



August 2018

## Planned amendments to the Income Tax Acts in 2019

On 15<sup>th</sup> July 2018 the Bill amending the PIT, CIT and some other Acts ('the Bill') was published.

According to the explanatory notes, the purpose of the amendment is to simplify of tax legislation and as well as to reduce the administrative burdens for businesses.

The amendments include a number of issues relating to i.a. transfer pricing and general taxation rules, therein:

### The Corporate and the Personal Income Tax Act

- **New income assessment (anti-avoidance clause).** The new clause allows tax authorities to claim that in given circumstances unrelated parties would not have concluded a transaction or would have concluded a different one instead. This is to empower tax authorities to disregard tax consequences of such transactions or to assess additional taxable income for an alternative arrangement. The clause is an incomplete implementation of OECD Transfer Pricing Guidelines and omits directions for authorities, in which circumstances the clause should apply. It should be hoped that the amendments would be supplemented during the legislative process to reduce discretionary powers of tax authorities.

- **Repealing the provision on taxation of free-of-charge transfer of goods and rights to a related entity.** The purpose of that amendment is to eliminate controversies regarding transfer pricing provisions on the same matter.
- **Transfer pricing adjustments.** The purpose of the amended rules is to define the tax point when upward or downward tax adjustment arises. As a consequence, adjustments resulting in either correction of taxable revenues or tax deductible costs should be recognized for tax purposes in the period to which they relate and not in the period when documents confirming the adjustments are issued.
- **New catalogue of low added value services.** For services included in the catalogue there would be no obligation to prepare benchmarking studies. To determine arm's length range of fees for low added value services it will be sufficient to determine the acceptable level of mark-up or other terms of a transaction. The catalogue has been developed based on the results of OECD and EU Joint Transfer Pricing Forum.

### The Corporate Income Tax Act

- **Tightening of the debt financing restrictions** by reducing from 30 per cent to 20 per cent EBITDA the level of non-limited tax deductibility of debt financing costs. Still, the change is not final as it has been proposed during intra-ministry consultations to keep the EBITDA limit at the current 30 per cent level.
- **Increase of tax deductibility limit for intangible services and royalties** paid to related entities and entities seated in tax havens from 5 per cent up to 10 per cent EBITDA. The deductibility limit increase should be viewed as a positive change. On the other hand, EBITDA calculation rules for debt financing and service costs are still to remain inconsistent (which should be assessed negatively).
- **Repeal of art. 15ca that links taxpayer's market creditworthiness with tax authority's right to adjust taxable base.** The creditworthiness test should be part of the review of market conditions adopted by related entities on the basis of transfer pricing regulations. The repeal of this regulation is to apply retroactively to 1<sup>st</sup> January 2018.

## Entry into force

- the adopted amendments to tax legislation are to apply as from the tax year starting after 31<sup>st</sup> December 2018,
- the amendment bill introduces the possibility of preparing transfer pricing documentation for 2018 based on either new and existing regulations,
- for transactions commenced and not completed before 1<sup>st</sup> January 2019 transfer pricing documentation for 2019 is to be prepared in accordance with the new regulations.

Please contact us if you would like to obtain more information on the draft amendments.

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