business operations of manufacturers and distributors of e-cigarette liquids and innovative tobacco products. New tax charges shall increase the number of procedures and the volume of documentation required in relation to business activities involving e-cigarettes.

At present, the bill has been presented for consultations, among others sent to the Social Dialogue Council members and to employer organizations to allow them submit comments.

According to the bill, the new regulations shall come into force as of 1 January 2018.

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Posting of workers under scrutiny of the National Labour Inspectorate

A recent report on the activity of the National Labour Inspectorate in 2016 provides interesting insights on the areas under close scrutiny of the institution and employer issues identified. According to the in-depth report, one of the key areas of interest was posting of workers to and from Poland. Key information about inspection findings and irregularities detected have been presented below to help readers prepare to possible future inspections.

More frequent inspections of Polish employees posted abroad

Foreign institutions more intensely scrutinize Polish workers posted abroad by Polish companies. The number of enquiries received by the National Labour Inspectorate from foreign authorities in 2016 **grew by 40% comparing to 2015.** Last year labour inspectors carried out 131 inspections of Polish companies posting workers abroad based on requests submitted by foreign institutions.

The main objective of the inspections was to check if a given employee seconded abroad can actually be considered a posted worker under the laws of the receiving country. The inspections also covered payment of salaries and other benefits in the secondment period.

One of the most frequent irregularities identified was that minimum terms and conditions of employment were not satisfied for posted staff. Some Polish employers still pay posted employees **less than a minimum pay** in a given receiving country. The inspections also indicated attempted evasion of law, when employers referred to business trip regulations.

Although the National Labour Inspectorate has no authority to impose sanctions on Polish employers posting employees abroad for breaches of local legislation, such **sanctions may be applied by foreign institutions** based on information provided by the National Labour Inspectorate.

Results of initial inspections of posting workers to Poland

The National Labour Inspectorate also analyses staff posted to Poland by foreign employers. In the first six months from the enactment of the Act on posting of workers in the framework of the provision of services, the National Labour Inspectorate carried out 67 inspections of employers posting employees to Poland. According to the report, inspections covered over 1.3

thousand employees, i.e. **ca. 1/4 of all employees posted to Poland and reported to the National Labour Inspectorate.**

Most irregularities detected during the inspection concerned employee secondment declarations (including the failure to report or to timely report posting employees, incomplete or non-updated declarations) and the failure to designate a person in charge of facilitating communication between the National Labour Inspectorate and a foreign employer posting employees to Poland.

The Inspectorate also checked if terms and conditions of employment were satisfied for employees posted to Poland. Most infringements concerned working time, in particular compliance with the working hours and rest times standards and paid vacations regulations.

Inspectors also detected **OHS issues** related to medical check-ups and OHS training for seconded staff. According to the Inspectorate, there are no clear regulations in this respect, which would indicate that medical check-ups and OHS training should be carried out in line with the principles applicable to Polish employees.

Our experience shows that the Inspectorate often requests employers to determine if foreign medical check-ups correspond with medical check-ups carried out in Poland and if any individual training should be provided in Poland.

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The Act on posting of workers in the framework of the provision of services was enacted only a year ago, hence the National Labour Inspectorate has not fully developed its practices in this respect. Still, the National Labour Inspectorate will certainly become increasingly interested in staff secondment, considering the current controversial legislative works aimed at revising the Directive 96/71 concerning the posting of workers in the framework of the provision of services.

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Centrum Obsługi Kluczowych Podatników - Key Taxpayers' Service Centre. Change of the clearing rules applicable to large entities

The pilot project called Centrum Obsługi Kluczowych Podmiotów - Key Taxpayers' Service Centre (COKP for short) was launched within the First Mazovian Tax Office on 03 July 2017. In the long term, COKP is planned to provide services to approx. 3,000 entities earning more than 50 million in revenue a year.

At present the COKP pilot project operates as part of the First Mazovian Tax Office and covers circa 200 entities, **but in the future it is intended to be a separate public sector unit reporting directly to the Head of the National Fiscal Administration (KAS)** and performing services for 3 thousand taxpayers responsible for 60% of budget receipts (companies with the annual revenue of more than EUR 50 million).

Project assumptions

The major objectives underlying the project undertaken by the Ministry of Finance and Development include:

- improvement of service quality and experience of the entities that account for a significant part of the state budget receipts,
- provision of standardized services to the covered entities,
- building a bond of trust between the enterprise and the authorities,
- favourable impact on tax chargeability and the serviced entities.

