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**CE Tax&Legal Highlights**
May 2017

ALBANIA
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CZECH REPUBLIC
CROATIA
BULGARIA
HUNGARY
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ESTONIA

# Tax&Legal Highlights

## May 2017


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# Estonia

### Looking to invest? Estonian crowdfunding solutions might be just right for you

**There was a time when the word "crowdfunding" meant that someone was probably trying to rip you off. Those days are gone and crowdfunding has become an incremental option on the market that offers businesses and individuals a good alternative for turning their ideas into reality. Estonia has noticed its potential and it should come as no surprise that there are a handful of crowdfunding platforms originating from Estonia, tens, if not hundreds, of successful fundraising campaigns and a countless number of not-so-successful attempts and of course, a lot of investors.**

### Intragroup services caught the attention of the tax authority

**On the international level, intragroup services are quite challenging for tax authorities, as companies use these transactions (of course, also other transaction types as loans etc.) to optimize with taxes. Services are commonly used for shifting untaxed profit to a country, where lower income tax rate applies. Therefore, the intragroup transactions have caught the interest of the tax authorities and are being constantly monitored.**

Read more

### Changes in the Commercial Code and other Associated Acts

**The Estonian Parliament Riigikogu has passed the Act on the Amendments to the Commercial Code and other Associated Acts. The amendments primarily concern the location of the legal persons and their management boards or the bodies substituting those, as well as abolish the possibility to personally attend the offices of the Commercial and Land registries.**

Read more

### Tax interest 0.06% per day is in compliance with the Estonian constitution

**The Estonian Supreme Court's Constitutional Supervision Board has decided on 29 March 2017 that the tax interest rate 0.06% per day is in compliance with the Estonian constitution and there is no reason to believe that the respective interests rate could have any kind of hidden agenda, in particular, intended as a tool to punish the taxable persons or to earn the additional tax income to the state resources**

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# Hungary

## The RIC Act is to change again

**The spring tax law package was tabled on 2 May 2017, which proposes the amendment of Act CII of 2011 on regulated investment companies ("RIC Act") to facilitate their further extension ("RIC Bill").**

This RIC Bill would further amend the RIC Act that entered into force in July 2011 and was amended in summer 2016 to confirm the original legislative intention of stimulating the real estate and capital markets by establishing RICs. The amendments are meant to specify detailed rules and concepts of RICs, prepare for the enforcement of the law and clarify terms and definitions for consolidated financial statements and the adoption of IFRS.

**The RIC Bill, among others, includes the following major changes:**

- The calculation method of initial capital requirement for RICs is clarified for companies involved in consolidation; the provisions on the HUF 5 billion initial capital shall be clearly considered together with the capital items disclosed in the consolidated financial statements.
- The Bill would modify the concepts regarding mandatory dividend payment: the definition of disposable funds and expected dividend. According to the Bill, disposable funds do not include funds over which the RIC, the regulated investment pre-company and the project company have no right of disposition (e.g. caution money received by the RIC), as these funds are associated with an obligation of repayment. According to the Bill, the RIC, the regulated investment pre-company and the project company would be obliged to pay the expected dividend based on the profit realised during their status under the RIC Act (naturally allowing that dividend may be paid from the profit reserve accumulated in the period before the status under the RIC Act was obtained.)
- Free float restrictions have also changed. Pursuant to current regulations, RICs must have one series of shares representing 25% of the total capital where no shareholder owns more than 5% of the series (free float). According to the RIC Bill, the calculation method of the free float limit should be harmonised with the capital market regulations pertaining to voting rights and the reporting of ownership shares. Accordingly, the 5% small shareholders' limit is defined in proportion to the total nominal value of registered capital. The Bill stipulates new provisions for a case where all the RIC's shares are listed. In this case -- due to operation in a fully regulated market and commitment to transparency -- the free float limit and the 5% voting limit would become unnecessary, and the free float should only be certified when the RIC is registered.
- Provisions pertaining to the diversification of the real estate and asset portfolios as well as the calculation of the debt ratio are clarified. The main rules for reviewing the real estate portfolio of a RIC would be modified: rather than on an individual basis, in case of consolidation the real estate portfolio and the debt ratio would be assessed in a consolidated way for all companies involved. Also, the value of one real estate or other share in the RIC would be maximised 30% of the balance sheet total instead of the previous 20%.
- The RIC Bill would rationalise restrictions on the persons managing the RIC. Accordingly, due to the nature of the real estate sector, no

university degree in finance, economy, or law would be required for an executive position, but any university level degree could be acceptable. The RIC Bill further extends executive capabilities by stating that rather than through 90% of the votes, exemption from the conflict of interest rule may be given based on the charter for executives holding offices at credit institutions, investment companies, investment fund managers, appraisers, venture capital fund managers, insurance companies, reinsurance companies and RICs where the RIC that had employed him before in management position holds no shares.
- The RIC Bill lays down several provisions for the adoption of IFRS, with special respect to the valuation methods and the impact of IFRS on the profit reserve. With a view to IFRS financial statements, the relevant tax laws are also specified.
- The restrictions on the share insurance companies and credit institutions may hold will also be specified. Previously it was not clear whether the indirect and direct participations of insurance companies and credit institutions were considered for the 10% ownership limit, but the Bill clarifies that the 10% direct RIC ownership share is to be considered for the purpose of applying the ownership limit.

If adopted, the RIC Bill would enter into force after the day of promulgation.

## The European Court of Justice contested the tax authority's sanctioning policy

**In case no. C-564/15 (Farkas), the Court of Justice of the European Union (CJEU) adopted a judgement on 26 April, where the CJEU found the Hungarian tax authority's practice regarding reclassification from ordinary to reverse charge taxation controversial.**

As part of an auction organised by the tax authorities, the claimant as a private individual purchased a mobile hangar from a company with an outstanding tax liability. The seller in question issued the invoice, which included the VAT relating to that transaction, and paid that tax to the Hungarian tax authority. The buyer deducted the output VAT recorded in that invoice.

The tax authority conducted a tax audit at the buyer before allocation. During the review the tax authority concluded that the seller charged undue VAT to the customer as the transaction is subject to the reverse charge system. The tax authority consequently found that the customer was liable for the tax difference equal to the VAT mount disclosed on the invoice, and imposed a 50% tax penalty.

