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**Tax and Legal
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In brief

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Are you ready for tax audit focused on transfer pricing?

Tax deductibility of the services provided by the group is often subject to review by Tax Authorities. Do you know which steps should not be underestimated so that a possible tax audit does not surprise you?



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In case of tax audits focused on transfer pricing, in practice, we often encounter that Tax Authorities scrutinize the costs of services received from related parties within the group. From our experience, taxpayers many times do not have sufficient supporting documents available at the time of the tax audit to prove the meeting of necessary conditions for tax deductibility. The consequence is often significant additional assess of tax.

In our experience, these are the most common causes:

- **Service is an intangible economic asset.** It is consumed at the same time as it is performed/provided. Because of this characteristic of services, it is more difficult to prove that the services have been carried out than to prove the supply of tangible assets, e.g. goods or machinery.
- **Taxpayers do not keep enough records.** The existence of an invoice and contract may not constitute sufficient proof.
- **The subject of tax audit are closed tax periods. Often five, sometimes more, years back.** Due to such a large time gap, various complications arise. E.g. it is not possible to access the relevant documents or the persons engaged when the service was received are by the time of the tax audit no longer employees of the taxpayer. The service provider may also not be able to help the situation for similar reasons or may no longer exist at all.
- But it is also a frequent reason **that the burden of proof** is disproportionately **shifted by the Tax Authorities on to the taxpayer** in violation of the law.

Among the conditions of tax deductibility that the tax authorities examine are:

- *Can the taxpayer prove that the service was truly provided?* In practice, in addition to contracts and invoices, the tax authorities mainly require evidence such as outputs of the provided services (e.g. reports, opinions, recommendations), work reports, minutes of meetings, e-mail communications, etc.
- *Can the taxpayer prove that the service provided in this way had benefited the taxpayer and how it is related to his business activities?*
- *Can the taxpayer prove that the price of the service is arm's length within the meaning of the transfer pricing rules?* In the case of the cost-plus method, which is often used in transfer pricing of services, it is necessary to prove not only that the amount of the profit mark-up is arm's length, but also the cost base itself and the way it is allocated among the different recipients of the service within the group.

There have been a number of court decisions on this topic in Slovakia as well as in the Czech Republic, which include, for example, the following conclusions:

- **Invoices by themselves are not sufficient evidence** to prove the supply of goods and the provision of services without additional evidence confirming their real fulfillment.

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- A condition for the deductibility of costs is their **direct link to the business activity and also to the income.**

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- If costs in a group of related parties are allocated according to a certain key, **supporting documents for this key must be provided for the whole group, not only for the costs allocated to the taxpayer.**

In conclusion, we stress that the taxpayer must bear the burden of proof in the first place, which means he has to prove that he actually received the services and that they benefited him. The transfer pricing itself is only examined subsequently. In our experience, taxpayers often have a problem with the first step and so the tax authorities in many cases do not even proceed to examine the transfer pricing during the tax audit and consider the full costs to be non-tax deductible.

Please feel free to contact our experts before the tax authorities request your transfer pricing documentation. We will be glad to help you and look into your transactions with your related parties.

Framework Agreement for the telework within the EU signed by the Slovak Republic

The Slovak Republic signed multilateral Framework Agreement in the field of social security of habitual cross-border telework within the EU.



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On 6 June 2023, the Ministry of Labour, Social affairs and Family of the Slovak Republic signed [the multilateral Framework agreement](#) on the application of **Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework**. As of 1 July 2023, the following countries have already signed the Framework agreement:

- Austria
- Belgium
- Croatia
- Czech Republic
- Finland
- France
- Germany
- Liechtenstein
- Luxembourg
- Malta
- Norway
- Poland
- Portugal
- Spain
- Sweden
- Switzerland
- The Netherlands
- The Slovak Republic

Framework agreement is applicable for all these states **as of 1 July 2023**. It is likely that several other countries will join as well.

The countries which already joined the Framework agreement will apply **new limit 49,99%** on telework from home country in their bilateral situations, rather than the usual 25% limit. However, it is required to file a request for exception on the Ministry of Labour, Social affairs and Family. If the conditions will be met, the exception could be **granted for 3 years**, with a possible extension after filing a new request.

As we informed you [in our previous Article](#), The Slovak Republic and Austria have recently signed a bilateral agreement, which will only apply to situations from 1 to 30 June 2023 in this respect.

If you have any cross-border situations, we will be pleased to help you with the obtaining exemptions.

Legislative changes in relation to the Commercial Register

The National Council of the Slovak Republic ("NC SR") approved the Act amending the Act on the Commercial Register and the Act on the Register of Non-Governmental Non-Profit Organisations (the "Amendment").



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Changes in the scope of the registered data relating to UBO

The Amendment reflects the legal conclusion of the judgment of the CJEU, about which we informed you in our previous article [Transparency of data on ultimate beneficial owners](#). According to the judgment, access to data on the ultimate beneficial owners ("UBO") should not be unrestricted and available to anyone.

According to the current legislation, it is required to enter data on the type and number of the identity document of the UBO in the Commercial Register / Register of Non-Governmental Non-Profit Organisations ("Registers"). The original intention of the introduction this registration was to achieve a clear identification of the UBO. However, the birth number as a unique identifier of the UBO is fully sufficient to achieve this intention. For this reason, **the Amendment also abolishes the obligation to provide in the Registers the type and number of the identity document of the UBO if he/she is a citizen of the Slovak Republic.**

The obligation to provide the type and number of the foreigner's identity document remains, given that foreigners often do not have a birth number or a similar unique identifier, as is the case with citizens of the Slovak Republic.

