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Taxes

What brings the amendment to the Slovak VAT Act?

New obligation of Slovak VAT payers is due on 30 November 2021.

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As of 15 November 2021, an amendment to the Slovak VAT Act became effective bringing new obligation for Slovak VAT payers to announce to the Financial Directorate **by 30 November 2021** all own bank accounts kept by providers of payment services in Slovakia as well as abroad (to be) used for the economic activity in Slovakia. Non-fulfilment of this obligation will be subject to penalties.

According to the recent interpretation presented by the Ministry of Finance as well as the Financial Directorate, announcement of bank account kept by providers of payment services in Slovakia or abroad owned by any other party is voluntary. Provided such bank account will be announced, it will be treated the same way as the own one whereas the owner of the bank account will be jointly liable to VAT from goods or services supplied as stated in the invoice should the supplier not pay this VAT (or its part) within the deadline and the consideration for this supply (or its part) will be paid to this bank account.

The form to be used for this announcement was already published and the Tax Authorities are currently sending to the VAT payers an information on the bank account registered in their systems.

As of 1 January 2022, the announced bank account will be used by the Tax Authorities i.a. for refund of the excessive deduction and the list of these bank accounts will be published on the website of the Financial Directorate. Furthermore, the joint liability to VAT by the customer will be extended and will also apply should the consideration for the supply (or its part) be paid to another bank account than the bank account of the supplier published in the list of bank accounts as of the payment date. The joint VAT liability may be avoided provided the customer will pay the VAT stated in the invoice for the supply of the goods and services within Slovakia to the individual bank account number of the supplier kept by the Tax Authorities.

Please contact us should you need more information on how these changes will affect your VAT position in Slovakia.

Taxes

Overview of the most interesting changes brought by the amendment to the Tax Code

An amendment to the Tax Code was published in the Collection of Laws. The aim of the amendment is to create new tools which can be used in the fight against tax fraud and to motivate taxpayers to voluntarily meet their tax obligations.

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On 12 November 2021, the amendment to the Tax Administration Act (Tax Code), including indirect amendments to several tax laws, was published in the Collection of Laws. The amendment introduces a package of measures aimed at combating tax avoidance. Here's an overview of the most interesting changes:

- **Tax Reliability Index** - the amendment to the Act modifies the institute of the Tax Reliability Index, which will become public and will apply to entrepreneurs registered for income tax. In particular, the aim of the Tax Reliability Index is to be of an incentive nature and will not be used to assess a risk level of the taxpayer. The taxpayer shall receive its first tax reliability index within the end of the month following the two years period after the year in which this taxpayer was registered for income tax. The criteria determining the Tax Reliability Index will be laid down in the regulation published by the Slovak Ministry of Finance. For example, highly reliable taxpayers will have a deadline within tax audit not shorter than 15 days and unreliable taxpayers 8 days. The Tax Reliability Index will be reviewed bi-annually. Based on the transitional provisions, taxpayers who have received notification of special tax regimes or which have been registered for income tax by 31.12.2019 will receive a notification on the Tax Reliability Index by 28.2.2022.
- **Disqualification of individuals** – with respect to the amendment of the disqualification of individuals in the Commercial Code as well as in the Act on Courts, a provision is added to the Tax Code under which the Tax Authorities can decide to disqualify an individual once the legal conditions have been met. The consequence of such a decision is that a disqualified individual who is a member of the statutory body of the taxpayer, is not allowed to perform this function. The Tax Authorities may, by their decision, exclude the individual for a period of three years following the day when their decision becomes effective.
- **Decrease of the fee for binding opinion** – the amendment to the Act reduces the fee for issuance of a binding opinion to the amount of EUR 1,000. At the same time, half the fee will apply to taxpayers that are classified as highly reliable. At present, the fee is tied to the value of the anticipated business case and the number of applicable legal regulations, while the lowest possible fee is EUR 2,000.

The above provisions become effective as of 1 January 2022.

An unexpected change within the legislative process was the parliamentary amendment introduced at the second reading, which amends the Income Tax Act, and brings two important changes:

- **reduction of the tax advantage** for taxpayers who apply **research and development deduction**. The amendment to the Act, effective as of 1 January 2022, changes the amount of deduction from the current 200% to 100% of the eligible expenses
- a new provision on the **deduction of investment expenditures** is introduced which is intended to be a temporary instrument to support investment with higher added value - productive investment with a link to "industry 4.0". The support will be represented by the additional deduction of expenses, determined as a percentage of the tax depreciation of the given assets. The amount of the deduction will range from 15% to 55% and will depend on the average value of the investment and the amount of the reinvestment. The so-called investment plan will represent a core document which has to contain information as required by the law, and which has to be prepared for the period of four years (tax periods 2022-2025 for taxpayers with tax period being a calendar year).

The amendment to the Tax Code indirectly amends also the VAT Act. We have prepared for you more detailed information about the new obligation of Slovak VAT payers introduced by amendment to the Slovak VAT Act which is due on 30 November 2021.

Cancellation and reissuance of an invoice does not have any impact on the VAT refund period

The Court of Justice of the EU (CJEU) released judgement C-80/20 Wilo Salmson France, dealing with the impact of correction and reissuance of an invoice on the input VAT deduction.

