



CONFEDERATION  
FISCALE  
EUROPEENNE

# CFE Fiscal Committee

## National Reports

### 135<sup>th</sup> meeting

Developments in national tax laws

January 2015 - September 2015



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No changes: Netherlands, Spain



## BELGIUM

### **Fairness tax: Constitutional Court refers preliminary questions to ECJ**

The Constitutional Court has referred 3 preliminary questions to the European Court of Justice regarding the compatibility of the fairness tax with the freedom of establishment and the parent-subsidiary directive.

### **Central Point of Contact**

As from 23 April 2015 (RD 03/04/2015), the individual taxpayers must, besides mentioning the existence of (a) foreign account(s) in their individual income tax return, also report certain data about the(se) account(s) to the Central Point of Contact (CPC) with the National Bank of Belgium (NBB).

### **Program law – tax measures**

A program law was published on 18 August 2015. Apart the introduction of some new ‘taxes’ the program law takes measures to stimulate starting companies.

### Transparency tax (“so called Cayman tax”)

The transparency tax is due by individuals or legal entities (not companies) that are considered to be the founder or the beneficiary of a legal construction.

A legal construction is either a trust or a similar agreement, either a company established in a country where there is no corporate income tax or where the company’s effective corporate income tax is less than 15 %.

With the introduction of the transparency tax the founder or beneficiary will be taxed on the income received by the legal construction, as if they would have received the income directly. This income will be taxed in the hands of the founder or beneficiary according to their normal regime which depends on the nature of the income as an immovable, movable, professional or miscellaneous income.

The new regime will be applicable to income received and-or paid/attributed by a legal construction as from 1 January 2015 and, regarding the application of the movable and wage withholding tax rules, on the income paid/attributed as from 1<sup>st</sup> September 2015.

### Bank Tax

Tax due by credit institutions and insurance companies which are established and recognized according to Belgian law and by other (EEA) credit institutions and insurance companies which exercise their activities on the Belgian territory.



The taxation takes place by the reduction of the normal dividends received deduction (DRD) notional interest deduction (NID) and/or tax losses carried forward (changes to art. 207 BITC). The reduction leads to an effective cash-out in the hands of all credit institutions and insurance companies in scope, irrespective of the DRD, NID or tax losses available.

For banks the reduction is based on a fraction (2,37 %) of the 'debts to clients' / for insurance companies it is calculated as a fraction (1,88 %) of the 'technical provisions' – as recorded in the annual accounts and then multiplied by the NID rate of the company. The reduction is attributed to the effectively used tax deductions in the following order:

1. Tax losses carried forward;
2. DRD (with priority to the dividends-received deduction which can be carried forward);
3. NID

The reduction of the DRD cannot lead to a higher use of the NID of the current year nor of the stock of NID carried forward.

### **Measures for starting companies**

New measures have been taken to stimulate starting companies. A starting company is a company which has been inscribed at the CBE (Crossroad bank for enterprises) less than 48 months ago.

Three measures entered into force:

#### Tax shelter - Reductions for shares or parts acquired in starting companies

A tax reduction is granted to the individual taxpayers for amounts allocated to the payment (even via crowdfunding) of new shares or units representing a part of the social capital of the company. This contribution must be done either at the constitution of the company or at a capital increase in the 4 years following its constitution. Taxpayer has to own the shares for 48 months. This new measure entered into force to acquisitions of shares as from July 1, 2015.

#### Exemption of interest on loans to starting companies

This exemption is available for loans granted by an individual tax payer to a starting company . The interest is not deductible for the borrower and the exempt income is limited to max 15.000€ for AY 2016. The loan must be granted for at least 4 years and has to be made to finance new activities of the starting company (refinancing loans are excluded but crowdfunding is accepted). Applicable for new loans granted as from July 1, 2015.



### Payment exemption of wage withholding tax for starting companies

Starting SME's will only have to pay to the tax authorities 90% of the 100% of the wage withholding tax withheld. Please note that very small entities (new category foreseen by the law) will only have to pay 80% to the tax authorities. The regime is not applicable in case of a reorganization procedure or bankruptcy. Entry into force: Remuneration paid as from August 1, 2015.

### **VAT decision on costs of lodging, food and drinks made for publicity purpose**

The tax authorities have published their decision to follow the Supreme Court in this matter (VAT Decision nr. E.T.124.247 dd. 13.03.2015). If the costs are made in the context of an activity which mainly and directly aims to inform potential clients about the existence and nature of a product or service with the purpose to promote the sales, those costs are publicity costs and the VAT is fully deductible.

### **VAT decision about the consequences of the ECJ Skandia case**

The Belgian VAT Authorities have published their decision about the consequences in Belgium stemming from the judgment of the European Court of Justice ("ECJ") in the case Skandia America Corporation ("Skandia"). The ECJ decided in September 2014 that, where an establishment of a legal entity is part of a VAT group, then the disregard applied in the FCE Bank Judgment, in respect to services provided from a head office to a branch, will no longer apply. This is on the basis that the VAT group is the taxable person who receives the supply and not the branch. Therefore, the services are no longer deemed to be provided to the branch with the effect that they can no longer be disregarded for VAT purposes and should as such be subject to VAT.