By way of legal remedies the parties interpreted the legal ground for tax shortage differently. The Hungarian court requested the CJEU's position whether in the case the tax deduction right of the customer may be restricted and whether the tax difference and the tax penalty are proportionate to the improper tax treatment of the transaction.

Irrespective of the Hungarian court's inquiry, in its judgement the CJEU laid down as a fundamental principle that under the VAT Directive member states may only apply reverse taxation in compulsory sale procedures for immovable property sale transactions (without a special permit). Accordingly, the provisions of the Hungarian VAT Act that apply reverse taxation to both movable and immovable property supply go against the EU law.

With respect to the assessment of the tax authority, the CJEU concluded that the parties did not meet the criteria of reverse taxation in terms of content and form in the transaction; therefore the customer was not entitled to deduct the input VAT, but is entitled to reclaim the tax paid to the seller in a civil procedure. According to the CJEU, this settlement of improperly paid VAT is in harmony with EU law. However, if VAT may not be reclaimed from the seller due to insolvency, the customer is entitled to turn directly to the tax authority for reclaim.

Regarding the tax penalty, the CJEU found that it was not in proportion with the weight and nature of the breach as it was merely of an administrative nature without the Hungarian central budget losing any tax income, and there were no signs implying tax fraud either.

The questions that may arise in the wake of the judgement:

- can we expect any change in the tax authority's practice, and what kind of change, in cases where the tax treatment of the transaction is reclassified as reverse charge?
- can taxpayers penalised under similar conditions seek legal remedy retrospectively in the light of this judgement?
- is it necessary to consider in compulsory sale procedures whether the asset sold is movable or immovable, with special respect to the new rules effective from 2017 pertaining to services directly linked to immovable property, which introduce new elements and issues in the evaluation of the property?

## Spring tax package

**We would like to take this opportunity to inform you that on 2 May 2017 the spring tax package (the 'Bill') was brought before Parliament. The Bill contains modifications affecting the remainder of 2017 in addition to 2018. The vote for the acceptance of the Bill will take place between 13 and 16 June 2017.**

### Personal income tax and contributions

*Income from real estate rental*

One of the most important changes concerning individuals is that the 14 per cent health tax liability on income (exceeding HUF 1 million per year) deriving from real estate rental would be abolished as of 2018.

*Housing subsidy to promote mobility*

Several favourable amendments would be made to the provisions introduced in 2017 on housing subsidy to promote mobility, including:

- the amount of the subsidy would increase significantly as of 2018,
- the tax exemption would also be available to individuals with employment contracts concluded for a definite period.

### Accounting Act

*Accounting of modified tax authority audit findings*

The Bill sets forth that as of 1 January 2018 if findings of a tax authority audit, which had previously been treated as material errors and, as a result,

had to be presented in a separate column in the income statement and the balance sheet relating to the previous years, were subsequently modified by an authority or court through a final resolution before the balance sheet preparation date, then the modification must be recorded in the current year.

*Release of deferred income from development grants*

According to the Bill, as of 1 January 2018 the deferred income recognised in connection with development grants would have to be released when the repayable amount of the grant is recognised as an expenditure, rather than on the date on which the grant is repaid.

*Valuation of assets acquired through derivative contracts*

The Bill provides that as of 1 January 2018 assets (both financial and non-financial) acquired as part of derivatives with physical delivery would have to be revaluated at fair market value as of the date of acquisition regardless of prior classification even if the company did not apply the fair value assessment in its accounting policy. Such assets must continue to be revaluated against other income and expenses from financial transactions.

The Bill provides the option for the application of the above proposed changes in the rules also to the financial year started in 2017.

*IFRS rules*

The Bill refines certain details of the tax rules applicable to taxpayers operating under IFRS rules. Information about the modifications to the IFRS related rules will be provided in a subsequent newsletter.

**Corporate income tax**

*Participation exemption*

The 10% threshold for capital gains participation exemption would be abolished thus substantially extending the scope and applicability of Hungary’s holding regime.

*Controlled foreign company*

The Bill would include clarifications related to the new CFC rules (that were introduced early 2017).

In particular the conditions related to shareholders of the CFC are considered to be fulfilled, if such shares are held for the majority of the taxpayer's tax year. When calculating a controlled foreign company's profit to be added to the tax base, the amount of profit to be taken into account must be proportional to the ownership share in the controlled foreign company or proportional to the percentage of the after-tax profit to which the taxpayer is entitled. The new rule may be applied by taxpayers at their own discretion for the year 2017.

*Rental flats built for employees*

The amount recorded as the historical cost of rental flats built for employees, or as an increase in such historical cost, may be deducted from the pre-tax profit in the tax year of the completion of the renovation / construction

project. The Bill also lists the requirements for claiming the tax base allowance.

*Construction of electric vehicle charging stations*

When constructing charging stations for electric vehicles, the historical cost of the charging stations would be deductible from the corporate income tax base. The maximum amount of allowance that may be claimed is set forth in the Bill. The allowance can be claimed in the tax year in which construction is completed and is available for construction projects launched after 30 June 2017.

*Tax credit for growth*

If a taxpayer defers its tax liability, then it must pay interest at a rate equal to the prime rate of the Hungarian National Bank. The interest payment obligation applies to declarations made after 1 January 2017.

**Local taxes**

In line with the Bill, during the company registration/change registration procedure, data pertaining to the company that are sent by the court of registry to the state tax authority would be forwarded to the municipality of the company's registered office. Thus the company's reporting obligation in respect of the forwarded data toward the municipality would be fulfilled.

As of 1 January 2018, outdoor advertising signs would also be subject to building tax. Similarly to wind farms, solar farms would also qualify as permanent establishments for local business tax purposes.

As of 1 January 2018, IAS 18 Revenue and IAS 11 Construction Contracts would be replaced by IFRS 15 Revenue from Contracts with Customers, and IFRS 9 Financial Instruments would also become effective. For this reason, the rules related to the determination of sales revenue for taxpayers preparing IFRS financial statements must be aligned to these standards.

**Duties**

Under the currently effective regulations, twice the amount of the duty allowance available in the case of financial leases is payable if the financial lease contract is not effectuated within the prescribed timeframe. Based on the Bill, if the acquirer has passed away or the entity has been dissolved without succession duty penalty would not be applicable.

