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In our Newsletter 3Q/2020 we offer you an overview of the most important legislative changes which should come into effect on 01/01/2021 or 01/01/2022 with a focus on the Amendment to the Income Tax Act ("ITA"). The changes have already been approved by the government and submitted to the Parliament in the second week of September (TOP 2 – TOP 5).

The final approval by the Parliament is expected in October or November, depending on the intensity of discussion in our new Parliament.

The expected changes to tax law focus mainly on the fight **against aggressive tax planning**, including profit shifting to low-tax jurisdictions. Part of the changes result from the obligation to implement the EU Directive as regards hybrid mismatches with third countries. ("ATAD 2"). For these purposes the definition of "reverse hybrid and transparent entities" is being introduced. Moreover, *CFC rules* are being extended to cover also individuals, and the tax residency definition is being specified.

In our previous Newsletter we have brought updated information on the possibility to receive state aid in form of contributions granted by the Labour Ministry. In this issue we would like to draw your attention to the introduction of a thereto related important business-friendly measure: **exemption of contributions for jobs from personal as well as corporate income tax** which should apply already when filing 2020 tax returns.

At the end of August, the government took perhaps the most expected decision of this Summer – filing deadline for 2019 tax returns (TOP 1). **The filing deadline will be 31 October 2020.** However, the decision along with other details, such as deadline for payment of tax, still has to be approved by the Parliament within the amendment to Lex Corona (Act No. 67/2020 Coll.). Moreover, all **procedural exceptions including tax audits on hold are expected to end as of 30 September 2020.**

An amendment to the VAT Act has been submitted to the Parliament, too. The amendment introduces **new rules for e-shops** as well as the option of **VAT refund from unsettled invoices** (TOP 6 and TOP 7).

In addition to the above changes, the Finance Ministry is working on a more complex tax reform. Its extent will depend also on the priorities and amount of funds from the Resilience and Recovery Facility (RRF) which will be allocated for the tax reform in the Fiscal Reform Chapter. The team, the member of which is also our partner R. Bláhová, is working full-speed to meet the first deadline for the submission of proposals to the EU, which should be mid-October.

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TOP 1: FILING DEADLINE FOR 2019 INCOME TAX RETURNS

At the end of August, the government took a long-awaited decision on the filing deadline for 2019 income tax returns. Tax returns will have to be filed until 31 October 2020 at the latest. The draft amendment regarding the deadline should be submitted to the Parliament in September in an accelerated procedure.

According to the currently valid law, the filing deadline for 2019 income tax returns is linked to the end of the extraordinary situation declared due to COVID-19. However, considering the latest developments, the end of the extraordinary situation cannot be foreseen. Thus, **30 September should be determined as a deemed end of the extraordinary situation for the purposes of tax return filing**. Accordingly, the tax returns will be filed until 31 October (end of the month following the month in which the extraordinary situation ends).

The Finance Ministry is currently analysing whether this deadline will apply also to the tax payment.

Last but not least, all **procedural exceptions including tax audits on hold are expected to end as of 30 September 2020** as well.

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TOP 2: EXEMPTION OF COVID CONTRIBUTIONS FROM INCOME TAX

The amendment introduces also the income tax exemption of contributions for maintaining jobs provided during the COVID-19 pandemic.

The exemption will concern both individuals (proposed section 6 ITA) and legal entities (proposed section 9 ITA).

The proposed applicability of the provision is for filings after 01/01/2021 and the exemption will be first applicable when filing tax returns for the year ended 31/12/2020.

In economic terms, this will mean a **de facto increase of the already provided contributions by another 20%**.

TOP 3: SPECIFICATION OF THE DEFINITION OF TAX RESIDENCY AND PLACE OF EFFECTIVE MANAGEMENT OF A LEGAL ENTITY

The amendment specifies the definition of the **place of effective management of a legal entity**. According to the current wording, the place of effective management is a place where management and business decisions of statutory and supervisory bodies of a legal entity are taken, even if this place is not registered with the Commercial Register.

Once amended, the place of effective management of a legal entity with its registered office in Slovakia (according to the Slovak Commercial Register) will be considered the place where KEY management and business decisions for the LEGAL ENTITY AS A WHOLE are STRUCTURED or taken. The character of decisions and their key impact on the company as a whole have to be evaluated by the entity itself. Decisions for smaller organization units or administrative decisions do not count as KEY decisions.

Thus, the place of effective management will also be the place where most business and management decisions for the company as a whole are taken. These decisions do not necessarily have to be taken by company bodies, other persons (e.g. owners, shareholders, employees) can take them, too.