As expected, the Belgian VAT authorities have upheld the full application of the Skandia case in Belgium. This implies, in practice, that:

- When purchasing taxable services localized in Belgium, the branch or the head-office must self-account for Belgian VAT when one is member of a VAT group (in Belgium or abroad). The VAT will be deductible in Belgium depending upon the actual VAT deduction right at the level of the VAT group (if a mixed taxpayer)
- The services recharged by a branch or a head-office to its foreign head-office or branch, when one is member of a VAT group, will have to be taken into account to determine the VAT deduction right (if mixed taxpayer)

When the services are taxable from a VAT perspective, the above applies regardless of whether the purchasing entity recharges the costs to another member of the VAT group in Belgium. VAT is therefore to be reverse charged in any case.



## CZECH REPUBLIC

### **Double taxation treaty between the Czech Republic and Liechtenstein**

The treaty will take effect in 2016. For payments from the CR

- zero withholding tax is imposed on interest and dividends if 10% shareholding interest for at least one year is maintained.
- Otherwise and in case of licenses 10% withholding tax is applied.
- The income tax rate of legal entities in Liechtenstein is 12.5%, but local legislation enables for deemed interest from equity contribution thus effectively leading to a tax rate of 8-9%.

### **VAT Control Statement**

The taxable persons registered for VAT in the Czech Republic will be obliged to submit the so-called “VAT Control Statement” after 1<sup>st</sup> January 2016. The following transactions shall be declared in the VAT Control Statement:

- Provided domestic taxable supplies or receipt of advance payment (lines 1, 2 or 25 of the CZ VAT return)
- Received domestic taxable supplies or providing of advance payment (lines 40, 41 or 10 and 11) of the CZ VAT return
- Received transactions provided by persons established outside the Czech Republic that are subject to the reverse-charge mechanism in the Czech Republic (lines 3, 4, 5, 6, 9, 12 and 13 of the CZ VAT return)
- Special scheme for investment gold

The taxable persons will be newly obliged to submit through the VAT Control Statement data from particular tax documents which are already required to be recorded in the tax evidence by the VAT Act.

The General Tax Directorate has already recently published a draft of the form of the VAT Control Statement and comprehensive information on completing this form.

### **Temporary reverse charge mechanism**

The scope of the local taxable supplies that are subject to the reverse charge mechanism has been slightly extended with effect from 1 July 2015. The reverse charge mechanism applies to all cereals and industrial crops classified in chapters 10 and 12 of the Customs Nomenclature. As to the supplies of sugar beet the reverse charge mechanism started to apply also to these supplies with effect from 1 September 2015. The General Tax Directorate has recently published comprehensive information on application of the reverse-charge mechanism on the local taxable supplies.

### **Immovable property transactions**



The General Tax Directorate has recently published comprehensive information on charging VAT on transactions relating to immovable property. The guidance interprets the VAT Law provisions with regard to:

- taxable persons involved in immovable property transactions;
- the definition of immovable property;
- exemptions in respect of certain supplies of immovable property;
- applicable VAT rates; and
- rentals of immovable property.

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## ITALY

### ***Update on Recent Developments of Italian Tax Laws (April – August 2015)***

#### ***Patent Box Regime***

The 2015 Stability Law introduced the patent box regime that provides for a privileged tax treatment – on an optional basis – for incomes deriving from the use of intangibles. Such benefit, once implemented, allows to exclude from taxation an amount equal to a 50% share of such incomes deriving from specific intangibles. Such share is equal to 30% for tax year 2015 and is equal to 40% for tax period 2016.

On 29 July 2015, the Minister of Economy and Finance and the Minister of Economic Development signed the inter-ministerial Decree, implementing the patent box regime. In order for the provision to be fully effective – while waiting for publication in the Official Gazette – the Regulation by the Tax Authorities Director, who shall have to establish the relevant procedures and terms for the option to the privileged tax regime, has yet to be issued.

#### ***International Ruling***

On 6 August 2015, the Italian Cabinet gave its final approval to the Draft Legislative Decree (hereinafter “*Internationalization Decree*” on measures for the development and the internationalization of enterprises implementing the Law on tax reform (Law No. 23 of 11 March 2014) which delegates to Government the task to introduce provisions for the creation of a fairer, more transparent and growth-oriented tax system.

One of the major innovations involves the enhancement of international rulings, aimed at incentivizing agreements between taxpayers and tax Administrations on special topics such as transfer pricing, allocation of profits and losses to permanent establishments, the prior assessment of requirements that would establish the existence of a permanent establishment on Italian territory, the identification, in



specific and concrete cases, of rules on the distribution or collection of dividends, royalties, interests and other income components to or from non-resident entities.

Agreements bind the parties for the tax period during which they are entered into and for the following four (4) tax periods.

### ***Tax rulings for new investments***

The Internationalization Decree provides moreover the introduction of a ruling for companies making new investments to provide certainty as to the tax aspects of the development plan to be implemented. To such purpose, what is fundamental is the investor's submission of a business plan with the description of the figures for the envisaged plan of action, time frames and means and procedures for the realization of the same, employment growth and any impact the latter may have on the Italian tax system.

In order to qualify for the above provision, a minimum threshold of 30 million Euro has been established for investments, which may also consist in the restructuring of enterprises undergoing a financial crisis, should such initiative have a favorable impact on employment.

### ***Black list costs and internal TP***

Art. 5 of the Internationalization Decree, in the final version definitively approved on 6 August 2015, amends in various points the regime currently in force (mainly provided by Art. 110 of the TUIR, i.e., Italian Income Tax Code, hereinafter "TUIR") related to *black list costs*.

In particular, the deductibility of expenses – and other negative components deriving from transactions entered into with enterprises located in States or territories with privileged tax regimes, which were ascertained by reason of the lack of adequate information exchange through a Decree of the Minister of Economy and Finance – was introduced. Deduction is allowed within an arm's length threshold (determined ex Art. 9 of the TUIR) of goods and services purchased on the basis of transactions concretely entered into.

