2 Corporate and Personal Taxation
Proposed amendment to the Income Tax Act - what we can prepare for

4 Value Added Tax
CJEU judgment in case C-691/17 PORR Építési Kft.

6 Legal news
Amendments to the “Anti-Letterbox Act” discussed in Parliament

7 News - in Brief
Corporate and Personal Taxation

Amendment to the Slovak Income Tax Act - what we can prepare for

The proposed Amendment to Income Tax Act No. 595/2003 Coll., drafted by the Ministry of Finance, which is currently undergoing the legislative process, introduces changes relevant to corporate taxpayers and also taxation of individuals. To make you aware of these, we have summarized the most significant in the following article.

CORPORATE TAXPAYERS

New rules for hybrid mismatches (implementation of the ATAD 2 Directive)

The amendment proposes deleting the existing hybrid rules contained in Section 21(2) o, while introducing a new Section 17i, which comprehensively encompasses all the rules on hybrid mismatches. A significant change within the above is the inclusion of hybrid mismatches with third countries. In principle, this reflects transposition of the EU ATAD 2 Directive, addressing the following situations:

- Hybrid financial instrument / payment - the situation when a financial instrument/payment of one related entity is considered a debt instrument and/or interest cost decreasing the tax base, while for a payee it is considered as a non-taxable equity instrument and/or dividend.

- Hybrid entity - is an entity treated as a corporation by the state in which it was established as a separate taxpayer, but the state of its founder treats it as a fiscally transparent entity. Opposite situations may also occur, in which case such an entity is referred to as a “reverse hybrid entity”.

- Diverted payment - The state of a head office attributes the payment to a permanent establishment (PE) in another state, while the state, in which the PE is located, attributes the payment to the state of the head office. Thereby, the income is taxed neither by the head office nor the PE, which simultaneously gives rise to tax expense.

- Disregarded PE - a state in which the PE is to be located fails to declare its existence and the state of the head office thus attributes a payment to a disregarded PE in another state. Accordingly, the income is not included in either the tax base of the head office or the PE, which simultaneously gives rise to tax expense.

- Disregarded payment - is a hybrid mismatch resulting from a payment made by a hybrid entity, and from non-inclusion of income with respect to a related entity.

- Deemed payment - is a mismatch in which a notional payment is made by the PE to the head office (or vice-versa), and in which this income is not included in the taxable income of the head office or the PE.

- Multiple deduction of expense (cost) without including multiple income (revenue) in taxable income - this most frequently relates to situations where expense (cost) is applied in a state where a company is established, as well as in the state of its founder.

- Imported mismatch - although the mismatch occurs between the taxpayer’s related entities, rather than directly between the taxpayer and their related entity, the taxpayer participated in financing this mismatch, either directly or indirectly.

Other than hybrid mismatches are mentioned in the explanatory memorandum accompanying the amendment, but not in the wording of the individual sections of the amendment.

News are updated regularly on our website. Follow us.
Tax costs/expenses deductible only after their payment

The current wording of the amendment regulates tax costs/expenses deductible only after their payment as follows:

- There is a significant change introduced in Section 17 (19), specifying that the condition of payment does not apply to those expenses (costs) which become part of the cost of assets, or part of own costs in the case of inventories.
- The scope of expenses (costs) deductible only after their payment is extended to management services and business management advisory services.
- According to the new wording of sub-para g), tax expenses after payment will refer to contractual penalties, charges due to delay, interest on late payment, lump-sum compensation of costs connected with enforcement of debts receivable on the side of the debtor, as well as severance payments to a beneficiary under Section 355 of the Commercial Code.
- The limitation previously applied to expenses (costs) after payment, incurred in obtaining standards and certificates was deleted from sub-para g).
- Of similar importance is abolition of the limit contained within Section 17 (19), sub-para d), i.e., 20% of the value of mediated business in the case of payment and commission for agencies.

Utilization of tax loss carry-forwards

Rules for tax loss deduction (Section 30) should also change for taxpayers. The proposed amendment extends the period of tax loss deduction to five years and at the same time, recalls the even deduction principle. The new rules allow utilization of a tax loss of up to 50% of the calculated tax base, applicable already during the first year of the tax loss carry-forward. However, under the proposal, these new rules will only apply to “new losses”, recognized after the Act has entered into force.

