



Virtual Reality Jungle

envelops the city!

Are you ready for the

new adventure?

September 2016

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KPMG in Romania

Pokemon Go has turned the real world into a part of the virtual game and has thereby managed to create a number of exciting new business opportunities. However, these may have legal and tax implications.

### **Singing Junichi Masudas' Tune...**

Perhaps you've heard your colleagues, friends, children, clients, accountant, dentist, next door neighbor and your local vendor across the street talk about catching Pokemons for a while now and succeeding in the most diverse and exciting places.

We could take the KPMG in Romania headquarters for example. Not only have multiple cases of encounters between auditors and Pokemons been reported in the professional services firm's hallways, but in case you did not know, its offices in Bucharest are a Pokestop - a place where objects can be obtained with which Pokemons can be caught or grown!

So if you're one of the over 21 million active users and you happen to pass by KPMG in Romania in your Pokemon Go digital quest, tax consultants together with lawyers from KPMG have prepared a brief guide to the fiscal and legal implications generated by the game which brings the Pokemon hunt into our everyday lives.

### **Augmented Taxation**

#### **For companies....**

Although Pokemon GO has been introduced to the public as a freemium software - an application that is made available free of charge, but which offers various additional services for real money, it has given rise to discussions about the consideration which is actually paid by users for application usage. Thus, the model used by Pokemon GO and by many other freemium apps is all about providing free of charge access only if the user agrees to provide certain personal information in exchange. Consequently, in order to run Pokemon

GO you must grant access to Contacts, Locations, Memory, Network, Camera and the list goes on ...

With regard to the above, the question arises as to whether the app developers will monetize the Pokemon GO application not only through in-app purchases, but also from collecting big data which they will further use for commercial purposes. Therefore, the obvious question from the perspective of indirect taxes is to what extent consideration resulting from personal data being obtained from each user, should be included in the taxable base of the services provided, in addition to the paid price for in-app purchases. This also raises questions about where the income should be taxed, but especially how much of the revenue derives from the app, considering that there is no practical way to measure accurately the purchase value of the data that is transferred.

KPMG recently released a study on the phenomenon of BIG Data, as part of its publication "The Future of Indirect taxes: 2020 and Beyond" which notes that the tax authorities increasingly understand the importance and availability of business data. Moreover, we should not ignore the impact of Big Data on the development, implementation and administration of fiscal policies.

#### **.... but also for the Players**

Although it is specifically stated that the transfer / alienation of Pokemon Go accounts violates the Terms and Conditions of Niantic, that has not stopped app users who have reached an advanced level in Pokemon Go from selling their accounts for up to thousands of euros!



People who conduct such activities in Romania must bear in mind the tax implications which arise from the sale of Pokemon GO accounts. As well as the obvious obligations to pay income tax and social contributions, the requirement to collect VAT should also be analyzed – in the event of transfers which exceed 65,000 euros a year.

Furthermore, given the huge popularity of Pokemon GO, many companies have already begun to take the application into consideration in their marketing strategy. One of the success stories is a restaurant in the United States, which, through a purchase of only \$ 10 for Pokemon incenses (i.e. articles used to attract Pokemons), managed to increase sales by 75% by bringing in new customers.

Companies that have already purchased or intend to purchase various Pokemon GO items for marketing purposes, should, however, pay attention to the issue of deductibility of these purchases in terms of income tax and VAT. According to tax legislation in Romania, services expenses are deductible only if supporting documentation is available which proves the effective rendering of services, as well as the fact, that these were purchased for the purpose of economic activities. Consequently, documentation of service purchases such as in-app purchases of Pokemon GO can be a challenge for taxpayers. Moreover, if a company acquires items through the application, it might also be required to withhold, declare and pay withholding tax

## **New challenges in the field of Intellectual Property**

Nothing signaled the rise of “Pokemon” in February 2016, when the list of the top most influential brands in the world was put together. Pokemon did not make the list, but with over 335 trademarks protected worldwide by companies of the group Nintendo, Nintendo of America Inc. and Nintendo Co. Ltd. “Pokemon” promises to break the charts in 2017.

### **Brand awareness challenges**

The game developer will have to wage a battle with an avalanche of awareness of its brand, which could have complex implications.

Awareness is not limited to the trademark “Pokemon”. The developer must also protect “Pikachu” and his play friends as well, consisting of more than 100 brands of the famous character.

### **Pokemon as a business**

With this in mind, the questions that arise are how can we catch as many Pokemon as possible for our business ... and especially how do we do it without risking possible violations of intellectual property rights? So are Pokemon on the street really free, or do some of them have a master?

Setting up an office / workstation as a Pokestop can be a significant marketing opportunity.



From a legal perspective, the “Pokemon Go” app, which houses our new friends, is protected as an intellectual creation through copyright. So, before you print invitations for hosting pokemon-friendly events, which are not confined to acquaintances / family, and have a commercial purpose, you should remember that it is necessary to sign non-exclusive agreements, under which you may „rent” the right to use the app at your events from the holder and even be granted the opportunity to invite Pikachu to the party!

#### **Pokestop**

But what about the Pokestops? Many companies, including KPMG in Romania have become pokestops on the “Pokemon Go” app.

Pokestop sites are pinpointed by images of various buildings, public spaces etc. offered by Google Maps, which include other protected trademarks.

From this point of view, according to Nintendo’s Privacy Policy, trademarks other than those held by Nintendo, belong to their respective owners.

Setting up an office / workstation as a Pokestop can be a significant marketing opportunity, although this possibility seems to have been temporarily suspended, most likely due to the large number of requests.

Nonetheless, we believe that new legal consequences are just around the corner, especially in terms of advertising.

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