Moreover, the requirement – providing that the deductibility of such costs was subject to the fact that the foreign enterprise was to prevalently carry out an effective commercial activity – was repealed. Lastly, a rule was introduced pertaining to authentic interpretation, aimed at specifying that the set of rules contained under par. 7 of Art. 110 of the TUIR (transfer pricing rules) is not valid for transactions carried out by and between entities residing or located in the State's territory. In other words, the application of provisions set forth for foreign transfer pricing cases may not be extended to transactions carried out between/among resident entities belonging to the same group.

### ***Black list Countries***

With Ministerial Decree of 27 April 2015, an amendment was made to the black list of States or territories with privileged tax regimes, which were qualified for application purposes of the provisions under Art. 110, par. 10 *et seq.* of the TUIR, concerning the deductibility of costs deriving from transactions with enterprises or professionals that are either resident or located in States or territories with privileged tax regimes. The new list, which partially amends the Ministerial Decree





of 23 January 2002, identifies low-tax States by using as benchmark the lack of procedures for information exchange.

### ***Abuse of Law***

On 18 August 2015, Legislative Decree No. 128 of 5 August 2015, (effective as of 2 September 2015) was published in the Official Gazette. Purpose of the above Decree is to strengthen the certainty of the Law in the relationship between Tax Authorities and taxpayers on the issues of Law abuse and tax avoidance, the doubling of audit terms, and tax compliance.

In matters of Law abuse and tax avoidance, a new Article will be included in the Law on the Taxpayer's Charter, which will be valid for all taxes across-the-board (income tax and indirect taxes, with no prejudice, in any case, to the special regime in force on Customs issues).

According to the new rule, Law abuse is ascertained in case of *“transactions devoid of any and all economic substance which, although formally abiding by tax rules, essentially attain undue tax advantages”*

The Decree, excludes tax evasion, in any case, from the scope of Law abuse (as tax evasion continues to be deemed a criminal offence) as well as *“transactions justified by sound non-tax, non-marginal reasons, also involving organization or management aspects, meeting the enterprise's need for structural or functional improvement, i.e., of taxpayer's professional activity”*. With regard to Law abuse, on the other hand, clarifications are provided that a special Deed is required – which becomes null and void – if taxpayer was not previously duly served a notice requesting clarifications, to be provided within the following sixty (60) days, stating the reasons for which the Tax Authorities deem that a case of Law abuse was ascertained.

### ***VAT – Abuse of law***

By Legislative Decree No. 128 of 5 August 2015, the Law on anti-avoidance, which was restricted to some cases in the area of direct taxation, was redrafted as a General Anti Avoidance Rule for any type of tax. The advantage in the VAT area is that cases concerning this tax will benefit from the specific advance assessment procedure, avoiding the previous inconvenience of the restriction of the right of defense, due to the risk of a complete cross-examination failure.

### ***Doubling of Tax Assessment terms***

Legislative Decree No. 128 of 5 August 2015 establishes that the doubling of (time-related) terms within which the Tax Authorities may carry out a tax assessment is allowed exclusively in the cases where the Tax Authorities (Tax Police included) has duly submitted and transmitted to the Judicial Authorities the report with the relevant charges within the due date set forth for ordinary tax audits.

### ***Cooperative Compliance Rules***



Legislative Decree No. 128 of 5 August 2015, confirms the institution of a new operational method between the Tax Authorities and taxpayers known as “Cooperative compliance regime”, which will be initially applicable to large corporations. Access to the regime will be on a voluntary basis, and subject to taxpayer’s being equipped with a system to identify, measure, manage and control tax risks such to allow prior self-assessment and monitoring of the said risks.

#### ***VAT – Electronic invoicing***

A new step toward the current use of electronic invoicing was accomplished by Legislative Decree No. 127 of 5 August 2015. As of 1 July 2016 the Tax Administration will supply a service, free of charge, for issuing, transmitting and filing electronic invoices.

As of 1 January 2017 the public Tax Data Exchange system for internal invoices will be available to all taxpayers. A significant reduction of administrative burdens may be expected, if the totality of invoices, issued or received by taxpayers, will be in electronic format.

#### ***VAT–Deemed intra-EU supplies or purchases***

In compliance with the Dresser-Rand Ruling (Cases C-60612 and C-607/12), “European Law 2014” (No. 115 of 29 July 2015) changed Italian VAT, so that any entry or exit involving work on goods is to be treated as a deemed intra-EU supply, or purchase, if the assembled goods are dispatched to end customer and not returned to the taxable person in the Member State from which they were initially transported.

#### ***VAT - Legislative Decree implementing MOSS***

Directive No. 2008/8/EC was implemented in Italy with Legislative Decree No. 42/2015 (amending Law Decree No. 633/1972). The introduction of MOSS in Italy changes territoriality rules for TBES services only for B2C supplies. Registration in the Moss system is now available at: ([http://www1.agenziaentrate.gov.it/english/services/moss/index\\_moss.htm](http://www1.agenziaentrate.gov.it/english/services/moss/index_moss.htm))

#### ***VAT – Split payment for public bodies***

According to Council implementing decision (EU) 2015/1401 Italy was authorized to introduce a special measure against tax evasion in derogation of Articles 206 and 226 of Directive 2006/112/EC. Under the new regime, public bodies have to pay VAT due for supplies directly to the Treasury and the supplier would neither have to make an advance VAT payment on their behalf nor would not have to pay any VAT.

