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The hottest topic discussed in our summer BMB Newsfilter is the draft **amendment to the Income Tax Act** approved by the government at the end of May. Following several years of restrictions, we are pleased to announce that the upcoming changes which we describe in TOP 1 (corporate income tax area) and in TOP 2 (personal income tax focused on employees) are mainly **business-friendly**. It is **expected** that the draft amendment accompanied by the reduction in the income tax rate for small businesses from 21% to 15% will be definitely approved **at the autumn session of the parliament**, while the majority of provisions should become effective from 01/01/2020. The greatest benefit for companies will be the **increase in the "super deduction" of research and development expenses to its double amount**, i.e. to 200% of eligible costs.

We will inform you also about an interesting judgment in which our client was compensated by interest of **10% p.a. for unjustified retention of VAT refund** contrary to EU law. As the interest has been awarded to 25 companies in joint cases, it can be regarded as a precedent (TOP 3). Other VAT issues we report on include the already envisaged amendment known as "quick fixes" which transposes EU law and should come into effect from 01/01/2020 (TOP 4).

New international developments we discuss in brief include ICAP as an alternative to multilateral APA processes and, last but not least, we inform on the developments in digital tax, on changes to the Labour Code and on the amendment to the Act on Accounting.

TOP 1: AMENDMENT TO THE INCOME TAX ACT

As already mentioned, after a long time, the changes are finally business-friendly. We provide a short overview of the most important ones:

- A. **"Super deduction" of R&D costs increases from the current 100% to 200%**. Consequently, a new increase in the number of businesses claiming this relief can be expected. For the last tax period for which data is available (2017), the financial administration records 163 taxpayers claiming the super deduction, while the following companies reported the highest R&D costs and, accordingly, the highest annual tax savings: U. S. Steel Košice s.r.o. (18,472 TEUR), TATRAVAGÓNKA a.s. (2,211 TEUR), Continental Automotive Systems Slovakia s.r.o. (1,508 TEUR), Plastic Omnium Auto Exteriors, s.r.o. (1,348 TEUR), Siemens s.r.o. (1,215 TEUR) and Siemens Healthcare s.r.o. (1,146 TEUR).
- B. The attitude to countries with liberal tax regimes is changing significantly. The term "non-contractual state" is being replaced by "non-cooperative jurisdiction" and refers **only** to the countries listed on the **black list**. Currently, only 9 countries are listed on the black list, while none of them is EU-member.

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- C. **Rules for the utilization of tax losses will loosen.** After 01/01/2020, it will be possible to utilize tax losses during a period of 5 years (currently 4 years) without further restrictions (currently up to 25% a year).
- D. **The term "micro-taxpayer" is being introduced** (max. revenues EUR 49,790). Micro-taxpayers will be granted numerous advantages, including special depreciation terms, recognition of allowances for receivables and tax loss utilization without restrictions.
- E. A new **depreciation group for electric and hybrid vehicles** is being introduced with a depreciation period reduced from 4 to 2 years.
- F. The tax base threshold for **obligatory tax advances** increases (to EUR 5,000).

Despite the above listed business-friendly measures, the fight against aggressive tax planning continues and the below changes are being introduced to support it:

- A. The list of expenses which **may not be claimed as tax deductible unless paid** is being extended (rental payments, copyrights and know-how, marketing studies, any consultancy services, sponsoring and advertising expenses).
- B. In line with EU law (ATAD 2), **measures against hybrid mismatch arrangements** are being introduced also in relation to third countries.
- C. Stricter conditions for registration and reporting duty (within 15 days after contract conclusion) for **possible creation of permanent establishments** are being introduced. This change should become applicable from 01/01/2021.

TOP 2: CHANGES TO INCOME TAX RELATED TO EMPLOYEES

With regard to employees, some exemptions have been extended. Another important favourable change is the proposed reduction of administrative burden connected with the taxation of employment income. The main newly introduced exemptions and simplifications include:

- A. A new **exemption of benefits-in-kind up to EUR 500/year** received from all employers: the exemption will be applicable if the employer does not claim these benefits-in-kind as deductible.
- B. **Change in the calculation of exemption regarding transport provided to employees:** max. amount of the exemption will be **EUR 60/month**, whereas one place in a motor vehicle will be decisive for the purpose of expense calculation. This calculation of the exemption will be applicable from **01/01/2021**.

