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In brief**

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The circulation of public documents within the EU simplifies

Legislative changes, which should simplify evidencing of authenticity of certain public documents such as birth certificate, marriage certificate or death certificate, have come into force. Neither the Apostille nor official translation of these documents is needed under the new rules.



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As of 16 February 2019, *Regulation (EU) 2016/1191 of the European parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012* (hereinafter "**Regulation on public documents**") has become effective. The purpose of the Regulation on public documents is to simplify circulation of certain public documents within the EU Member States.

The substance of the Regulation on public documents is to eliminate the requirement of the apostille and official translation of certain public documents, to which the public authority will attach, upon a request, a multilingual standard form.

This Regulation applies to public documents issued by the authorities of the EU Member State in accordance with its national law, which will be presented to the authorities of another EU Member State and the primary purpose of which is to establish one or more of the following facts:

1. facts relating to status of a natural persons: birth; a person being alive; death; name; domicile and/or residence; nationality;
2. facts relating to family relations: marriage including capacity to marry and marital status; divorce, legal separation or marriage annulment; registered partnership, including capacity to enter into a registered partnership and registered partnership status; dissolution of a registered partnership, legal separation or annulment of a registered partnership; parenthood; adoption;
3. absence of a criminal record, provided that public documents concerning this fact are issued for a citizen of the Union by the authorities of that citizen's Member State of nationality.

Examples:

Original of transcript of criminal record from the German criminal register (or criminal register of any other EU Member State of which is a person citizen), which will be submitted to a public authority in the Slovak republic (or in any other EU Member State):

A/ in case of absence of criminal record:

- a person does not need to apostille transcript of criminal record (Art. 1 para. 1, lit. a) and Art. 2 para. 1, lit. m) of the Regulation);
- upon request of the person entitled to the receive transcript of criminal records, public authority shall issue transcript of criminal records accompanied by a multilingual standard form, with parts in Slovak and German language. Therefore, official translation should not be required. (Art. 7 of the Regulation).

B/ if the person has a criminal record:

- a person needs to apostille transcript of a criminal record (this case is not in the scope of the Regulation – Art. 2, para. 1, lit. m));

- in this case, transcript of records needs official translation to Slovak language.

Original birth certificate issued by Italian public authority (or by public authority in any other EU Member State), which will be submitted to public authority in the Slovak republic (or to public authority in any other EU Member State):

- birth certificate does not need to be apostilled (Art. 1, para. 1, lit. a) and Art. 2 para. 1, lit. a) of the Regulation);

- upon the request of the person entitled to receive the birth certificate, a public authority shall issue birth certificate accompanied by a multilingual standard form, with parts in Slovak and Italian language. Therefore, official translation should not be required. (Art. 7 of the Regulation).

New Whistleblowing Act should improve protection of whistleblowers

In addition to modifying the whistleblower protection system, the law has also introduced obligations for employers concerning the internal system of notice's verification.



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On 1 March 2019, new Act No. 54/2019 Coll. on protection of whistleblowers and on amendments to certain acts (hereinafter as "**Act**") became effective and several changes have been introduced by this new piece of legislation.

Office for Whistleblowers' Protection

The Act establishes the Office for Whistleblowers' Protection ("**Office**") as an independent state administration body performing a role in the whistleblowers' protection during the reporting of illegal activities, monitoring the implementation of the Act, providing expert opinions and advice and, among other things, raising awareness of whistleblowing. The chairman of the Office will be elected and recalled by the National Council of the Slovak Republic.

Notice of illegal activity

A notice of illegal activity does not need to contribute significantly to revelation of illicit activities. According to with the new legislation, the notice means a statement of facts learned by an individual in connection with performance of his/her employment, profession, position or function or in the context of an activity in public interest relating to the whistleblowing. The criminal offences of legal entities are also deemed illegal activities being subject to the whistleblowing.

Whistleblower's Protection

The Act specifies that protection of whistleblowers in both criminal and administrative proceedings during the reporting of whistleblowing may be extended its related persons if he/she has the same employer as the whistleblower.

If the protection is not granted to the whistleblower either in criminal or administrative proceedings, the whistleblower may request by himself/herself or via the Office to investigate the grounds refusal by appealing to the superior administrative authority.

Reward

The Office may provide the whistleblower, who has performed a qualified notice, by his/her request a reward up to the amount of 50 times the minimum wage.

Internal system of notice's verification

Under the new legislation, an employer, who is employing at least 50 employees and an employer who is a public authority and employing at least 5 employees is required to designate a responsible person.

