NEWSLETTER 2/2018

In the latest issue of the Newsletter, we bring you the following topics:

1. The annual settlement of social insurance is postponed 1
2. What will the e-Kasa bring? 1
3. A modern "whip" named GDPR 2
4. The growing trend of tax audits in transfer pricing 2
5. Tax and contribution benefit of the 13th and 14th salaries 3
6. Obligations of the recipient and the provider of services through the digital platform 4
7. Digital services will no longer escape taxation 4
8. Accounting for crypto currencies 5

1. The annual settlement of social insurance is postponed

As we have already informed you in the previous issue of the Newsletter, the proposed amendment to the Social Insurance Act intends to introduce the institute of annual settlement of social insurance. The originally proposed effective date of the annual settlement was set at the year 2020 when the annual settlement would be made for the first time for the year 2019.

Since the introduction of the annual settlement requires extensive modifications to the systems of the Social Insurance company, it proposes within the amendment procedure to shift the original term two years later, i.e. the Social Insurance company proposes to make the annual settlement for the first time in 2022 for the year 2021.

2. What will the e-Kasa bring?

A proposal to amend Act No. 289/2008 Coll. on the use of electronic cash registers, which regards the online connection of cash registers to the State fiscal modules, is currently being prepared.

The proposed amendment to the Act aims to ensure that business entities providing selected services are required to use for the purposes of registering the received revenue a cash register connected online to the tax authorities systems. In particular, this change is expected to reduce tax evasion and thus increase revenues to the State budget, while on the part of entrepreneurs, to reduce the administrative burden and operating costs. This new system is to ensure the possibility of real-time authentication of cash receipts.

The first changes should be reflected in practice in the course of 2019. A pilot version of the project will be tested in two stages in retail chains, with whom negotiations are under way.

3. A modern “whip” named GDPR

Since 25 May 2018, there have been significant changes in the area of personal data protection for anyone receiving, collecting and processing personal data of natural persons in the EU. On that date, the new Regulation of the European Parliament and of the Council of the EU, the General Data Protection Regulation (GDPR), entered into force.

The content of the GDPR in its entirety and with the same effective date has been taken over by the Slovak Act on the Protection of Personal Data No. 18/2018 Coll.

One of the fundamental changes is that companies collecting personal data on natural persons from the EU must be able to demonstrate an unambiguous and confirming consent to the processing of personal data. The consent must clearly state the purpose for which the company wants to use the personal data.

According to GDPR, personal data is such data on the basis of which it is possible to directly or indirectly identify a particular person. Personal data also include, in particular, online identifiers, such as the IP address, cookies, location data, etc.

In the event of any breach of personal data protection, it will not be possible to settle this situation internally within the company, but the company is obliged to report this fact to the Office for Personal Data Protection without delay, but no later than within 72 hours.

An important change also occurs in the penalties for the personal data breach, the amount of which is virtually liquidating. Companies that do not respect the provisions of the regulation and the applicable law may be fined up to EUR 20 million or up to 4% of the worldwide annual turnover in the previous financial year, whichever is higher. The supervisory authority in the Slovak Republic is the Office for Personal Data Protection.

To comply with the GDPR, the companies can receive assistance from law firms, which offer their consultancy services in this area. In the near future, we can expect the publication of the companies providing official certification of the GDPR compliance.

4. The growing trend of tax audits in transfer pricing

In order to minimise tax evasion, transfer pricing rules are tightened every year, which results also in the growing trend of tax audits focused on this area. The average amount of the additionally assessed income tax within one tax audit represents hundreds of thousand Euros. The best way to demonstrate that the transfer prices between related parties are in compliance with the market values, is to prepare the transfer pricing documentation.
Tax audits focus on individual industries, with the decisive selection factor being the industry’s profitability and size. Subsequently, transactions relating to services, production and sales of products, licence fees, financial transactions and business restructuring are examined.