The Centre will provide comprehensive services - each covered entity will be assigned to the relevant industry-specific team and appointed a manager who will be familiar with the specifics of its business operations. In particular, the team specialization is aimed to strengthen confidence in tax administration and promote fulfilment of tax obligations. In addition, the authorities want to host a website focused on material domestic and international tax law issues, which is also expected to make their services more efficient. They plan to publish tax bulletins providing information targeted specifically at enterprises. Workshops, video-conferences and individual taxpayer communication channels will also be organized in the near future.

Entities covered by COKP

In line with the currently binding legal regulations, entities that generated not less than PLN 400 million of revenue in 2014 or 2015 and that fall under the competence of the head of the First Mazovian Tax Office will be covered by the services of COKP. COKP will function in its current form until the end of 2017. **At the beginning of 2018 the Fourth Mazovian Tax Office will be set up, to be later transformed into COKP.** Importantly, COKP will be the first-instance tax authority, whereas the Head of KAS will fill the role of the second instance. It is estimated that in its final shape and form COKP will deliver services in respect of circa 3000 taxpayers, i.e. the companies that generate over EUR 50 million in revenue a year. In aggregate, such taxpayers are responsible for 60% of the state budget receipts.

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Transportation package – further amendments and extension of obligations to cover railway transport

The Government Legislation Centre published a bill amending the Act on the system of monitoring road transport of goods and certain other acts (hereinafter: "bill" or "amendment") which changes the transportation package regime (hereinafter also: "the Act").

The amendment extents the scope of the goods' transportation monitoring obligation to include **railway transport** (only road transport has been subject to monitoring so far).

The bill constitutes yet another proposal of changes in the transportation package rules. In the June issue of our Excise Express we mentioned amendments based on which transportation would be monitored with the use of GPS locators (some of the changes contained in the GPS-focused proposal have been transposed to the new bill). Hence, two bills amending the transportation package are being processed at the same time.

Newly proposed amendment - extending monitoring to cover railway transport

According to the legislator, to restrict the possibility of using railway transport for illicit transportation of 'sensitive goods', it is justified to apply the monitoring system to railway transportation. The legislator explains that the proposed amendment is a result, inter alia, of the increased volume of railway transportation of energy products.

By analogy to road transportation, railway movement of the goods that fall within the scope of the Act will be associated with certain duties to be fulfilled by the dispatcher / recipient of the goods and the carrier (the entity that carries out the railway transportation). In this case, the train driver (the individual driving an engine-powered railway vehicle unit) will function as the driver.

As opposed to road transportation, when submitting the report to the register, the railway carrier will be obliged to provide certain additional data, such as: (i) train number, (ii) harmonized freight wagon code and (iii) location of the siding where it is possible to conduct inspection and which is closest in distance to the goods' destination or the place where the transport of goods ends in the territory of the country.

More importantly, the amendment increases the penalty imposed on carriers (including railway carriers) for non-reporting, from PLN 5 000 to PLN 10 000.

Changes taken from the previous bill of amendments

As pointed out above, the bill includes certain changes taken from the GPS-system bill. Among others, under the new bill the goods subject to monitoring requirements are no longer classified to sub-categories in line with the Polish

Classification of Goods and Services ("PKWiU") Therefore, the monitoring requirements may apply to the goods assigned to the CN categories specified in the applicable regulations.

In addition, the bill includes a provision to the effect that as regards the goods classified under CN 2905 and CN 3824, only the products marked as excise goods can be subject to monitoring.

The new bill also proposes changes in respect of the inter-warehouse transfer sheet by adding more details to be disclosed in that document, i.e. the registration number of the vehicle used and the date of issuing the inter-warehouse transfer sheet.

The right to demand that the carrier reported in the register present the vehicle and the goods transported in the specified location (the place where the dispatch of the goods ends or a branch of the tax and customs office) and at a specified time, for inspection purposes (if, based on the analysis, it transpires that the transportation of goods indicated in the report is associated with higher risks) is another significant change transposed from the GPS-related bill. If the vehicle with the goods is not provided to the specified place in the specified time, the carrier will be fined PLN 20,000.

Additional changes

Apart from the amendments originating from the GPS-system bill, certain additional changes have also been proposed, including inter alia the provision that if the transportation is made from a single dispatcher, to a single recipient, to one and the same destination, and using one vehicle, then the report can cover various types of goods (falling within the scope of various CN codes).

More importantly, as regards the penalties for non-fulfilment of statutory obligations, a clause has been added stipulating that if irregularities are detected in the course of tax proceedings, tax audit or tax and customs control, no penalties will be imposed where the receipts of the State Treasury have not been depleted.

The limitation of the possibility to impose fines will not apply to disclosure of irregularities in the course of the transport inspection.

What next?

The bill has been tabled for interministerial discussions, and it will come into effect 14 days after its publishing.

