NEWSLETTER 1/2019

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1. Reduced VAT rate for accommodation services

As we informed you in the last issue of the newsletter, an amendment to Act No. 222/2004 Coll., on Value-Added Tax, effective as of 1 January 2019, has introduced a reduced VAT rate for accommodation services at the rate of 10%. This reduced VAT rate applies to accommodation services with code 55 in the statistical classification of products by activity (CPA).

In view of the ambiguity of this provision in connection with the transition of the years, the advances received and paid for accommodation services and other services relating to accommodation, the Financial Directorate of the Slovak Republic has issued two guidelines on the issue in question.

One of the guidelines of the Financial Directorate clarifies the procedure for applying the reduced VAT rate in the event that accommodation began in 2018 and ends in 2019. The guideline further clarifies what a taxpayer should do in the case of a (partial or full) advance payment received in 2018, but intended for accommodation services provided in 2019, when the 10% reduction of the VAT rate takes effect.

The second guideline clarifies application of the VAT rate for accommodation in relation to whether, aside from the accommodation itself, the taxpayer provides a range of other services such as breakfast, parking, wellness, half board, etc. The main influence for assessing the VAT rate to be applied is whether (i) there is a single complex service that is subject to the reduced VAT rate as a whole, or (ii) the matter involves distinct services, i.e., accommodation taxed at the rate of 10% VAT and additional services which are not included in the price of the accommodation and are subject to the basic VAT rate of 20%.

2. Change in the VAT system for the taxation of trade between member states

Early last year we informed you about planned changes to the Council Directive on the common system of VAT (2006/112/EC). The proposed Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC on VAT is currently in the interdepartmental comment procedure. The Ministry of Finance of the Slovak Republic ("MFSR") has issued a due preliminary opinion in the matter, in which it expresses its reservations about individual substantive changes.

The proposal includes the following basic areas of substantive changes:

a) **The principle of a single payment** ("intracommunity supply of goods) which will be taxed according to the destination principle, i.e., in the destination member state. This amendment proposes abolishing the obligation to submit EC Sales Lists. The MFSR has reservations about abolishing the obligation to submit an EC Sales List even if two transactions merge into one (intracommunity acquisition of goods and intracommunity supply of goods), as supervision of the movement of goods is imperative in order to combat tax evasion as well as for correctly determining the place where the goods are to be taxed.
b) **Persons obliged to pay tax on the supply of goods to another member state (intracommunity supply of goods)** – customers shall be obliged to pay tax if they are certified taxable persons (assigned CTP status); otherwise, tax on the intracommunity supply of goods shall be paid by the supplier. The MFSR has reservations about the proposed concept because the tax collection process becomes more complicated and expensive (whether in terms of tax collection, checking the correct application of VAT, and the tax deduction system). The MFSR has also drawn attention to the negative cash flow of businesses, which will be obliged to pay tax on supplies, instead of the current tax exemption of intracommunity supply of goods.
c) **Introduction of a one-stop shop (OSS) system** for transactions between two taxable persons (B2B transactions). If a taxable person is not a resident in the member state where tax is due, such a person will be able to file a tax return and pay the tax through a one-stop shop. In practice, it will be rather problematic to quickly identify taxable persons (suppliers) who do not pay tax because they are established taxable persons in a different member state, and the member state of destination will have to rely entirely on the member state of establishment to make efforts to ensure that tax is collected for the other member state. Administrative cooperation between member states is currently a weak link in the VAT system of the EU and therefore, according to the MFSR, the proposed concept increases the risk of fictitious tax deductions.
d) **Certified Taxable Person concept (CTP status)** – the MFSR is against establishing certification of taxable persons, since this would create a further registration system (assignment of CTP status) in a VAT system where VAT registration already exists, thereby complicating the existing system.
e) **Other amendments** – a proposal regarding the removal of a domestic reverse-charge-mechanism transferring a tax obligation to the buyer in certain cases. The MFSR does not agree with the specified proposal, as it is an effective tool for combating tax evasion.

