

## Amendments to Slovak legislation and other topics

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

- **Amendment to the Act on Income Tax,**
- **Amendment to the Slovak VAT Act,**
- **Amendment to the Tax Administration Code,**
- **Withholding tax - healthcare providers,**
- **Extension of topics of binding rulings issued by the Financial directorate of the Slovak republic,**
- **OECD BEPS update,**
- **Input VAT deduction by holding companies,**
- **Slovak Government approves Resolution setting maximum intensity of investment aid,**
- **Amendment to the Act on public procurement.**

We wish you pleasant reading.



### **Amendment to the Act on Income Tax**

The amendment to Act No. 595/2003 Coll. On Income Tax as amended (hereinafter "the SITA") from 22 September 2015 signed by the president of the Slovak Republic includes many changes, adjustments and specifications (legislation fine-tuning). The most significant of them are summarized below:

- Taxation of capital income of individual within the separate tax base alone (individually)
- Possibility for exemption of social assistance (help) grant from the personal income tax
- Possibility for exemption of personal income from the sale of the securities

accepted for trading on the regulated market from the personal income tax

- Possibility for exemption of personal income from the sale of securities, sale of options and derivatives from the personal income tax
- Adding into the provision regarding exemption from the personal income tax in case of child allowances, maternity benefits, social benefits and tax (child) bonuses by income of the same kind received from EU and EEA
- New provision relating to namely hybrid financial instruments / dividends received by legal entity
- Changes in the area of transfer pricing
- Explanation of the term "advisory and legal services", which are only tax deductible upon payment starting from the year 2015.
- Change relating to the tax deductibility of costs for obtaining of norms and certifications
- Legislation fine-tuning with respect to the tax deductibility of the travel allowances which are provided in excess of the Travel Expense Act
- New provision with respect to pricing (valuing) of financial assets (securities and shares) for tax purposes

- New provisions (adjustments) relating to the tax deductibility of the bad debt provision against to accessories to receivable, write off of receivables including accessories, cession (assignment) of receivables including accessories
- Adjustments in the area of the tax deductibility of depreciation charges of rented tangible assets, claiming of tax residual value
- Implementation of anti-abuse rules
- Changes in the area of the taxation of monetary and non-monetary consideration paid / provided by holder (e.g. holder of registration certificate of medicament, pharmaceutical company) to health care provider

Please see our [Tax Alert](#) for more detailed information.

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#### Amendment to the Slovak VAT Act

The Parliament approved on 1 October 2015 the amendment to Act No. 222/2004 Coll. on VAT as amended, already signed by the President. The major changes **to be effective from 1 January 2016** are summarized below:

- Settlement of the VAT liability upon receipt of the payment from the customer
- Domestic reverse-charge on supply of construction works
- Voluntary VAT registration – tax deposit will not be required
- Broadening of the application of reverse-charge
- Mitigation of conditions for accelerated refund of excessive deduction
- More detailed information on local purchases in the VAT Ledger Statement (effective from 1 April 2016)
- Decrease of VAT rate on food - supply of certain kinds of meat, fish, milk, cream, butter and bread will be subject to 10 % VAT

Please see our [Tax Alert](#) for more detailed information.

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

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#### Amendment to the Tax Administration Code

The main changes introduced with the amendment effective as of 1 January 2016 are

- new and updated lists publicized by the Slovak Tax Authorities,
- introducing of a possibility of filing a supplementary tax return after the initiation of a tax audit,
- grading of penalties according to the time elapsed from the breach of discipline,
- enhancing the possibilities to change or cancel the pledge
- introduction of an absorption principle when imposing penalties.

Please see our [Tax Alert](#) for more detailed information.

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#### Withholding tax - healthcare providers

As of 1.1.2016 the Act on Income Tax introduces amendments in the area of taxation of income which is paid to healthcare providers by the holders of drug registration.

The value of meals provided to healthcare providers during any events organized for educational purposes will be exempt from tax, provided that the value of meal will not extend the limits stated in the Act on travel expenses. However, the value of accommodation and transport provided will be treated as taxable non – monetary benefits as before.

