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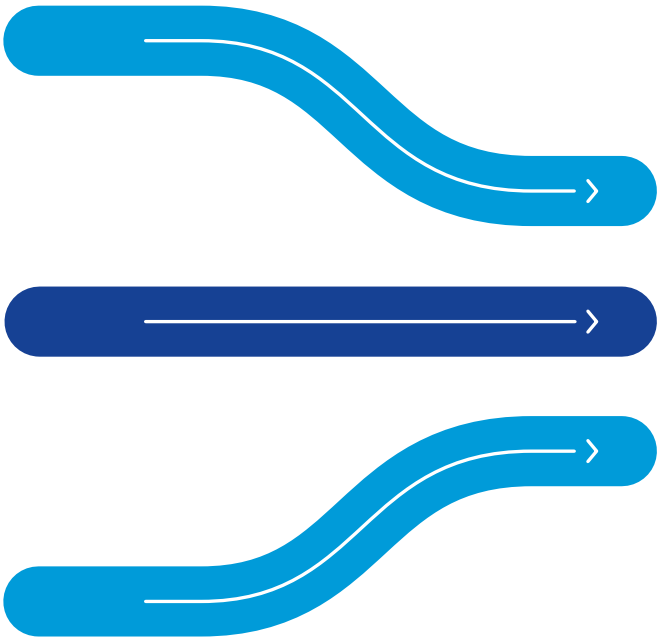
# Legal News
## February 2019

## Central- and Eastern Europe



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# Big changes in tax regulations

A new chapter in the government's tax offensive. Significant modifications to key regulations aim to further optimize the tax system.

As part of the ongoing campaign aimed at optimising the tax system and increasing tax revenues, the Polish legislator is introducing a new bundle of systemic solutions. By the end of 2018, a comprehensive amendment to the PIT, CIT and general tax ordinance acts was passed, which introduces a number of new regulations. The first provisions of this resolution have just come into force.

A new chapter of the Tax Ordinance introduces extensive reporting obligations to tax authorities of tax schemes, i.e. solutions aimed at tax benefits (so-called MDR, Mandatory Disclosure Rules). This is a response to Council Directive (EU) 2018/822, which aims to combat aggressive tax optimisation practices by introducing reporting obligations, as well as by improving exchange of information between EU countries.

The new regulations impose an obligation to report not only on advisers (e.g. tax, legal, bank employees), but also on entities and persons using/benefiting from tax arrangements. The scope of the new provisions goes partly beyond the requirements of Directive 2018/822 in that they cover not only cross-border schemes but also domestic schemes, while the reporting obligation applies partly retrospectively. Evading these obligations may result in imposition of penalties of up to PLN 2 million.

In addition to the MDR, an exit tax has also been introduced, i.e. a tax related to the transfer of a taxpayer's tax residence outside Poland. This applies both to companies and individuals.

Other new solutions include, for example:

- special regulations governing taxation of income from virtual currencies,
- preferential taxation of income generated by intellectual property rights,
- arrangements for the acquisition of debt portfolios,
- an alternative way of taxing the issue of Eurobonds,

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- changes in transfer pricing rules,
- limiting the possibility of issuing individual interpretations with regard to anti-avoidance provisions and changes in the provisions of the protective force of general interpretations and tax explanations in cases of tax avoidance.

Due to controversies and uncertainties related to the new regulations, the Ministry of Finance is currently drafting extensive explanations to all new regulations. Publication of the explanatory notes is scheduled for mid-2019.

Source: Act of 23 October 2018 amending the Personal Income Tax Act, the Corporate Income Tax Act, the Tax Ordinance Act and certain other acts

# Belarus introduces manufacturer's sale price for medicines registration from 2019

Manufacturers of medicines to register maximum selling price based on reference price method.

In order to keep prices for medicines at bay, Belarus is introducing manufacturer's selling price registration based on the reference prices method.

At first, the measure will affect only some oncological and cardiovascular medicines listed in the legislation and will remain until 2021. If it proves to be effective the measure will cover all medicines and extended.

