Tax and Legal News

- Taxes
- World news
- Legal
- In brief

Up-to-date information on tax implications for Ukrainian citizens working in Slovakia

The physical stay of many Ukrainian citizens in Slovakia is currently exceeding 183 days. If they perform employment activities for their Ukrainian employer in the territory of Slovakia, this brings certain income tax implications.

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Ukrainian citizens with approved temporary protection status staying in Slovakia for more than 183 days, while performing employment activities for their Ukrainian employer remotely, need to consider their Slovak income tax obligations.

No specific statement of the Financial Administration of the Slovak Republic or Financial Directorate of the Slovak Republic has been issued yet. Neither any specific legislation simplifying the situation of these persons in Slovakia has been adopted. As a result, the persons need to proceed in line with the general provisions of tax legislation.

The Slovak Income Tax Act provides for a Slovak **tax resident being a person who has permanent residency, residence, or habitual abode in Slovakia (183 days spent in Slovakia in 2022)**. As these persons may (from the beginning of the war conflict until now) exceed 183 days in Slovakia, their ultimate tax residency needs to be considered in line with **the Double Tax Treaty concluded between Ukraine and Slovakia**. We understand that if there was no war conflict in Ukraine, these persons would not enter Slovakia, they would not stay in the territory of Slovakia and their ties would in majority of cases lead to Ukraine.

In most cases, the move of tax residency status to Slovakia would not be in place for temporary protection holders. This is, however, very general conclusion and situation of each individual should be considered individually with due care, as even minimum change in their personal situation (e.g. loss of permanent home in Ukraine) might result into Slovak tax residency.

Even **Slovak tax non-residents might have obligation to tax their income in Slovakia**. For Slovak tax non-residents, income for employment activity performed in the territory of Slovakia (assuming that the income is paid by entity with its seat in Ukraine, whereas the entity does not have permanent establishment in Slovakia) is not taxable in Slovakia, unless this activity exceeds 183 days.

Nowadays, the criterion of 183 days was reached by many employees of Ukrainian entities working remotely in Slovakia. This may lead to **tax implication not only for the individuals – employees, but also for their Ukrainian employers**. Tax obligations need to be fulfilled on monthly basis, not only in annual personal income tax return filings. Therefore, we strongly recommend **setting the monthly tax compliance of these persons in Slovakia properly**.

Should you have any questions concerning the determination of tax residency status or concerning taxation of income of Ukrainian citizens in Slovakia, please do not hesitate to reach out to Global Mobility Services team at KPMG in Slovakia.

World news

Public consultation on BEFIT, a new framework for EU corporate taxation

The European Commission announced in its communication Business Taxation for the 21st Century a proposal for a new framework for income taxation for businesses. This new proposal is known as Business in Europe: Framework for Income Taxation (BEFIT).

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As we informed you in our previous Article, the Commission announced that BEFIT would be a single corporate tax rulebook for the EU, based on the key features of a **common tax base and the allocation of profits between Member States by using a formula**, replacing the previously proposed CCCTB. Currently more options for the final draft of the BEFIT directive are considered:

Scope

Option 1: Groups with consolidated global revenues exceeding EUR 750 million

Under this option, the threshold for a group of companies to fall under BEFIT would be set at EUR 750 million of consolidated global revenues. The definition of 'a group of companies' would be aligned with the definition used in the proposal for a directive on pillar 2.

Option 2: Broader scope

A wider scope would cover also SMEs with cross-border activities or those that envisage scaling up and starting to operate across borders soon. These SMEs could opt in to BEFIT to benefit from common EU rules on tax base and the allocation of profits.

Tax base calculation

Option 1: Limited tax adjustments

Under this option, a limited list of tax adjustments would be applied to the income reported in the financial statements of the group entities falling under BEFIT. All companies in a group falling under BEFIT would be required to use financial statements as a starting point for the tax base calculation, prepared in accordance with the same accounting standard, authorised for use in the EU.

Option 2: Comprehensive set of tax rules

An alternative option would be to set up a comprehensive corporate tax system with detailed rules for all aspects of profit/tax determination, rather than building a system based on financial accounting like in option 1. If this option were chosen, Member States would have to run two comprehensive sets of corporate tax rules in parallel, i.e. BEFIT and their national rules (this would not be the case under option 1, where BEFIT rules for tax determination will be simplified).

Formula for allocating taxable profits

The basic principle to follow when deciding on a formulary apportionment is to choose factors that reflect the source of income generation.

Option 1: Formula without incorporating intangible assets

Under this option, the proposal would consider: (i) tangible assets (excluding financial assets unless in a sector-specific version); (ii) labour (possibly, equally shared between personnel and salaries); and (iii) sales by destination.

