

Amendments to Slovak legislation and other topics

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

- Draft amendment to the Slovak VAT Act,
- Amendment to the Act on Income Tax – current state,
- Tax deductibility of license fees and service fees,
- Subsistence minimum,
- Case-law dealing with interpretation of double tax treaties,
- Malaysia - Slovak Republic Double Taxation Avoidance Treaty,
- Recodification of procedural codes.

We wish you pleasant reading.



Draft amendment to the Slovak VAT Act

The Government of the Slovak Republic approved a draft amendment to Act No. 222/2004 Coll. on VAT as amended which proposes the following major changes to be effective from 1 January 2016:

- Settlement of the VAT liability upon receipt of the payment from the customer;
- Broadening of the application of reverse-charge;
- Voluntary VAT registration – tax deposit will not be required;
- Mitigation of conditions for accelerated refund of excessive deduction;
- Newly registered VAT payers will be allowed to deduct input VAT also from services purchased before VAT registration;
- Input VAT deduction – criteria to determine the rate in which the VAT payer uses his inputs for business as

well as for other than business purposes;

- Shortening of the period after which the right for excessive VAT deduction expires providing the VAT payer does not enable the Tax Authorities to perform a tax audit (from 6 to 3 months);
- Determination of the period within which the Tax Authorities will be obliged to:
 - perform a change of the VAT registration certificate of the VAT payer should i.a. a fixed establishment arises or ceases to exist – within 30 days of the submission of the announcement,
 - start a tax inspection upon the filing of a VAT return for the period for which the person should have been VAT registered provided the amount of input VAT exceeds the amount of output VAT – within 30 days of filing of this VAT return;
- Supply of management of funds according to special provisions will be VAT exempt regardless of the person supplying the service;
- Taxable persons seated outside the EU will be entitled to file a request for VAT refund also for a period of a calendar half year;

- The obligation of foreign persons to pay back to the Tax Authorities VAT refunded based on the VAT refund application should the amount of tax base be decreased after the filing of the application.

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

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Amendment to the Act on Income Tax – current state

The draft amendment to the Act on Income Tax we informed you of in our April issue of Tax and Legal news gets on the agenda of the National Council of the Slovak Republic before the summer break. One of the key subjects of the amendment in the area of taxation of individuals is a more favorable tax regime for income which an individual gains from so-called long-term investment plans and from the sale of securities traded on the regulated market.

Corporate income tax has undergone a number of significant changes due to an extensive amendment to the Act on Income Tax effective from the beginning of this year. The amendment brings further adjustments in this area, some of which should be relevant already for tax returns for 2015 filed after 31 December 2015. The following proposed changes may be interesting for a wider range of taxpayers:

- Advisory and legal services under codes 69.1 and 69.2 of the Statistical Classification of Products should be tax deductible only upon payment;
- Expenses on the acquisition of certificates and standards, which are tax deductible only upon payment should be subject to payment conditions if the input price is higher than EUR 2,400;
- Expenses arising from transactions with appurtenances to receivables (write-off, assignment, creation of provisions) should generally be tax deductible after the lapse of 1,080 days of the respective receivable becoming overdue;
- A limitation on the tax residual value of technical improvement financed by tenants of a leased premises included in depreciation group 6 (e.g. administrative buildings) should be cancelled;
- As of 1 January 2015 landlords of tangible assets may claim tax depreciation charges (generally applied on an annual basis) up to

an amount of time-resolved rental income of the property.

The application practice since the beginning of the year brought a number of questions which the Ministry of Finance responded to by the proposal to change the legislation so that if the tangible assets are rented only partly or only a portion of the tax period, the amount of depreciation included in the landlord's tax expenses shall be determined by the extent and duration of the rental of these assets. Landlords should in such cases perform adjustments of the annual tax depreciation charges for the purpose of their comparison with the rental income.

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Tax deductibility of license fees and service fees

In the recent months we have noted that tax audits frequently seek to challenge the deductibility of costs for services, specifically, if these are being provided by foreign related parties. The approach of the Tax Authorities is in our experience mostly negative to services such as management advisory and licenses. We recommend that those tax payers who purchase such services have a sound documentation proving that the general tax deductibility conditions are met, as well as that the arm's length principle is followed.

We would gladly assist you with preparation of supporting documentation or defend the deductibility of costs in case of tax audit. In case of failure in the first instance proceedings, our Tax and Legal department could in a number of cases represent you in the appellate proceeding and/or in court proceedings.

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Subsistence minimum

The subsistence minimum does not change with effect from 1 July 2015, i.e. the amount will remain EUR 198.09 per month per person. This figure impacts e.g. the amount of the non-taxable allowance for a taxpayer, non-taxable allowance for a spouse or the amount of tax base from which the higher 25% personal income tax rate applies.

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Case-law dealing with interpretation of double tax treaties

In its recent judgment no. 2Sžf/76/2014 the Supreme Court of the Slovak Republic took a stance to the question of the interpretation of double tax treaties. The litigation between the taxpayer and the tax authorities focused on the concept of beneficial ownership of income derived by non-residents from sources in the Slovak Republic. The dispute concerned the application of this concept in a situation where the applicable tax treaty did not explicitly require the non-resident to be a "beneficial" owner of the concerned source income. When assessing the audited transaction the tax authorities invoked the concept of beneficial ownership by means of the Commentary to the OECD Model Treaty.

