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The second quarter of 2020 brought dynamic changes, not just as a result of pandemic, but in Slovakia, mainly as a result of the new government of Igor Matovič, which was formed after the February parliamentary elections. The new government, surprisingly consisting of members of 4 former opposition parties, approved its [Program Statement](#) on 24/04/2020. The document describing the vision of the government for the years 2020 – 2024 on 120 pages was approved by the Parliament on 30/04/2020. The government has a constitutional majority, thus it can be expected that the government will take a consistent approach in fulfilling its programme.

The primary goals listed in the Program Statement include the fight against corruption and tax evasion, better transparency of public administration, large-scale reform of justice with the aim to restore the trust in the rule of law, but also a major focus on the improvement of the business environment, including “100 measures for businesses”.

The Ministries of Finance, Economy and Labour have already initiated a discussion on these significant changes to Slovak legislation (TOP 1, 2 and 5). Thanks to our colleagues who have been members of advisory teams of the Finance and Labour Ministries since April, we are proud to participate in the creation of these changes.

As we have informed you in our first 2020 Newsfilter, the pandemic has lead to the adoption of a number of aid packages in Slovakia, which are continually updated and extended. We have held several seminars and prepared a number of updates focusing on this topic (TOP 6). International law has seen dynamic developments, too. We would like to draw your attention mainly to transfer prices, OECD analysis on the impacts of home office and postponed deadlines for international information exchange (TOP 3, 7 and 8).

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TOP 1: PROGRAM STATEMENT OF NEW SLOVAK GOVERNMENT AND CHANGES IN TAX

The new government formed after the February elections approved its [Program Statement](#) on 24/04/2020. The document describing the vision of the government for the years 2020 – 2024 on 120 pages was approved by the Parliament on 30/04/2020. The primary goals listed in the Program Statement include the fight against corruption, better transparency of public administration and large-scale reform of justice with the aim to restore the trust in the rule of law. As for the business environment, the Program Statement contains the following important point:

- Better position of Slovakia in rankings evaluating the quality of business environment,
- Creating favourable conditions for the progress of small, medium as well as large enterprises,
- Introduction of a uniform fixed tax and social/health insurance contributions for self-employed and small businesses,
- Introduction of a universal free trade,
- Better predictability of law: laws important for business will be amended only once a year (always as at 1 January),
- Non-increasing and in the next step decreasing the regulatory burden: from 2021 "1 in 1 out" principle, from 2022 "1 in 2 out",
- Elimination of duplicity and decreased frequency of audits (especially if no violations were identified in the past), chance to remedy administrative infringements without sanctions,
- Elimination of duplicity of obligatory reports and statements,
- Decrease in administrative burden, so that companies concentrate on doing business, not bureaucracy,
- Improvement of competitiveness and diversification of the Slovak economy, support of investments creating high added value, support of digitalisation and automation.

On 24/06/2020, the government approved the first part of the envisaged "100 measures for businesses". Out of over 100 minor measures we have selected our "TOP 5":

Extension of the deadline for the submission of the documentation requested by the tax administrator from 15 to 30 days
Tax deductibility of the actual fuel consumption (now: according to the vehicle registration certificate (VRC), new: VRC + 20 %)
Abolition of the fine for minor mechanical damage of and spelling mistakes on the sales receipt, if the receipt contains all essentials
Abolition of the duty to issue the TIN and VAT No. certificates
Abolition of the duty to report changes to the tax administrator the information on which is accessible to the tax administrator under § 36 (1) (e.g. changes in the Commercial Register)

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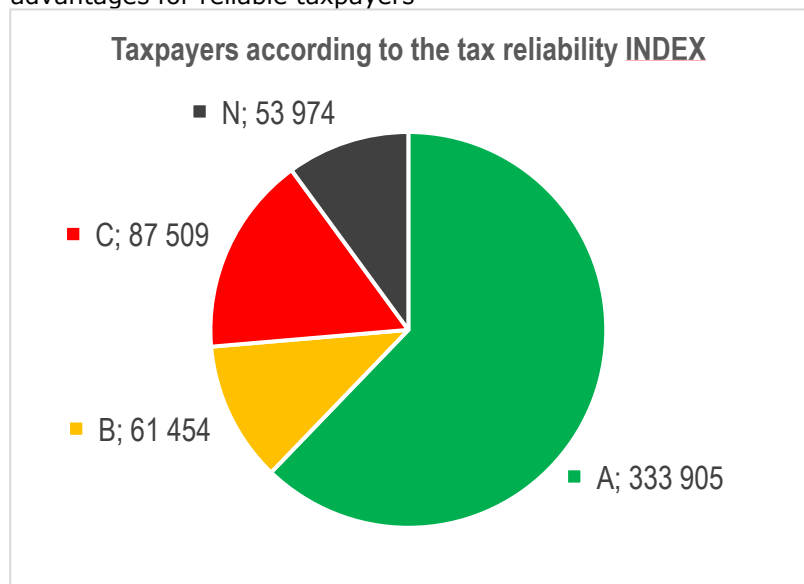
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The following changes with impact on taxes and falling under the above areas have been already prepared and will be subject to the complete legislative procedure. It is expected that they will be adopted in the Autumn:

