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The amendments to the Corporate Income Tax Bylaw and announcement of the Corporate Income Tax amendments

The amendments to the Corporate Income Tax Bylaw
The amendments to the Corporate Income Tax Bylaw (Official Gazette 137/15) have entered into force on 24 December 2015. The most important amendments are as follows:

- Corporate Income Tax Bylaw was adjusted with the new Investment Promotion Act.
- In relation to the tax relief for reinvested profit, the relief can be applied if the number of full-time or fixed time employees defined at the beginning of the (tax) period does not change at least two years following this period.
- The calculation method of interest on loans between related parties was defined.
- Amendments to the Corporate Income Tax return (“CIT return”) for 2015 were made. The content of the 2015 CIT return has been supplemented with additional items relating to tax liability of natural persons that are corporate income tax payers, based on the individual work income.
- Bylaw also introduced the new form - Report on business activities with related parties (PD-IPO form) and its detailed content. First PD-IPO form will be applicable for the 2016 CIT return. The reporting will be obliged for taxpayers that had business transactions with related parties: receiving and providing loans, purchase and sale of goods and services.

Announcement of the Corporate Income Tax Act amendments

The Croatian CIT Act, in line with the Council Directive 2011/16/EU, prescribes non-taxation of revenues from dividends and profit shares and exemption from withholding tax on dividend and profit shares distribution paid by subsidiary companies to their parent companies, in order to avoid double taxation. However, it was shown necessary to tackle the inconsistencies between national legislation as regards hybrid financial instruments within the remit of the Parent-Subsidiary Directive and to introduce a general anti-abuse rule in order to safeguard the functioning of the Directive and strengthen the fight against tax fraud and tax evasion.

However, in order not to abuse the prescribed exemptions (reliefs), Council Directive 2015/121/EU prescribes minimum anti-abuse rule when benefits of the Directive (exemption) should not be granted to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage.

The Amendments of the CIT Act would be applicable retroactively, i.e. for the tax periods starting from 1 January 2016.
Announcement of the amendments to the General Tax Act with respect to the automatic exchange of information


Directive 2014/107/EU broadens the scope of automatic exchange between EU Member States with respect to financial accounts data, which the financial institutions will be obliged to deliver to the Tax Authorities.

Financial institutions will be obliged to report on certain categories of income and assets for the first time by 30 June 2017, therewith reporting the information for the period between 1 January 2016 and 31 December 2016.

Minister of Finance will further regulate the subject matter by issuing the respective bylaw.

The interest rate on loans between related parties

As of 31 December 2015, the Resolution on interest rate on loans between related parties has entered into force. According to the Resolution, interest rate on loans between related parties for 2016 is 5.14%.

Interest rate on loans between related parties should be defined by Minister of Finance before the start of the tax period for which the interest rate is to be applied (taking into consideration that the interest rate is the one that can be used in comparable circumstances or between non-related parties). Interest rate between related parties should be calculated as an arithmetic mean of the average interest rates on loans granted to the non-financial companies for a period longer than one year, which is declared by Croatian National Bank in the current calendar year.

Change in prescribed penalty interest rate

For the period from 1 January to 30 June 2016, new penalty interest rates are applicable calculated on the late payments between traders themselves and traders and public law persons, entrepreneurs themselves, entrepreneurs and public law persons, and other relationships. New penalty interest rate has been changed based on the change of the average interest rate on loans granted for period longer than one year to non-financial companies in a referent period from 1 May to 31 October 2015, which is defined by Croatian National Bank (Official Gazette 140/15) at 5.05%.

The changes of the penalty interest rates in the last two periods are presented in the below table:

<table>
<thead>
<tr>
<th>Description/Period</th>
<th>From 1 August to 31 December 2015</th>
<th>From 1 January to 30 June 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. In relations between traders themselves and traders and public law persons (Croatian Act on Obligations)</td>
<td>10,14% (5,14% + 5%)</td>
<td>10,05% (5,05%+5%)</td>
</tr>
<tr>
<td>2. In relations between entrepreneurs themselves and entrepreneurs and public law persons (when a public law person is debtor) (Financial Transactions and Pre-bankruptcy Settlement Act)</td>
<td>10,14% (5,14% - 3% + 8%)</td>
<td>10,05% (5,05%-3% + 8%)</td>
</tr>
<tr>
<td>3. In other respects / relationships (according to Croatian Act on Obligations) which are not stated above</td>
<td>8,14% (5,14%+3%)</td>
<td>8,05% (5,05%+3%)</td>
</tr>
</tbody>
</table>
New Customs Code in the European Union

As of 1 May 2016, the Union Customs Code ("UCC") and its planned implementing regulations will replace the Community Customs Code ("CCC") that has been in effect for over 20 years.

The UCC will introduce a number of new concepts and completely new structure of customs law across the whole of the European Union and will modernize many existing procedures.

