Deloitte.

Tax news
Deloitte Czech Republic

March 2018

The Proposed Amendment to the ITA Brings Changes for Both Legal Entities and Individuals

The Ministry of Finance has released a proposed amendment to the Income Taxes Act (the "ITA") for consultation, through which the new anti-tax avoidance principles arising from the ATAD Directive (Council Directive EU 2016/1164 of 12 July 2017) should be implemented, including the abolition of the "super-gross salary" and the "solidarity tax surcharge", while, at the same time, increasing the personal income tax rate.

In addition to the changes for legal entities and individuals described below, all payers should be subject to the new anti-abuse rule (or general anti-abuse rule), currently only inferred by the judicature in certain cases. According to the amendment, the Tax Code should specifically provide for the procedure in situations where the main, or one of the main, aims of the transaction is to generate a tax or another benefit in breach of the letter and spirit of the law. We will analyse this topic in more detail in next issues of dReport.

I. Changes for Legal Entities

Over the last year, we gradually informed you of the rather substantial changes that are expected to be implemented in the ITA for legal entities by the end of 2018. The new taxation principles primarily affecting large companies with cross-border operations are based on the ATAD. The Directive stipulates five anti-tax avoidance measures: the interest limitation rule, exit taxation, general anti-abuse rule, controlled foreign company rules, and hybrid mismatches. The ATAD implementation deadline is 31 December 2018; therefore, the proposed amendment to the Income Taxes Act must become effective on 1 January 2019, at the latest (except for the exit taxation and hybrid mismatches rules, in respect of which the implementation period is extended until the end of 2019, or 2021 for 'reverse hybrid mismatches').

Limitation of the Deductibility of Borrowing Costs

The new rules limiting the tax deductibility of financial expenses as stipulated by the Directive should generally affect **all companies (except for financial businesses and other than group entities)** and all loans, ie including group loans as well as loans from banks and other entities.

What procedure will be applied to calculation under the new rules? According to the proposed amendment, the payer will firstly determine non-tax deductible financial expenses arising from the general rules (costs related to the holding of an interest in a subsidiary, costs of financial instruments in respect of which the interest is based on the debtor's profit, and costs in excess of the thin capitalisation limit). In the next step, the payer will determine excessive borrowing costs (hereinafter "EBC" for the sake of simplification), which, to put it simply, represent the difference by which borrowing costs (arising from all loans – ie from group loans as well as loans from third parties) exceed interest income. The difference will be subsequently compared to the de minimis value. The Directive makes it possible to set the exemption threshold (the tax deductibility of total annual EBC) in the maximum amount of EUR 3 million, with the proposed amendment retaining the threshold (or, to be precise, retranslating it to CZK 80 million). Therefore, if the payer meets the EBC threshold, they will not need to deal with anything else. Otherwise, they will have to calculate the tax deductibility limit from EBC, which is determined as 30% of the 'tax EBITDA' value (which is, in essence, based on the difference between taxable income and tax-deductible expenses to which the applied tax depreciation charges and EBC are added). EBC will be tax-deductible up to the 30% threshold, and any excess amount will represent a non-tax deductible expense in the given taxation period. However, it will be possible to record the amount and carry it over to the subsequent taxation periods as a tax-deductible item.

Please note that the EBC calculation method applies a definition of financial expenses other than the one that is customary in the existing practice: for example, it also includes the values of capitalised costs in balance sheet items or interest on finance leases.

Controlled Foreign Company (CFC) Rule

The ITA amendment proposal implements the rule by using a fiction according to which the performances of a controlled foreign company giving rise to taxable income are regarded as if they had been generated by the controlling entity in the Czech Republic, provided the controlled foreign company i) does not perform significant economic activities (using staff, equipment, assets and premises); and ii) is subject to a foreign tax liability that is lower than half of the tax liability to which it would be subject in the Czech Republic.

Controlled foreign companies are entities in whose capital a Czech entity holds a direct or indirect interest of more than 50%.

Exit Taxation

The substance of the measure is the taxation of the market value of the payer's assets in relocating the assets abroad without changing the ownership structure in the country from which it was relocated (a de-facto fictitious "profit from sale" without any sale). The payer may utilise the net book value of the assets as a tax-deductible expense in respect of the "fictitious income" determined based on the market value of the relocated assets. The proposed amendment introduces (taking into account the relevant provisions of the ATAD) the deferral of tax, or apportionment of the tax payment to instalments, which should comply with the Tax Code.

