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Tax reliability index, new TP Guideline, taxation of new employee benefits, VAT news and implementation of DAC 6 in Slovakia

We would like to present you the new format of our **BMB Newsfilter**. In this form, we will provide you with an efficient summary of the most important news from the world of taxes and related legislation on a quarterly basis. Crucial news will be described in more detail, the rest in a short overview.

In the today's, first issue, our founding partner Renáta Bláhová will focus on the long-awaited classification according to **the tax reliability index**. This index was introduced at the end of 2018. We also list the most important advantages automatically granted to Slovak taxpayers ranked as "reliable".

Judita Kuchtová will analyse advantages and disadvantages of the new **Finance Ministry Guideline on transfer prices** and compare the draft Arbitration Act with the Arbitration Convention of 2006, successfully applied by our clients in larger tax disputes.

Our colleague with a fresh tax advisor's license Katarína Hoppe will summarize tax implications of the newly introduced **employee benefits**.

Together, we can take a short look at new developments in the VAT area, DAC 6, draft Arbitration Act or at a landmark ECJ judgement in several joint cases regarding the application of the beneficial owner concept.

Further, we will provide you with several useful links to interesting specialist articles and information published in the previous months. A detailed overview of legislative changes applicable since 01/01/2019 can be found in [our previous Mailing](#).

Of course, we have not forgotten the most important event to us: the [Global TAXAND conference in Paris](#) on 15-17 May 2019. If you would like to attend the conference, our company – the exclusive Slovak member of the world's largest tax organisation – is able to help you get a complimentary invitation.

Top 1: Tax reliability index and its advantages

The reason why we deal with this topic is that in the recent years, the Slovak tax administration has taken a harder line in the interpretation of tax and criminal law, especially in the field of VAT. In several of our cases, disputes have been initiated which lead or might lead to criminal prosecution, even though the taxpayers are reliable in the long term, file tax returns, pay taxes within deadlines and communicate with tax authorities without problems.

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In this respect attention is to be paid mainly to the division into two areas: 1) tax law and tax offences (responsibility for this area is borne by the tax administration), 2) criminal law and criminal offences (responsibility for this area is borne by public prosecutor's office). The index of the tax reliability is closely connected to these two areas.

Three categories of taxpayers

The indexation in Slovak tax law started in the previous year. Based on the recommendations of the EU, the tax administration took a step in the right direction and created, at an internal level, three categories of taxpayers (link to a useful EC presentation can be found at the end of the Newsfilter):

- a. Reliable (EU recommends that a "red carpet is rolled out");
- b. Potentially reliable (to whom a "helping hand" should be offered);
- c. Unreliable (non-cooperating firms where only repression helps).

Only the tax administration may decide in which of the categories the taxpayer belongs. The decision-making should be based on objective criteria, which have not been published by the financial administration yet.

Reliable taxpayers – advantages and criteria

What we know so far is, that in Slovakia, almost 60% taxpayers have been ranked as reliable. At the end of 2018, these taxpayers were officially offered a "red carpet" in form of an automatic entitlement to special advantages. Together, there are 20 advantages, published also on the website of the Financial Directorate. We will provide you with the list of advantages also in German or English language upon request.

The most important and most frequently applied advantages include:

- Granting the deferral of tax payment;
- Granting the request to pay tax advances in another way;
- Priority of local hearings to a tax audit;
- Agreement on the opening day and place of the tax audit with the taxpayer;
- Longer deadlines for the submission of comments and/or documents.

Based on the recommendations of the EU, objective criteria for classification of a taxpayer as unreliable include e.g. significant debts, ignoring requests to file tax returns or illegal employment. That is how it works in several CEE countries, including the Czech Republic and Hungary.

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It follows from the specific recommendations of the European Commission for Slovakia that the tax administration should work on the "improvement of voluntary discipline". If a taxpayer with "occasional problems cooperates voluntarily", it is a great success for the state. Otherwise, the financial burden for the Slovak state budget is significant. In its efforts to implement this recommendation, the management of the financial administration declared officially, prior to the introduction of the indexation, a "change from the repressive to the taxpayer-friendly approach".

Top 2: New Guideline of the Finance Ministry on transfer prices

At the end of 2018, the Slovak Ministry of Finance published the long-awaited Guideline, which is based on the original 2016 guideline as well as on OECD Guidelines.

The original aim of the Guideline was to lower the administrative burden of taxpayers in connection with the documentation, what has been achieved only partly.

With regard to small businesses, the simplification will apply to them only if they are obliged to keep shortened documentation. This documentation may be replaced by a form, the template of which is attached to the Guideline and which can become part of the tax return in the future.

As for the remaining taxpayers, the Guideline introduced stricter conditions, both regarding the size criteria (transactions over EUR 8 million or turnover over EUR 10 million) and the contents of the documentation (duty to describe the activities in more detail, including the function and risk analysis, financial data linked to the financial accounts of the company and also division according to particular related parties).

