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Tax services

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Corporate and Personal Taxation

Amendment to the Income Tax Act passed by Parliament

On 21 December 2010, the Slovak Parliament approved the final wording of the Amendment to the Income Tax Act which entered into effect on 1 January 2011. Following the President's rejection of the wording as approved by Parliament on 1 December 2010 and his proposal for some changes, the amendment was finally passed with the wording as first sent to the President. The main changes to the Income Tax Act are described in our previous Tax alerts and Tax news.

New corporate income tax return form

On 12 November 2010 the Slovak Ministry of Finance published the new template for the corporate income tax return form, reflecting the latest Amendment to the Slovak Income Tax Act. The measure to which the new form is pertinent is effective from 1 January 2011, hence the new form should be used for declaring tax liability when the deadline for the corporate income tax return submission is later than 31 December 2010. Taxpayers for whom the final date for filing the return was not later than 31 December 2010 should use the previous return form.

We summarize the main changes to the return form below:

- ▶ Section H was added to Part III (Tables of auxiliary computations & additional data), which should be used for calculating the tax base of non-residents;
- ▶ Part IV dealing with the donation of 2% of tax liability has been extended and now requires a signature per each individual donation.



2010 Global Transfer Pricing Survey

Transfer pricing as one of the leading tax challenges in 2010

Ernst & Young's 2010 Global Transfer Pricing Survey reveals that transfer pricing (TP) continues to be a major tax challenge for multi-national enterprises across the world.

The survey summarizes the TP practices, perceptions, and audit experiences of a wide range of global corporate tax practitioners from 25 countries worldwide.

Transfer pricing under scrutiny from financial authorities

As a result of the downturn in the global economy, governments are forced to increase revenues through taxation. This is reflected in tax authorities' increased staffing and preparation for TP investigations. As a result, more and more tax authorities are increasing their enforcement efforts.

Greater numbers of survey respondents report that they have been subjects of a TP audit/review.

Greater emphasis on inter-company services and financing transactions

According to the survey, inter-company services, financing and intangibles transactions are increasingly susceptible to review from tax authorities. Documentation of these categories of transactions frequently lags behind documentation for tangible goods and intangible property transactions. In addition, these transactions are more susceptible to dispute and tax base adjustments on the part of the tax authorities, due to the greater complexity of TP documentation they require.

Key trends in global transfer pricing

Recently published revisions to the OECD TP guidelines signal a shift from traditional TP methods to profit-based. We may expect that tax authorities will share these preferences in future tax audits. However, this is contrary to the general preference of the survey respondents, who tend to incline to and use the traditional methods.

These regulatory shifts may result in a dramatic increase in the use of profit-based methods as corroborative, or sometimes primary, transfer pricing methods in the near future.

The survey is available at www.ey.com/SK/en/Services/Tax/Tax_Tax_news

Regulation (EC) No. 883/2004, determining social security liabilities for cross-border workers, is now applicable for third country nationals

As of 1 January 2011, Regulation (EU) No. 1231/2010 extends coverage of Regulation (EU) No. 883/2004 on the coordination of social security systems to non-EU nationals ("third country nationals") moving within the EU who are legally resident within the territory of a member state.

The new regulation will have a major impact on the social security position of cross-border workers who are third country nationals, as it introduces a new requirement and revised application process if such an individual is to remain within the home country social security cover.

Regulation (EU) No. 1231/2010 has been adopted by all Member States except for the United Kingdom and Denmark. From the UK perspective, the old Regulation No. 1408/71 continues to apply for third country nationals. For Denmark, neither the old Regulation (EU) No. 1408/71 nor the new Regulation (EU) No. 883/2004 apply to third country nationals.

In the case of Switzerland, Lichtenstein, Iceland and Norway, the old Regulation (EU) No. 1408/71 continues to apply while they consider adoption of new Regulation (EU) No. 883/2004.

New forms for Annual Reconciliation of 2010 Health Insurance Contributions

The Ministry of Health Regulation No. 10/2011 was published in the Collection of Laws of the Slovak Republic. The Regulation is an amendment to Regulation No. 239/2006 and relates to the annual reconciliation of health insurance contributions for 2010. It introduces the forms to be used in the 2010 annual reconciliation process.

