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Tax&Legal Highlights
June 2017

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BULGARIA
HUNGARY
CENTRAL EUROPE
LITHUANIA
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Bulgaria

Bulgaria signed the MLI

On 7 June 2017, under the framework of the OECD BEPS project, 68 jurisdictions, including Bulgaria, signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI).

The MLI allows jurisdictions to transpose the results of the OECD BEPS project by way of modifying their existing tax treaties networks. The measures included in the MLI address hybrid mismatches, treaty abuse, avoidance of permanent establishment, mutual agreement procedure and arbitration. While certain provisions of the MLI establish a number of minimum standards that are required to be implemented by jurisdictions signing up to it, the signatories may choose to apply available optional provisions by way of filing technical reservations and notifications.

The OECD, in its role as Depositary, has published on its website provisional lists of the treaties they intend to bring within the scope of the MLI, along with their reservations and notifications ("MLI Positions"), including Bulgaria's MLI Positions (available in English on the OECD website).

Bulgaria defined 66 tax treaties as agreements it wishes to be covered (Covered Tax Agreements) by the MLI, while 38 of these tax treaties are set by the other contracting jurisdiction that also signed the MLI on 7 June. At the time of signature of the MLI, Bulgaria has made reservations to all optional provisions of the MLI. It should be noted that as the OECD stated in the document listing the signatory countries, the MLI positions provided at the time of signature may be subject to change, and the definitive position for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI.

Bulgaria has opted to apply the provisions with connection to the BEPS project minimum standards. The minimum standard changes to treaties address treaty abuse, the mutual agreement procedure and the preambles to tax treaties for preventing treaty abuse, as well as the provisions relating to dispute resolution. The treaty abuse minimum standard addresses concerns that bilateral tax treaties could be used to make treaty benefits available in unintended circumstances. Options are given to support the different approaches permitted under the minimum standard: principal purpose tests (PPT) or simplified limitation on benefits rules (LOB), supplemented with a PPT. Alternatively, the use of detailed LOB rules is permitted. All 68 signing jurisdictions have opted to include the PPT within their Covered Tax Agreements. The following 12 countries, including Bulgaria, have chosen to opt for the supplementary LOB rules: Argentina, Armenia, Bulgaria, Chile, Colombia, India, Indonesia, Mexico, Russia, Senegal, Slovakia and Uruguay.

For the changes to apply to a particular bilateral tax treaty on the provisional list provided by a jurisdiction to the OECD at the time of signing the MLI, both parties to the treaty must ratify the MLI and adopt the same optional provisions. Signatories may amend their MLI Positions until ratification. After ratification, signatories can choose to opt in with respect to optional provisions or to withdraw reservations. As at 21 June, Bulgaria has not officially expressed its intention whether it will amend its MLI Positions until ratification or subsequently.

The domestic ratification procedures will determine when the changes will have an effect for each tax treaty.

Draft law proposed for CbC reporting

A draft law presented to the parliament on 5 June 2017 would implement EU Council Directive 2016/881 on country-by-country (CbC) reporting into Bulgarian law. The draft law generally follows the provisions of the EU directive.

According to the draft law, multinational enterprise groups (MNE groups) headquartered outside Bulgaria would be required to file CbC reports in Bulgaria if their consolidated group revenue exceeds EUR 750 million. A reduced reporting threshold of BGN 100 million (approximately EUR 51 million) is proposed for MNE groups whose ultimate parent entity is a Bulgarian tax resident.

Filing

The CbC report would have to be filed electronically with the tax authorities within 12 months of the last day of the MNE group's fiscal year (FY).

The term for filing of the first CbC report vary depending on the entity which makes the filing (the ultimate parent entity, surrogate entity or constituent entity).

The first CbC report would have to cover:

- The FY of the MNE group starting on or after 1 January 2016, when the CbC report is filed by the ultimate parent entity or the surrogate parent entity, and
- The reporting FY starting on or after 1 January 2017 when the CbC report is filed by a constituent entity that is not the ultimate parent entity or the surrogate parent entity.

In certain cases, a constituent entity that is not the ultimate parent entity would have to file the CbC report with the Bulgarian tax authorities.

The first notification before the Bulgarian revenue authorities is due by the end of the FY of the MNE group. For the FY of the MNE group starting on or after 1 January 2016, the notification should be filed until 31 December 2017.

Penalties

The draft law provides for significant penalties for noncompliance.

Amendments to the Regulation for the Implementation of the VAT Act came into force on 21 March 2017

The most important changes are regarding rules on the mixed business and private use of goods, adjustments of VAT deduction, calculation of the quotient for proportional VAT credit deductions, and zero-rated supplies related to international transport.

The changes regarding rules on the mixed business and private use of goods are the following:

- The allocation key for the pro-rata VAT deduction can be any reasonable criterion based on time or quantity, or a combination of the two, which takes into account the degree of business use based on the specifics of the good in question;
- Specific instructions how to report invoices for the acquisition of goods for which pro-rata VAT deduction is used;
- Specific provisions requiring the use of pro-rata VAT deduction for goods available at the date of the initial or subsequent VAT registration and in the case of succession due to business reorganization, transfer of a going concern or in-kind contribution.

The changes regarding adjustments of VAT deduction are the following:

- Opportunity to claim a portion of the VAT credit in the case of taxable supplies of fixed assets (goods or services) for which no initial deduction was claimed;
- Specific rules on the protocols, which need to be issued in the different cases of deduction adjustments;
- Members in a consortium should make the deduction adjustment for any goods or services provided to the consortium based on their degree of business use at the level of the latter.

The change regarding calculation of the quotient for proportional VAT deduction (when goods or services are used for both taxable and exempt supplies) is the following:

The following turnover should be excluded when calculating the quotient:

- the sale of fixed assets, used by the taxable person in its independent economic activities;
- the incidental sale of immovable property or incidental provision of financial services.

The change regarding zero-rated supplies related to international transport is the following :

- there are new rules on the documents needed to support the application of 0% VAT for supplies related to ships and aircraft.

There are some other changes :

- VAT-registered entities will no longer be required to file a statement for offsetting (so called Appendix 6) when claiming effective VAT recovery under the general rules. Simply stating the amount for recovery in the VAT return will be enough;
- It is explicitly stated that the supply of pre-paid telephone cards is a service;
- The tour operator margin scheme will not be applicable to goods and services supplied directly by the tour operator (rather than obtained from third parties). The general VAT rules will apply to such goods and services.

Reminder: Possibility for filing a correction annual corporate income tax return

As part of the number of new tax rules applicable in Bulgaria as from 1 January 2017, the tax payers will be able to file a one-off correcting corporate income tax return in case of mistakes identified after 31 March of the following year and the submission of the regular corporate income tax return.

The correcting return may be filed by 30 September of the following year. This will also apply for the corporate income tax return due for 2016. Hence, for a mistake identified and related to 2016, one-off correction corporate income tax return may be filed until 30 September 2017.

The correction procedures existing until 31 December 2016, which include the notification of the National Revenue Agency, will continue to apply in all other cases.

The scope of the events that may trigger a correction is increased. It will now include adjusting events within the meaning of the applicable accounting standards.