- tax reliability index: better transparency in criteria and bigger advantages for reliable taxpayers



*a total of 536,842 taxpayers were assessed
Source: Press release of the Slovak Financial Directorate

- extra fast depreciation to motivate technology investments in projects which meet the criteria for Industry 4.0.
- CFC rules for individuals with the aim to eliminate the abuse of shell companies in low-tax jurisdictions (dividend approach is proposed instead of the transactional approach introduced in 2017 for legal entities)
- stricter criminal law for evasion of direct taxes with the aim to eliminate speculative abuse by aggressive taxpayers (provision on active repentance introduced in 2013 should be deleted).

TOP 2: NEW RENT SUBSIDY AND ITS TAX ASPECTS

With respect to rents, financial aid during the COVID-19 pandemic developed gradually, starting with the protection of lessees against rent termination as resulting in the possibility to receive, subject to meeting the prescribed conditions, a 100% rent coverage. The legal regulations are aimed to help lessees that were struck by COVID-19 pandemic and had no access to their premises, had to close their premises or final consumers had limited or no access to their premises.

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In April, an amendment to Lex Corona was adopted, providing a legal framework for the protection of the lessee against a unilateral termination of a rental contract by the lessor until 31/12/2020, if the lessee does not settle the rent for the period 01/04/2020 – 30/06/2020. The right of the lessor to collect the rent did not cease to exist and the lessee was obliged to settle the rent by 31/12/2020 at the latest. It was a temporary regulation according to a German model ("moratorium").

On 09/06/2020, the Parliament adopted an amendment to the Lex Corona, providing a legislative framework for rent subsidies. On 17/06/2020, the state aid scheme for direct non-repayable rent grants was approved also by the European Commission (EC). [EC approved the state aid scheme](#) in the amount of € 200 million. This aid scheme was approved within the temporary legal framework for state aid provision adopted by the EC on 19 March, which was changed and amended on 3 April and 8 May. Under the scheme, the state aid may not exceed € 800 thousand per company and may be provided max. until the end of 2020.

The key principle of the amendment is that the state provides rent subsidy in the same amount in which the lessor provides a rent reduction to the lessee. **Maximum amount of the subsidy may reach 50% and companies who own the premises will not be entitled to apply for it. Thus, the lessees may receive coverage of their rent costs in the amount of 100%.**

The rent subsidy may be granted for rent payment payable to the lessor under a rental or similar contract.

Preconditions:

- **rental** relationship between the lessee and the lessor has lasted at least since **01/02/2020, and**
- the **use of rented premises** for the agreed purpose **was** made impossible due to COVID-19 measures of public authorities **by closing the premises or greatly limited due to the ban on the access to the premises for the public** (hereafter "aggravated use").

Subject of the rent:

- non-residential premises (or room or its part) in which the lessee sells goods or supplies services to end consumers, including service rooms and storage area, or
- market stand.

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Addenda to rental contracts concluded after 12/03/2020

Changes of rental or similar contracts concluded after 12/03/2020 are disregarded for the purposes of the rent subsidy. Where rent amount change was agreed after 12/03/2020, such change has no impact on the rent subsidy amount.

Application for the rent subsidy – filing

Applications for the rent subsidy are **filed by lessors on behalf of the lessee and for own account**. Filings are to be made electronically using the [form](#) published on the website of the Slovak Ministry of Economy. There is no need to attach the agreement on rent reduction, as sending the electronic form has equal effects as this agreement, assuming the signatures of the lessee and the lessor are authorized under the e-Government Act.

Special provisions

Where the requested rent subsidy exceeds **€ 100,000**, the application for rent subsidy must include the information on the **beneficial owner**.

The rent subsidy will be transferred by the Ministry to be Lessor based on the notification of the approved subsidy, which will be sent electronically to both the lessor and the lessee.