Hybrid Mismatches

Hybrid mismatches occur in situations where double non-taxation applies as for example expenses are deducted twice in different countries, or income is not taxed, or a combination of both. The aim is to prevent these mismatches: "non--taxation" occurring as a result of hybrid mismatches is preferentially addressed by applying the primary defensive rule (ie, for example, by not allowing a tax deduction if the income is tax-exempt in the other country). If the rule is not enforced, the other country should apply the secondary defensive rule (to tax the relevant income in the given case).

II. Changes for Individuals

With effect from 1 January 2019, the proposal should abolish the super-gross salary, or the inclusion of insurance premiums paid by the employer in the tax base of individuals' income from dependent activities. Employees' tax bases should newly only consist of their gross income. The proposal will additionally abolish the solidarity tax surcharge, which complicated the calculation of tax in respect of persons with higher income.

However, the tax rate will increase. Instead of the existing 15% rate, two rates will be introduced: 19% for income of up to CZK 1.5 million a year, and 24% for income in excess of the threshold.

Employees with lower income will, in effect, see a 1.1% decrease in taxation (19% as opposed to the existing 20.1% effective tax rate), with higher taxation applicable to persons with rental income and persons with other income (these were only subject to a 15% tax rate following the deduction of expenses).

Entrepreneurs and other entities with income from independent activities will be compensated for the increased tax rate by the possibility to deduct three quarters of the social security and health insurance contributions made on top of standard expenses (actual or flat-rate expense charge-offs). In theory, their taxation should remain substantially unchanged thanks to the deduction; however, tax calculation and related administration will become more complicated for them. We will discuss this topic in more detail on our regular webcast.

The amendment may be expected to be modified both during consultation and during the subsequent debate in Parliament. We will keep you informed about further developments.

Lucie Rytířová
+420 606 165 715
lrytirova@deloittece.com

Tereza Tomanová
+420 731 642 218
ttomanova@deloittece.com

A Change in the Treatment of Tax Exemption of Income from Royalty and Interest Payments?

In late January, an important ruling of the Supreme Administrative Court (SAC) was issued under Ref. No. 3 Afs 250/2016. The ruling is related to tax exemption of income from royalty payments and interest on a debt financing instrument.

The common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been introduced by the European Union by way of Council Directive 2003/49/EC (Directive). The Czech Republic implemented this system into its national tax legislation by way of the provision under Section 38 (nb) of Act 586/1992 Coll., on Income Taxes (ITA).

The subject of the assessed case was a negative ruling passed by the Tax Administrator in terms of acknowledging the tax exemption of income from interest on a debt financial instrument for 2011 and 2012 based on an application filed by the taxable entity in July 2013. According to the Tax Authority, and as later confirmed by the Appellate Financial Directorate, the application for tax exemption could not be approved due to the fact that it was filed too late. In terms of the late filing, the authorities stated that a critical precondition to utilise a tax exemption is to obtain a resolution of a constitutive nature. In other words, this means that tax exemptions may be utilised no sooner than after the issuance of the relevant tax exemption resolution, ie not backwards.

In its appeal, the taxable entity principally referred to the Directive as such, which stipulates that if the taxable entity's company withholds tax at source in a case in which tax exemption should be used, an **entitlement arises for the taxable entity to seek the refund of the tax withheld in this way, within a period of at least two years from the date on which the interest and royalty payments were made (if the tax exemption preconditions have been de facto met)**. Given that in the Czech Republic, tax exemptions depend on the issuance of a resolution under Section 38 (nb) of the ITA, the two-year period for refunding withheld taxes may be connected with the point at which the application for tax exemption was filed.

The SAC upheld this opinion of the taxable entity and stated that the importance of decisions on tax exemption lies in the authoritative confirmation of matters based on which the entitlement to tax exemption originates and the fulfilment of which is required in order to achieve the exemption of interest from withholding tax.

Do not hesitate to contact us if the new ruling of the SAC affects you directly. We will be happy to discuss with you in detail the ruling and the alternatives of its application in your case.

Kateřina Krchnivá
+420 735 703 353
kkrchniva@deloittece.com

Tereza Tomanová
+420 731 642 218
ttomanova@deloittece.com

A New Form of the TP Attachment to the Corporate Income Tax Return

Since 2014, taxable entities that meet specific criteria have been obliged to fill in an appendix to the corporate income tax return related to intercompany transactions. Also due to this measure, transfer prices have attracted the attention of the tax administration more significantly. The taxable entity is supposed to fill it in, if it meets at least one of the following criteria: the entity owns assets of at least CZK 40 million; the entity generates turnover exceeding CZK 80 million; the entity's average recalculated headcount equals 50 and, simultaneously, the entity performed a transaction with a related entity abroad, incurred a loss or was granted a promise for investment incentives and, simultaneously, performed a transaction with a related party. In short, these are the preconditions indicating that the taxable entity is obliged to inform the tax administration on its intercompany transactions in detail.

