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In our first edition of BMB Newsfilter this year, there is no other way to begin than by expressing our moral support for our neighbour Ukraine and its citizens. We appreciate and value the humanitarian aid provided by organizations and individuals, we thank our colleagues in Slovakia and in cooperating companies who help financially, materially or provide accommodation. Our founding partner is also working to improve legislation to freeze the assets of Russian oligarchs - more on this topic in the [article on the EU's draft Unshell Directive](#). The military conflict in Ukraine reminds us of the great value of a life in peace, and of course we hope for an early end of war.

At the same time, we work hard so that our clients can continue operating without interruptions despite the difficult conditions and we are pleased that BMB Partners TAXAND is the only specialist tax boutique to be ranked among the TOP 10 in the tax advisory category in the Slovak Spectator's ranking. Learn more in the annual publication [Largest in Business](#).

Despite the war in our neighbouring country, the financial administration in Slovakia is not slacking off. On the one hand, its officers are helping at the border with Ukraine to ensure the smooth passage of humanitarian aid and important information for refugees; on the other hand, tax audits are running properly, new ones are being opened, and legislative changes are being adopted as planned. See below the most important topics of the last months.

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TOP 1: PROPOSED CHANGES TO THE ITA AND TO TRAVEL ALLOWANCES

In relation to the implementation of Article 4 of ATAD I, it is proposed to introduce an updated interest deduction limitation rule, based on the preliminary information published on 9 February 2022. This is one of further OECD BEPS measures, the implementation of which from ATAD I should ensure a minimum protection of the tax base against base erosion in the EU.

The measure regulates the amount of tax deductible excess interest expense, i.e. interest expense in excess of interest revenue (net interest expense). This rule should apply to all corporate taxpayers and not only to related parties as it is the case under the current tax law.

The basis for limiting the amount of excess interest expense is the tax base plus tax depreciation and net interest expense (in excess of interest revenue).

It is presumed that the proposal will be submitted for comments and feedback in May 2022. Given the expected inflation, we recommend paying close attention to this topic.

Changes are planned also to the measures regulating the amounts of domestic travel allowances.

In February 2022, the Ministry of Labour, Social Affairs and Family published information on a proposal to change the amounts of the domestic meal allowance, which would be increased from the current EUR 5.10 to EUR 6. In addition, it is proposed to increase the amount of reimbursement for the use of a private car for business purposes. The date of application of the increased amounts is not yet known, but implementation is expected from April 2022.

TOP 2: SUPER DEDUCTION OF INVESTMENT COSTS

We would like to draw your attention to a new tool of legitimate corporate income tax reduction which can be applied already for the 2022 tax period. Taxpayers planning to invest in new progressive technologies (Industry 4.0 - investments in connection with digitalization, automation, robotization of production and logistics processes) will be able to take advantage of an additional deduction (15 % to 55 %) of the expenses for these investments from tax depreciation charges. The amount of the deduction depends on the ratio of the new investments compared to the average of the previous three tax periods (at least 700 %) as well as on the amount of the new investments (min. EUR 1 million). To apply the deduction, no approval of competent authorities is necessary, it is sufficient to meet the conditions prescribed by law.

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Average value of investments implemented (%)	Planned amount of the implemented investment of the average value of investments (EUR million)		
	over 1 up to 20	over 20 up to 50	over 50
700 % - 1399.99 %	15 %	25 %	50 %
1400 % and more	20 %	30 %	55 %

TOP 3: MORE EFFICIENT TAX AUDITS WITH A FOCUS ON TRANSFER PRICES

Based on a [press release](#) issued by the Financial Directorate on 24 February 2022, the Office for Selected Economic Entities ("OSEE") will focus more closely on transfer prices during tax audits. In this connection, the OSEE has sent a questionnaire to 889 taxpayers that focuses primarily on transactions with related parties.

In the press release, the OSEE informs taxpayers that the questionnaire will be delivered by means of an information notice (soft warning) and that the completion of the questionnaire will be voluntary. Despite the voluntary nature of the questionnaire, the Directorate expects taxpayers to cooperate, according to its statement in the press release. The data obtained from the questionnaires are intended to serve to combat tax avoidance and possible tax evasion more effectively. In addition, the data obtained will also serve for possible legislative/non-legislative changes in the area of transfer pricing.

The monitored reference period for transactions with related parties is the calendar or fiscal year 2020 and the deadline for completion and return has been set at 28 March 2022.

Based on our practical experience we can confirm that a number of transfer pricing audits has been opened.

TOP 4: NEW GUIDANCE ON THE APPLICATION OF DOUBLE TAX TREATIES

A new [Guidance](#) No. MF/016332/2021-724 on the application of double tax treaties ("DTT") was published in the Financial Reporter towards the end of 2021, replacing the 2000 guidance. In a nutshell, the new guidance could be described as a summary of the Slovak approach to the interpretation and application of DTTs or a tax-law minimum for understanding the DTTs. The approach presented in the new guidance is not new and has been applied by Slovakia for a long time.

