



## NEWSLETTER 4/2022

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### 1. Amendment to the Income Tax Act from 1 January 2023

On the 6<sup>th</sup> of December 2022, the National Council of the Slovak Republic (the "NC SR") approved an amendment to the Income Tax Act, which also amends certain provisions of the Tax Administration Act (the "Tax Code"). We wrote about proposed changes of Income Tax Act and Tax Code in more detail in the previous edition of our Newsletter. In this edition, we provide a summary of the most important changes to the enacted laws. The amended Income Tax Act will take effect on 1st January 2023 and certain selected provisions of the Income Tax Act will take effect from 1<sup>st</sup> January 2024.

The most important amendments in the **Income Tax Act** are as follows:

#### 1) Transfer pricing

- the definition of an economically connected person and a controlled transaction is clarified;
- the rules for adjusting the tax base in the event of non-compliance with the arm's length principle and the rules for including costs incurred by another related party into the taxpayer's tax base are clarified;



- in order to reduce the administrative burden on small businesses in case of low-value transactions, a “safe harbor” of EUR 10,000 is introduced, except for loans and credits, which will be considered a significant controlled transaction if their principal exceeds EUR 50,000;
- in order to ensure legal certainty in the application of transfer pricing rules, a reference to the OECD Transfer Pricing Directive is added to the act;
- if the prices used by the taxpayer in transactions with related parties do not comply with the arm's length principle, in the event of a tax inspection the taxpayer's tax base will be adjusted “to the median” of the independent comparable values found;
- when issuing decisions on bilateral and multilateral agreements to the use of the valuation method, the possibility is added to issue a decision for more than five tax periods if the competent authorities have also agreed to apply the valuation method for the tax periods prior to the submission of the application,
- it will also be possible to submit the transfer documentation in a foreign language, and if the tax administrator requests the documentation in the state language, the taxpayer will be obliged to submit it within 15 days of receiving the tax administrator's request;
- foreign taxpayers doing business in the territory of the Slovak Republic through a permanent establishment will be able to determine the tax base of this permanent establishment on the basis of foreign records (e.g. from accounting records kept abroad), and thus the accrual principle is considered in this case and not the cash principle;
- the procedure for including incomes (revenues) and expenses (costs), that are recognized after the termination of a permanent establishment, into the tax base is also modified.

## 2) Limitation of tax deductibility of interest

- with effect from 1<sup>st</sup> January 2024, a new rule is introduced to limit the net interest expense (the difference between interest revenue and interest expense) included in the tax base;
- the limitation will only apply to taxpayers whose net interest expense exceeds EUR 3 000 000, i.e. the tax base will be increased by the amount by which the net interest expense exceeds 30 % of the EBIDTA indicator;
- net interest expense not included in the tax base in the relevant tax period will be deductible from the tax base in a maximum of five consecutive tax periods;
- the new net interest expense limitation rule is to be applied in preference to the thin capitalisation rules pursuant to Section 21a of the Income Tax Act and is not intended to apply to banks and insurance companies.

## 3) Other

- the tax administrator will register ex officio for income tax the taxpayers registered in the commercial and trade registers and according to the notice that will be published on the website of the Financial Directorate of the Slovak Republic;
- adjustments to the tax base resulting from the implementation of IFRS 9 and IFRS 17 will be included in the tax base on a straight-line basis over three tax periods, starting with the tax period beginning no earlier than on 1<sup>st</sup> January 2023;