The rent subsidy will be granted in the same amount in which the rent reduction was granted based on an agreement between the lessor and the lessee, however, max. in the amount of 50% of the rent for the period of aggravated use. The rent amount **may not include rent-related services and costs** (e.g. utilities, turnover-based payments). Where it is not possible to separate these payments, rent-related services will represent 5% of the usual rent amount.

To summarize, the lessee will pay to the lessor the unsettled rent for the period of aggravated use less rent reduction provided by the lessor and less rent subsidy transferred to the lessor by the state.

The unsettled rent may be settled by the lessee to the lessor in max. 48 equal monthly instalments due on 15th day of the relevant calendar month (unless the lessor and the lessee agree otherwise). During the instalment period, **neither the lessor nor its legal successor is entitled to increase the rent unilaterally**, unless the right to increase the rent unilaterally was agreed before 01/02/2020.

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Procedure if rent has already been paid

The law considers also cases when the lessee has already settled the rent for the period of aggravated use (or its part) to the lessor. In such a case rent subsidy may be applied for based on an agreement on rent reduction between the lessor and the lessee **for an equivalent future period.**

Payment of rent if no rent reduction is granted by the lessor

Regardless of whether the lessee and the lessor agree on the rent reduction, the lessee may pay the unsettled rent for the period of aggravated use in max. 48 equal monthly instalments (unless agreed otherwise).

See below for a model case in practice:

The lessee has met all the conditions for the rent subsidy. It rents premises which had to be closed or the access to them for end customers was limited due to COVID-19 pandemic. The monthly rent amounts to € 10,000 excl. VAT and utilities. The lessee and the lessor agreed on a rent reduction of 30% i.e. of € 3,000. The equal amount will be granted by the state in form of a direct non-repayable grant in the amount of € 3,000. Accordingly, the remaining amount of € 4,000 will have to be paid by the lessee. The lessee can settle this amount in 48 equal instalments always due on 15th day of the month following the month in which the extraordinary situation ends.

In what amount is the rent borne by the subjects?

Rent (excl. VAT)	Lessor	Lessee	State
€ 10,000	€ 3,000	€ 4,000 *	€ 3,000

*max. 48 equal monthly instalments

In this case, the lessor will reach rental revenue of € 7,000.

Tax aspects of rent subsidies:

- According to the current tax law, subsidies fall within taxable income. However, an exemption is being considered.
- The new regulations will have an impact on the amount of depreciation charges of leased assets, as under tax law, depreciation charges may be claimed only up to the amount of rental income.
- Lessees may claim the rent as tax deductible expense no sooner than it is actually paid. After claiming the rent reduction, only the amount actually paid by the lessee in instalments will be deductible for tax purposes, unless the lessee is granted a 100% coverage of rent (50% lessor, 50% state).

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- We recommend preparing the agreement on rent reduction in cooperation with an advisor in order to eliminate doubts in connection with claiming VAT.

TOP 3: TRANSFER PRICES IN 2020

The crisis triggered by the COVID-19 pandemic will have a dramatic impact on the economies of numerous countries as well as on market conditions in a number of sectors. In order to comply with the arm's length principle, multinational enterprises (MNE) will have to adjust their transfer prices so that these reflect the changed conditions. We recommend focusing on the analysis and adjustment of transfer prices as soon as possible and not waiting until the end of the tax period.

Some companies within the group perform "routine" (e.g. distribution or manufacturing) activities, others are decision-making Steering companies ("Entrepreneurs"). Companies performing routine activities are attributed less important functions and minor risks – in return for a small, but stable profit. Steering companies keep the remaining profit but bear also the risk of eventual losses. If a MNE generates a much lower profit or a loss due to a crisis, it is necessary to deal with the question whether the company performing routine activities is to be attributed the same stable profit despite the crisis. During the 2008 financial crisis, the profit margins of these companies decreased, depending on the particular sector. Several fields will require an analysis:

- When setting transfer prices, comparability analyses based on the data for previous years are widely used. Price formation relying on pre-crisis data which no longer reflect the changed market conditions and may lead to incorrect price setting and overpaying taxes. Of course, such an approach will most likely be challenged by tax authorities in the country of residence of MNE, as countries will be eager to find additional tax revenues. Adjusting comparability analyses is a cost-efficient way for MNEs to adapt their existing transfer pricing policy and ensure they neither overpay taxes in 2020 nor bear significant tax risks.
- Where a company within the group receives state aid as a measure to support the economy, it is necessary to analyse the impact of this payment on transfer prices.
- Royalties for the use of trademarks or patents the amount of which depends on sales revenues should be subject to a review, too. If sales revenues decrease due to the crisis, the amount of royalties falls, too. However, in some cases sales revenues may remain relatively stable during the crisis, while costs may rise as a result of measures against COVID-19, leading either to a loss or a significantly lower profit. In these circumstances, the crisis should be a reason to negotiate changes to licence agreements.

