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In brief

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What changes with the new Guidelines on the content of the transfer pricing documentation?

The new Guidelines came with several changes. The most significant of them relate to the new definition of significant controlled transaction, the criteria for determining the scope of the taxpayer's documentation obligation, as well as the modification of the documentation content for permanent establishments.



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At the end of the year 2022 the new **Guidelines of the Ministry of Finance of the Slovak Republic No. MF/020061/2022-724** on determining the content of the transfer pricing documentation (hereinafter "MF SR Guidelines 2023") were issued. MF SR Guidelines 2023 replaced the Guidelines no. MF/019153/2018-724 (hereinafter "MF SR Guidelines 2018") and for the first time are to be used **for preparation of the transfer pricing documentation** for the tax period starting **after December 31, 2022**.

The amendment to the Income Tax Act^[1] introduced the concept of significant controlled transaction, according to which transactions with a value of up to EUR 10,000 are considered insignificant. Credits or loans are considered insignificant from, if their principal did not exceed the value of EUR 50,000. As transfer pricing rules do not apply on insignificant transactions, the taxpayer does not have to include them in the transfer pricing documentation. Since the former Guidelines worked with similar concept, It was subsequently necessary to update them, in order to remove ambiguities. After all, for the purposes of determining the obligatory scope of transfer pricing documentation, it is still necessary to assess significance of transactions according to accounting regulations, i.e. same way as before the update.

MF SR Guidelines 2023 still recognize three types of the documentation scopes from content perspective - simplified, basic and full-scope, and in terms of content, no significant changes were made.

However, significant changes were made in respect of **criteria for obligation to keep documentation in simplified scope**. According to new rules, the obligation to prepare such documentation, in case of significant transactions have all of the taxpayers, which in the relevant tax period: reported tax loss; applied for tax loss deduction; or did not apply the tax rate according to § 15 letter a) point 2 or letter b) point 1a of the Income Tax Act. We would like to stress mainly the last mentioned criterion, as it **extends the documentation obligation to all taxpayers whose turnover for a maximum of 12 previous consecutive calendar months reached EUR 49,790**.

It remains valid, that the taxpayer does not have to prepare documentation related to transactions that do not affect the income tax base of the taxpayer. However, the MF SR Guidelines 2023 Guidelines introduce an exception for credit and loans, where the taxpayer is always obliged to document them.

The guidelines also regulate the mandatory content of the documentation for permanent establishments. If permanent establishment claims financing costs as tax deductible expense, transfer pricing documentation must also include a description of the allocation method of capital and the allocation method of financing costs.

Updates to the new analytical evidence of employees' data

In December, we pointed out the new administrative obligations for employers from 1 January 2023 towards the Social Insurance Agency. By the article below, we would like to remind you of these obligations as these are necessary to be fulfilled already within course of this month. All modified forms have already been published.



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The original article can be found [here](#). The new analytical evidence comprises of the following data:

- numerical code of **the place of work** according to [the statistical code of regions, districts, and municipalities](#)
- arranged **extent of working hours** per week
- **number of hours** related to the income accounted for the payout for the corresponding month
- numerical code of the agreed **category of work performed**, determined by [the decree of the Statistical Office](#)

The relevant information will have to be kept for all employees insured in Slovakia. For those whose insurance commenced before 1 January 2023, records are only kept starting **from 1 January 2023**.

By means of the **Registration Form** of employee it is required to report **place of work, the extent of working hours and the category of work performed** to the Social Insurance Agency. When registering the new employees, the employer should use the **Registration form - application** for an employee. In the case of "old" employees, it is necessary to report the relevant data via the **Registration form - change**, while the deadline for filing of the analytical data is the **deadline for filing the employer's monthly reports** for January 2023. Subsequently, an obligation to declare changes via the **Registration form - change** arises for employers in case of any change in the monitored analytical data.

The **extent of working hours** corresponding to the settled income for payment per calendar month will need to be reported **regularly via monthly reports**. The extent of working hours that must be reported for the observed month reflects both working and non-working hours, e.g. due to vacations, doctor's visit, obstacles at work, for which the employee is entitled to receive a compensation included within the assessment base for the respective month.

We believe that the information above would be helpful in course of fulfilling the obligations towards the Social Insurance Agency. Should you require any assistance or help in this respect, we would be at your disposal.

New minimum prepayments for health insurance contributions apply from January 2023

From 2023, every employee, as well as statutory representatives with management contract, will pay the minimum amount of health insurance which is derived from the sum of substance minimum valid on the first day of the calendar year.



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Effective from 1 January 2023, a new Article VII. of the Act no. 518/2022 Coll. amends the Act No. 580/2004 Coll. on medical insurance and introduces **the minimum health insurance contributions for the employee**. As a result, beginning with the calendar year 2023, every employee, including statutory representatives with management contract, will **pay the minimum amount of health insurance**. This amount is derived from **the sum of substance minimum** valid on the first day of the calendar year.

The Slovak parliament approved the amendment to the Act no. 580/2004 on medical insurance (hereinafter "the act") at the end of 2022. New sections § 13b and § 16a relate to **the minimum insurance contributions and the minimum prepayment for the employee**.

