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TAX AUDIT ADVISORY

BMB Newsfilter

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In this issue of Newsfilter, we would like to offer you a summary of the most important legislative changes for the last quarter. We have listed them in the sequence according to their importance. As usually, we take a closer look at the first three items, the rest of the top ten news is summarized briefly.

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TOP 1: CHANGES TO THE INCOME TAX FROM 01/01/2020

Below you can find a short summary of the changes to direct taxes approved in the course of 2019 and coming into effect in 2020 and later. Several changes were adopted through indirect amendments to other laws. The last change to the Income Tax Act was approved at the end of November. We informed you about all important changes in detail in the previous two issues of Newsfilter. In general, the **changes are business-friendly:**

Increased super-deduction of R&D costs

Slovak taxpayers have been able to claim the super-deduction since 2015. However, the super-deduction **increases to** as much as **200%** from 01/01/2020. Given the **relatively low administrative burden** and an **interesting possibility of tax optimisation,** this change should bring a new increase in the number of businesses that invest in innovations and claim this relief. Research and development activities do not have to be registered with the Commercial Register as the scope of business of the relevant companies. **The period for carrying forward the unclaimed part of the super-deduction** has been extended from 4 to **5 tax periods.**

More generous rules for carrying forward losses

The rules for **carrying forward tax losses** become less strict. Losses generated after 01/01/2020 may be carried forward during **5 years** (now 4 years) and also **unevenly**, max. up to **50% of the tax base.**

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More generous rules for the depreciation of assets

A new **depreciation group 0** for more advantageous depreciation of electric and hybrid vehicles with the depreciation period of 2 years (now 4 years) was introduced. This depreciation group may be first used when filing the tax return after 31/12/2019 and is applicable also to "old" assets.

The November amendment applicable from 01/01/2020 set new rules for the **depreciation of buildings** used for the **accommodation of employees** (option to depreciate buildings of the 6th depreciation group during 6 years, if at least 70% of the building is used for accommodation of core staff).

Favourable taxation of small businesses

The income tax rate reduction from 21 % to 15 % for small businesses is applicable to legal entities as well as to individuals (sole traders and self-employed persons) with annual turnover up to EUR 100,000.

In addition, micro-taxpayers (taxpayers with revenues max. EUR 49,790) will be able to benefit from various advantages from 01/01/2021, including better depreciation conditions, recognition of allowances to receivables and carrying forward losses without restrictions.

List on Non-Cooperative Countries becomes shorter

The attitude to countries with liberal tax regimes is changing. The term "non-contractual state" is being replaced by "non-cooperative country" 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.

As a result, the extent of payments subject to the withholding tax of 35% will be reduced significantly.

Changes to the payment condition

The payment condition is being extended by:

- expenses for advisory and legal services include now also services falling under the codes 70.1 (Activities of head offices) and 70.22 (Business and other management consultancy activities) of the Statistical Classification of Economic Activities;
- lump-sum compensation for costs related to recovery of a claim;
- contractual fines, late charges and late interest on the side of the debtor;
- severance pay on the side of the entitled person.

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Changes have been introduced also to the following fields:

- specification that the payment condition does not refer to expenses included to the acquisition costs of assets;
- expenses for marketing and other studies (condition of payment receipt on the side of the supplier has been deleted);
- intermediation costs (limit of 20% of the value of the intermediated transaction has been deleted);
- the payment condition is no more applicable to expenses for acquiring norms and certificates.

Threshold for paying tax advances increased

The threshold for the obligatory payment of tax advances has increased from EUR 2,500 to EUR 5,000 both for legal entities and individuals.

Rules for hybrid mismatches changed

In line with EU law (ATAD 2), **measures against hybrid mismatch arrangements** are being introduced also in relation to third countries from 01/01/2020. This applies to payments classified inconsistently on the side of recipient and payer (exempt dividends vs tax deductible interest).

Stricter approach to the registration of permanent establishments

From 01/01/2021, the notification duty regarding the eventual **creation of a permanent establishment** will be stricter (official registration template).

PAYROLL TAX – FOCUS ON EMPLOYEES

In the field of payroll tax, the employers will be able to decide from 01/01/2020 which way of **gross-up calculation of employee benefits in-kind** they will use.

From 01/01/2020, the exempt **accommodation contribution** of the employer increases from the current EUR 60 to EUR 100 per month. The amendment of 28/11/2019 has increased this exemption to as much as EUR 350 per month for employees employed for at least 24 months without interruptions with this employer.