Special rules will apply to so-called micro-entities, for which the amount of tax loss utilization is unlimited. Such taxpayers will be able to utilize a tax loss up to the amount of their calculated tax base in the tax period in which they apply the tax loss deduction.

Debt receivables

According to the existing wording of the Income Tax Act, it is possible, subject to exceptions, to create tax-deductible provisions only for debt receivables which are included in taxable income and have not become void. This led to problems in cases when debt receivables became void, under the Civil Code, during the course of the relevant tax period. Consequently, the amendment proposes assessment of the statute of limitations as at the last day of the tax period in which a provision was created, assigned or written off, whenever a debt receivable has not become void for at least one calendar day during the tax period in question.

A provision for a debt receivable, recognized during a year when the debt receivable had already become void, pursuant to the Civil Code, is therefore still regarded as a tax expense according to the Income Tax Act.

Tax advantage for R&D costs

Taxpayers undertaking R&D will be entitled to a higher tax advantage with respect to R&D costs, the so-called super-deduction. If they fulfil legal conditions, taxpayers - based on the new rules - will be able deduct from the tax base up to 200% of expenses (costs) incurred for R&D for a tax period starting after 31 December 2019 (150% for a tax period starting after 31 December 2018).

Now is the right time to consider whether your company is entitled to such a tax benefit.
TAXATION OF INDIVIDUALS

Tax exemption of employees’ education

According to the current wording of the ITA, the costs of training paid on behalf of employees by their employer are tax exempt. However, the current version of the ITA does not exempt comprehensive study programs at universities or secondary schools.

The proposed wording of the amendment extends the scope of this provision, meaning that education costs at universities or secondary schools, paid by an employer for their employees, can be tax exempt for the employee, if properly justified.

Tax exemption of non-monetary benefits up to €500

The amendment proposes tax exemption of non-monetary benefits, provided to the employee by the employer, if the employer considers these expenses as tax non-deductible at a corporate level. The amount of the exemption is capped at €500 per employee in a single tax period.

Restrictions for the exemption of capital gains from the sale of securities

Based on the ITA, the capital income from sale of securities is tax exempt if two conditions are met. First, the securities should be held by the individual for more than a year and secondly, they should be traded on a regulated market (even for one day) at the time of the transaction.

The amendment restricts one of the above conditions for tax exemption of these capital gains. According to the current wording of the amendment the exemption applies only if the shares have been listed on the regulated market for at least a year. At the same time, the condition that the shares should have been held by the individual for at least a year, has remained unchanged.

Exemption of costs for preventive health care paid by an employer

The Amendment proposes tax exemption of contributions provided by employers to their employees for preventive medical examinations. This should also include medical examinations attended in addition to the mandatory legislative minimum. The contributions should be tax exempt at the level of the employee, if they originate from the employer’s social fund.

Submission of annual reconciliation via electronic means

The amendment proposes that Slovak employers will be able to issue confirmation of income and annual reconciliation to their employees electronically. However, electronic delivery can be made only if mutually agreed by both employee and employer.

We will continue to monitor this amendment and will inform you of substantial changes in a timely manner.

---

Value Added Tax

CJEU judgment in case C-691/17 PORR Építési Kft.

The Court of Justice of the European Union (CJEU) has issued a decision in case C-691/17 PORR Építési Kft. concerning the deduction of VAT from invoices on which the supplier incorrectly applied VAT.

Background

PORR, a company established in Hungary for VAT purposes, received invoices from Hungarian suppliers for services related to construction of a motorway. The suppliers
charged VAT, which PORR paid and subsequently deducted in its VAT returns. However, the tax authority suggested that the services provided to PORR, under national law, should have been subject to a reverse charge. The suppliers should have issued the invoices without VAT and inserted a reference to the reverse charge mechanism on their invoices.

The tax authority stated that the incorrect invoicing did not exempt PORR from the obligation to apply the reverse charge mechanism to the supplies received and assessed PORR with VAT, plus other tax penalties. In its decision, the tax authority did not take into account the right to VAT deduction which PORR would have had if it had been correctly invoiced, arguing that there had been no double taxation and the suppliers could have been requested to correct the invoices.