*September 2015*

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## POLAND

1. On 5th August 2015, the President of the Republic of Poland signed an act amending the Tax Law Act and certain other acts, dated 5 August 2015.

The said amendment to the Tax Law and certain other laws introduces a principle stating that any doubts arising with regard to the tax law regulations which cannot be resolved are going to be interpreted to the advantage of taxpayers. This solution is intended to provide a stronger protection of the taxpayers' rights and enhance confidence in business trading.

In addition, the amendment sets forth a proposed relaxation of the tax control rules. Amendments to the Freedom of Business Activity Act allow for conducting control not only in the company's registered office or its business venue but also at the place of keeping company records, including tax books.

The new regulations are coming into force as of 1 January 2016.
2. From 11 September 2015, the *gmina* (commune/municipality) council may introduce a new local charge called the advertising charge. It will apply to advertising boards or devices placed within the *gmina's* territory.

The act amending certain laws in connection with reinforcement of the landscape protection tools, dated 24 April 2015 (Journal of Laws item 774), has introduced a possibility to impose an advertising charge by *gmina* councils.

The advertising charge is going to be levied from owners of real property or buildings, except for land under perpetual usufruct, perpetual users of land, holders of independent real property or buildings and holders of real property or any part thereof, or of buildings or any part thereof owned by the State Treasury or a local government unit.

Exemption from the charge will apply to advertising boards and devices which cannot be seen from public places, which are signboards or which have been placed to fulfil legal requirements. No charge will be levied either on any advertising boards and devices which convey religious information or commemorate people, institutions or events.
3. On 31 August 2015, the act on tax administration of 10 July 2015 was published, which will supersede the current act on tax offices and chambers dated 21 June 1996.

This act lays down the responsibilities and organisation of the tax administration. It also introduces amendments to a number of legal instruments, including, amongst others, the act on enforcement procedure in administration, the Tax Law and in the petty offences procedure code.

Following the new regulations, the tax administration bodies will include: the minister competent for public finance affairs, a tax chamber director, director of the National Tax Information Office and a tax office head. The director of the National Tax Information Office has been awarded the 'tax body' status, and s/he will be competent for issuance of individual tax law interpretations.



The Minister of Finance will perform his/her tasks with the assistance of the Tax Administration Head – a secretary or an undersecretary of state in the office serving the minister competent for the public finance affairs.

The act sets forth detailed regulations governing the service and support to be provided to the taxpayer, which are to be implemented, amongst others, by the taxpayer service centre and by the taxpayer assistant. The Tax Administration Knowledge Database is to ensure uniform and generally available tax information, which will contain tax law interpretations as well as judicial decisions.

The tax administration bodies will perform their responsibilities using the Central Tax Data Register, which is to be kept in an IT system.

Except for few of its regulations, the act will come into force as of 1 January 2016.

4. As of 1 July 2015, new regulations have come into force, introducing an allowance for bad debts, and more goods have been covered by joint and several responsibility of the purchaser.

From 1 July, an amendment has been in force in the goods and services tax act and in the Procurement Law, extending the reverse charge mechanism to cover, amongst others, tablets, laptops, game consoles and mobile phones.

The new regulations are intended to curtail VAT deduction abuse and in particular tax fraud and tax evasion. Amongst others, regulations concerning bad debt allowance have been laid down more precisely. This mechanism refers to payments of due amounts which were not made within 150 days of the date stated in the contract or invoice. The creditor may not claim the allowance if the debtor is in the course of bankruptcy or liquidation proceedings.

According to the amendment, a debtor will not be obliged to make a correction of the input tax deducted earlier provided that s/he will be under bankruptcy or liquidation proceedings on the last day of the month in which 150th day lapses from the payment date of, e.g., an overdue invoice. In practice it means that the input tax deducted by the debtor will need to be reported in the bankruptcy estate, and the creditor will have a greater chance to recover its overdue amounts by this means.

The new regulations provide also for extending the reverse charge mechanism to cover, amongst others, some forms of gold, further steel products (i.e. products with properties identical with goods already covered by that mechanism), mobile phones, laptops, tablets and game consoles. This mechanism transfers the tax settlement liability from the supplier to the purchaser. The adopted amendments have introduced an extended catalogue of goods which are subject to the reverse charge, and it covers unformed semi-products from non-ferrous metals - aluminium, lead and zinc.

Another amendment has been adopted stating that the seller will not be obliged to settle VAT in a reverse charge transaction involving mobile phones and tablets also in a situation where the reverse charge was applied incorrectly as a result of unfair acts of the purchaser.



The amendment imposes an obligation on sellers to submit information to the tax office with a summary of completed transactions. The information shall include, amongst others, the total value of deliveries or services.

The new regulations are also increasing the guarantee deposit for fuel deliveries: the minimum one up to PLN 1m (from PLN 200 thousand) and the maximum one up to PLN 10m (from PLN 3m).

5. Free legal assistance will include advice of tax consultants

On 25 August 2015, the President of the Republic of Poland signed the Act on Free Legal Assistance and Legal Education of 5 August 2015.

Over 1500 service points providing free legal assistance will be established in 2016. This assistance, which includes advice of tax consultants, will be provided, for instance, to elderly people, holders of the Big Family Card as well as veterans.

According to the act, 50% of new points can be run by non-governmental organisations. Assistance is going to be provided by barristers, legal advisers and - in points run by NGOs – also tax consultants and law college graduates (with at least three years' experience).

