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Tax services

Tax news Ernst & Young

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Tax deductibility of non-monetary benefits of employees - judgment of the Bratislava County Court (VÚB; 2 S 195/2009-164)

In the last months of 2010, the Bratislava County Court held proceedings on the appeal against the Slovak Tax Directorate decision on the corporate income tax deductibility of non-monetary benefits provided to employees. In its judgment, the court supported the tax deductibility of these costs, rescinded the decision of the Slovak Tax Directorate and returned the case for further proceedings at which the tax authorities are bound by the court's opinion. The Slovak Tax Directorate did not appeal to the Supreme Court, and so the decision is final. We provide a short summary of the case below.

Background

The Slovak taxpayer provided various non-monetary benefits to i) board members, ii) foreign temporarily assigned specialists and iii) own employees. The benefits provided included, among other things flight tickets, rent of houses/apartments, garages, payment of utility costs, household services, gardening services and life insurance premium payments etc. The taxpayer provided these benefits in accordance with the mandate agreements, assignment agreements or employment contracts concluded.

During the tax audit, the tax authority challenged the corporate income tax deductibility of the respective in-kind benefit costs and assessed an additional tax and penalty. The Slovak Tax Directorate upheld the decision of the tax authority and the taxpayer appealed.

Reasoning

The tax authority claimed that the non-monetary benefit costs exceed the tax deductibility limit stipulated by Section 19 (2) c) point 5 of the Slovak Income Tax Act (SITA) as the labour law does not explicitly presume the provision of such benefits to employees (it is not employer's obligation).

The taxpayer brought, among others, the following arguments:

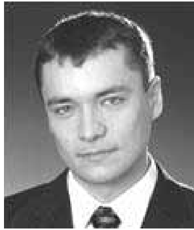
- The tax authorities did not challenge the connection of the incurred costs with the realization of taxable income (i.e., general tax deductibility test is met).
- The tax authorities accepted tax deductibility of monetary benefits and based on the substance over form principle, the tax treatment of costs should not differ merely due to the different form.
- The Slovak labor law (to which Section 19 (2) c) point 5 of the SITA refers) does not restrict the provision of salary in in-kind/non-monetary form and does provide for any upper limits for the employees' compensation.
- The benefits were subject to personal income tax in accordance with the SITA.
- The Slovak Tax Directorate deviated from the previous judgments of the Slovak Supreme Court (e.g. Accenture case 3 Sžf 31/2008 or S.L.M. case 3 Sžf 42/2008).

Judgment

The County Court upheld the arguments of the taxpayer and confirmed the connection of these costs with realization of taxable income and the right of parties to agree (part of) compensation in non-monetary form. The court also noted that the Tax Directorate failed to prove any limitations to tax deductibility of these costs by the labour law and Section 19 (2) c) point 5 of the SITA.

Based on the judgment, if the provision of benefits is agreed (ideally in written form) and taxed in accordance with the SITA in hands of employees, the respective costs should be deductible for corporate income tax purposes.

If you would like more information on this issue, please contact the author of the article or your partner or manager at Ernst & Young.



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Action in Case C-64/11 concerning an exit tax on unrealized capital gains (Commission vs. Spain)

In the wording of Royal Legislative Decree 4/2004, Spain introduced special treatment for unrealized capital gains on the assets of companies that transfer their residence or activities from Spain to another Member State of the European Union, or cease their activities in Spain in order to continue them in another Member State. In such cases, Spain taxes the unrealized capital gains at the time of exit; that is, the affected companies must settle a tax levied on unrealized and hypothetical revenues which may never be realized.

According to the Commission, companies must have the right to transfer their registered office or individual assets to another Member State without being subject to excessively complex and onerous procedures. In the Commission's view, there is no justification for the immediate charging of taxes on unrealized capital gains at the time of exit if that kind of taxation is not found in comparable national situations.

In light of the above, the Commission is of the opinion that this provision is discriminatory and violates/restricts the principle of freedom of establishment (i.e., the rule could discourage movements of companies or assets which would result in a better distribution of economic resources).

The action as well as further development in this area may be interesting also for Slovak companies since exit taxation rules in Slovakia are not straightforward in specific circumstances.

If you have any questions regarding this matter, please contact the author of the article or your partner or manager at Ernst & Young.