Mandatory electronic submission of returns as of 1 January 2018

As of 1 January 2018, tax payers will be obliged to submit all returns under the CITA electronically.

The discount currently granted for electronic submission will be discontinued after 1 January 2018.

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Croatia

Advance Pricing Agreement Procedure Regulations

The Croatian Tax Authorities have published Advance Pricing Agreement Procedure Regulations, which provide the taxpayers with an option for tax risk minimisation.

The Advance Pricing Agreement ("APA") is **an agreement between a taxpayer and the Ministry of Finance, Tax Authorities and the tax authorities** of other countries in which the related parties are residents or operate through a permanent establishment.

The purpose of an APA is **to define the tax treatment of one or more related party transactions before the transactions commence**. The criteria that can be agreed upon during the APA process include transfer pricing methods, comparable companies / transactions / profit indicators, transfer pricing adjustments or assumptions on future events of those transactions.

The purpose of concluding an APA is to:

- Minimise tax risks during the planning of materially significant complex related party transactions
- Have assurance during the planning of related party transactions
- Resolve transfer pricing matters on a partnership basis with the Tax Authorities

The details of an APA conclusion are prescribed by the **on the Advance Pricing Agreement Procedure Regulations** (NN 42/17).

During the APA conclusion process, the taxpayer has to prepare a functional, risk and economic analysis for the future transaction. A successful preparation of the detailed documentation prior to entering the transaction is key to present economic reasons for entering into the transaction to the Tax Authorities.

The basis for the APA is a planned transfer pricing study, which contains concise data on the future transaction and the functional, risk and economic analysis of the planned transaction.

The APA can be concluded as a:

1. Unilateral Agreement between the taxpayer and the Tax Authorities, or
2. Bilateral or Multilateral Agreement between the taxpayer and the Tax Authorities as well as the related parties and the tax authorities of other countries in which the related parties are residents

The APA is initiated by the **taxpayer and is binding for the taxpayer and the Tax Authorities** for the period for which it is concluded.

The APA can be concluded for a period of up to five years, depending on the characteristics and types of transactions, which are the subject of the APA. The APA can be extended for six months before the expiry of the time limit for which the APA is concluded.

The procedure of concluding the APA consists of the following phases:

1. Submission of the initiative for the APA conclusion
2. Preliminary discussion
3. Submission of the Statement of Intent for the APA conclusion

4. APA conclusion
5. Monitoring the APA implementation

The APA conclusion costs are borne entirely by the applicant of the Statement of Intent and must be paid together with the Statement of Intent submission.

The Tax Authorities will not perform a transfer pricing adjustment after the APA conclusion, i.e. in the APA duration period, as long as the taxpayer fully complies with the terms of the APA, or until the conditions of the APA change.

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Czech Republic

Interest in Trust Funds on the Rise

The legal institute of trust funds has recently become more attractive, namely owing to the media hype surrounding the former minister Andrej Babiš. However, it should be noted that Andrej Babiš was neither the first nor the only one who made use of the option of organizing his asset portfolio via a trust fund. The number of trust funds created between 2014 and 2016 exceeds six hundred and the interest in the institute keeps rising.

Trust funds, which are traditional and long-standing legal institutes namely in the Common law system, were incorporated in Czech law by the New Civil Code with effect from 1 January 2014. In connection to its introduction, amendments to related legal regulations (eg tax and accounting regulations) were made. Notwithstanding its lack of legal personality and a registered office, a trust fund is considered to be a due reporting entity and corporate income tax payer obliged to be registered with the Tax Authority for the Capital City of Prague (territorial office for Prague 7).

Ambiguity of the New Legislation

Before the New Civil Code came into effect, a major political debate took place regarding the removal of the institute from the Czech Republic's legal system. The reasons for the proposed removal primarily included the ambiguous new legal provisions and concerns about trust funds being abused for the calculated diversion of assets in order to achieve fully anonymous ownership or to circumvent related tax liabilities. More than three years later, it appears that the labor pains of the new legal and related provisions are gradually subsiding. Given the short period of existence of trust funds, it is currently not possible to rely on judicature in contentious situations; however, efforts have been underway since 2014 to eliminate ambiguities in legal, tax, accounting and other related legislation governing trust funds.

Ambiguities in the legislation governing trust funds have also been identified in relation to tax aspects although trust funds as stipulated by Czech legal regulations do not carry any special tax relief compared to similar funds abroad. Interpretation-related tax issues result primarily from the trust fund lacking legal personality and the ambiguous definition of relations among the trust fund, its founders and the beneficiaries deriving benefit from the fund's assets and profit. Before the relevant legal regulations actually came into effect, the Chamber of Tax Advisors actively initiated meetings with representatives of the Czech Tax Authorities, with a view to clarifying the substance of the related ambiguous tax regulations under discussion. Therefore, since the very beginning of the existence of trust funds, the interpretation of the regulations has been discussed in respect of the trust fund's tax position, tax depreciation and amortization of assets placed in the trust fund, tax consequences of the costs paid from the resources allocated to the trust fund or increasing the trust fund's assets, taxation of supplies to the beneficiary from the fund's assets or profit, taxation of the fee to the fund trustee etc. In this respect, the approach of the Czech Tax Authorities may also be assessed in highly positive terms. In early 2014, the General Financial Directorate issued a formal guideline regarding the registration of trust funds as taxpayers, with the Czech Tax Authorities interested in addressing other

contentious issues concerning the taxation of trust funds as well. Provisions were ambiguous not only in relation to income tax but also to VAT, tax on the acquisition of immovable assets etc. The highly positive thing is that the interpretation of multiple contentious issues has already been unified as part of the given communication. However, there are tax issues in respect of which we still lack affirmative and definite answers. We have no other choice but to wait for related judicature, which is still nowhere in sight.

Compulsory Registration of Trust Funds

The amendment to New Civil Code No. 240/2016 Coll., introducing compulsory registration of trust funds in a formal trust fund list with effect from 2018, has not diminished the attractiveness of trust funds. As a result, trust funds will come into being on the day they are incorporated in the newly established register of trust funds, which should work on the same principle as the Register of Companies. Similarly, the designation of the beneficiary of a trust fund established for private purposes will also become effective on the day when the beneficiary is registered in the non-public part of the trust fund register.

Exemption of Profit Shares Newly Possible for Trust Funds as Well

Another step towards making trust funds more attractive in terms of the tax burden is currently in the last stage of the legislative process. The "Tax Package", abolishing the double taxation system in respect of trust funds holding equity interests in their portfolios, has been approved by the President and is awaiting promulgation in the Collection of Deeds. Double taxation (ie the taxation of profit from the business activities of an enterprise and the subsequent taxation of the allocation of a profit share to the trust fund) placed trust funds at a disadvantage compared to business corporations which may be exempt from the "dividend tax" upon the subsequent allocation of profit provided it meets relevant conditions (ie the amount of the share, period of holding and legal status). On the anticipated effective date, 1 July 2017, discrimination will be eliminated and all profit shares allocated to the trust fund whose payment will be decided subsequent to the above date may be exempt from the tax provided the above stated conditions are met.