- it is possible to complete the application of the entire entitlement to the tax bonus for a dependent child if the taxpayer's tax base is insufficient to apply the full amount of the tax bonus. The application of the tax bonus will be possible exclusively through the tax return, by including the tax base of both eligible persons nurturing a child into the aggregate income for the purposes of assessing the entitlement to the tax bonus;
- from 1<sup>st</sup> January 2023 to 31<sup>st</sup> December 2024, the monthly tax bonus for a dependent child who has reached the age of 18 will be EUR 50 and if the dependent child has not reached the age of 18, the monthly tax bonus will be EUR 140; revenues from bonds (with the exception of government bonds) accruing to legal entities with limited tax liability (non-residents) in the Slovak Republic will be treated as a source of income from the Slovak Republic and will be subject to withholding tax. The tax thus collected may be treated as a tax advance payment;
- the value of accommodation and transport provided in connection with a health care provider's participation in statutorily required continuing education for health care professionals is to be tax-exempt income;
- the amendment of the Income Tax Act also regulates the extinction of a receivable as a result of its forgiveness in a so-called preventive restructuring. The receivable will be a tax expense with the creditor if a preventive restructuring plan is approved and will be to the extent that the liability is forgiven.

The most important amendments in the **Tax Code** are as follows:

- with effect from 1<sup>st</sup> January 2024, a so-called "second chance" is introduced when imposing penalties, where the tax administrator will not impose a penalty, which can be determined within an interval range, for the first violation of the Tax Code, but will first call on the tax entity to comply with its obligations, together with a warning that a penalty will be imposed for the next violation. The administrative offense will be solved separately by the Customs and Tax authorities;
- with effect from 1<sup>st</sup> January 2024, it is proposed to shorten the time limit for charging interest on late payment in the event of full payment of the arrears, so that the tax administrator will be able to impose the interest only within one year from the end of the year in which the arrears were paid.

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## 2. Amendment to the Value Added Tax Act

On the 6<sup>th</sup> of December 2022, the National Council of the Slovak Republic (the "NC SR") also approved an amendment to the Value Added Tax Act (the "VAT Act"), which we informed you about it in our previous Newsletter. The amendment to the VAT Act was approved in the revised version because some of the initial proposed changes were not approved or were approved in an edited version.

We would like to provide you with a brief overview of the most important additions and changes to the **VAT Act**:

- the VAT Act amendment brings a change in Section 53b, which **introduces an obligation for the customer to make a correction of the deducted VAT on purchased goods or services, in the price of which VAT has been applied, unless the customer settles the obligation in part or in full within 100 days after its due date.**



- **for a temporary period from 1<sup>st</sup> January 2023 to 31<sup>st</sup> March 2023, a reduced VAT rate of 10% will apply to selected services. Specifically, this applies to the transport of persons by land cableways and ski lifts, to the provision of covered and uncovered sports facilities, artificial swimming pools as well as restaurant and catering services.** The aim of this measure is to support regional economies, to make these activities more accessible to the general public and to support the restaurant and catering sector.
- **The amendment also introduces an obligation to file a tax return for an entity that has failed to comply with the obligation to apply for VAT registration or that has applied for registration late.** The change is in the length of the period for which an extraordinary tax return is filed. If the **delay is more than 21 days**, the entity has an obligation to file one tax return for a period, in which the entity should have been a taxable person. This obligation shall apply to a taxable person who has his registered office, place of business, establishment, residence or usually stays in the territory of the Slovak Republic.
- Waiver of the obligation to register as a VAT payer after exceeding a turnover of EUR 49,790 if the taxable entity exclusively supplies goods or services that are exempt from VAT.
- **Other changes aimed at reducing the administrative burden and eliminating some of the shortcomings of the act that have arisen from application in practice.** These include, for example, a more detailed explanation of what constitutes a consignment of a small nature, the import of which is exempt from VAT, for the purposes of the VAT Act; a new definition of an irrecoverable debt; the method for determining the amount of the correction of deducted tax on the theft of goods specified by the act; the abolition of the obligation to submit a nil tax return in the case of the first customer under a triangular trade scheme; a change of the time limit for payment of tax on the acquisition of a new means of transport from another Member State; alignment of the procedure for charging interest on late payment of tax on imports of goods with charging interest on customs debt.
- With effect from 1<sup>st</sup> January 2024, a **new record-keeping obligation** is introduced **for payment service providers** through which payments for delivered goods or services are made – this change is primarily due to the transposition of the EU Council Directive, the main objective of which is to combat tax evasion arising from cross-border e-commerce, where situations arise when the customer is located in one EU Member State and the supplier of goods or services is located in another Member State, or in a third country, with the entire purchase being made in the online space.