It is expected that the place of effective management will have adequate material and personnel conditions for decision-making. The adequacy will be evaluated on a case-by-case basis.

To summarize, the definition of residency for legal entities is now fully in line with the international double tax treaty (DTT) concept.

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The amendment amends also the definition of taxpayers with limited tax liability in accordance with the relevant DTT. In principle, this clarification is not substantial, as already the current wording of the Income Tax Act specifies that international treaties take precedence. The only exception concerned individuals who regularly cross the border to perform employment in Slovakia.

Under the amendment, the residency shall be determined strictly according to the provisions of the double tax treaty (distinguishing criteria). Currently, Slovakia requests in such cases only taxation of Slovak-sourced (i.e. employment) income.

These changes come into effect on 01/01/2021.

TOP 4: CFC RULES FOR INDIVIDUALS

With the aim to prevent aggressive tax planning and profit shifting to tax havens and low-tax jurisdictions, the amendment introduces rules for controlled foreign companies (hereafter "CFC rules") also for individuals. CFC rules for legal entities were introduced already in 2017.

Unlike CFC rules for legal entities, which apply the transactional approach (transfer pricing alike), the system for individuals is simpler. The tax is imposed on the total income comprising the tax base, regardless of whether the income is passive or active.

Under the new rules, the individual will tax the income generated through a CFC, even if the income has not been distributed as dividends. The aim was also to protect smaller entrepreneurs. To summarize simply, an individual is expected to apply the CFC rules if following criteria are met:

- income from all CFCs exceeds EUR 100,000,
- the individual (alone or together with its related parties) controls, directly or indirectly, at least 10% (profit share or actual control), and
- CFC resides in a country listed among non-cooperative jurisdictions, or in which the effective taxation of income is lower than 10%.

The amount of the income taxable by the individual in Slovakia equals the positive economic result reported by the CFC for the tax period less the corporate income tax verifiably paid by the CFC in the ratio in which the individual would be entitled, given a direct participation, to the profit share (dividend), if paid out, or other income as a result of the actually performed control over the CFC.

We will explain this rule in more detail along with specific examples once finally passed in the Parliament, since important changes are expected.

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TOP 5: HYBRID AND TRANSPARENT ENTITIES INCL. PARTNERSHIPS

This measure is related to the implementation of ATAD 2, based on which the term “*reverse hybrid entity*” is being defined in the Slovak tax law. The aim is to avoid hybrid mismatches which **lead to double non-taxation** of income. In the future, the state in which the entity is established and considered to be transparent, should treat the entity as opaque if the entity is treated so by its foreign founder.

The most common transparent entities in Slovakia are the general partnership (verejná obchodná spoločnosť (v.o.s.)) and the limited partnership (komanditná spoločnosť (k.s.)), the income of which is taxed at the level of partners.

The term “*reverse hybrid entity*” covers entities which are considered to be taxpayers of one country but the income of which is attributed to a taxpayer residing in another country under the legal regulations of another country. These entities are treated as transparent by the country of their establishment and as opaque by their founder (foreign partner), i.e. reverse view. Consequently, situations could occur when the income is taxed neither at the level of the transparent entity in the country of establishment nor at the level of the foreign partner of this entity in the country of the founder.

The new legislation on reverse hybrid entities is based on the principle that the income of **non-resident majority partners** (at least 50% in registered capital, voting or profit) is taxed at the level of this transparent entity applying the corporate income tax rate of 21%, if it cannot be taxed at the level of a permanent establishment in Slovakia or if it is not taxed at the level of this non-resident partner in its residency state.

To put it simply, if there is no proof of taxation of this income abroad or at the level of the permanent establishment in Slovakia, this income will be taxed at the level of v.o.s. or k.s. in Slovakia. In such way a **double non-taxation** of income is avoided.

Within this change, **a new reporting obligation** is being introduced. Accordingly, the **foreign partner** is obliged to declare how it treats the Slovak transparent entity from tax point of view and also whether the income attributable to the partner is taxed in Slovakia or abroad. If the income is not taxed anywhere, the new legislation on reverse hybrid entities will apply and the income will be taxed in Slovakia at 21%. If reported incorrectly, the tax administrator shall impose a fine in the amount of the extra tax assessed.

In relation **to domestic partners**, no new legislation is necessary, as the income of Slovak partners (individuals) is taxed under section 6 (1d) ITA and of legal entities under section 12 (5) and (6) ITA. This change comes into effect on 01/01/2022.