The Directive and the related amendments should be implemented into the local VAT Act with effect from 1 July 2022.

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3. Proposed amendments to the VAT Act

In relation to the above-mentioned EU Directive No. 2018/1910 of 4 December 2018 amending Directive 2006/112/EC, the MSFR has issued preliminary information on a proposed act to amend and supplement Act No. 222/2004 Coll. on value-added tax as amended (the VAT Act).

In so doing, the Slovak Republic will fulfil its obligation to adopt and publish a law required for compliance with the VAT Act and the Directive specified above.

The proposed law will modify the existing law, as well as creating new rules regarding cross-border supplies of goods between businesses within the EU. This specifically concerns:

- facilitating cross-border trading of goods within the scope of call-off stock arrangements,
- determining the place of delivery of the goods with transport carried out by an intermediary entity or on its behalf in so-called chain transactions within the EU,
- adding that a VAT identification number allocated to a purchaser of goods by another member state, such as the member state of departure of the goods, shall constitute a substantive condition for the tax exemption of the supply of goods to another member state.

At the same time, a uniform regulation is to be introduced in the EU as of 1 January 2020, concerning proof of the carriage of goods to another EU member state for the purposes of tax exemption, which will result in a change to the provisions of Section 43 (5) of the VAT Act.

The comment procedure is expected to begin in the first half of 2019.

4. Support of small and medium-sized enterprises in the area of income tax

As part of a Programme Declaration of the Slovak Government, the MFSR has issued preliminary information on the proposal of an act to amend and supplement Act No. 595/2003 Coll. on Income Tax, as amended.

The aim of the legislation is to support small and medium-sized enterprises by improving legislative and administrative conditions.

The measures should primarily concern the following areas:

- simplifying the calculation of the tax base,
- transfer of the registration duty for income tax to a tax administrator,
- simplifying the calculation of advance tax payments, including reporting their amount to a tax administrator,
- re-assessing the deadline for filing tax returns.

The comment procedure is expected to begin in May 2019.

5. A multilateral convention signed with 10 countries came into effect on 1 January 2019

The Multilateral Convention, also known as the Multilateral Instrument (MLI), is a multilateral contractual tool, which constitutes part of the OECD Action Plan on Base Erosion and Profit Shifting ("BEPS"). The convention allows for the rapid implementation of BEPS measures in individual bilateral double taxation treaties without the need for individual changes in separate contracts, thus effectively helping to prevent income tax evasion.

The MLI contains the following measures:
- neutralisation of the effects of hybrid mismatch arrangements,
- prevention of advantages arising from double taxation treaties in unfair situations,
- to prevent the creation/existence of permanent establishment status,
- a mechanism for resolving disputes concerning taxation.

Slovakia became a signatory of the MLI on 7 June 2018, the president of Slovakia ratified the MLI on 30 July 2018, and the MLI entered into force for Slovakia from 1 January 2019.

However, the convention will only affect double taxation agreements entered into with countries, which have also ratified the MLI. At present (i.e. with effect as of 1 January 2019) it concerns agreements entered into between Slovakia and Australia, France, Israel, Japan, Lithuania, Poland, Austria, Slovenia, Serbia and the United Kingdom and Northern Ireland.

Since the MLI modifies bilateral double taxation treaties, the impact on individual treaties in terms of reservations and declarations of both parties asserted upon ratification shall be made public in separate communications from the Ministry of Foreign and European Affairs of the Slovak Republic in the interest of ensuring greater certainty.

An explanatory statement, which can be inspected at the MFSR, has been issued for the convention. Reservations and declarations put forward by Slovakia in relation to the convention can also be inspected at the MFSR.

6. Changes await transfer pricing documentation for 2018

As we informed you in the previous issue of the newsletter, the MFSR submitted a new guideline on the content of transfer pricing documentation for a comment procedure at the end of 2018. The new guideline was published in the Financial Newsletter in late 2018 as Guideline of the Ministry of Finance of the Slovak Republic No. MF/019153/2018-724 on determination of the content of transfer pricing documentation, replacing the original guideline. According to the new guideline, taxpayers are obliged to take action when preparing documentation for a tax period starting after 31 December 2017. Taxpayers can also submit transfer pricing documentation to a tax administrator in accordance with the old guideline, however, only if such a tax administrator calls upon them to do so by 30 June 2019 at the latest.

