# Tax & Legal news

**Amendments to Slovak legislation and other topics**

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

- Changes in the remittance of the excessive VAT deduction
- Anti-BEPS Directive
- Further proceedings in the BEPS initiative
- New public procurement law

**We wish you pleasant reading.**

**KPMG in Slovakia**
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### Changes in the remittance of the excessive VAT deduction

According to Act No. 222/2004 Coll. on VAT as amended, effective as of 1 January 2016, the following changes in the remittance of the excessive VAT deduction are applicable:

- **Mitigation of conditions for accelerated refund of excessive deduction**
  - The VAT payers are entitled to ask for accelerated excessive VAT deduction remittance (i.e. VAT refund within 30 days of the deadline for filing the VAT return for the respective VAT period) under the following conditions:
  - The VAT period is a calendar month,
  - The VAT payer has been registered for Slovak VAT purposes for more than 12 months, and
  - The VAT payer had not outstanding liabilities towards the state budget and towards social/health insurance institutions during 6 calendar months before the end of the calendar month in which the excessive deduction arose exceeding the amount of EUR 1,000.

These new conditions were applicable for the first time already for accelerated excessive VAT deduction remittance for the December 2015 VAT period.

- **Remittance of the excessive VAT deduction to the taxpayer who ceased to be a VAT payer**

If a VAT payer declares an excessive deduction in the last VAT period in which he ceased to be a VAT payer, the Tax Authorities remit the excessive VAT deduction within 30 days of the deadline for filing the VAT return for this VAT period.

- **Shortening of the period after which the right for excessive VAT deduction expires**

Should the VAT payer not enable the Tax Authorities to perform a tax audit within 3 months (previously 6 months) of its commencement, the entitlement to remit the excessive VAT deduction (in the amount claimed in the VAT return or a supplementary VAT return) expires on the last day of the third month.

The shortened period is applicable for excessive VAT deductions declared in the January 2016 VAT period at the earliest.

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### Anti-BEPS Directive

In its June 2015 Action Plan, the Commission announced its intention to re-launch its proposal for the Common Consolidated Corporate Tax Base (CCCTB). The Luxembourg Presidency subsequently put forward the idea of splitting off certain international anti-BEPS aspects of the CCCTB proposal that would lead to an “anti-BEPS Directive”. In December 2015, the Council of the European Union released the first details of a possible draft EU directive addressing certain BEPS issues.
The European Commission’s proposal builds up on this initial draft.

The proposed rules lay down common minimum rules in the areas of interest limitation, exit taxation, switch-over clause, general anti-abuse rules (GAAR), controlled foreign companies (CFC) and hybrid mismatches. These standards are intended to provide a minimum level of protection for Member States and national implementing rules may therefore go further. Contrary to the December Council’s text, the current proposal does not address issues related to the artificial avoidance of permanent establishment status, but the issue is covered by the European Commission Recommendation on the implementation of measures against tax treaty abuse.

- **Interest limitation**

The proposed interest limitation rules would apply to companies resident within the European Union or the European Economic Area (EU/EEA) and would take the form of an earnings stripping rule (limitation up to the higher of a 30% fixed ratio or EUR 1,000,000) and, subject to conditions, a group equity/assets rule.

- **Exit taxation**

The proposed exit tax rules would apply to certain cross-border transfers of assets or residence within the EU or to non-EU countries. The rules broadly reflect EU case law on this and provide for a tax deferral mechanism for transfers within the EU/EEA. In case of transfer within the EU, the receiving Member State will also have to accept the same market value as defined by the home Member State as the starting value of the assets for tax purposes.

- **Switch-over clause**

The switch-over clause would be limited to non-EU situations and means a credit for foreign tax would apply instead of an exemption. Contrary to the Council's initial proposal for an effective tax rate test, this defense mechanism would be triggered when the income received is taxed at a statutory rate lower than 40% of the rate applicable in the receiving Member State. No artificiality test is foreseen.

- **GAAR**

The rules, which are intended to reflect EU case law on this, would require EU Member States to ignore arrangements that did not comply with the standard, which would comprise both a motive test and a substance test.