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EU Commission approves report on shared services within a group

The EU Commission approved the final version of a report on transfer pricing aspects of low value adding intra-group services prepared by the EU Joint Transfer Pricing Forum (JTPF), an expert group in the area of transfer pricing at the EU level.

The report covers the services which are commonly shared by the companies within a group (IT, HR, marketing, legal services, etc.) and proposes an appropriate transfer pricing method (cost plus), possible allocation keys (turnover, number of users, etc.), and a markup which is usually applied on these services (within a range of 3-10%, often around 5%). The report also provides a unified format of the documentation corroborating the benefit of shared services.

The report devotes substantial attention to "shareholder costs" that are mostly incurred for the benefit of the parent company. The report provides an illustrative list of services which are regularly recognized as shareholder costs. However, it is recommended that a case by case approach is applied when concluding whether a particular service constitutes a shareholder cost. Among others things, the report deems such expenses to cover the costs incurred in respect of an audit and preparation of financial statements in accordance with the accounting standards of the parent company, unless they bring specific benefit to the subsidiaries. Nevertheless, the question of whether such costs are incurred fully for the benefit of the parent company, or are to be borne partially or wholly by the subsidiaries, still needs to be answered.

Overall, the report increases the security of taxpayers regarding the typical transfer pricing method to be applied in respect to the expenses shared within a group and the format of the documentation to be prepared in order to corroborate their benefit.

Notwithstanding the above, the Slovak tax authorities may use this report as an instrument for challenging the tax deductibility of a part of shared expenses, arguing that they are to be borne by the parent company. In order to minimize risk in this area, we would recommend reviewing the nature and pricing of shared expenses in your company and revising the model where necessary.

If you are interested in more detailed information, please contact the author of the article or your partner or manager at Ernst & Young.

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CJEU judgment in C-450/09 Ulrich Schröder - Freedom of movements of capital, direct link between income and expenditure

On 31 March 2011, the Court of Justice of the European Union ("CJEU") published its decision in Case C-450/09 Ulrich Schröder, concerning the refusal of the German tax office to allow for the deduction of the annuity related to the rental income received by a German tax-non resident.

Situation

Mr Schröder is a German national who is resident and employed in Belgium. In 1992, he acquired immovable property from his parents, situated in Germany, which was subject to a right of usufruct in their favour. In 2002 other immovable property situated in Germany was transferred to Mr Schröder by his mother. The rights of usufruct which his mother had to these properties were transformed into an annuity, under the terms of which Mr Schröder had to pay his mother a monthly sum of EUR 1,000.

For the year 2002, Mr Schröder received income from renting these properties. Based on the national legislation, the German authorities refused to allow for the deduction of EUR 1,000 paid by Mr Schröder to his mother with respect to these properties, as according to the German legislation, German tax non-residents are not entitled to such deductions (unlike German tax residents, including his brother, who was tax resident in Germany and was entitled to a deduction of the same type of annuity paid to his mother).

Argumentation of the parties

In the referral to the CJEU, the German court sought clarification as to whether it is contrary to Articles 63 and 18 of the Treaty on the Functioning of the European Union ("TFEU") that a person with limited tax liability in Germany, unlike a person with unlimited tax liability, may not deduct from his total income, as special expenditure, annuities paid in connection with income from letting or leasing the property.

The CJEU referred to its previous decisions which held that in relation to expenses which are directly linked to an activity generating taxable income in a Member State, the residents and non-residents of that State are in a comparable situation. Therefore, the legislation of that State which denies non-residents the right to deduct such expenses, while, on the other hand, allowing residents to do so, constitutes indirect discrimination.

The German government argued that an annuity, classified as special expenditure, differs from business expenses and occupational expenses which can be deducted by a taxpayer with limited tax liability in so far as they represent the consideration for the acquisition of a source of income. Moreover, it argued that the payment of such an annuity is not the "normal" or legal consequence of the receipt of rental income but forms part of a family support arrangement, with the amount being fixed not by reference to the value of the assets transferred but according to the personal needs of the recipient and the debtor's general economic ability to pay. As such, the German government argued that there is no direct link between the rental income and the annuities paid.

Decision of the CJEU

The CJEU has taken the view that even assuming that the amount of an annuity is determined on the basis of the ability of the debtor to pay and the recipient's personal needs (i.e., not in relation to the amount of the rental income obtained), the existence of a direct link cannot be questioned as the payment of the annuity is necessary in order to carry out the rental activity. Therefore, the taxpayer with limited tax liability is in a situation comparable to that of a taxpayer with unlimited tax liability.