Based on the Bill, the category of duty-exempt acquisitions where the acquirer is not required to report the acquisition of property would be expanded to include preferential transformation and acquisition through a preferential exchange of shares, as well as the duty-exempt transformation of law firms.

In addition to the above, the Bill also clarifies the definition of a business organisation, making it clear that foreign persons also qualify as business organisations for the purposes of the Act on Duties. The Bill provides further amendments regarding the rules on the duty liabilities and exemptions of individuals in connection with the exchange of apartments.

## Value added tax

According to the Bill, the VAT rate applicable to both edible fish and internet services would be reduced to 5%. The modified tax rates would be applicable as of 1 January 2018.

Furthermore, the Bill would amend the definition of internet access services. Network services would not qualify as internet access services, which means that the preferential VAT rate would not be applicable to such services.

According to the Bill, the provision that would reduce the minimum threshold for the submission of domestic sales and purchase lists to HUF 100 thousand would not enter into force on 1 July 2017. The introduction of the real time data provision regarding invoices issued by an invoicing software would also be delayed. A test period is required before the system goes live. Therefore, reporting would be on a voluntary basis for a transitional period of one year.

## Special taxes concerning the financial sector

The Bill provides that the entities subject to the bank tax would be able to deduct the amount of support provided for preferential purposes (up to 50% of the special tax of financial institutions) from the amount of special tax payable.

The Bill lists the conditions for claiming such allowance, as well as the purposes which may qualify as preferential (e.g. supporting amateur sports organisations and work with youth teams). It is important to note that the provisions on claiming the allowance with respect to the special tax for financial institutions may be applied by the taxpayer in connection with the 2017 tax year at the taxpayer's discretion.

In addition to the above, credit institutions, which are members of voluntary institutional protection fund or a mandatory institutional protection organisation, as defined by the Act on Credit Institutions and Financial Enterprises, may reduce their special tax by the amount paid to such voluntary institutional protection funds or mandatory institutional protection organisations during the tax year, provided that certain criteria are fulfilled.

The scope of exemption from the financial transaction duty would be amended. The payment transactions on a client account or, in connection with investment services, on any other account would not give rise to any financial transaction duty liability if the payment service provider and the party providing investment services were members of the same mandatory institutional protection organisation.

## Excise tax

According to the Bill, the scope of financial security would be expanded, as a result of which a certificate of coverage would also be acceptable as a form of security in the future.

For the purpose of ensuring harmonization with the relevant EU Directive, the Bill would clarify the scope of controlled energy products. Furthermore, the Bill stipulates that a tax liability arises even if other controlled mineral oils and monitored products are imported for own use.

## Customs regulations

The amendment to the provisions of the Customs Act would clarify the definition of customs deficiency and would stipulate that the form for customs representation could be filed by electronic means only. In addition, the Bill provides that the customs authority may hand over risk information to entities possessing an AEO certificate which are subject to customs simplifications, provided that the handover of such information does not infringe upon the provisions on confidential customs information.

## Regulated real estate investment companies

The main goal of the amendment to the Act on Regulated Real Estate Investment Companies is to facilitate the establishment and widespread operation of such entities, which could contribute to the expansion of the real estate market and, due to their presence on the stock exchange, the capital markets.

The Bill includes various amendments to the detailed rules related to the Hungarian REIT regime which is expected to become a well applicable option for publicly traded Hungarian property investments.

## International cooperation on taxes and other public dues

The Act on the International Cooperation on Taxes and Other Public Dues has been amended. Multinational groups would be required to prepare country-by-country reports if the group's consolidated revenue exceeds EUR 750 million.

As a general rule, the country-by-country report must be prepared by the ultimate parent company of the multinational group and must be filed with the tax authority of the state of which it is a tax resident.

It is important to note that, if certain criteria are fulfilled, the reporting obligation may be passed on to the Hungarian tax resident member of the group. In addition to the reporting obligation, group members which are Hungarian tax residents must report to the Hungarian Tax and Customs Administration (the 'HTCA'), using a special form, if they are subject to the reporting obligation. If they are not subject to this obligation, then they must specify the group member required to provide information. The above notification obligations must be filed before the last day of the reporting financial year.

Failure to comply with the reporting and/or notification obligation or incorrect reporting or notification may result in a severe default penalty of up to HUF 20 million.

## Amendments relating to the rules of taxation

*The pre-requisite for an allowance is the lack of a net tax debt*

As of 1 January 2018, taxpayer requests for a favourable divergence from the general rules in connection with the payment of tax liabilities (not including payment facilitation and tax reductions), may only be approved if the taxpayer does not have a net tax debt on the date the request is filed.

*Reporting of foreign bank accounts*

Companies must report all foreign bank accounts existing on 1 January 2018 (the name of the foreign financial institution managing the account and the date of opening and closing the account) in writing to the HTCA prior to 31 January 2018. This must be done by means of a special form. Failure to comply with this reporting obligation or late, incorrect, false or incomplete reporting carries a default penalty of up to HUF 600 thousand.

*Reporting of office service providers*

Entrepreneurs registered for the purpose of obtaining a tax number prior to 1 January 2017, as well as taxpayers required to register with the company registry, must report the details of their provider of corporate headquarters services to the HTCA prior to 29 September 2017 if they engage a provider of corporate headquarters services and their provider has not changed since 31 December 2016.

*Email communication for foreign taxpayers*

If a taxpayer who does not have a business registration, domicile or residence in Hungary is otherwise not required to communicate by electronic means, then it may opt for communication by electronic mail at his own discretion. In order to do so, the taxpayer must submit his electronic mail address to the HTCA along with a special declaration.

*Introduction of tax deposits*

As of 1 January 2018, the HTCA would require taxpayers to make a tax deposit after their tax number is issued if either the person authorised to represent the taxpayer or its member or shareholder possessing more than 50 per cent of the votes or qualified majority control is a former senior officer, member or shareholder of another taxpayer which was terminated without succession during the five years preceding the date of filing of the request for the issue of a tax number and had a net tax debt exceeding HUF 1 million (HUF 2 million in the case of the taxpayers with the highest tax performance), provided that the legal relationship existed on the 360th day preceding the date of liquidation or forced deregistration procedure or any other day thereafter.

Furthermore, the Bill also requires making a tax deposit for persons who join a functioning company and fulfil the above criteria.