We would like to emphasize that the act does not change the minimum assessment base for health insurance that apply to self-employed person, voluntary unemployed persons and self-payers. The minimum assessment base for these persons amounts to EUR 605,77 and the monthly prepayment for health insurance contributions represents EUR 84,77 for the calendar year 2023.

According to the amended act, the minimum insurance contributions for employee represents the sum of employee's contributions and employer's contributions of the amount of **12-times of substance minimum valid on the first day of the calendar year**. For the calendar year 2023, minimum insurance contributions of the employee are as follows:

- **Employee's minimum contributions:** 4% of the amount $12 \times 234,42 \text{ EUR} = \mathbf{112,52 \text{ EUR per year}}$ (or 9,37 EUR per month),
- **Employer's minimum contributions:** 10% of the amount $12 \times 234,42 \text{ EUR} = \mathbf{281,30 \text{ EUR per year}}$ (or 23,44 EUR per month).

Thus, the total **minimum employee insurance contributions** for 2023 will reach the amount of **393,82 EUR** and the **minimum monthly prepayment for the employee** will reach **32,81 EUR**. Since the amendment is effective from January 1, 2023, the minimum prepayment does not apply to employee's income for December 2022, which is usually paid in January 2023; however, it applies only to income for January 2023. The minimum contributions are lowered by proportional part corresponding to number of calendar days during which the employee was insured by the state, was a disability person, was declared as a missing person or was not considered as an employee.

The main intention of this amendment is **to eliminate speculative transactions** with a low gross income or a low remuneration of a statutory representative. In a case that health insurance contributions are lower than the amount of the minimum prepayment, the employee is obliged to pay the difference. Please note that the employer does not have to pay the difference. **4 | Tax and Legal News | January 2023**

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increase the employee's income in such level that minimum prepayment was paid. Consequently, the act stipulates the **obligation to pay prepayment for health insurance contributions for employee at the level of the employee's minimum contribution, at least.**

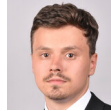
In this context, the Ministry of Health of the Slovak Republic published on its website **new forms for monthly statements of contributions for public health insurance**, which include items for prepayment of the employee determined from the assessment base for insurance contributions, non-application of the minimum prepayment for insurance contributions and calculation of the amount missing to the minimum prepayment. Please find new templates [on the following link](#).

Changes in wage allowances from June 2023

An employee working overtime is entitled to extra-pay increases for work on holidays, work performed during the weekend or night work since 1 June 2023. We have prepared an overview of the relevant wage benefits.



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The MP's draft Amendment to the Act No. 311/2001 Coll., the Labour Code, as amended (hereinafter referred to as the "Labour Code") will bring a change in the amount of wage allowances for night work and work during weekends. The remuneration for work performed outside the employment relationship on public holidays and the compensation provided to the employee for the inactive part of the on-call time outside the workplace will also undergo a change.

The amendment to the Labour Code with the symbolic designation No. 1/2023 Coll. will again **link the amount of wage allowances to the amount of the minimum wage**, as was the case until the end of 2020.

From 1 June 2023, the wage allowances will be as follows:

- (a) Wage allowance for work on Saturdays** will be at least **50 % of the minimum hourly wage** instead of the current fixed amount of EUR 1.79/hour.
- (b) The wage allowance for work on Sundays** shall be at least **100 % of the minimum hourly wage** instead of the current fixed amount of EUR 3,58/hour.
- (c) The wage allowance for night work** shall be at least **40 % of the minimum hourly wage** and, in the case of an employee performing hazardous work, at least 50 % of the minimum hourly wage. The previous fixed amount was €1.43/hour and €1.79/hour for an employee performing hazardous work.

The Labour Code also provides for exemptions which apply to employers whose nature of the work, or the conditions of the establishment require that the work be regularly performed on Saturdays, Sundays or as night work. In these cases, lower amounts of wage allowances may be agreed, but at least 45 % of the minimum hourly wage for Saturday work, 90 % of the minimum hourly wage for Sunday work and 35 % of the minimum hourly wage for night work.

Compensation for the inactive part of on-call time and for the difficult performance of work shall be changed from the current fixed amount of EUR 0.72/hour to at least 20 % of the minimum hourly wage.

Employees working under agreements on work performed outside the employment relationship will be entitled to an agreed remuneration for each hour of work on public holidays, increased by at least the amount of the minimum hourly wage.

The value of the minimum wage is set from 2023 onwards in accordance with the Notification of the Ministry of Labour Social Affairs and Family of the Slovak Republic No. 300/2022 Coll. and the Act No. 663/2007 Coll. on **the minimum wage at EUR 700 for a fixed 40-hour weekly working time**. The minimum hourly wage for 2023 is EUR 4,023/hour.

EU Minimum Tax Directive adopted by the Council

A new EU Council Directive on global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (the so-called Pillar Two) should transpose the rules into local law by 31 December 2023.



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After the resolution of reservations of Poland and a political solution to the subsequent negative position of Hungary, on 14 December 2022 the Council of the EU **reached an agreement to implement the EU Minimum Tax Directive** ([Council Directive \(EU\) 2022/2523](#)) in the amended wording of 25 November 2022.

