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Corporate and Personal Taxation

Slovak Financial Directorate has published a form for the new “automatic” local corresponding transfer pricing adjustments

We would like to inform you that with respect to the recently amended Act No. 595/2003 Coll. on Income tax (ITA) a new official announcement form was published by the Financial Directorate on 14 December 2016 for the new procedure of “automatic” corresponding - downward - transfer pricing tax base adjustments between Slovak tax residents (local corresponding adjustments).

A new form should be submitted by every taxpayer performing a local corresponding adjustment based on Article 17/6 of the ITA within the deadline for submission of the corporate income tax return for the period in which the tax base was adjusted due to transfer pricing.

In case the taxpayer has performed more than one local corresponding adjustment with different entities on the other side performing the primary - upward - transfer pricing tax base adjustments (contra-adjustors), each of such local corresponding adjustments should be announced by the adjusting taxpayer in a separate announcement form per the contra-adjustor.

The local corresponding adjustments should also be applicable for supplementary tax returns submitted after 31 December 2016 for the tax periods starting on 1 January 2016 and onwards, for which the primary transfer pricing tax base adjustments were performed.

If you would like more information or have any questions regarding this area, please contact the author of this article or your partner or manager at EY.
Value Added Tax

Guideline on VAT treatment of supplies of services connected with immovable property

In January 2017, the Financial Directorate of the Slovak Republic published its guideline on VAT treatment of supplies of services connected with immovable property (“the Guideline”). This followed articles 13b, 31a and 31b of Regulation (EU) No 282/2011, the amendment to which entered into force on 1 January 2017. The Guideline provides a detailed analysis of the services connected with immovable property, together with a wide range of examples.

In Article 16, the Slovak VAT Act defines the place of supply of services connected with immovable property as the actual location of that immovable property. Alternatively, the place of supply of services which are not linked closely enough to immovable property, follows the general rule stipulated in Article 15 of the Slovak VAT Act and depends on whether the services are supplied to a taxable person.

Based on Article 31a (1) of the Implementing Regulation, the services connected with immovable property, where the place of supply is to be determined according to Article 47 of the VAT Directive (Article 16 Section 1 of the Slovak VAT Act), include only services directly connected to the immovable property.

Of primary consideration is whether the service in question relates to goods which can be regarded as immovable property and consequently whether there is a sufficient connection between the service and immovable property.

Article 13b of the Implementing Regulation provides a definition of “immovable property” and refers to four categories of goods which should be regarded as such:

- Any specific part of the earth, on or below its surface, over which title and possession can be created
- Any building or construction fixed to, or in the ground, above or below sea level, which cannot be easily dismantled or moved
- Any item that has been installed and makes up an integral part of a building or construction without which it is incomplete, such as doors, windows, roofs, staircases and lifts
- Any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.

Article 31a (2) provides a list of services, which within the meaning of this Regulation, can be considered as connected to immovable property. Moreover, the Guideline contains detailed explanations of the particular services with practical examples.

At the same time, services that should not be considered as connected to the immovable property are also listed in the Guideline in accordance with Article 31a (3) of the Regulation.

In connection with this, the European Commission has issued Explanatory Notes and the Guideline includes references to them. Even though the Explanatory Notes are not legally binding and were not meant to be exhaustive, they cover a relatively wide area and in many cases may be helpful.

If you wish to obtain more information or have any questions regarding this topic, please contact the author of this article or your EY partner or manager.
Slovak referrals recently submitted to the Court of Justice of the European Union

Two Slovak referrals were recently submitted to the Court of Justice of the European Union (CJEU):

- The first case (C-533/16 Volkswagen AG) concerned the right to deduct input VAT where all substantive requirements were satisfied but the taxable person failed to fulfill the formal conditions.

- In the second case (C-534/16 BB Construct s.r.o.), the taxpayer questioned the legitimacy and appropriateness of the tax guarantee institute.

**Case C-533/16 Volkswagen AG**

The Slovak court asked the CJEU whether a taxable person is entitled to claim input VAT via the VAT refund procedure, where all substantive and procedural conditions were satisfied, but they failed to comply with some formal conditions.

The taxpayer assumed they were entitled to input VAT deduction from purchase of goods and services performed in Slovakia, since this tax was correctly paid by the supplier and thus all substantive conditions for VAT refund should have been met. However, the Slovak tax authorities rejected the input VAT deduction on the grounds that the claimed VAT was not properly stated by the supplier on the relevant invoice. The CJEU is expected to assess whether the Slovak tax authorities acted in line with the principle of neutrality and proportionality, as the fundamental principles of the common system of VAT. It should also examine whether the objective defined by Council Directive 2008/9/EC can be achieved only if both conditions, i.e., the supply of goods or services and the inclusion of VAT on the invoice by the supplier, are satisfied.

As we informed you in a previous issue of Tax & Legal News, in several recent decisions the CJEU has reiterated that the principle of neutrality should be considered as achieved, if all substantive requirements for VAT deduction are satisfied, even if the taxable person has failed to comply with some formal conditions. The decision in this case might therefore represent a significant breakthrough in the interpretation of relevant provisions of the Slovak VAT Act dealing with the conditions for exercising the right to VAT deduction. It could also bring more legal certainty for taxpayers claiming the input VAT from purchases of goods / services during tax audits in cases where the VAT was not charged by the supplier on the invoice or the invoice was not issued properly.

