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European directive introduce a new top-up tax in Slovakia

For a long time, the European Union has been trying to solve the taxation of large multinational companies that use the tax regimes of countries with a low tax rate. Member States, including Slovakia, are introducing a new top-up tax that will ensure that corporations fulfil their tax obligations in the countries of their subsidiaries where profits are generated. The introduction of this tax in Slovak legislation will bring new reporting obligations.



Zuzana Blažejová

zblazejova@kpmg.sk
+421 905 740 000

As part of our [series of articles](#), we regularly inform you about the current development of the global minimum tax. On 3 August 2023, the Ministry of Finance of the Slovak Republic published a draft law that plans to introduce the so-called **top-up tax, which is based on the OECD BEPS 2.0 initiative taken over in the EU directive on the minimum global tax**. The Slovak Republic, as an EU member state, **must implement this directive into local legislation by the end of this year**. It is not clear from the draft law whether the top-up tax will be applied already for the tax period of 2023, although the directive clearly states that it should apply to tax periods starting on 31 December 2023 and later.

Who is subject to the minimum level of taxation

The top-up tax will apply to those companies that fall under **the ultimate parent company with consolidated revenues of at least 750 million euros** in two accounting periods out of the last four accounting periods. For the determination of revenues, the procedure will probably be in accordance with the determination of consolidated revenues for the purposes of Country-by-Country Reporting (CbCR). As part of the OECD proposal, it is required that at least one company in the group has a residence in a country other than the country of residence of the ultimate parent company, but within the EU, the directive also applies to purely local groups of companies.

When determining the top-up tax, it will be based **on the total effective tax rate of the group**, while being compared to **the global minimum effective tax of 15%**. If the effective tax of the group does not reach this limit, the difference between the global minimum effective tax and the actual effective tax of the group will have **to be compensated through the payment of the top-up tax**. The allocation of the top-up tax between the individual companies of the group will be based on the ratio of the adjusted profit of the given company to the total profit of the group.

Exceptions to the application of the new rules

Excluded entities are, for example, some state-owned enterprises with 100% state participation, non-profit organizations, pension funds or some investment funds, these will not have to pay the top-up tax. However, even in their case, their income will be included in the group's consolidated income for the purpose of determining whether the group is subject to the provisions on the top-up tax or not.

New notification obligations will be added

In relation to the top-up tax, **it will be necessary to submit notifications** that will contain information intended for the correct determination of the top-up tax. These notices can be submitted by one of the selected companies in Slovakia instead of each company individually, or by the ultimate parent company abroad, as long as the Slovak Republic has an agreement on the exchange of information on top-up tax with the country of residence of the ultimate parent company. The deadline for submitting this notice will probably be 13 months from the end of the relevant tax period (15 months according to the directive). At the same time, the draft law also **contains the obligation to submit a tax return**, which will be submitted individually by the companies in the group, also within 13 months from the end of the tax period.

The draft law contains various adjustments to the revenues included in the calculation of total consolidated revenues for the purposes of the top-up tax, as well as adjustments to the tax liability for the calculation of the effective tax rate and other provisions.

Our colleagues from the KPMG global network regularly monitor the global development of these legislative changes, which you can find on this link [BEPS 2.0: state of play \(kpmg.com\)](https://www.kpmg.com/BEPS-2.0-state-of-play).

We are monitoring the legislative process and will inform you about the final version of the law.

Financial Directorate prepared auxiliary document for proving the status of the beneficial owner

The Financial Directorate of the Slovak Republic in cooperation with the Slovak Ministry of Finance and Slovak Chamber of Tax Advisors prepared the long-awaited auxiliary material for proving the status of the beneficial owner.



Veronika Jendželovská

kpmg@kpmg.sk
+421 259 984 111

The Slovak Income Tax Act (SITA) contains definition of the **“beneficial owner”** as of 1 January 2018. Also, it contains process in case the taxpayer is not able to prove who the beneficial owner is. In such situation it can lead to higher taxation at the end. However, the SITA, or any other legal act, does not stipulate the way, form and even the extent to which this “status” should be proven in practice. This has changed since the end of August 2023 and the Financial Directorate of the Slovak Republic has issued (auxiliary) information on the method of proving the status of the beneficial owner of income.

In this document you can find:

- The impact of the significance of risks and the extent of risk level on the individual transaction
- Indicators of risk level
- Categorization of transaction according to the risk level into three categories (containing brief description and examples)
- The way, form, extent and periodicity of proving the status of the beneficial owner for individual categories
- Draft of affidavit and draft of questionnaire applicable for certain categories of transactions
- Examples of other documents proving the status of the beneficial owner

Although this information is issued in the form of recommendation and as such is not legally binding, it is definitely a **significant move forward in the process of proving the beneficial owner and application of individual double tax treaties**. The complete version of document is available in the Slovak language on [the website of the Financial Directorate](#).

Should you be interested in this topic, we are glad to discuss your situation.