The Amendment has not yet been signed by the President. Assuming the President signs the Amendment, the above changes will enter into force on the date of its promulgation in the Collection of Laws of the Slovak Republic.

Registration of data in the commercial register by a notary

An unexpected and rather big change is an extension of the powers of notaries in the field of registration of data in the Commercial Register.

The notary will thus have the power:

- to verify the fulfilment of the conditions for the registration of data in the Commercial Register;
- to certify compliance with the conditions in the form of a notarial deed; and
- execute the entry in the relevant commercial register.

At the same time, the notary will be obliged to ensure that the deeds are placed in the collection of deeds.

No appeal shall be allowed against the non-execution of the registration by the notary. However, the non-execution of the registration by the notary shall not prohibit the applicant from filing a registration with the relevant registry court.

Details on registration by a notary as well as the scope of registration of data in the Commercial Register by a notary shall be established by the Ministry of Justice of the Slovak Republic by a generally binding legal regulation.

The changes shall enter into force **as of 1 November 2023**.

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Ministry of Finance published the measure about the report on income tax information

With effect from 22 June 2023, the Measure No. MF/006455/2023-74 on the report on income tax information enters into force by which the Ministry of Finance of the Slovak Republic (the „Ministry“) stipulates the content, arrangement, and electronic format of the report on income tax information.



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As we have informed [in our previous article](#), amendment to the Act on Accounting introduced a new obligation for selected accounting entities to disclose a report on income tax information. However, the content of this report was not defined. Now, the Ministry specified the content and structure by issuing the measure.

According to published measure, the report on income tax information includes all information about all activities of standalone accounting entity, ultimate parent accounting entity, and foreign ultimate accounting entity. Information included in the report can be divided in three groups as follows:

1. Obligatory information,
2. Information which can be disclosed, and
3. Information which does not have to be disclosed.

The following table below shows an overview of these information which shall include in the report on income tax information.

REPORT ON INCOME TAX INFORMATION	Obligatory information	<ul style="list-style-type: none"> • Business name or company name • Accounting period for which the report shall be issued • Functional currency in which amounts are disclosed in the report • A list of all subsidiary accounting entities included in the consolidated financial statement of the ultimate parent accounting entity, and subsidiary entities of foreign ultimate parent entity, which have registered seat in the territory of one of the EU Member States or in the territory of a state that is a contracting party to the Agreement on the European Economic Area, or which have their registered seat in tax jurisdictions within the EU lists • A brief description of economic activities • Calculated number of employees in full working time • Revenues, including transactions with the related parties • Profit or loss before taxation • Current income tax due • Current income tax due only for the accounting period related to report, except for deferred tax and provision on uncertain tax liability • Income tax paid on a cash basis (tax paid in the accounting period, including the amount of withholding tax) • Retained earnings
	Voluntary information	<ul style="list-style-type: none"> • Explanations of significant differences between the amounts of current income tax due and income tax paid • Information about number of employees, profit before taxation, current income tax due and income tax paid, and retained earnings under specific regulation (Appendix to the Act No. 442/2012 on international cooperation with tax administration as amended by the Act No. 43/2017)
	Not disclosed	<ul style="list-style-type: none"> • Information, the disclosure of which would seriously disrupt business activity of the accounting entity, or other related entity • Sufficient evidence why information has not been disclosed in the report

In addition to the content of report on income tax information, the structure of disclosed information is also important.

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 of EU states that does not cooperate for tax purposes, and separately for each tax jurisdiction of cooperative EU states, otherwise, aggregately for tax jurisdictions.

The Ministry also set an **obligation that the report must be filed at the Register in electronic, machine-readable formats**. The report with the abovementioned content shall be **filed with the Register for the first time for the accounting period starting on 22 June 2024, or later**.

The European Commission has published draft Directive for harmonized withholding tax procedures

New FASTER Directive (Faster and Safer Relief of Excess Withholding Taxes) aims to simplify the system of withholding tax and its refund.



Daňové a právne oddelenie

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Key highlights of the published proposal include:

- simplification would apply only to dividends of publicly traded shares (with the option to apply also to interest from publicly traded bonds)
- in order to benefit from the fast track systems it would be necessary to engage with certified financial intermediary
- a common EU-wide digital tax residency certificate would be used to prove tax residency status
- Member state would be able to choose one of two relief systems (or a combination of both): a relief at source system and a quick refund system

It is expected that the proposal will come into force **on 1 January 2027**. If you are interested in more detailed information please refer to our [EU Tax Flash](#) from KPMG's EU Tax Centre.

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Last month's tax and legal news in brief.



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- Members of Parliament at their June's meeting approved amendments to the Income Tax Act ([1654](#), [1597](#)), which bring several significant changes. We will prepare an overview of the main tax legislative changes in the next issue. The respective amendments have not been signed by the Slovak President yet.
- Do not forget to file the income tax returns. Taxpayers who announced an extension for filing the income tax returns by three months must meet their statutory obligation by **30 June 2023**.
- The Parliament approved [the Act on Transformations of Companies and Cooperatives](#), which introduces a new mechanism for national and cross-border transformations and modifications of the legal form. For more detailed information, see [our previous Article](#).
- According to [the Decree of the Ministry of Labour, Social Affairs and Family of the Slovak Republic](#), the subsistence minimum will be increased to EUR 268.88 for an adult individual person as of 1 July 2023.
- The European Central Bank increased the key interest rates on the main refinancing operations to 4% with effect from 21 June 2023.

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