



# Daňovky

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**Tax and Legal News |  
January 2022**

# 5 things you need to know about Deduction of investment expenses

The amendment of the Income Tax Act introduces a new provision to support investments with a higher added value, i. e. productive investments linked to Industry 4.0. We have prepared answers to 5 basic questions that interest our clients.



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## **1. Who can apply Deduction of investment expenses?**

Deduction of investment expenses (costs) can be applied by legal entities and individuals with entrepreneur income according to Article 6 (1,2) of the Income Tax Law.

## **2. In what extent can we claim this deduction?**

The deduction amount depends on the amount, which is being reinvested in the company and is determined as a percentage of the tax depreciation charge of the invested assets and can amount from 15% up to 55% of the tax depreciation charge. The taxpayer will reduce by this deduction the tax base after tax loss carried forward.

In practice, it is necessary to compare the amount invested in the years 2019 to 2021 with the investment plans for the next 4 years (periods). The increase between the average investment value and the planned investment must be at least 700% and the value of the investment at least EUR 1 mil.

## **3. What is the period applicable for Deduction of investment expenses?**

The deduction is applicable during the entire depreciation period of the asset, but no longer than 10 tax periods, starting with the tax period in which the asset was put into use. It is not possible to interrupt tax depreciation of assets for which a deduction is applied.

## **4. Is it obligatory to file the investment plan together with the tax return in case a company claims Deduction of investment costs?**

The investment plan is not a mandatory enclosure to the tax return.

The investment plan must be signed by a responsible person authorized to act on behalf of the taxpayer, at the latest by the deadline for filing of the tax return, in which he claims Deduction of the investment costs for the first time. It is submitted to the Tax Authorities only upon request, e. g. during a tax audit.

## **5. The company was established in 2020. Can we use the amounts invested in 2020 and 2021 for the purposes of calculation the average value of investments?**

No. In accordance with Article 30 (7) of the Income Tax Act, Deduction of investment costs cannot be claimed by a legal entity that has obtained a business license in the Slovak Republic during the three tax periods which are included in the calculation of the average value of investment.

If you are interested in this topic and need more information, do not hesitate to contact our experts.

# Can be a penalty for parking in breach of the regulations subject to VAT?

This question was analysed by the Court of Justice of the EU (CJEU) in case C-90/20 Apcoa Parking Danmark.



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## Background of the case

Danish company Apcoa Parking Danmark A/S (hereinafter „Apcoa“) operated car parks where besides parking fee also so called control fees for various breaches of parking conditions were charged, such as e.g. for payment of insufficient fee, missing or incorrectly placed parking ticket, parking outside designated or on reserved spaces without permission, parking in restricted area.

According to Apcoa, control fees were not subject to VAT; however, Danish Tax Authorities took a different view.

## Judgement

According to the CJEU:

**- control fees may have a direct link with the parking service and, as a result, they may be regarded as forming an integral part of the total amount** – the total amount of the sums which the motorists have undertaken to pay for parking, including, where appropriate, the control fees, represents the terms and conditions under which they actually benefited from a parking space, even if they chose to make excessive use of it, contrary to the general terms and conditions for use of the car parks concerned,

**- the amount of control fees corresponds to the remuneration for part of the costs associated with the supply of the parking service** – that amount necessarily takes into account the higher cost of operating car parks which is caused by parking that does not satisfy the normal terms and conditions for use and also seeks to ensure that Apcoa receives contractual remuneration for the service carried out in circumstances attributable to the user, which are not such as to change the economic and commercial realities of their relationship,

**- payment of parking fees and, where appropriate, of the amount corresponding to the control fees for parking in breach of the regulations constitutes consideration for the provision of a parking space, whereas the following arguments do not have any effect on this conclusion:**

- the provision of a parking space does not depend on the payment of those control fees by the motorist,
- the amount of control fees charged for parking in breach of the regulations is predetermined and has no real economic link with the value of the parking service supplied,
- under national law, the amount of control fees charged for parking in breach of the regulations is classified as a penalty.

**The control fees charged in the event of failure to comply with the general terms and conditions for use of the car parks can be regarded as consideration for a supply of services; and thus, may be subject to VAT.**

More information can be found on the following link:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=252446&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=24427>

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# Developments in EU social security legislation

While the pandemic situation is getting worse in many countries again, the work from home has never been such a hot topic. Complexity and administrative burdens have increased. Cross border mobility of employees often leads to lower levels of compliance. The compliance is complicated also due to different interpretations of various states.



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To make this topic less painful, at the beginning of pandemics 27 EU member states had implemented “No impact policy” in social security area. “No impact policy” is a temporary measure that prevents a change in social security position for employees who intend to return to their pre-pandemic working pattern once the state of health emergency is called off. Based on these measures, persons performing work temporarily from other country than before the pandemics could stay insured in the country, from where they would perform the work under usual (prepandemics) situation.

In December 2021 the Administrative Commission in the EU agreed to **extend the “No impact policy” for additional 6 months, i.e. until 30 June 2022**. The extension was necessary due to the ongoing pandemic.

However, as the pandemic continues and work patterns continue to change also for the future, we may see a pressure from several EU member states to consider reviewing the coordination rules from a long-term perspective. We are facing different interpretations in various member states, Slovakia being one of it. Obtaining **A1 certificates** in various “pandemics situations” is complicated. If you face any issues in this respect, please do not hesitate to contact us.

