

Amendments to Slovak legislation and other topics

Welcome to our April issue of Tax & Legal News. In this issue we have prepared information for you on the following topics:

- **Draft amendment to the Act on Income Tax – corporate income tax,**
- **Draft amendment to the Act on Income Tax – taxation of individuals,**
- **Draft amendment to the Slovak VAT Act,**
- **Draft Amendment to the Tax Administration Code,**
- **Possibility for assignment of tax paid by taxpayer,**
- **Amendment to the Commercial Code.**

We wish you pleasant reading.



Draft amendment to the Act on Income Tax – corporate income tax

The wheels of the legislative process have started turning relatively early this year and already in April we have had a chance to get familiar with ideas of the Slovak Finance Ministry concerning the tax environment in the country from the year 2016. Along with other pieces of the tax legislation, the draft Amendment of the Income Tax Act was published, proposing the following changes in taxation of the corporate sector:

Changes having a "legislation fine-tuning" character that may impact a large scale

of taxpayers include an explanation of "advisory and legal services", which are only tax deductible upon payment starting from the year 2015. After adding codes from the Statistical Classification of Products it is clear that the payment condition applies to accounting services, bookkeeping, audit and tax advisory services (code 69.2). As regards legal services, they shall include for the purpose of the payment conditions, advisory services, representation in various proceedings as well as notarial services (code 69.1).

Another proposed change that should, according to the Finance Ministry, fine-tune the already existing rules is

the opportunity to treat expenses on travel allowances as tax deductible at the employer provided that they represent taxable income in the hands of the employee.

As regards the area of transfer pricing which, starting from the year 2015, impacts not only foreign but also domestic related parties, the draft Amendment introduces changes in the process of obtaining an Advanced Pricing Agreement (APA). Failure to file the application for an APA within the statutory deadline will automatically lead to a refusal of the application. As the transfer pricing documentation represents an obligatory enclosure to the application and obtaining an APA may depend on the quality of documentation, taxpayers willing to obtain an APA should not leave the preparation of the application to the last minute.

Tenants of administrative buildings should welcome the cancellation of a restriction on including the tax residual value of technical improvement of leased premises financed by them in the case of income from financial settlement with the landlord at the end of the lease is lower than the residual value. Landlords and other lease-givers may be interested in the fine-tuning of the regime of tax depreciation charges of rented assets after the end of the lease in cases where the assets are not leased any longer.

The Finance Ministry did its homework and prepared also provisions

implementing the amended Council Directive 2011/96/EU known as the "Parent-Subsidiary Directive" aiming to make the fight against tax evasion more effective. The Amendment should impact cross-border transactions involving hybrid financial instruments, that are considered as loan financial instruments in the country of source (generally bearing tax deductible costs), whiles income arising from them is treated as dividends in Slovakia (which are generally not subject to tax). The Slovak Income Tax Act should also be supplemented by a general anti-abuse provision which should restrict the misuse of the tax regime applicable to dividends by setting-up a legal structure that does not reflect the economic reality.

The draft Amendment to the Income Tax Act includes also changes related to business combinations, transactions with securities and shares and provisions impacting selected sectors such as healthcare, pharmaceutical business and the insurance sector.

Author: Michaela Stachová
Contact: mstachova@kpmg.sk
+421 2 599 84 111

Draft amendment to the Act on Income Tax – taxation of individuals

This month a draft of the amendment to the Act No. 595/2003 Coll. on Income Tax was published. The most significant changes related to the taxation of individuals are summarised in the following paragraphs.

The submitted amendment proposes to exempt income which an individual gains from the transfer of securities, options and income from derivatives if this gain/income is generated within the long-term investment plans ("LT IP") according to the special regulation, including income which is paid after fifteen years from the beginning of saving. This tax benefit should be applicable to the income which is related to the transfer of securities obtained in the course of the saving period. If the conditions of LT IP are breached, the taxpayer will be obliged to include such previously exempted income to the tax base in the tax period when the conditions have been breached. Furthermore, the submitted amendment proposes to exempt income from the transfer of the securities traded on a regulated market if the period between acquisition and transfer exceeds one year.

Another of the proposed changes is

the introduction of a separate tax base for capital income. The separate tax base should be subject to a unitary tax rate of 19% regardless of the taxpayer's total annual income. The purpose of the proposed changes is to support the investments of the population in the capital market.

The submitted amendment also proposes several amendments to the Act relating to the non-monetary benefits which are provided by "an owner of medication licence" or other persons stipulated by the Act to the healthcare provider. For the sake of legal certainty it is proposed to broaden the scope of the provision of the Act related to the tax exemption of family allowances, maternity allowances, social benefits and tax credits by these which are received from the EU and EEA.

The amendment should be effective as of 1 January 2016

Author: Tomáš Geffert
Contact: tgeffert@kpmg.sk
+421 2 599 84 111

Draft amendment to the Slovak VAT Act

In April 2015, the Slovak Ministry of Finance introduced a draft amendment to Act No. 222/2004 Coll. on VAT as amended.