**Case C-534/16 BB Construct s.r.o.**

The CJEU was requested to assess whether the institute of a tax guarantee is in line with the objectives defined by the provisions of the VAT Directive dealing with the prevention of VAT evasion (Article 273 of Council Directive 2006/12/EC), especially in cases when levying a tax deposit indirectly forces the taxpayer to declare bankruptcy.

The Slovak tax authorities required a taxpayer to pay a tax deposit of €500,000. This amount was based on the fact that the director of the entity was also director of another entity, against which the tax authorities recorded unsettled tax liabilities. The CJEU was asked to consider whether the value of a guarantee is consistent with the freedom to conduct business and whether it does not constitute a breach, in the area of VAT levying, of the ne bis in idem principle or of the prohibition on retroactivity.

We will monitor the status of both cases described above and will inform you of any further developments.

If you would like to know more about the topic or have any other questions regarding this issue, please contact the author of this article or your EY partner or manager.
Legal news

Will the amendment to the Execution Act ensure better enforcement of the law?

An extensive amendment to Act no. 233/1995 Coll. on Court Executors and Execution Activities (the Execution Act) was approved at the end of last year. It aims to solve the problem of never-ending execution cases and the courts’ consequent disproportionate workload, to break the relationships between executors and authorized creditors and ensure greater protection for debtors. The new rules will be effective from 1 April and they should ensure that executive proceedings will be faster, fairer and more effective.

What are the most significant changes laid down by the amendment and what should you be aware of, if you are a creditor or a debtor?

Nowadays, the courts’ agenda concerning execution of debt includes many administrative tasks, which cause an excessive workload. After the new law enters into force, management of executive proceedings will be concentrated in a single court – the District Court, Banská Bystrica. Specialized judges and other employees of the court should improve the quality and speed of decisions. In addition, communications between court and executor will only be conducted electronically, including electronic delivery of all written documents to the court. Executive proceedings, which have already commenced before the amendment becomes effective, will be held in compliance with the previously effective laws.

Digitization will also affect creditors. Proposals initiating an execution will be filed directly to the electronic inbox of the court through an electronic form published on the website of the Ministry of Justice of the Slovak Republic. The proposal must be authorized by a qualified electronic signature, otherwise it will not be accepted. If the creditor’s electronic inbox has not been activated, any executor can complete the application on their behalf, to initiate the execution.

A significant change is also introduced by random and balanced allocation of executions to court executors, in order to lessen the scope for corruption and clientelism and to ensure greater independence of court executors. A creditor will no longer be permitted to choose which executor will enforce their claim. An executor will be randomly selected from the list of those with a registered seat within the jurisdiction of the regional court, which also covers the permanent residence, place of business or registered seat of the debtor. Another novelty will be the publication of mandates for execution.

An exception from the random selection of executors will be a case where an existing execution against a debtor is held by an executor for whom the court has already released a mandate. In such a case, each subsequent execution against the same debtor will be assigned to the executor enforcing the prior execution.

The amendment expands the number of opportunities for suspension of the execution process by a competent executor without any court approval (§ 61n of the Execution Act). Additionally it introduces the opportunity to suspend long-term execution cases, if the executor cannot identify any property or income which could be executed, for a period of 5 years and 2½ years, for natural persons and legal entities, respectively. The reason for this change is to resolve vindictive execution processes and to afford some protection to debtors, who are often persecuted even after retirement. On the other
hand, deductions from retirement pensions could be the last chance for creditors to enforce their adjudicated claims.

Another new right for debtors is to a delay of immediate execution because of “social reasons”. This right is available only once during the execution. The delay will be dependent upon completing an application and receiving executor approval (but without the approval of the creditor) which can take a maximum of three months.

The debtor will have also a new opportunity to use a repayment schedule (instead of delaying the execution). If all required conditions are fulfilled, approval of the repayment schedule by the creditor will not be needed and the debtor’s property will not be blocked.

For more information or in the case of any questions related to this issue, please contact your partner or manager in EY.

Brief news

- We would like to inform you that on 24 November 2016, the OECD adopted the wording of the Multilateral convention. In respect of this, the Slovak Republic plans to join the convention during the course of this year. The Multilateral convention allows the smooth renewal of existing bilateral double tax treaties to implement measures related to preventing Base Erosion and Profit Shifting (BEPS) as one of the outcomes of the BEPS Project regarding international tax avoidance. In light of the above, the Ministry of Finance of the Slovak Republic started a comments procedure regarding the impact of Slovakia joining the Multilateral convention. The comments procedure was completed on 5 February 2017.

- Simple joint-stock company

  An amendment to the Commercial Code, effective 1 January 2017, has introduced a completely new legal form of company - the simple joint-stock company. It is a hybrid form of capital company which has elements of both limited liability and joint-stock companies.

  The most significant benefits of this new legal form are as follows:
  - Registered share capital may begin at one euro.
  - The company may be established by one person (legal or natural).
  - Several types of shares can be issued with various individual rights specified in the company’s Articles of Association (e.g., larger voting rights or the right to share profit, determined by means other than the ratio of the nominal value of shares to the nominal value of shares of all share-holders - fixed, priority or subordinate shares).
  - The shareholders’ agreement can have arrangements for rights to join the sale of shares (tag-along), force the sale of shares (drag-along) or request the acquisition of shares (“shootout”).
  - Establishment of a supervisory board is voluntary.

  On the other hand, its disadvantages are that:
  - A simple joint-stock company may not be established, based on a call for subscription of shares.
  - A Memorandum of Association or Founding Deed has to be executed in the form of a notarial deed.
  - Shares can only be in the form of book-entered securities and registered shares.
  - Shareholders must be publicly-registered.