The amount of the tax deposit is equal to the tax debt recorded by the HTCA and reduced by any overpayments. If there are several grounds for simultaneously requiring a tax deposit, then the amount of the tax deposit would be the value of the largest tax debt. A tax deposit can be made by transferring one lump sum payment to the HTCA's separate deposit account or by submitting a guarantee certificate issued to the HTCA as the beneficiary, which is valid for 12 months from the date of issue.

The HTCA may, without issuing a request to the taxpayer to pay his tax debt, pass a resolution on using the tax deposit in full or in part. Otherwise, the deposit is retained for 12 months after receipt, and the deposit or its remaining amount is returned to the taxpayer within 30 days after this period has passed.

The obligation to make a tax deposit also applies in cases where, after the final resolution on the deposit is issued, the reason for requiring a tax deposit no longer applies due to a change in the senior officer, member or

shareholder. However, the person from whom the tax deposit is required may file a request for exemption. Additionally, the taxpayer has a right to appeal against the resolution requiring a tax deposit and the resolution on the use of such deposit.

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# Latvia

## Latvia introduces country-by-country (CbC) reporting

**On 8 June 2017 Latvian government has approved changes in legislation regarding CbC reporting.**

Tax payer will be subject to CbC reporting in Latvia for a fiscal year commencing on or after 1 January 2016 (following rules provided by EU Directive 2016/881 of 25 May 2016 amending Directive 2011/16/EU).

Detailed reporting requirements (content, structure, and timing) will be provided by Cabinet Regulations that are yet to be drafted.

## Changes in Latvian VAT legislation

**The following amendments have now been officially adopted by the Latvian government with effect from 1 June, 2017.**

1. New wording with respect to the taxation period in which input VAT for locally acquired goods and services can be deducted has been introduced. The new wording states that input VAT for locally acquired goods and services must be deducted in the taxation period in which the goods or services were received and a tax invoice received or in the taxation period in which an advance payment for the goods or services was made, however no later than in the next taxation period, which follows this taxation period. Thus from the new wording introduced it would follow that the input VAT can be claimed either in the same or next taxation period in which the goods or services have been received and a tax invoice has been received. For example, if goods were to be received in November, and invoice was to be received by the accounting department in December, input VAT could be claimed in either the December or January VAT return.

2. Adjustment in criteria for VAT deduction for bad debts have been introduced. In order to recover output VAT paid on bad debts various criteria must be met. One of the criteria is that the bad debt must have occurred within the last three fiscal years. Furthermore, depending on the amount of the bad debt and the debtor, in some cases the VAT on the bad debt can only be recovered after the completion of insolvency, bankruptcy proceedings or the receipt of either a court judgment on garnishment or a bailiff act on the impossibility of debt recovery. Considering that these procedures can exceed three years it is possible that after their completion the criteria on the debt occurring within the last three fiscal years is no longer valid. Thus an adjustment in the VAT Law was made, allowing VAT recovery on bad debts also in cases where within three years after the occurrence of the bad debt:

a) an application for bad debt collection has been brought to court;

b) bankruptcy proceedings have been initiated;

c) insolvency proceedings have been initiated.

3. The terminology in Latvian VAT Law regarding construction services has been amended in order to be in line with the new Construction Law. The

changes are with respect to specific Latvian terms and words (for example, the word reconstruction changed to rebuilding) used within the VAT law, however they do not change the current VAT application for goods and services connected with real estate.

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# Lithuania

## New Labour Code in Lithuania

### What to expect?

**On 6 June 2017 the Lithuanian Parliament adopted amendments to the new Labour Code and thus finally clarified the content of the Code. Please find below an overview of the novelties introduced by the new Labour Code, which enters into force on 1 July 2017.**

### 1. Employment termination

### 1.1. Termination on the initiative of an employer without the fault of an employee

As of 1 July 2017, employers will be able to terminate employment agreements without employees' fault due to the following reasons:

1. employee's work function is no longer required;
2. employee fails to reach the agreed results of work;
3. employee does not agree to change the terms of his/her employment agreement, place of work or working regime;
4. employee does not agree to continue employment after business transfer or a part thereof; and
5. employer ceases its activities.

In case of employment termination on the initiative of an employer without the fault of an employee, standard notice is 1 month. When employment continues for less than 1 year, 2 weeks' notice is required.

The above-mentioned notice periods are increased three times for:

1. employees raising a child (also adopted) under 14 years of age;
2. employees raising a disabled child under 18 years of age;
3. disabled employees;
4. employees who will be entitled to the retirement pension in 2 years.

Notice periods are doubled for employees who will be entitled to the retirement pension in 5 years.

Dismissed employee has to be paid a severance pay of his 2 average monthly salaries. If employment relationship lasted less than one year, dismissed employee has to be paid 0,5 of his average monthly salary.

Additionally, dismissed employee receives a severance pay from a special state fund, amount of which depends on the continuous length of employment.

### 1.2. Termination based on employer's will

If employer wants to terminate employment agreement due to other reasons, not listed in paragraph 1.1. above, employee may be served with a 3 business days' prior written notice and paid a severance pay of at least 6 average salaries. Pregnant women, employees who are on maternity, paternity or child care leave may not be dismissed on the basis of this ground.

## 2. Working time, overtime and annual leave

### 2.1. Working time

Maximum working time, including overtime but excluding agreement on additional work, cannot exceed 48 hours per 7 consecutive days.

Maximum working time, including both overtime and additional work, may not exceed 12 hours per day and 60 hours per 7 consecutive days.

Where employees work under the cumulative working time regime, maximum working time within a period of 7 consecutive days may not exceed 52 hours. This limit does not apply if work is performed under agreement on additional work or during the standby duty.

If employee works at night, average working time on a night shift may not exceed 8 hours per working day (shift) during the reporting period of 3 months.

### 2.2. Overtime

Employee's overtime work must not exceed 8 hours in 7 consecutive calendar days, unless an employee gives written consent to work up to 12 overtime hours per week.

Maximum overtime might not exceed 180 hours per year, unless longer term is established under collective agreement.

### 2.3. Annual leave

Employees have to be granted with annual leave not shorter than 20 business days (or not shorter than 24 business days, if an employee works 6 days per week).

One instalment of annual leave may not be:

(i) shorter than 10 business days;
(ii) shorter than 12 business days (if an employee works 6 days per week).