If the proposed amendments become effective, they will cover a wide range of new entities (especially railway carriers). Such entities should verify the goods they transport as soon as possible, and if they conclude that new obligations may be applicable, they should carefully follow the legislative process associated with the bill. Then, if the proposed regulations become the binding law, they will need to take steps with a view to implement appropriate enterprise risk management procedures and mechanisms, organize employee training, modify agreements concluded with contractors, etc.

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Romania

The conditions of issuance of the European Unique Identifier (EUID)

The Order of the Ministry of Justice regarding the approval of the EUID structure for the professionals registered with the Trade Registry and the standard model of the registration certificate is currently under public debates and is expected to be approved and enter into force starting with 7 July 2017.

In order to ensure that official information on companies is always readily available on a cross-border basis, the Directive 2012/17/EU (i.e., Directive 2012/17/EU amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council regarding the interconnection of central, commercial and companies registers) regulates the establishment of an interconnection system for the information held with respect to legal entities registered with the commercial registries in the Member States.

In Romania, Directive 2012/17/EU is transposed through Law 152/2015 which amends and supplements a series of legal acts regarding Trade Registry registrations. Law 152/2015 establishes that the National Trade Registry Office and all the local Trade Registry offices will be part of an interconnection system available both at national and European level.
In order to facilitate the identification of professionals registered with the commercial registries of the Member States, all such professionals (natural and legal persons) will be assigned a European Unique Identifier (EUID).

The structure of such EUID is determined by the Order of the Ministry of Justice for the approval of the EUID structure for the professionals registered with the Trade Registry and the standard model of the registration certificate ("Order") and includes the following:

- country code, followed by the local Trade Registry ID and by the specific registration number.

Additionally, the Order provides the following:

- each natural or legal person shall have an EUID assigned in the integrated informatics system of the National Trade Registry upon the incorporation / registration with the relevant Trade Registry;
- the EUID will be mentioned in the registration certificates of each such professional.

Although the enactments previously mentioned provide that all professionals registered with the Trade Registry will be assigned the EUID, the Order does not impose any obligation to the professionals already registered with the Trade Registry to perform any formalities in order to be granted such EUID.

In this respect, the Order mentions only that such professionals may request the issuance of a new registration certificate from the Trade Registry, which should include also the new EUID.
The Order is currently under public debates and is expected to be approved and enter into force starting with 7 July 2017.

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Transfer Pricing: OECD releases new edition of transfer pricing guidelines

An updated version of the OECD Guidelines - Transfer Pricing Guidelines for Multinational Companies and Tax Administrations was published on 10 July 2017 by the Organization for Economic Cooperation and Development (OECD). The previous version of the guidelines was issued in 2010. The Romanian Fiscal Code recommends complying with the OECD Transfer Pricing Guidelines.

The updated version of the OECD Guidelines includes a series of recommendations undertaken from the BEPS reports - Base Erosion and Profit Shifting. We reiterate the fact that Romania is an associated member of BEPS starting June 2017.

The main changes brought by the updated version of the OECD Guidelines are:

Actions 8-10 "Aligning Transfer Pricing Outcomes with Value Creation"	
Chapter I, Section D ("The Arm's Length Principle") *The provisions of this section are deleted in their entirety and replaced by new guidance.*	Members of Multinational Enterprises will not be remunerated based only on the capital employed but rather on the control exercised in the process of decision making.
Chapter VI ("Special Considerations for Intangibles") *The provisions of Chapter VI of the Transfer Pricing Guidelines and the annex to this Chapter are deleted in their entirety and replaced by new guidance and annex*	The updated guidelines include information regarding the definition of the intangibles, principles of appropriate allocation of profits associated with the transfer and use of intangibles and transfer pricing rules or special measures for transfers of hard-to-value intangibles. Moreover, it must be assured that the profits associated to the transfer and use of intangibles are properly allocated, in correspondence with the process of present and future value creation.

Chapter VII ("Special Considerations for Intra-Group Service") The provisions of Chapter VII of the Transfer Pricing Guidelines are deleted in their entirety and replaced by new guidance.	The new provisions include guidance regarding low value-adding intra-group services and a simplified approach to such services.
Action 13 "Transfer Pricing Documentation and Country-by-Country Reporting"	
Chapter V („Documentation") *The provisions of Chapter V of the Transfer Pricing Guidelines are deleted in their entirety and replaced by new guidance and annexes.*	The transfer pricing documentation should comprise the following: - A documentation which should include information regarding the Multinational Enterprises („Masterfile"); - A local documentation which should include information regarding intra-group transactions of the taxpayer („Local file"); - A documentation which should include information regarding the manner in which income, taxes are allocated and reporting of financial indicators („Country-by-Country Report").

Significant changes are also made in Chapters II ("Methods"), IV ("Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes") – revised guidance regarding safe harbors, VIII ("Cost Contribution Arrangements") and IX ("Transfer Pricing Aspects of Business Restructurings").