Option 2: Formula incorporating intangible assets

The alternative option would be to include intangible assets as a factor in the formula, in addition to the three previously mentioned factors.

The allocation of profit to related entities outside the group

In general, EU law applies only to activities occurring within the EU, so the options for action in this area are limited. It is envisaged that the current transfer pricing principles would continue to apply to transactions with related entities resident outside the consolidated group.

Option 1: Simplified approach to transfer pricing

Under this option, the proposal would envisage a simplified approach to the administration of transfer pricing rules based on macroeconomic industry benchmarks. The businesses would however still need to carry out the necessary transfer pricing analysis. The envisaged rules would only provide guidance on tax authorities' risk approach to businesses' transactions with related entities outside the consolidated group.

Option 2: Keep current transfer pricing rules

The second option is to keep the current approach to the application of the transfer pricing rules.

Administration

One of the key goals of BEFIT is to reduce compliance and administrative costs for taxpayers and Member States, so the design of this building block will require careful consideration.

The BEFIT proposal is subject to public consultation for 12 weeks, **until 5 January 2023**. It may bring complexity or simplification in the EU tax system, depending on the final combination of the options proposed.

What brings the amendment to the Labour Code effective from 1 November 2022?

The amendment to the Labour Code introduces several new novelties in response to the European directives on transparent and predictable working conditions. We bring you a summary of the most important changes.

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On 4 October 2022, the National Council of the Slovak Republic approved an Act amending Act No. 311/2001 Coll. the Labour Code (the "Labour Code") (the "Act"). These changes reflect the transposition of (i) Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union; and (ii) the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers (the "Directives").

Several provisions enshrined in the Directives are already included to a certain extent in the current legislation of the Labour Code or in other labour law regulations.

The Act is expected to enter into force on 1 November 2022.

The Act introduces the following changes to the Labour Code or other labour legislation:

(i) the possibility of transfer to another form of employment: an employee has the right to request his employer for a form of employment with more predictable and secure working conditions (e.g. the employee has the right to ask his or her employer for a change from a fixed term to an indefinite term).

This option applies to an employee who meets the following conditions:

- has a fixed-term or part-time employment contract;
- is not on probation period; and
- has worked for the same employer for at least six months.

The employer, however, is not obliged to comply with the employee's request, but is only obliged to reply to the employee in writing and to duly justify the reply.

(ii) the form in which the information is provided: where information is provided to an employee, it should be permissible, in addition to providing the information in paper form, to provide the information in electronic form, provided that the following conditions are met:

- the employee has access to the electronic form of the information;
- he/she can save and print it; and
- the employer keeps a record of the sending or receiving of such information in electronic form.

(iii) probationary period: in the case of fixed-term employment relationships, the agreed probationary period may not be longer than half the agreed duration of the employment relationship.

In practice, this means that if an employment relationship is agreed for a period e.g. four months, a probationary period may be agreed for a maximum of two months.

(iv) parallel employment: an employer may not prohibit an employee from commencing employment with another employer outside the hours of work determined by that employer, nor disadvantage him in any way because of that;

(v) changes to the information obligation on working conditions: the employer is obliged to provide the employee, within seven days of the commencement of the employment relationship with information on:

- the method of determining the place of work where more than one place of work is agreed in the employment contract;
- the length of the employee's standard working day or week and any rules regarding overtime and overtime pay, and rules regarding shift change when the work schedule is fully or substantially predictable; and
- the wage payment terms. Under the current legislation, the employer is obliged to comply with this obligation within one month of the commencement of the employment relationship, i.e. the time limit for providing this information will be shortened by the Act;

- a new information obligation of the employer is introduced, namely:

- to inform the employee of the time limit for submitting a claim for a determination that the termination of the employment relationship is invalid; and
- to inform the employee of the right to training provided by the employer.

The time limit for providing the information is four weeks from the date of commencement of the employment relationship. In order to eliminate administrative paperwork, the employer fulfils this obligation by including the information in the employment contract itself.

(vi) delivery: the employer may not specify a collection period of less than ten days for the delivery;

(vii) the institution of paternity leave: the employee (the father of the child) is entitled to paternity leave of two weeks (14 calendar days) within a period of six weeks from the birth of the child. During this period and after the conditions have been fulfilled, he will be entitled to so-called "paternity" (maternity) pay. During this period, the child's mother will not lose her entitlement to maternity leave and maternity pay.

Increased financial support for employers from "Kurzarbeit" scheme

The Government of the Slovak Republic released additional finances for the purpose of providing support during short-time working.