In 2018, the tax administration has issued a new form of the attachment that is to be filled in already for the 2017 reporting period. The attachment has been extended to include additional lines, specifically in Table B where, for the first time, the costs and income from rents will be filled in (Line 4), and in Table C, where the taxable entity will newly indicate whether it provided or received any financial or bank guarantees.

The obligation to file the transfer pricing attachment will newly apply to financial institutions It is still valid that the attachment is not to be filled in by the permanent establishment of tax non-residents.
All details necessary for the preparation of the attachment to the tax return are described in the instructions provided for the filling of Item 12, Part I of the corporate income tax return.

For more information on intercompany transactions, do not hesitate to contact our transfer pricing team.

Lucie Hovorková
+420 605 045 492
lhovorkova@deloittece.com

New Transfer Pricing Reporting Duty for Financial Institutions

Financial institutions are newly requested to file the transfer pricing appendix to the corporate income tax return already for FY 2017.

So far an exception from the obligation to file the Appendix to the tax return applied, among others, to the following types of companies:

- Banks;
- Savings and credit associations;
- Insurance and reinsurance companies;
- Investment fund administrators including investment funds administered by them, if the funds lack legal personality;
- Investment funds, investment fund depositories, and major investment fund sponsors; and
- Pension companies including all funds administered by them, including transformed funds through which pension companies provide additional pension insurance.

Starting from FY 2017 the exception for the above mentioned financial institutions will not apply, if meeting the general criteria (please see the previous article for the details).

The Appendix includes an overview of the intercompany transactions performed with respect to sale and purchase of assets, mutually-provided intercompany services and other intangible supplies, financial transactions and overview of payables/receivables. Contrarily to other entities, certain exceptions apply to financial institutions, such as not having to complete several specific items such as the sales and purchases of material, products and goods (Line 4 in Table A), the use of cash-pooling (Line 6 in in Table C) and short-term payables and receivables (Lines 3,4 in Table D).

The latest Appendix version for FY 2017 including the completion instructions is available under the following link: http://www.financnisprava.cz/assets/tiskopisy/5404-E_4.pdf?201801051300

As the practice over the years during which the Taxation Authority has been using the Appendix to the tax return has shown, the information gained on intercompany transactions has become an integral part of the process in selecting entities for tax audits focused on transfer pricing issues. As expected, the Taxation Authority performs a risk analysis of companies based on the data received. In combination with publicly-available sources and information from prior tax proceedings, the analysis helps the Taxation Authority to gain initial insight into a company's position within a group, and thus to define more particularly the areas of closer scrutiny. Since 2014, we have seen a series of "waves" of initiated tax proceedings, both in the form of local inspections and tax audits, the subject of which was principally transfer pricing. As such, it can be anticipated that now this wave will also concern financial institutions, which are centrally administered by the Specialised Tax Office.

In addition, we noted that starting from 2018, the Taxation Authority plans to complement the information gained from local resources by data gained through the international exchange of information, specifically from Country-by-Country Reports. As such, in addition to information on particular Czech companies' activities, Country-by-Country reports provide an overview of how multinational groups of companies work as a whole from the global perspective. Among other things, these reports highlight the locations in which groups operate, what particular activities are performed in individual countries, where major profits are generated, what the group actual taxation is in individual countries, and the like. In this way, for the first time the Czech Taxation Authority will be able to assess information on particular taxable entities, which was only unilateral so far, in the context of the whole multinational group's operations. The degree to which the Taxation Authorities succeed in combining the data resources and what particular impact this will have on taxable entities will show in the coming years.

For more information on intercompany transactions, do not hesitate to contact our Transfer Pricing Team.