PORR argued that the tax authority did not fulfill its obligation to verify that VAT had been paid and whether the suppliers were able to correct the invoices in question. PORR argued that this was not possible, because self-correction of invoices is not permitted in Hungary after the initiation of a tax inspection. Consequently, the company definitively lost the possibility of exercising its right to deduct.

**Judgment of the Court of Justice**

The CJEU highlighted that the formal requirements relating to issuance of invoices subject to reverse charge were not met, since there was no reference to application of the reverse charge on the invoice. Moreover, the ECJ held the view that the right to deduct can only be exercised in respect of amounts due. Therefore, since the VAT which should have been reverse charged was not due to the tax authorities by PORR, the company did not have the right to deduct it.

Consequently, since PORR did not observe a substantive requirement of the reverse charge regime and the VAT which it paid to the suppliers of the services was not due, the company could not claim the right to deduct that VAT.

The CJEU also considered whether the tax authorities should have examined the ability of the suppliers to refund PORR the undue VAT which it had paid.

In this respect, the CJEU stated that a system is in line with the principles of neutrality and effectiveness where: (i) suppliers are allowed to reclaim unduly paid VAT from the tax authorities and (ii) the recipient of the services, i.e., PORR in the case at hand, may recover the VAT paid by bringing a civil action against its suppliers.

However, where refund of the unduly paid VAT by the supplier is impossible or excessively difficult, such as in the case of insolvency, PORR must be able to apply for reimbursement directly to the Hungarian tax authorities.

“What are the practical consequences?”

As the court stated, the taxpayer is not exempted from its VAT obligations even in the case of payment of incorrectly issued invoices with unduly charged VAT. Consequently, apart from the sanction interest charged by the tax authority in addition to the tax assessment, the taxpayer bears the burden of double taxation unless they successfully claim the unduly paid VAT from their suppliers. Therefore, we recommend verifying whether VAT is charged by your suppliers. In cases of uncertainty over the applicable VAT regime, do not hesitate to consult with your tax advisor.

---

News are updated regularly on our [website](#). Follow us.
Amendments to the “Anti-Letterbox Act” discussed in Parliament

The proposed amendment to the Act on Register of Public-Sector Partners (RPSP), drafted by the Ministry of Justice, has passed the initial stages of legislative procedure and is scheduled for discussion in the Slovak Parliament. As an update to information published in previous issues of our Tax & Legal News, below you will find selected amendments included in the current version of the bill, which were prompted by practitioners to reflect issues arising from its application.

**Contract value – a method of determining whether an entity is considered a public-sector partner (PSP)**

The proposal adopts the Act’s conditions, which rather disqualify definition as a PSP, based on receipt of: (i) a one-time performance not exceeding €100,000 or (ii) a partial or repeated performance not exceeding €250,000 in total, over the course of the relevant contract (not a calendar year). Additionally, it provides guidance on determining the value of contracts exceeding €250,000, indefinite duration contracts, contractual increases and penalties. In the case of a non-fiduciary performance, the amount may be determined by means of an expert opinion.

**Registration refusal**

If a PSP is erased from the RPSP, a new sanction will preclude the competent authority from re-registering it for two years. This will effectively prevent the former PSP from doing business with the public sector.

**Senior management – definition narrowed**

The proposal narrows the definition of senior management, thus simplifying the process for PSPs registering their managers as ultimate beneficiary owners (UBO). Unlike today, the PSP will not have to register a wide range of individuals (directors, board members, procurement holders, managers) , which sometimes amounts to dozens of people. Under the proposed wording, only members of the statutory body will be registered.

**Publication of UBO’s address**

It may be possible to publish the PSP’s address in the register, rather than the UBO’s, if this is justified on the grounds of safety or infringement of the UBO’s, or related parties’ rights. For stock exchange-listed companies, where the top management are considered the UBOs, the company’s address may be entered in the RPSP without further justification.

**Stricter assessment of joint action**

Under current Slovak legislation on anti-money laundering, an individual may not meet the UBO criteria, but can still be classified as such with another person, where they act in concurrence or in joint action. The amendment proposes a stricter assessment of joint action, which will always apply, unless proven otherwise, to related persons, individuals who have been in business together for a long time and their relatives.