However, according to the view of the Supreme Court the Commentary does not have a binding character (it is not a source of law) in particular because it was not published in Slovakia.

The Commentary has according to the Supreme Court only a complementary character.

The judgment of the Supreme Court suggests a possible direction towards which the opinions of the Slovak judges will evolve when deciding similar cases in which the tax authorities invoke the application of the Commentary to the OECD Model Treaty.

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Malaysia - Slovak Republic Double Taxation Avoidance Treaty

On 25 May 2015, Malaysia and the Slovak Republic signed a Double Taxation Avoidance Treaty in Kuala Lumpur. The treaty is subject to the domestic approval of both treaty states. It shall come into force 60 days after the later diplomatic note confirming this approval is exchanged.

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Recodification of procedural codes

The National Council of the Slovak Republic adopted on 21 May 2015, by a majority vote of its members three procedural codes; the Civil Dispute Code, the Civil Non-dispute Code and the Administrative Procedure Code which will replace valid Act No. 99/1963 Coll. the Civil Procedure Code as amended (hereinafter the "Civil Procedure Code"). The adoption of those codes is one of

the most significant legislative achievements in the history of the Slovak Republic which aim is to create such procedural institutes which would enable the approach of the ideal of prompt and fair protection of rights and interests of the parties.

The currently valid Civil Procedure Code of 1963 was amended more than 80 times, resulting in the disruption of its content and its logical continuity. In addition, the Civil Procedure Code as a general civil procedure code, inadequately reflects the particularities of each type of proceedings and therefore the three stated codes were adopted.

The Civil Dispute Code

One of the main objectives of the authors of the Civil Dispute Code was to ensure a consistent concentration of the process and the procedural activities of the parties. The acceleration of the procedure is to be achieved by the change of the rules of delivery. Through the penalization of unfounded objections, the new code also resolves the problem of an abuse of an objection of bias which can lead to the prolongation of the proceedings. Codification also affected the costs of proceedings, as the current Civil Procedure Code does not sufficiently motivate parties towards efficiency in the managing of proceedings. The Civil Procedure Code establishes the preliminary hearing of the dispute and the new means of communication. The appellate review will be based on a combination of review and cassation in principle. An extraordinary appellate review will be also changed due to non-compliance with the case law of the European Court of Human Rights.

The Civil Non-dispute Code

As we have already mentioned above, the current valid Civil Procedure Code does not sufficiently reflect the particularities of non-dispute proceedings and therefore a separate Civil Non-dispute Code was adopted. The separation of Codes represents a significant conceptual change which results in clarity in the area of management of dispute and non-dispute proceedings. The Civil Non-dispute Code governs only legal relationships which are different from legal relationships governed by the Civil Dispute Code. Legal relationship which are not governed by the Civil Non-dispute Code will be governed by the Civil Dispute Code. The Civil Non-dispute Code provides an exhaustive list of non-dispute proceedings. A contrario, all other proceedings are considered as dispute proceedings. New proceedings on

the cancellation of the registration of information into the Commercial Register was enacted.

The Administrative Procedure Code

Already in the beginning of re-codification works it was decided to separate the administrative judiciary into a separate code based on its specificity and the practice of other states.

The Administrative Procedure Code no longer provides for an appeal against non-effective decisions of administrative bodies. The Administrative Procedure Code changes the local competences of the courts in a way that the regional court is competent in the area of which the first instance administrative body has its seat, which will lead to a decreased workload of the Regional Court in Bratislava.

The Supreme Court of the Slovak Republic will decide in only a small number of cases. The most significant change is the creation of a cassation complaint which will replace an appeal. The cassation complaint will be considered as an extraordinary remedy. The Administrative Procedure Code introduces an action upon retrial.

All three codes come into force on 1 July 2016.

In conclusion, it should be noted that the new codes reasonably use those provisions of the Civil Procedure Code which were proved in practice and may be used also in the new concept of civil procedure law.

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In one sentence

- On 22 May 2015, the OECD released a new discussion draft on Action 6 (Prevent Treaty Abuse) of the OECD's base erosion and profit shifting (BEPS) action plan which reflects the conclusions and proposals that resulted from the March 2015 meeting of Working Party 1 on Tax Conventions. The draft can be found under following link: <http://www.oecd.org/ctp/treaties/discussion-draft-action-6-follow-up-prevent-treaty-abuse.pdf>
- The European Commission intends to adopt an Action Plan that will include a minimum corporate tax rate and a strategy to re-launch the Common Consolidated Corporate Tax Base (CCCTB) along with other actions to reinforce the link between taxation and economic activity.
- On May 27, 2015 Switzerland and the EU signed an agreement under

which Switzerland on the one hand and the 28 EU Member States on the other will automatically exchange information on financial accounts of each other's residents from 2018.

- The Slovak Financial Directorate released information on the filing in Table D of the corporate income tax return form where taxpayers may find practical instructions on how to complete the respective part of the tax return form related to the evidence of tax losses reported, utilized and carried forward. This document may be found (in Slovak language) here: https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Infoservis/Aktualne_informacie/dp/2015/2015_05_29_informacia_k_vyplnaniu_tabulky_D.pdf
- The Prime Minister of the Slovak Republic proposed to broaden the domestic reverse-charge mechanism to supplies in the construction industry and to decrease the VAT rate on selected food.

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