The frequency for remittance of withholding taxes and reporting of non-monetary income is reduced - from calendar quarter to a calendar year. If the income is provided after 31.12.2015, the holder reports the amount of the non-monetary income by 15.1.2017 to a healthcare provider, and the holder withholds the tax and file the announcement by 30.1.2017.

Should the non-monetary benefits be provided by a third person, the reporting obligations are to be fulfilled by this third person, unless i) there is a written agreement declaring otherwise or, ii) the third party is a foreign entity.

Also non-residents - healthcare providers – will be obliged to tax their income derived from activities within the territory of the Slovak Republic received in the form of monetary or non-monetary income from the holder - resident or non-

resident, having a branch or permanent establishment in the Slovak Republic.

Monetary and non-monetary income from abroad will be subject to withholding tax. This income will be taxed by resident (the recipient of the income) annually by 30 days after the end of the calendar year - this simplification above may not be used, if this income is provided by foreign holder, having a branch or permanent establishment in the Slovak republic.

The last change is addressing beneficiaries, being both holders and the healthcare providers at the same time. If the holder provides monetary or non-monetary income to a health care provider, who is also a holder, the person responsible for the timely and correct settlement of the tax will be the recipient of the supply. In the case he acts as a health care provider, tax will be withheld, regardless of nature of the income (monetary or non-monetary) and the recipient will pay the tax. If the beneficiary acts as a holder, the tax will not be assessed at all.

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#### Extension of topics of binding rulings issued by the Financial directorate of the Slovak republic

Based on the ordinance issued by the Ministry of Finance, as of 15 September 2015 the extent of topics that may be subject to binding rulings of the Financial directorate of the Slovak republic (FDSR) has been extended. With respect to provisions of the Act no. 595/2003 Coll. on the Income Tax as amended (SITA) the FDSR is allowed to issue binding rulings to assessment of topics related to:

- The source of income of the taxpayer with limited tax liability according to Art. 16 of SITA
  - The sale and purchase of a company or its part at fair values according to Art. 17a of SITA
- (binding rulings to the above points may be issued as of 1 September 2014)*
- Tax base adjustment representing the amount of unpaid overdue liability or its part according to Art. 17 Section 27 and 32 of SITA
  - The tax deductibility of costs (expenses) according to Art. 19 of SITA
  - The deduction (use) of tax loss according to Art. 30 section 1-4 of SITA

- Correct application of provisions of Art. 43 of SITA regarding the withholding tax.

With respect to provisions of the Act no. 222/2004 Coll. on the Value Added Tax as amended (VATA) the FDSR is allowed to issue binding rulings to assessment of topics related to:

- The commencement of tax liability according to Art. 19 –21 of VATA
- Tax rates for goods according to Art. 27 of VATA
- The person who is liable to pay value added tax according to Art. 69 section 12 of VATA

*(binding rulings to the above points may be issued as of 1 September 2014)*

- The fulfilment of requirements for creation of a fixed establishment according to Art. 4 section 5 of VATA.

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### OECD released final package of BEPS reports

On 5 October 2015, the Organisation for Economic Co-operation and Development (OECD) issued a final package of reports in connection with its Action Plan to address Base Erosion and Profit Shifting (BEPS), as well as a plan for follow-up work and a timetable for implementation.

The OECD's BEPS Action Plan, which was launched in July 2013 and endorsed by the G20, includes 15 key areas for identifying and curbing aggressive tax planning and practices and modernizing the international tax system. The OECD delivered interim reports with respect to 7 of the 15 action items in September of 2014. Those 2014 reports have been consolidated with the remaining 2015 deliverables to produce a final set of recommendations for addressing BEPS. Many countries have already adopted or are poised to adopt changes to their international tax systems based on the OECD recommendations (Slovakia included).