In respect of the institute of trust funds, this presents an interesting opportunity for handling asset portfolios, namely in view of the future resolution of family relationships or the legal protection of assets against risks arising from business activities. If the institutes become common practice as part of our legal environment, with interpretation ambiguities eliminated in other respects as well, trust funds will become ordinary and popular institutes which may be used in positive terms by any of us, just like abroad. The uncertainty in using trust funds as new legal institutes which we have been dealing with in the past 2-3 years could thus be fully eliminated.

Upcoming Changes in Income Taxation

The Ministry of Finance has published further material regarding the new Income Taxes Act. The Legislative Department of the Ministry of Finance has published a draft version of the material entitled "Outline of the Innovative Solution Regarding the Regulation of Income Taxation and Income-Related Insurance Payments" for public consultation. The material provides a theoretical background to the concept of the new Income Taxes Act.

In addition to the matter that have already been outlined, we would like to point out the following information:

- Currently, one version of one Income Taxes Act is generally preferred to having two separate acts for individuals and legal entities.
- In terms of individuals, the draft proposes a reduced number of partial tax bases, which would inter alia result in a unified tax treatment of income from business activities and lease. The material does not provide any further information regarding the impacts that the new changes will necessary have on the interconnected system of social security and health insurance contributions.
- The material describes system exemptions that should be included in the upcoming act (eg random income of individuals) and simplified tax regimes for certain situations (eg lump-sum expense charge-offs). Non-systemic issues (eg the amount of the tax rate or the majority of the existing tax exemptions) should be included in the act depending on the political perspective.
- The material also considers the possibility of introducing group taxation for legal entities.
- The corporate income tax base should be based on accounting records, however, the relatively substantial amendments will effectively result in "tax accounting records".

For the new Income Taxes Act to become effective, the Tax Administration will have to implement a new IT system, and the institutes of self-assessment and individualization, ie the break-down of tax accounts into individual physical persons – employees, will have to be introduced. Given the long-term implementation period of such projects, it is apparent that the new act will be an extremely long-term project.

Everybody May Be Held Liable for VAT Fraud! Do Not Pay Taxes for Others!

Fight against tax evasion is one of the issues handled by the tax administration in the Czech Republic and across European Union. A large portion of ongoing tax audits is initiated due to suspected involvement in a VAT fraud. The tax administration uses data provided by the businesses themselves to identify any involvement, although unconscious, in a VAT fraud.

The primary information sources include statutory Local Sales and Purchases Reports as well as information provided by companies in good faith on the basis of unofficial requests of the tax authority in the form of e-mail or in the course of a tax audit. Our experience indicates that the more information companies provide on business activities, the longer the tax proceedings

usually take and the data disclosed by companies are often used by the tax administrator as evidence that companies did not act in good faith. If the tax administrator proves in the tax proceedings that a company did not act in good faith, the company will have to pay the VAT for the entity committing the fraud.

It is obvious that any business or entrepreneur may establish a cooperation with a business partner that is involved in a VAT fraud. As an illustrative example, we could mention the case from May 2017 when the General Financial Directorate itself purchased mobile phones for internal purposes from a company involved in a VAT fraud. The information which was subsequently issued by the General Financial Directorate indicates that if a company is able to prove that it has made every effort to prevent its involvement in fraud, it will not be held liable for the outstanding VAT.

There are currently no entrepreneurs, companies and, ultimately, state organizations that would not be exposed to this risk.

For a long time, the term "tax fraud" has referred to not only fictitious but also actual supplies of goods in a supply chain in which one of the suppliers will supply the required goods but will not declare and pay the VAT applicable to the transaction. Although other entities in the supply chain are not aware of any such activity, the tax administrator may conclude that the relevant entity could or should infer from the information which was available to it or from the non-standard nature of the transaction that a failure to pay VAT may arise. If the tax administration demonstrates that the entity did not act in good faith, the entity as a guarantor may be obliged to settle the unpaid VAT, or the entity's related claim for a VAT deduction does not have to be recognized. As a matter of fact, the entity may be required to pay VAT for another company although it has paid all taxes as appropriate.

How should one avoid being unconsciously involved in a VAT fraud and paying taxes for others?

If a tax administrator wants to additionally assess tax or does not want to recognize a claim for a VAT deduction due to involvement in fraud, it will have to prove that an entrepreneur or company should or could have known that its supplier or customer is involved in a VAT fraud. This fact is inferred by the tax administrator on the basis of the control procedures performed by the entrepreneur in concluding the transaction and as part of cooperation with a business partner. The tax administrator predominantly focuses on what control measures were established by the entrepreneur and whether appropriate attention was given to them to prevent the risk of being involved in a fraudulent chain in which a failure to pay VAT occurred.

What indicators are to be monitored by companies? Aside from reviewing VAT registration, unreliable payers and published accounts, companies should also focus on the information which is available in the Register of Companies, the Trade Register as well as the Insolvency and Enforcement Register. With respect to the absence of good faith, tax administrators also draw attention to the fact that it may also be considered suspicious when a business partner of the audited company does not publish its financial statements or is a newly incorporated company or a company without the necessary business licenses, or when its statutory bodies are composed of foreigners or young people or when the transaction price is too low. There is a wide range of relevant and available information which differs depending on the business sector in which

the company operates and on the manner in which its business activity is commonly realized.

The results of this review are to be demonstrably recorded for the purpose of a tax audit, if any. The tax administrator will be otherwise exposed to the risk that despite being prudent in respect of its business partners and having sufficient control measures in place, it will not be able to demonstrate this to the tax administrator and, ultimately, it may be deprived of its claim for a VAT deduction. The relating measures should also be reflected in contracts with business partners.

Launching the VAT risk management system, which should certainly be part of risk management of any entrepreneur or company at present, is a comprehensive matter. It is therefore advisable to give appropriate attention to this issue.

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Hungary

The planning schemes in EU focus

The European Commission is expected to publish its draft on 21 June 2017, which stipulates that tax advisors are required to inform the competent tax authorities of the tax planning schemes that they designed.

The draft is based on the idea that if tax authorities learn about aggressive tax planning schemes even before implementation, they could more efficiently monitor them and take the right measures if necessary. The draft intends to regulate as many schemes as possible where at least two member states or one member state and a third country are involved. To this end the Commission created the following definitions:Taxpayer: Any person (natural or legal) that uses a cross-border scheme to optimise its tax position. Intermediary: Any person that provides tax advisory services to taxpayers regarding planning, marketing, organisation or implementation of cross border schemes. Intermediaries are required to report any tax planning schemes to the competent tax authority (within 5 days following the delivery of the scheme to the taxpayer). If the tax advisor's registered office is located in a third country, such reporting obligation is assumed by the taxpayer (within 5 days following the start of implementation).