**Directors’ liability**

Under current rules, each member of a PSP's statutory body (e.g., directors, board members) is liable for incorrect or incomplete information registered in the RPSP, with individual penalties of up to €100,000. For a company with three directors, this could amount to a total fine of €300,000. The proposed amendment introduces the statutory body's joint and several liability in the range of €10,000 to €100,000, so that even in the case of a company with several directors, this upper limit cannot be exceeded.
Voluntary verification of UBOs

The current list of reasons for compulsory verification of UBOs will be increased to include the possibility of verification initiated by the PSP.

What shall we expect?

The proposed amendment of the “Anti-Letterbox Act” introduces changes in determination and registration of UBOs in the Register of Public-Sector Partners. Based on practitioners’ experience, sanctions are specified and a new definition of top management is introduced.

We are observing the legislative process and will inform you about the proposal’s progress in the forthcoming issues of our Tax & Legal News.

News – in Brief

Employers should have a system to measure daily working time

On 14 May 2019, the Court of Justice of the European Union ruled in Case C-55/18 the Federation of Servicios de Comisiones Obreras (CCOO) against Deutsche Bank UAE on the obligation of employers to have a system for measuring working time.

Based on the case law of some Member States’ courts, it could be assumed that employers do not have such an obligation. However, according to the Court of Justice, in the absence of a system to measure daily working time, the number of hours worked cannot be reliably proven. This could lead to the maximum working time being exceeded, with significant negative impact on employees.

Thus, the Court has held that EU law (Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organization of working time and Council Directive 89/391/ EEC on the introduction of measures to encourage improvements in the safety and health of workers at work) prevails over local legislation or court decision-making practice, where these do not require working time measurement.

In this respect, Member States shall impose an obligation on employers to establish an objective, credible and accessible system that allows them to measure the length of daily working time, as well as to define the specific criteria and form that they must meet. Specifically, the Slovak legislation already imposes a requirement on the employer to measure working time. As such, in our environment the judgment only specifies the quality requirements of the system (i.e. its availability, flexibility, etc.). When defining specific conditions of the system, it is necessary to take into account the individual sectoral aspects of different enterprises as well as current trends in flexible working time organization (e.g. home office, where the implementation of this system may be complicated).

Act on termination of some enforcement proceedings

At the end of April, the Slovak Government delivered to the National Council of the Slovak Republic its proposed Act on termination of some enforcement proceedings and on amendments to certain acts. The proposed legislation should result in termination of enforcement proceedings which began before 1 April 2017 and did not result in effective enforcement of the claim.

This should mainly affect enforcement proceedings in which bailiffs enforced less than €15 in the previous 18 months and the first enforcement mandate in such proceedings was delivered to the bailiff more than 5 years previously or where the entitled or obliged person became deceased without a legal successor. If the entitled person wishes to continue the enforcement after its termination under the terms of the new law, they may apply for its recommencement.

If approved, the proposed should enter into force as of 1 January 2020.
The Czech Supreme Court’s groundbreaking resolution on distribution of profits in a joint-stock company

The Czech Supreme Court’s resolution of March this year has again shifted the case law covering profit distribution in a joint-stock company. Based on the similarities between Slovak legislation and that of our Western neighbor, it should be applicable also in the conditions of the Slovak Republic.

Previous case law of the Czech Supreme Court limited profit distribution decisions based on financial statements, to the six months following completion of the previous accounting period, during which they must be approved by a general meeting. Beyond this time limit, it was considered that the financial statements would no longer accurately represent the company’s status. This legal condition also served as protection for creditors against unlawful withdrawal of company resources.

However, the new resolution abandons this position and permits regular financial statements, prepared for the previous accounting period, to serve as the basis for profit distribution until the end of the following accounting period. The court’s reasoning behind its change of approach is that creditors are sufficiently protected against unlawful withdrawal of company resources by the so-called insolvency test, forbidding payment of profits and funds from other resources, if it could cause the company’s bankruptcy. A similar provision to the insolvency test is included in the Slovak Commercial Code and therefore the newly-formulated conclusions of the Czech Supreme Court should also apply in Slovakia.