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The Government of the Slovak Republic, by Resolution No. 613/2022 of 5 October 2022, released an additional EUR 5 million for the purpose of providing support during short-time working for the year 2022 on the proposal of the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter referred to as the "Ministry of Labour").

As a result of the military conflict in Ukraine and its consequences, some employers are unable to allocate work to their employees to the full extent. They are therefore making use of the short-time working system and requesting financial assistance.

According to information from the Ministry of Labour, the Labour, Social Affairs and Family Directorate has already supported 235 applicants with EUR 19 444 995.57 for the months of March to August, which is used to preserve almost 76 000 jobs. Around 60 more applications are in the process of being approved, with support for almost 4 000 jobs.

Of the original budget for 2022 of EUR 20 million, thanks to the extensive support, only a balance of approximately EUR 1 million is available as of 23.8.2022. For this reason, the additional increase had to be decided by the Government of the Slovak Republic, which is entitled to increase the original budget on the basis of Section 12(2) of the Act No. 215/2021 Coll. on support in times of short-time working and on amending and supplementing certain acts, as amended.

EU Blacklist: Updates to the list of non-cooperative jurisdictions

Following latest update, the three Caribbean region countries were added to the European Union's blacklist.

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We keep you informed about the current status on cooperation in the tax area within series of our Articles. On 4 October 2022, the ECOFIN Council adopted a revised list as follows:

- **Anguilla, the Bahamas** and **Turks and Caicos Islands** were moved from the graylist to the blacklist. Anguilla was already once listed in 2020, and the Bahamas once in 2018. The reason for the inclusion is that jurisdictions facilitate structures and arrangements aimed at attracting profits without real economic substance.
- **Armenia** and **Eswatini** were added to the so-called graylist.
- **Bermuda** and **Tunisia** were completely removed as they have fulfilled their commitments.

Currently, the EU's blacklist includes the following 12 non-cooperative tax jurisdictions: **American Samoa, Anguilla, the Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the Turks and Caicos Islands, the US Virgin Islands and Vanuatu.**

Following this latest revision, 22 jurisdictions are graylisted: **Armenia, Barbados, Belize, Botswana, the British Virgin Islands, Costa Rica, Dominica, Eswatini, Hong Kong, Israel, Jamaica, Jordan, Malaysia, Montserrat, North Macedonia, Qatar, Seychelles, Thailand, Turkey, Uruguay, Russian Federation and Vietnam.**

The next revision of the non-cooperative jurisdictions list for tax purposes is scheduled for February 2023.

In this ECOFIN meeting, there was some expectation about discussion on the **Pillar Two Directive**, this item was finally not included in the meeting's agenda. The governments of France, Germany, Italy, Spain and the Netherlands issued joint statement committing to implementing global minimum tax in 2023.

One sentence summary | October 2022

Last month's tax and legal news in brief.

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- Amendment to the Tax Code extends the deadline for publishing the list of taxpayers with assigned tax reliability index. Financial Directorate will publish the list of taxpayers **based on the notifications on tax reliability index sent by 31 January 2023**. For more information, please see our previous Article.
- During the current meeting of the National Council the governmental proposal on **tax from the benefit received from the specific situation on the oil market** is being discussed in the shortened legislative procedure. The aim of the proposal is to tax the economic benefit consisting of the lower acquisition price of oil with the origin in the Russian Federation compared to the price of Brent oil.
- The Ministry of Labour, Social Affairs and Family of the Slovak Republic released a draft decree on the increase of the amounts of meal allowances for the third time during this year. The current meal allowance amount for a business trip lasting 5-12 hours, effective as of 1 September 2022, should increase from EUR 6.40 to **EUR 6.80**.

Accounting News: Amendment to the Act on Accounting

We have prepared the latest accounting news.

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We provide you with an overview of the major changes in connection with the improvement of the business environment. This Act is referred to by the media as "Sulíkovo kilečko 2" [Sulík's Hundred 2; refers to 100 measures prepared by the Economy Ministry led by Richard Sulík)]. The Act entered into force on 1 September 2022.

The Explanatory Statement says that the purpose of the draft law is to reduce the excessive regulatory burden on enterprises and thus increase their motivation to start and develop business, give them a competitive advantage over neighboring countries, and, in the final analysis, improve the position of the Slovak Republic in international business environment rankings.

These changes also affect Act No. 431/2002 Coll. on Accounting, namely **the obligation of so-called large companies to prepare individual financial statements according to the IFRS as adopted by the EU (IFRS/EU)**.

Our accounting advisory experts have prepared for you a detailed summary, more information can be found on the following link.

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