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Employees' meal allowance will have (again) new rules

On 26 October 2021, the meeting of the National Council of the Slovak Republic approved the amendment to the Labour Code. The parliamentary amendment introduced several significant changes compared to the original proposal.

Ivana Soboličová
isobolicova@kpmg.sk
+421 905 703 190

Marianna Dávidová
mdavidova@kpmg.sk
+421 907 745 029

Soňa Vojteková
kpmg@kpmg.sk
+421 259 984 111

We keep you informed about the amendment to the Labour Code in the area of employees' meal allowance within series of our articles.

The main idea of the legislative proposal was to equalize various forms of meals, especially meal vouchers or a financial contribution depending on employee's preference.

The original proposal to exempt from tax and social security and health care contributions a financial contribution up to 100% of the meal allowance (subsequently during the discussions in the committee meetings up to 82%) for a business trip lasting 5-12 hours was not approved in the National Council of the Slovak Republic. The parliamentary amendment, as a response to the reservations of the inter-governmental review process, the Ministry of Labour, Social Affairs and Family or the Ministry of Finance, made the following changes:

- **The amount of 55% of the value of the meal allowance (currently a maximum of EUR 2.81) will be** tax exempt for the employee, for all forms of meals as well as the financial contribution. The employer's contribution from the Social fund should remain unchanged and exempted from tax.
- The meal vouchers or financial contribution will still need to be provided **in advance** in order to maintain the purpose of the contribution.
- Self-employed individuals will be able to include in the tax deductible expenses **only the amount of 2.81 EUR** for each working day, without the obligation to document meals expenses.

The approved wording of the amendment to the Act brings equalization of the tax assessment of meals vouchers and the financial contribution, but on the other hand it reduces the limit for exemption from tax as well as social security and health care contributions in the case of meal vouchers or meals provided to employees at the workplace. The amendment will therefore affect many employees and employers. Moreover, reduction of the administrative burden caused by the obligation to provide meal allowances in advance was not achieved.

The amendment to the Act has yet to be signed by the President of the Slovak Republic and is proposed to be effective from 1 January 2022.

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In brief

Two-way electronic communication from 1 January 2022

The Slovak Financial Administration informed about the forthcoming launch of the expected two-way electronic communication. From 1 January 2022, according to the Act on e-Government, the method of communication between the tax authorities and taxpayers should be changed - the sending of official documents in paper form will be replaced by electronic mailboxes.

Marianna Dávidová
mdavidova@kpmg.sk
+421 907 745 029

Soňa Vojteková
kpmg@kpmg.sk
+421 259 984 111

Increase of e-services has long been one of the highest priorities of financial administration. The transition to the paperless communication has been discussed since 2015. It was actually introduced in 2016 only in the area of excise duties. After several amendments to the Act on e-Government the financial administration covered e-communication with taxpayers also in the area of gambling. Since 2018 majority of taxpayers are obliged to file returns exclusively in electronic form, but the tax authorities still send many documents in a paper form.

Until the end of 2020, due to technical reasons, an exemption from the obligation of electronic delivery was provided for financial administration authorities. The insufficient technical capacity required an extension of this period until 31 December 2021.

From 1 January 2022, according to the financial administration press release, the new functioning of their mutual communication with taxpayers will be in force. The official documents sent by the financial administration will be managed through **the Central Public Administration Portal "slovensko.sk".** In order to use the electronic mailbox for communication with public authorities and for delivery of official documents the mailbox must be „activated“, including email or message notifications of received mail. In case of an inactive electronic mailbox, the automated module **"Central Official Delivery"** will enable to send a paper form of an electronic document.

The Slovak Financial Administration prepares video instructions and materials with more detailed information. The tax authorities will approach the fulfillment of the goal of keeping their agenda in electronic form.

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Case law

Suspension of the tax audit in case of international exchange of information – CJEU judgment

On 30 September 2021, the Court of Justice of the European Union (“CJEU”) released its judgment in the case C 186/20 of a Slovak company HYDINA SK s.r.o. The tax authorities started a tax audit at this company, which was then suspended twice due to international exchange of information. CJEU has analyzed the nature of deadlines for provision of information as set out by the Regulation No. 904/2010 and dealt with question of their effect on the lawfulness of suspension of the tax audit. Conclusions of the CJEU are not favorable for the taxpayers who have sought to challenge legality of tax audits and proceedings following the tax audits in cases where international exchange of information was not adhering to deadlines set out by the regulation.