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Background of the case

The French company Pompes Salmson SAS purchased in 2012 tooling located in Romania and filed 2012 VAT refund claim. This VAT refund application was denied by Romanian Tax Authorities due to possession of incorrect invoices. Pompes Salmson SAS did not file any appeal against this decision.

In 2015 the supplier cancelled the original invoices and issued new ones. Based on these new invoices, the company Wilo Salmson France SAS (legal successor of Pompes Salmson SAS) filed new VAT refund claim for 2015. Romanian Tax Authorities denied this application, reasoning that this VAT was already claimed in 2012.

Judgement

According to the CJEU:

- the right to deduct input VAT arises at the moment when the VAT liability with respect to the VAT that is deductible arises whereas **in order to claim the input VAT deduction (and VAT refund) the taxable person must possess an invoice** issued in accordance with the EU VAT Directive,
- **a document cannot be regarded as an invoice** in accordance with the EU VAT Directive **only if it contains such omissions that does not allow the Tax Authorities to obtain information necessary for the approval of the VAT refund application** – i. e. formally incomplete document cannot be automatically denied,
- for the VAT refund purposes, it is crucial when the taxable person obtained the invoice issued in accordance with the EU VAT Directive – **the VAT refund application for a particular period cannot be denied only on the ground that the VAT liability arose in previous refund period; however, the invoice was issued in that particular period,**
- provided the original invoices should be treated as invoices issued in accordance with the EU VAT Directive, their **cancellation and reissuance performed by the supplier** without any valid reason **after rejecting**, by the Tax Authorities, **of the VAT refund claim** based on these invoices, **do have any impact neither on the right for VAT refund that was already claimed nor on the period for which the right should be claimed.**

World news

G20 Finance Ministers have agreed on new international taxation

On 8 October 2021, under the auspices of the OECD/G20, 137 countries (including Slovakia), have finally agreed to introduce a global minimum tax. The two-pillar framework is designed to address the tax problems arising from the digitalization of the economy. The new mechanism will primarily affect tech giants, which benefit from different tax regimes in the countries. The international tax system is expected to take effect in 2023, so the model rules for corporate taxation and profit redistribution must be transposed into national law over the next year.

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Long-standing international efforts to ensure fair taxation conditions for large companies have been met in the form of the published *"Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitization of the Economy"*. Multinational enterprises must be prepared for a significant change - their tax obligation will be tied to the countries where they sell their goods and services. Taxes will be reallocated where companies have their customers, regardless of their physical presence in the countries.

The key aspects of the agreement of the members of the OECD/G20 Inclusive Framework are covered by two pillars, including a detailed implementation plan of particular measures. According to OECD estimates, the first part of the reform measures will allow a redistribution of EUR 108 billion of profits per year to the market countries, while the introduction of a global minimum tax could bring additional revenues of EUR 131 billion for governments. A part of the overall agreement is the removal of the Digital Services Tax applied by some countries at the local level.

Pillar 1: Reallocation of profits

- ***"Amount A" - new taxing right***
- ***"Amount B" - baseline marketing and distribution services***

The Pillar One contains a new nexus rule which allows profit allocation to a jurisdiction where value is created via user participation. The standard taxation model of corporate profits in the country in which they have their formal seat will now be applied in a fair way to real places of business activities and profits generation (also known as market jurisdiction). Only **the largest and most profitable businesses with more than EUR 20 billion in revenues and a profit margin above 10% (profit before tax/revenues)** will fall within "Amount A". In that case, they would then redistribute 25% of the group's profits above the 10% threshold to the relevant jurisdictions. The "Amount A" will be apportioned among the market countries based on the proportion of revenues from sales generated by the group in that country to the group's total revenue. Companies in the extractives sector and financial services companies will be excluded from the policy after several discussions.

"Amount B" aims to all multinational companies that perform routine marketing and distribution services in a market jurisdiction. The calculation of "Amount B" will be consistent with the arm´s length principle for such activities. More detailed information will be published at the end of 2022.

Pillar 2: Global Minimum Tax

- ***Income Inclusion Rule (IIR)***
- ***Undertaxed Payments Rule (UTPR)***
- ***Subject to Tax Rule (STTR)***

The Pillar Two introduces a global minimum tax rate in order to discourage multinational companies from shifting their profits to low-tax countries. After years of negotiations, it was set a final tax rate at **15%** for each jurisdiction in which the company operates. The new minimum tax rate will apply to **companies with revenues exceeding EUR 750 million**, excluding government entities, investment and pension funds and non-profit organizations.

The Pillar Two focuses on a series of three rules against Global Anti-Base Erosion ("GloBE"):

a) Income Inclusion Rule “IIR” – covers foreign income of branches to a minimum tax in the parent jurisdiction. The rule would allow a country hosting the headquarter of a multinational level to levy a top-up tax on the undertaxed profits of a foreign affiliate in a low-tax country.

b) Undertaxed Payments Rule "UTPR" – the jurisdiction of the payer denies tax deductions or make an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IRR.

c) Subject to Tax Rule “STTR” - the treaty-based rule will allow market jurisdiction to impose tax on certain related party payments taxed below a minimum taxation rate (on interest, royalties and others).

There are still a number of open key technical issues to assess the effects of international reform. We will keep you informed about further developments.

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