Lucie Hovorková
+420 605 045 492
lhovorkova@deloittece.com

Upcoming Amendment to the VAT Act

The Czech Ministry of Finance has presented the first proposed amendment to the VAT Act, which should (barring exceptions) become effective on 1 January 2019. The amendment is set to fully revise the rules for correcting the tax base or the possibility of decreasing VAT in respect of irrecoverable receivables. It introduces special treatment for taxing vouchers for the purchase of goods/services, thereby transposing the relevant EU Directive. Additional transposition of EU rules includes the implementation of new processes for services provided electronically to non--taxable entities. The changes should also specifically affect the financial sector (a new definition of finance leases, application of exemptions to independent groups of entities) and the real estate industry (inclusion of certain work on the property in the compulsory/voluntary adjustment of tax deductions, impossibility of imposing tax on premises rented for housing purposes). Furthermore, the changes with general implications include a stricter approach to issuing tax documents and their delivery.

At present, comments on the amendment to the VAT Act made by experts as well as non-specialists are being processed. The Czech Ministry of Finance should subsequently address these and submit the amendment for the subsequent legislative process.

Tomáš Brandejs
+420 604 298 952
tbrandejs@deloittece.com

Supreme Administrative Court Ruling on the Rejection of a Tax Deduction Claim

In its recent ruling 5 Afs 60/2017, the Supreme Administrative Court addressed the possibility of rejecting a tax deduction claim made by a payer in a situation where the supplier declared the relevant tax, yet the subcontractor failed to pay VAT at the very beginning of the entire business chain. The ruling has been recently referred to by the media as ground-breaking as, in certain cases, it benefits the fact that the tax administrator is generally unable to reject the tax deduction at all if VAT was not paid by an indirect, rather than direct, business partner. This would, indeed, be a revolutionary assertion. Nevertheless, the Court has not stated any such thing: it merely rejected the tax administrator's assertions that the payer was demonstrably aware of the failure to pay tax, or should have and could have been aware of it. The other sub--comments made by the court in relation to individual "errors" on the part of the payer are quite apt, yet in no way innovative: they merely uncover the fact that the tax administrator's actions were entirely mistaken and rash and do not in any way advance the view on the issue of proving participation in tax fraud. Nevertheless, we **consider this ruling to be of great use and it will surely be a convenient means of protecting tax payers' rights**.

Tomáš Brandejs
+420 604 298 952
tbrandejs@deloittece.com

Further EET Developments

Following its ruling of 12 December 2017, the Constitutional Court revoked the implementation of the electronic sales records (‘EET’) in the two remaining phases which were to affect the vast majority of sales of services (e.g. freelancers, agriculture) and the sales generated by craftsmen and producers. In addition, the court cancelled the EET obligation in respect of sales set out in Section 5 b) of the EET Act, i.e. a taxpayer’s sales that are realised by way of a cash-free transfer of money which is ordered to take place by the payer through the recipient who is the taxpayer charged with recording the sales. The reason for this cancellation relates to the fact that those payments leave an electronic trace both with the bank and operator of the payment cards system and the trader, and hence recording the sales under the EET Act serves no useful purpose. In practical terms, this means that starting from 1 March 2018, it will not be required to record sales made in a way other than in cash, check, bill of exchange and similar forms. The taxpayer is not obliged to record sales received subsequent to 28 February 2018, for example, by payment cards or through payPal, PayU, etc. However, as confirmed by the Ministry of Finance, taxpayers may record the sales voluntarily. It also applies that after 28 February 2018, the receipt no longer needs to indicate the taxpayer’s tax ID (or the tax ID of the authorising taxpayer) if the taxpayer is an individual/physical person. This information will continue to be sent as part of the data message of the recorded sales.

Petr Čapoun
+420 720 758 636
pcapoun@deloittece.com

Monika Trauške
+420 775 679 789
mtrauske@deloittece.com

The Tax Administration Released a List of Countries to Exchange CbC Reports with the Czech Republic

In Financial Bulletin No. 2/2018 of 31 January 2018, the Czech Tax Administration released a list of countries that will be exchanging Country-by--Country Reports (the "CbCR") with the Czech Republic. The announced list will gradually be updated following other jurisdictions joining the CbCR exchange system with the Czech Republic; this update will also be published in the Financial Bulletin.

With the Amendment to the Act on International Cooperation in Tax Administration, a new reporting obligation as part of the international exchange of information, so called Country-by-Country Reporting, was introduced in the Czech Republic. This obliges groups of companies with consolidated global income exceeding EUR 750 million to present to the respective tax administration the CbCR on an annual basis, summarising financial information on the group. The obligation to prepare the CbCR, which is subsequently subject to an automatic exchange of information between the individual countries, for the entire group of companies applies to:

- **The ultimate parent company**; or
- **A surrogate parent entity** (ie an entity that was assigned to prepare the CbCR by the group eg because the ultimate parent company is not obliged to prepare the CbCR in its country or the country is not included in the CbCR automatic exchange – refer to the list of jurisdictions published); or
- **A Czech member company** in case the ultimate parent company or the surrogate parent entity have their seat in a country mentioned above.

