

NEWSLETTER 2/2023

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1. Draft Law on Conversions of Commercial Companies and Cooperatives

The Draft Law on Conversions of Commercial Companies and Cooperatives and on Amendments and Additions to Certain Acts (hereinafter referred to as the “Act”), of which we have already informed you in the previous issue of the Newsletter, has passed its first reading in the National Council of the Slovak Republic. The Act was drafted in order to transpose Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

In this issue of the Newsletter, we will present the most important changes in the field of income tax, value added tax and accounting in connection with the draft Act.

Value Added Tax Act

- Cases are added when companies, including foreign companies (taxable persons), to which the ownership of tangible or intangible assets is transferred as a result of a spin-off, cross-border spin-off or dissolution without liquidation, become a VAT payer (hereinafter referred to as a “VAT payer”) by operation of the law;
- a person who becomes a VAT payer will be obliged to submit to the tax administrator the officially certified documents on the basis of which he became a VAT payer. The foregoing shall not be required in cases where this fact is recorded in the commercial register;
- a foreign person who becomes a VAT payer will be obliged to notify the tax administrator of the fact on the basis of which he became a VAT payer within 10 days from the date of the occurrence of this fact. Such a person is also obliged to submit documents certifying this fact within this time period. The tax authority will then register the foreign person as a VAT payer within 10 days from the date of the delivery of the notification and documents;



- in the case of the division of companies by a spin-off (merger) or cross-border spin-off, the transfer of tangible or intangible assets to the successor company shall not be considered to be the supply of goods or services if the latter is or becomes a VAT payer on the date of the conversion coming into effect;
- in the case of a transfer of fixed assets, the company that is divided by a spin-off, or cross-border spin-off, will be obliged to notify the successor company of the details of the adjustment to the deducted tax;
- in the event of the dissolution without liquidation of a VAT payer whose legal successor becomes a VAT payer, the latter shall not be obliged to adjust the tax already deducted in respect of the property acquired or created by his own activity or of the property which he acquired free of tax and upon the acquisition or creation of which the tax was deducted in whole or in part by the previous owner.

Income Tax Act

- Income arising from the acquisition of new shares and interests, as well as income arising from their exchange in the event of the conversion of a company or cooperative, will not be subject to income tax;
- for the purposes of applying the exemption of income (revenue) from the sale of shares or business shares acquired by a spin-off, it is proposed to set the date of entry in the commercial register, which gives effect to the spin-off, as the time of the acquisition of the direct share in the share capital;
- the procedure for adjusting the tax base for a taxpayer who is divided by a spin-off, as well as for his successor in real values and at the original prices, is supplemented. Rules are laid down for the valuation of assets and liabilities acquired by a successor and also the method for the depreciation of assets thus acquired;
- the determination of the entry price of financial assets that are created or taken over by the successor in the process of division by a spin-off is also supplemented, depending on whether the spin-off was carried out in accordance with the principle of real values or original prices for the purposes of adjusting the tax base.

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Accounting Act

- For accounting purposes, a decisive date is set, i.e. the day as of which the actions of the dissolving accounting unit are considered to be performed on behalf of the successor accounting unit. This date must be specified in the conversion project and must not be later than the date of the conversion coming into effect;
- in the case of a cross-border change of legal form as a result of a change of the company's registered office to another state, the last statutory body shall be obliged to ensure the termination of bookkeeping and the preparation of financial statements and their entry in the register of financial statements as of the date of the company's or cooperative's deletion from the commercial register;
- if the legal successor is a Slovak accounting entity, the obligation to draw up interim financial statements is hereby established as of the date of the change in legal form coming into effect;
- the dissolving accounting unit will continue to have the obligation to value assets and liabilities at fair value as of the day preceding the decisive day (however, this shall not apply if the successor company is a foreign accounting unit that does not remain in business in the Slovak Republic through an organisation branch).



The successor entity shall take over the assets and liabilities of the dissolving entity as of the decisive date at fair value. In the case of a spin-off, this shall include the valuation of assets and liabilities that are the subject of the split-off part of the capital.

The law is proposed to enter into effect on 1 March 2024. We will keep you informed of further developments on this law in future editions of our Newsletter.

2. Government Draft Amendment to Act No. 300/2005 Z. z. – Legislation on Tax Crimes

The Government of the Slovak Republic submitted to the National Council of the Slovak Republic a draft amendment to Act No. 300/2005 Z. z. (hereinafter referred to as the “Draft Amendment”), the aim of which is to modernise criminal policy and make better use of European criminal law instruments. The law is proposed to come into effect as of 1 June 2023, and some provisions shall enter into force as of 1 January 2024.

The Draft Amendment significantly shortens the time period during which it is possible to apply effective regret and to additionally pay the tax, relevant fees or insurance premiums. This period shall be shortened to 90 days from the date on which the charges become final. This measure is intended to avoid a situation where the offender waits until the final conclusion of the investigation regarding the commission of the crime before fulfilling his/her obligation. This change also contributes to the saving of state funds and the capacities of law enforcement agencies. In addition, according to the amendment, effective regret will only be possible if the damage does not exceed EUR 250,000.

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The Draft Amendment also includes an increase in the criminality threshold for tax offences related to the evasion or non-payment of taxes and insurance premiums. For most tax offences, the criminality threshold is shifted to the value representing major damage, i.e. at least EUR 5,000. The amount of minor damage will increase from the original EUR 266 to EUR 500, and other damage limits will be moved proportionally. Large-scale damage increases to EUR 250,000.