The CJEU concluded that national legislation allowing a tax resident to deduct the annuities paid in respect of the immovable property from the rental income derived from that property, while on the other hand not granting such deduction to tax non-resident, is not in the compliance with EU law, whereby it is in breach of the principle of free movement of capital.

If you are interested in more information or have any questions regarding the above, please contact the author of the article or your partner or manager at Ernst & Young.

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Information on the execution of international treaties during 2010

During its session on 23 March 2011, the Government discussed the document dealing with information on the execution of international treaties in 2010 in various areas. The document provides an overview of the international treaties Slovakia concluded in 2010 (which are intended for 2011) and information on the execution of the treaties concluded in the past and problems encountered during their application in 2010.

Double taxation treaties

In 2010, the double taxation treaties concluded with Libya, Macedonia and Syria came into effect. The government approved the conclusion of new double taxation treaties with Kuwait and Oman and updated the treaty concluded with Switzerland.

Furthermore, the Ministry of Finance intends to commence negotiations with states with which no double taxation treaty is in place (e.g., Azerbaijan, Qatar, Jordan, Morocco, San Marino, Algeria, Lebanon). Treaties to be concluded with Ethiopia, Lichtenstein, Malaysia, Saudi Arabia, United Arab Emirates and Egypt are in various stages of preparation.

The Ministry of Finance also intends to initiate amendments to the double taxation treaties concluded with Denmark and Belgium.

Customs

No treaty was concluded in 2010 (intended for 2011) in the area of customs cooperation.

International exchange of tax information

Slovakia is involved in the OECD project on international exchange of tax related information with states with which it has not concluded a double taxation treaty. In 2010, negotiations with Guernsey started and the conclusion of the treaty with this country is a pilot project in this area. In future, the negotiations with Antigua and Barbuda, British Virgin Islands, Bermuda, Grenada, Saint Lucia and others are planned.

Social security

The section of the document relating to the Ministry of Labour, Social Affairs and Family covers treaties in the area of social security and employment. In 2010, the social security agreements ("totalization agreement") with Australia and Israel were concluded.

The aim of the Ministry of Labour, Social Affairs and Family is to conclude totalization agreements with states where communities of Slovak citizens live. Therefore, in 2010, negotiations with Japan and Serbia continued. The conclusion of these totalization agreements is expected in the second half of 2011. In 2011, negotiations with the United States should start.

If you would like more information on this issue, please contact the author of the article or your partner or manager at Ernst & Young.

Personal Taxation

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Amendment to the Act on Health Insurance that introduces the obligation of health insurance agencies to perform annual reconciliation of health insurance contributions

The Slovak Parliament has recently approved the amendment to Act No. 580/2004 Coll. on Health Insurance ("the Amendment") which, among other changes, introduces the obligation of health insurance agencies to perform the annual reconciliation of health insurance contributions for the previous calendar year on behalf of insured persons.

The annual reconciliation shall be performed by the health insurance agency by 30 September of the calendar year following the year for which the reconciliation is to be performed. If the deadline for submitting the ordinary tax return is extended, the annual reconciliation must be performed by 31 October of the following calendar year. The health insurance agency is also obliged to inform the insured persons about the result of the annual reconciliation within the same deadline.

Underpayments on health insurance contributions are due within two months after the day on which the annual reconciliation is performed. Similarly, the health insurance agency shall be obliged to refund the overpayment on health insurance contributions to insured persons within two months after the annual reconciliation.

The amendment becomes effective as of 1 May 2011 and the health insurance agencies will be obliged to perform the first annual reconciliation of health insurance contributions in 2012 for the calendar year 2011.

If you have any questions regarding the Amendment, please contact the author of the article or your partner or manager at Ernst & Young.

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Draft amendment of the Tax Administration Code – proposed changes to the Income Tax Act

The Ministry of Finance has released a draft amendment of the new Tax Administration Code for a public discussion.

