INTERNATIONAL NEWSLETTER

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Angola, Andorra, Argentine, Austria, Belgium, Bulgaria, Colombia, Costa Rica, Cyprus, Chile, China, Ecuador, El Salvador, France, Germany, Greece, Guatemala, Honduras, India, Israel, Italy, Luxembourg, Malta, Mexico, Netherlands, Pakistan, Panama, Peru, Poland, Portugal, Republica Dominicana, Romania, Serbia, Spain, Switzerland, Turkey, United Kingdom, Uruguay, Usa, Venezuela.

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The new Illegal Asset Forfeiture Law – Decisive Step Against Tax Evasion

BULGARIA

The much-debated new Illegal Asset Forfeiture Law passed the second hearing in the Parliament on 3rd May. Taking into consideration the fact that the draft bill was submitted in January this year, we have to applause the determination of the supreme legislative body in the country to reform the regime of confiscation of illegal assets.

According to the bill, the Commission for the Identification and Forfeiture of Criminal Assets (CEPACA) has the power to undertake asset verification of individual's assets in every case when criminal proceeding for crimes entailing material benefit such as terrorism, participation in an organised criminal group, kidnapping, human trafficking, theft, robbery, embezzlement, drug deals, tax evasion etc. have been initiated.

CEPACA will have the right to launch probes and seize any assets when there is a significant (more than Lev 250,000) mismatch between the net income of the person under investigation and its property/assets. Subject to inspection may be not only individuals, but also legal entities. In the former case, the inspection is not limited to the business activities of the individuals, but expands to assets and incomes of the family and all "related parties" (spouses, minor children, extended family members etc.).

The new law provides in detail conditions and procedures for confiscation of property, for the acquisition of which there is no legal ground/legitimate source. Unlike current law, forfeiture is not preceded by conviction.

The new law envisages the seizure proceedings to develop in two phases: procedure conducted by CEPACA , which verifies the sources for the acquisition of the assets and taking interim measures/injunction; and forfeiture procedure carried out by a court.

Cases where CEPACA is entitled to initiate proceedings to establish whether the property under investigation is acquired with funds for which no legal source exist, are specifically mentioned in the law. Inspected is the property of two groups of persons: those indicted for a criminal offense related to material benefit or those who were not indicted on the grounds of Art. 24 of the Criminal Procedure Code; and individuals or legal entities who own or control assets which might reasonably be thought to be acquired by another person indicted for criminal activity, including tax evasion. As evident, the new law is clearly focused on persons for whom a reasonable assumption may be made that they own or control assets of illegal origin.

In the proceedings before it, CEPACA has the right to conduct financial investigation where evidences on the assets and the sources for their acquisition could be traced up to 10 years back. This limitation period, albeit long, has been criticized as barring the possibility to confiscate any property acquired in violation of the law in the beginning of the democratic changes in the country 25 years ago.

The bill also specifies what type of assets may be subject to forfeiture. When the assets are impossible to detach from the rest of the property, an equivalent monetary amount calculated at the market price of the asset at the time of forfeiture is due.

The pressure from the EU institutions is undeniably one of the main factors, but it is evident that there is also a strong political will on a national level to "mitigate" the situation of accumulating substantial amount of wealth by certain individuals from illegal activity, including tax evasion, in the last 25 years.

The law will enter into force 6 months after its promulgation in the Official Gazette.

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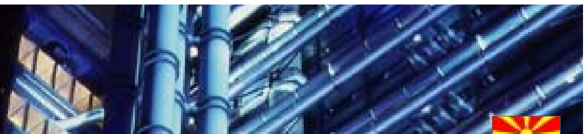
Public Revenue Office Law Amended; PRO to supervise AML measures



MACEDONIA

The Parliament has adopted the amended Law on the Public Revenue Office and The Law, published on March 22 in the Official Gazette No.39, is effective as of March 30 2012.

With this set of amendments, the Public Revenue Office has increased its portfolio of competencies that will now include the supervising of the implementation of actions and policies defined in the Law against Money Laundering (AML). The measures prescribed in the AML Law are directed both towards physical persons as well as towards legal entities active in the fields of real estate, accounting and auditing, tax consulting and general consulting services.