From 1 January 2019 selling affected medicines without a price limit registration is prohibited in Belarus.

The Ministry of Healthcare together with its subordinate organization, the Centre for Examinations and Tests in Healthcare (RCETH), handles applications and registrations. At the request of the RCETH, the Ministry of Antimonopoly Regulation and Trade (MART) evaluates the price set by the manufacturer according to the set methodology and approves or rejects it.

The right to apply belongs to the holder of the medicine's state registration certificate or their authorized representative.

Each calculation is detailed and specified for certain types of manufacturer, products (original, generic) and situations in the methodology approved by MART (available in English here).

The reference countries are Armenia, Bulgaria, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Russia, the Czech Republic, Estonia and the country of manufacturer's residence.

For instance, the manufacturer's sale price limit for a non-EAEU manufacturer who is not involved in primary or secondary packaging of its products in Belarus for original medicines is established based on comparison of (1) the weighted average of the actual selling price in Belarus for the calendar year preceding application for registration and (2) the average minimal selling price in reference countries, whichever is less. Detailed rules are laid down in the methodology for calculation of each indicator mentioned.

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Documents supporting the application among others must include a power of attorney and a list of open information sources with data on manufacturers' minimum selling prices in the reference countries.

The registered prices are added to the special register publicly available on the web-page of RCETH.

The manufacturer may not sell its products for a price above the registered maximum price.

Source: National legal internet portal of the Republic of Belarus (NLIP)
24.08.2018, 1/17898

# Recreational vouchers are now mandatory!

Do you want to spend your holiday in Slovakia? From 1 January 2019, some employers will have to provide you a recreation contribution.

In an attempt to support local tourism, Slovak legislators passed a Labour Code amendment, according to which companies employing more than 49 employees are obliged to provide a recreation contribution to any employee who requests it. Companies with less than 49 employees will be able to issue the recreational vouchers on a voluntary basis.

The recreation contribution is available to employees whose employment with the company has lasted at least 24 months. This means that only employees working under an employment contract are eligible, including part-time employees. An employee can only apply for a recreation contribution from one employer.

The amount of the recreation contribution is 55% of the recreation costs, up to a maximum of €275 per calendar year. However, only full-time employees are eligible for the full amount. For part-timers, the contribution will be reduced proportionally to their shorter working hours. For example, a part-time employee who works 20 hours a week is only entitled to a half.

The recreation contribution applies only to holidays which include at least two overnight stays in Slovakia.

Companies can provide the contribution either in financial form, or as recreation vouchers.

Employers and trade unions are skeptical. They argument that the law discriminates employees of smaller companies, and that people who cannot afford to pay the remaining costs of their holiday will not apply for a voucher. It will also increase labour and administration costs. As is the case with food vouchers, the legislator compels employers to give employees money for a specific purpose, instead of enabling them to reward the employees with a contribution which they could use as they see fit.

Only time will tell whether the employers' fears that the new law will have a negative impact on the future economic growth of Slovakia will come true, or whether the recreation contributions will become hugely popular among employees willing

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to spend their holiday, and their money, in Slovakia, thus boosting the local economy.

Source: Act No. 347/2018 Coll., amending and extending Act no. 91/2010 Coll. on Tourism, as amended

# Company formation possible without Estonian bank account.

A change in the law of 1.01.2019 enables foreigners to establish a private limited company in Estonia without an Estonian bank account.

Starting a business in Estonia is generally quick and easy. Since 2014, foreigners have been able to start and run businesses online in Estonia thanks to e-residency ☐ a digital international "ID-Card". An obstacle was opening a bank account in Estonia. Especially in recent years, the banks had tightened their opening requirements for accounts and this often made opening an account almost impossible for foreigners.

The aim of the amendment is to remove this obstacle. From 1 January 2019, setting up a private limited company in Estonia is possible using a payment account which has been opened on behalf of the incorporated company by a credit institution or bank established in the European Economic Area (EEA).