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- We recommend analysing also extraordinary costs incurred due to COVID-19, in particular whether these costs should be allocated to the particular companies within the group. If the costs were incurred for services from which the recipient benefits and for which it would be willing to pay to an independent third-party provider or to perform them itself, the costs are to be allocated. In the next step it should be analysed, depending of the service type, whether the particular service is to be allocated using the cost-plus method and applying a mark-up or without a mark-up.

TOP 4: VAT AND NEWS FROM ECJ

Uncollectible receivables

In our BMB Newsfilter for 4th quarter 2019, we have informed you about the ECJ judgement regarding the VAT refund from unsettled outgoing invoices. This case concerned the Czech company A-PACK CZ s.r.o. The court stated in its conclusions that the taxable amount is the consideration actually received (payment). Last year, the Slovak Ministry of Finance indicated it was analysing the possibility of a VAT refund in the case of unsettled invoices. The proposal of such a regulation is already in the [legislative procedure](#) (submitted to cross-sectoral comments, to be closed on 02/07/2020). According to the information available to us, an option to decrease the tax base (only by the unsettled amount) after the origination of the tax liability should be available if the delivered goods or supplied services are **completely or partly not paid for** by the customer and the receivable is **uncollectible** (enforcement proceedings, bankruptcy, decision of the court on debt relief of the customer, death of the customer). No special relation under the VAT Act may exist between the customer and the supplier.

The correction is to be made by the supplier no sooner than in the VAT return for the tax period in which the receivable became uncollectible and no later than 3 years after the lapse of the filing deadline for the VAT return for the period in which the supply was realized. The issued correction document must refer to the new provision (section 25a). The provision is expected to come into force on 01/01/2021. The amendment will be subject to the regular legislative procedure and its wording might change.

Rebates

Please note there is a new [ECJ judgement](#) of May 2020 regarding the rebates/price reductions provided to a customer after the realisation of the supply subject to fulfilling certain conditions. World Comm Trading Gfz SRL concluded a contract for distribution of mobile phones with Nokia Corporation. Nokia corrected the tax base of World Comm Trading through a subsequent provision of a volume-based rebate. The rebate was provided to local supplies as well as acquisitions in another member states.

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At the time the rebate was provided, Nokia was no longer registered for VAT in Romania. Consequently, Nokia issued a credit note under its Finnish VAT number (including the local supplies in Romania). The disputed question is whether each member state should request the decrease of the originally deducted VAT, in which case the credit note should have been issued in relation to original supplies in the relevant states.

The ECJ decided that under the VAT Directive, national authorities must impose a duty on VAT registered entities to adjust the originally deducted VAT, if the VAT registered entity deducted a higher amount after the rebate was granted that it was entitled to. At the same time, ECJ concludes that the correction is to be made in the member state of the original supply, even if the supplier (who paid VAT from original supplies) has already finished its activities in the member state and will not be able to request the refund, even if it has paid a higher amount.

It should be added that the corrections made by World Comm Trading and Nokia have a neutral impact on state budgets. Nokia should decrease its tax liability by the VAT from the rebate provided on the local supply in Romania and the equal VAT will be paid by World Comm Trading to the Romanian state budget.

In similar cases we recommend that the VAT registered entities agree in contracts that, in the case of price reductions of goods or services after the origination of the tax liability, neither the tax base nor the tax have to be adjusted. The parties make financial compensation only.

TOP 5: PERMANENT KURZARBEIT IN SLOVAKIA

At the end of May, the European Commission submitted a proposal of the revised EU budget for the period 2021-2027 in total amount of € 1,850 billion and published also the [2020 Commission Work Programme](#), prioritising the actions needed to propel Europe's recovery. Also the Slovak government will receive several extra billions and plans to use them to finance the [permanent kurzarbeit scheme](#), which is already being prepared by a cross-sectoral expert commission.