The actions included in the Final Reports are:

- Action 1 – Addressing the tax challenges of the digital economy
- Action 2 – Neutralising the effects of hybrid mismatch arrangements
- Action 3 – Designing effective controlled foreign company rules

- Action 4 – Limiting base erosion involving interest deductions and other financial payments
- Action 5 – Countering harmful tax practices more effectively, taking into account transparency and substance
- Action 6 – Preventing the granting of treaty benefits in inappropriate circumstances
- Action 7 – Preventing the artificial avoidance of permanent establishment status
- Actions 8 -10 – Aligning transfer pricing outcomes with value creation
- Action 11 – Measuring and monitoring BEPS
- Action 12 – Mandatory disclosure rules (on aggressive or abusive tax-planning schemes and their users)
- Action 13 – Guidance on transfer pricing documentation and country-by-country reporting
- Action 14 – Making dispute resolution mechanisms more effective
- Action 15 – Developing a Multilateral Instrument to modify bilateral tax treaties

The final reports can be accessed under this link:

<http://www.oecd.org/tax/aggressive/beps-2015-final-reports.htm>

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### Input VAT deduction by holding companies

On 16 July 2015, the the Court of Justice of the European Union ("CJEU") released its judgment on the joint cases C-108/14 Larentia + Minerva mbH & Co. KG v. Finanzamt Nordenham and C-109/14 Finanzamt Hamburg-Mitte v. Marenave Schiffahrts AG.

These cases concern the deduction of input VAT by holding companies from received supplies related to procurement of capital for the acquisition of a shareholding in subsidiaries.

The judgment also deals with conditions for creating a VAT group and a possibility to invoke the direct effect of the provisions of the EU VAT Directive governing the VAT grouping.

#### The Case

Larentia + Minerva mbH & Co. KG („Larentia + Minerva“) and Marenave Schiffahrts AG („Marenave“) are companies established according to German Law.

Both have represented what is known as „management holding companies“, who have rendered services to its subsidiaries for consideration and have been actively involved in the management of their day-to-day business activities.

The Company Larentia + Minerva has rendered taxable administrative and commercial services. Marenave has, in addition to taxable management services, provided financial services exempt from VAT without the right for input VAT deduction. Both holding companies have deducted input VAT deduction charged upon the transactions related to procurement of capital for the acquisition of shareholding in subsidiaries. However, the German tax authorities have partially disallowed the input VAT deduction. They argued that the respective received supplies were related to a mere acquisition and holding of shares in a company which is, from the VAT point of view, not to be regarded as an economic activity subject to VAT.

#### Questions referred for a preliminary ruling

The Federal Finance Court (Bundesfinanzhof) in Germany requested a preliminary ruling of CJEU on the calculation method that is to be used to calculate a holding company's (pro-rata) input VAT deduction in respect of input supplies connected with the procurement of capital for the purchase of shares in subsidiaries, if that holding company subsequently (as intended from the outset) provides various taxable services to those subsidiaries.

Further, a preliminary ruling was requested on whether certain forms of businesses that are not considered as having legal personality under the domestic legislation, could become members of a VAT group. The CJEU further had to cope with the question on whether a taxable person can invoke a direct effect of provisions of the EU VAT Directive governing the VAT grouping.

#### The Judgment

#### Full VAT deduction by active holding companies

As for the opinion of the Federal Finance Court in Germany according to which the received supplies connected with the procurement of capital for the purchase of shares in subsidiaries should be apportioned between the economic and non-economic activities of that company, the CJEU



opposes referring to its previous judgment in the case C-16/00 Cibo Participations.

Based on the aforementioned judgment, the mere acquisition and holding of shares in a company is not to be regarded as an economic activity that is subject to VAT. However, the involvement of a holding company in the management of companies in which it has acquired a shareholding constitutes an economic activity for VAT purposes.

The CJEU reminds that the right for input VAT deduction arises to the taxable person even in the absence of direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. According to the CJEU, costs connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity, must be regarded as belonging to its general costs and the VAT paid on those costs must, in principle, be fully deductible.

The CJEU has not directly dealt with comparison of the amount of the respective costs with the turnover volume. In other words, it has not examined whether and in what amount were these costs included in the turnover resulting from taxable transactions. However, it appears that the CJEU holds the view that these costs qualify as general costs of the management holding company, which are in a way always reflected in the calculation of the price for the services provided. The CJEU concluded that in such a case, the holding company may deduct the input VAT in full, if the parent company performs only taxable management services.