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The text itself deals among others with the Multilateral Instrument (MLI), mentions the Commentaries to the Model Treaties (OECD and UN) as an accepted supplementary means of interpretation. Slovakia applies a dynamic approach to interpretation - according to the current wording of the Commentary (if there were no reservations to a specific provision of the article of the Model Treaty or observations to the Commentary, or the specific DTT has not deviated from the wording of the Model Treaty and takes into account reciprocity), the aim of which is to clarify the provisions, not to change them through the Commentary.

TOP 5: HIGHER TAX REVENUES FOR 2021, MAINLY IN THE CORPORATE INCOME TAX AREA

The tax administration has released information that despite the pandemic the state has seen higher tax collections over the past year. As at the end of last year, the state's tax revenue was EUR 1.7 billion higher than expected, which means that the budget was implemented at 114.8 %. The budget originally envisaged revenues of EUR 11.8 billion, but the actual tax revenues reached EUR 13.5 billion as of 31 December 2021.

Higher revenues were recorded for several types of taxes, with corporate income tax (CIT) revenues exceeding the budget the most. CIT collections improved by EUR 1.05 billion, indicating a significantly milder impact of the pandemic on corporate profitability in 2020 than expected. Value added tax collection increased, too, by EUR 725.2 million and withholding tax collection increased by EUR 50.1 million. Motor vehicle tax collection increased, too, by EUR 3.4 million.

There was also a positive development in the gross tax revenue for the tax and customs authorities, which increased by 12 % year-on-year, representing an increase of EUR 1.8 billion in nominal terms. The tax revenue collected by the tax authorities was 8 % higher year-on-year. Revenue collected by customs authorities was 21 % higher year-on-year.

This and much more information is available on the new Financial Administration's [OpenData](#) portal, which we informed you about at the end of last year.

TOP 6: OECD RELEASED NEW EDITION OF TRANSFER PRICING GUIDELINES

In January 2022, the OECD released the 2022 edition of the [OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations](#). The OECD Transfer Pricing Guidelines provide guidance on the application of the "arm's length principle", which represents the international consensus on the valuation of cross-border transactions between associated enterprises for income tax purposes.

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In today's economy, where multinational enterprises play an increasingly prominent role, transfer pricing continues to be high on the agenda of tax administrations and taxpayers alike. Governments need to ensure that the taxable profits of multinational companies are not artificially shifted out of their jurisdiction and that the tax base reported by multinational enterprises in their country reflects the economic activity undertaken therein, and taxpayers need clear guidance on the proper application of the arm's length principle.

The Slovak Republic has accepted the OECD Transfer Pricing Guidelines and had them officially translated into Slovak language. The January 2022 edition includes the revised guidance on the application of the transactional profit split method and the guidance for tax administrations on the application of the approach to hard-to-value intangibles agreed in 2018, as well as the new transfer pricing guidance on financial transactions approved in 2020. Finally, consistency changes have been made to the rest of the OECD Transfer Pricing Guidelines.

According to published statistics of the Slovak financial administration, the importance of tax audits focusing on transfer pricing is growing. With approximately 19 audits in 2020 (affected by COVID), the increase in the tax base amounted to almost EUR 10 million, which is an average of approximately EUR 0.5 million per tax audit (for more information, see our [Newsfilter 20213Q](#)).

TOP 7: PLANS TO BRING EU'S VAT RULES INTO THE DIGITAL AGE

In January 2022, the European Commission ("EC") launched a [public consultation](#) before adopting a new legislative package to adapt the way the value added tax ("VAT") is reported and collected in the increasingly digital world. The consultation seeks feedback from businesses, academics, Member States and other interested parties.

VAT is a major source of revenue for the Member States. However, the current VAT system is not able to deal with the new digital reality, is excessively complex for businesses and is prone to fraud. In its 2020 Action Plan for fair and simple taxation, the EC announced that it would prepare a package of measures to improve the situation. The proposal to come later this year will cover digital reporting requirements for businesses across the EU, new rules for the platform economy, and a single registration for companies in the EU. These measures will decrease the administrative burden for businesses, reduce costs and also help fight VAT fraud.

The call for feedback is open until 5 May 2022.