The individual member states are required to introduce "effective, proportionate and dissuasive" sanctions against intermediaries and taxpayers who break the rules. Furthermore, member states' liability is extended to automatic information exchange on a quarterly basis. In the annexes to the draft, the Commission specified five features and examples to identify aggressive tax planning schemes:

1. The intermediary is entitled to a fee that is linked to the amount of tax advantage reached through the tax planning scheme.
2. "Primary advantage test" – relates to schemes:
   - where the taxpayer deducts losses from his tax liabilities that were transferred from abroad, or
   - as a result of which taxable income is converted to capital, gift or any other income category that is subject to lower taxes.
3. Schemes where funds are transferred across the border between two or more associated parties and the addressee:
   - has no tax residence in either of the countries, or
   - it has tax residence in a country where the corporate income tax rate is lower than half of the EU average or there is no corporate income tax at all.

The draft also relates to transactions where the same asset is depreciated in more than one country.

4. Any scheme that aims the avoidance of EU law or regulations pertaining to automatic information exchange.
5. Any scheme that goes against the arm's length principle or the OECD transfer pricing rules.

Currently only three countries have transparency requirements for intermediaries: Ireland, Portugal and UK.

The Commission hopes that the new rules may enter into force as early as 2019 after effective and efficient negotiations.

Multilateral Treaty against tax planning

The multilateral treaty signed on 7 June 2017 by 68 countries, including Hungary is a spectacular result of the fight against BEPS (Base Erosion and Profit Shifting), and brings significant changes to the interpretation of international transactions by modifying several thousands of bilateral tax treaties through one single legal act.

Rather than amending tax treaties through bilateral negotiations, the aim of the multilateral agreement is to incorporate the main rules created in the BEPS project into the effective treaties of the signing countries in a more efficient and uniform way.

The multilateral treaty had to be flexible enough so that several countries can commit; therefore it sets forth both compulsory and optional provisions. The mandatory provisions apply to all tax treaties of all countries involved where the partner country also accepted the multilateral treaty. These are the following:

- Use of a new introductory text that lays down on a concept level that the aim of the tax treaty is the avoidance of double taxation in a way that is no option for nontaxation or artificially low taxation.
- If all circumstances of the case imply that the main goal of a transaction is to reach a tax advantage, then the benefits granted by the tax treaty are not applicable. This rule may be supplemented by a further restriction on benefits based on activities, but this is only optional.
- Mutual negotiations to make international taxation smoother.
- The multilateral treaty provides for several other optional rules, including the so called hybrid schemes, the permanent establishment rules and the taxation of companies holding real estate.

The multilateral treaty is to enter into force on the first day of the forth calendar month after the date when the fifth country ratifies the treaty. To make the treaty applicable to an existing tax treaty between two countries, both countries need to ratify it, then three months need to pass. Having been signed on 7 June, it is clear that the treaty is not yet effective but the process has started and about 1,100 tax treaties of the 68 signing countries are to be modified within the next year or two.

More than 100 countries indicated their intentions to ratify the multilateral treaty, and further countries are free to join at any time, potentially increasing the number of tax treaties concerned. The OECD keeps records of signing and ratifying countries and their choices made with respect to the treaty (also country specific choices).

With respect to the fact that the multilateral treaty is not automatically incorporated in the individual tax treaties, in the future it will not be sufficient to review the provisions of the individual tax treaties in case of cross-border transactions, but it must also be considered whether the multilateral treaty is effective for the given country, and if so, which country opted for which provisions in addition to the mandatory elements. Therefore the tax treatment of international transactions will require even more consideration and expertise, with special regard to the fact that out of the 68 countries now signing the treaty, Hungary has effective tax treaties with 52.

For more information on the multilateral treaty, please contact our experts.

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Latvia

The taxpayer is obliged to indicate all objections against the circumstances determined by the State Revenue Service already at the initial stage of dispute

On 28 February 2017, the Supreme Court of the Republic of Latvia delivered a judgment regarding obligations of the taxpayer during the appeal of a decision of the State Revenue Service (hereinafter - SRS).

The court stated that since the taxpayer is the subject, which is well aware of the circumstances related to its income, expenses and performed transactions, the taxpayer should inform the SRS by drawing the attention to the circumstances wrongfully determined by the SRS and reasons thereof. The tax payer shall indicate facts based on which the tax payer does not agree with and which it wants to question. Otherwise it should be considered that the taxpayer has not performed its duty to cooperate with the SRS in good faith and has failed to exercise its right to challenge an administrative act.

In the judgment the court stated that, since collection of taxes is based on cooperation of a taxpayer with the tax administration, the taxpayer should be interested in providing to the tax administration all necessary information and explanations. The tax payer shall indicate particular objections and the mistakes of the SRS committed upon determination of circumstances significant for the adoption of decision in the stage of challenge and appeal as well.

Since the taxpayer is the subject, which is aware of the circumstances related to its income, expenses and implemented transactions, the taxpayer should inform the SRS by drawing the attention to the circumstances wrongfully determined by the SRS and reasons thereof. The tax payer shall indicate facts based on which the tax payer does not agree with and which it wants to question.

The court stated that in case a taxpayer does not raise any objections against particular circumstances determined by the SRS at the beginning of the dispute and raises objections solely during the litigation process, it should be considered that the taxpayer has not performed its cooperation duty with SRS in a good faith and has failed to exercise its right to challenge the administrative act.

Thereby, the court concluded that expression of objections related to the actual circumstances of the case in the court, without raising any objections at the initial stage, may be allowed only in case the taxpayer did not objectively know (understand) that there was a reason to object also against other circumstances determined by the SRS.

Accordingly, the taxpayers facing a dispute with the SRS shall act proactively at the beginning of dispute and indicate all objections to the interpretation of circumstances made by the SRS.

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Lithuania

Amendments to order "Regarding the rules on electronic reporting of trade with European Union Member States performed by VAT payer of the Republic of Lithuania"

On 7 June 2017 Customs Department under the Ministry of Finance of the Republic of Lithuania issued Order No 1B-432 „ Regarding the rules on electronic reporting of trade with European Union Member States performed by VAT payer of the Republic of Lithuania". The order lays down the grounds for an updated Intrastat system as well as terminates the previous agreements on online Intrastat data submission.

Accordingly, VAT payers which have an obligation to report Intrastat data must be registered within the "Electronic services" portal as the service recipient.

New functionalities of e-invoicing subsystem presented

As of 8 June 2017 users of e-invoicing services subsystem (i.SAF) of smart tax administration system (i.MAS) enjoy a possibility not only to submit VAT invoice registers, issue and receive electronic VAT invoices (service provided to small business only), but also to order preliminary VAT return service.

Preliminary declaration is formed by using the data provided by VAT taxpayer and uploaded to e-declaration system (EDS) for review/amendment/approval by i.SAF user.

As of 15 June 2017 users of e-invoicing services subsystem (i.SAF) of smart tax administration system (i.MAS) are subject to VAT invoices cross-checking function.

The i.SAF will notify VAT invoices cross-checking data and lack of conformity related to VAT invoices after submitting VAT invoices up until the deadline provided for data submission. It will allow comparing VAT invoice data submitted to i.SAF among taxpayers.

New Labour Code adopted

On 6 June 2017 the Parliament adopted new wording of the Labour Code.

The main novelties are introduced in the following areas:

- Employment termination: amendments include new grounds for employment termination, shortened notice periods, lower amount of severance pay;
- New rules for calculation of working time, overtime and annual leave;
- New types of employment contracts: the law establishes apprenticeships contracts, project based employment contracts, employment contract for several employers, etc.