Among other changes, the draft proposal involves the amendment of the Income Tax Act ("Income Tax Act"). The major proposed changes are summarized below:

- The income Tax Act will contain definitions of the terms „advance tax payment" and „taxpayer" which have not been covered so far.
- A new article dealing with the complaints regarding incorrectly withheld tax or doubts about tax advance paid should be implemented. It is essentially aimed at increase a level of protection for employees/taxpayers.
- In justified cases, the tax administrator may, upon a taxpayer's request, set the tax advance payments on an individual basis; that is, not only due to changes in the expected final tax liability which does not correspond to total tax advances paid (as currently stipulated by the law).
- The Tax Authority will be obliged to refund the tax prepayments to the taxpayer within 30 days of the request (also during the ongoing tax period) if the taxpayer was either not liable to pay any tax advances or the tax prepayments were withheld in a higher amount than required.
- Employer may be subject to a penalty of a minimum EUR 15 per employee (not exceeding EUR 30,000 for all employees) if they fail to prepare the annual tax reconciliation for their employee(s), provided that the employee(s) applied for the reconciliation and all the conditions for annual reconciliation were met.
- The draft amendment also introduces a new article stipulating registration and reporting obligation of taxpayers currently governed by the Act on Tax Administration. The proposal extends the reporting obligation to reporting of material cash transactions exceeding EUR 5,000 per year and the obligation to announce the creation of a permanent establishment of a foreign entity based on a contract.
- The penalty for reporting obligation between two business entities/taxpayers stipulated by sections 2 and 7 of paragraph 17b of the Income Tax Act is to be omitted.
- In addition, several procedural details originally stipulated by the Act on Tax Administration are proposed to be reflected within the Income Tax Act. In particular, the provisions dealing with the employee's premiums, child bonus and submission of corrective quarterly overviews and supplementary annual reports. In this regard the amendment also stipulates the obligation of a tax administrator to request an additional information/explanation from the taxpayer if there are doubts about the correctness or completeness of the reports/overviews that have been submitted.

We will be closely monitoring the ongoing legislative process of the above draft amendment and will provide you with any relevant updates and developments.

If you would like more detail information regarding the proposed law amendment, please contact the author of the article or your partner or manager at Ernst & Young.

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Concept of tax and social security system reform published for public consultations

The Slovak Ministry of Finance prepared and published a concept of planned reform of the tax and social security/health insurance (SSHI) system for public consultation. The reform is also a part of UNITAS project aiming to simplify, rationalize, modernize and unify the collection of taxes and SSHI contributions.

The reform should bring changes in the institutional and procedural side as well as to the calculation of tax and SSHI contributions. The concept proposes challenging the implementation time schedule according to which most of the technical changes should be implemented from beginning of 2012.

We summarize the main technical changes proposed by the concept of the reform below.

KEY FEATURES OF THE REFORM

- **Introduction of "super-gross" salaries**
  As a part of the reform ***"super-gross" salaries should be introduced***. New gross employee's remuneration should in principle be equal to sum of employee's current gross remuneration and current employer's part of SSHI contributions (with the exception of employer's accidental insurance contributions). New gross salaries should not be only a fiction for tax and SSHI calculation purposes, but the Slovak employer's should in fact increase the employee's gross salaries by current employer's SSHI contributions due to reform.
- **Abolition of employer's SSHI contributions**
  After the introduction of "super-gross" salaries, only the employee's part of SSHI contributions will remain and ***no employer's part of SSHI contributions*** will apply (except for accidental insurance which is intended to be rendered on commercial basis by private insurance companies over the time).

  However, the employer will be still responsible for the withholding of and remittance of the employee's SSHI contributions.
- **Single flat income tax rate should stay at 19%**
- **Single health insurance contribution rate**
  The individual's ***health insurance contribution rate should be unified at 9%*** (with an exception of the severely disabled for whom 4.5% rate should apply).
- **Single social security contribution rate**
  The individual's ***social security contribution rate should be unified at 19%***. The exception should apply for ***self-employed persons (13% rate)*** and persons working under ***specific labour agreements***, e.g., students ***(10% rate)***. In addition, for the latter exception category, the health and social security contributions should be due only from the income exceeding EUR 190 per month.
- **Unification of tax and SSHI assessment bases**
  As a part of unification of tax and SSHI assessment bases, in contrast with the current situation, the employee's ***SSHI contributions should not be deductible from the tax base***. Thus, employee's tax liability will be calculated from his/her "super-gross" salary not decreased by the SSHI contributions. Accordingly, SSHI contributions of a self employed individual should be treated as tax non-deductible (in addition, the tax base of self-employed individuals should not be adjusted by current coefficients (2 and 2,14) for purposes of SSHI assessment base determination).