Elvíra Ungerová
eungerova@kpmg.sk
+421 915 758 807

Background situation

In the tax period of December 2013, the Slovak company HYDINA SK s.r.o. claimed a right to deduct VAT in respect of supplies of meat products based on invoices received from its supplier established in Slovakia.

The Slovak tax authorities started a tax audit for the purpose of establishing the validity of that right and the corresponding claim for reimbursement of excess VAT deduction for that tax period.

The tax authorities twice suspended the tax audit due to requests for information that they had sent to the respective competent authorities of two EU Member States, in accordance with the procedure provided for in Regulation No. 904/2010, with a view to determining whether the goods invoiced to it by the supplier had actually been delivered.

The tax audit was first suspended for the period from 26 August 2014 to 11 March 2015, the second period of suspension was from 20 April to 1 July 2015.

The tax audit was closed on 7 December 2015. The tax authorities have not accepted the company's claim for deduction of input VAT shown in the invoices received from the respective supplier.

Issue concerned

The company has challenged the excessive length of the overall tax audit. According to Article 46 (10) of the Tax Procedure Code, the duration of the tax audit may not exceed one year from its commencement. In the present case, the tax audit was begun on 21 March 2014 and closed on 7 December 2015.

It follows from Paragraph 61(5) of the Tax Procedure Code that, in the event of suspension of the tax audit, the time limit laid down in Paragraph 46 (10) of the Tax Procedure Code ceases to run. In this case the tax audit was suspended because of the two requests for information submitted on the basis of Regulation No 904/2010.

The need to obtain information under Regulation No. 904/2010 justifies the suspension of the tax audit. However, under Article 10 of that regulation, read in the light of recital 25 thereof, the requested authorities should provide that information within a maximum of three months from the date of receipt of the request for information addressed to them. In the present case, that time limit was not observed.

The Slovak Supreme Court held necessary to determine the lawfulness of the duration of a tax audit, in particular with regard to the principles of proportionality and legal certainty. Potential unlawfulness could further lead to challenging the

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VAT assessment decisions adopted by the tax authorities.

CJEU hence dealt with the question on whether Article 10 of Regulation No. 904/2010, read in the light of recital 25 thereof, must be interpreted as laying down time limits, which if not complied with may affect the lawfulness of the suspension of a tax audit provided for by the national law of the requesting Member State, pending the communication by the requested Member State of the information requested via the mechanism for administrative cooperation established by that regulation.

Conclusions of CJEU

Following the analysis of the wording of the Regulation No. 904/2010 as well as the context in which it occurs and the objectives pursued by the rules of which it is part, the CJEU stated that the Regulation No. 904/2010 aims to enable administrative cooperation for the purposes of exchanging information that may be necessary for the tax authorities of the EU Member States.

However, in the absence of any express provision in the regulation to that effect, the latter cannot be interpreted as conferring on a taxable person any specific right.

Moreover, that regulation does not govern the maximum duration of a tax audit or the conditions for suspending such an audit on commencement of the information exchange procedure provided for therein. Therefore, a taxable person cannot rely on that regulation in order to challenge the lawfulness of the suspension of the tax audit to which he or she is subject on grounds of the excessive duration.

CJEU concluded that Article 10 of Regulation No. 904/2010, read in the light of recital 25 thereof is not laying down time limits, the non-compliance with which is liable to affect the lawfulness of the suspension of a tax audit provided for by the law of the requesting EU Member State pending the communication, by the requested Member State, of the information requested under the administrative cooperation mechanism established by that regulation.

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DAC7 – new obligations for digital platform operators

The EU aims at tackling various forms of tax evasion and avoidance. One of the methods discovered was the use of digital platforms by sellers without declaring income from the respective sales. To solve this issue, digital platform operators will have to report various data about sellers who are using their platforms.