The amendment to this Act takes effect from 1<sup>st</sup> January 2023, except for the record-keeping obligation for selected payment service providers, which will take effect from 1<sup>st</sup> January 2024.

### 3. Approved amendment to Act No. 251/2012 Coll. on Energy

The current energy crisis and the related rapid rise in energy prices and inflation have negatively affected all EU Member States. As a consequence of this situation, the EU has adopted a regulation dealing with high energy prices, which includes the issue of the so-called market revenue cap and the distribution of excess and



congestion revenues among final electricity consumers. The amendment law introduces an excess income levy for certain entities generating electricity but also grants to cover the difference in the price of heat.

The payer of the levy on excessive income is a domestic and foreign individual and legal entity located in the territory of the Slovak Republic, which:

- produces electricity in an electricity generation facility on the basis of a permit,
- purchases and sells electricity on the basis of an electricity supply permit,
- is directly or indirectly related to another levy payer,
- supplies electricity to the wholesale electricity market.

The subject of the levy is the excess income from the sale of electricity produced in the Slovak Republic and delivered to the electricity system. The amount of the levy is determined at 90 % of the excess income.

The periods of the levy on excess income are the calendar months in the period from 1<sup>st</sup> December 2022 to 31<sup>st</sup> December 2024, while the levy payer is obliged to electronically submit the notice of the levy and pay the levy by the 25<sup>th</sup> calendar day of the month following the end of the period of the levy. The Financial Directorate of the Slovak Republic shall publish a template of the excess income levy notice form on its website.

The approved version of the Energy Act also amends the Income Tax Act, which determines that the levy on excess income is a tax expense. At the same time, the provisions of the Tax Code shall apply accordingly to the excess income levy.

#### **4. A new act on the solidarity contribution from activities in the oil, gas, coal and refinery sectors**

The Government of the Slovak Republic has submitted a proposal for an abbreviated legislative procedure on the Government's draft law on the solidarity contribution from activities in the oil, gas, coal and refinery sectors and on the amendment of certain laws, thereby responding to the adoption of Council Regulation (EU) 2022/1854 on emergency intervention ("the Regulation"). This law is intended to address high energy prices. Under the Regulation, companies generating at least 75% of their turnover from activities in the oil, gas, coal and refinery sectors, which have seen their profits increase as a result of the sudden and unforeseeable circumstances of the war in Ukraine, are to make a proportionate contribution to alleviating the energy crisis in the relevant EU internal market.

Following the above-mentioned Regulation, the Government of the Slovak Republic has submitted a draft Act introducing a new mandatory temporary solidarity contribution of legal entities and permanent establishments of foreign persons in the Slovak Republic that are active in the oil, gas, coal and refinery sectors.

The contribution will be calculated as the product of the rate and the contribution base, with a proposed contribution rate of 70%. The contribution base is the difference between the tax base of the comparative tax period (beginning in 2022 or 2023) and the average of the tax bases of the comparative tax periods (four



consecutive tax periods, the first of which began after 1<sup>st</sup> January 2018), increased by 20%. The contribution base is calculated on the basis of the income tax base less the tax loss deduction, the deduction for research and development expenditures and the deduction for investment expenditures.

This new draft act also amends the Income Tax Act, i.e. the contribution paid is to be considered a tax expense.

The effectiveness of this new act is proposed from 31<sup>st</sup> December 2022.

However, considering the current political and economic situation, and the negative reactions of some energy companies and unions to 90% taxation of excess income from the sale of electricity in terms of the amendment to the Energy Act, the future survival of this proposal is highly uncertain.