  In connection with unification of tax and SSHI assessment bases, ***certain in-kind and monetary benefits up to maximum amount of EUR 500 per year should be tax exempt***. Consequently, this income would ***not be subject to SSHI.***

  Rental income and capital gains should not be subject to SSHI contributions. On the other hand, ***dividends and profit shares of individuals should be subject to SSHI*** at standard health insurance rate of 9% and a 13% social security rate.
- **Introduction of single tax and SSHI reconciliation**
  Maximum SSHI assessment bases (caps) should be replaced by ***maximum SSHI premium amount***. It is proposed that from 2013 (for tax period 2012) a ***single tax and SSHI reconciliation form*** should be filed (thus, also introducing a reconciliation of social security contributions which is currently not performed).
- **General tax deductible allowance**
  It is proposed that the general tax deductible allowance for each taxpayer should equal to eighteen times of the subsistence minimum amount (i.e., the tax free allowance should be EUR 3 413.70 in 2012). In addition, ***general tax free allowance should be fixed for all taxpayers*** and not gradually decreasing depending on the amount of taxable income (i.e., so called "millionaires' tax" should be abolished).
- **Other changes for employees**
  The employee premium concept (zamestnanecká prémia) should be abolished.
- **Other changes for self-employed individuals**
  Self-employed individuals should not be restricted by tax depreciation schemes and should be able to depreciate their tangible assets for tax purposes even fully in the first year or over a longer time period based on their preference.

  Self-employed individuals should still be able to claim a 40% flat deduction (instead of a real expenses deduction), but the flat deduction should be limited to EUR 200 per month.

IMPACT OF THE REFORM

The concept of the reform illustrates the impact on tax and SSHI burden of Slovak employees based on their annual incomes. Based on the calculation of the Ministry of Finance, the ***proposed changes should have a minimal overall impact on total tax and SSHI burden and net income of Slovak employees and practically no direct financial impact on Slovak employers.*** The changes will have greater financial impact on self-employed individuals.

Although the changes proposed by the reform should have a minimal overall financial impact on majority of Slovak employees, the ***distribution between tax and SSHI burden should change substantially*** (i.e., increased personal income tax should be compensated for by decreased SSHI contributions). Thus, the SSHI system would not be self-financed but would need to be extensively financed from the state budget.

The ***relative financial neutrality*** of the proposed changes for employees ***might not prove to be the case of business travellers or assigned employees*** (or more generally individuals subject to Slovak tax only or Slovak SSHI only). For better understanding we provide two examples in which the proposed changes could significantly change the employee's overall tax and SSHI burden. Considering that many employers apply tax equalization or protection schemes for internationally mobile employees, the additional tax and SSHI burden might eventually impact the employer's employment/assignment costs.

Example 1

An employee from other EU member state is seconded to Slovakia. Based on the E101/A1 certificate, the employee contributes to the home country social security system during the secondment. After implementation of the reform, the mandatory foreign social security contributions would not be deductible from employee's tax base resulting in higher Slovak tax liability while foreign SSHI contributions will stay at their current level. Consequently, the overall tax and SSHI burden of the employee could increase by hundreds/thousands of EUR compared to the current overall tax and SSHI burden in the same situation.

Example 2

A Slovak employee is seconded to other EU member state. Based on the E101/A1 certificate the employee contributes to the Slovak social security system during the secondment. After implementation of the reform, employee's gross salary would be increased by the amount of current employer's SSHI contributions to "super-gross" salary. The higher foreign tax rates applied on super-gross income might result in increase of the foreign tax burden not fully compensated by the decrease of Slovak SSHI contributions (in particular in the countries where employee's SSHI contributions cannot be deducted from the tax base). In addition, the employee's increased gross income might fall within a higher tax bracket of a progressive foreign tax regime which may further increase the overall tax and SSHI burden difference compared to the same current situation.

If you have any questions regarding this topic, please contact the author of the article or your partner or manager at Ernst & Young.

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New Totalization Agreements with Israel and Australia

On 24 March 2011 the Slovak Parliament approved new Totalization Agreements with Australia and Israel.

The agreements will provide a legal basis for relationships with respective countries in the area of social security and will be relevant for all Slovak citizens working in Australia and Israel, as well as for citizens from these countries working in Slovakia. In practice this also means that employees assigned to Slovakia from Australia or Israel may fall outside the Slovak social security system (i.e., assigned employees and their foreign employers can avoid social security registration and administration in Slovakia).