As for last year, the deadline for submitting the 2010 annual health insurance reconciliation is 31 March 2011. Any underpayment of health insurance contributions must be settled within three months, i.e. up to 30 June 2011. In the case of

an individual having agreed an extended deadline for filing the 2010 personal income tax return, the deadline for submitting the annual reconciliation of 2010 health insurance contributions is extended accordingly - i.e. the same deadline as for filing the 2010 tax return applies. Proof of submission of the extension notice to the tax authorities has to be delivered to the respective Health Insurance Company by 31 March 2011 at the latest.

Maximum assessment bases for social and health insurance - amendments as of 1 January 2011

We wish to inform you of recent changes to the maximum monthly assessment bases for the calculation of social insurance and health insurance contributions, applicable as of 1 January 2011.

For 2011, the maximum monthly assessment base for the calculation of social insurance contributions remains at the same level as for 2010. However, the maximum assessment base for health insurance has been increased from EUR 2,169.09 to EUR 2,233.50.

As of 1 January 2011, the employee's minimum assessment base for health insurance purposes is no longer stipulated by the health insurance legislation (similarly as for the minimum assessment base for social insurance which was cancelled as of 1 January 2010).

Below, we provide information on the maximum monthly assessment bases for all categories of social and health insurance of employee and employer valid for the period 1 January to 31 December 2011.

Insurance	Maximum monthly assessment base (EUR)	Employer's maximum contribution (EUR)	Employee's maximum contribution (EUR)
Health insurance	2,233.50	223.35	89.34
Sickness insurance	1,116.75	15.63	15.63
Old-age insurance	2,978.00	416.92	119.12
Disability insurance	2,978.00	89.34	89.34
Accident insurance	No ceiling	No ceiling	-
Unemployment insurance	2,978.00	29.78	29.78
Guarantee insurance	1,116.75	2.79	-
Solidarity reserve fund	2,978.00	141.45	-
Total maximum contribution in EUR		919.26 plus accident insurance	343.21



Value Added Tax

Judgment of the Slovak Supreme Court - VAT exemption in the case of exports, right to deduct VAT in respect of reverse-charge services

The Slovak Supreme Court recently issued Decision No. 6 Sžf 17/2010 dealing with requirements for the application of VAT exemption in the case of exports and the right to deduct VAT from reverse-charge services received from a foreign supplier.

Situation

The Slovak VAT payer applied the VAT exemption on goods supplied to the USA. In the course of a tax audit, the tax authority challenged the application of the exemption on the grounds that the VAT payer could not produce the customs declaration on export confirmed by the respective customs authority. It should be noted that the tax authority did not dispute that the goods were actually exported (transport to the USA was demonstrably effected).

In addition, the tax authority challenged the deduction of VAT in the case of a reverse-charge service received from abroad on the basis that the service and respective VAT were not included in the VAT records.

The tax audit resulted in the assessment of additional VAT. The VAT payer appealed against the decision, claiming it had proved that the export was actually performed and that VAT exemption cannot be conditioned by a formal requirement, such as a customs declaration. With regard to the second part of the case, the VAT payer argued that the service and the VAT were added to the VAT records in the course of the tax audit.

Decision

The Supreme Court reviewed the case and ruled in favor of the tax authority. The Supreme Court argued that the decision of the tax authority was in accordance with the provisions of Directive no. 2006/112/ES which stipulate that a Member State may determine the conditions for VAT exemption. Thus, if national

legislation requires evidence of export in the form of the customs declaration then, for the purposes of VAT exemption, the customs declaration should be available to the VAT payer.

The Supreme Court denied the applicability of ECJ case C-146/05 Albert Colleé, arguing that the situation of intra-Community supplies pertaining in the case is not analogous to supplies performed outside the Community.

With regard to the VAT deduction, the Supreme Court confirmed the previous decisions, arguing that the VAT payer should have included the service and the respective VAT into the VAT records when he had the invoice available from the supplier and was not permitted to change the VAT records retrospectively during the tax audit. The Supreme Court also ruled that the tax authority did not deny the right to deduct the VAT in general, as the VAT payer can deduct the VAT in the period in which he includes the VAT in the VAT records.