News in the field of approval of urban planning documentation

In May 2023, the Parliament adopted an amendment to the Construction Act introducing changes in the process of approval of the urban planning documentation.



Milina Schifferdeckerová
mschifferdeckerova@kpmg.sk
+421 907 745 045



Beáta Machalíková
kpmg@kpmg.sk
+421 259 984 111

The amendment to the Construction Act, which entered into force on 1 July 2023, is a response to the non-compliance with the resolutions of the regional or municipal councils in the process of procurement of urban planning documentation by local authorities.

The aim of the amendment is to provide councils with the power to approve proposals for the procurement of urban planning documentation and to be more involved in the process of its approval.

What obligations does the amendment introduce for local authorities?

- the obligation to ensure that the draft of the urban plan complies with the resolution of the competent council of the regional or municipal council,
- the impossibility of introducing urban planning documentation to the approving authority that does not take into possible suggestions from the relevant council into account.
- to consider the needs of urban development and the environment when procuring new urban planning documentation, and
- the obligation to prepare a new urban planning documentation in some cases, i.e. whenever new municipalities are built, or new buildings built for public interest, or a substantial rebuilding, in order to improve the environment, ensure ecological stability and sustainable development.

The above-mentioned changes in the Construction Act have also been reflected in other related laws. In the case of land owned by the municipality, the municipal council has the right to approve initiatives for the procurement of urban planning documentation and initiatives for its updating.

According to the legislation in force until now, although municipal councils had the right to submit proposals for general binding regulation, the above did not applied to the process of approving land-use plans.

The amendment to the Construction Act was also reflected in the process of approval of the urban plans of Bratislava and Košice or their parts and the concept of development of individual areas of life in these cities.

The Capital City Act as well as the Košice City Act provides the city council with the authority to approve the city's urban plan, to approve initiatives for the procurement of urban planning documentation, initiatives for its update in the case of land owned by the city of Bratislava/Košice or one of its parts.

CBAM: Reporting rules for its transitional phase were adopted

On 17 August 2023, the European Commission adopted an implementing regulation laying down rules for fulfillment of reporting obligations under the carbon border adjustment mechanism (CBAM) during its transitional phase.



Elvira Ungerová

eungerova@kpmg.sk
+421 915 758 807

Commission Implementing Regulation (EU) 2023/1773 of 17 August 2023 laying down the rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards reporting obligations for the purposes of the carbon border adjustment mechanism during the transitional period was published in the Official Journal of the European Union on 15 September 2023.

During the period **from 1 October 2023 until the end of 2025**, this mechanism will be applied in a pilot phase by fulfilling reporting obligations by traders on the emissions embedded in their imports, without introducing any financial adjustments.

The European Commission also published a guidance on the practical implementation of the new rules.

For more information on the introduction of this mechanism, please refer to [the previous article](#).

Links to the related documents:

- [Regulation \(EU\) 2023/956](#)
- [Commission Implementing Regulation \(EU\) 2023/1773](#)
- [Guidance on the practical implementation of the new rules published by the European Commission](#)

One sentence summary | September 2023

Last month's tax and legal news in brief.



Soňa Vojteková

kpmg@kpmg.sk

+421 259 984 111

- **New rates of the meal allowances for business trips** will come into force **on 1 October 2023**: EUR 7.80 (for the time zone 5 to 12 hours), EUR 11.60 (for the time zone over 12 to 18 hours) and EUR 17.40 (for the time zone over 18 hours). In this context, the minimum value of the meal voucher increased from EUR 5.48 to **EUR 5.85**, the minimum employer contribution/financial contribution increased from EUR 3.02 to **EUR 3.22** and the maximum employer contribution/financial contribution increased from EUR 4.02 to **EUR 4.29**. Financial Administration has updated methodological guideline on meal allowance for employees in this respect, you can find it [here](#) (available only in Slovak language).
- The Social Insurance Agency has published [detailed information](#) on social security contributions relief for employers in the food and agriculture industry. According to the amendment to the Social Insurance Act, the social security contributions should have temporarily reduced for these taxpayers from **1 August 2023 to 31 January 2024**. Relief for the months of August and September will also be taken into account retroactively.
- The Financial Administration introduced **the new FS Drive service** for the secure transfer of large files and data, which will simplify sending of documents, especially during tax audits. New application does not replace the obligation of electronic communication with the Tax Authorities. You can find more information [at this link](#).
- **As of 1 January 2024, the monthly minimum wage will increase from EUR 700 to EUR 750** (based on degree of work intensity). This amount applies to full time employees working 40 hours per week. The hourly minimum wage will increase to EUR 4,310. The increase of the minimum wage is also related to the increase of some [wage allowances for working in non-standard hours](#).
- The European Central Bank increased [the key interest rates](#) on the main refinancing operations to **4,50% with effect from 20 September 2023**.

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www.kpmg.sk

Tel.: +421 2 5998 4111

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