On 31 January 2018, the Czech Ministry of Finance published a long-awaited **list of jurisdictions with which the automatic exchange of information is active for the Czech Republic.** The list is available at http://www.mfcr.cz/cs/legislativa/mezinarodni-spoluprace-v-oblasti-dani/umluva-o-vzajemne-spravni-spolupraci--mca/mnohostranna-dohoda-cbcr. Except for the countries on this list, the exchange of the CbCR automatically takes place in the European Union. The first automatic exchange of the CbCRs between these countries will take place in June 2018.

In most cases, Czech companies obliged to comply with Country-by-Country Reporting have already had to notify to the Czech Tax Administration on who will be filing the CbCR for the group for the reporting period beginning after 1 January 2016. Given that the Czech Tax Administration has not published the list of countries included in the automatic exchange of information until now, Czech companies may have **indicated incorrect** data in the CbC notification. Should a company find out that a respective country is not included in the newly published list and this change affects the facts stated in the already filed CbC notification, the change of data is to be reported in a **notification of a change**. The notification of a change is again to be filed to the Specialised Taxation Office electronically via the EPO tax portal on a specific form and in the form's letter-head, the option **"Change of data"** is to be ticked.

In case eg a Czech entity has already notified that the CbCR will be filed by the ultimate parent company with its seat in a country which is not listed under the jurisdictions obliged to exchange the CbCR (for reporting periods beginning on 1 January 2016 and later), **amended data** are to be disclosed in the notification of a change, ie:

- In case the CbCR for the group will be filed by a **surrogate parent entity** from the published list of countries exchanging the CbCRs, the Czech entity is to provide its data and the respective taxation period for which the CbCR will be filed for the first time.
- In case no surrogate entity was established, the **Czech entity is to be stated** as the entity **obliged to prepare the CbCR** for the group. Based on transitional guidance, in this case, the first reporting period to be reported is a reporting period beginning on 1 January 2017 or later.

n case the country where the ultimate parent company filing the CbCR (or the surrogate entity) is seated shows up on an updated list of jurisdictions complying with the CbCR automatic exchange, it will again be possible to file a notification of a change and present these facts.

Lucie Hovorková
+420 605 045 492
lhovorkova@deloittece.com

Amendment to the Double Tax Treaty with Chile

In its Financial Bulletin, the Ministry of Finance has issued Information on the Practical Application of Article 11 of the Double Tax Treaty between the Czech Republic and the Republic of Chile ("DTT").

Article 11 (7) of the DTT between the Czech Republic and the Republic of Chile contains what is referred to as the 'most--favoured-nation clause'. Therefore, if one of the contracting parties subsequently concludes a double tax treaty with a different state under more favourable terms, the relevant advantages will also apply to the former treaty. Following the conclusion of the DTT between Chile and Japan, which contains more favourable provisions on interest payments, these will also apply to the interest paid among Czech and Chilean residents provided all the conditions stipulated are met.

Therefore, from 1 January 2017 onwards, for the purposes of Article 11 (2) of the DTT between the Czech Republic and the Republic of Chile, a 4% rate, instead of the original 5% rate, will apply if all the conditions stipulated are met (eg in respect of payments to banks, insurance companies etc). If interest had already been taxed in 2017 in the source country in breach of the above stated rules, the beneficial owner of interest is entitled to seek a refund of the tax paid so that the tax liability in the source country of income complies with the above stated rules.

Tereza Tomanová
+420 731 642 218
ttomanova@deloittece.com

News round-up BEPS

New members for BEPS inclusive framework

The Bahamas, Mongolia and Zambia have joined the inclusive framework for the global implementation of the BEPS project, bringing the number of participating jurisdictions to 111. The whole list of participating jurisdictions is available here.

Action 13: Transfer Pricing Documentation and Country-by-Country Reporting

Finland – On 19 December 2017, the Ministry of Finance announced that the government had approved a notice under the OECD Automatic Exchange of Information Agreement (2014) (MCAA) that Finland is willing to exchange country-by-country (CbC) reports with other willing jurisdictions for earlier tax periods than set out under the MCAA.