Advice can cover completion of tax returns, but it may not refer to tax matters related to business activity.

The free legal assistance can be provided to: the elderly of 65 years of age and older; young people aged 26 and younger; holders of the Big Family Card; individuals receiving help from social services; individuals under a threat of a natural disaster or who suffered from a natural disaster or a technical failure; veterans.

The new regulations are to come into force as of 1 January 2016.

6. In September, the Polish Sejm will continue its work on the Governmental bill amending the excise tax act and certain other laws

The purpose of the new regulations is to reduce the administrative obligations imposed on the trade in excise-liable goods and thus to reduce business activity costs.

The amendment introduces exemption from the excise duty for energy-consuming plants starting their business activity and using coal or gas products. The excise exemption will also cover enterprises using electric energy for chemical reduction purposes in electrolytic, metallurgy and mineralogical processes. These solutions are to equalise the competitive position of Polish enterprises with companies from other EU countries.

The required excise duty related records can be replaced by other tax or accounting records. And the records kept for the purpose of control of excise-liable goods will be limited, for instance, by eliminating the double verification of entities before they are issued an excise authorisation as well as the double documentation on tax warehouses and introducing a single application for the authorisation and official verification.

The duty of submitting excise security when moving goods with a zero excise rate under the suspension procedure will be lifted, significantly reducing the business activity costs.



The new regulations are to come into force as of 1 January 2016.

7. In September, the Polish Sejm will continue its work to amend the act on local taxes and charges. The act is introducing exemption from the tax on real property land and buildings or a part thereof owned by *gminas*.

The amendment sets forth an object-related exemption from the real property tax for land and buildings or a part thereof owned by *gminas*, except for those occupied for business activity purposes or held by public finance sector units other than *gminas* and other entities. Introduction of this exemption is aimed at eliminating such cases where a *gmina*, being a subject of the public law, levies the tax from itself.

Any real property in/on which business activity is conducted or which is utilised by entities other than the *gmina*, will continue to be subject to taxation.

The new regulations are to come into force as of 1 January 2016.

8. In September the Polish Sejm will continue to work on the Governmental bill amending the Tax Law and certain other laws.

The amendment simplifies tax procedures by introducing general power of attorney in tax proceedings, a unified format of electronic reports from tax books and tax evidence, changes in the service of official letters, an anti-tax evasion clause, a possibility of paying tax on the taxpayer's behalf, a new solution of appointing one "leading" tax office on matters concerning related entities which are subject to territorial jurisdiction of different tax offices; extending the access for tax offices to the banking data and streamlining the issuance of individual tax interpretations.

The amended regulations are to come into force as of 1 January 2016.

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## ROMANIA

### 1. VAT

- Starting with 1 June 2015, the 9% VAT rate is applied for:
  - restaurant and catering services;
  - non - alcoholic drinks;
  - food :
    - food and non-alcoholic drinks for human and animal consumption;
    - live animals and birds from domestic species;
    - seeds, plants and ingredients normally used in preparing food;



- products normally used to complete or replace food.

- The reduced 9% VAT rate is also applied, starting with 20.01.2015, for all types of accommodation available in tourist locations which offer housing facilities.

The types of accommodation covered are:

- accommodation without breakfast;
  - accommodation with breakfast;
  - half-board accommodation;
  - full-board accommodation;
  - “all-inclusive” accommodation;
- offered at an aggregated total price.

## 2. Excises

- Establishing specific excise duty on cigarettes, applicable from 1 April 2015 to 31 March 2016;

## 3. Other amendments to the Fiscal code

Law no. 571/2003 regarding the Fiscal Code has been amended and supplemented by the publication of Government Emergency Ordinance no. 6/2015- Romanian Official Gazette no. 250/14 April 2015.

This Ordinance introduced provisions with respect to:

- taxation of income from the transfer of immovable property from personal patrimony, as well as clarifications regarding advance income tax payments for rental income;
- fiscal treatment applicable to interest revenues/ revenues from freelancing activities derived by legal entities /individuals resident in the European Union or the European Economic Area.

### ➤ **Taxation of income from the transfer of immovable property from personal patrimony**

- New measures were introduced as regards the obligation of the competent tax authorities to issue tax decisions by means of which the tax due is calculated and collected for the transfer of property rights obtained through court order, through other procedures or in the case of forced execution. The tax due has to be paid within 60 days from communication of the tax decision.
- It has been eliminated the obligation of the Land Registry Office officials to check whether the tax on the income obtained from the transfer of immovable property has been paid in order to register in the Land Registry Office the rights obtained through such transfers.

### ➤ **Advance tax payments for rental income**



- Clarification has been provided regarding the method of calculation of advance tax payments in the case of dissolution, during the fiscal year, of rental agreements with the rent representing the equivalent in RON of an amount in foreign currency.
- In the case of dissolution of a rental agreement during the fiscal year, with the rent representing the equivalent in Romanian currency (RON) of an amount in foreign currency, the advanced tax payments are recalculated by the competent tax authorities, at the tax payer's request, upon submission of supporting documents.
- The annual income is determined based on the exchange rate published by the National Bank of Romania on the day prior to communication of the tax decision.
- In this situation, the annual tax returns are not submitted for the income obtained.