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- C. **The accommodation exemption** will rise from the current **EUR 60 to EUR 100/month**. This increased exemption amount should be applicable from **01/01/2020**.
- D. Extended option of **exemption for further education of employees** if costs are borne by the employer. Considering the increase in employee qualification, exempt income should include also expenses of the employer for the education of the employee, e.g. expenses for higher level of education of the employee (e.g. after the employee gets the bachelor degree, the employer will cover the costs for a higher degree education). Concerning this type of exemption, the duration of employment relationship will have to be tested (24 months).
- E. The currently applicable formula to **calculate the gross income-in-kind** is listed in Annex No. 6 to the Income Tax Act. As problems occurred when applying the formula in practice, the Annex No. 6 will be deleted from the law and the employer will be free to decide upon the way of calculation of the gross income-in-kind. This will reduce the administrative burden significantly.
- F. **Simplification of payroll processing:** The duty of employees to annually sign the declaration when claiming the tax-free personal allowance and the tax bonus is abolished unless changes occur. It will be possible to file the documents related to payroll processing electronically (e.g. changes related to tax bonus, application for annual tax reconciliation). The employer, too, will be able to issue and transmit electronic documents, e.g. confirmation of taxable income, annual settlement of wage tax advances or certificate of tax payment.
- G. The threshold for **obligatory payment of income tax advances** increases from EUR 2,500 to **EUR 5,000**.
- H. The deadline for the payment of wage tax advances by an economic employer (payment of wage tax advances for employees legally employed by another foreign employer) is being specified in more detail. In addition to this change, also the duty of individuals whose employer is not registered for wage tax in Slovakia to pay wage tax advances is specified.

TOP 3: SUPREME COURT JUDGMENT ON RECOGNITION OF INTEREST FOR VAT REFUND WITHHELD DURING TAX AUDIT

We would like to draw your attention to an interesting judgment of the Supreme Court of the Slovak Republic (SC), which was initiated by **our company** and ended in favour of our client. The core issue was the **VAT refund** withheld during a tax audit in 2010 and 2011 and included a total of 25 companies. The decision of the SC is based on the conclusions of the ECJ judgement in the case Kovožber. It states that, **in line with the VAT neutrality principle, the right to the VAT refund may not be recognized as late as after the audit ends.**

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Based on our argumentation already proven as reliable in other cases, **interest of 10% p.a. was granted as an adequate compensation.** In addition, the court claimed that the interest is to be awarded from the moment the VAT should have been normally refunded if it had not been withheld due to a tax audit, until the refund day. Given the fact that the interest was granted to 25 companies in a joint case, this decision may be regarded as a precedent.

Starting with 2017, the VAT Act introduced a compensation for retention of VAT refund during a tax audit amounting to double the ECB base interest rate (min. 1.5% p.a.), however, **no sooner than after the lapse of 6 months after the normal VAT refund deadline.** Such legal regulation may be contrary to EU law, too. If considerable amounts are at stake, we recommend consulting an expert.

TOP 4: AMENDMENT TO THE VALUE ADDED TAX ACT TO BECOME EFFECTIVE FROM 01/01/2020

The aim of the Amendment to the VAT Act prepared by the Slovak Finance Ministry is to transpose the Council Implementing Regulation (EU) 2018/1912 as regards certain exemptions for intra-community transactions.

We informed you on these temporary exemptions – “quick fixes” – in more detail last year. In brief, they include the following measures:

- A. Rules for a clear attribution of transport in the case of chain transactions, which should contribute to legal certainty.
- B. Introduction of the “call-off stock” regime. Until now, Slovakia has had unilateral provisions on consignment stocks in section 11a VAT Act. Now, within the process of EU law harmonisation, the amendment introduces provisions which are applicable both ways.
- C. Application of exemption for intra-community supply of goods. The VAT number of the customer will be a legal prerequisite for the application of the exemption. Another precondition for the application of the exemption will be the inclusion of the relevant transactions into the EC Sales List by the supplier.
- D. The regulation introduces strict uniform requirements on documents on an exempt intra-community supply. As for the particular documents which the taxpayer needs to apply the exemption, the law refers to the regulation. More detailed essentials of the confirmation of arrival are required if the transport is performed directly by the supplier or customer.

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Another change in line with the VAT Directive is the exemption for transactions with crude oil in bonded and special warehouses.