With regard to large companies which keep full-scope documentation, an extensive and more complex documentation will be required. Focus is put mainly on interconnection of various facts such as identification of profitability factors of the group, analysis of the supply chain, creation, holding and use of immaterial rights. Specific documentation stresses the importance of the transaction-related approach.

A new duty is the submission of contracts as part of documentation, which applies also to the basic documentation.

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Top 3: Taxation of new employee benefits

We have informed about the 13th and 14th salary during 2018, when this change came into effect. Since 1 March 2019, the rule for the right to claim tax exemption of the 13th salary changed. Originally, the 13th salary, if provided in the amount of the average monthly earnings, could be exempt from tax up to the amount of EUR 500, subject to the fulfilment of further conditions. When paying the 13th salary from June 2019, it will be possible to claim tax exemption of the amount EUR 500 if the 13th salary reaches at least EUR 500.

As of 1 April 2019, the tax bonus is doubled if the child is younger than 6 years (from 22 EUR to 44 EUR per month).

The contributions for the recreation of employees to be paid by employers with over 49 employees caused vivid discussions at the beginning of the year, too. One of the questions was how this duty can be met at the administrative level. Currently, there are two alternatives in which form the contributions can be provided:

- Employees ask the employer for the contribution and must submit the invoice for the recreation;
- Employers can use recreation vouchers which operate similarly as the meal vouchers.

Top 4: New developments in VAT area

On 01/01/2019, several changes came into effect, e.g. the reduced VAT rate of 10% applicable to accommodation services as well as to goods and services within the social economy. The tax security, introduced in 2012, was abolished, too. The amendment removes the option not to exempt the lease of flats, family houses and/or apartments in a residence building from VAT.

Now, it is possible to apply tax not only when supplying new buildings, but also older used buildings, if the purpose of the building use changes and the value of construction works during the reconstruction exceeds 40% of the value of the original building.

Starting from 01/10/2019, new rules will apply upon the supply of goods and services when using vouchers. The rules are in line with the Council Directive (EU) 2016/1065.

There was a change of dates for the new eKasa system (online cash registrar). All entrepreneurs must be connected to the system through certified providers latest by 1 July 2019, whereby the online registration can be performed between 1 April and 30 June 2019.

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Top 5: Automatic information exchange extended to cover aggressive tax planning (DAC 6)

Last year, the EU approved the extension of the Directive on automatic information exchange (2011/16/EU) to cover also cross-border measures which lead to potential aggressive tax planning, tax optimization or abuse of tax law. This extension of the Directive is known under the title "DAC 6" and its goal is to increase the transparency. Now, the reporting duty refers not only to taxpayers, but also to intermediaries (lawyers, tax advisors, auditors etc).

The Slovak Ministry of Finance is already working on the implementation of DAC 6. It has prepared a draft law, which will be adopted and published by the end of this year at the latest and applicable from 01/07/2020. However, the reporting duty will cover also the transactions conducted last year, if they were carried out after 25/06/2018. In this respect we recommend to all taxpayers preparing, as soon as possible, procedures and/or internal policy based on which the duties resulting from DAC 6 will be met and/or proved.

In brief

6. Draft Arbitration Act compared to the Arbitration Convention

The Act on the rules for tax dispute resolution will ensure greater legal certainty in the field of direct taxes. This Act is the implementation of the Council Directive (EU) 2017/1852. The new tax dispute resolution mechanisms in the European Union focus on the interpretation and application of bilateral double tax treaties. The advantage of the act is that it will be applicable to a large scale of tax disputes. The currently valid law at EU level (Arbitration Convention) is applicable only to transfer pricing disputes. A disadvantage are stricter conditions for the initiation of the international procedure.

7. Landmark ECJ judgements on the application of the beneficial owner concept

At the end of February, the ECJ published decisions on interpretation of the beneficial owner concept (including the one with SICAR investment fund structure) where the Royalty Directive (Luxembourg and Denmark) and Parent Subsidiary Directive (Denmark) should apply. They provide useful guidance to local courts of all member states. However, due to the fact that the final conclusion differed from the opinion of the Advocate General, future development will be of importance as well.

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8. Report on dispute resolution in Slovakia

The Report on Dispute Resolution for Slovakia was published together with the peer review on 14/02/2019. Its full wording can be found on the website of OECD.

9. Updated DTT list and MLI

The Slovak Ministry of Finance updated its double tax treaty list on its website and as of 1 January 2019 included also information on which of the 70 treaties have been modified by the MLI Convention.

10. Duplicity of entries in registers of beneficial owners removed

As of 1 January 2019, companies which are listed in the Registrar of partners of public sector do not have to perform the beneficial owner entry in the Commercial Registrar due by end of 2019 under certain conditions.

Useful links

[Presentations](#) from the event of the European Commission on tax fraud and approach of financial administration to tax fraud.

[Interview for Trend](#) on the topic European tax law on tax fraud and why the case KTAG, on which our team cooperates with law office Dentons, is an important precedent.

Slovak Ministry of finance updated the [double tax treaty list](#).

Invitation to the [Global TAXAND conference to be held in Paris](#) on **15-17 May 2019**.

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