Some of the BEPS work streams have not been finalized in the 2017 transfer pricing guidelines, including the guidance on hard-to-value-intangibles and the attribution of profits to a permanent establishment.

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The stamp is no longer mandatory for documents submitted to the customs authorities

Stamping the declarations, applications, contracts or any other documents to be submitted to the customs authorities is not mandatory, states the General Customs Directorate on its own website, www.customs.ro.

Stamping the declarations, applications, contracts or any other documents or documents to be submitted to public institutions or authorities, issued, or concluded in relation to public institutions or authorities is not mandatory, both for natural persons and legal persons.

As of 30 July 2017, the act of requesting natural persons, private legal entities and entities without legal personality, to stamp declarations, applications, contracts or any other documents committed by the person within an institution or public authority, constitutes a disciplinary offense and entails disciplinary liability.

The measure is included in Government Emergency Ordinance no. 49/2017, which was published in the Official Gazette, Part I, no. 507 of 30 June 2017 and will apply from 30 July 2017.

Commission's Electronic Decision System, applicable from 2 October 2017

Information sharing related to applications and decisions between customs authorities in the European Union, as well as between economic operators and customs authorities in the European Union, will be carried out by using electronic data processing techniques, starting with 2 October 2017.

Starting 2 October 2017, the applications and authorizations listed in Annex A to Delegate Regulation (EU) No. 2446/2015 of the Commission will be managed in the European Commission's Central Customs Decision System ("DGTAXUD"), except:

- Decisions on mandatory information;
- Applications and authorizations for the status of authorized economic operator;

- Applications and decisions regarding repayment or remission of import or export duties;

Applications and authorizations for the use of the temporary admission procedure, final destination, inward processing or outward processing in situations where Article 163 (1) of Delegate Regulation (EU) 2015/2446 of the Commission applies;

What does this means for the economic operators?
Using the above-mentioned electronic data processing system will ease the procedures for obtaining customs authorizations and will reduce the processing time of the customs applications.

In order to obtain the right of access to DGTAXUD's Central Customs Decision System, the interested economic operators must access the link "Decizii Vamale/Cerere acces sistem Decizii Vamale" link, which will be available on the General Customs Directorate's website, starting with 01.08.2017.

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Slovenia

More detailed instructions for submission of the CbCR and CbCR notification in Slovenia

On July 1, 2017, amendments to the rules on the implementation of the Tax Procedure Act came into force. A guideline for the respective amendments was published in the Official Gazette of the Republic of Slovenia, no. 30-2017 from 16.6.2017.
Topical changes brought about by the amendments concern the added VI Chapter on reporting and exchanging of country-by-country reports (CbCR) based on chapter III.B of the Tax Procedure Act.

According to the given instructions for reporting and exchange of country-by-country reports for international business groups, every Slovene tax payer, who is a part of international group bound to CbCR reporting, must submit CbCR notification. The CbCR notification must contain the following information:

- Indication that a tax payer is comitted to report CbCR for an international group of companies that it is a part of,
- Indication of a parent company and an international group of companies,
- Indication of a reporter and his/her role in an international group of companies,
- Notification from a tax payer about its role in an international group of companies,
- Notification from a tax payer on whether, in the event when the parent company is not the one to submit CbCR notification, an alternative parent company or the appointed reporter can obtain information from the parent company for preparation of the CbCR notification.

CbCR notification will be submitted in electronic form via the eDavki portal together with the corporate income tax return. The CbCR notification form will be available on the Financial Administration of the Republic of Slovenia website under the Corporate Income Tax (CIT) regulations.

The first notification will have to be submitted for tax year 2017. Namely, the notification is attached to the tax return of the respective year, with the first deadline for submission on March 31, 2018.

Implementation of more detailed instructions for the preparation and submission of the CbCR to local legislation

Although Republic of Slovenia has already adopted the basic provisions regarding the CbCR in its legislative act (the Tax Procedure Act) at the end of 2016 the, the implementation of detailed rules regarding the precise content of the report and the method of submission has somewhat been delayed.

Last change was the full implementation of Council Directive (EU) 2016/881 on 25 May, 2016 in respect to the amendments to the Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation.

The instructions, adopted with the amendments to the Implementation of the Tax Procedure Act are fully consistent with the instructions of Council

Directive (EU) 2016/881. The CbCR must hereby contain the following information:
- An overview of the distribution of income, taxes and business activities under the tax jurisdiction;
- A list of people in an international group of companies, grouped by tax jurisdictions;
- Additional information.

The CbCR notification form is available on the Financial Administration of the Republic of Slovenia website. The reporter submits the notification CbCR in an electronic form (XML scheme assigned by OECD) via the eDavki portal.

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