Undoubtedly this measure will make it easier for one or another foreign investor to set up a business in Estonia. On the other hand, the inevitable question is whether a foreign bank is willing to open an account for a newly-established Estonian private limited company.

If the foreign company founder is well known to its bank in a positive sense, this can open up new perspectives. In any case, the question must be clarified if possible beforehand with the bank concerned.

Additionally, under certain conditions an Estonian private limited company can be established without contributing share capital. In practice, this gives the founder time to find a willing bank.

Conclusion: it remains to be seen whether the change in the law actually works and makes starting a business for foreigners in Estonia easier.

Establishing a public limited company, still requires a securities account at an Estonian bank.

Source: Estonian Commercial Code

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# New requirements for collecting and providing personal data: what's new?

What new personal data to collect and store about shareholders under the new legal regulation?

As a result of implementation of the 4th EU Money Laundering Prevention Directive, from 1 January 2019 amendments to Lithuania's Law on Prevention of Money Laundering and Terrorist Financing entered into force.

Companies, except state-owned and municipal-owned companies, must provide personal data about their beneficiaries to the Legal Entities Information System (JADIS). The amendments impose a legal obligation on companies to obtain, update and store accurate information about their beneficiaries – name, date of birth, personal identification number, country of issue of identity document, residence, ownership rights and amount (% of shares, % of voting rights) or other controlling rights (chairman of the board, board member, manager, senior manager, other duties and obligations, details of voting rights transferred).

The ultimate beneficial owner is held to be a natural person who directly or indirectly controls more than 25 percent of the voting rights in the company.

It should be noted that data must be provided not only about the ultimate beneficial owner but also about the whole governance structure of a group of companies, i.e. about all legal entities up to the ultimate beneficial owner, a natural person.

Although the new legislation significantly increases the amount of personal data that must be provided, the objective of the amendments is to ensure and to increase transparency, quality of information about the actual owners of legal entities, and to make data on beneficial owners more reliable as well.

At present fines for violations of Lithuania's Law on Prevention of Money Laundering and Terrorist Financing may amount from 0.5 to 5 percent of annual income.

Source: Law of the Republic of Lithuania on Prevention of Money Laundering and Terrorist Financing

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# New Austrian Supreme Court ruling on European Certificates of Succession

Judgment of the Austrian Supreme Court (OGH) on land specifications with far-reaching implications for ECS practice

In an earlier article published on 20 July 2018 I dealt with the experience with German European Certificates of Succession (ECSs), which were introduced by Regulation 650/2012/EU (EuErbVO) and can be issued for deaths since 17 August 2015 (Entry of land plots in a European Certificate of Succession issued in Germany). That article elicited a number of responses from readers, confirming my view that the Czech Republic (as well as Austria, Slovakia, and Hungary) have substantial problems in this regard – problems which are still awaiting to be resolved by jurisprudence.

The decision of the Austrian Supreme Court (OGH, judgment of 15 May 2018, AZ: 5Ob35/18k) concerns the central question between Germany and Austria, but mutatis mutandis also the Czech Republic, Hungary and Slovakia, namely whether ECSs from Germany, which do not contain a specification of plots, are sufficient for a transfer of Austrian (or Czech, Slovak or Hungarian) plots.

In almost all successor states of Austria-Hungary, where Maria Theresa introduced in the great reforms of 1750 as a "tax (Theresian) register" as a register of real estate, specifications of plots of land are essential for transferring or registering them. However, in ECSs issued in Germany, these specifications are often missing, in particular because of the practice of Bavarian courts (judgements of the Higher Regional Court of Munich and Nuremberg from 2017, to which many German district courts orient themselves).

A similar case has now been decided by the Austrian Supreme Court in Vienna: four German heirs requested the transfer of properties in Austria with a German ECS, which contained no designation of the properties. In the opinion of the OGH, a transfer is possible without specifying properties in the ECS. This is because the EuErbVO takes precedence over national cadastral law.