## 3. New types of employment contracts

### 3.1. Project-based employment contract

A project-based employment contract is a fixed-term contract whereby an employee undertakes to carry out his job functions for the particular project. To achieve the above-mentioned result an employee may determine working time regime by himself and work either at or outside the workplace. The maximum permitted duration of the contract is 2 years for new employees and 5 years for the replacement of the existing employment contracts.

### 3.2. Job-sharing employment contract

Under a job-sharing employment contract, two employees agree with an employer to share one job position. Job-sharing contracts may contain details regarding the type of the contract, identity of the other employee, number of working hours per week, etc.

### 3.3. Employment contract for several employers

Under an employment contract for several employers, an employee can work for two or more employers by performing the same job function. When this type of contract contains a provision that working time of an employee is not divided among employers, information regarding the remuneration for the working time by each employer has to be determined.

### 3.4. Apprenticeship employment contract

An apprenticeship employment contract is a fixed-term contract, which is concluded when a person is employed for the purpose of either acquiring qualification and skills or gaining competences required for the profession. The maximum duration of this contract is 6 months with some applicable exceptions.

## 4. Other amendments

### 4.1. Fixed-term employment contract

From 1 July 2017 a fixed-term employment contracts may be concluded for work of a permanent nature. Fixed-term employment contracts may not exceed 20% of the total number of employment contracts concluded in the company.

### 4.2. Obligation to form works council

When the average number of employees is 20 or more, the workplace is required to have a works council, unless the workplace has a trade union which operates at the level of the employer and at least 1/3 of all employees belong to the union. In the latter case the trade union will have all powers of the works council and perform all functions assigned to it. Employers are obliged to form a works council election committee by 1 January 2018.

In smaller companies, employees may be represented by an employee trustee elected by the employees.

### 4.3. Obligation to approve systems of remuneration

Forms of remuneration, wage rates, grounds and procedures for additional payment, wage indexation arrangements will have to be listed in the remuneration system in accordance with the category of employees' positions and qualifications.

Remuneration system should be determined in the collective agreement. When a collective agreement is not concluded and the average number of employees is twenty or more, remuneration system has to be approved by the employer and made available to all the employees.

### 4.4. Ensuring employees' equal opportunities and protection of personal data

Employer with the average number of more than 50 employees has to approve a policy for protection of employees' personal data as well as to approve measures to implement the policy of employees' equal rights and its monitoring principals. Policy and measures have to be published in ways that are normally used for publishing in the workplace.

### 4.5. Minimum salary

According to new Labour Code, minimum salary may only be paid for unqualified work. Unqualified work is defined as work not requiring any special or professional skills.

## 5. Recommendations for the employers

Please find below a summary of our recommendations that might be helpful in preparing for the new Labour Code:

5.1. Consider the changes in the calculation of overtime rules and make sure that recording of overtime is in accordance with the new Labor Code.

5.2. Recalculate employees' annual leave. Annual leave, which was acquired prior to 1 July 2017, has to be converted into business days. Every 7 calendar days of annual leave has to be converted to 5 business days of annual leave (if employee works 5 days a week) or 6 business days (if employee works 6 days a week).

5.3. The new Labour Code introduced new types of employment agreements and brought flexibility to labor relations. We recommend checking the possibility to establish different types of employment contracts or change the existing ones in a way, most consistent with the nature of employee's work.

5.4. Take all necessary steps to form works council election committee by 1 January 2018, if the average number of employees is 20 and more.

5.5. Prepare job descriptions and confirm systems of work remuneration in accordance with the descriptions, if the average number of employees is 20 or more.

5.6. Prepare the implementation and enforcement measures for policy of employee's equal rights, if the average number of employees exceeds 50.

5.7. Prepare employees' personal data protection policy and measures for its implementation, if the average number of employees exceeds 50.

5.8. Make sure that the minimum wage is paid only to unskilled employees.

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# Poland

## Daily bank statements in SAF-T format. Obligation to file daily SAF-T reports on taxpayers

**Starting from 1 September 2017 banks will be obliged to file daily bank statements of businesses in the SAF-T format. The new requirement does not apply to microenterprises and public finance entities. Taxpayers holding accounts with foreign banks are obliged to file daily reports independently.**

The government draft amendment to the Tax Code introduces an obligation to provide the Head of the National Tax Administration with daily bank statements in the SAF-T format.

The requirement will apply to **legal persons, organizational units without legal personality and sole proprietors** within the meaning of the Act on freedom of economic activity, **excluding microenterprises and entities from the public finance sector**.

For taxpayers holding a bank account with a bank or a bank branch registered in the Republic of Poland or a credit union, SAF-T will be submitted directly by **abank or a credit union** based on a written authorization of a taxpayer. Taxpayers holding a bank account with a **foreign bank** will have to file daily reports in the SAF-T format **independently**.

According to the amendment, bank statements **will be provided for 24-hour periods until the end of the following 24-hour period** excluding Saturdays and public holidays. The bank statements will be provided by banks and credit units through the IT system of the Polish clearing chamber (KIR S.A.). Taxpayers preparing SAF-T reports independently will send them to the dedicated gateway of the Ministry of Finance.

The new regulation is based on the structure of the SAF-T file, which should be submitted by large enterprises, as requested by tax authorities. Daily SAF-T bank statements should include the following information:

1. details of the sender and recipient of the payment (name, address, tax identification number NIP or statistical number REGON, if available);
2. account number of the sender and the recipient;
3. date and time of debiting the sender's account or date and time of a cash payment;
4. amount and currency;
5. title and description of a payment order;
6. account balance of the company after the payment - for data provided by the bank or credit union keeping the company's account;
7. details of a virtual account created to identify mass payments, if a payment order credits such an account - for data provided by a bank or credit union keeping the credited account of the company.

Planned effective date of the amendment is 1 September 2017.

**Rapid reaction mechanism?**

As indicated in the explanatory statement of the bill, the amendment objective is to prevent tax fraud and offence, including carousel fraud, through rapid identification of suspicious transactions and checking the revenue and expenses declared against the account throughput. Daily bank statements will enable rapid reaction of tax authorities to undesirable behaviour of taxpayers, which should protect honest taxpayers against fraudulent actions of their counterparties.