The exemption is now applicable also to the expenses incurred by the employer for the **education of an employee**, provided the education level of the employee will increase and the education is related to the activities or business of the employer (condition – min. duration of permanent employment 24 months without interruptions).

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From 01/01/2021, the calculation of **exemption** applicable to the **transport** of employees to and from work provided by the employer changes, too. The exemption will amount **to max. EUR 60 per month,** while the basis for the cost calculation will be the **cost of one place in the motor vehicle**.

A new **exemption** of **other benefits in-kind up to EUR 500** per year received from all employers will be applicable from 01/01/2022, provided the employers treat these costs as non-deductible.

From 01/01/2020, the **payroll processes** simplify:

- the duty of employees to sign the declaration for the purposes of the personal tax-free allowance annually is being deleted, if there are no changes of conditions;
- payroll-related documents may be processed electronically (e.g. reporting the change of conditions when claiming tax bonus, request for annual tax reconciliation);
- electronic documents may be issued and transmitted also by the employer (e.g. confirmation of taxable income, annual reconciliation of tax advances).

Payment of payroll tax advances by the economic employer has been specified in more detail (payment of tax for employees legally employed by another, foreign employer).

TOP 2: VAT CHANGES FROM 01/01/2020 INCLUDING QUICK FIXES

The Amendment to the VAT Act applicable from 01/01/2020 implements mainly EU law – Quick Fixes. The aim of these changes is to make life easier for businesses and bring more legal certainty.

Simplification for call-off stocks

The first change is the introduction of a harmonized call-off stock arrangement. It is a simplification scheme applicable to supplies performed through a call-off stock. The arrangement is similar to the Slovak section 11a. However, it introduces more detailed rules and extensive recording duties both on the side of suppliers and purchasers.

Specification for chain transactions

Another change is the detailed specification of the VAT treatment of chain transactions. The identification of the movable supply (and, accordingly, the supply which may be exempt as an intra-Community supply) will depend on which VAT number will be reported for this transaction by the intermediary operator.

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Proof of transport and conditions for exemption

The new regulation of conditions for documents serving as a proof of transport for the purpose of exemption of intra-Community supplies laid down by the Council Implementing Regulation (EU) No. 2018/1912 has initiated an intensive discussion. This Regulation stipulates "maximum acceptable requirements" for such a proof. After their fulfilment, the taxpayer creates a "rebuttable presumption" that the transport took place. However, there are not changes to the Slovak VAT Act in this respect, the taxpayers will provide the proof of transport in the same way as now.

Another change is that the VAT number becomes a substantive condition for the exemption of intra-Community supplies. Further condition for the exemption will be a correct inclusion of the transaction under the relevant VAT number in the EC Sales List.

Other changes to the VAT Act

The amendment introduces also further changes, e.g. the exemption of certain commodities traded in selected types of warehouses with the aim to support international trade, or the reduction in the tax rate applicable to selected printed products and foodstuffs.

VAT refund in the case of unsettled invoices

Finally, we would like to bring to your attention the ECJ judgement regarding the VAT refund from unsettled outgoing invoices, as Slovakia has not introduced such a rule yet. The case concerns the company A-PACK CZ s.r.o. The court states in its conclusions, that the taxable amount is the consideration actually received (payment). This is the basic principle of tax base adjustment rules, e.g. in the case of price reduction, return of goods etc. The possibility to apply the exception with respect to the adjustment concerning unsettled invoices (banning the adjustment of the tax base) must be justified by the notion that the non-payment of consideration may be difficult to establish or may only be temporary. Within the meaning of this judgement, the legal regulations valid in the Czech Republic limiting the correction of the tax base from unsettled invoices if the debtor is no longer a taxable person for the purposes of VAT are not in line with the VAT Directive 2006/112/EC.

The ECJ judgement regarding the VAT refund from unsettled outgoing invoices is not the first of its kind. The Slovak Ministry of Finance has already published the information that they were analysing the possibilities of a VAT refund in these circumstances.