In detail, the Supreme Court justifies this result with the Austrian peculiarity that "...according to formal (sc. Austrian) register law, the concrete designation of property in a European Certificate of Succession (or a copy) is not a mandatory prerequisite for incorporation. The content of such a certificate is based

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exclusively on Art. 68 EuErbVO, which conclusively regulates the information to be included therein and does not require the designation of the property either, so that the absence of this information alone does not prevent a grant of incorporation on the basis of such a certificate.

The content of the certificate submitted by the applicants is thus unobjectionable in formal terms and leaves no doubt in substantive legal terms either because it is linked to the (rebuttable) presumption that their legal position as stated in the certificate actually exists. It was decisive that the ECS clearly expressed the legal status of the heirs and that nobody doubted their legal status.

A submission to the OGH in accordance with Art. 267 TFEU (Treaty on the Functioning of the EU) was apparently not an issue for the Supreme Court, because a provision in Austrian land register law enabled registration even without specification. The decision is important for practice in the Czech Republic, Slovakia and Hungary because it clarifies that the ECS is sufficient for registration if it has been issued lawfully, i.e. even without specifying the land; but decisions of the Supreme Court have not been binding for 100 years in Hungary, Slovakia and the Czech Republic. Unfortunately, the OGH, whose decisions are binding on Hungary, Slovakia and the Czech Republic, has not yet decided whether the ECS takes precedence over formal national cadastral or registry law. Only then would the practice of Czech, Slovak and Hungarian cadastral offices no longer be based on rejecting ECSs from Germany because of national cadastral law.

Unfortunately, the only alternative for heirs at present is to sue either against Czech, Slovak or Hungarian refusals of a Czech, Slovak or Hungarian cadastral office, or to obtain ECSs that can be used in Germany, i.e. those that specify land plots. Outside Bavaria and Thuringia this is possible, but often very time-consuming and costly. It should also be noted that an ECS is only valid for six months and validity can only be extended in exceptional cases (Art. 70 para. 3 EuErbVO).

Source: Regulation 650/2012/EU

# Loan market environment again advantageous for Hungarian SMEs

To increase the ratio of fixed-interest loans the Hungarian National Bank has re-launched the Growth Credit Program Fix (GCP).

Although the market expected the GCP in autumn 2018, the Hungarian National Bank published its product introduction on the relaunch of the GCP including the detailed terms of the programme. Thus companies are expected to start using the opportunities offered by the programme – effective as of 1st January 2019 – only in mid or late January 2019.

The GCP budget amounts to HUF 1 000 billion, to be provided by the national bank to credit institutions in the form of refinancing credits at 0% interest and maximum maturity of 10 years.

The basic terms of the GCP are the following:

- Who is entitled to apply?:
  The credit can be utilized only by SMEs as defined by law; however the Hungarian National Bank did not set out any other requirement in this respect.

- Term:
  Refinancing credits can be utilized from 3rd January 2019. The final deadline for utilizing the loan is 2 years calculated from the date of concluding the relevant credit facility agreement, provided that first use of the loan must be within 1 year calculated from conclusion of the agreement.

- Purpose of the credit:
  The GCP can be used only for new investment credit. New investments include inter alia everything that supports the business activity of an SME. A loan previously utilized by an SME cannot be refinanced from the investment credit, except if the loan was utilized under the current GCP.

- Interest rate of SME loan:
  A fixed rate not exceeding 2.5% a year. Credit institutions cannot charge additional interest, costs, fees, or commissions in connection with an investment credit.

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- The amount of SME investment credit:
  The minimum amount of the credit is HUF 3 million while the maximal amount is HUF 1 billion.

- Maturity:
  Maturity is a minimum of 3 years calculated from conclusion of the investment credit facility agreement but a maximum of 10 years calculated from first disbursement under the related refinancing loan.

- Collateral:
  The collateral structure does not alter from the usual one: credit institutions and financial institutions may require collateral from SMEs based on the law applicable to their activity and their business policy.

Based on the preliminary expectation of experts the budget will be exhausted within 2 years and will likely be enough to cover the financial needs of every firm from various sectors.

Source: https://www.mnb.hu/monetaris-politika/novekedesi-hitelprogram-nhp

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