The adopted Labour Code will come into effect on 1 July 2017.

The Article 61 of the Lithuanian Law on Tax Administration was amended

On 23 May 2017, the amendment of the Article 61 of the Lithuanian Law on Tax Administration setting an obligation for taxpayers that meet certain requirements to provide information concerning the participants of multinational enterprise groups to the STI was adopted.

The amendment came into force as of 5 June 2017.

You can read more about this amendment in our Tax and Legal Newsletter April edition.

Amendments to the Law on Legal Status of Foreigner adopted

On 25 May 2017 the Lithuanian Parliament adopted amendments to the Law on Legal Status of Foreigners and thus replaced former regulation on temporary residence permit issue for intra-group secondment cases.

Main novelties include the following:

- Possibility for the host company in Lithuania to submit documents on behalf of seconded employee;
- Shorter examination period: application for temporary residence permit shall be examined and decision adopted within 2 months (ordinary procedure) or within 1 month (urgent procedure);
- Short term intra-group mobility option (possibility to transfer seconded employee within the group of companies in EU for up to 90 days period), etc.

Amendments will come into effect on 1 September 2017.

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Poland

Effective June 11, 2017 simplification of visa application process for Ukrainian citizens entering Poland and the European Union

The Ukrainians have been waiting a long time for abolition of entry visas to the EU territory. Negotiations between the European Commission and the Government of Ukraine in respect of the abolition of EU entry visas for Ukrainian citizens began in 2008. At the end of May 2015, the European Commission concluded that Ukraine meets the criteria for abolishing the visa regime, and formally recommended in May 2016, that the EU states abolish the visa requirement for Ukrainian citizens.

On May 11, 2017, EU representatives in the Council of the European Union approved the abolition of visas for Ukrainian citizens by the European Union. This was the last formal step for our Eastern neighbors, enabling them to travel more easily to the EU countries.

Pursuant to the Regulation 2017/850 of the European Parliament and the Council (EU) of 17 May 2017, amending the Regulation (EC) No 539/2001 listing the third countries nationals who are obliged to hold visas upon crossing the external borders of EU and those countries whose nationals are exempt from this requirement, Ukraine has now been included on the list of third countries whose citizens who can cross the EU boarder without a visa.

The Regulation was published in the Official Journal of the European Union on 22 May 2017 and it enters into force 20 days after publishing. This implies that as of 11 June 2017 Ukrainian citizens holding biometric passports are able to enter the EU member states, other EEA states and Switzerland - except for the United Kingdom and Ireland - for business, tourist or family reasons for 90 days within a 180-day period without obtaining a visa (so called visa waiver).

Legal employment of Ukrainians in Poland

As a rule, the visa waiver does not entitle foreigners to take up legal employment without additional (work) permits at the territory of EU member states. According to the local Polish immigration provisions (Article 87.1.12 of the Act on the Promotion of Employment and Labor Market Institutions), a foreigner staying on the territory of Poland based on visa waiver (time limit of days of stay within the applicable180-day period) is allowed to perform work legally provided that he has a work permit. This simplification means that Ukrainian citizens will be able to start working in Poland as soon as the employer obtains a work permit or a statement of intention to employ a foreigner without the permit (simplified procedure), without the obligation to apply for a visa at the relevant Consulate in Ukraine.

Should citizens of Ukraine wish to continue legal stay and work in Poland after the visa waiver period, they will be able to legalize their stay by applying for a temporary stay permit in the relevant Voivodship Office in Poland. In such case, the employer should, however, verify the legal basis of their stay (i.e. immigration documents) before the visa waiver period expires, as the legal stay in Poland is a prerequisite for continuous employment. Foreigners employed based on a statement on intention to employ a foreigner, should be handled with special care. Under the current provisions, the continuation of employment is possible only after the foreigner obtains a positive decision

allowing for temporary residence with a right to work (issued by the Voivodship Office in Poland) or a visa with a right to work (issued by one of Polish Consulates in Ukraine) before the expiry of the visa waiver period.

Conditions for entering the EU Schengen zone

The introduction of visa waiver for Ukrainian citizens (effective as of June 11) does not automatically guarantee that Polish Border Guards will allow a Ukrainian citizen to enter Poland or other EU Schengen states. The Border Guard officers will verify the purpose and conditions of the intended stay in Poland with respect to each foreigner who crosses the EU border.

Any foreigner, who wants to cross the border based on visa waiver, is obliged to have, among others:

- a valid passport (only biometrical passport applies);
- a medical insurance for a minimum coverage of EUR 30 000 valid for the intended stay of the foreigner in Poland;
- sufficient financial means to cover the planned stay and the return trip to the country of origin.

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Freight package: the monitoring obligation extended to vegetable oils and animal fats

On 12 June 2017 the Ordinance on goods whose freight is subject to the monitoring obligation (henceforth: the "Ordinance") was submitted to the Minister of Development and Finance for sign-off.

Its provisions extend the range of goods subject to this obligation pursuant to the Act on the road transport monitoring system of 9 March 2017 (Journal of Laws item 708, henceforth: the "freight package") among others to vegetable oils and animal fats classified in selected CN and Polish Classification of Goods and Services (PKWiU) categories.

Purpose of the Ordinance

As stated by the Ministry of Finance in the introduction to the Ordinance, in light of analysis conclusions indicating irregularities regarding trade in vegetable oils taxed with 5% or 23% VAT, in particular in relation to rapeseed oil, it is reasonable to include goods falling in CN categories 1507 to 1517 in

the road freight monitoring system in order to improve the effectiveness of the tax system.

Goods subject to monitoring

The Ordinance assumes that goods from CN categories 1507 to 1517 (among others palm oil, coconut oil, soya bean and sunflower oil, vegetable oils, animal fats and their fractions) shall be included in the monitoring obligation for freight batch weights in excess of 500 kg or freight batch volumes in excess of 500 l.

Freight of goods in unit packs up to 26 kg or 26 l shall not be subject to monitoring.

Importantly, the Ordinance does not limit the range of goods subject to the monitoring obligation to excise goods as defined in the Excise Duty Act of 6 December 2008 (Journal of Laws of 2017 item 43).

Additionally, unlike in the draft Act amending the Act on the road transport monitoring system and Act on public roads, the lawmakers have not resigned from using the Polish Classification of Goods and Services (PKWiU) when determining the range of goods subject to the new requirements.

Following consultation procedures, comments brought in by the social side with regard to exclusion of PKWiU items 10.41.41-10.41.42 (among others, linseed-cake) and CN item 1517 (solid and liquid margarine) have been included.

Exemptions regarding specific cases

Similarly to the freight package provisions, the Ordinance includes exemptions.

Freight of goods will be exempted from the obligations included in the Ordinance in the following cases: (i) when transported by postal operators in postal packages; (ii) if subject to customs procedures including transit, storage, temporary customs clearance, processing, export or re-export; (iii) freight of vegetable oils to be used as heating or engine fuel under the excise suspension procedure.