Partial input VAT deduction should be considered if the activities of the holding company comprised both the supplies with the right for input VAT deduction and VAT exempt supplies without the right for input VAT deduction.

#### VAT deduction limitation applicable to mixed taxable persons

The CJEU clarifies that the VAT deduction limitation should be applied if the holding company was involved in both economic activities and transactions that do not qualify for an economic activity for

VAT purposes (if a "mixed taxable person" was concerned).

If the referring court found out that the shareholdings resulting from the capital transactions carried out by the holding companies were attributed in part to other subsidiaries in the management of which those holding companies were not involved, the VAT paid on the costs of those operations could be deducted only in part.

In such case, the mere holding of their shares in those subsidiaries could not be considered to be an economic activity of those holding companies. It would be necessary to apportion the input VAT between that which relates to economic activities and that which relates to the non-economic activities of those holding companies.

Input VAT deduction could be applied only in the extent relating exclusively to economic transactions of the holding companies.

The determination of the methods and criteria for apportioning input VAT between economic and non-economic activities is left in the competence of the EU member states. The CJEU refers to the previous judgment in the case C-437/06 *Securenta*. According to this judgment, the EU member states may, where appropriate, to use an investment formula or a transaction formula or any other appropriate formula, without the obligation to restrict themselves to only one of those methods.

#### Conditions of VAT grouping and direct effect

According to the CJEU, the provisions of the EU VAT Directive governing the rules for VAT grouping preclude national legislations which allow to form a VAT group solely to entities with legal personality and linked to the controlling company of that group in a relationship of subordination. Exception could be considered if those two requirements were appropriate and necessary in order to achieve the objectives seeking to prevent abusive practices or to combat tax evasion or tax avoidance.

Finally, the CJEU concluded that the provisions of EU VAT Directive governing the VAT grouping do not have a direct effect, as these provisions contain conditions whose implementation is left to the discretion of the EU member states. This means that taxable persons cannot invoke them against their member state if the domestic legislation is incompatible with these provisions.

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### **Slovak Government approves Resolution setting maximum intensity of investment aid**

The Slovak Government approved the new Resolution No. 219/2015, which sets up the maximum intensity of investment aid and the amount of investment aid in the regions of the Slovak Republic.

The new Resolution implements the regional aid map approved by the European Commission under the EU state aid rules.

Key changes to present status:

- The Resolution cancels Resolution 481/2011
- The Resolution defines regions of Eastern, Middle and Western Slovakia (except Bratislava)
- The Resolution defines a new category of districts with unemployment rate above 160% of the average unemployment rate in the Slovak Republic in relevant period.
- The Zones A, B and C are cancelled and instead of it the investment aid intensity is determined based on the Region. Please note that the investment intensity cap for former Zone C is similar or identical to Western Slovakia region and the intensity caps for former Zones A and B are identical to Middle and Eastern Slovakia regions.
- Maximum amount of aid for tangible and intangible assets are enhanced (25% for Western and 35% for Eastern and Middle Slovakia)
- Maximum tax relief for Western Slovakia is 25%, which is identical to current Zone C and 35% for Middle and Eastern Slovakia regions, which is identical to current Zones A and B
- Maximum amounts of aid for a new workplace has increased and is determined according to regions and according to unemployment rate. The new category of districts with unemployment rate above 160% of the average unemployment rate was introduced. The new cap for this category is EUR 30 thousand per one workplace (or EUR 15 thousand for Industry and Strategic services in Western Slovakia). Please note

according to the [Resolution 481/2011](#) the ceiling was EUR 8 thousand and only for Technology centres.

- Maximum amounts of aid for intangible assets acquired for price below general value are 25% for West and 35% for East and Middle Slovakia.

The maximum intensity of aid for small and medium enterprises may be increased by 20% and 10% respectively.

Please note that the new Resolution is applicable also for proceedings, which were not decided upon until 14 September 2015.

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### **Amendment to the Act on public procurement**

On 17 September 2015, the National council of the Slovak Republic passed (after previously returned by the president) the act amending Act no. 25/2006 Coll. on public procurement ("the act on public procurement"). This amendment will come into force as of fifteenth day of its declaration, except for selected provisions which will come into force as of 1 November 2015.