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## The new principles of hiring temporary employees come into force

**On 6 May 2017 the Polish President signed the amended Act on the employment of temporary workers. The amended act introduces new principles of hiring temporary employees, new obligations for temporary employment agencies, user employers and for employees.**

The new law came into force on 1 June 2017. The key changes.

More stringent employment time limits for hiring temporary workers
The new regulations make time limits for hiring temporary workers more stringent and efficient. In line with the amended act, the user employer will have the right to use the work of a given temporary employee for the period not exceeding the total of 18 months in the period of 36 consecutive months, **irrespective of whether the employment has been organized by one or more temporary employment agencies.** The limit will apply to temporary employment organized by temporary employment agencies under **employment contract and other contracts entered civil law regime** (also if used interchangeably).

Consequently, new obligations have been imposed on the agency, user employer and a temporary worker. Before posting an employee, an agency will be obliged to check if the limits stipulated in the act have not been exceeded. To this end, a temporary worker will have to present an employment separation certificate and employment records (or own statements) to certify the temporary employment period with a given user employer before a contract is signed with the agency.

At the same time, a user employer will have to **keep records of all temporary employees**, including the start and end date of employment in the period of 36 consecutive months. The user employer will be obliged to keep such records in the 36 reporting period and for another 36 months after the end thereof.

Any breach of the employment limits in question shall be considered as **an offence**.

Protection of pregnant women
Contracts between temporary employment agencies and pregnant women, which would have been terminated after the third month of pregnancy, will be extended automatically until the **date of confinement**. The provision will apply to female temporary workers with at least 2-month posting period to a given temporary assignment by a given agency under an employment contract in a 36-month reference period.

The 2-month employment period and the 36-month reference period will be calculated as from 1 June 2017 also for employment contracts concluded before the amendment entered into force, i.e. before 1 June 2017.

More precise provisions of a ban from hiring temporary workers
The amendment introduces more detailed provisions on the territorial scope of a ban from hiring temporary workers to do a job covered by group layoffs by a user employer. In line with the amended act, the restriction applies only to the municipality/district where the organizational unit which employed and subsequently dismissed a given person is located. The former regulations did not provide any detailed instructions in this respect.

The 3-month grace period has not changed.

New obligations and new sanctions
Apart from employment period limitations, temporary workers, agencies and user employers are obliged to comply with a number of new reporting and formal requirements.

The catalogue of offences under the act has been extended considerably. In particular, the employment of temporary workers for a period exceeding maximum employment limits or hiring temporary staff to carry out assignments which may not be awarded to temporary employees will be punishable. Maximum fine which can be imposed on temporary work agencies and user employers violating the act has been increased from PLN 5,000 to PLN 30,000.

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The act modifying principles of hiring temporary employees has been signed by the President. In particular:

(i) it clarifies and extends the limitations for hiring temporary employees. A company will be allowed to hire a given temporary employee for the maximum period of 18 months in a 36-month reference period, regardless whether this employee is assigned to that company by one or several temporary employment agencies and regardless whether hired based on labour law or civil law regime;

(ii) employment contracts concluded with pregnant employees that would expire after the first trimester of pregnancy will automatically be extended until the date of birth;

(iii) companies hiring temporary employees and temporary employment agencies will have numerous new formal obligations;

(iv) the catalogue of offences on the grounds of the temporary employment act has been extended;

(v) also the maximum fines that may be imposed on the grounds of this act have been increased from PLN 5,000 to PLN 30,000.

The new provisions come into force as of 1 June.

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## Anti-avoidance clause: the current practices of tax authorities

**The tax law avoidance clause was introduced to the Polish tax law system on 15 June 2016. Although no decision has been issued based on the clause so far, the practices of tax authorities applying its selected provisions can be analysed after twelve months since the implementation.**

### Examples of applying the anti-avoidance clause

One of the most typical examples of applying the anti-avoidance clause are cases where tax authorities refuse to issue a tax ruling, because they reasonably suspect that certain elements of the facts of the case or the future event indicate tax avoidance. Tax rulings were refused in cases related to effects of donations, company revaluations and contributions-in-kind. There is no official data on the number of refusals issued because the authorities had considered the possibility of applying the anti-avoidance clause. The Polish Ombudsman requested the Minister of Finance and Development to publish such information in a letter No. V.511.25.2017.EG indicating a number of doubts arising from the implementation of the clause.

**First decisions of the Regional Administrative Court**

First decisions of Regional Administrative Courts were also issued - most of them related to refusals to issue a tax ruling. For instance, the Regional Administrative Court confirmed that a tax ruling may concern the protective power of a tax ruling if the clause is applied. The Regional Administrative Court in Gdańsk decided that the authority issuing a tax ruling has no authority to decide if the proceedings under the clause could be carried out in a given case.

Moreover, a securing opinion on a business combination was refused on 16 December 2016 (file No. 145058/K). Although the decision in question concerned a specific transaction between specific companies, statements and arguments included in the document may indicate how tax authorities may interpret the provisions of the clause. In the refusal in question, the Minister of Finance and Development interpreted a sequence of actions of the transaction as one sequence of actions within the meaning of the clause (i.e. as one action under the clause). Still, referring to the objective of the action, the Minister divided the sequence of actions into individual steps and referred to business objectives of individual stages, not to the entire sequence. This approach may raise certain doubts in the context of the clause. Moreover, the content of the refusal may suggest that tax authorities may focus on figures disclosed in the list of tax and non-tax benefits resulting from a given action when assessing whether a given action was carried out to derive tax benefits. Finally, arguments raised in the refusal may indicate that wherever a given action was deemed as taken solely to derive tax benefits, such action should be considered unnatural.

**Alert about the possibility to apply the anti-avoidance clause**

On 8 May 2017 the Ministry of Finance published on its website a "Minister's of Finance alert about tax optimization of closed-end investment funds using bonds". In accordance with the information published, it is the first of a series of documents warning that an anti-avoidance clause could be applied to certain structures. According to the alert, in certain circumstances, a structure with closed-end investment funds and bonds could potentially be considered as tax avoidance, to which the anti-avoidance clause shall apply.