The AML Law, which remains unchanged, is mostly harmonised with the EU Directive 2005/60/EC, the 40 FATF recommendations and the 9 special FATF recommendations for counter terrorism financing. The Law prescribes that entities performing the above stated services are obliged to: perform client due diligence; monitor transactions – especially those from and to countries which have not implemented AML/CTF measures; collect and store information about the clients' transactions; and report on any suspicious transactions. The Law stipulates that any transaction (or multiple related transactions) of amounts greater than EUR 15,000 must also invoke a due diligence procedure.

It should be noted that entities failing to: perform a client due diligence; refuse or postpone a risky transaction; and inform the authorities of such a transaction will be fined with a EUR 4,000-5,000 penalty.

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Agreement between Argentina and Uruguay for the exchange of information.

ARGENTINA

On April 23rd the Authorities of the Argentine and Uruguayan Governments signed an Agreement for the Exchange of Information on tax matters. This is another agreement signed by Argentina in recent years.

In this regard, our country has subscribed agreements for the exchange of information on tax matters with the following countries: Spain, Peru, Brazil, Chile, Monaco, Costa Rica, Italy, China, Ecuador, Jersey, Guernsey, Bermuda, Bahamas, San Marino, Andorra, India and the Cayman Islands.

TAXES COVERED

The agreement will apply to all national taxes established by the parties and to which they are added or replace the existing ones, and do not include the provincial taxes.

There are included on the exchange natural and legal persons, entities considered taxable persons, as well as those subject to tax liability in accordance with the local legislation of the parties.

COMPETENT AUTHORITY

In the case of the Argentine Republic, the Federal Administration of income (AFIP) is defined as the competent authority, and in the case of Uruguay it is the Ministry of Economy and Finance.

LIABLE INFORMATION EXCHANGE

The agreement foresees that Argentina and Uruguay shall assist each other by exchanging information that is foreseeably relevant to the administration and enforcement of domestic law of the parties with respect to taxes and tax criminal matters covered herein.

The exchange of information is subject to that which is made by written request, which is that referred to the review, inquiry or investigation of a taxpayer's tax liability for specific fiscal years. By contrast, it does not foresee automatic exchange of information - either the transmission or systematically. Neither provides simultaneous tax audits or checks, the visit of representatives of the competent authorities and sectorial information exchange.

In this way, you can only exchange information related to specific cases, and on which the Treasury applicant must prove the relevance of the requested data. For information exchange applicable, the questing Treasury must have some information that constitutes a reasonable presumption to make the request. This evidence or data held by the Administration must justify the relevance of the application.

They are also excluded from the Agreement requests directed only at the simple collection of evidence in a purely speculative way (fishing expeditions) without direct connection with an audit in process.

FACULTIES TO GATHER INFORMATION

If the requested information in the possession of the Treasury applicant is not sufficient, it shall use all relevant information gathering measures to provide the applicant Party with the information requested.

In the case of Uruguay, the Dto 313/11 establishes that banking information will be provided by the intervention of a judge and in addition, the person in respect of the information which is supplied must be notified prior to the exchange with the other contracting State who can corroborate what type of information is supplied, in what terms, on the basis of that order, to which entity, etc. To ensure that the taxpayer can control the legality, make comments and even collaborate, precept is the preview of the referral of the information to the outside, which is required in any procedure that can cause injury to a managed one. In Argentina the right to notification prior to the implementation of the exchange is not regulated.

CONFIDENTIALITY OF THE EXCHANGE INFORMATION

The information received under this Agreement shall be treated as confidential. This means that only specific people can have access to the information. Such people or authorities shall use that information only for those purposes.

The information may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Given that the provincial taxes are not included in the agreement, the exchanged information may not be disclosed to any provincial collection organisms.

METHOD TO AVOID DOUBLE TAXATION

The Convention applies to the residents of one or both states. This expression includes every person subject to taxation by a signatory state according to its legislation with the exception of those that are only in relation to the income obtained in that State or on the heritage located in the same.

