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The first quarter of this year was rather turbulent for Slovakia. Our country has been doing its best to fight the pandemic and we are glad to see that the Covid-19 incidence figures have started to decline along with vaccination rates rising steadily in the last weeks. As of 10 April, almost 20 % of our population is vaccinated based on European Statistics. When it comes to vaccination rates, we have been among the first 10 EU States from the beginning.

Moreover, our government was exposed to a crisis triggered by a deal to buy Russia's Sputnik V coronavirus vaccine which has not been authorised by the EU yet. Fortunately, the crisis ended in the best possible scenario, the Slovak Prime Minister Igor Matovič swapped roles with the Finance Minister Eduard Heger. The reconstructed government will continue its work under similar conditions as agreed one year ago.

Therefore, we are quite optimistic that the new government will pursue the reforms launched and we believe that after the break caused by the crisis, further favourable tax measures will be introduced soon (TOP 1).

We have repeatedly proposed through numerous platforms and discussions that important legislation should be adopted at least 6 months before it comes into effect, otherwise the effectivity should be postponed until 1 January of the following year. This crucial measure from the rule of law and predictability perspective still has a chance to be adopted by the government after the pandemic is over. We declare also here that we will keep reminding our government officials of their pre-election promise.

Our partner Katarina Hoppe successfully managed to inform more than 100 businesses on cross-border issues related to home office (TOP 2). We also succeeded to organize webinars on the First Aid Plus Plus package (TOP 3). We summarize other important changes in tax legislation, too (TOP 4 and 5). Please refer to useful links also at the end of our Newsfilter.

Traditionally, an overview of international tax-law-related developments is available as well (TOP 6 – 10).

Enjoy the reading as well as the upcoming spring time.

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TOP 1: SMART TAX = MORE LEGAL CERTAINTY, TAX NEUTRALITY AND SUPPORT OF INNOVATION

The Slovak Ministry of Finance has been working on a package with pro-business-oriented tax changes under a working title "Smart Tax" since the beginning of this year. It focuses on the corporate income tax field, and a restart of the economy after the pandemic. The focus of the big tax and social security reform will, however, remain on the social security system and recovery plan milestones.

Most importantly, we should highlight the introduction of the initial "pandemic" Kurzarbeit scheme as a solid foundation for the long-term Kurzarbeit concept, which is of crucial importance for our economy. For years, the voice of both small and large employers has gone unheard by the previous government. Last year the issue was first seriously discussed and this year the Slovak government approved it already as a long-term scheme. Moreover, we should keep our fingers crossed for the implementation of the whole plan of reforms presented in the MODERN AND SUCCESSFUL SLOVAKIA document that will be crucial for drawing the generous amount of over EUR 6 billion waiting for us in the RRF EU fund and another approximately EUR 20 billion from related EU funds.

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The main aspects of the tax reform have been defined in the chapter "Fiscal Reform" for more than half a year. First, we need a bigger growth and a fairer tax system (by supporting investments and decreasing barriers to employment of low-income groups). Second, there has to be a shift from the taxation of economic activity to the taxation of consumption and to environmental taxes. Third, more emphasis should be put on the principle of tax neutrality (e.g. in the concept of tax loss carryforward or group taxation).

To put it simply, the framework of the tax reform has been set since summer 2020: Decreasing the tax burden on work and increasing taxes on property and consumption.

Introduction to the Smart Tax Package

The working title "Smart Tax" focuses on changes in tax administration law and corporate income tax area. It is divided into 3 phases, the first one has already been approved, the second and third are expected to be finalized by this summer.

1st phase of Smart Tax

Within the first phase, which does not have a significant budgetary impact, the Ministry of Finance team went through most measures suggested by entrepreneurs, including those collected by the Ministry of Economy under the working title "100" (Kilečko). Accordingly, the measures focus on increasing the legal certainty, reducing the bureaucratic burden and decreasing the costs of businesses. The key measures were introduced at the beginning of March and can be summarized in 3 points:

- extension of binding rulings issued by the financial administration and reduction of corresponding fees;
- transition from paper to electronic documents including problem-free paperless archiving;
- minimizing redundant tax-related reporting duties.

In addition, the first phase includes creation of an interdisciplinary working group for the project FAMILY BUSINESSES, which should consist of three pillars: 1) Foundations for succession planning and generational change (Czech or Austrian model), 2) Improvement of existing forms – family holding, group of companies and family trade license and 3) Securing tax neutrality and financing. The group is expected to start working by the end of April and will be led by Mrs. Žitňanská (former Minister of Justice).

2nd phase of Smart Tax

The second phase contains measures with a more significant budgetary impact, primarily aimed at improving the reputation of Slovakia as an investment destination and at the decrease of the tax and social security burden as the key motivation tool for employers.

