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NEW DEVELOPMENTS IN THE FIELD OF TRANSFER PRICING

In this issue of our Mailing we would like to inform you about the Guideline MF 020525/2017-724 stipulating the steps within the mutual agreement procedure, about the planned simplification of the documentation duty in Slovakia as well as about the pending revision of the Transfer Pricing Guidelines at OECD level.

GUIDELINE MF 020525/2017-724 STIPULATING THE STEPS WITHIN THE MUTUAL AGREEMENT PROCEDURE

The Slovak Republic takes part in negotiations on the avoidance of double taxation with several other countries. The legal basis for dispute resolution through mutual agreement procedure ("MAP") is set by double taxation treaties and by the EU Arbitration Convention.

The particular steps to be taken during MAP depend also on national legal regulations, which are rather brief and require more detailed guidance. This is the purpose of the above guideline which focuses on several fields, e.g.:

- legal basis for MAP;
- subject matter and purpose of MAP;
- preconditions for initiation of MAP;
- application of the taxpayer for MAP initiation and its essentials;
- Finance Ministry as the competent authority and communication with other bodies;
- specific steps under the Arbitration Convention, deadlines, creation of an advisory commission.

GUIDELINE STIPULATING THE CONTENT OF TRANSFER PRICING DOCUMENTATION

In connection with the task of the "Doing Business" working group of the Slovak Ministry of Economy, the Slovak Ministry of Finance is working on the simplification of the documentation duty. Another aim of the Finance Ministry is to implement the Chapter V of the OECD Guidelines on documentation. The three documentation categories (basic, shortened and full-scope) should be maintained.

As regards the shortened documentation, the introduction of a standardized form is being considered.

Among other things, the presented discussion draft

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- contains new size criteria with respect to the duty to keep the basic documentation;
- places more importance on the transaction-oriented approach;
- requires contractual documentation in written form;
- defines in more detail important content items of the documentation.

TRANSFER PRICING GUIDELINES

Transfer Pricing Guidelines for multinational enterprises ("TPG") are considered to be generally accepted supplementary means of interpretation of double taxation treaties. Currently, TPG are being updated in two fields at OECD level:

- *Administrative approaches to avoiding and resolving transfer pricing disputes ("resolving disputes")*
- *Special considerations for intra-group services*

The framework extent of changes for the new project of the working group should be evaluated by the end of 2018.

In addition, a public discussion to the discussion draft on financial transactions has been initiated.

CHAPTER IV RESOLVING DISPUTES

It is of interest that the OECD website contains MAP statistics for 2017.

Selected overview of MAP cases from 2017 OECD statistics:

Country	As at 31/12/2017
DE	1 241
AT	255
CZ	49
SK	31

According to the information as at the end of 2017, the average time needed to close a MAP case is 30 months.

The update of the chapter should help minimize the risk of transfer pricing disputes and enhance tax certainty for taxpayers.

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The update should affect the following fields:

- additional aspects and mechanisms to minimize the risk of transfer pricing disputes;
- practical experience with the incorporation of the BEPS Action point 14; incorporated into TPG in 2017; revision with the aim to minimize the double taxation;
- minimum standard and "best practices" of APA (Advance Pricing Agreement);
- other proposals which should be incorporated into TPG and which would help to avoid and resolve transfer pricing disputes.

CHAPTER VII SPECIAL CONSIDERATIONS FOR INTRA-GROUP SERVICES

There have been no significant changes to this chapter since 1996. Changes related to the BEPS project were made in 2015, which simplified the approach to the determination of arm's length relationship for low value-adding intra-group services.

The update should affect the following fields and contribute to better application in practice:

- proving that the service has been rendered and/or that the recipient of the service has benefited from it;
- displaying the difference in the benefits gained by group members due to various reasons;
- identification of duplicity of activities in practice;
- determination of a suitable allocation key for cost allocation of intra-group services;
- determination of the cost basis for price calculation of intra-group services;
- arm's length conditions for services rendered in connection with intangible property.

DISCUSSION DRAFT ON FINANCIAL TRANSACTIONS

The discussion draft is based on BEPS Action points 8 – 10 ("*Aligning Transfer Pricing Outcomes with Value Creation*"). Its wording still does not represent a consensus on the relevant topics and offers various opinions on intra-group financial transactions, mainly on:

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- intra-group loans;
- guarantees;
- covenants;
- cash pooling;
- financing-related payments;
- approaches to the determination of market interest;
- hedging;
- insurance.

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