Follow up

Recently, the Ordinance has been transferred to the Minister of Development and Finance for sign-off. The regulations shall come into force three months of official publication. Pursuant to the Ordinance, the monitoring obligation shall apply to a broad range of goods from many industries (in particular, to food products). The classification of goods subject to monitoring being based on CN and PKWiU and extended beyond the range of excise goods may result in new obligations being imposed on a large group of businesses.

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Budget 2018: Improving the effectiveness of the tax system instead of increasing VAT rates. The Ministry of Finance wants to extend the scope of automated tax inspection

On 6 June 2017, the Government approved 2018 budget assumptions. VAT rates will remain unchanged, while income from taxes is to grow thanks to improved effectiveness of inspection and preventing of VAT-related fraud.

Measures aimed at improved effectiveness of tax regulations may significantly affect the state budget income. State Tax Administration has indicated VAT gap reduction as its key objective, which is to be achieved thanks to the use of new technologies and tools for automated mass data analysis.

Detecting fake transactions

Government plans to increase the state budget income from taxes continuing measures aimed at detecting of invoices that support fake transactions based on Standard Audit File for Taxes with the use of electronic analytical tools. The number of SAF_VAT inspections, in particular aimed at identification of invoices issued by counterparties not registered as VAT payers may increase. Probably, the automated cross-inspection shall continue, too. Even now, the Ministry of Finance can compare transaction data with those recorded by taxpayer's counterparties.

Split payment: is it voluntary?

Another change important for taxpayers will involve introduction of a split payment model regarding delivered goods or services in 2018. Including split payment information in assumptions to the draft budget indicates that the Ministry of Finance plans to introduce the solution in 2018. Should this happen, buyers shall pay net amounts to suppliers' accounts, while VAT shall be paid directly to a special account. Current plans of the Ministry of Finance indicate that split payment will be a voluntary solution, but entities that elect to use it will be offered special incentives and preferences.

New reporting obligations

Budget assumptions indicate that the Government plans to introduce an information obligation. Entities will provide the National Tax Administration with data that allow fast identification of suspicious transactions and reconciliation of declared revenue and expenses with bank account balances. Obligatory submission of daily bank account statements in the JPK_WB (SAF) format may be a part of the plan.

Fighting fraud with analytics

Implementing of an ICT system and risk analysis tools will help reducing the tax gap. The measure is to improve information flow within the banking system and thus make VAT fraud more difficult to perpetrate.

Law amendments to improve income

The draft budget assumes introducing other measures regarding VAT, CIT and excise duty to provide more information and improve quality of analytical and control tools.

The Government expects amendments to the gambling law and improved monitoring of road freight of goods to positively affect the state budget. At the same time, the year 2018 will see new proceeds from the now suspended tax on retail trade.

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Romania

Romania becomes associate member of Plan BEPS – Base Erosion and Profit Shifting

Romania becomes associate member of Plan BEPS – Base Erosion and Profit Shifting on the 9th of June when Law no 124/2017 comes into force. The main objective of BEPS is to prevent the use by companies of legislative mismatches from national tax systems in order to transfer profits to lower tax jurisdictions.

Consequently Romania is expected to implement legislative changes on medium term, according to the recommendations of BEPS in the following areas: transfer pricing, double taxation conventions, exchange of information between fiscal authorities.

The new rules implemented according to BEPS might lead to the restructuring of the activities of multinational companies around the world, including Romania. The aim of BEPS measures is to ensure that MNEs report profits where economic activities are carried out and value is created.

Conventions for avoidance of double taxation concluded by Romania will be amended

Romania and other 67 countries signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) on the 7th of June. Romania has 91 conventions for avoidance of double taxation.

These states will swiftly implement a series of tax treaty measures to update the existing network of bilateral tax treaties and reduce opportunities for tax avoidance by multinational enterprises. The new convention will also strengthen provisions to resolve treaty disputes, thereby reducing double taxation and increasing tax certainty, according to OECD which initiated plan BEPS – Base Erosion and Profit Shifting.
MLI was developed through inclusive negotiations involving more than 100 countries and jurisdictions, under a mandate delivered by G20 Finance Ministers and Central Bank Governors. As a result of implementing MLI, 1,100 treaties around the world will be changed.
Romania has 91 conventions for avoidance of double taxation.

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Multinational enterprises have new reporting obligations regarding automatic exchange of information on fiscal area

Any parent company or any other reporting entity resident in Romania and part of a multinational group of companies with a consolidated income in amount of minimum EUR 750 million has the obligation to submit a country-by-country report for each reporting year that includes information on the amount of revenue, profit/losses, stated capital, accumulated earnings, number of employees and tangible assets. The provisions were introduced by a Government Emergency Ordinance amending the Fiscal Procedure Code.

On June 9, 2017, the Romanian Government approved an emergency ordinance amending the Fiscal Procedure Code, further published in the Official Monitor of Romania on June 13, 2017. The Normative Act shall enter into force on the date of its publication in the Official Monitor of Romania, Part I, except for the provisions of art. I point 9, which shall enter into force within 10 days of the date of publication.

The ordinance transposes the Council Directive (EU) 2016/881. The directive provides that each Member State of the European Union is required to take measures to impose on the parent company of a group of multinational companies resident in its territory the submission of a report for each country and fiscal year, within 12 months of the last day of the reporting fiscal year of the group.

The main objectives of the Ordinance are:

- the assessment of the risks related to transfer prices and those related to the erosion of the taxable base and the transfer of profits at international level;
- use by tax authorities as a data source during a fiscal audit at national level.

The Ordinance is applicable to multinational groups with a consolidated income in amount of minimum EUR 750 million (hereinafter "MG").

General reporting obligations

Reporting obligations of the taxpayer
Any entity part of a MG as defined above has the obligation to notify the competent authority whether it is the ultimate parent or surrogate (assigned for reporting) until the last day of a MG's reporting fiscal year. The parent company or surrogate resident in Romania and part of a MG, has the obligation to submit a report for each country for each fiscal year starting January 1, 2017 or later.

The reporting process refers to the fiscal year as defined in art. 16 of the Fiscal Code.

The obligation to submit the report to the competent authorities in Romania shall take place within 12 months of the last day of the MG reporting fiscal year.

Entities that are not ultimate parent or surrogate parent companies are required to notify the competent authority in Romania of the identity and tax residence of the reporting entity until the last day of the reporting fiscal year.

If the reporting entities for each country do not comply with the obligation to submit the reports or provide incorrect or incomplete information, they are liable for a fine, as follows:

- for late submission of the report or the transmission of incorrect or incomplete information, the reporting entity is sanctioned with a fine from RON 30,000 to RON 50,000;
- for failure to submit the report, the reporting entity is sanctioned with a fine from RON 70,000 to RON 100,000.

Please read the entire article, by accessing the following link.

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Posting of employees in the framework of transnational provision of services on the territory of Romania, clarifications

Some aspects regarding the posting of employees in the framework of transnational provision of services on the territory of Romania were clarified by methodological norms (Decision no 337/2017). For example, the norms present some factual elements to be taken into account by the Labor Inspection in order to identify the existence of actual transnational postings.