In particular, the tax authorities consider loss-making entities as risky. The situation where one enterprise in the group reports losses, while the rest of the companies in the group declare profits, may trigger a tax audit in relation to transfer pricing. However, related as well as unrelated companies may actually incur losses due to excessive initial business start-up costs, adverse economic or business conditions or inefficiency. Nevertheless, long-term losses would not be tolerated by any independent business and it would not be able to continue doing business under such conditions.

5. Tax and contribution benefit of the 13th and 14th salaries

The amendment to the Income Tax Act, which extends the range of income of employees exempted from payroll tax by the 13th and 14th salaries entered into force on 1 May 2018. In both cases, the upper limit for the purposes of the exemption is EUR 500, provided that the conditions stipulated by the Act are met.

Conditions for the exemption of the 13th salary:

- its pay-out will take place in June,
- it amounts to at least the average monthly earnings of the employee, and
- the labour-law or state employment relationship must last continuously for at least 24 months by 30 April of the given year.

This procedure will be used for the first time for the 13th salary paid in June 2019.

Conditions for the exemption of the 14th salary:

- its pay-out will take place in December,
- it amounts at least to the average monthly earnings of the employee,
- the labour-law or state employment relationship must last continuously for at least 48 months by 31 October of the given year, and
- to the employee was paid in the same year the 13th salary in the amount of at least the average monthly earnings.

This procedure will be used for the first time for the 14th salary paid to the employee in December 2018 provided that the 13th salary was paid in June 2018 (the 13th salary paid in the year 2018, will not be exempt).

The 13th salary up to a maximum amount of EUR 500 will be exempt from health care contributions already in 2018 and from social security contributions from 2021. The 14th salary up to a maximum amount of EUR 500 will be exempt from health care contributions already in 2018 and from social security contributions from 2019. The income tax and the social security and health care contributions will continue to be paid from the amounts of the 13th and 14th salaries, which exceed EUR 500.

6. Obligations of the recipient and the provider of services through the digital platform

The amendment to the Income Tax Act with effect from 1 January 2018 has brought changes that related, among others, to foreign entrepreneurs who provide services of mediation of transport and accommodation on the territory of the Slovak Republic through the digital platform, i.e. without physical presence.

The Income Tax Act introduces for the foreign operators of such digital platforms the obligation to register their permanent establishments in the Slovak Republic, and thus the obligation to tax the income arising from them in the Slovak Republic, if their services are used by taxpayers based in the Slovak Republic. If a foreign operator fails to fulfil the registration obligation, the tax authorities are entitled to register the permanent establishment by virtue of office and at the same time impose a penalty of up to EUR 20,000.

However, this change also affects taxpayers based in the Slovak Republic, who use the services of foreign operators of digital platforms. A taxpayer based in the Slovak Republic, who uses the digital platforms operated by a foreign operator to mediate the sale of its transport and accommodation services, is obliged to deduct a tax of 19% of each payment and transfer it to the tax office if the foreign operator does not have a permanent establishment registered in the Slovak Republic. Information on the registration of the digital platform of a foreign operator for the purposes of the income tax in the Slovak Republic can be obtained by telephone or in writing from the representative of tax authorities, the register department.

7. Digital services will no longer escape taxation

The current digitisation trends allow digital companies to do business across borders without a physical presence, leading to a mismatch between the place of taxation and the place where the values are actually created. Given the fact that some Member States have acted promptly in this issue under growing political pressure and modified their local legislation at their discretion, such a diversity of approaches to taxing the digital economy could lead to legal uncertainty, various barriers and, last but not least, fragmentation of the EU single market. Hence the need to introduce a comprehensive solution to this issue at EU level. For this reason, with a view to fair and efficient taxation of the revenues from modern digitised business models, the EU Council has come up with the proposal of two directives in the field of digital service taxation.