➤ **Withholding tax**

- Legal entities/ individuals resident in Member States of the European Union or the Economic European Area deriving interest revenues/ revenues from freelancing activities in Romania may opt for the regularisation of the withholding tax by way of declaring and paying in Romania the corporate income tax/ income tax related to the revenues obtained. The non-residents have the following options:
  - revenues derived from Romania, by way of declaring and paying corporate income tax for the taxable profit related to these revenues according to the provisions of Title II of the Romanian Fiscal Code;
  - non-resident individuals deriving revenues from freelancing activities in Romania may opt for the regularisation of the withholding tax applied, by way of declaring and paying income tax for the taxable income related to these revenues, in accordance with the provisions of Title III of the Romanian Fiscal Code.
- The tax withheld and paid for interest revenues/ revenues from freelancing activities would be considered as an advance payment in relation to the corporate income tax / income tax.
- Where the income beneficiary does not make available its tax residency certificate and, consequently, the payer withholds 16% in accordance with the Romanian Fiscal code, the amount withheld can be deemed as an advance payment in relation to corporate income tax/ income tax only if the tax residency certificate is subsequently obtained.
- The possibility for regularisation of the withholding tax is only applied in the case of revenues derived from Romania by residents of member states of the European Union or the European Economic Area, provided that a Convention for the Avoidance of Double Taxation or a legal instrument for the exchange of information is concluded between Romania and those states.

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## SLOVAKIA

The Slovak government further continues with its program “Action Plan to Combat Tax Fraud in 2012 - 2016”. There have been numerous legislation changes over the past years, mainly to fight VAT fraud and to increase revenues from income tax and corporate taxes. We would like to inform you about the next planned measures for 2015:

- Recently introduced VAT check statements (Electronic list of VAT invoices delivered to Tax authorities together with VAT returns) will be extended and more detailed information about simplified cash invoices must be reported.
- Important changes in the Tax Code will be introduced, such as changes in calculating penalties dependent on time factor and fact if the penalty is a result of a tax audit or self-correction of a tax return, an aggregate penalty will be used for multiple breach of tax law
- Tax authorities plan to introduce an internal valuation of taxpayers. This is an internal procedure of tax authorities and no further details about the criteria and valuation methods have been made public.

*Ing. Ján Polóny, PhD.*

*Slovak Chamber of Tax Advisors (SKDP)*

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## SLOVENIA

### **Penal code (*Zakon o spremembah in dopolnitvah Kazenskega zakonika – KZ-1C, UL RS 54/15*)**

Penal code has changed. A new article 249 about tax avoidance, tax fraud as criminal work. It will ... from 20 th Okt 2015. As criminal act is defined also periodical and

### **Personal Income Tax (*Zakon o spremembah in dopolnitvah zakona o dohodnini ZdoH-2P, UL RS 55/15*)**

Personal Income Tax has changed. Changes were not significant.

### **Act on fiscal verification of invoices (*Zakon o davčnem potrjevanju računov - ZDavPR, UL RS 57/15*)**

Act on fiscal verification of invoices was adopted., which includes verifying invoices for cash transactions by the Financial Administration. The certified cash registers will be connected to the central information system of the financial authority via the internet, so processed invoices will be verified and saved in real time. The verification procedure will form a system that will enable traceability and effective oversight of issued invoices and limit the grey economy.



From 2 nd January 2016 all taxable persons will have to verify their invoices paid by cash or credit card on the financial authority.

**Fiscal Rule Act (*Zakon o fiskalnem pravilu – ZFP, UL RS 55/15*)**

Fiscal Rule Act was adopted in July 2015 by the National Assembly.

Fiscal Rule Act is a powerful signal of Slovenian Parliament to the international community that we were worthy of trust. “It is of key importance for me that we enable ourselves and our descendants a safe future and long-term social stability also with this Act, whereby our primary care must be directed towards future generations and the provision of a positive future for Slovenia’s youth,” said Sloven Minister of finance after adoption.

**Company Act (*Zakon o gospodarskih družbah, ZGD-1 UL RS 55/15*)**

The amended act adds new restrictions to the establishment of companies which refer to infringements regarding payments for labour or unregistered employment in order to prevent unfair business practices related to payment for work. In addition, establishing companies is restricted for persons who have held over a 50 per cent stake in the capital of a limited liability company that has been deleted from the court register without liquidation in accordance with the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.

A person who has acquired a share in a limited liability company that was established in the last three months will not be able to become the founder or partner of a limited liability company. This is supposed to make setting up additional companies as vehicles for sell-offs and playing creditors, the authorities and employees more difficult. The draft includes several exceptions so as not to prevent the establishment of limited liability companies by genuine entrepreneurs.

In order to improve corporate management, the amendments introduce the institution of internal auditing, amends provisions with regard to the audit commission and rule on insuring the responsibility of the members of management and supervisory bodies.

Also added were requirements regarding connected persons within corporate groups. It defines in greater detail the report, audit and consent to the corporate contract, as well as the rights of creditors within corporate groups.

The amendments also amend the penal provisions by adding new offences (e.g. for members of management, and management and supervisory boards). One of the novelties is that the level of the fine depends on the size of the company.



The draft amendment partly transfers into Slovenian legislation Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on annual financial statements, consolidated financial statements and related reports of some types of undertakings, amendments to Directive 2006/43/EC of the European Parliament and of the Council and repealing directives of the Council 78/660/EEA and 83/349/EEA and Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 on amending Directive 2006/43/EC on required audits of annual and consolidated financial statements and regulates the implementation of the Regulation of the European parliament and of the Council 1606/2002/EC of 19 July 2002 on applying international accounting standards.