- **Controlled foreign companies**

Unlike the Council's initial proposal, the proposed rules would apply to both EU and non-EU CFCs. The CFC's income would become taxable if certain thresholds are met as regards ownership (50%), effective tax rate (40%), and passive income (50%). Whereas non-EU CFCs would be subject to an objective test, EU/EEA CFCs would only be caught if they involve purely artificial arrangements. A carve-out clause for EU financial undertakings is also provided.

- **Hybrid mismatches**

Contrary to the Council's initial text, the proposal only covers intra-EU situations involving hybrid entities and hybrid instruments. According to the new text, the tax characterization used by the source Member State has to be followed to ensure consistent tax treatment within the EU. Despite the absence in the proposal of rules on hybrids involving third countries, the recommendations of the EU Code of Conduct Group on hybrids involving third countries may impact existing structures and practice.

- **Country-by-Country Reporting (CBCR)**

The European Commission's package also includes a proposal to implement country-by-country reporting to local tax administrations, as well as the exchange of the reports between them. This takes the form of an amendment to the current EU Directive on Administrative Cooperation (DAC) in the field of direct taxation (2011/16/EU). More information on the CBCR please find in the article above.

- **Next steps**

The two legislative proposals will now be submitted to the European Parliament for consultation and to the Council for adoption by all Member States. If approved, the proposal on country-by-country reporting will have to be implemented into domestic legislation by the end of 2016, and be applied from January 1, 2017. Although the proposal for the Anti-BEPS Directive does not provide for a specific implementation date, Commissioner Moscovici has already expressed on several occasions his conviction that a quick adoption should be possible.

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### Further proceedings in the BEPS initiative

Representatives of 31 countries signed a multilateral agreement (MCAA) for the automatic exchange of country-by-country reports. This agreement is intended to allow for consistent and swift implementation of new transfer pricing reporting standards as well as to allow tax administrations to understand how multinational enterprises structure their operations.

In practice this means that tax administrations where a company operates will annually (starting 2016) get aggregate information relating to the global allocation of income and taxes paid. It will also cover information about which entities do business in a particular jurisdiction and the business activities each entity engages in. The information will be collected by the country of residence of the multinational enterprise group, and will, consequently, be exchanged.

First exchanges regarding the 2016 information should start in 2017-2018.

On 3 February 2016 a meeting aimed on the latest BEPS development took place in the premises of the Slovak Ministry of Finance. Director of the Centre for Tax Policy and Administration of OECD Pascal Saint-Amans also participated in this meeting and described the upcoming steps to be taken with respect to BEPS implementation. We summarize some of the main points below:

- The key statement made was "Play time is over. The rules have changed." It was mentioned, that should no aggressive tax planning schemes exist in the past, the question of BEPS would not arise.
- It is acknowledged that the BEPS initiative imposes a higher administrative burden as well as new compliance costs for the taxpayers. A new BEPS pillar called "Tax policy" is considered to manage the administrative burden of companies.
- New EU Directives, which will address the BEPS Action Plan, should enter into force during 2016 and 2017. It is anticipated that 80% of the BEPS measures will be finalized and signed by the end of 2016 and ratified at the beginning of 2017. The Transfer Pricing Guidelines have already been modified.
- A multilateral instrument which will change the current Double Tax Treaties is in preparation. This one-time amendment will affect more than 2000 DTTs in relation to the application of BEPS measures.
- It is not the aim of the BEPS package to be retroactive; however, not all of the tax planning schemes in use were legal also prior to the BEPS initiative.
- Small and medium sized enterprises (SMEs) should not be negatively affected by the BEPS initiative, they should, on the contrary, benefit from these measures. As multinational enterprises are able to offset the tax liabilities across multiple legislations in order to pay low or even no taxes, the tax administrations are forced to impose high taxes on its economies and thus the SMEs are suffering a higher tax burden. As the BEPS package should avoid such tax evasion, the tax administrations could, theoretically, lower the applicable income tax rates.