The Methodological Norms govern mainly the following aspects:

- Illustrating, by way of example, the factual elements to be taken into account by the Labor Inspection in order to prevent abuses resulting from the establishment of "letterbox" companies and to identify the existence of actual transnational postings.

The factual elements in question shall take into account:

a) The activities carried out by undertakings established in other EU Member States which, in the framework of transnational provision of services, post employees in Romania. In this respect, exempli gratia, the following aspects shall be analyzed: the place where the undertaking has its registered office and carries out its main activity,

respectively the place where it pays its taxes and fees, the basic activity for which the undertaking is authorized, the subject matter of the service agreement concluded with the beneficiary of the services, the number of contracts executed and/or the size of the turnover achieved in the Member State of establishment;

b) The work and situation of employees posted on the territory of Romania (e.g.: the date on which the posting begins and ends, the correspondence between the nature of the activity performed by the posted employee and the scope of the service agreement).

- Procedural rules on administrative cooperation between national competent authorities in the field of transnational posting.

In the field of administrative cooperation, among others, the Labor Inspection:

Provides information and / or documents relating to (i) employees posted on Romanian territory, (ii) any legal person registered in Romania, (iii) temporary employment agencies authorized in Romania, (iv) the payroll of salary rights of the posted workers and related proof of payment, (v) collective attendance sheets and (vi) individual employment agreements;

a) Receives, via the Internal Market Information System ("IMI"), the decision whereby an administrative financial sanction was imposed on an undertaking established in Romania.

- Annual risk assessment procedure caused by the violation of legal provisions on the posting of employees in the framework of transnational provision of services.
- Obligation of undertakings posting employees in Romania, to submit to the competent territorial labor inspectorate a declaration on the transnational posting of employees;
- Contraventions and sanctions imposed by the labor inspectors in case of non-observance of the rules on transnational posting, respectively fine ranging between 5,000 and 9,000 RON.

Entry into force

The Government Decision no. 337/2017 on the approval of the Methodological Norms regarding the posting of employees in the framework of transnational provision of services on the territory of Romania, is applicable starting with the date of its publication in the Official Gazette, respectively 31.05.2017.

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A new Regulation regarding the reception of construction works and corresponding installations shall enter into force on 29 July 2017

The Regulation dated 18 May 2017 regarding the reception of construction works fully replaces the Regulation for reception of construction works and installations dated 14 June 1994. The Regulation brings some welcome changes related to constructions, as well as some clarifications regarding aspects previously regulated.

The Regulation regarding the reception of construction works dated 18 May 2017 was published in the first part of the Official Gazette no. 406 dated 30 May 2017 and shall enter into force on 29 November 2017 (the "**Regulation**"). This new legislation shall not be applicable to the constructions for which the reception at the completion of works, respectively the final reception, is ongoing as of the date of entering into force of the Regulation.

The reception at the completion of the works.

Deadlines
A first clarification brought by the Regulation is that the contractor of the construction works has to communicate to and request from the investor the performance of the reception at the completion of the works **during the validity period of the permit** based on which it had executed the works.

After receiving such communication, the investor has 5 days (*as opposed to 3 days, stipulated in the previous regulation*) to request the appointment of the representatives which shall be part of the reception committee at the completion of works, to establish the details for the commencement of the committee's activity and to hand-over to the State Inspectorate for Constructions ("**SIC**") the communication received from the contractor, together with the reports drafted by the planner and the site supervisor, about the execution and value of the works.

The names of the representatives who shall be part of the reception committee at the completion of works have to be sent by the relevant institutions within **10 days** after receiving such request from the investor. The investor has **maximum 3 days** from the date when it receives the names of the representatives (*as opposed to the previous regulation, which provided for a 15 days term since the contractor notifies the completion of works*) to notify the members of the commission, the contractors and the designer related to the date, hours and place for the assembly of the commission.

The composition of the reception committee at the completion of works
The reception committee at the completion of works shall be comprised of **minimum 3-5 members** and, if the case, of a SIC representative, a representative from the Inspectorate for Emergency Situations ("**IES**"), a representative from the Direction for Culture and/or a representative from the main credit-release authority. The Regulation expressly provides the situations when the representatives of the above-mentioned institutions shall

be part of the reception committee, conditioning their participation on the category of construction of the immovable asset and on the special laws applicable in each situation.

Please read the entire article, by accessing the following link.

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Serbia

New Ministry of Finance Rulings – Value Added Tax

Obligation to obtain a single administrative document as a condition for tax exemption for services regarding transport of import – related goods

In order to claim tax exemption based on provided services involving transport of goods related to import, a VAT payer – provider of transport services is not obliged to obtain a filled out JCI form issued by the competent customs authority.

(Ministry of Finance ruling, no. 430-00-201/2017-04 as of May 17, 2017)

New Ministry of Finance Rulings – Value Added Tax

The right to deduct input VAT for transport services related to import of goods

When a VAT payer provides a service involving transport of import-related goods to a taxpayer in terms of Article 12 of the VAT Law, and, in addition to the data on the total amount of fee for that service, states the data on portion of fee for transport performed outside of Serbia and portion of fee for transport performed in Serbia, the invoice with such presented data is considered to be issued in accordance with the VAT Law.

(Ministry of Finance ruling, no. 011-00-320/2017-04 as of May 17, 2017)

New Ministry of Finance Rulings – Value Added Tax

The place of supply of warehousing services where the entire immovable property is not intended for the exclusive storage of goods

Warehousing services in which the entire immovable property, or its specific part, is not intended for exclusive storage of goods for the particular service recipient, are not considered to be the services directly related to immovable property.

(Ministry of Finance ruling, no. 011-00-291/2017-04 as of May 15, 2017)

New Ministry of Finance Rulings – Value Added Tax

The place of supply of services involving rental of vehicles for the period longer than 30 days

When a VAT payer performs the supply of services involving rental of vehicles to a company for a period longer than 30 days, the place of supply of such services is considered to be the place in which the service recipient has a seat; if the supply of said services is performed to a permanent establishment which is not located in the same place as the seat of the service recipient (whilst a permanent establishment from Article 12 also includes the representative office of a foreign company), the place of supply of services is considered to be the place where the permanent establishment is located.

(Ministry of Finance ruling, no. 011-00-306/2017-04 as of May 15, 2017)

New Ministry of Finance Rulings – Value Added Tax

The right to deduct input VAT paid on import of goods

If it is evident from the available documentation that a foreign entity has a business relationship exclusively with an entity which imports the goods on its own behalf and for the account of another person, it may be concluded from a tax point of view that the foreign entity has performed the supply of goods (which are the subject of import), i.e. the transfer of the right of disposal of such goods to the entity importing the goods on its own behalf and for the account of another person, as well as that the entity performs another supply of goods (transfer of right of disposal) to an entity for whose account the goods were imported.

The entity that imports goods on its own behalf and for another person's account is considered to be the beneficial owner of the imported goods, meaning that the VAT payer is entitled to deduct VAT paid on import in accordance with the VAT Law, but is also obliged to issue an invoice, compute VAT and pay the computed VAT in accordance with the VAT Law for the supply of goods performed to an entity for whose account it imported the goods.

