Track Changes

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WOLF THEISS

NEW EXIT TAX RULES INTRODUCED IN BULGARIA

Amendments to the Bulgarian Corporate Income Tax Act ("CIT Act") introduced new exit taxation rules that entered into force on 1 January 2020. The new provisions extend the scope of the taxable cross-border intra-company transfers of assets and business activities under Bulgarian law and implement Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("EU Anti-Tax Avoidance Directive").

TAXABLE TRANSFERS

Under the new rules, certain intra-company transfers of assets and business activities may trigger corporate income taxation in Bulgaria, if as a result of the transfer, Bulgaria would partially or completely lose the right to tax future disposals of the transferred assets/activities. According to the amendments to the CIT Act, the following outbound transfers are envisaged as a taxable "exit":

- A transfer of assets/business activities from the Bulgarian head office of the taxpayer to its permanent establishment outside of the country;
- A transfer of assets/business activities from the Bulgarian permanent establishment of the taxpayer to its head office abroad;
- A transfer of assets/business activities which is the result of a change of the taxpayer's tax residence from Bulgaria to another jurisdiction, except for assets which remain effectively connected with a permanent establishment in Bulgaria;
- A transfer of business activities carried out through a Bulgarian permanent establishment to another jurisdiction.

Exit taxation is triggered where no change of legal or economic title over the transferred assets/business activities occurs, as the transfer takes place between parts of the taxpayer's enterprise which are located in different jurisdictions. Intra-group transactions between separate legal entities, however, remain out of the scope of the new exit tax regime when they provide for the transfer of assets or business activities between the members of the group.

Certain temporary transfers of assets for a period not exceeding 12 months are exempt from the Bulgarian exit tax. The exemption applies to transfers which:

- are related to the financing of securities, or
- are related to assets posted as a collateral, or
- take place in order to meet prudential capital requirements or for the purpose of liquidity management.

TAXABLE BASE

The new rules are designed to tax the deemed capital gains derived by the taxpayer upon the "exit". To that end, 10% Bulgarian corporate income tax is levied on the positive difference between the fair market value of the transferred assets/business activities and their tax value at the time the transfer takes place. The tax value of the assets is calculated based on their historical acquisition cost, adjusted for tax purposes with statutory deductions and add-backs.

Where the difference between the fair market value and the tax value of the transferred assets/business activities is negative, the capital loss is tax deductible from the corporate income tax base of the taxpayer.

DEFERRED TAXATION

Under the new exit tax regime, the payment of corporate income tax liabilities arising from an intra-company transfer may be deferred and paid by way of annual instalments for a period of 5 years, provided that:

- the transfer of assets/business activities is of incidental or irregular nature, and
- the transfer of assets/business activities is made to an EU/EEA Member State.

Taxpayers meeting the above conditions may opt for deferred payment under their annual corporate income tax return for the tax year during which the transfer was made.

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About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

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