



NEWSLETTER 1/2017

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1. Stricter EU conditions for claim recognition

Fight against tax avoidance remains one of the top priorities of international taxation. The Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (also known as "ATAD") sets forth, among other things, new measures to limit deductability of the interest on borrowing costs.

Member States will be free to elect one of the possible measures to discourage groups of companies from reducing their global tax liabilities by way of excessive interest payments. They include such measures as:

- comparison of interest against the EBIT indicator, meaning lower deductability of interest;
- laying down time periods for, or the amount of, unrelieved interest which may be carried forward or back; or
- laying down targeted rules against intra-group debt financing (e.g. thin capitalisation rules);
- where the taxpayers are part of a group which files statutory consolidated accounts, taking into consideration the indebtedness of the overall group.

To reduce the administrative burden, the Directive proposes to provide for a safe harbour rule so that net interest is deductible up to a fixed amount.

The EU Council leaves it up to individual Member States to decide whether to include the interest on loans from financial institutions in the proposed amount of interest being compared or to exclude the same from the scope of interest limitation rules. The Slovak legislation currently only limits the interest on loans from related persons.

Said changes should be adopted by the Member States until the end of 2018. We will keep you informed of proposals and changes.



2. Will the "exit tax" be also implemented in Slovakia?

Within the fight against tax evasion, the EU Council proposes to the member States to implement the so-called exit tax. The aim is to ensure taxation of capital gains where a taxpayer moves assets or its tax residence to another State in the State in which the gains have been created even though that gain has not yet been realised at the time of the exit.

3. Change of the regulation treating taxation of the margin in the provision of tourist services

The upcoming amendment act to the VAT Act expected to take effect as of 1 January 2018 amends, in conjunction with the judicature of the Court of Justice of the EU, the regulation treating special taxation of the margin in the provision of tourist services. Based on the actual legal regulation, the special tax on margin may only be applied if the recipient of the tourist services is a consumer - tourist.

The legal regulation proposed extends the application of the special tax on the margin to include each provision of tourist services irrespective of the recipient of such services (be it a tourist or an entrepreneur which purchases a package of tourist services for the entrepreneur's business purposes, for its resale, or for business trip purposes).

In conjunction with this change, a travel office or agency will not be allowed to tax individual tourist services anymore, and the buyer - the taxpayer - will not be allowed to claim tax on such services anymore.

4. Faster refund of overpaid tax and other changes in the area of VAT

The upcoming amendment act to the VAT Act expected to take effect as of 1 January 2018 brings, among other things, the following changes:

- Faster **refund of a portion of the overpaid tax** based on the control statement.
- The obligation to **provide a collateral on tax** is extended to also apply to applicants being natural persons or legal entities which have VAT arrears on the day they file an application for registration for VAT purposes in amount of EUR 1,000 or more or whose registration for VAT was cancelled.
- One of the conditions to claim a **trilateral transaction** is being changed forbidding the first customer to have a registered office or permanent establishment in the Member State of the second customer (based on the actual legislation, the first customer must not be registered for VAT in the Member State of the second customer).
- The definition of the **fixed assets** for the purposes of deductible tax is proposed to be extended to include all structures.
- A **collective invoice** may also be compiled where the recipient is a **non-resident taxable person**.
- Where persons **registered for VAT owing to acceptance of goods or services** as per Art. 7 and Art.



7a take part in a trilateral transaction as the first customer, they will be required to file a summary statement.

5. Definition of related persons in transfer pricing changed effective as of 2017

The amendment act to the Income Tax Act taking effect in 2017 has, in addition to other important changes, brought changes in transfer pricing. Multiple changes have been made in transfer pricing since 2017, but the most significant cover the changes in the definition of related persons.

A substantial change affects, since 2017, the economic or personal interrelation which is defined in a quite extensive Section 2 sub-section o) of the Income Tax Act, and therefore they allow for the combination thereof. Moreover, compared to its previous language, the economic (through ownership) and personal interrelation may also arise through the relation of close persons.

Other interrelation establishing a relationship of related person between entities originally applied to a business relation only, but since 2017 it may arise basically based on any legal or similar relationship. The typical features of other interrelation may include obviously inappropriate conditions of a transaction without economic grounds leading to a purposeful reduction of the tax base or increase in the tax loss, this being the primary goal of such interrelations.

6. Interim Financial Statement

The Tax Methodology dpt. issued a guideline in May 2017 concerning the interim financial statement (FS) of the accounting units keeping double-entry bookkeeping system where such units are dissolved through liquidation or those which were declared bankrupt. Such an accounting unit is obligated to compile an interim FS for the period ended on 31/12 of each calendar year which is included in the tax period affected by liquidation or bankruptcy.

The interim FS is compiled to the extent of an ordinary FS, but it does not have to be verified by an auditor. It is delivered to the tax office by the deadline for the corporate income tax return, but the tax office does not forward it to the registry of FS.

The data in the balance sheet is shown for the period ended on the day, as at which the interim FS is compiled. The P&L shows the cost, revenues, and net income/loss for the entire period accumulatively in a micro accounting unit for the reported portion of the period only. The notes on the interim FS contains the information which explains and provides additional data for the data in the balance sheet and in the P&L.

The data for the immediately preceding accounting period is shown for the period ended on the day preceding the unit's entering into liquidation or on the effective date of bankruptcy declaration, i.e. data of the ordinary FS. The micro accounting unit does not report data for the previous period.



What else awaits us?

In order to support business environment and fight fraud, the Financial Authority of the Slovak Republic and the Ministry of Finance of the Slovak Republic have made brief mention of the following plans:

- Implementation of tax reliability index for tax entities. This index would rank entities as the "compliant or non-compliant" entities.
- Cancellation of territorial jurisdiction of tax entities and improvement of client-oriented approach to tax entities.
- Introduction of the so-called Soft Warning Letter as a soft request submitted to the entities to meet their tax liabilities or to notify them of the consequences if they fail to do so. This instrument should transform the Financial Authority from a repressive to a business-friendly authority.
- Implementation of a compulsory electronic communication for all business organisations.
- Reform of the sanction system in favour of tax entities.
- Extension of the period for control operations to 10 years.
- Amendment of the provisions of the Commercial Code to hinder purposeful merger of companies.

This Newsletter has been produced by TPA

Best regards

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