The UCC and the related delegated and implementing acts shall be as follows:

- procedural deadlines will be significantly extended: more time will be needed to obtain new licenses,
- customs rules and procedures will be simplified and more efficient customs transactions will be facilitated,
- significant changes in respect of Authorised Economic Operators ("AEO"): requirements for obtaining/maintaining the AEO will be more stringent and AEO license will be a legal requirement for applying customs simplification,
- stricter rules on customs valuation: first sale rule will be terminated and royalty payments and license fees are likely to become part of the customs base,
- mandatory guarantees will be introduced,
- new IT systems will be introduced (shift to a fully electronic environment).

On 17 December 2015, the European Commission adopted a delegated act to establish transitional rules for operators and customs authorities pending the introduction of new IT systems to create a fully electronic customs environment. Those rules will ensure a smooth transition between existing and new customs rules for a limited period starting on 1 May 2016.

Recent BEPS-related developments

OECD

On 27 January 2016, 31 countries\(^1\) signed the Multilateral Competent Authority Agreement ("MCAA") for the automatic exchange of country-by-country ("CbC") reports, pursuant to the OECD Convention on Mutual Administrative Assistance in Tax Matters. The MCAA requires each jurisdiction's competent authority to provide a notification regarding the jurisdiction's readiness and intentions with respect to CbC reporting, including that the jurisdiction has in place legislation to require CbC reporting for fiscal years beginning on or after the date of the notification. The MCAA provides for CbC reports to be exchanged as soon as possible and no later than 18 months after the end of the fiscal year covered by a report. Additional countries may sign the MCAA in the future.

European Union

On 28 January 2016, the European Commission published an Anti-Tax Avoidance Package containing new measures against corporate tax avoidance in the European Union that follow the recommendations developed in the OECD BEPS project and designed to provide uniform implementation of BEPS measures and minimum standards across Member States. Most significant are the proposals for an Anti-Tax Avoidance ("ATA") Directive and an EU CbC Reporting Directive.

The ATA Directive (Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market proposal), if adopted, would establish a new level of harmonization in the field of direct taxation in the EU. The proposal includes new provisions on interest deduction limitations, exit taxation, controlled foreign company taxation, treatment of low-taxed foreign income, anti-abuse rules, and hybrid mismatches.

The CbC Directive, if adopted, would amend the existing EU Directive on exchange of information within the EU, would require Member States to ensure that CbC reports are filed in all Member States. The content to be included in the CbC reports is in line with the BEPS Action 13 recommendations.

The CbC Directive contains rules on establishing mandatory automatic exchange of CbC reports within the EU and requires the first reports to be exchanged to include information for fiscal years starting on or after 1 January 2016.

As a next step, the proposed Directives will be discussed in the Council of the European Union, which has the authority to adopt directives.

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\(^1\) Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and United Kingdom.
New Personal Bankruptcy Act

The new legislation on consumer bankruptcy came into force on 1 January 2016, and the law is perceived as an attempt to give over-indebted citizens a chance for a fresh start and offer them an opportunity to repay debts in a controlled manner.

All insolvent persons could file for bankruptcy if, for three straight months, they have not been able to pay their debts exceeding the amount of HRK 30,000. Before filing for bankruptcy, a debtor would first have to attempt to settle with the creditors out of court with the Financial Agency’s (“FINA”) advisory body. If no agreement is reached, a debtor has an opportunity to continue with proceedings in court.

European Commission presented EU-US Privacy Shield

The European Commission and the United States have agreed on a new framework for transatlantic data flows, i.e. the EU-US Privacy Shield.

For the first time, the US has given the EU written assurances that the access of public authorities for law enforcement and national security will be subject to clear limitations, safeguards and oversight mechanisms.

The EU-US Privacy Shield reflects the requirements set out by the European Court of Justice in its ruling on 6 October 2015, which declared the old Safe Harbor framework invalid.

The new arrangement will include the following elements:

- strong obligations on companies handling Europeans’ personal data and robust enforcement,
- clear safeguards and transparency obligations on US Government access,
- the establishment of an Ombudsperson mechanism,
- effective protection of EU citizens' rights with several redress possibilities.

Now, a committee composed of representatives of the Member States will be consulted and the EU Data Protection Authorities will give their opinion, before a final decision by the College of commissioners.
Reform of posting of workers

European Commission presented on 8 March 2016, a revised proposal of Directive 96/71 concerning the posting of workers in the framework of the provision of services.

The targeted revision will introduce changes in three areas: (i) remuneration of posted workers, (ii) rules on temporary work agencies and (iii) long-term posting.

The proposal foresees that posted workers are subject to equal pay and working conditions as local workers. This will be done in full respect of the working conditions set by the Member State in question.

From now on, all the rules on remuneration that are applied generally to local workers will also have to be granted to posted workers.

Rules set by law or universally applicable collective agreements will become mandatory for posted workers in all economic sectors.

The proposal will also ensure that national rules on temporary agency work apply when agencies established abroad post workers.

Finally, the proposal envisages that in case of posting exceeding the duration of 24 months, the labour law conditions of the host Member States will have to be applied, where this is favourable to the posted worker.

At this stage, this is a Commission proposal only, which might undergo further changes before adoption. It remains to be seen how the new directive, once adopted, could affect the application of Croatian labour law rules, especially taking into account the current rather unclear provisions regarding posting of workers.
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