## **5. Draft amendment to the Act on the Special Levy on Business in Regulated Sectors**

On 8<sup>th</sup> November 2022, members of the NC SR passed the draft amendment to Act No. 235/2012 Coll., on the Special Levy on Business in Regulated Sectors to the second reading. The aim of the draft is to raise additional funds for the state budget of the Slovak Republic, in view of the economic damage caused by the coronavirus pandemic and the war in Ukraine.

The special levy is compulsory for entities in regulated sectors whose economic result exceeds EUR 3,000,000. The draft contains an extension of the scope of entities that will be obliged to pay this levy to include many entities operating on the financial market on the basis of a licence from the NBS. These include e.g. financial intermediaries, securities traders and asset management companies. The amendment to the Act will also apply to entities providing broadcasting of programme services on the basis of a licence granted by the Council for Broadcasting and Retransmission. Including the company entrusted with the collection of tolls in Slovakia among the regulated entities has also been proposed.

Another proposed change is to stop the current gradual reduction of the levy rate and at the same time to increase the levy rate to 0.01 (from the original 0.00726). The amendment to the Act is proposed to take effect on the date of its promulgation.

However, the draft version of the law is not yet final, because an amendment was submitted in a modified version, which changes the above-proposed changes, such as lowering the levy rate or not expanding regulated entities.



## 6. Draft Act on the Special Construction Tax

On 8<sup>th</sup> November 2022, members of the NC SR passed the draft Act on the Special Construction Tax to the second reading. The aim of the draft is to introduce a new tax on a special construction (gas pipeline network) used to transport gas in the territory of the Slovak Republic. One of the reasons for the introduction of the new tax is that this special construction is not subject to property tax.

The draft of the new Act regulates the basic provisions regarding the tax – amount, method of payment, taxpayer, tax administrator, tax base and tax rate. The taxpayer is to be a gas undertaking authorised to transport gas in the territory of the Slovak Republic. The tax base for calculating the tax is to be the length of the special construction expressed in kilometers and the tax rate is to be set at EUR 6,000 for each even started kilometer of the special construction. The proposed tax period is the calendar month.

The amendment to the Act is proposed to take effect on the date of its promulgation.

However, even in this case, the draft version of the law is not yet final, because Members of the National Council have submitted an amendment that could change the above-mentioned information.

## 7. Amendment to the Social Insurance Act introduces the so-called assignment of contributions to the parental pension

The approved amendment to Act No. 461/2003 Coll., on Social Insurance, introduces a **new pension benefit - parental pension** from January 2023. Every child who works in Slovakia or is voluntarily insured for a pension, will have the opportunity to assign part of their paid social insurance contributions to the persons who raised them and are retired.

The Social Insurance Institution will automatically pay a parental pension to parents of their own or adopted children who are recipients of **an old-age, invalidity or retirement pension** paid after reaching the retirement age. However, the child may decide that they do not want the parent to be granted a parental pension or prefer to contribute to the surrogate parent. This decision must be notified to the Social Insurance Institution **by 28<sup>th</sup> February 2023** using the published form.

The paid parental pension of one parent will be **1.5% of the child's social insurance assessment base from two years ago**. This means that the year 2021 will be the relevant year for the payment of the parental pension for 2023. The parental pension will be calculated from a maximum of 1.2 times the average salary in the Slovak economy two years ago. The entitlement to a parental pension will be assessed each calendar year. In 2023, a retired parent who has brought up one child will get a **maximum increase of EUR 264**. The amount of the parental pension may increase depending on the number of children brought up.



## 8. Approved amendment to the Tax Code

On 20<sup>th</sup> September 2022, the NC SR approved an amendment to the Act on the Electronic Form of Exercising the Powers of Public Authorities (the e-Government Act), which also modified some of the elements of the Tax Code.

The most significant changes include the postponement of the deadline for publication of the list of tax entities for which the tax reliability index has been determined, to 31 January 2023.