Zuzana Blažejová
zblazejova@kpmg.sk
+421 905 740 000

On 22 March 2021 the Directive (EU) 2021/514 (called DAC7) amending the Directive 2011/16/EU introducing a solution to this problem was approved and on 25 March 2021 published in the EU Official Journal, with entry into force on 14 April 2021. The EU Member States have now time until 31 December 2022 to transpose the new regulations into their national law.

Reportable activities (both domestic and cross-border) via the digital platforms include rental of real estate, personal services, sale of goods and rental of any mode of transportation.

Reportable sellers are those with tax residence in the EU or who rent real estate located in the EU. Excluded sellers are governmental entities, listed entities including their related entities, large hotel chains (with over 2 000 services per property) and sellers who sell goods and have less than 30 relevant activities, in aggregate not exceeding revenues of EUR 2 000 during the reporting period.

Platform operators will have to report to the tax authorities reportable seller's revenues, platform's commission and reportable seller's due diligence information, such as the identification data of the platform operator (including the business name of the digital platform to which a report is filed and web-address of the platform) and each seller (including the number of activities of each seller on the platform and e.g. the certificate of ownership), financial account of the seller, amount of remuneration paid and credited to the account, any fees, commissions and taxes, lease periods, address of immovable property, land register number, and more.

Platform operators are expected to not only collect information, but also to verify the data received from the sellers. Therefore, they will need certain information and documentation from the sellers. The new provisions require that if the seller fails to provide the requested information and documents to the platform operator even after the second reminder, the platform operator must block the seller's account after 60 days from the first deadline for the provision of the information. In addition, the platform operator must prevent the seller from registering with the platform again. If the seller provides the relevant data later, the platform operator may unblock the seller's account after the expiry of the blocking period. Because of the platform operator's obligation to enforce the collection and verification requirement, there is a particular tension between sanctions and customer relations. For example, under no circumstances may a seller be wrongly blocked.

The new provisions covering digital platform operators will apply from 1 January 2023. There is no retroactive period, thus there will be no reporting for periods before 2023. The first report will have to be made by the platform operators by 31 January 2024 for the reporting period of 2023. For sellers registered at the platform as at 1 January 2023 due diligence procedures will have to be performed by the platform operators by 31 December 2024.

Digital platform operators have now time until the end of 2022 to update their internal systems and contractual relationships with the sellers to be in the position to collect the required data.

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World news

The European Council has published a revised list of non-cooperative jurisdictions

On 5 October 2021, the ECOFIN Council updated the EU list of non-cooperative jurisdictions for tax purposes. The EU has removed three countries from the „blacklist“ after the meeting. At the same time, no new jurisdictions have been added that would not comply with respective criteria in the tax area.

Marianna Dávidová
mdavidova@kpmg.sk
+421 907 745 029

Soňa Vojteková
kpmg@kpmg.sk
+421 259 984 111

Public classification in the so-called „The EU Blacklist“ does not currently apply to Anguilla, Seychelles and Dominica. The countries have committed to implement changes to their tax regulations and practices, and thus they were placed on a „greylist“ including other 12 countries (Barbados, Botswana, Costa Rica, Hong Kong (SAR), Jamaica, Jordan, Malaysia, North Macedonia, Qatar, Thailand, Turkey and Uruguay).

Following this latest revision, nine jurisdictions remain blacklisted:

- **American Samoa**
- **Fiji**
- **Guam**
- **Palau**
- **Panama**
- **Samoa**
- **Trinidad and Tobago**
- **US Virgin Islands**
- **Vanuatu**

ECOFIN is committed to regularly monitor and update the list twice a year to support countries in the necessary tax reforms to comply with the international standards.

The next revision of non-cooperative jurisdictions is scheduled for February 2022.

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In brief

Parliament approved amendment to the Tax Code

Parliament approved amendment to the Tax Code including amendment to the VAT Act and Income Tax Act.

Daňové a právne oddelenie
kpmg@kpmg.sk
+421 259 984 111

We have informed you about the proposed wording of the Amendment in our Article and we are preparing also the summary of the most important changes based on the approved wording.

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www.kpmg.sk
Tel.: +421 2 5998 4111

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