The responsible person shall have the professional qualifications required to perform the tasks under the Act, but the professional qualifications are not specified in the Act. The responsible person performs some of the employer's tasks under the Act, in particular: (a) discloses information on the internal system of notice's verification, (b) receipts and verifies each notice, (c) notifies the whistleblower of the outcomes of resolution of the notice and others.

The employer is also obliged to take appropriate technical and organizational measures to ensure and demonstrate that the internal system of notice's verification is carried out in accordance with the Act.

If the employer fails to perform any obligations arising from the Act, the Office may impose a penalty up to EUR 20,000 on the employer.

In case of questions, do not hesitate to contact [Marian Dzuroška](#), Executive Director at KPMG Legal Services.

ECJ issues important decision on the Beneficial Owner concept

Court of Justice of the European Union (ECJ) has issued two important decisions on the interpretation of the beneficial ownership concept in cases where the Interest and Royalties Directive and the Parent-Subsidiary Directive apply. The ECJ concluded that it is for the referring courts to assess whether the arrangements under review constitute an abuse under EU law, taking into account in particular the existence of conduit companies.



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On 26 February 2019 the Court of Justice of the European Union (ECJ) issued two important decisions on the interpretation of the beneficial ownership concept in cases where the Interest and Royalties Directive (joined cases N Luxembourg, X Denmark, C Danmark and Z Denmark) and the Parent-Subsidiary Directive (joined cases T Danmark and Y Denmark) apply. The ECJ concluded that it is for the referring courts to assess whether the arrangements under review constitute an abuse under EU law, taking into account in particular the existence of conduit companies.

The four joined cases N Luxembourg 1 (C-115/16), X Denmark (C-118/16) and C Danmark 1 (C-119/16) and Z Denmark case (C-299/16) all involve back-to-back financing transactions, under which a Danish resident subsidiary is financed by its non-resident parent company via a series of loans granted to intermediary holding companies resident in another EU Member State. The two joined cases T Danmark (C-116/16) and Y Denmark (C-117/16) both concern dividend distributions made by a Danish resident company to an intermediate holding company resident in the EU.

In all cases, the Danish company requested an exemption from the Danish withholding tax levied on the payments made to the EU company, based respectively on the Interest and Royalties Directive (2003/49/EC) and on the Parent-Subsidiary Directive (90/435/EC). The Danish tax authorities denied the exemption, arguing that the company receiving the income was a conduit structure and could not be considered the beneficial owner of the payment.

The taxpayers appealed these refusals before the Danish courts. The Danish courts in turn asked the ECJ to clarify whether Denmark may deny the benefits of the EU Directives and impose withholding tax on the underlying payments. The Danish courts also requested clarification of the applicability of the OECD's Commentaries on the Model Tax Convention in this respect, and on the requirements for a domestic or a Double Tax Treaty provision to qualify as anti-abuse provisions under the respective Directives.

The ECJ noted that EU law prohibits abusive practices as a general principle and concluded that under fraudulent circumstances Denmark must deny the benefit of an EU Directive, even in the absence of domestic or other anti-abuse provisions. Contrary to the Advocate General's (AG) Opinion (Tax & Legal News from April 2018), the ECJ concluded that in this case denying the benefit of an EU Directive merely results from the application of a general principle of EU law and therefore does not infringe the principle of legal certainty, which prohibits directives from being able by themselves to create obligations for individuals.

Noting that it is for the referring courts to assess whether the arrangements under review are in fact abusive, the ECJ pointed out that an abusive situation can be evidenced in the combined presence of objective (the purpose of the EU Directives is circumvented, despite a formal observance of the conditions required for their application) and subjective elements (existence of a wholly artificial arrangement, as well as an intention to obtain a (tax) advantage). The existence of

a conduit company without economic substance, which cannot use or enjoy the income received but has the obligation to pass it on to a third party, could also be considered a further indication of abuse. The fact that Denmark has concluded a tax treaty with the state of residence of the alleged ultimate beneficiary of the income cannot in itself rule out the existence of an abusive situation.

If abuse is identified, the ECJ further ruled, contrary to the AG's Opinion, that a Member State cannot be required to identify the person it deems to be the beneficial owner of the income, as it may be impossible for the national authorities to provide this information.

Lastly, the ECJ briefly addressed the potential infringement of the fundamental freedoms and concluded that the latter cannot be relied upon in abusive situations.