*Prepared by Simona Novak*

*Zbornica davčnih svetovalcev Slovenije*

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## SWITZERLAND

### **Corporate Tax Reform III - Update**

As mentioned in the “National Report Switzerland” dated from September 30<sup>th</sup> 2014, Switzerland has been under international pressure for some years because of its cantonal regimes for holding, domiciliary and mixed companies. In the framework of the Corporate Tax Reform III (CTR III) the cantonal tax regimes are to be abolished and substituted by new competitive and internationally accepted measures.

The package includes a Patent Box (“output promotion”), which aims to promote (by means of specific tax incentives) the development and the use of intellectual property rights. Additionally to the introduction of a patent box the cantons should have the possibility to allow increased tax deductions for research and development expenditures at the cantonal level (“input promotion”), which complies with the OECD Guidelines. Furthermore the package contains rules regarding the disclosure of hidden reserves. Given the abolition of the cantonal tax regime, the companies must be allowed to transfer from privileged to ordinary taxation without immediately increasing their tax burden. To further boost Switzerland’s attractiveness as a business location, the cantons will reduce their ordinary corporate income tax rates. Moreover the current law deducts only interests on debt capital. Hence within the ambit of the CTR III it was suggested to align the tax treatment of debt and equity by means of an interest-adjusted corporate income tax. But the Swiss Federal Council has excluded the Notional Interest Deduction (NID) from the reform package in April 2015. Nevertheless, the NID is strongly supported by a majority of the political parties and the economy. Thus, it will very likely be reintroduced. Further measures are the abolishment of the one-time capital duty on capital contributions, the harmonization of the partial taxation of dividend income on federal as well as on cantonal level, and the discriminatory



treatment of permanent establishments with regard to the lump-sum tax credit of foreign residual withholding taxes should be removed.

### **Mutual Assistance in Switzerland**

Switzerland is poised to give in to global pressure to assist foreign tax probes involving stolen bank data. Under current law mutual assistance to requests based on “stolen data” are not allowed. Switzerland now proposed amending its laws to share information with foreign countries probing tax crimes on the basis of “stolen data”. The proposal assumes significance especially for India because it is probing hundreds of citizens for suspected hoarding of alleged black money in Swiss banks. This significant policy shift was put to consultation in August 2015 and would still have to face parliamentary scrutiny before being put into force – most likely not before the start of 2017.

### **Exemption of the withholding tax on bail-in bonds**

The Federal Council wants to maintain the withholding tax exemptions for certain financial instruments of Swiss banks and introduce new ones. In its dispatch, the Federal Council proposes maintaining the existing withholding tax exemptions for a limited period with the aim of boosting the stability of the Swiss financial centre. A temporary withholding tax exemption should be introduced for bonds that were approved by FINMA at the time of issuance and that can be written down or converted into equity capital as part of restructuring procedures in the event of (threatened) insolvency. These exemptions create the necessary tax environment for Swiss banks to be able to issue these financial instruments from Switzerland at competitive terms.

*Ernst & Young Ltd*

*Walo Staehlin/Alexander Seewer*

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## **UNITED KINGDOM**

### **Report on UK developments March to September 2015**

#### **Budget March 2015 and first Finance Bill 2015**

- The Budget took place on 18 March and the Finance Bill was published very shortly afterwards and became law, Finance Act 2015, after only a few hours' debate. Parliament was then dissolved on 30 March prior to the General Election on 7 May.



- The Conservatives were elected with a small overall majority and so they now form the government and are no longer in coalition with another political party (they were in coalition with the Liberal Democrats from 2010 to 2015.)

### **July Budget and second Finance Bill 2015**

There was a second Budget on 8 July and the Finance Bill was published on 15 July. The detailed provisions are being considered in the Public Bill Committee which began sitting on 8 September after the return from the summer holidays. A second Finance Act of 2015 will be finalised before the end of the year.

### **Autumn Statement**

On 25 November there will be an Autumn Statement, which has become a mini-Budget in recent years, and draft clauses will be published shortly afterwards and, with suitable amendments, will become part of the Finance Bill of March/April 2016. At the same time, 25 November, the government will announce the results of the Spending Review which is being undertaken over the next couple of months.

### **Direct tax**

- The headline rate of tax came down to 20% from April 2015.
- In the July Budget the Chancellor announced the headline rate would come down to 19% from April 2017 and then to 18% from April 2020.
- Expenditure on capital plant and machinery can be fully written off up to £250,000 of expenditure each year.
- The Diverted Profits Tax which was announced in December 2014 was enacted at the end of March in Finance Act 2015. It will tax international business on UK based profits which those businesses have sought to “divert” from the UK by not creating a Permanent Establishment in the UK or using artificial means to ensure the profit does not arise in the UK under existing rules. This new law applies from 1 April 2015.
- The existing pension regime is going to be fundamentally changed and pensioners will be free to draw out the money in their pension arrangement paying tax at their marginal rate of tax at the time the funds are withdrawn. The government is also consulting on more fundamental changes to the tax regime for pensions: one suggestion is that there will be no tax relief on contributions to pension funds but the pension will not be taxable when paid.

### **Indirect Tax**

#### **End of March**

26 March HMRC publishes Brief 8/2015 concerning input VAT recovery on pension fund management costs.



March HMRC issue a position paper on the VAT provisions for non-EU 'use and enjoyment' of business to customer (B2C) mobile phone and broadband services. Where the services can be used outside the EU, this would remove that element of the service from UK VAT.

24 March HMRC extends indefinitely the reduced compliance requirements for microbusinesses undertaking EU digital supplies (a micro business is one that employs fewer than 10 persons and has either annual turnover or an annual balance sheet total not exceeding €2 million).