(Ministry of Finance rulings, no. 430-00-202/2017-04 as of May 31, 2017)

New Ministry of Finance Rulings – Value Added Tax

Determining the tax debtor for the supply of geodetic services

Geodetic services are not considered as services in the field of construction, meaning that the tax debtor for the supply of such services is a VAT payer performing the subject supply.

However, in case that the subject of the contract on execution of works is the supply of goods in the field of construction within construction or reconstruction of a facility, whilst the fee for the subject supply is determined as the sum of all costs (e.g. cost for geodetic services), it is considered that only the supply of goods in the field of construction was performed, for which the taxpayer is a VAT payer – recipient.

(Ministry of Finance ruling, no. 011-00-204/2017-04 as of June 1, 2017)

New Ministry of Finance Rulings – Value Added Tax

Determining the place of supply of services involving clinical examination of medicines that a VAT payer provides to a foreign entity

When a VAT payer provides the services involving clinical examination of medicines to a legal entity that performs the activity continuously, and which has its seat abroad, the place of supply of said services is considered to be the place in which the service recipient has a seat, i.e. abroad. Based on the provision of subject services, a VAT payer is not obliged to compute and pay VAT, but has the right to deduct input VAT in accordance with the VAT Law.

For the supply of said services, the VAT payer – service provider issues an invoice which should contain, inter alia, a note on the provision of the VAT Law based on which the VAT is not computed, and which should read: “VAT is not computed in accordance with Article 12, para 4 of the VAT Law”. In addition, with an aim to prove that the supply was performed to a taxpayer

referred to in Article 12, para 2 of the VAT Law, who has the seat abroad, the said invoice can include the TIN number of a foreign entity – service recipient (although this is not required).

(Ministry of Finance ruling, no. 011-00-292/2017-04 as of May 31, 2017)

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Slovakia

Interdepartmental Circulation of Comments on the Amendment to Act No. 222/2004 Coll. on VAT, as amended (hereinafter the "VAT Act")

In connection with the 2017 Plan of Legislative Tasks of the Government of the Slovak Republic, an interdepartmental circulation of comments was undertaken from 15 May 2017 to 2 June 2017 on the draft amendment to the VAT Act, which is to enter into effect on 1 January 2018.

On 2 June 2017, an interdepartmental circulation of comments was completed on the draft amendment to the VAT Act, which is to enter into effect on 1 January 2018. The most important proposed changes include:

- **Extension of the application of special tax treatment of the markup on the provision of tourism services** to cases where the services are received by entrepreneurs who purchase a package of tourism services for their business purposes.
- **Partial VAT refund** based on information in the VAT transactions statement before tax audit to identify the eligibility to the VAT refund, where the tax authority would focus on disputed invoices.
- **Abolition of a limit – tax base on an invoice of EUR 5 000** for selected agricultural crops and metals where tax reverse charge mechanism is applied to the recipient in accordance with Article 69 (12) of the VAT Act.
- **The obligation to adjust deducted VAT** for utility structures or structures other than buildings if the purpose of the structure changes within the 20-year period laid down for the deductible tax adjustment.

Possibility to issue a summary invoice for lease and supply of electricity, gas, water and heat for a period of 12 calendar months, even if the recipient is a foreign taxable person.

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OECD Multilateral Convention and BEPS Initiative

Ministers from 76 countries signed a multilateral convention to reduce tax avoidance and update the existing network of bilateral tax treaties.

As noted in February 2017 Deloitte News in a section on OECD's multilateral instruments, on 7 June 2017, ministers from 76 countries signed or declared the will to sign a multilateral convention to reduce tax avoidance and update the existing network of bilateral tax treaties. The new convention will also strengthen dispute settlement provisions, thereby reducing double taxation and increasing tax certainly.

Click the following link for the full wording of the convention.

The signing of the multilateral convention is an important milestone in the international tax agenda dealing with the tax base erosion and profit shifting (BEPS) by multinational corporations. The new convention is the first multilateral treaty of its kind and allows jurisdictions to transpose the project's results into their existing networks of bilateral tax treaties. It was created by inclusive negotiations covering over 100 countries and jurisdictions. The project enables governments to eliminate weaknesses in the existing international rules that allowed corporate profits to "disappear" or be artificially shifted to countries with low or no tax burden where businesses have little or no economic activity. The lost revenues from such activities are conservatively estimated at USD 100-240 billion per year, accounting for 4-10% of worldwide corporate income tax.

Almost 100 countries and jurisdictions are currently working to incorporate the BEPS measures into their national legislation and bilateral tax treaties. A large number of bilateral treaties make updates of the bilateral treaty network burdensome and time-consuming.

The BEPS package provides 15 measures that will help governments address the issues of tax base erosion and profit shifting. Countries will have tools to tax profits where profit-generating economic activities are carried out and where value is generated. These tools also provide businesses with greater certainty by reducing disputes regarding the application of international tax rules and by standardising compliance requirements.

Click the following link for a detailed overview of the progress of implementation of the BEPS measures in each country. One of the major BEPS measures is Action Plan 13 – Country by Country Report (CbCR). According to the OECD recommendations, the first reports and notifications should cover the 2016 financial year. As the deadlines for the CbCR implementation may vary by jurisdiction, we provide you with a regular summary of notification obligations associated with the BEPS 13 measure in each country.

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2017 – 2018 Action Plan to Tackle Tax Fraud

The Government of the Slovak Republic approved the 2017 – 2018 Action Plan to Tackle Tax Fraud on 26 April 2017. The document contains 21 new measures aimed at eliminating new forms of tax fraud.

The Government of the Slovak Republic approved the 2017 – 2018 Action Plan to Tackle Tax Fraud on 26 April 2017. The document prepared by the Ministry of Finance, Ministry of Justice and Ministry of Interior contains 21 new measures aimed at eliminating new forms of tax fraud. The selected measures are listed below:

- **Preventing unfair practices, unfair liquidation of companies** – the current legal regulation of mergers, amalgamations and demergers of companies allows legal entities to avoid liability to their creditors by transferring liabilities to another legal entity in a simple manner. In this way, legal entities attempt to avoid their liabilities to the tax authority. A solution could be an obligation to submit a tax authority's consent to the relevant registration court in a manner similar to that defined for a change of persons in a company.

- **Possibility of partial VAT before tax audit** – based on the outputs of the analysis of VAT transactions statements, a taxpayer may be provided with a partial VAT refund before tax audit by the tax authority, which makes tax audits more efficient.

- **Change in what constitutes the crime of obstruction of tax administration** - the objective is to increase liability of taxable persons for the accuracy of the information reported in tax returns, statements and reports, and to extend the range of responsible persons.

- **Extension of the period to perform tax proceedings to 10 years -** the legislator justifies this by eliminating potential abuse of time limits to evade tax.

- **Simplification of the tax assessment proceedings** – shorter tax assessment proceedings, elimination of delays in tax proceedings by the taxable person and definition of the period for tax assessment proceedings. The measure aims to prevent artificial prolongation of tax assessment proceedings by taxable persons.

Extension of agent use - an extension of agent use whereby a person other than a member of the Police may be an agent in the most serious forms of tax crimes.

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