The ECJ also noted that the exemption of interest payments from any taxes as provided for by the Interest and Royalties Directive is restricted solely to the beneficial owners of such interest and further emphasized that such beneficial owner is the entity that economically benefits and has the freedom to use and enjoy the interest. In this respect, the ECJ underlined that the OECD Model Tax Convention and the pertinent commentaries are relevant for interpreting the concept of beneficial owner under the Interest and Royalties Directive, as the original directive's proposal is based on the OECD work in this matter.

Lastly, the ECJ addressed several questions on the general interpretation of the Interest and Royalties Directive that do not directly relate to abusive situations. Examining the case of the Luxembourg SICAR investment fund in the X Denmark case, the ECJ concluded that even if the SICAR is formally subject to corporate income tax in Luxembourg, it cannot benefit from the Directive if the interest income is in fact tax-exempt. Following settled case law as regards the Danish legislation possibly infringing the free movement of capital in non-abusive cases, the ECJ further noted that the Danish withholding tax on interest paid to non-residents infringed EU law insofar as resident taxpayers receiving Danish sourced interest (1) benefit from a tax payment deferral, (2) enjoy lower late payment interest rates and (3) may take any business expenses directly related to the interest income received into account when assessing their taxable income.

It is interesting to note that the ECJ's decision substantially differs from the AG's Opinion on various aspects of the case, including whether the OECD work could be relevant in interpreting provisions of the Interest and Royalties Directive or whether national tax authorities should be required to identify the person they deem to be the beneficial owner of the income in cases of abuse. The CJEU nonetheless provides much needed guidance on the interpretation of the concept of abuse under EU law and on the beneficial owner concept under the Interest and Royalties Directive in particular. In many respects, it would appear that the concept of abuse under EU law continues to evolve.

EU finance ministers take another step towards new VAT rules on e-commerce

On 12 March 2019, the Economic and Financial Affairs Council (ECOFIN) has reached a general approach on the VAT implementing rules on e-commerce. These rules should ensure a smooth introduction of the new VAT measures for e-commerce according to Council Directive (EU) 2017/2455 of 5 December 2017 and which will come into force in January 2021.



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VAT collection on sales facilitated by online platforms

The VAT rules set out in Council Directive (EU) 2017/2455 provide that where a taxable person facilitates distance sales of goods imported from third countries to EU customers in consignments of value not exceeding EUR 150 through the use of an electronic interface (such as a marketplace, platform, portal or other similar means), that taxable person will be considered to act as the seller. This means that from the VAT point of view, the taxable person who facilitates the supply via online platform will be deemed to have received and supplied the goods himself.

The same rules will apply when non-EU businesses use online platforms to sell goods from “fulfilment centres” in the EU, irrespective of their value. Online platform providers will also be expected to keep records of sales of goods or services made by businesses using their platform.

The new implementing rules specify in more detail when online marketplaces are considered to facilitate such supplies or when they are not considered to do so. This should be based on whether or not they are setting the terms and conditions of the supply as well as their involvement in the payment or ordering and delivery of the goods.

The implementing rules also specify in detail what kind of records have to be kept by platforms facilitating supplies of goods or services to customers in the EU.

A new VAT system for e-commerce

The recently agreed Implementing rules should also ensure that a new VAT system is ready for businesses that sell goods online as of 2021.

These measures comprise inter alia extension of the “One-Stop Shop”. Companies that sell goods online to their customers should gain a possibility to deal with their VAT obligations in the EU through one online portal in their own language. Without the portal, VAT registration would in general be required in each EU member state into which they want to sell.

Next steps

Adoption of the implementing rules will be possible only when the consultative opinion of the European Parliament becomes available. However, the European Commission indicated that the EU Member States can rely on the agreed rules to start extending their IT systems.

The new VAT rules for e-commerce will apply from 1 January 2021. The EU member states have to transpose the new rules of the VAT Directive into national legislation until the end of 2020. Businesses wishing to make use of the extended “One Stop Shop” should be enabled to start registering in EU member states as of 1 October 2020.

EU extended “Black list” of non-cooperative jurisdictions for tax purposes

In addition to the five jurisdictions that were already listed, the revised list now includes ten additional jurisdictions.



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On 12 March 2019 the Council of the European Union adopted a revised EU “Black list”, list of non-cooperative jurisdictions for tax purposes. In addition to the five jurisdictions that were already listed (American Samoa, Guam, Samoa, Trinidad and Tobago, US Virgin Islands), the revised list now includes ten additional jurisdictions that did not deliver on their commitments on time: Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, United Arab Emirates and Vanuatu.

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