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Currently, measures in the following areas are likely to be approved also by the new Minister of Finance:

- increase in personal tax-free allowance for low-income employees as well as decrease in employer's social insurance contributions;
- more liberal tax loss carryforward (the current limit of 5 years makes us one of the most restrictive EU countries and violates the tax neutrality principle);
- support of innovations (extension of the deduction for research and development);
- faster depreciation of all investments or super-deduction for Industry 4.0;
- group taxation to improve the reputation of Slovakia in Doing Business rankings and support of family businesses.

We agree that there is no need to make radical changes during the pandemic. However, the economy will need a restart – the sooner the better. What we need is an appetite for investment, not restrictions such as strictly limited time frame for tax loss carryforward.

3rd phase of Smart Tax

In the last phase there will be political decision-making on tax rates. We do not think it is decisive at the moment, but we would welcome it if Slovakia dropped its corporate income tax rate under 20% to be competitive with the V4 countries.

If you are interested in the newspaper version of the information published online, please refer to Slovak Spectator.

TOP 2: CROSS-BORDER HOME OFFICE AND ITS TAX AND SOCIAL SECURITY ASPECTS

With a number of employers, the pandemic, mobility restrictions and lockdowns have resulted in home office for their employees, i.e. preforming work from home. Thousands of people mainly from border regions commuted to work abroad on a daily basis and once the home office measures were introduced, they remained working from home. Given the new situation, employers face the question where and how the income of such employees should be taxed. In cross-border situations, taxation follows the valid bilateral double tax treaty concluded between the relevant countries. In general, the employment income is taxable in the country of work performance ("territoriality principle").

Accordingly, if the employee lives e.g. in Hainburg (Austria) and works, under normal circumstances, for a Slovak employer in Slovakia and, during the pandemic, works from his home in Austria, his/her income for the home office days is taxable in Austria.

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Good news for Slovak employers is that their duty to register and pay wage tax advances in Austria was cancelled retroactively as at 01/01/2020 and has become voluntary. However, if the employer does not register, employees have to settle their tax liability by themselves. There are still a few administrative duties the employers have to meet. One way or another, the employee is obliged to file a tax return and pay the corresponding tax in his/her residence country.

The social security treatment can be more complicated. However, if the home office is a result of the pandemic, the applicable social security regulations should not change.

Many employers are concerned about the origination of a permanent establishment abroad due to the home office of their employees. According to the OECD interpretation, cross-border home office caused by the pandemic does not necessarily lead to a permanent establishment. For now, Slovakia accepts the OECD interpretation, but a long-term solution is questionable. Where employees work from a home office abroad, the approach of the relevant country is to be checked.

TOP 3: APPROVED FIRST AID PLUS PLUS AND PLANNED COMPENSATIONS FOR LOSS-MAKING BUSINESSES

CHANGES COMPARED TO "FIRST AID PLUS"

The Labour Ministry has extended the possibility to draw contributions until June 2021. It will be possible to apply for contributions also for employees who started employment between 02/09/2020 and 01/02/2021. Self-employed persons who started their business between 02/09/2020 and 01/02/2021 are eligible to apply, too.

The contributions increased as follows since February 2021:

Measure	Contributions/Employee October 2020 – January 2021	Contributions/Employee since February 2021
Measure 1	max. € 1,100 (80 % labour costs)	max. € 1,100 (100 % labour costs)
Measure 3A	max. € 1,100 (80 % labour costs)	max. € 1,100 (100 % labour costs)
Measure 3B	**Sales revenues decrease**	**Sales revenues decrease**
	≥ 20 % - € 270	≥ 20 % - € 330 (≤ 29 %), € 420 (≤ 39%)
	≥ 40 % - € 450	≥ 40 % - € 510 (≤ 49 %), € 600 (≤ 59 %)
	≥ 60 % - € 630	≥ 60 % - € 690 (≤ 69 %), € 780 (≤ 79 %)
	≥ 80 % - € 810	≥80 % - € 870

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With measures 1 and 3A, the contribution has increased to **100 % of labour costs** (previously 80 %). Also with the measure 3B, max. amount of the contribution has increased to 100 % of employee labour costs (previously max. 80 %).

The increase in the contribution to max. 100 % of labour costs is applicable only to employers that have not exceeded the prescribed limit (see below) when drawing the contributions since February 2021, and that did not meet the conditions for a "company in difficulties" as at 31/12/2019. If the employer has reached the prescribed limits or was a company in difficulties as at 31/12/2019, the maximum amount of the contributions remains 80 % of employee labour costs.