The taxes covered for Argentina are the Income Tax, the Tax on Presumptive Minimum Income, and the Personal Assets Tax. With regard to Uruguay, they are the Income Tax on economic activities, the disposal of agricultural goods, to the income of individuals, to the income of the non-residents, assistance to the social security and the property tax, as well as those of similar nature that allow you to add in the future or as a substitute.

The method to avoid the double taxation is for both countries the tax credit, on the basis that Uruguay will allow to deduct from the Uruguayan tax amounts withheld or paid in Argentina in relation to the income source of Argentina, but only up to the stop of the tax of Uruguay on the income that is subject to taxation in our country.

Similarly, when a resident in Uruguay possesses a heritage located in Argentina and subject to taxation in our country, Uruguay will allow you to deduct from the Uruguayan tax paid in Argentina but up to the stop of the tax of Uruguay.

In the case of Argentina, when a resident of our country get income from some Uruguayan source subject to taxation in this country, it may be deducted from the income tax an amount equal to that paid in Uruguay, but only up to the stop the tax determined in Argentina.

It will be an equal method of implementation in relation to technical support services, technical, scientific, administrative or similar and up to stop the tax determined in the country of residence.

In the latter case, the Convention does not limit the tax credit to the foreign source income, such as character set with the general law of income tax and also the double taxation treaties concluded by Argentina under the models of the U.N. and O.E.C.D. Thus allows to count as tax credit that retained by Uruguay in relation to technical services or technical support of Argentina sources (rendered in or from Argentina), which may be subject to retention in Uruguay, facilitating to export these services.

COME INTO FORCE/ EFFECT

The Agreement is not yet in force since it establishes that it shall enter into force thirty days after the diplomatic track receives the last notification between the parties. This last notification will notify that they have complied with the procedures laid down in their respective laws, such is the legislative approval in each country.

From it becoming effective, the Agreement is applicable to criminal tax matters as of that date, and in all other matters, to this date, but only for the tax periods that begin during or after that date. The same will apply when there is no fiscal period for the collection of taxes that arise on or after the date it came into force. In other words, the Convention is applied toward the future, once the Agreement becomes effective. This means that it is not possible to make retroactive exchanges.

It is worth mentioning that Act 15.322 of the Republic of Uruguay provides that information relating to data from bank accounts in no case may be earlier than 1/1/2011.

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Serbia – Canada Double Tax Treaty on Income and Capital

SERBIA

On April 27 2012, Canada and Serbia signed a convention for the avoidance of double taxation with regard to taxes on income and capital. The convention will enter into force once both contracting states will notify each other through diplomatic channels that the procedures required by their domestic laws for the entry into force of the convention have been completed.

In accordance with the Convention, the withholding tax rate at source with respect to dividends will be 5% provided that the beneficial owner is resident of the other contracting state and a company controlling at least 25% of the voting power of the company paying the dividend. In all other cases the withholding tax on dividends will be 15% on the gross amount of the dividends.

With respect to interest and royalties, it ought to be mentioned that the withholding tax rate at source shall not exceed 10%, in both cases, if the beneficial owner is a resident of the other contracting state.

Capital Gains derived by a resident of a contracting state from the disposal of shares or comparable interests, which derive more than 50% of their value, whether directly or indirectly, from immovable property situated in a Contracting State, such gains may be taxed in the Contracting State where the immovable property is situated. It is important to note that comparable interest includes an interest in a partnership or trust.

Finally, the provision relating to exchange of information, are also included in the said Convention. Such provisions are in compliance with the Organisation for Economic Cooperation and Development's agreed standard on information exchange. The provision specifically mentions that the exchange of information will occur where it is 'foreseeably relevant'.

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Tax relief for the assignment of intangible assets: patents, plans and business know-how.

SPAIN

Act 16/2007 of July 4th introduced, for the period started from the 1st of January, 2008 onwards, a new article 23 in the Spanish Consolidated Corporation Tax Act (hereinafter TRLIS), where a new tax incentive consisting of a reduction in the taxable income base of the 50% of the gross revenues obtained in the transfer of certain intangible assets is established. The aim of the regulation is encouraging the carrying out of creative activities of technical knowledge with industrial application within the frame of an innovative activity.

