

# Tax & Legal Alert

Ernst & Young Bulgaria

This edition of the Tax& Legal Alert reviews recent domestic and international developments, which occurred as of 1 January 2011 (unless otherwise indicated in the text below).

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## New requirements to bankers' remuneration schemes

The Bulgarian National Bank has recently published detailed rules on the remuneration policies of local banks and foreign banks' branches in Bulgaria. Specific requirements have now been set to remuneration packages offered to directors, managers, supervisors and other employees who may affect the bank's risk profile. Under the new rules, their remuneration should be determined according to personal performance and overall results in a multi-year framework. These policies should be disclosed publicly.

Banks should ensure an appropriate balance between fixed and variable (e.g., bonuses) remuneration. The latter should comply with the following requirements:

- ▶ At least 40 % should be deferred over a period of three to five years.
- ▶ At least 50 % should consist of shares or alternative instruments.
- ▶ Pension benefits should be paid in shares or similar instruments, subject to five-year retention.

Guaranteed bonuses may only be given in exceptional circumstances. If financial targets are not achieved, banks may decrease deferred variable components or reclaim paid bonuses.

### How would this affect banks?

The new standards require changes to existing remuneration policies and employment contracts. Banks should ensure their compliance with the new principles by 31 March 2011. As salary tax is due upon receipt of cash payments, bonuses payable in shares may trigger tax issues. Therefore, tax implications should also be considered when structuring remuneration schemes.

## Amendments to the Commercial Act provisions

A more detailed identification of registered shares' owners is now required to be made in the companies' ledgers of shareholders. Director will also be held liable for the timely disclosure of holders of interim share certificates, as well as for recording changes in shareholding and pledges on shares. Registered shareholders and beneficiaries of pledges on registered shares should request registration by 1 March 2011.

New rules have also been introduced with a view to speeding up company reorganizations and insolvency proceedings, among which:

- ▶ Simplified procedures have been extended to reorganizations between parent companies and subsidiaries.
- ▶ A management's report on draft reorganization terms will not be required, if all shareholders agree to this in writing.
- ▶ Creditors whose claims are secured may appeal decisions for commencement or suspension of insolvency proceedings subject to certain conditions.
- ▶ Insolvency applications, submitted by debtors or liquidators, must be disclosed in the Commercial Register.

The term for re-registration of companies with the Commercial Register has now been extended to 31 December 2011.

## Civil procedures

As of 21 December 2010, court decisions on civil law claims up to BGN 5,000 and on commercial disputes under BGN 10,000 may not be appealed before the Bulgarian Supreme Court of Cassation.

## Electronic signatures

Amendments to electronic signatures' regulations, which will enter into force on 1 July 2011, include:

- ▶ Recognition of certification services provided by EU suppliers
- ▶ Changes to registration rules for certification service providers
- ▶ Qualified electronic signatures, having the legal effect of handwritten signatures, will replace standard ones.
- ▶ Confirmation will not be required upon receipt of electronic data messages.

## Incoterms (international commercial terms)

Under the 2010 revision of Incoterms, the "D" terms have been modified. They now comprise DDP (delivered duty paid) and the new terms DAP (delivered at place) and DAT (delivered at terminal), which replace DAF (Delivered At Frontier), DES (Delivered Ex Ship), DEQ (Delivered Ex Quay) and DDU (Delivered Duty Unpaid).

## Double taxation treaties

A renewed double taxation treaty between Germany and Bulgaria foresees the following:

- ▶ A reduced 5% withholding tax on dividends, if recipients (other than partnerships or German real estate investment trust companies) hold directly at least 10% in the paying company
- ▶ A new withholding tax of 5% on interest payments. Interest payable under bank loans, loans granted by certain institutions or related to sales of equipment and goods, is exempt from tax. Interest payments, which have been fully relieved under the old treaty, should be reviewed for compliance with the new provisions.
- ▶ The withholding tax on use of equipment fees to apply until 31 December 2014
- ▶ A shorter nine-month presence under construction projects to determine the existence of a permanent establishment
- ▶ Adjustment of related companies' profits for tax purposes
- ▶ Employment income to be taxed in the host country, if the employee spends there more than 183 days in any twelve month period starting or ending in the tax year concerned
- ▶ Nationality to determine an individual's tax residency, if an individual is a resident of both states under their national legislations

Double taxation treaties with Bahrain and Qatar and an amended treaty with Armenia also apply as of 1 January 2011.

A renewed double taxation treaty with Austria has been ratified by the Bulgarian Parliament but is awaiting ratification by the other country in order to take effect.

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