With respect to the EU Regulation 883/2004 on the coordination of social security systems, currently there is a new amendment discussed. Many significant changes are expected, such as a pre notification system for posting of employees. This change is likely to have strict deadlines and possible sanctions in case of breaching the deadlines. However, the wording of the amendment or deadlines is not clear yet.

There are also other changes expected in this amendment, not just in case of posted employees, but also for business travels, or work from two or more EU countries. The area of social security benefits is the one where the discussions might be most painful.

We will monitor the developments and keep you updated. In the meantime, please consider the social security and tax obligations when approving work from home or new assignments to abroad. KPMG stands at your disposal.

# Constitutional Court: The change to the Labour Code is suspended

On 15 December 2021, the Slovak Constitutional Court suspended the effective date of the provision of the Labour Code, which introduced a new reason for termination of employment. The legislation provision enables an employer to dismiss an employee based on his age.



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As we informed you in [our previous Article](#), as of 1 January 2022 the amendment in accordance with the Article 63 (1f) of Labour Code should entitle employers to terminate their employment with an employee **if the employee reaches the age of 65 and at the same time this age will be determined for entitlement to a retirement**, i.e. both conditions must be met simultaneously. In this respect, the employee would also be entitled to compensation.

With effect from 29 December 2021, the Resolution was published in the Collection of Laws under [No. 539/2021 Coll.](#), by which the Slovak Constitutional Court decided on a temporary suspension of the effectiveness of the Labour Code's provision.

It is currently unknown what will be the final conclusion with respect to adopted wording. Accordingly, the original wording of the law remains in force until the Constitutional Court's decision.

The main purpose of this parliamentary amendment was to enable inter-generational staff exchange and improve the employment of high school and university graduates. There is also another view, which consider such conditions defined by law to be unacceptable and discriminatory.

We will keep you informed on further update of the Constitutional Court proceeding.

# Tax Authorities published template of Announcement on Reverse hybrid entity

The Income Tax Act introduces together with the rules for Reverse hybrid entity also new reporting obligation for Slovak tax non-residents.



## **Daňové a právne oddelenie**

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Rules for a reverse hybrid entity were introduced into the Slovak Income Tax Act effective from 1 January 2022. Further, a new reporting obligation was added, for which the Tax Authorities published [a template](#) (available only in Slovak language).

Reporting obligation applies to:

- Partner of a partnership
- Unlimited partner of a limited partnership
- Recipient of income from subject with legal personality
- Recipient of income from subject without legal personality,

which are considered as Slovak tax non-residents and have direct or indirect share on registered capital, voting rights or profit of a reverse hybrid entity, in the amount of at least 50%.

The Announcement contains the information on tax regime of reverse hybrid entity in the tax residency country of person filing it.

Deadline for filing of the Announcement on Reverse hybrid entity is end of calendar month following the month during which an individual became partner of a partnership, unlimited partner of a limited partnership or recipient of income and other legislative conditions were met.

In accordance with the transitional provisions the Announcement on Reverse hybrid entity must be filed also in case that the above conditions were met as of 31 December 2021 within 31 January 2022.

If you are not sure whether the above rules apply to your situation, please contact us.

# Entry in the Register of Public Sector Partners when drawing First Aid contributions

Since January 2022, the conditions for drawing First Aid contributions have been updated with the obligation to register in the Register of Public Sector Partners when the prescribed drawing limits are exceeded.



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The obligation to register in the Register of Public Sector Partners applies to employers who apply for a contribution under the First Aid projects for **January and February 2022** or for these months separately. The amount of financial assistance must exceed EUR 100 000 in the relevant month or EUR 250 000 for both months (January and February 2022). If the amount of financial assistance is lower than the given amounts, the obligation to register in the Register of Public Sector Partners will not apply. The entry in the Register of Public Sector Partners must be completed at the time of the application for the financial assistance.

For those employers who receive a financial assistance under First Aid projects for the period up to **31 December 2021**, the obligation to register in the Register of Public Sector Partners is **considered fulfilled**, i.e. they are not obliged to register in the Register of Public Sector Partners.

From March 2022, the First Aid program will be replaced by the so-called kurzarbeit - law on support during shortened work. In case of drawing aid on the basis of kurzarbeit, the employer is obliged to register in the Register of Public Sector Partners when receiving financial assistance of more than EUR 100 000 at once or more than EUR 250 000 during the whole calendar year. In this case, the employer must be registered in the Register of Public Sector Partners at the time when the funds are credited to the employer's account at the latest.

# Public tax reliability index

On 30 December 2021, criteria that allow to assess the reliability of taxpayers were published in the Collection of Laws. A new tool should improve motivation in proceeding with the tax authorities-meeting tax obligations becomes publicly available in this context.



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As of 1 January 2022, the Regulation of the Slovak Ministry of Finance is effective, which determines the framework of 13 evaluation criteria for assigning the index to entrepreneurs registered for income tax.

The new version of the Tax Reliability Index brings several benefits for highly reliable taxpayers. For more detailed information, see [our previous article](#) from November 2021 dealt with the amendment to the Tax Code.

The full wording of the Regulation of the Slovak Ministry of Finance on the criteria for determining the Tax Reliability Index can be found [at this link](#) (currently available only in Slovak language).

Please note that the list of taxpayers with tax reliability index will be published by the Financial Administration on its website by 30 June 2022 at the latest.



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