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**New public procurement law**

A new Act No. **343/2015** Coll. on Public Procurement and on changes and amendments to certain Acts **("Act")**, providing new regulation in the field of public procurement in the Slovak Republic, will become effective from 18 April 2016 *. In comparison with the current legislation, the Act sets forth mainly the following changes:

1. **Communication by electronic means**. Fully electronic communication throughout all stages of the procurement process (including submission of the application in public procurement) will be mandatory after a transition period of 12 months (following the effective date of the Act). In some instances, the Act will still presume a combination of letter communication and communication by electronic means (*e.g.* where sensitive information should remain protected).
2. **Division of large contracts into lots**. The contracting authorities and entities ("**contracting bodies**") may divide large contracts into smaller parts ("**parts**") according to new legislation. The scope and the subject matter of the parts will be determined by the contracting bodies in the notice of invitation to the public procurement process. This procedure should allow access of small and medium-sized enterprises to the public procurement. The contracting bodies may limit the number of parts of the contract for each procurement participant in order to comply with the competition rules, provided that this limit must be justified in the notice of invitation to the public procurement process.
3. **Withdrawal from the contract, framework agreement and concession.** The Act stipulates new specific reasons due to which the contracting body may withdraw from the contract concluded under the Act, such as:

a) occurrence of the reason to exclude the participant from the procurement process due to his failure to meet the personal requirements when concluding the contract (if a tenderer was lawfully sentenced for some of the specific criminal offences, such as corruption, money laundering, damaging financial interests of the European Communities, machinations in the public procurement),

b) breach of the obligations arising from the legally binding act of the European Union based on the decisions of the European Court of Justice, in accordance with the Treaty on the functioning of the European Union by the tender participant,

c) failure to register the ultimate beneficiaries of the tender participant with the Register of Ultimate Beneficiaries on the day of conclusion of the contract, or if deletion of the tender participant from the Register of Ultimate Beneficiaries.

4. **Cross – border public procurement.** The Act stipulates conditions on cross – border public procurement process for the contracting bodies from the European Union countries. The contracting bodies may award the contract via the dynamic purchasing system operated by the central purchasing organization in another member state on basis of the framework agreement concluded with the central purchasing organization. In such an event, the public procurement process must be carried out in accordance with laws of the EU member state where the registered seat of the central purchasing organization is.

5. **Innovation partnership.** Innovation partnership represents a new specific procurement procedure. The aim of the innovative partnership is to develop and, subsequently, to purchase goods, works and services resulting from innovation and which are focused to meet the needs identified by the contracting bodies, provided that the existing solutions cannot meet these needs. Innovative partnership will be performed in several phases corresponding to the sequence of steps in the research and innovation process:

   - a call for submission of initial offers,
   - negotiations with tender participants on the initial offers with an aim to improve their contents,
   - selection of the winning bidder (the contracting bodies will take into account the tender participant's capabilities in the R&D area).

* The Act transposes three Directives of the European Parliament and of the Council:

1. **Directive 2014/24/EU of the European Parliament and of the Council** on public procurement and repealing Directive 2004/18/EC;
2. **Directive 2014/25/EU of the European Parliament and of the Council** on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;
3. **Directive 2014/23/EU of the European Parliament and of the Council** on the award of concession contracts;

("**Directives**").

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### In one sentence

The Slovak Financial Directorate released inter-alia the following guidelines and information:

### Value added tax

- **Guidelines on the adjustment of VAT deduction related to capital assets according to Article 54 of the VAT Act after 1 January 2016**
- **Information on refund of excessive deduction**
- **Information on notification obligation of application of settlement of the VAT liability upon receipt of the payment from the customer according to Article 68d of the VAT Act**
- **Information on triangular transactions**
- **Information on reference of invoices issued due to the settlement of repeated supplies of energy in the VAT Ledger Statement**

## Income tax

- **Information on amendment of the Act. no. 595/2003 Coll. on Income Tax (Act no. 440/2015 Coll. on Sport)**
- **Information on filing of personal income tax return, Type B for the tax period of 2015**
- **The basic figures related to filing of personal income tax returns for the tax period of 2015**
- **Information on filing of corporate income tax returns for the tax period of 2015**
- **Information on tax deductibility of expenses on assets, which may have a character of personal use**
- **Information on adjustment of tax base if the taxpayer in bankruptcy or restructuring had increased its tax base by overdue liabilities**

## Other

- **The basic questions and answers related to Two-way electronic communication**

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