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TOP 6: NEW VAT RULES FOR E-SHOPS

In BMB Newsletter 2Q/2020 we informed you that the Finance Ministry was working on an amendment to the VAT Act regarding e-shops and the VAT refund from unsettled invoices.

Regarding e-shops, the aim of the change is to put on equal footing European businesses with non-European ones, which do not have to pay VAT. Starting next year, Asian or American online platforms will have to register in the EU and meet administrative duties. Suppliers of goods or e-shops will add to the price of goods also the VAT of the country of destination. Besides, they will file VAT returns and pay VAT in the EU.

From July 2021, VAT of 20% will be paid also on goods up to EUR 22 and there will be an obligation to file an electronic customs declaration.

A significant change will affect Slovak e-shops which sell goods or services to end customers abroad (EU). If they send, after 01/01/2021, orders for over EUR 10,000 per year to end customers in an EU country, they will have to register for VAT in the country to which the goods are imported. The current limit is EUR 100,000.

TOP 7: VAT REFUND FROM UNSETTLED INVOICES

The amendment will introduce the option to refund to companies the VAT from unsettled invoices. This change results from last year's ECJ judgement in the case of the Czech company A-PACK CZ s.r.o. (we informed about the case in BMB Newsletter 4Q/2019) and from the solution already implemented in Czechia.

In August 2020, the draft amendment was approved by the Government and submitted to the Parliament. The option to adjust the tax base is based on the principle that the taxable amount is the consideration actually received. If the consideration has not been paid and the receivable becomes uncollectible, the state will return the relevant VAT to the company. The law introduces precise rules to define uncollectible receivables in order to exclude cases when the non-payment is temporary.

The taxable person may claim the right for adjustment (decrease of the VAT paid) in a regular VAT return no sooner than for the tax period in which the receivable becomes uncollectible. The VAT refund will follow the standard rules applicable to the VAT return in which the adjustment is declared. The seller will issue a document on the adjustment if the customer was a taxable person at the time of supply.

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The receivable becomes uncollectible if it has been unsuccessfully collected in enforcement proceedings for 12 months. If the customer is in bankruptcy proceedings, the receivable is considered uncollectible on the day a notice is published on the validity of the decision on the stay or dismissal of the bankruptcy proceedings due to the lack of assets. The law exhaustively enumerates the cases when the receivable is uncollectible for the purposes of this provision.

However, the taxpayers may make such an adjustment only within 3 years after the filing deadline for the VAT return for the tax period in which the relevant supply was performed. The law excludes the adjustment also if related parties (over 10% in assets or voting rights) or closely linked persons are concerned.

If, after the adjustment, the taxable person receives a payment in relation to the uncollectible receivable, it is obliged to make a corresponding adjustment.

TOP 8: TAXATION OF SPORTSMEN AND ARTISTS

With respect to non-resident sportsmen and artists who perform their activities in Slovakia, the law introduces an anti-evasion measure for cases when the income of artists and sportsmen is **paid through an agent**. If the actual amount of income of the artist, sportsman, performer or involved persons is not documented in the payment to the agent, the whole amount of the payment is considered the income of these persons.

In this relation, the definition of a foreign taxpayer is being amended. For the purposes of withholding tax and tax guarantee, a foreign taxpayer shall include also non-resident individuals and legal entities that pay, transfer or credit income to a foreign artist or sportsman.

TOP 9: LOOSENED CONDITIONS FOR RENT SUBSIDIES

Due to low use by businesses, the Ministry of Economy has loosened the conditions to qualify for rent subsidies. The changes declared by the Ministry at the press conference of 24/08/2020 include mainly:

- the rent subsidy may be applied for by **companies of all sizes**, including large companies (previously not possible),
- the rent subsidy may be applied for **also** by **companies in difficulty**,
- a new alternative has been introduced: the electronic application can be signed by an **empowered person** both for the lessor and the lessee. The empowered person must have the authorization to access and to dispose of the electronic mailbox of the legal entity or sole trader for which/whom he/she will sign the application.

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TOP 10: INFORMATION ON MATURITY OF INCOME TAX ADVANCES

From 1 January 2022, a new business-friendly measure regarding the payment of income tax advances should be applicable. Financial administration will inform on the approaching maturity of tax advances. The notice will be addressed both to individuals and legal entities obliged to pay income tax advances based on their submitted income tax returns.

USEFUL LINKS

[Article "Oligarchovia sú na pozore"](#)

[Article "Štát od januára vráti podnikateľom DPH z nezaplatených faktúr"](#)

[Amendment to the Act on Income Tax in the Parliament](#)

[Detailed information on rent subsidies](#)

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