#### **Apr 2015**

20 April HMRC publishes updated procedures for authorised economic operator application and auditing.

28 April HMRC issues VAT notice 1001 concerning VAT refunds for certain charities.

#### **May 2015**

21 May Court of Appeal upholds Littlewoods claim to compound interest as recompense for VAT overpaid as a result of a mistake of EU law.

21 May HMRC issues guidance for agents using the mini one stop shop.

21 May High Court upholds the right of Premier Foods to recover directly from HMRC £4m of input VAT incorrectly invoiced to it by a supplier (who was in administration) and which the supplier had paid over to HMRC.

21 May Upper Tribunal concludes the BBC was an organisation having objects similar to an educational aim as specified in UK law. As a result the Open University's claim to recover £21m of overpaid VAT arising from the BBC charging VAT on its supplies when they should have been VAT exempt, was upheld.

#### **June 2015**

2 June Upper Tribunal concludes that the relocation of a loan broking service from the UK to outside the EU (thus permitting zero rating of the business's advertising costs) was not an abuse of EU VAT law.

20 June Supreme Court concludes that a series of transactions entered into by Pendragon plc to achieve input VAT recovery on passenger cars without output VAT due on their final sale outside the business, was an abuse of power. The scheme involved transactions between the UK and a third party located outside the EU. The Supreme Court considered that the doctrine could apply to provisions of national law that were not directly giving effect to provisions in the Directive. Lord Sumption said: "The Cars Order was made with the intention of applying art 26a of the Sixth Directive to the used car market. All domestic VAT implementing legislation is made against the background of EU law, including its general principles, and on the footing that these will apply to it. It would be irrational and unworkable for the principle of abuse of law to apply to some steps in a concerted scheme



of transactions but not others, depending on the degree to which the legislator's intention to transpose the Directive was successfully achieved. For these reasons, I think that Lord Neuberger was right in *WHA Ltd v Revenue and Customs Comrs*, at para [44], to say that if the domestic legislation in question has been enacted with the intention of giving effect to the Directive, 'the fact that it imperfectly transposes the Sixth Directive should not justify non-application of the abuse principle'.

- 9 June HMRC updates its notices on VAT on postal services and delivery where direct marketing is involved along with the provision of printed matter (potentially zero rated) to clarify that certain printing and delivery services involved in direct marketing for charities are subject to VAT. A previous concessionary treatment is to end on 31 July 2015.
- 9 June The Upper Tribunal (UT) concludes that input VAT on investment management of Cambridge University's endowment fund was residual input VAT, recoverable according to the university's partial exemption method.
- 23 June HMRC publishes Brief 9/2015 on the implications of the Littlewoods decision on compound interest (noting it is seeking permission to appeal the Court of Appeal's decision to the Supreme Court).

#### July 2015

- 1 July In the case of *Secrets*, the Upper Tribunal concludes that commission charged on redeeming vouchers was a taxable supply and not a VAT exempt supply in connection with the dealing of a security for money.
- 7 July Upper Tribunal clarifies that the transfer of a business of providing bank processing systems, to a VAT group, met the TOGC conditions where the group used it to provide its own banking platform.
- 8 July Summer Budget covering:
- VAT 'use and enjoyment' provisions will apply so that, from next year, it will be clear that all UK repairs made under UK insurance contracts will be subject to VAT in the UK.
  - Clarification of the method for refunding VAT to certain charities
- 8 July The Supreme Court holds that gaming machines involving a random number generator providing numbers to a range of terminal machines, were gaming machines within the definition of the exclusion from VAT exemption at the relevant time.
- 15 July HMRC clarify they must be notified by 30 Nov 2015 of the desire to use the concession (which ends on 31 July) for VAT on postal and printing services supplied to charitable entities.
- July In response to CJEU judgment in the *Le Crédit Lyonnais* case, the March 2015 Budget announced that legislation would be introduced to restrict the deduction of VAT incurred within the UK in the management of foreign branches. Following a period of consultation,



we understand that the legislation will now not be introduced in August as originally intended.

- 21 July First Tier Tribunal concluded that in determining the VAT status of a supply of medical care services, the legal form of the person providing the medical care is irrelevant so long as the essential nature of the supply being made does not change. There was no need for supplies of medical care to be made directly to the final patient and the supplies in this case could be treated as VAT exempt.
- 28 July The Court of Appeal has concluded the residual input tax paid by Volkswagen Financial Services (UK) Limited (VWFS) incurred in respect of the general overheads of the business, was deductible against the output tax paid on the taxable supply of vehicles to customers.
- 31 July HMRC issues Brief 13/2015 clarifying that any changes implemented as a result of the CJEU decision on reduced rate for energy saving materials will not be brought in before Finance Act 2016.
- 23 July First tier Tribunal decides to refer questions to the CJEU on whether a sport qualifying for VAT exemption requires an element of physical exertion, or whether sports with a predominantly mental requirement can qualify.

#### **Aug 2015**

- 3 Aug Upper Tribunal concludes that a £71k surcharge for the payment late by one day of £3.5m of VAT was a proportionate penalty.
- 13 Aug First tier Tribunal concludes that input VAT incurred on the cost of vouchers used by Associated Newspapers in a marketing campaign was recoverable, whether incurred on purchase from intermediaries or direct from retailers.
- 17 Aug HMRC issues Brief 14/2015 providing guidance on the VAT treatment of introduction of a compulsory charge on single use carrier bags to be effective from 5 October 2015.

*ICAEW Tax Faculty / Chartered Institute of Taxation*  
*September 2015*

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