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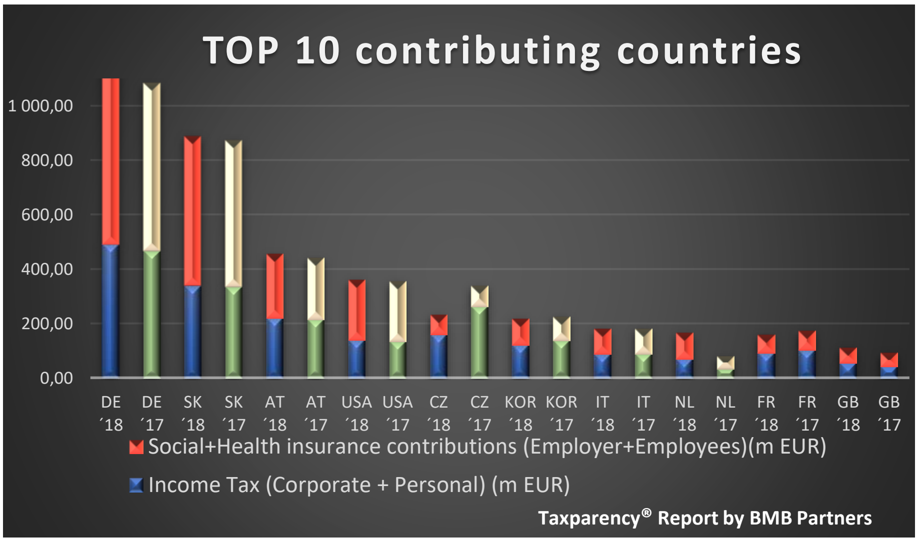
TOP 3: THE 2019 TAXPARENCY REPORT

In cooperation with FINSTAT and Trend, our advisory company has prepared the TAXPARENCY® Report for the third year in a row. As part of the report, **50 biggest contributors of direct taxes to the Slovak state budget are being evaluated**. The winner of the ranking for 2018 is Volkswagen Slovakia again, a company owned by a German investor. This year we have evaluated the climber of the year for the first time. This award was granted to US Steel Košice.

This year's TAXPARENCY® Report contains very interesting facts and information. As for the source of capital, the biggest contributors to the Slovak state coffers are companies from other EU Member States again. Their share has reached more than 44 %. Just as in previous years, German companies contributed bigger amounts to the state budget than Slovak firms:



Source: http://finstat.sk/; gross calculations; manual search according to the Ultimate Parent Company Seat Concept

WHAT CHANGES DO THE BIGGEST TAXPAYERS PREFER?

This year, our tax advisors have expanded the study by a survey, in which the biggest taxpayers were asked which three out of the ten most often discussed tax measures and changes they rank as most important. Just as we have expected, the clear winner is the <u>decrease in the total tax and social security burden on work marked by as many as 25% big taxpayers</u>. What came as a surprise is that the second and third place were taken by tax law measures with qualitative and not with economic impact. Rather than further decrease in tax rates and extension of tax relief, the companies would welcome <u>more predictable changes and an overall simpler tax system.</u>

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For the complete version of the TAXPARENCY® Report go to the website of BMB Partners.

TOP 4: HIGHER REAL ESTATE TAXES FROM 01/01/2020

To replace the drop in revenue from personal income tax (alone Bratislava will lose EUR 8 million), the Union of towns and cities of Slovakia and, on 5 December also the Mayor of Bratislava, have published a proposal to increase the real estate tax substantially. The city councillors of Bratislava adopted the increase in the real estate tax promptly at its last this year's session on 12/12/2019. Consequently, the new rates will come into effect from 01/01/2020, which means they will be applied already in the 2020 real estate tax returns and in the tax assessments issued in the course of 2020.

Overview of the new tax rates in EUR per square meter for Bratislava:

Zone	Flats	Residential houses	Non-residential space used for business	Industrial constructions	Administrative constructions	Gardens Building plots
A	0.90	0.90	3.50	5.75	7.00	0.90
B	0.90	0.90	4.00	6.00	7.50	1.00
C	0.95	0.95	5.00	6.50	8.50	1.10
D	1.00	1.00	6.00	7.00	9.00	1.25

A - Vajnory, Vrakuňa, Podunajské Biskupice
B - Čunovo, Devín, Dúbravka, Jarovce, Karlova Ves, Lamač, Rača, Rusovce, Devínska Nová Ves, Záhorská Bystrica
C - Nové Mesto, Vinohrady, Ružinov, Trnávka, Petržalka, Nivy
D - Staré Mesto

More tables and details of the new rates can be found here.

TOP 5: SLOVAK TAX ADVISORS ARE PRIVILEGED AFTER DAC 6 IMPLEMENTATION

DAC 6 has been implemented at national level in Slovakia by the Act 305/2019 that will enter into force on 1 January 2020. The Slovak Ministry of Finance informed that there was no intention to make the rules for reporting aggressive tax planning stricter or more demanding than the EUROPEAN DIRECTIVE ATAD (DAC 6) and the new law almost fully corresponds to DAC 6.