When evaluating the decrease in sales revenues, the current month may be compared also to the **comparable month of 2020** when applying the first method, and to the monthly average for 2020 when applying the second method. Accordingly, the company may choose a more favourable reference year for comparison of the net turnover – either 2019 or 2020.

TOTAL AID AMOUNT

The total aid amount is max. **€ 1.8 million**.
The total aid amount granted to an applicant in the Fisheries and Aquaculture sector is max. € 270 thousand.
The total aid amount granted to an applicant in the Primary Agricultural Production sector is max. € 225 thousand.
The above limits are applicable to contributions per employee in the amount of max. 100 % of labour costs.

Once the limit is reached, the employer can continue drawing contributions, but their amount per employee will be **max. 80 % of labour costs**. For these purposes, the contributions received for the months until January 2021 are disregarded. In other words, the above limits are monitored starting with the contributions for **February 2021**. However, the above maximum limit includes also other types of state aid granted according to the relevant temporary state aid framework, e.g. the rent subsidy since the beginning of the pandemic or various types of credit subsidies are to be included.

In addition, introduction of a new aid scheme for loss-making companies is expected in the future. According to an unofficial proposal, the scheme should be applicable to companies whose net turnover decreased at least by 30 %. Such companies should be compensated a significant part of their losses. We will provide you with more details as soon as the change is approved.

Apart from the above changes, the rent subsidy was extended, too. The Ministry of Economy will not cancel the rent subsidies after 31/03/2021. The aid period is extended on a monthly basis, considering the current pandemic situation.

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To access more detailed information, you can visit also the SLSP website on which we cooperated.

TOP 4: PLANNED CHANGES TO THE REAL ESTATE TAX

Great attention is paid to the real estate tax reform, which is part of the Recovery plan. In March, the Recovery plan was commented at the level of ministries, resulting in 400 comments which are currently being evaluated.

At the moment, very limited information on the real estate tax reform is accessible to the public, as the Recovery plan deals with this topic very briefly and the public receives more information mainly from discussion forums. The reform aims at privately owned real estates. Real estates used for business should not be affected by the tax increase. Please find below a summary of the accessible information. We will come back to this topic once the whole concept is presented in a more binding form – presumably next year:

- The whole concept is being prepared at the level of ministries. The scheme is based on a "tax mix" principle, aiming at decreasing the tax on active work and compensating it by increasing the tax on consumption. The goal should be support of business environment.
- The expected year of introduction of the "new" real estate tax is 2023.
- The calculation of the real estate tax will be based on real estate price maps (subject to discussion at ministry level). To some extent, the price map should reflect the market value (ministry consults also real estate agencies), further aspects to be reflected include location, number of floors, construction year and equipment of real estate. Some social and ecological aspects should be considered for the purpose of tax relief.
- Information appeared in the media that the tax will amount to approx. 1.6 % of the real estate market value, which would mean thousands of EUR for a standard flat in a prefab building in Petržalka. This information has been publicly declared a hoax by the Finance Ministry.
- As for commercial real estate, anomalies should be removed (such as dramatically differing tax rates for equal real estates).

Under the currently valid law, the real estate tax depends mainly on the location, purpose of use, size and the applicable tax rate. The rate of the residential premises tax in Bratislava (capital) is in the range EUR 0.90 - 1 per m2, which is just a fraction of the average of European capitals.

The tax reform can be analysed no sooner than after the concept of the complex reform package "property, consumption and active income" is published.

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TOP 5: BETTER CONDITIONS FOR TAX DEFERRALS OF UP TO 2 YEARS

Unlike in the previous year, the filing deadline for 2020 income tax returns has remained unchanged and lapsed on 31/03/2021. Taxpayers had again the option to extend their filing deadline, either until 30/06/2021 or until 30/09/2021 (if they received income from abroad) at the latest. With the aim to meet the needs of taxpayers during the pandemic, the tax administration accepted this year besides an official filing extension form also a simple notice in e-mail form.

Moreover, the conditions of applying for the tax deferral or for payment of tax in instalments have been relaxed. The amendment to the Tax Procedure Code has removed some obstacles to filing the application for a tax deferral or for payment of tax in instalments with respect to all tax types, i.e. real estate tax, value added tax and personal/corporate income tax. The tax administration has already published relevant guidance on its website.

Debtors had the option to apply for payment of tax in instalments also in the past. However, they were required to meet further conditions, e.g. a lien if the tax arrears exceeded EUR 3,000 or preparation of a financial and economic analysis. Due to the pandemic, the situation of many citizens got complicated and by relaxing conditions, the financial administration wanted to help those who are in financial difficulties.