We have already informed you of the intension of the Slovak government to introduce a permanent kurzarbeit scheme in the Spring issue of our BMB Newsfilter. The aim of the scheme is to preserve jobs during more challenging economic times. Kurzarbeit or "short-time work" is a system under which working time as well as salaries of employees are shortened, while the state covers part of the wage costs under precisely defined conditions. In some countries, e.g. Austria, Belgium, Germany, France, Denmark or Switzerland, kurzarbeit looks back on a long tradition, other countries introduce the concept now.

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Two months after the introduction of the temporary kurzarbeit scheme during the Covid-19 pandemic it is obvious that hundreds of thousands of jobs can be protected in this way.

Working on the new regulations, Slovakia wants to profit from the experience of other countries, including Germany, where kurzarbeit has been successfully functioning for years. Kurzarbeit models applied in particular countries are very heterogenous and differ in a number of parameters, such as the amount of the wage reimbursement, duration and way of financing. In cooperation with the Labour Ministry, the Social Policy Institute has prepared a concept of introduction of permanent kurzarbeit and analysed the already existing schemes in a number of other countries.

The government plans to adopt the new regulations until the end of the year. The initial costs to launch the scheme are expected to be covered from extra EU funds to be provided to Slovakia.

TOP 6: UPDATE OF THE COVID-19 FINANCIAL AID PACKAGE IN SLOVAKIA

Since the introduction of the first Measure on 06/04/2020, the financial aid package to help mitigate the impacts of COVID-19 has been gradually extended. Currently, taxpayers have several options how to apply for financial aid.

There are 5 Measures available to businesses and taxpayers provided and administered by the Labour Ministry:

Measure 1 (for mandatorily closed operations)

Measure 2 (for self-employed who pay social insurance contributions – minimum decrease in sales 20%)

Measure 3A (temporary KURZARBEIT scheme – 80% average salaries of employees)

Measure 3B (lump-sum contribution per employee depending on the decrease in sales, max. 80% of gross salary)

Measure 4A (for self-employed who do not pay social insurance contributions)

Measure 4B (for self-employed - "one-person limited liability companies")

Measure 5 (citizens in crisis – e.g. working based on work agreements).

Applications and statements under the Measures 1 and 3 (3A, 3B) for April may be filed within the **extended deadline until 30/06/2020**. Applications for May under measures 1 and 3 **may be filed until 31/07/2020** and under Measure 2 (self-employed) until 30/06/2020.

Taxpayers may apply for financial aid also for July – the deadline 31/08/2020. Further extensions are considered.

For more details on this issue see the [presentation](#) to our [webinar](#).

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TOP 7: COVID-19 AND HOME OFFICE ACCORDING TO OECD

The Covid-19 pandemic has a potential impact on international taxation, too. Due to travel restrictions, many individuals are unable to physically perform their work in their country of employment and may have stayed working from home or a place other than the usual place of work performance located in another country.

OECD has published a special [analysis](#) on this issue, based on the basic presumption that the Covid-19 pandemic is an extraordinary and temporary situation. The analysis focuses on the following topics:

- Creation of a permanent establishment: It is unlikely that the home office activity of employees will lead to the creation of a permanent establishment of the employer in another country, as this activity does not have the required degree of permanency and the employees work from home not as a result of the employer's requirement.
- Taxation of employee income: Generally, taxation rules under Art. 15 of bilateral double tax treaties apply. However, where a government has stepped in to subsidise the keeping of an employee on a company's payroll, the income that the employee receives from the employer should be attributable to the place where the employment used to be exercised. OECD recommends more intensive coordination between countries.
- Change of the residence status of individuals and companies: Generally, the Covid-19 pandemic should not lead to the change of the residence status, as the dislocation is a result of extraordinary circumstances and is temporary. Of course, OECD recommends a complex analysis in specific cases.

The Slovak Ministry of Finance concurs with conclusions of the OECD analysis and has published its [shortened version](#) in the Slovak language on its website.

TOP 8: COVID-19 AND POSTPONEMENT OF EU TAXATION MEASURES

To take account of the difficulties that businesses and Member States face due to the Covid-19 crisis, the European Commission (EC) proposed to [postpone the entry into force](#) of two EU taxation measures in May 2020:

- EC has proposed to postpone the entry into application of the VAT e-commerce package by 6 months. These rules will apply as of 01/07/2021 instead of 01/01/2021, giving Member States and businesses more time to prepare.

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- EC has proposed deferring certain deadlines for filing and exchanging information under the Directive on Administrative Cooperation (DAC). Based on the proposed changes, Member States will have three additional months to exchange information on financial accounts of which the beneficiaries are tax residents in another Member State (DAC 2). Similarly, Member States will have three additional months to exchange information on certain cross-border tax planning arrangements (DAC 6).