This amendment introduces mainly the following changes:

#### *Beneficial owner*

The most significant novelty of the legal regulation of public procurement is the introduction of the beneficial owner definition and of the register of beneficial owners. The aim of this regulation is to achieve more effective and transparent management of public resources and to fight corruption in the public procurement.

In the light of the new regulation, the public procurer and the procurer will not be able to contract with the tenderer that does not have beneficial owners listed in the register of beneficial owners. Subcontractors will also have an obligation to have beneficial owners listed in the register of beneficial owners if their share of the performance of the contract is at least 30 % of a value of above-limit contracts with an estimated value of at least EUR 10 mil., or if their share of the performance of the contract is at least 50 % for other contracts. Thus, contracts based on the public procurement will be concluded only by subjects with ownership structure which is known up to the level of individuals.

This requirement is relevant for above-limit contracts and below-limit contracts without the use of an electronic market.

Companies and individuals will be obliged to list their beneficial owners in the affidavit annexed to the application for registration with the register of beneficial owners. These data will then be publicly available on the web site of the Office for Public Procurement.

In case of a failure to comply with obligations related to registration with the register of beneficial owners, the amendment:

- introduces new types of administrative offenses and entitles the public procurer and the procurer to terminate, under certain conditions, the contract, the concession contract or the framework contract;
- enables to delete from the register entities having the address or registered seat in a state which does not cooperate with the authorities of the Slovak Republic in verifying the identification of the real owner.

#### *Below-limit contracts*

The amendment introduces also a change of the lower limit for anticipated value of (below-limit) contracts for delivery of commercially available goods on the market, except for food, construction work or services commercially available on the market. The financial limit has been increased from EUR 1,000 to EUR 5,000 for all entities, except for the Slovak Republic represented by its bodies. The lower limit for the government remains unchanged at EUR 1,000. The aim of this change is to simplify the procurement process for municipalities and small towns.

#### *Negative definition of the scope of the act (legal representation and advisory)*

Within the limit of below-limit contracts and contracts under Article 9 para. 9 of the act on public procurement, legal representation of a client by an attorney in the arbitration, conciliation, judicial, administrative proceedings or other similar proceedings and legal advisory from the attorney related to the preparation of these proceedings, or if there is a clear indication of a high likelihood that the case which relates to legal advisory, will become subject to such proceedings, are being excluded from the scope of this act.

### *Electronic market and dynamic purchasing systems*

The changes introduced by the amendment to the act on public procurement include also a possibility of using electronic market also in a case of above-limit contracts and a regulation of a process of dynamic purchasing systems in relation to the application of rules of closer procedure.

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#### **In one sentence**

- The Slovak Financial Directorate released the following guidelines:
- Guideline on change of VAT registration of a taxable person (i.e. change from VAT registration according to Article 5 or 6 to Article 4 and vice versa) [https://www.financnasprava.sk/\\_img/pfsedit/Dokumenty\\_PFS/Profesional\\_na\\_zona/Dane/Metodicke\\_pokyny/Nepriame\\_dane/2015/2015.09.22\\_MP\\_DPH.pdf](https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Profesional_na_zona/Dane/Metodicke_pokyny/Nepriame_dane/2015/2015.09.22_MP_DPH.pdf)
- Information on taxation of non-monetary income arising from a granting a motor vehicle to be used for business and private purposes [https://www.financnasprava.sk/\\_img/pfsedit/Dokumenty\\_PFS/Infoservis/Aktualne\\_informacie/dp/2015/2015.09.22\\_dan\\_z\\_prijmu.pdf](https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Infoservis/Aktualne_informacie/dp/2015/2015.09.22_dan_z_prijmu.pdf)
- On 6 October 2015, interdepartmental commentary process to draft amendment to the act on securities was completed. The purpose of this draft amendment is to simplify execution of right of squeeze in favor of a shareholder holding majority stake in excess of 95 % in the joint stock company (squeeze out).
- The President signed the amendments to the Act on Excise Duty on Tobacco Products and the Act on Excise Duty on Alcoholic beverages approved by the Parliament on 22 September 2015.



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