Practical considerations

It is our opinion that the Supreme Court may have exceeded its competencies in this case, as cases related to VAT should be referred to the European Court of Justice, unless the situation is unambiguous or unless the ECJ had already decided on a similar case (we are unaware of any such judgment).

In respect of the VAT deduction in the case of the reverse-charge service, it is not clear from the decision whether the Court rejected retrospective changes in the VAT records in general or only during the course of a VAT audit.

ECJ judgment in C-103/09 Weald Leasing Ltd - "abuse of law"

The Court of Justice of the European Union (ECJ) recently published its decision in Case C-103/09 Weald Leasing Ltd.

In November's Tax news, we informed you of the opinion of the Advocate General (AG) in this case, which hinges on the interpretation of the concept of "abusive practice" as referred to in Halifax. In this case, the abusive practice was challenged in respect of a structure that improves the VAT deduction position of the Churchill insurance group, which is largely VAT-exempt.

Weald Leasing Ltd, as a member of the Churchill group registered for VAT independently, purchased the assets and leased them to Suas Ltd, a company independent of the Churchill group. However, the respective assets were then sub-leased back to the entities within the Churchill group by Suas Ltd. As a result, the Churchill group was not immediately liable for the non-deductible VAT on the total acquisition costs of the assets purchased, but on the amount of the lease payments spread over the term of the leasing agreements.

According to the ECJ, leasing transactions where irrecoverable VAT on lease rentals is spread over a period of time, in comparison with an immediate full hit of irrecoverable VAT on outright purchase, are not per se contrary to the Sixth Directive (a taxpayer may choose to structure his business so as to limit his tax liability). The ECJ places no significance on the fact that asset-leasing is not a part of the normal commercial operations of the Churchill group.

The ECJ has confirmed the opinion of the AG that the leasing of assets rather than outright purchase is not fundamentally abusive. However, detailed consideration of the circumstances of the transaction was passed back to the national court, in particular, as to whether the level of rentals complies with arm's length terms. If the national court concluded that the contractual terms do not reflect the economic reality, the court would have to redefine the transactions, disregarding the involvement of the independent party (Suas Ltd).

VAT payers with a limited right to deduction involved in similar leasing structures should consider the impact of this ECJ judgment on their own business.

ECJ judgement in C-277/09 RBS Deutschland Holding GmbH - VAT deduction and abuse of law

On 22 December 2010, the Court of Justice of the European Union ("ECJ") published its decision in Case C-277/09 - RBS Deutschland Holding GmbH, concerning the possibility of VAT deduction and abuse of the law.

RBS Deutschland Holdings GmbH ("RBSD"), a member of the Royal Bank of Scotland Group, is a German-based company providing banking and leasing services. RBSD is VAT-registered but has no presence in the UK.

In the course of its business activities, RBSD purchased cars in the UK for their subsequent lease to another UK company and deducted the related input VAT. Due to the difference in classification of leasing in Germany (supply of goods with place of supply in UK) and UK (supply of services with place of supply in Germany), the lease of cars to a UK company did not give rise to RBSD paying output VAT in any of the Member States concerned.

In the referral to the ECJ, the UK court sought clarification as to whether RBSD is entitled to deduction of the input VAT incurred on the purchase of leased cars, given that the output transactions had not given rise to the payment of VAT and, in addition, whether taking advantage of different VAT regimes thereby gaining a favourable VAT treatment for the supply constitutes an abusive practice.

The ECJ concluded that a Member State may not deny the deduction of input VAT paid on the acquisition of goods where these goods have been used for the purposes of leasing transactions performed in another Member State, solely on the grounds that the output transactions have not given rise to the payment of VAT.

In addition, the ECJ ruled that, since the transactions in question were genuine transactions performed by RBSD in the course of its normal business activities, where RBSD and its customer were non-related parties, the fact that RBSD benefited from different VAT regimes in its transactions in two Member States should not be regarded as constituting an abuse of law.