Moreover, the disclosure obligations will only apply to the cross-border arrangements and only to the income tax area. On the other hand, the law imposes penalties of up to EUR 30,000 for the failure to comply with disclosure obligations, which can be imposed repeatedly.

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The position of Slovak tax advisors as intermediaries is privileged. They have the legal professional immunity and confidentiality vis-a-vis their clients with only a few exceptions. On the other hand, the disclosure obligation can shift to the relevant taxpayer of the tax arrangement unless the process is sufficiently documented. As a result of the professional privilege above, tax advisors cannot be penalized in most cases.

The DAC 6-related provisions of the new law will come into force on 1 July 2020. The reporting obligations will apply with retrospective effect since 25 June 2018.

Together with TAXAND we have designed a few simple tools as well as decision trees to enable our clients to document their reporting process properly. We would be pleased to share them with you upon your request.

TOP 6: TAXAND SURVEY ON LICENSING INTANGIBLES

55% of the 38 surveyed countries have recently issued a specific law on how to document intercompany transactions involving intangibles. However, when looking closer, the majority of the jurisdictions have simply embraced Action 13 of the BEPS action plan without going into many more details. Of the 38 survey respondents, 36 indicated the comparable uncontrolled price/transaction (CUP/CUT) method as the most common transfer pricing methodology adopted for intercompany licensing transactions. When applied, the CUP method relies on internal comparables or more often on database studies for external comparable license agreements. Database studies are generally accepted in 37 of the 38 jurisdictions under survey.

Slovakia follows the mainstream approach above. Moreover, it applies in practice a similar safe harbour rule to license fees as to interest expense (25% of EBITDA), even though it is not enacted.

If you are interested in the complete study, please write us a short email.

TOP 7: BANK LEVY IN SLOVAKIA WILL DOUBLE

According to the proposal approved by the Slovak Parliament, starting from 2020, the bank levy will amount to 0.4 % of selected liabilities. Consequently, this levy alone will cost the banks more than two fifths of their profits. Banks have already indicated that they will refuse to pay the levy and challenge it before the Constitutional Court. A detailed opinion of our partner on this topic can be found in the Panel of experts.

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TOP 8: NEW CRITERIA FOR STATUTORY AUDITS

The approved Amendment to the Act on Accounting applicable from 01/01/2020 changes the size criteria for statutory (obligatory) audits. Until now, the audit requirement has applied to companies which have fulfilled two out of three following conditions in two latest accounting periods: gross amount of assets exceeded EUR 1 million, net turnover exceeded EUR 2 million or average calculated number of employees in one accounting period exceeded 30. From January, the first two criteria double. The total amount of gross assets increases to over EUR 2 million and the net turnover to over EUR 4 million. The size criterion regarding the number of employees remains unchanged. The new size criteria are generally comparable to similar EU countries.

Nevertheless, we recommend that companies affected by this change maintain the continuity in auditing their financial statements to ensure the continuing quality and transparency of bookkeeping.

TOP 9: DEVELOPMENT IN OECD TENDS TOWARDS A NEW TAXATION SYSTEM

Last month, the Czech Parliament approved a 7% tax on sales revenues from advertising for technology giants. Even though the EU has still not succeeded to agree upon a uniform tax, there is an intensive discussion at G20/OECD level regarding a new taxation system, desisting from the traditional taxation of profits according to the tax residence and leading to the taxation of profits depending on where the profits are generated, i.e. where the customers are. The final proposal is expected to be submitted in January.

TOP 10: SLOVAKIA'S RATING A+ WITH STABLE OUTLOOK

Good news for Christmas for all entrepreneurs: Fitch Ratings confirmed the rating for Slovakia A+ with stable outlook. This information was published by the press department of the Slovak Ministry of Finance. The international rating agency stated that the main factors which have led to the positive rating of the country include mainly the stable inflow of direct foreign investments, favourable structure of foreign debt and institutional power. Another favourable factor was a well-capitalised and liquid banking sector. According to Fitch Ratings, short-term risks for the Slovak automotive industry related to the links to the German supply chain, Brexit and the American pro-export policy are manageable for Slovakia.

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Authors: our tax advisors


Renáta Bláhová


Katarína Hoppe


Judita Kuchtová

BMB Partners
Zámocká 34
81101 Bratislava
T +421 2 212 99 000
M bmb@bmb.sk
www.bmb.sk
www.taxand.com