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## A due diligence action list will be developed for VAT purposes

**The Ministry of Finance specifies what kind of non-standard circumstances of a transaction should raise doubts of a taxpayer and trigger detailed analysis of a counterparty. The Ministry is also developing a due diligence action list.**

**Suspicious circumstances of a transaction**

According to the Ministry of Finance due diligence in counterparty checking should not be limited to obtaining a copy of registration documents certifying assignment of a statistical number (REGON), tax identification number (NIP) or other documents (such a fuel trader's licence). Circumstances of establishing and carrying out business relations should also be closely inspected. According to the Ministry of Finance non-standard circumstances of trading in given goods should raise doubts of a taxpayer. Such non-typical situations include cases where:

- an entity reporting a considerable revenue has a registered address in a place with no signs of any business activity and it has no technical resources necessary to carry out this type of business activities;
- suppliers and buyers in the supply chain often change without any economic reason (new companies are established, other businesses are re-established with a changed shareholding structure);
- a supplier does not intend to enter into a long-term business relationship;
- business facilitators indicate preferred or acceptable suppliers and buyers with no clear reason;
- considerably short payment terms, considering the transaction size;
- reversed payment chain - the last entity in the chain makes advance payments to finance the entire purchase transaction;
- low transaction margins for most companies in the chain (with low profit margin) and no price negotiations;
- fast trading, goods are not warehoused, but immediately sold to other entities.

Circumstances listed above should raise doubts as to the integrity of the counterparty. In other words, in these circumstances, a taxpayer is expected to inspect in detail if the counterparty actually exists, to check its integrity and VAT registration.

**Due diligence guidelines**

The Ministry of Finance decided to consider the proposition of determining a list of actions indicating a taxpayer's good faith or due diligence or guidelines in this respect, as suggested in the related interpellation. The list would instruct honest entrepreneurs what actions should be taken to avoid the risk that tax authorities may question their right to deduct tax. The Ministry of Finance is said to be developing the list in question.

On the other hand, the Ministry of Finance emphasises that even if the same goods are traded, the actual circumstances of a given transaction will decide of the good faith and due diligence of a taxpayer. If the list of obligations is made too specific, it may disregard some situations, in particular, those of a non-standard nature. Moreover, the Ministry of Finance indicates that the list could be used by dishonest buyer to fake acting in good faith.

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# Romania

## The list of the most relevant amendments to the Methodological Norms for the Application of the Tax Code

**Amendments and additions to the Methodological Norms for the application of the Tax Code in respect of corporate income tax, micro-enterprise income tax, income tax, statutory social contributions and value added tax have been recently published in the Official Monitor.**

Amendments and additions to the Methodological Norms for the application of the Tax Code in respect of corporate income tax, micro-enterprise income tax, income tax, statutory social contributions and value added tax have been recently published in the Official Monitor.

The amendments bring clarifications and examples regarding the implementation of the measures introduced through the Government Emergency Ordinance no. 84/2016, focusing in particular on the following aspects:

**Title I General provisions**

A new section on the VAT treatment of transactions made by / from taxable persons having the VAT registration code canceled was introduced. Specifically, clarifications and examples were brought on:

- the exercise of the seller's deduction right for purchases made prior to re-registration (allowed even in the absence of a VAT code mentioned on the invoice);
- the method of computing the VAT collected (by the gross-up method when the price mentioned in the contract does not include VAT and the VAT cannot be cashed-in from the client or when the contract does not provide any reference in relation to VAT) as well as
- aspects regarding the reporting of the collected VAT (related forms) and the issuance of correction invoices after re-registration.

**Title II – Corporate income tax**

- The tax exemption for the profit invested in the acquisition of the right to use the software is applied for those programs acquired and used starting with January 1, 2017.
- Examples were provided regarding the method through which non-taxable income from the sale of participation titles is computed, as well as in regards to the determination of the management costs related to non-taxable income.
- Loans obtained directly or indirectly from international development banks, Romanian or foreign credit institutions, non-banking financial institutions are not included in the calculation of the borrowed funds.
- It is specifically mentioned that non-deductible interest expenses to be carried forward can be deducted on an unlimited period of time.
- Clarifications regarding the recovery of tax losses for taxpayers who apply the taxing system on microenterprise revenues have been introduced, depending on the period when the losses were incurred

The amendments are approved by the Government Decision no 284/2017 for the amendment and completion of the Methodological Norms of the Law no 227/2015 regarding the Tax Code, published in the Official Monitor no. 319 / 04.05.2017.

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

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## Companies will be able to communicate with the tax authorities starting with June via the Virtual Private Space service

**Legal entities and entities without legal personality will be able to communicate with tax authorities via the Virtual Private Space (SPV) service as of June 1, according to an MFP order.**
**At the same time, the list of documents that can be communicated through the SPV will be extended, including tax returns.**

Legal entities and entities without legal personality will be able to communicate with tax authorities via the Virtual Private Space (SPV) service as of June 1, according to an MFP order.
At the same time, the list of documents that can be communicated through the SPV will be extended, including tax returns.
The communication procedure has been amended to extend the service for legal entities and entities without legal personality through Order 660/2017 of the Minister of Public Finance.

**SPV registration**

- The individuals can register directly on the platform based on their personal identification data.
- The legal entities and the entities without legal personality are directly identified through legal representatives or qualified persons by using qualified certificates.
- Accessing SPV is optional. Once done, the communication of the administrative-tax acts will be done exclusively through the online platform.

**Documents and information that can be communicated through the SPV**

The main type of documents communicated via are:

- Documents issued and communicated by MFP / ANAF: assessment decisions, tax administrative acts issued by tax inspection bodies, enforcement documents and acts issued in the enforcement of the law (notifications, notices), payment obligations statement, tax certificate, tax record etc.
- Documents issued and communicated to MFP / ANAF: tax returns, various requests, complaints, petitions, audiences requests, information on the application of tax legislation, etc.

In addition, if the taxable person accessing the SPV and its partners gave their consent when filling Local Sales and Purchases List (Form 394) to make the information public to business partners, the users may also review the data provided by the List.

The users can also automatically receive relevant information from the tax authority, resulting from their risk analysis, so that they can comply voluntarily.

Transitional measures are applicable until 30 June 2017, namely 30 June 2018.

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## New provisions of the public-private partnerships and concessions legislation-an analysis by Reff &Associates

### PPP and Concessions – the new legislation brings material improvements, but further clarifications are still needed

The legal framework governing public private partnerships and concessions of works and services was significantly reshaped in 2016. In this respect, in May 2016 the new legislative package on public procurement and concession of works and services was enacted, replacing the previous regulations, including former PPP Law no. 178/2010. Also, in December 2016 the new PPP Law was adopted.