As soon as the tax administration approves the tax deferral, the taxpayers are considered to be entities without tax arrears and are able to draw contributions from the First Aid scheme, as non-existence of income tax arrears is a precondition for being able to receive the contributions. The taxpayers have two possibilities to meet this condition – either by applying for tax deferral or for payment of tax in instalments. Another important change is that the interest to be imposed for the approved deferral or instalment period has decreased from 10 % to 3 %.

The deferral/payment in instalments may be approved for a maximum of 24 months after the maturity date of the tax or tax difference.

TOP 6: OECD COVID-19 TAX TREATY GUIDANCE UPDATE

The update revisits the guidance issued by the OECD Secretariat in April 2020 on the impact of the COVID-19 pandemic on tax treaties, intending to provide more certainty to taxpayers during this exceptional period. The guidance reflects the general approach of Working Party 1 and illustrates how some jurisdictions have addressed the impact of COVID-19 on the tax situations of individuals and employers.

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It outlines the application of the existing rules and the OECD Commentary on concerns related to the creation of permanent establishments, the application of "tie-breaker" rules to dual residents, and the tax treaty treatment of income from employment. We address employment-related issues applicable to Slovakia in more detail under TOP 2 above.

TOP 7: MINIMUM CORPORATE TAX UPDATE

The international community should agree on the establishment of a global minimum corporate tax rate, according to the February 2021 UN report. The proposal is part of a package of reforms to combat tax evasion and money laundering, and ensure that cash-strapped governments can boost their public finances in the wake of the COVID-19 pandemic.

The report by the UN panel on international financial accountability, transparency and integrity (Facti), published on 25 February 2021, contends that an agreed minimum tax rate of 20-30 % on company profits would limit incentives for multinational companies to shift profits to lower-tax jurisdictions.

The UN paper also recommends that all countries establish beneficial ownership registers holding information on all legal entities, and for all multinational corporations to publish their country-by-country reports.

Slovakia introduced such a register a few years ago.

TOP 8: EU DIGITAL LEVY UPDATE

German Finance Minister Olaf Scholz said already in January that they would seek a deal with the incoming Biden administration on global rules for corporate taxation. Speaking at a Reuters conference in Berlin, he said the plan was to reach agreement by the summer on a tax blueprint unveiled last year by the OECD, in the club of rich nations. "What's at stake on digital is more symbolic than about revenue," said Pascal Saint-Amans, head of the OECD's tax policy center who is shepherding the digital tax talks to the finish line. That has not stopped countries from imposing unilateral measures.

France began collecting national digital services tax, which almost exclusively targets U.S. tech companies, in December after OECD negotiations were pushed back to June 2021. Earlier last month, Spain said it had delayed its own levy on digital companies until July. The United Kingdom is likely to begin receiving tax revenue from Google, Facebook and others via its domestic digital tax regime in September. All three countries agreed to rescind their national rules if a global digital tax agreement is reached. Slovakia takes from the very beginning a similar approach to Germany and awaits till the global deal is closed.

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TOP 9: US SHELL COMPANIES FORCED TO BE MORE TRANSPARENT

In January, the U.S. Congress voted to override President Trump's veto in order to pass the National Defense Authorization Act for fiscal year 2021. Tucked into this legislation was the Corporate Transparency Act (the "Act").

The Act is a milestone, as it represents some of the most sweeping anti-corruption legislation enacted in decades and continues recent efforts to root out tax evasion, money laundering, terrorism financing, and other perceived threats to U.S. national security interests.

The Act requires the Treasury Department to issue regulations within one year which will require certain entities (both new and existing) to file a report with the U.S. federal government which discloses information regarding certain beneficial owners of the entity. The alert of our US TAXAND colleagues highlights the information regarding more details of the proposed disclosures.

Slovakia implemented beneficial owner disclosure requirements several years ago.

TOP 10: INTERESTING COCA COLA TRANSFER PRICING CASE DEVELOPMENTS

The recent US Tax Court decision in the case of **Coca-Cola** deals with a $9 billion dispute over Coca-Cola's unique tax structure and transfer pricing policies involving affiliates in Brazil, Ireland, and several other countries. It has attracted attention in the EU as well. One of the most interesting partial decisions here is that the court accepted the tax auditor's view on reallocating income to Coca Cola by employing a comparative profits method that used the supply points as the tested parties and the "bottlers" as the uncontrolled comparables.

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USEFUL LINKS

Webinar on cross-border home office issues (DE)
Webinar on First Aid PLUS PLUS Measures (DE)
Recovery and Resilience Facility (EN)
Loss Carryforward Provisions in Europe (EN)
Article on Smart Tax - Slovak Spectator (EN)
Article on the new Prime Minister – Slovak Spectator (EN)
Tax Measures in Response to COVID-19 in TAXAND Countries (EN)
Article - Politico (EN)
Newsletter of our American colleagues from TAXAND (EN)
UN report (EN)

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