Further, the amendment **simplifies the supply of low value fixed assets free of charge**. It will no more be necessary to pay the VAT from the full acquisition price. For these purposes, the tax base will amount to fictitious residual value when considering the useful life of 4 years.

TOP 5: ICAP VERSUS MAP

The number of transfer pricing audits has risen dramatically in recent years and multinational companies experience higher pressure from tax authorities. Of course, there are a few efficient tools available for protection from double taxation, such as APA (Advance Pricing Agreements) or mutual agreements under EU Arbitration Convention. An advantage of these procedures is a legally binding agreement between tax administrations of the countries concerned. On the other hand, these procedures may take years and absorb substantial human resources.

OECD has therefore introduced a pilot project in form of a voluntary programme (International Compliance Assurance Programme, shortly ICAP). It is designed to be an efficient and coordinated approach to provide the multinational companies willing to engage actively and transparently with higher tax certainty in respect of their cross-border transactions.

ICAP does not provide the company with legal certainty, however, provides for comfort and assurance where tax administrations participating in the risk assessment consider the risk to be low.

The comfort level achieved may be compared to rating procedures already performed at a domestic level in a few countries including the Index of reliability in Slovakia (reliable taxpayer = low risk profile).

The outcome of ICAP is assurance from all participating tax administrations provided in written form, whereby the time frame for the next pilot approved in March 2019 is estimated to take less than 12 months. The participating taxpayers will be submitting documentation focusing mainly on available CbC reports and transfer pricing files.

Currently, tax administrations of 17 countries are involved and companies can volunteer to apply for ICAP Pilot 2.0 by the end of June 2019.

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Comparison of the certainty level of ICAP and other instruments for protection against double taxation:



Source: [OECD website, ICAP Pilot Handbook 2.0](#)

IN BRIEF

6. DIGITAL TAX STILL WITHOUT CONSENSUS

Despite enormous efforts, EU still has not succeeded in approving a common proposal of a **digital tax amounting to 3% of sales revenues of multinational digital giants**, as the approval of all member states is required. Consequently, **more and more countries opt for unilateral solutions**, recently also Austria (5% of online sales revenues) and the Czech Republic (as much as 7% of sales revenues from advertising). However, according to the opinion poll taken during the global Taxand conference in Paris, as many as 95% of tax professionals are of the opinion that a common global solution should be found instead of unilateral regulations. A new attempt to achieve a consensus initiated by OECD is planned to be published this summer. According to the information available to us, it should contain a condition of a significant economic presence including a "digital platform", to which also the current Slovak Income Tax Act refers.

7. ACT ON TRAVEL REIMBURSEMENTS

Since 01/06/2019, the new Regulation of the Labour Ministry has **increased**, after ten years without changes, **the reimbursement for the use of private motor vehicles for business trips**. The reimbursement amount for passenger cars rose from EUR 0.183/km to **EUR 0.193/km**.

8. EU DIRECTIVE ON SECONDMENT

The Slovak parliament has been submitted an Amendment to the Labour Code, approved by the government, which plans to **transpose the Directive (EU) 2018/957**. The aim is to introduce tightened conditions for the secondment of employees into Slovak law, such as:

- specification of provisions of Slovak labour law which will be applicable to employees seconded to Slovakia,

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- differentiation between short-term and long-term secondment (up to 12 or 18 months and over 18 months), when either the application of "hard core" conditions or of the whole Labour Code is required,
- calculation of the secondment period in the case of "chaining".

9. AMENDMENT TO THE LABOUR CODE

The draft Amendment to the Labour Code plans to introduce, from 01/01/2020, a voluntary contribution of the employer for sports activities of children of those employees who have been employed with the employer for at least 24 months. The employer will be able to contribute 55% of eligible costs, however, max. EUR 275. This contribution will be exempt from tax for the employee.

10. AMENDMENT TO THE ACT ON ACCOUNTING

According to the draft amendment to the **Act on Accounting**, the thresholds for obligatory audit should change and the rules for publishing financial as well as non-financial information should be simplified starting from the accounting period 2020.

The draft amendment aims to increase the currently valid thresholds for an obligatory audit of the financial statements as follows: gross value of assets EUR 2 million and net turnover EUR 4 million. The number of employees remains unchanged (30).

USEFUL LINKS

[Amendment to the Income Tax Act submitted to Slovak Parliament](#)

[Taxand conference](#)

[Black list published following a controversial diplomatic struggle](#)

[Information on digital tax published on EURACTIV portal](#)

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