On 19 June, the European Parliament voted in favour of the deferral of reporting deadlines under DAC 6. Instead of the three-month deferral originally proposed by the EC, an optional six-month deferral was approved. It is up to each Member State to opt for and communicate the deferral. Slovakia is considering the deferral by the whole 6 months.

TOP 9: CHANGES TO COMMERCIAL LAW

Changes to the Commercial Register Act

From 01/10/202, applications for Commercial Register entries will be filed electronically only. Currently, subjects may opt for paper or electronic filings. The aim is to ensure more transparency and efficiency.

Another important change is the deletion of numerous inactive companies. The deletion will affect mainly companies that still have not converted their registered capital to the euro currency, companies that entered liquidation before 01/10/2016 and are bankrupt etc.

Changes to the Commercial Code

The most important change is the change in the process of dissolution and liquidation of corporations.

From 01/10/2020, a company may be subject to liquidation if it does not file its financial statements for over 6 months after the filing deadline.

A company will be dissolved without liquidation only after all the assts are transferred to the legal successor or if no liquidation prepayment (prepayment for liquidator fees and costs) is paid after the company is dissolved by court. This will eliminate situations when the value of the company's assets is not sufficient to cover these costs.

Under the new regulation, the day when the company enters the liquidation is not considered to be the day of company's dissolution, but the day when the **liquidator is registered with the Commercial Register**. Once the company enters liquidation, the competencies of the statutory body are transferred to the liquidator. Further, once the company enters the liquidation, all unilateral legal actions of the company cease to exist (instructions, authorisations, powers of attorney, proxies).

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The liquidator is obliged to prepare a list the assets and receivables which will be deposited with the collection of deeds.

The term “**company in crisis**” will include also **companies after dissolution before they enter liquidation**.

Once the company is dissolved and before it enters liquidation, the disposal of its assets the value of which exceeds 10% of the registered capital is subject to the expert’s opinion and approval by the supreme company body. A legal action resulting in disposal of assets may not become legally valid before it is deposited, together with the expert’s opinion, with the collection of deeds.

The amendment states that the person subject to enforcement proceedings will not be allowed to establish a limited liability company. This change will affect also the transfer of business shares. Such a person will be allowed neither to acquire a business share nor to transfer its business share to another person, including a shareholder.

TOP 10: AMENDMENT TO THE LABOUR CODE

Repeated conclusion of fixed-term employment contracts (3x)

On 09/06/2020, an Amendment to the Labour Code was adopted by the Parliament, introducing the option to repeatedly extend the employment for a fixed period.

For now, the change is only temporary (expires two months after the end of pandemic), however, its more permanent character is being considered.

Fixed-term employment the agreed period of which ends under section 59 (2) during the extraordinary situation and which does not meet the conditions for an extension under section 48 (2) (“*fixed-term employment may be extended max. twice during two years*”), may be extended one more time for a maximum of one year.

Fixed-term employment which ended during the extraordinary situation and which does not meet the conditions for a repeated conclusion under section 48 (2) (“*fixed-term employment may be repeatedly concluded max. twice during two years*”), may be repeatedly concluded one more time for a maximum of one year.

To put it simply, fixed-term employment the agreed period of which ended or should end during the extraordinary situation, may be extended or repeatedly concluded max. three times within three years.

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Under section 250 (o)(2), the employer is obliged to discuss the extension or repeated conclusion of a fixed-term employment contract under section § 250(o)(1) with employee representatives in advance. If such discussions do not take place, the employment is considered to be concluded for an indefinite period.

USEFUL LINKS

[Program Statement of New Slovak Government for 2020 – 2024](#)
[Rent subsidy application form](#)

[EC approved the state aid scheme for rent](#)

[Draft change to the VAT Act](#)

[ECJ judgement of May 2020](#)

[2020 Commission Work Programme](#)

[Discussion on the Introduction of Permanent kurzarbeit](#)

[Presentation to Webinar](#)

[Webinar BMB Partners in cooperation with AHK](#)

[OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis](#)

[Short Slovak version of OECD Analysis](#)

[Commission Postponed Taxation Rules due to Coronavirus Crisis](#)

[Article in Trend on aid packages in other countries](#)

[Comprehensive overview of COVID 19 Measures in TAXAND member states](#)

Authors:



Renáta Bláhová
Tax advisor
and auditor



Judita Kuchtová
Tax advisor



Petra Packová
Auditor