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TOP 8: AUSTRIAN FAMILY TAX SUPPORT CONTRARY TO EU LAW

Since 2019, Austria has adjusted, as regards workers whose children permanently reside in another Member State, the flat-rate amount of the family allowance as well as various tax advantages in line with the general price level in the Member State concerned. As such adjustment and the resulting difference in treatment, primarily as regards migrant workers by comparison with nationals, are contrary to EU law, the EC brought an action for failure to fulfil obligations against Austria before the Court of Justice. In his [Opinion](#) delivered in January 2022, the Advocate General proposes that the Court of Justice should find that the adjustment of the family allowance, the child tax credit, the 'Family Bonus Plus' tax credit, the sole earner's allowance, the single parent's allowance and the tax credit for maintenance payments for migrant workers whose children reside permanently in another Member State is contrary to EU law. EU law expressly provides that family benefits are not to be subject to any reduction or amendment on account of the fact that the members of the beneficiary's family reside in another Member State. To fix the amount of those benefits on the basis of the residence of family members therefore constitutes an infringement of the right of free movement conferred on EU citizens.

The Advocate General notes that the system established at the EU level concerning the coordination of social security systems is based on the general idea that, if a migrant worker pays social contributions and taxes in a Member State, he or she must be able to benefit from the same allowances as nationals of that State. Further, he noted, that, according to a report of the Austrian Court of Auditors, the reason which could jeopardise the financial equilibrium of the social security system is not the payment of benefits to workers whose children reside outside Austria, but the lack of appropriate checks with regard to the grant of those benefits.

The Advocate General's Opinion is not binding on the Court of Justice, the judgement will follow at a later date.

TOP 9: DRAFT UNSHELL DIRECTIVE (ATAD III)

In December 2021, the European Commission presented a [proposal](#) for a directive against the abuse of shell companies (Unshell Directive). The proposal establishes objective indicators that will help detect shell companies which exist only on paper. Under the planned rules, such companies will have new obligations to file tax returns and will lose access to tax reliefs and protection guaranteed by European directives or double tax treaties. This is an important step primarily in the fight against tax avoidance and tax evasion in the European Union. To put it in a very simplified way, a system is to be introduced which filters entities through three levels of indicators, called "gateways".

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1. The first level of indicators focuses on the activities of entities based on the income they receive. The gateway is met if more than 75 % of the entity's total income in the previous two tax periods does not come from the entity's business activity or if more than 75 % of its assets consist of real estate or other private property of exceptionally high value.
2. The second gateway requires a cross-border element. If a company receives most of its relevant income through transactions linked to another jurisdiction or passes that income to other companies based abroad, the company crosses to the next gateway.
3. The third gateway focuses on whether corporate management and administration services are performed in-house or are outsourced.

An entity crossing all three gateways will be required to report more details on its substance in the tax return, for example, on its registered office, its branches and offices, its bank accounts, the tax residency of its directors and that of its employees, etc. If an entity fails to meet the substance indicators, it will be deemed to be a "shell company" and will not be able to access tax relief and the benefits of the tax treaty network of its Member State and/or to qualify for the treatment under EU Directives such as the Parent-Subsidiary or the Interest and Royalties Directive.

The draft of the Unshell Directive has entered the negotiation phase between Member States with a view to reaching a final agreement. It is proposed that Member States transpose the directive into their national legislation by 30 June 2023, so that the rules enter into force on 1 January 2024.

TOP 10: OECD RELEASED DETAILED TECHNICAL GUIDANCE ON PILLAR TWO

On 14 March 2022, OECD/G20 Inclusive Framework on BEPS released further technical guidance on the 15 % global minimum tax agreed in October 2021 as part of the two-pillar solution to address the tax challenges arising from digitalisation of economy. The Commentary focuses on the application and operation of the Global Anti-Base Erosion (GloBE) Rules agreed and released in December 2021. The GloBE Rules provide a co-ordinated system to ensure that multinational enterprises (MNEs) with revenues above EUR 750 million pay at least a minimum level of tax (15 %) on the income arising in each of the jurisdictions in which they operate.

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The Commentary to the GloBE Rules provides MNEs and tax administrations with detailed and comprehensive technical guidance on the operation and intended outcomes under the rules and clarifies the meaning of certain terms. It is intended to promote a consistent and common interpretation of the GloBE Rules that will facilitate co-ordinated outcomes for both tax administrations and MNEs.

The full text of the GloBE Rules and the Commentary is available [here](#).

USEFUL LINKS

[Article on the draft Unshell Directive](#) (EN)

[Largest in Business](#) (EN)

[More efficient tax audits](#) (SK)

[Guidance on the application of DTT](#) (SK)

[OpenData Portal](#) (EN)

[2022 OECD Transfer Pricing Guidelines](#) (EN)

[Call for public consultations](#) (EN)

[Advocate General's Opinion](#) (EN)

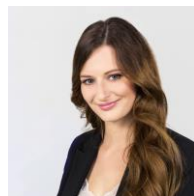
[Information on the Unshell Directive](#) (EN)

[GloBE Rules and Commentary](#) (EN)

Authors:



Renáta Bláhová
Tax advisor
and auditor



Eva Kusá
Tax advisor



Kristína Reguliová
Senior tax expert