3. Draft Law on Foundations and on Amendments to the Civil Code

In the previous issue of our Newsletter we informed you about the government’s draft law on foundations and the amendment to the Civil Code, the main purpose of which was to introduce an institute for private asset management through a private foundation. This should allow citizens to set up how property is managed and handed over to family members or other persons designated by them.

This draft was ultimately not brought to the Government for discussion, with the most significant reasons for this being criticism from representatives of the not-for-profit sector, as well as the fact that it would not be an appropriate property management solution for same-sex couples.

4. Draft Amendments to the Income Tax Act

A number of governmental and parliamentary bills amending and supplementing the Income Tax Act were submitted to the National Council of the Slovak Republic. The proposed changes cover various areas, such as the government's Sports Bill or the amendment of the CFC rules applicable to natural persons/individuals.

The Government's Sports Bill

- Introduces the possibility for income from the activities of a sports professional which is not included in the income from employment to be treated as income from other self-employment on which tax is levied by withholding;
- simplifies the administration and filing of tax returns for sports professionals;
- reduces the administrative burden and bureaucracy of paying remuneration to sports professionals;
- shall enter into force as of 1 May 2023, and will be used for the first time for the taxation of income as of 1 January 2024.

Abolition of rules for taxation of controlled foreign companies for individuals

- Because of the problematic application in practice, it is proposed to abolish the rules regarding controlled foreign companies for natural persons/individuals, the so-called CFC rules, which were applied for the first time when filing tax returns for the year 2022.
- The CFC rules for natural persons/individuals are not regulated by EU legislation, and EU countries can decide whether to implement these rules in their legislation. Only five EU member states, including Slovakia, have introduced these rules, but the conditions for their application are much less strict than in Slovakia.
- As these rules were first applied when tax returns were being returned for 2022, it is proposed to introduce a transitional provision under which natural persons/individuals will cease to be liable to pay tax arising under the CFC rules. If the taxpayer has already made a payment of the tax, this payment will be considered as a tax overpayment.
- This change to the Income Tax Act is proposed to take effect as of 1 August 2023.

5. Reducing the scope of income of a taxpayer with limited tax liability

In our 4Q 2022 Newsletter, we informed you that starting from 2023, income from commercial bonds paid by Slovak tax residents to taxpayers with limited tax liability in the Slovak Republic will be considered as income from sources in the territory of the Slovak Republic and will thus be subject to withholding tax.

On 29 March 2023, a bill was approved amending Act No. 595/2003 Z. z. on Income Tax, as amended. The bill that was adopted also included an amendment that reintroduces the tax treatment of bond income effective until 31 December 2022, which means that interest and other income from bonds flowing from taxpayers with unlimited tax liability in the Slovak Republic to taxpayers with limited tax liability in the Slovak Republic will again be excluded from income from sources within the Slovak Republic.

This change should facilitate the placement of bonds on foreign markets and should also reduce the administrative burden related to the assessment of the tax residence of a foreign investor and the

determination of the withholding tax in the correct amount.

The Act was published in the Collection of Laws on 18 April 2023 and entered into force as of that date.

6. Draft Amendment to the Motor Vehicle Tax Act

Members of the National Council of the Slovak Republic have submitted a draft amendment to Act No. 361/2014 Z. z. on Motor Vehicle Tax, the aim of which is to eliminate the excessive tax and fee burden on Slovak road transport undertakings in comparison with neighbouring V4 countries, as well as to reduce the administrative burden.

The draft proposes the following reduction in the motor vehicle tax (hereinafter the “Tax”) imposed on road transport undertakings:

- a reduction of tax by 50% if the road transport undertaking paid more than 50% of the tax attributable to the vehicle owned by it for the Slovak toll in the previous calendar year;
- a reduction of tax by the amount of the toll proved to have been paid if the road transport undertaking paid less than 50% but more than 5% of the tax for the Slovak toll in the previous calendar year;
- road transport undertakings which pay less than 5% of the tax for the Slovak toll for the previous calendar year will not have the tax reduced.

The draft amendment also allows for the termination of the tax obligation on the basis of notification delivered to the tax administrator during the period when a vehicle is not used for business for various reasons (e.g. inoperability, vehicle temporarily not needed, etc.). The current legislation allows for the extinction of the tax obligation only when a vehicle is deregistered at the traffic (police) inspectorate. It would also be possible to report the re-emergence of the tax liability through a notification.

In the notice of termination of the tax liability, the taxpayer will be obliged to indicate, inter alia, the place where the vehicle in question will be parked during the period without tax liability. If the taxpayer provides false information in the notification, he/she is at risk of being charged additional tax in the amount without possible statutory reductions and exemptions.

The law is proposed to enter into effect on 1 January 2024.

7. The Ministry of Finance of the Slovak Republic has published a transparent portal with data on public finances

The Ministry of Finance of the Slovak Republic (MoF SR) has introduced a new transparent portal with data on public finances with the aim of becoming a more progressive, accessible and, above all, transparent public institution. At present, the portal is divided into several separate units, where data is available not only from the Ministry of Finance of the Slovak Republic, but also from other public institutions such as the State Treasury, Eximbank, the Government Audit Office or the Financial Administration. It is planned to gradually



expand this list of institutions (which is also related to the amount of published information).

The portal provides a wide range of information on the costs and revenues of public administration, data on the management of local government and municipalities, information from state reporting such as accounting consolidation of public administration, public and central government debt and much more financial data. Every user has free access to this detailed information and data, which should result in a better understanding of the use of public finances in Slovakia.

The portal is available at: <https://opendata.mfsr.sk/>. In addition, the portal can be accessed via a variety of devices, including mobile phones and tablets, allowing users to monitor and analyse data anywhere and at any time.

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Best regards,

Your TPA team.

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