The first directive introduces a new form of indirect tax on revenues from the provision of certain digital services by taxable persons. It will be applied to revenues generated from the sale of online advertising space, brokerage services (shared economy services) and from the sale of data obtained on the basis of information provided by the users.

The proposed tax on digital services would be applied at the rate of 3% of the gross annual revenues in the EU derived from the provision of specific digital services and would be payable in the Member State(s) where the users of the services are located.

This tax should only be a temporary solution that would apply until the adoption of the structural and complex changes in the area of corporate taxation.

The second directive is the Council Directive laying down rules on the taxation of income of legal entities, which are characterised by a digital presence. The aim of this directive is to ensure that the revenue from the provision of digital services is taxed where the value is created, extend the concept of permanent establishment to a significant digital presence and establish the principles of attribution of profit to such a fixed establishment, which will be based on the transfer pricing rules and on functional analysis. The adopted amendments should be reflected in the change of bilateral treaties on the avoidance of double taxation as well as in the change of the OECD Model Tax Convention.

Both directives propose limits (e.g. according to the amount of turnover, the number of users of the services) to identify companies that would be subject to those obligations so as not to have a negative impact on small and medium-sized enterprises. However, since the limits are set relatively high, the Slovak Republic will seek, according to unofficial information, to enforce their reduction so that the set limits would not exclude the application of the directives in the territory of the Slovak Republic.

The Member States must transpose the directives no later than 31 December 2019 with effect from 1 January 2020.

8. Accounting for crypto currencies

The Ministry of Finance of the Slovak Republic has issued a methodological guideline to ensure a consistent interpretation of the taxation of income from the sale of virtual currency within the meaning of the Income Tax Act. The methodological guideline also determines the method of valuation and recognition of virtual currency.

Virtual currency means a digital bearer of value that is not issued or guaranteed by a central bank or a public authority, nor is it necessarily linked to legal tender, does not have the legal status of currency or money but is accepted by some natural or legal persons as a means of payment.

The acquired virtual currency is considered from the accounting point of view as a short-term financial asset other than cash and is recognised at a special synthetic account within the accounting group 25 - Short-term financial assets, which will be added by an accounting entity in accordance with the Act on Accounting. Analytical records are kept according to the different types of virtual currencies. An accounting entity that is not established for business purposes accounts for virtual currency on an analytical account to the account 251 - Equity securities for trading.

Virtual currency is valued at fair value at the date of acquisition as the securities for trading. This also applies in the case of a micro entity, an accounting entity not founded or established for business purposes and an accounting entity that accounts in a single-entry accounting system.

Virtual currency obtained in the mining process is reported up to the date of its disposal by exchange or otherwise in the off-balance sheet or the auxiliary book, as appropriate. On the day of the implementation of the exchange, it is recognised at fair value.

The assets (other than cash) acquired in exchange for the virtual currency are measured at the date of the accounting case at fair value – the market price of the virtual currency. This valuation is considered to be the input price of the asset also for tax purposes. The same procedure applies to the valuation of a virtual currency acquired for another virtual currency on the date it is credited to the virtual currency wallet.

The differences arising in the accounts up to the time of crediting or debiting the virtual currency are accounted for with the effect on the business income. In order to measure the decrease in the same type of virtual currency, an entity may use the weighted arithmetic mean method or the FIFO method (whereby the first price to measure the increase in an asset type is used as the first price to measure the decrease in that asset). In this context, it is important for the entity to adjust the measurement of virtual currency in its internal regulation.

As of the date on which the financial statements are prepared, the virtual currency is not revalued to fair value.

This Newsletter is a product of TPA.
Best regards,

Your TPA team

Contact:

TPA Slovakia
Pribinova 25/4195
811 09 Bratislava

TPA Slovakia
Letná 27
040 01 Košice

Phone: +421 (02) 57 351 111

www.tpa-group.sk
www.tpa-group.com

If you wish to receive regular information, please subscribe to the Newsletter on our website.