According to the current legal regulations, this incentive will be only applicable when the right of use or exploitation of the following assets is transferred:

A. Patents.

Patents are regulated by Act 11/1986, of March 20, on invention and utility models, in which it is established that in order to constitute a patent the following three requirements must be met:

- To be new inventions.
- To imply inventive activity.
- That they could be of industrial application.

Consequently, an immaterial asset considered as a patent, according to the abovementioned regulation, will meet the requirements for the application of the tax relief.

Also, such Act refers to utility models, establishing they will be securable as utility models.

Consequently, if from an accounting point of view these models are considered intangible assets, and since they include a level of invention and invention activity, this tax incentive could be applied to them.

B. Drawings or models, plans, formulas or secret procedures.

For these purposes, Act 20/2003, of July 7, for the Legal Protection of Industrial Design, establishes that by design it will be understood: "the appearance of the whole product or one part of this product that derives from the features of, particularly, lines, outlines, colours, shapes, textures or materials of the product itself or its ornamentation."

Therefore, the industrial design configured in drawings, models, plans, formulas or secret procedures also determines the right to the application of the tax regime of Article 23 of the TRLIS.

C. Rights on information related to industrial, commercial or scientific experiences.

These assets are not defined in our legislation. Nevertheless, they are part of what is known as know-how. According to the comments to the OECD Model Convention, know-how is the series of technical information not disclosed, that is, secret, patentable or not, that are required for the industrial reproduction, directly and in the same conditions of a product or procedure, arising form the experience and being the complement of what one company cannot know by means of the simple examination of the product and the knowledge of the technological progress. This knowledge arises from the experience of one company that describes the ability of one organization to develop without any problem certain functions within the productive or services spheres.

In accordance to this definition, the know-how could be understood as a secret on a series of knowledge of commercial or industrial nature, with technical character, determining a competitive advantage for its holder. According to the current doctrine, the concept of know-how comprises industrial, commercial and scientific secrets, not just limited to the productive process.

Additionally to the nature of the asset, certain requirements must be met in order to apply the tax incentive:

1) The incentive is only applicative in the circumstances in which the assigner entity itself creates the incentive. It must not be understood as the creation of the intangible asset the fact the passive subject has developed materially the intangible asset, but it has assumed the risk of its creation.

2) The proprietorship of the intangible asset must remain as passive subject. Only the transfer of the right of use or exploitation provides the application of the incentive, not the transfer of the ownership.

3) The assignee must use the intangible asset in the development of an economic activity. Consequently, in the event the assignee entity will act as a simple intermediary we understand the application of the reduction shall not apply.

4) In the circumstances in which the assignee is a person or entity linked to the intangible asset assigner, the regulation expressly states the assigner entity cannot acquire services or goods that imply financial expenses related to the intangible asset transferred.

5) In case the transfer agreement includes additional benefits of services, the regulation requires differentiating the consideration that corresponds to them.

6) The assigner entity must have the accounting books required to determine the revenues and expenses, direct and indirect, corresponding to the transfer of intangible assets.

7) The assignee cannot reside in a country or territory of no taxation or considered as tax haven.

Our experience says that the complex nature of assets together with the legal requirements required by the tax regulations for the application of the tax relief has made that many companies that by means of an adequate financial planning of the incentive will obtain profitable benefits, choose to not take advantage of it.

Undoubtedly, the complexity in the implementation of the legal requirements must never be an obstacle to take advantage of the tax relief established in the current legislation.

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This article refers to one of those topics that always generate inquiries from our clients: in whose name it is be to register the ownership of a real estate property? (Whether urban or rural).

Ownership of properties

URUGUAY

There are different reasons why someone would choose not to register a real estate as his; it could be in order to protect his personal assets or even for wealth transfer planning, but we are going to emphasize the tax aspect regarding this subject (income taxes generated when renting the real estate and property taxes) in the name of a natural person (local or foreigner).

