Tax&Legal Highlights

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.

Full communication regarding draft 2018 budget assumptions is available on the Ministry of Finance website. (in Polish)

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