The following major changes are proposed to become effective from 1 January 2016:

- Settlement of the VAT liability upon the receipt of the payment from the customer**

A VAT payer established in Slovakia (except for a VAT group) whose turnover for the preceding calendar year did not exceed EUR 75,000 and who does not reasonably expect this turnover to be exceeded in the current calendar will be entitled to opt to apply a special regime - to settle the VAT upon the receipt of the payment from his customer. On the other hand, he will be entitled to claim an input VAT deduction only after the payment of the liability to his supplier.

The VAT payer will be obliged to announce the application of the special regime to the Tax Authorities as well as to include an information on this regime in his output invoices.

Upon the termination of the application of the special regime or upon deregistration, the VAT payer will be obliged to pay output VAT from all supplies which have not been settled in the period in which

the regime was applied, while will be entitled for input VAT deduction from purchases not yet paid in this period.

Should the VAT payer wrongfully apply the special regime or continue in the application of the special regime or should he not include the information on the special regime in the invoices, the Tax Authorities will levy a penalty up to EUR 10,000.

The Financial Directorate will publish on the website a list of VAT payers who announced the application or termination of the special regime.

This regime will negatively affect those VAT payers who will apply the standard regime and will purchase goods or services from a VAT payer applying the special regime as they will be entitled to claim an input VAT deduction from these purchases only upon payment of their liabilities to the supplier.

- Broadening of the application of reverse-charge**

Supply of goods within Slovakia except for the sale of goods via distance sales performed by a foreign person will be subject to reverse-charge by the customer established in Slovakia.

Based on this, the foreign person supplying the goods (except for distance sales) will not be obliged to register for VAT purposes in Slovakia and he will be entitled to claim input VAT via a VAT refund mechanism.

- Voluntary VAT registration – tax deposit will not be required**

Taxable persons which are only preparing for the making of supplies, and apply for voluntary VAT registration will not be obliged to provide to the Tax Authorities with a deposit in order to be VAT registered.

- Mitigation of conditions for accelerated refund of excessive deduction**

The VAT payers will be entitled to ask for an accelerated excessive VAT deduction remittance (i.e. a VAT refund within 30 days of the deadline for filing the VAT return for the respective VAT period) provided i. a. they did not have outstanding liabilities towards the state budget and towards social/health insurance institutions exceeding the amount of EUR 1,000 in total during 6 calendar months before the end of the calendar month in which the excessive deduction arose.

- Other proposed changes**

- Input VAT deduction – criteria to determine a rate in which the VAT payer uses his inputs for business purposes as well as

for other than business purposes

- Shortening of the period after which the right for excessive VAT deduction expires providing that the VAT payer does not enable the Tax Authorities to perform a tax audit (from 6 to 3 months)
- Obligations of foreign persons to pay back to the Tax Authorities VAT refunded based on the VAT refund application should the amount of the tax base be decreased after the filing of the application

We will keep you informed on the next steps within the legislative process.

Author: Zuzana Šidlová

Contact: zsidlova@kpmg.sk

+421 2 599 84 111

Draft Amendment to the Tax Administration Code

The draft amendment, which will become effective as of 1 January 2016 is introduced in response to the Report on the state of the business environment in Slovakia containing suggestions for improvement, which was taken into account by the Government Ruling no. 172 on 16 April 2014.

The main changes to be introduced are new and updated lists publicized by the Slovak Tax Authorities, the possibility of filing a supplementary tax return after the initiation of a tax audit, the grading of the amounts of penalties depending on the time elapsed from the breach of discipline, as well as the introduction of an absorption principle when imposing penalties. Please find below an overview of the proposed major changes to the Tax Administration Code:

- Filings in the prescribed form (e.g. tax return, EU sales list, VAT ledger statement) that an individual, under a duty to communicate electronically (e.g. VAT taxpayer or tax advisor), delivers otherwise than by electronic means shall be deemed as not received.
- Filings that do not have a prescribed form that an individual, under a duty to communicate electronically, delivers otherwise than by electronic means - the individual will be notified to deliver the filing by corrected means.
- The possibility of filing

a supplementary tax return within 15 days after the initiation of a tax audit is proposed. The intention of this amendment is to allow taxpayers to adjust the amount of their tax liability via filing a supplementary tax return for the corresponding tax period and this can lead to the levying of lower penalties than those imposed on the taxpayer based on the results of the tax audit.

- It is also suggested to use the amount of value added tax granted to the taxpayer to cover the receivable of the Member State on the basis of a request for international assistance for the debt recovery.
- To encourage taxpayers to fulfil their tax obligations in a timely and proper manner, a time element to the penalties is proposed, so in the case of a later imposed tax, a higher penalty is imposed. A penalty in the amount of the base interest rate of the ECB (but at least 3%) is proposed, if the supplementary tax return (STR) is filed before the receipt of the notice of initiation of a tax audit, in the amount of two times the base interest rate of the ECB (but at least 7%) if the STR is filed after the receipt of the notice and in the amount of three times the base interest rate of the ECB (but at least 10%) if a tax is levied by the Tax Authorities based on the results of a tax audit.
- The so called absorption principle in the imposition of penalties will be implemented. To be able to apply the absorption principle, the person should have committed multiple offenses within one Act, and applicable to the imposition of the aggregate penalty is the same Tax Authority (i.e. a tax office, a customs office or a municipality). Hence the Tax Authority is entitled to impose an aggregate penalty with the highest maximum limit of the penalty, and also shall impose a penalty of not less than the highest minimum limit of the penalty.
- Penalties under this amendment (effective from 1 January 2016) shall also apply to offenses committed during 2015, if favorable to the taxpayer.