Hong Kong – The government of Hong Kong has released the text of a bill that would amend the Inland Revenue Ordinance to codify the arm's-length principle and comply with the minimum standards for participation in the base erosion and profit-shifting project's inclusive framework. Under the "fundamental rule" proposed by the bill, profit or loss of an enterprise or permanent establishment will be adjusted if related-party transactions result in a tax advantage and their price or terms differ from what would have been agreed to by unrelated parties. Although Hong Kong currently has no domestic legislation adopting the arm's-length principle or transfer pricing methods, Hong Kong's bilateral treaties and the Inland Revenue Department's administrative guidance follow OECD standards, the legislative council brief says.

China – On 19 December 2017, the State Administration of Taxation (SAT) issued a public notice clarifying CbC reporting related issues. According to the notice, Articles 7 and 8 of Public Notice 42 on Filing Related Party Transactions and Administration of Contemporaneous Transfer Pricing Documentation do not apply to CbC reporting for 2016. Under Article 7 of Public Notice 42, the Chinese tax authority may, on the basis of treaties, agreements or arrangements, exchange CbC reports with other jurisdictions, whereas Article 8 requires certain categories of multinational enterprises that do not meet the CbC reporting threshold to submit CbC reports if they have not submitted CbC reports to any tax jurisdiction, or submitted CbC reports to a tax jurisdiction with which China does not have an exchange of information mechanism, or the other jurisdiction has never exchanged the CbC report with China despite the existence of an exchange of information mechanism.

Portugal – Order No. 383-A/2017 approves form 55, the official financial and fiscal CBC reporting form, which must be submitted electronically, preferably in the XML format, within 12 months after the end of each concerned fiscal year. However, for fiscal year 2016, this deadline is extended for another 2 months (i.e. until 28 February 2018).

Kateřina Krchnivá
+420 735 703 353
kkrchniva@deloittece.com

Tereza Tomanová
+420 731 642 218
ttomanova@deloittece.com

In Brief

EU list of non-cooperative jurisdictions

The Council of the European Union has published the conclusions on the EU list of non-cooperative jurisdictions. The report details the reasons why jurisdictions are included in the list and the commitments made to address the issues identified. The full text of the conclusion is available here.

EU releases tax policy roadmap

The Bulgarian Presidency of the EU Council has published its tax policy roadmap setting out the council's planned short- and medium-term work on direct and indirect tax issues. The roadmap is available here.

Finland proposes changes to interest deduction limitation rules

On 19 January 2018, the Finnish government published a draft proposal that would revise the domestic rules governing the deductibility of interest expense. The proposed amendments are based on the EU anti-tax avoidance directive and would substantially broaden the scope of the interest deduction limitation rules and further limit the deductibility of interest expense. If approved, the rules would be applicable for financial years ending on or after 1 January 2019.

French parliament adopts the finance bills for 2017 and 2018

On 21 December 2017, the French parliament adopted the second amended finance bill for 2017 and the finance bill for 2018. These finance laws–the first of President Macron–are intended to reduce the tax burden on companies and individuals, further the government's objective to orientate savings towards helping the financing of companies and ensure that provisions of the French tax code are in line with EU law. Measures also are included to attract companies leaving London following Brexit.

China announces WHT deferral on reinvested profits

On 21 December 2017, the Ministry of Finance (MoF), the State Administration of Taxation (SAT), the National Development and Reform Committee and the Ministry of Commerce (MOFCOM) jointly issued a circular (Cai Shui [2017] No. 88) temporarily exempting from withholding tax dividends and profits distributed to foreign investors and re-invested in China. The exemption is applicable to dividends distributed on or after 1 January 2017; the withholding tax already paid on the distribution of dividends on or after 1 January 2017 may be refunded.

Italian 2018 budget law includes new regime for taxation of digital services

Italy's budget law for 2018, which was published in the official gazette on 29 December 2017 and generally applies as from 1 January 2018, makes a number of significant changes to the country's tax rules. Among other provisions that affect corporations, the new law introduces an equalisation tax on digital/web-based services; revises the definition of permanent establishment (PE); amends the rules for interest and depreciation deductions; and provides for a substitute tax on income from qualifying participations. A new 3% equalisation tax will be withheld from payments for "digital services" made by Italian companies to resident and non-resident providers as from 1 January 2019. The equalisation tax will apply to services provided over the internet or electronic networks and that are characterised by a high degree of automation and minimal human intervention. The tax will apply only to business-to--business transactions.

Japanese 2018 tax reform proposal

On 14 December 2017, proposals for the 2018 tax reform were approved. Under this tax reform, among other changes, tax credits and incentives will be expanded for companies which increase wages or capital investment, and the definition of a permanent establishment (PE) will be expanded to align Japanese tax law with the definition under the OECD's Base Erosion and Profit Shifting project.