The EU Minimum Tax Directive establishes common measures for the minimum effective taxation (by minimum effective tax rate of 15%) of multinational enterprise (MNE) groups and large-scale domestic groups in the form of:

- **an income inclusion rule (IIR)** in accordance with which a parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of the group; and
- **an undertaxed profit rule (UTPR)** in accordance with which a constituent entity of an MNE group has an additional cash tax expense equal to its share of top-up tax that was not charged under the IIR in respect of the low-taxed constituent entities of the group.

Member States may elect to apply a qualified domestic top-up tax in accordance with which top-up tax shall be computed and paid on the excess profit of all the low-taxed constituent entities located in their jurisdiction pursuant to the EU Minimum Tax Directive.

To meet the requirement of Poland, a statement was attached to the Council conclusion confirming the European Union's determination to have both Pillar 1 (related to digital taxation) and Pillar 2 (resulted in the EU Minimum Tax Directive) implemented. The note also requires the European Commission to present a proposal for the Pillar 1 rules by the end of 2023, if agreement at international level on a Pillar 1 solution is not reached.

The agreed text of 25 November 2022 mainly includes linguistic and structural changes compared to the June 2022 version and remains closely aligned with the OECD GloBE Model Rules. To achieve consistency with the freedom of establishment, the EU implementation of Pillar 2 differs from the OECD Model Rules mainly as follows:

- it is not limited to cross-border situations but also applies to domestic groups, and
- it requires the application of the IIR at the level of an EU parent entity located in a low-taxed jurisdiction not only with respect to its low-taxed foreign subsidiaries, but also with respect to all low-taxed entities resident in the same Member State of that parent.

The Member States must now transpose the rules into domestic legislation by 31 December 2023 and to start applying the Income Inclusion Rule (IIR) for fiscal years beginning on or after 31 December 2023. The Undertaxed Profits Rule (UTPR) will be applied for fiscal years beginning on or after 31 December 2024. The agreed compromise text, however, provides the option for Member States to implement **a qualified domestic top-up tax (QDMTT) and to defer the application of the IIR and the UTPR up to 31 December 2029**, assuming that the number of Ultimate Parent Entities (UPEs) based in that EU Member State does not exceed 12 UPEs with a consolidated turnover of at minimum EUR 750 million in two years from four years preceding the tested financial year.

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Where the ultimate parent entity of an MNE group is located in a Member State that has made an election to postpone the application of the IIR and UTPR rules up to 31 December 2029, the Member States, other than the one in which the ultimate parent entity is located, shall not apply the IIR and UTPR rules to the MNE group.

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parent entity is located, shall ensure that the constituent entities of that MNE group are subject, in the Member State in which they are located, to the UTPR top-up tax amount allocated to that Member State for the fiscal years already beginning from 31 December 2023. The UTPR percentage determined for a Member State that has made an election to postpone the application of the IIR and UTPR rules up to 31 December 2029 shall be deemed to be zero for the transitional fiscal years.

We will now have to wait to see when will Slovakia implement this Directive and if the Pillar 2 rules will be applied from 1 January 2024, or the postponement to 1 January 2030 will be utilised even if the respective UTPR percentage will be lost by Slovakia up to the application of the IIR and UTPR rules.

The Slovak Ministry of Finance published preliminary information on the draft law, which will implement this Directive into Slovak law. We expect that a legislative proposal will be prepared by Slovak Ministry of Finance in May 2023.

One sentence summary | January 2023

Last month's tax and legal news in brief.



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- Effective from 1 January 2023, the tax authorities **register individuals and legal persons ex-offo** based on data of the register of legal entities, entrepreneurs and public authorities registered into the Commercial Register and Trade Licence Register. As the result, the tax authorities issue the registration decision with the assigned tax ID and a personal account number of the taxpayer into electronic mailboxes.
- Effective from 1 February 2023, the amendment to the Commercial Code will **simplify the establishment of a limited liability company** and branch of enterprise or enterprise of foreign legal entity, which has its registered seat in one of EU Member States or EEA Agreement States. The Memorandum of Association can be created electronically, [the standardized form](#) has already published by Ministry of Justice.
- The Financial Administration published **electronic forms for personal (type A, B) and corporate income tax returns** which came into force on 1 January 2023.
- The amendment to the Slovak VAT Act effective as of 1 April 2023 changes temporary **decrease of VAT rate** (from 20% to 10 %) for transportation of passengers by cable cars and ski lifts, for restaurant and catering services and entrance to sports facilities for sporting purposes, to fitness centres and to artificial swimming pools to **permanent**. More information about the amendment to the Slovak VAT Act can be found [at this link](#).
- According to the information provided by the President of Slovak Financial Administration Jiří Žežulka, the preparation of the draft law **on sending invoice data to the Financial Administration by taxpayers (the so-called "e-invoicing") is postponed indefinitely**.
- The Financial Administration has updated the **tax calendar for the year 2023**, which you can import into your mobile devices. More information can be found [at this link](#).

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