Author: Lenka Slezáková

Contact: lslezakova@kpmg.sk

+421 2 599 84 111

Possibility for assignment of tax paid by taxpayer

The Financial Directorate of the Slovak Republic issued a Press Release on the possibility for the assignment of a percentage of tax paid to eligible entities. Inter alia, it states that the taxpayer who files a corporate income tax return for the period which started in 2014 and ends in 2015 (e.g. the taxpayer with the financial year ending in 2015) is entitled to assign "only" 1,5 %, alternatively 1 % of tax paid (or tax licence paid) to eligible entities specified by this taxpayer. 1,5 % of tax paid can be assigned only if the taxpayer provided financial gift/s to the taxpayers which are not established or founded to conduct business at least in the amount of 1 % of the tax paid (or tax licence paid) in the respective taxation period or no later than by the deadline for the filing of the respective tax return. Otherwise, the taxpayer is entitled to assign the percentage of tax paid only up to 1 % of the tax paid.

This document can be found on the following link:

https://www.financnasprava.sk/_img/pfse/dokumenty_PFS/Pre_media/Tlacove_spravy/Rok_2015/2015.03.23_TS_202_percenta.pdf

Author: Michal Mularčík

Contact: mmularcik@kpmg.sk

+421 2 599 84 111

Amendment to the Commercial Code

Following the current issues related to the process of bankruptcy and restructuring in the Slovak Republic, a Government Bill amending and supplementing Law No. 513/1991 Coll. Commercial Code was passed on 23 April 2015 (the "Amendment").

The main purpose of this Amendment is to prevent damage to creditors in cases of insolvency or restructuring proceedings. For this purpose, the Amendment introduces: (i) a register of disqualified persons, (ii) sanctions for willful delay of insolvency declarations (iii) an institute of a "company in crisis".

The register of disqualified persons contains the list of individuals who shall not, according to the decision of the respective court, act as a member of the statutory body, supervisory body, a branch manager, foreign company manager, foreign company branch manager or proxy.

Shareholders whose companies are at risk of bankruptcy shall, according to

the Amendment, should address the particular risk through an increase of capital of the company.

Only companies which maintain proper accounts and truthfully describe all transactions which affected the company before restructuring will be allowed to enter the restructuring process. If the restructuring plan indicates the debt settlement lower than 40% for unsecured creditors, no profits shall be paid to the shareholders of the company by the company before outstanding debts to unsecured creditors are not settled to at least to 40%. A denial of creditors' filled claims will be subject to judicial scrutiny.

The Amendment also excludes the applicability of § 59a) of the Commercial Code (which sets up restrictions for transfers of assets between related parties) for limited liability companies.

The majority of the provisions of the Amendment became effective on the day of its publication in the Collection of Laws, i.e. 29 April 2015.

Author: Alexandra Bakošová

Contact: abakosova@kpmg.sk

+421 2 599 84 111

https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Infosevis/Aktualne_informacie/2015_04_14_MOSS.pdf

- Information on the tax deductibility of the acquisition price of the stock provided free of charge to the Slovak Food bank after 1 January 2015
https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Infosevis/Aktualne_informacie/dp/2015/2015_04_14_Informacia_Potravina_vabanka.pdf

Contact us

Tomáš Ciran, Partner
+421 (0)2 59 98 43 06
tciran@kpmg.sk

Branislav Ďurajka, Partner
+421 (0)2 59 98 43 03
bdurajka@kpmg.sk

Robert Kolár, Director
+421 (0)2 59 98 43 14
rkolar@kpmg.sk

KPMG Slovensko Advisory, k. s
Dvořákovo nábrežie 10
811 02 Bratislava
skmarketing@kpmg.sk

www.kpmg.sk

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In one sentence

The Slovak Financial Directorate released the following guidelines and information:

- Guidelines on the taxation of income provided to a health care provider, his employee or to medical staff from an entity specified by the Slovak Income Tax Act
https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Metodicke_pokyny/Priame_dane/2015.04.17_MP_zdanovanie_%20poskytovatelov.pdf
- Information on the taxation of non-monetary consideration provided by the employer to the employee in connection to the cut of tax expenses according to the relevant provision of the Slovak Income Tax Act
https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Metodicke_pokyny/Priame_dane/2015.04.17_MP_zdanovanie_%20poskytovatelov.pdf
- Information on the filing of tax return for the "Mini One Stop Shop" scheme