The Agreements will become valid on the first day of the third month following the month in which both interested countries mutually confirm that all local requirements necessary for validity of the Agreement have been met.

If you have any questions regarding the Totalization Agreements, please contact the author of the article or your partner or manager at Ernst & Young.

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The Slovak Supreme Court's judgment on input VAT deduction incurred on the lease of M1 category cars

The Slovak Supreme Court recently published a decision on deductibility of input VAT incurred on the lease of passenger cars in the M1 category.

Situation

A foreign VAT payer operated as a lessor of motor vehicles leased through operational and financial leasing. They leased passenger cars (M1 category), with the intention of further lease or sale. The entity asked for a VAT refund on input VAT incurred on the lease. The tax authority, however, blocked the VAT refund arguing that the provision of the Slovak VAT Act valid at the time (in 2006) did not allow deduction of input VAT incurred on the lease of passenger cars, even if used for further lease or sale.

The decision and its practical considerations

The Supreme Court decided in favor of the foreign VAT payer and ruled that the provision based on which the tax authority disallowed the input VAT deduction is not in line with the European VAT Directives. In particular, the non-compliance was identified by the Court in relation to the provision of the 6th VAT Directive allowing Member States to retain exclusions to general VAT deduction rights, if those were provided for under the national laws prior to EU accession (in Slovakia's case).

This provision (now Article 176 of Recast VAT Directive) was indeed, in Slovak tax practice, seen as a legal justification for keeping the VAT deduction block on passenger cars in Slovak VAT law even after 1 May 2005 (EU accession date). The decision of the Court has the potential to significantly influence this common view, given that the Court directly referred to the incompatibility of the Slovak provision of Art. 49 (7) a) with Art. 176. Unfortunately, in our view, the Court has not made explicit why provision of Art. 176 was not applicable in the case at hand.

An extensive interpretation of this case would be that the Court in general declares the block on deducting input VAT on the purchase and lease of passenger cars contained in the Slovak VAT legislation as invalid. This would mean that leases or purchases of passenger cars since EU accession up until the change of the VAT legislation in December 2009 could bear right to deduct VAT if done for business purposes (perhaps not only those cases where the cars were resold or further subleased, but including those cars that were generally used for business purposes). A narrower interpretation might mean a chance for businesses to retrospectively reclaim at least the VAT incurred on passenger car leases where these were further sold or subleased in the relevant period from 2005 onwards.

We would be pleased to discuss this issue with you. Please contact the author of this article or your usual partner or manager at Ernst & Young.

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Amendment to the Tax Administration Code

The Ministry of Finance issued a draft proposal on the amendment of the new Tax Administration Code No. 563/2009 Coll. which will replace the current Act on Tax Administration No. 511/1992 Coll. as amended from 2012.

The changes proposed in the amendment which may have major impact on the Slovak taxpayers are as follows.

- The rights of tax controllers during tax audits shall be substantially extended. In accordance with the proposed legislation, they will be able to request ***access to taxpayers' electronic systems without any restrictions.***
- The tax audits will also be performed by the Financial Directorate whilst the tax authorities will be entitled to issue additional tax assessments based on the findings of the Financial Directorate. This may mean significant centralization of the process of tax audits and may weaken the controlling function of the Financial Directorate (currently Tax Directorate) as in the appellate procedure it will be reviewing its own findings.
- Taxpayers will be able to file supplementary tax returns increasing income tax losses within the period of six years after the end of the year when they filed the tax return declaring the income tax loss. However, they will not be able to utilize such tax losses by filing a supplementary tax return for a period when they declared a positive tax base, if more than four years expired from the end of the year in which the ordinary tax return for this period was filed.

Given their significance, all the above issues were addressed by Ernst & Young during the legislative process.

We will continue to monitor the ongoing legislative process and will inform you of any important developments.

On a related note, we would like to remind our readers that from the beginning of 2012 all registered VAT payers will be obliged to use only electronic means of communication with the tax authorities in accordance with the new Tax Administration Code.

Should you believe that these changes may affect your business activities and if you require more detailed information, please do not hesitate to contact Michaela Michalovičová or your Ernst & Young tax advisor.