The authorisation of electronic submissions, which must be authorised by a qualified electronic signature or other recognised method of authorisation, has been specified. The submission, which has a prescribed structured form, can only be submitted through the specialised portal of the Financial Directorate of the Slovak Republic. If an individual wishes to deliver documents to the Financial Administration by other electronic means, they shall conclude an agreement on electronic delivery with the tax administrator.

In the area of time limits/deadlines, it has been specified that the time limit shall be deemed met if, on the last day of the time limit, an act is performed at the tax administrator, or a filing is handed over for postal transport or submitted by electronic means. In the event that the filing cannot be delivered electronically due to reasons on the part of the tax administrator, the time limit is deemed to have been met if the filing is delivered on the next business day after the obstacles on the part of the tax administrator have been removed.

The amendment to the Act regulated the area of delivery by electronic means, where if the taxpayer has several electronic mailboxes, the tax administrator will deliver the consignments to any electronic mailbox that is activated for delivery. Electronic delivery requiring confirmation is deemed to be delivery to the recipient's own hands.

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## 9. Amendment to the Local Taxes and Local Fees Act

On 1<sup>st</sup> November 2022, the amendment to Act No. 582/2004 Coll., on Local Taxes and Local Fee for Municipal Waste and Small Construction Waste, as amended, took effect.

The aim of the amendment is to introduce a legislative framework for the determination of the local fee for municipal and small construction waste, the collection of which is carried out by weighing on the collection vehicle when emptying the collection container. Until now, municipalities have only been able to set the fee in two ways, either as a flat rate (per person per day), or for bulk collection.

The actual decision on the method of determining the local municipal waste fee will be at the discretion of the municipality. The municipality shall determine the rate of the fee in accordance with the established system of collection of municipal waste and small construction waste as follows:

- flat fee per person per calendar day, or per person per calendar year,





- fee for unweighted bulk collection of municipal waste and small construction waste,
- fee for unweighted bulk collection of municipal waste,
- fee for weighted bulk collection of small construction waste,
- fee for weighted bulk collection of municipal waste.

A municipality may have a different system of municipal waste collection and different determination of fees for its territory, a part of the municipality or for certain types of taxpayers.

## 10. Draft amendment to the Electronic Cash Register Act

A group of members of the National Council of the Slovak Republic (NC SR) submitted to the NC SR a proposal to repeat the second reading of the draft amendment to Act No. 289/2008 Coll., on the Use of Electronic Cash Register (hereinafter referred to as the "ECR Act"). The primary objective of the submitted draft amendment is the effective reduction of the tax gap by involving the general public in the control of compliance with the provisions of the ECR Act.

The proposed measure will allow the population to receive a financial contribution for the purchase of selected goods and services for personal consumption. Payment for goods or services will have to be evidenced by a cash receipt issued by the e-kasa client cash register.

The contribution will be available after the applicant registers in the mobile application operated by the financial administration, which will assess their eligibility and then send the contribution to the bank account within the specified time limit.

The amount of the financial contribution, as well as the goods and services to which this option will apply, will be published in a regulation of the Government of the Slovak Republic.

The proposed effectiveness of the amendment to the ECR Act is from 31<sup>st</sup> December 2022.

## 11. Draft Act on Screening Foreign Investments

As the Slovak Republic does not currently have a comprehensive legal regulation in the field of foreign investment screening due to the protection of security and public order in the Slovak Republic and security and public order in the EU, the National Council of the Slovak Republic approved on 29<sup>th</sup> November 2022 a draft Act on Screening Foreign Investment. Its primary purpose is to regulate the screening of foreign investments **from third countries coming to Slovakia**.

Slovakia sees the benefits of foreign investments in its economic development. Therefore, the aim of the new legislation is not to reduce the inflow of foreign investments to Slovakia, but to introduce a mechanism that has proven worldwide to be an effective means of protection against potential security risks associated with foreign



investments.