The new guideline has implemented new requirements for transfer pricing documentation, which have been published in the revised OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017. Changes for taxpayers have particularly been made due to the increased focus on transfer pricing, so that tax administrations have sufficient information for a risk analysis, and so that the documentation provides useful information in the case of tax inspections directed at transfer pricing.

The biggest change concerns the preparation of shortened (simplified) documentation, which will only be submitted to a tax administrator as a standardised form. This standardised form is available on the website of the MFSR. Taxpayers shall only submit the form to a tax administrator if called upon to do so. Changes have also been made to the complete documentation, which should now include much more information about entire groups of companies, their financing, profitability factors, supply chains, intangible assets and other facts. In other words, greater emphasis shall be placed on the provision of comprehensive information. Another new feature in the case of financial transactions is that, for the purposes of materiality and transaction values, matters will proceed based on the highest value of the principal or underlying asset. Important transactions in this case are transactions that meet the materiality characteristics of the Accounting Act.

The new guideline has not introduced any major changes to the basic documentation. However, the purpose of basic and complete transfer pricing documentation should continue to be documentation of the process of valuing a taxpayer’s mutual business relationships, including the prices of controlled transactions and other factors that affect pricing.

Taxpayers who do not meet any of the criteria for preparing shortened (simplified), basic or complete documentation shall fulfil their obligations by completing a tax return with data on dependent companies.

7. Cancellation of the notification duty when changing bank accounts

In January 2019, a proposal for an amendment to Act No. 563/2009 Coll., on tax administration (the Tax Code) was submitted to the National Council of the Slovak Republic.

The submitted amendment aims to abolish the duty of taxable persons to report changes relating to changes to an entrepreneur’s bank account (opening/closing an account). The reason for submitting the proposal and abolishing the notification duty of entrepreneurs is the duplication of such notifications, as banks and branches of foreign banks, which keep such accounts, have the same obligation. Approval of the proposal would reduce the administrative burden on taxable persons.

Please be aware that this change will not concern the obligation to provide a bank account number when registering a taxable person. In such cases, the notification duty will remain unchanged.

The proposed effective date of the act is 1 May 2019.

8. Conditions for tax exemption of the 13th salary

We have already informed you about the tax-deductible benefit of 13th and 14th salaries in accordance with an amendment to the Income Tax Act (Act No. 595/2003 Coll.) in the February 2018 edition of the newsletter. With effect from 1 March 2019, the Income Tax Act has been amended by Act No. 54/2019 Coll., on the protection of notifiers of anti-social activities. The specific change affects the issue of 13th salaries paid for work during the summer holiday period.

One of the previous conditions for the tax exemption of 13th salaries was that such a 13th salary would amount to at least the average monthly earnings of the employee. With effect as of 1 March 2019, it will be sufficient for a single employer to pay a 13th salary in the amount of € 500. This condition for the income tax exemption of 13th salaries will be applied for the first time to payments made in June 2019.

Other conditions for tax exemption purposes will not be changed.

9. Remuneration for hours worked at night and during holidays – Stage 2

The amendment to the Labour Code effective as of 1 May 2018 will be entering its second stage from 1 May 2019, bringing with it a further increase in premium pay for employees who work at night and on weekends.

This second stage will increase premium pay for night work from the current 30% of the minimum hourly wage to 40%. For high-risk professions, the amount shall be increased from the current 35% of the minimum hourly wage to 50%.

Premium pay for weekend work is set to be doubled. For work on Saturdays, employees will enjoy an increase from the current 25% of the minimum hourly wage to 50%. Double time will be paid for Sundays, as the current premium rate of 50% of the minimum hourly wage is to be increased to 100%.

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Your TPA team

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