In the name of a natural person (local or foreign)

If the owner is a natural person, then he must pay the tax on properties of natural persons. The value of the real estate considered for the tax calculation will be the same of the cadastral register (no matter what the actual cost was).This fact implies that many times the owner will not even have to pay taxes on properties, because in our national legislation the minimum taxable value of all the combined properties of a person is $100.000 (double this amount when the calculation is based on the whole family's properties). Moreover, it is possible to deduce up to 50% of the value (never exceeding the corresponding minimum taxable value). The aliquots are progressive and have increasing percentage rates that go from 0,7% to 1,8%. As we previously said, we shall consider all the properties of the natural person when we calculate property taxes.

In terms of income taxes, when renting the property to others, the owner will have to pay 10,5% of this income as "income taxes for natural persons".

If the real estate is sold later at a higher price, then the profit will be taxable at 12% of the difference between the original cost and the selling price. If the property was purchased before July of 2007 the taxation can also be made for 1,8% of the selling price.

In the name of a local company

The property tax for a legal person is calculated based on the buying cost of the real estate (the amount in US dollars multiplied for the exchange rate of the local currency at the date of the purchase) adjusted by the accumulated inflation.

If any improvement has been made in the real estate its value has to be depreciated according to the estimated life span of these improvements. In addition to this, the taxable value of the property shall never be less than the value that appears in the cadastral register.

The aliquot will be 1,5% and there will not be any minimum taxable value.

As you can see, this tax represents a really significant change if you compare it with registering the property by a natural person.

If the real estate is rented to other, then the income generated will have to pay 25% in taxes (of the net income, but you will probably not have many expenses to deduce). And then we have to add an additional 7% of the dividend distribution.

Once again, if the real estate is sold later at a higher price, the seller will have to pay 25% of the difference between the buying cost and the selling price for the capital gains tax.

If the real estate was bought after July of 2007 (or September of 2008 according to our criteria) from a natural person, then we could only deduce up to 48% of the cost (in this country this is called "padlock rule"). This means that we could end up paying much more than 25%.

In the name of an LLP

The difference between an LLP and a company is that the LLP is able to pay national capital gains tax if they choose to rent the property: 12% of the selling price (and without paying 7% in concept of distribution of profits) as long as the annual revenues are less than $ 400,000.

Note that the income from the rent of this property is 100% deductible for a capital gains tax payer (this is a kind of imperfection of the rule referred as "lock pad").

In the name of a foreign company

A Panamanian company, for example, will pay income taxes as a natural person and estate taxes as a local company.

Indeed, here we have a combo that reasonably meets the purpose of assets protection at a reasonable tax cost. It is obvious that a company has to pay at least the same rates of income taxes than natural persons are charged. The tax increase in comparison to natural persons is found in the properties taxes, the foreign companies pay 1,5% of the value updated by the inflation, just as much as local companies do.

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Changes to Intellectual Property Tax Regime

CYPRUS

The House of Representatives of the Republic of Cyprus has voted for new amendments in May 2012. These new amendments amongst all, intend to establish Cyprus as a very beneficial intellectual property holding structure, by creating an appealing tax regime for Intellectual Property Rights Holding Company.

Currently, a Cyprus Company is taxed with the usual corporate tax (CIT) of 10% on the net profits from any income generated from intellectual property rights.

The amendments to the law provide that 80% of any income generated from IP rights will be exempt from CIT; therefore only 20% of the profits generated from IP rights will be subject to CIT at the rate of 10%.

The aforementioned tax treatment also covers any profit from the future sale of the IP rights.

Furthermore, the law permits the deduction of all expenses that result out of the production of the royalty income. Therefore, the amount to be paid may be reduced even further.

In regard to capital expenditure it ought to be noted that the Cyprus IP Company will be able to write off any capital expenditure for the purpose of the acquisition or development of the IP rights. Such a write off will be permitted for the initial 5 years of use. Straight line capital allowances at the rate of 20% will be applicable for the first years of use as well as the following 4 years.

Subsequently, having the aforementioned in mind with regard to the amendments of Income Tax Law 118(I)/2002 (as amended), a Cyprus IP Company will effectively be liable to a maximum tax of 2%, as it is only taxed on 20% of its profits in case of royalty income.

The amendments to the law will come into force once they are published in the Official Gazette and have a retroactive effect as of 1st January 2012.

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ALLIANCE OF INDEPENDENT FIRMS

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