OECD launches International Compliance Assurance Programme pilot

The OECD announced on 24 January 2018 that the pilot International Compliance Assurance Program (ICAP) for the multilateral risk assessment of large multinational enterprise groups was launched on 23 January in Washington DC. The voluntary program will use country-by-country reports, master files and local files and other information to facilitate open and cooperative multilateral engagements between multinationals and tax administrations, with a view to providing early tax certainty and assurance. The ICAP has been developed under the framework of the OECD Forum on Tax Administration (FTA) Large Business and International Program, sponsored by the Canada Revenue Agency (CRA). The objective is a more efficient use of resources both for multinational groups and for tax administrations and, in the longer term, fewer cases entering into mutual agreement procedures (MAP). Australia, Canada, Italy, Japan, Netherlands, Spain, the UK and the US are in the pilot.

Poland enacts major corporate tax reform

The reforms generally apply from 1 January 2018 and introduce a new limitation on the deduction of debt financing costs, restrict the deductibility of certain payments made to related parties and tax havens, create a separate capital gain "basket" of income and revise the controlled foreign company rules, among other changes.

Taiwan proposes rules for taxing digital sales by foreign companies

Sales by a foreign enterprise from some categories of digital services will be subject to Taiwanese corporate income tax based on a presumed profit margin and domestic contribution share, effective 1 May 2018, according to the rules proposed by Taiwan's Ministry of Finance. Under the proposed rules, payments to foreign enterprises with no fixed place of business in Taiwan would be subject to a gross withholding tax unless the enterprise applies to the National Taxation Bureau (NTB) for examination and approval of its net profit under the rules for determining expenses and profit.

Kateřina Krchnivá
+420 735 703 353
kkrchniva@deloittece.com

Tereza Tomanová
+420 731 642 218
ttomanova@deloittece.com

Two Interesting Court Rulings on Interest arising from Tax Proceedings

On one day in December 2017, the Supreme Administrative Court issued two very interesting rulings related to interest arising from tax proceedings.

Under the first ruling, the Court acknowledged the origination of interest on interest by stating that in the event of delays in imposing interest arising from the Tax Administrator's unjustified action an entitlement to (additional) interest arises to taxable entities. Such interest shall be calculated from the amount of interest, which has been charged with delay.

With regard to the relevant circumstances, an entitlement to interest arises for taxable entities either from unjustified steps taken by the Tax Administrator, or from a delay in refunding refundable excessive tax payments. Therefore, it is material whether the delayed imposition of interest results in a "non-refundable" excessive tax payment (which will be offset by the Tax Administrator against the taxable entity's tax arrears), or in a refundable excessive tax payment (which is paid to the taxable entity).

The second ruling follows immediately up on the ground-breaking ruling from 2014, in which the Supreme Administrative Court approved VAT payers' entitlement to interest on excessive tax deductions arising from the fact that prior to refunding the excessive tax deduction the Tax Administrator spent an unreasonably long time reviewing it ("the ruling in the Kordárna case").

Under this ruling, the Supreme Administrative Court scrutinised the question of whether a separate application was to be filed for refunding the excessive tax payment, which originated from the imposition of interest in line with the ruling in the Kordárna case /ie interest on a delayed refund of a refundable excessive tax payment/, or whether the Tax Authority should both impose and refund the excessive tax payment automatically (ie ex offo).

The Court concluded that on one hand, the interest should have been imposed automatically ex offo, however, on the other hand, the tax payer had to apply for the reimbursement of the thus-originated excessive tax payment separately. Moreover, the Court highlighted that in events in which the interest was imposed no sooner than pursuant to the steps made by the tax payer (who had to spend a great amount of time claiming it), it shall on no account be anticipated that by those steps the tax payer sought solely the imposition of interest without its payment.

Therefore, it may be summed up from the ruling that tax payers that generate an entitlement to interest due to the fact that an excessive tax payment was withheld from them, under conditions equal to those applicable in the Kordárna case, shall explicitly apply with the relevant Taxation Authority for the refund of such interest (unless the tax payer has already done so). On the other hand, interest imposed in line with the wording of the Tax Code effective from 1 January 2015, should be refunded without any prior applications together with the excessive tax deduction to which the interest is related. However, it shall be noted that applications must be filed for refunds of excessive tax deductions, which were additionally assessed based on additional tax returns or based on tax audits. We will discuss this topic in more detail on our regular webcast.