The law on concession of works and services is now fully functional and concession projects may be launched, having full legal support, as the methodological norms for the application of the law were enacted in December 2016. On the other hand, projects under the new PPP Law will still have to wait, as the methodological norms for the implementation of the law are still under discussions, although the deadline for issuing them, respectively 90 days as of the entering into force of the PPP law, was exceeded.

Concessions of works and services, as well as the public private partnerships, are instruments allowing the cooperation between the public and private sector for the purpose of developing public interest objectives or performing public interest services.

Concession is part of the extended category of public private partnerships, taking into account the definition of the latter by legal scholars and the European Commission guidance. In this respect, the public private partnership mechanism, in its extended sense, as the European Commission has mentioned in the "Green Paper on public-private partnerships and Community law on public contracts and concession", is based on various forms of cooperation between public and private sector, which "ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service". However, at a national level, the distinction between concessions of works and services and public private partnerships is made.

By accessing these instruments, the public partner aims to overcome the budgetary constraints that impede on the public sector, temporarily transferring in the private sector the burden of performing the necessary investments for public interest projects. At the same time, the private partner have an opportunity to invest in profitable projects, considering that both PPP law and the law on concession of works and services provide that projects shall allow the recovery of the investment as well as a reasonable profit margin. Profitability is sustained through availability payments made by the public partner, granted under the condition that the services and works performed by the investors comply with certain quality parameters.

At European level, the concession and public private partnerships were and still are often used for the implementation of a wide range of public interest projects in fields that cover road infrastructure, airports, public transportation, healthcare infrastructure, construction of administrative buildings or supply of water and sewerage services, national defense and education services. The total value of public private partnership projects implemented in the European Union between 2000 and 2015, amounted to Euro 270 billion according to the European Commission's data. Good practice examples can be found in France, Germany, Great Britain, Netherlands, Spain or Portugal.

The entire article can be read by accessing this link

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# Serbia

### New Ministry of Finance Rulings – Value Added Tax

**The place of supply of services of providing exhibitors the possibility of presenting their goods or services in a particular facility during the fair along with other related services, provided by the fair organizer to local and foreign exhibitors**

When a VAT payer – fair organizer provides exhibitors the possibility of presenting his goods or services in a particular facility during the fair along with other related services, whereby the exhibitor is a taxpayer from Article 12 of the VAT law, the place of supply of services is considered to be the place where the service recipient has its head office or a permanent establishment, if the supply is performed to a permanent establishment that is not in the place where service recipient has its head office, i.e. the place in which the service recipient has permanent or temporary residence.

However, for services involving the lease of conference halls with accompanying equipment (as an ancillary supply), provided by a VAT payer – fair organizer to exhibitors or other persons during the fair, the place of supply for such services is the place wherein the immoveable asset is located, i.e. the place where the conference hall is located. This means that when the conference hall is located in Serbia, the VAT payer – fair organizer is obliged to compute and pay VAT in accordance with the VAT law, regardless of whether the service is provided to a taxpayer from Article 12 of the VAT law or not.

*(Ministry of Finance explanatory note, no. 430-00-00136/2017-04 as of April 10, 2017)*

### New Ministry of Finance Rulings – Value Added Tax

**The place of supply of services related to attending an international conference held in Serbia**

On participation fees charged by the Faculty of Mechanical Engineering, University of Belgrade based on participants' attendance in international conference held in Serbia, meaning that the place of supply of said services is Serbia, the general VAT of 20% applies, since these are not services from the field of science for which the tax exemption is prescribed.

*(Ministry of Finance ruling, no. 430-00-61/2017-04 as of May 8, 2017)*

### New Ministry of Finance Rulings – Value Added Tax

**VAT treatment of intermediary services for the supply of goods dispatched from abroad to Serbia and from Serbia to abroad**

When a VAT payer provides intermediation services for the supply of goods sent or shipped to Serbia, to a taxpayer from Article 12 of the VAT law – legal entity with a seat in Serbia, after April 1, 2017, the general 20% VAT applies on the supply of said service (amount of intermediation fee), without VAT,

considering that the place of supply of such services is considered to be the place in which the service recipient has a seat.

*(Ministry of Finance ruling, no. 430-00-144/2017-04 as of May 8, 2017)*

## New Ministry of Finance Rulings – Corporate Income Tax

### Tax incentive for investments based on a purchase of a legal entity as part of bankruptcy proceedings

In case of investments made by another individual for the purchase of the taxpayer – bankruptcy debtor as a legal entity, such investments are not made pursuant to Article 50a of the Law on Corporate Income Tax, and the taxpayer (for which, in this case the bankruptcy proceeding is suspended) is not entitled to a tax incentive.

*(Ministry of Finance ruling, no. 011-00-255/2017-04 as of May 4, 2017)*

## New Ministry of Finance Rulings – Corporate Income Tax

### Recognizing expenses in the taxpayer's balance arose for registration and accommodation fees for participation in a pharmaceutical symposium

Expenses that a taxpayer, engaged in wholesale of pharmaceutical products, stated in its ledger as registration and accommodation fees for participation of its employees and clients in the pharmaceutical symposium organized with an aim to get acquainted with the new medicines and new treatment approaches, whilst at the end of the symposium participants take tests and collect credits necessary for maintaining the pharmaceutical license, are recognized for tax balance purposes.

In terms of regulations governing accounting, every taxpayer should divide advertising and propaganda costs on one hand and entertainment costs on the other hand in accordance with its general act, i.e. such an act should regulate in more detail the question of approval and the amount of entertainment costs. Additionally, in determining whether a particular cost should be considered as advertisement and propaganda or entertainment, it should be considered that advertising and propaganda activities performed were intended for a larger number of (anonymous) individuals under the same conditions, as opposed to entertainment activities intended for predetermined (known) individuals.

Considering the above, the expenses that a taxpayer (in this particular case) stated in its ledger based on a fee for participation and accommodation of its business partners in a symposium, represents entertainment expenses which are recognized for tax balance purposes in accordance with Article 12, para 7 of the Law.

However, when it comes to expenses that the taxpayer stated on the same bases for participation of its employees in the said symposium, such a stated expense does not represent an entertainment expense.

*(Ministry of Finance ruling, no. 011-00-154/2017-04 as of May 8, 2017)*

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