Foreign investment is mainly understood as acquisition, merger, a certain range of "asset" investments, but also greenfield or joint venture investments. A critical foreign investment is one where a heightened security risk is anticipated in advance (e.g. investments in the military technology sector, digital services) and has been determined to be worth at least 10% of the target entity's share capital or voting rights.

The Ministry of Economy of the Slovak Republic (ME SR) will be the screener of foreign investments and the screening will be based on a request from the foreign investor or ex officio (e.g. for a critical investment). A screening by the ME SR may result in either an approval or a prohibition of the investment.

The Act on Foreign Investments Screening will take effect from 1<sup>st</sup> March 2023.

## 12. Paternity leave

With effect from 1<sup>st</sup> November 2022, the Labour Code clarifies the concepts related to the care of a newborn child and specifies more precisely the so-called paternity leave.

The father caring for a newborn child is entitled to paternity leave for a period of **2 weeks within 6 weeks of the child's birth at the latest**. During this period, the father is entitled to a so-called "paternity allowance", which is a social insurance sickness benefit paid to the father of the child by the Social Insurance Institution.

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## 13. Other changes to the Labour Code with effect from 1<sup>st</sup> November 2022

- **Employment contract** - only the general essential elements of an employment contract must be agreed upon in the employment contract. The essential elements of an employment contract are the type of work, place of work, date of commencement of work and salary conditions. For other terms and conditions of employment, it is at the employer's discretion whether to regulate them in the form of written information or to keep them in the employment contract. Other elements include the payment date, working time, amount of leave and length of notice period.
- **Deductions from salary** - Until now, an employer could make deductions from an employee's salary in connection with the provision of meals exclusively on the basis of an agreement concluded between the employer and the employee; however, as the amendment to the Labour Code became effective on 1<sup>st</sup> November 2022, the employer is entitled to make a unilateral deduction from the salary also in the case of an unaccounted advance payment for the provision of meals or for a provided financial contribution for meals.
- **Minimum predictability of work** - The employer is obliged to provide the employee, when concluding a work performance agreement, a student temporary work agreement or a work activity agreement, with



written information on the days and periods of time during which the employee may be required to perform the work and the time limit within which the employee is to be informed of the performance of the work prior to its commencement, which must not be less than 24 hours. If the employer cancels the performance of work within a shorter period than the period notified to the employee, the employee is entitled to a minimum of 30% of the remuneration to which the employee would have been entitled if they had actually worked.

- **Performance of income-generating activity outside working hours** – the employer cannot prohibit the employee from performing other income-generating activity outside working hours. In the case of a competing activity, the employer's consent will still be required.
- **Probationary period for fixed-term employment** - The probationary period must be appropriate and therefore must not exceed half of the agreed duration of the employment relationship. The statutory limit on the length of the probationary period (3 or 6 months) remains in force.

## 14. Another change of meal allowance from 1<sup>st</sup> January 2023

We have already informed you of the changes to the meal allowance several times this year, and there is yet another change again. With effect from **1<sup>st</sup> January 2023**, meal allowances are to be changed as follows:

- ✓ **EUR 6.80** for the time zone of 5 hours to 12 hours,
- ✓ **EUR 10.10** for the time zone of over 12 hours and up to 18 hours,
- ✓ **EUR 15.30** for the time zone of over 18 hours.

The stipulated amount of the meal allowance has an impact on the provision of meals to employees as well, and thus the maximum possible employer contribution for meals provided under the Labour Code will also increase to **EUR 3.74** (previously EUR 3.52), while the lowest possible value of the meal voucher will increase to **EUR 5.10** (previously EUR 4.80).

The financial contribution for meals is the same as the amount the employer contributes to the employees' meal or to the meal voucher.

The above-mentioned meal allowance prices are regulated by a measure published in the Collection of Laws.



This Newsletter is a product of TPA.  
Best regards,

Your TPA team.

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