ECJ judgment C-430/09 Euro Tyre Holding concerning chain transactions

The Court of Justice of the European Union ("ECJ") recently released its judgment in the case of Euro Tyre Holding B.V. ("ETH"), concerning a transaction involving two successive supplies between three taxable persons established in different Member States and only one movement of goods. The case deals

specifically with the question of which of the supplies should be deemed to be an intra-Community transaction in the chain of supplies.

ETH, a Dutch company, made supplies of tyres under "ex works" terms to two companies established in Belgium ("the purchasers"). On being informed of the intended transportation of the goods to Belgium and having confirmed the purchasers' VAT numbers with the Dutch tax authorities, ETH issued invoices without VAT. However, prior to transportation of the goods to Belgium, the purchasers sold the goods to another Belgian company ("the customer"). Subsequently, the goods were collected by a representative of the purchasers and transported on their behalf and at their risk directly to the premises of the customer in Belgium.



The Dutch tax authorities rejected the application of the exemption on ETH's supplies in question and assessed additional VAT, arguing that the intra-Community transport related to the supplies made by the purchasers to the customer in Belgium. After the matter had passed through several proceedings, the Dutch Supreme Court referred the question to the ECJ, seeking determination as to which of the supplies the intra-Community transport should be ascribed in the above scenario. In its earlier judgment, the EMAG Case (C-245/04), the ECJ had ruled that the intra-Community transport can be assigned to only one supply; however, it had not further specified how this should be determined.

Firstly, the ECJ noted that no general rules in this respect are embedded in the VAT Directive. Further, the ECJ stated that the issue as to which of those supplies fulfils the conditions for the exemption of the intra-Community supply of goods should be assessed.

According to the ECJ, if the purchasers expressed their intention to transfer the goods to Belgium and presented their Belgian VAT numbers, ETH was entitled to consider these transactions as intra-Community supplies under the condition that the right to dispose of the goods as owner was, subsequently, transferred by the purchasers to the customer in the state of destination, i.e. in Belgium. However, this should be further reviewed by the referring court.

Further, the ECJ held that the supplier should act in good faith and take every reasonable measure in his power to ensure that the transaction that he effects does not lead to his participation in tax fraud. However, once the supplier has fulfilled his obligations relating to seeking evidence of an intra-Community supply (e.g. verified the VAT number, proved the intention of the customer), it is the acquirer of the goods who should be liable for VAT in that Member State.

Slovak VAT payers should pay close attention to structuring their transactions as, according to this judgment, some of them might not be eligible for VAT exemption. On the other hand, Slovak VAT law does not have any provisions that would shift the burden of the VAT liability from the suppliers to their customers.

Other Legislation

Cancellation of the Act on Disproportionate Conditions in Business Relations - update on the current status within the legislation process

In our last issue of Tax news, we noted that the Ministry of the Economy of the Slovak Republic had prepared a proposal for cancellation of Act No. 140/2010 Coll. on Disproportionate Conditions in Business Relations between Customer and Supplier of Alimentary Goods, which is to be rescinded as of 1 April 2011. The Proposal has been approved by the Government and passed to the Slovak Parliament.

Currently, the proposal is at the stage of its second reading, being discussed within the parliamentary committees. The deadline for the committees to propose any comments and amendments is 18 March 2011.

Publication of court decisions - law not approved

The President rejected the Act imposing an obligation on Slovak courts to publish their [tax] decisions on the Internet .

On 23 December 2010, the President of the Slovak Republic rejected the Amendment to Act No. 385/2000 Coll. on Judges, which also amended Act No. 757/2004 Coll. on Courts. As we noted in our previous issue of Tax news, this Amendment was to introduce a major change to the Slovak tax environment - obligatory internet publication of the decisions of the Regional Courts and the Supreme Court of the Slovak Republic as from 1.1.2012, which would also apply to court decisions on tax matters.

The President returned the amendment to the Slovak Parliament for further discussion. One of the reasons given in the President's statement was that the amendment is in conflict with the provisions of the Act on Free Access to Information. Parliament should discuss the proposed amendment in its next session starting on 1 February 2011 and, if the Parliament approves the amendment, it will enter into effect even without the President's signature.

We will update you on further developments in respect of the amendment.

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