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Electronic cash register Act – experience with implementation

In the December 2010 edition of Tax news we informed you of the amendment to the Act on the use of electronic cash registers ("Act") postponing the deadline for implementation of new cash registers (i.e., complying with the new Act) until 31 December 2011.

In connection with the new Act, the Slovak Ministry of Finance published a list of practical examples on its web page. We do not comment here on the examples as the document is publicly accessible. Instead, we want to share practical experience with installing the cash registers compliant with the Act, in particular regarding the aspects that were changed by the new legislation.

- Cash register book
  Based on the Act, the cash register book should contain only identification data of the entrepreneur and the cash register, official records of the tax authorities and service organization. Unlike in the past, no receipts, returns, turnovers, etc, need to be recorded in the cash register book used in accordance with the Act, as this information is printed out at the daily closing.
- Electronic journal ("kontrolny zaznam")
  The electronic journal should generally replace the "control strip" (kontrolna paska) which was used in the past (under the old Regulation). The electronic journal must contain an exact copy of the cash register bill with the same content and format as the original cash register bill handed to the customer. Appropriate ways include scanned .pdf copy, .doc or .xls format which could, however, consume a significant volume of data memory.

  In addition, the electronic journal should also contain a database of all data from the cash register bills enabling the user (e.g., the tax authority) to select particular information (e.g., the amount of output VAT for a certain period).
- Particulars of the cash register bill
  Besides the identification data (about the seller, cash register, goods/services sold, information for VAT purposes, etc.), the cash register bill also has to contain a protective sign (defined in enclosure to the Act).
- Cash in / cash out not relating to sale of goods
  Based on the Act, any cash put into the cash register, other than cash received for goods sold, needs to be recorded, and a document marked as „VKLAD" needs to be printed out. Nevertheless, such cash put in the cash register is recorded in the cash register's operating memory only, not in the fiscal memory. Therefore, the cash in the cash register and the amount recorded in the fiscal memory do not need to equal.

  On the other hand, if any cash is taken from the cash register, such a transaction does not need to be recorded in the cash register and no document needs to be printed out.
- Archiving obligations
  - Copies of paragon and printed outputs from the daily closing need to be stored for five years after the end of the year in which they have been printed.
  - The fiscal memory and the electronic journal should be archived within the period which is opened for a tax audit.
  - All printed outputs (i.e., also the cash register bills handed over to customers) need to be readable for a period of 10 years.
- Reading the data saved in cash register
  The manufacturer of the cash register shall provide a special external technical equipment, enabling to "read" the data saved in the fiscal memory which needs to be handed over to the special certification authority and, subsequently, upon request to the tax authorities in case of a tax audit.
- Other issues which entrepreneurs may face in practice, not covered properly by the Act are:

  i) Returns of goods in another shop as they have been bought and the related implications/ requirements (e.g., particulars of a cash register bill in such case).

  ii) Practical problems related to certain types of the "new" electronic cash registers enabling the printing of only two types of cash register bill (stating only the positive or the negative amount).

Should you have any queries concerning the implementation of new cash registers, please, do not hesitate to contact us. We would be pleased to assist you.

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Proposed changes to the Slovak Bankruptcy Act

On 7 April 2011, the Ministry of Justice of the Slovak Republic presented its proposal on the amendment to Act No. 7/2005 Coll. on Bankruptcy and Restructuring ("Bankruptcy Act"). The proposal introduces, inter alia, an important change regarding the conditions under which companies and entrepreneurs will be obliged to file motions for bankruptcy.

Under the current rules, companies whose **overdue** liabilities exceed the value of their assets are obliged to initiate bankruptcy proceedings. Pursuant to the proposal, also the companies whose total amount of liabilities exceeds the value of their assets should be obliged to file a motion for bankruptcy.

The proposal also modifies the liability of the members of statutory bodies for not complying with the obligation to initiate bankruptcy proceedings when the conditions stipulated by the law were fulfilled. In accordance with the proposed wording, if the members of the statutory body of the company fail to file a motion for bankruptcy proceedings by the due date, they should be liable to the company's creditors up to the amount of the company's registered capital.

The amendment should become effective as of 1 January 2012. Given that the Proposal is only at an early stage in the legislative process, it is possible that it will undergo further changes. We will closely monitor the developments and we will inform you about any important changes in our future Tax news.

If you believe that the proposed amendment may affect your business activities, do not hesitate to contact the author of this article or your partner or manager at Ernst & Young.

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