Hana Erbsová
+420 739 525 422
herbsova@deloittece.com

The Czech Republic wants to amend the rules for posting employees in the EU

The EU Posting Workers Directive shall be amended, claims the Czech government. Currently, it complicates the life for many employers that post their employees abroad: the employers have to register at the authorities of the respective states, they have to provide the employees with numerous documents (e.g., A1 certificates, copies of employment contracts etc.). In addition, the rules for minimum wage and other labour law obligations need to be obeyed. The Directive is now subject to revision, as part of which the Czech government asks, among others, for excluding international transit. However, employers from other industries may expect the tightening of the rules, requested especially by West European countries. We will keep you informed about any updates.

Lucie Rytířová
+420 606 165 715
lrytirova@deloittece.com

Tax liabilities – March 2018

Thursday, 1	Income tax	• Submission of income tax from employment settlement for taxable period 2017
Monday, 12	Consumption tax	• Tax maturity for January 2018 (except the consumption tax on alcohol)
Wednesday, 14	Intrastat	• The Intrastat statement for February 2018, paper version
Thursday, 15	Income tax	• Quarterly advance payment on tax
Friday, 16	Intrastat	• The Intrastat statement for February 2018, electronic version
Tuesday, 20	Income tax	• Monthly payment of deducted advance payments on personal income tax from employment • E-submission of income tax from employment settlement for taxable period 2017
Monday, 26	Value added tax	• Tax return and tax for February 2018 • EC Sales List for February 2018 • VAT control statement for February 2018
	Consumption tax	• Tax return for February 2018 • Tax return for claiming of refund of consumption tax for example on fuel oil and other petrol (benzine) for February 2018 (if applicable)
	Energy taxes	• Tax return and tax maturity on gas, solid fuels and electricity for February 2018
Tuesday, 27	Consumption tax	• Tax maturity for January 2018 (only the consumption tax on alcohol)

Tax liabilities – April 2018

Tuesday, 3	Income tax	• Submission of special-rate withholding tax settlement for February 2018 • Submission of special-rate withholding tax form settlement for tax year 2017 • Submission of tax return and payment of tax for 2017, if the taxpayer wasn´t required an audit and fills the tax return himself/herself
Monday, 9	Consumption tax	• Tax maturity for February 2018 (except the consumption tax on alcohol)
Monday, 16	Road tax	• Advance payment of tax for 1st quarter 2018
	Intrastat	• The Intrastat statement for March 2018, paper version
Wednesday, 18	Intrastat	• The Intrastat statement for March 2018, electronic version
Friday, 20	Value added tax	• Tax return and maturity of the MOSS VAT
	Income tax	• Monthly payment of deducted advance payments on personal income tax from employment
Tuesday, 24	Consumption tax	• Tax maturity for February 2018 (only the consumption tax on alcohol)
Wednesday, 25	Lotteries and other similar games	• Submission of statement for advanced payment on deduction from lotteries and other similar games and payment of advanced for 1. quarter 2018
	Value added tax	• Tax return and tax for Q1 and March 2018 • EC Sales List, Q1 and March 2018 • VAT control statement for 1Q and March 2018
	Energy taxes	• Tax return and tax maturity on gas, solid fuels and electricity for March 2018
	Consumption tax	• Tax return for March 2018 • Tax return for claiming of refund of consumption tax for example on fuel oil and other petrol (benzine) for March 2018 (if applicable)
Monday, 30	Income tax	• Submission of special-rate withholding tax settlement for March 2018

Contacts

If you have any questions concerning the items in this publication, please contact your regular Deloitte Tax contact or one of the following experts:

Direct Taxes

Jaroslav Škvrna
jskvrna@deloitteCE.com

Zbyněk Brtinský
zbrtinsky@deloitteCE.com

Miroslav Svoboda
msvoboda@deloitteCE.com

Marek Romancov
mromancov@deloitteCE.com

LaDana Edwards
ledwards@deloitteCE.com

Tomas Seidl
tseidl@deloitteCE.com

Indirect Taxes

Adham Hafoudh
ahafoudh@deloitteCE.com

Radka Mašková
rmaskova@deloitteCE.com

Local Sales / Purchases Report

Jaroslav Beneš
jbenes@deloitteCE.com

Deloitte Advisory, s. r. o.
Nile House, Karolinská 654/2,
186 00 Praha 8 - Karlín, Czech Republic
Tel.: +420 246 042 500

Subscribe to dReport and other newsletters and invitations here http://www.deloitte.com/cz/subscribe-en