

Overview of Tax Law Changes after 01/01/2023

The year 2022 was again rich in tax changes, with the most important tax laws being amended and a number of significant amendments introduced. The most important changes result from our EU membership and the need to transpose EU legislation into national law. In the following text, we provide you with a **brief overview of the most important legislative changes coming into force in 2023 or later.**

Changes to the Income Tax Act

The Income Tax Act has been amended several times. The last amendment was approved at the end of December 2022, with the most important provisions coming into force on 01/01/2023.

CHANGES TO TRANSFER PRICING (SINCE 01/01/2023)

Significant changes have been adopted in the area of transfer pricing, which are briefly described in the following paragraph:

1. Modification of the definition for identifying **economically related parties**. The shares of related parties are added together and if their sum exceeds 25 %, the persons or entities concerned are subsequently considered to be economically related.
2. A threshold for a "**material controlled transaction**" has been introduced: amount exceeding **€10,000 per transaction** and a principal amount exceeding **€50,000 for a loan**.
3. The **right for a corresponding adjustment of the tax base** was introduced if the primary adjustment is made in a Slovak company and the counterparty is a Slovak permanent establishment.
4. The tax administrator **may determine the profitability of an entity at the level of the median** during a tax audit. If the taxpayer proves that, given the circumstances, an adjustment to a different value within the range of values is more appropriate, the tax base will be adjusted to that value. This provision strengthens the position of the tax administrator, that usually presents its own benchmark in problematic cases.
5. To reduce the administrative burden of taxpayers, a possibility was introduced to submit transfer pricing documentation to the tax administrator in an official language other than Slovak.
6. With the aim to eliminate inconsistencies when issuing decisions on bilateral or multilateral APAs, the competent authorities have agreed that it will be possible to use the agreed transfer pricing method also for **tax periods prior to filing the application (roll back) and, at the same time, to issue the decision for more than five tax periods.**

CHANGED APPROACH TO TAXATION OF PERMANENT ESTABLISHMENTS (SINCE 01/01/2023)

While the last legal regulation on the **calculation of the tax base of a permanent establishment that does not keep double-entry books** (Section 17(1)(d)) was based on the **cash principle** (the difference between income and expenditures), the **new wording of the act explicitly introduces also the accrual principle**. When determining the tax base, the permanent establishment should therefore be able to proceed upon the **difference between revenues and expenses attributable to the permanent establishment as shown in the accounts of the head office**. The amendment responds to the requirements of practice. It is very common for the PE's head offices abroad to keep double-entry accounts and this is in many cases a more reliable basis for determining the PE's tax base.

The amendment has also regulated the procedure for including income (revenue) and expenditures (expenses) incurred before the origination or recognised after the termination of the PE. The change will allow tax expenses to be claimed by the PE even if the condition for claiming them was met after the PE ceased to exist (e.g. expenses underlying the payment condition).

The PE can claim these expenses after its termination by means of an amended tax return for either of the last two tax periods when it still existed.

LIMITATION OF TAX DEDUCTIBILITY OF INTEREST EXPENSE (FROM 01/01/2024)

In relation to the transposition of Article 4 of ATAD I, the rule on the limitation of tax deductibility of interest expense was updated in the Income Tax Act. The aim was to limit the net interest expense of legal entities in order to prevent artificial reduction of the tax base of a legal entity through debt financing.

The new rule determines the amount of tax-deductible interest expense exceeding the interest revenue (net interest expense). The base for the limitation of net interest expense is the tax base plus tax depreciation and net interest expense.

Until the end of 2023, the exemption under Article 11(6) of ATAD I is applicable in Slovakia, based on which the interest expense limitation applies exclusively to related parties (thin capitalisation rules under Section 21a of the Income Tax Act). With effect from 01/01/2024, the new rule on the limitation of net interest expense comes into effect and will also apply to **non-related parties**.

The provision also contains a safe harbour rule, i.e. the cap on net interest expense does not apply to taxpayers whose net interest expense **does not exceed €3 million**.

A taxpayer who is not subject to the safe harbour rule is obliged to increase the tax base by interest that exceeds **30 % of EBITDA** (earnings before interest, tax, depreciation and amortisation). In contrast to Section 21a, interest that is part of the acquisition cost or own cost of an asset (capitalised interest) is also included in net interest expense.

The good news is that, in addition to limiting tax optimisation, the European Union is keen to promote a reliable, efficient and fair system of corporate taxation in the EU. In an attempt to address the historical tax advantage of debt over equity, it has introduced a proposal for the DEBRA Directive under which, under certain conditions, **notional interest on increases in equity will be deductible for tax purposes**. If approved, the directive will apply from 01/01/2024, with a proposed implementation date of 31/12/2023.

TAXATION OF COMMERCIAL BONDS OF NON-RESIDENTS (SINCE 01/01/2023)

Starting with 2023, also the Slovak-sourced revenues from commercial bonds received by taxpayers with limited tax liability are subject to taxation in Slovakia.

CHANGES TO THE TAX BONUS (SINCE 01/01/2023)

The amount and the calculation formula of the tax bonus have changed with effect since 01/01/2023, too. Two age groups have been introduced – up to 15 years and over 15 years of age of a child. Further, the amount of the tax bonus is limited by the percentage of the tax base (partial tax base), according to the amount of dependent children. The maximum tax bonus per dependent child up to 15 years of age is €100/month and over 15 years of age €50/month.

Changes to the VAT Act

The amendment to the VAT Act was adopted in December 2022 and brought numerous changes.

OBLIGATION TO CORRECT THE DEDUCTED INPUT VAT IN RELATION TO UNPAID INVOICES (SINCE 01/01/2023)

An important change is the **obligation of the customer to make a correction of the deducted input VAT**, which must be made on the purchased goods/services if he has not paid for the above supplies. The correction is to be made in the tax period in which 100 days have passed since the due date of the liability.

At the same time, the conditions for the possibility of correcting the tax base for an irrecoverable receivable have been softened. **The receivable will be considered irrecoverable if 150 days have elapsed since the due date** (until now 12 months).

Further, the lower limit for receivables that can automatically be considered irrecoverable after 150 days has been **increased from €300 incl. VAT to €1,000 incl. VAT.**

CHANGES RELATED TO THE REGISTRATION DUTY (SINCE 01/01/2023)

The amendment has also brought simplification **in the form of deletion of the obligation of domestic registration for VAT if the entity has reached a turnover of €49,790 only from exempt activities** within the meaning of Sections 37 through 39 of the VAT Act. The aim of this change is to avoid the obligation to file zero VAT returns with only exempt activities reported. Entities which have already been registered and meet the conditions may apply for deregistration on these grounds.

Further, the **period for assessing late registration is being changed from 30 days to 21 days**, and the automatic obligation of the tax administrator to carry out a tax audit if an excessive VAT deduction is declared was deleted from the law.

VAT REDUCTION TO 10% FOR SELECTED RESTAURANT AND SPORTS SERVICES (SINCE 01/01/2023)

Another change to the VAT Act was proposed during the legislative process in the parliament: the introduction of a temporarily reduced 10 % VAT rate (until 31/03/2023) applicable to services of transporting people by cable cars and ski lifts, admission to indoor and outdoor sports facilities, swimming pools and to restaurant and catering services. Shortly before Christmas, the parliament finally agreed **that the reduction of the VAT rate to 10 % will be permanent.**

OTHER CHANGES (FROM 01/01/2024)

The amendment transposes also the EU Council Directive 2020/284 of 18 February 2020 amending Directive 2006/112/EC. Harmonised rules **to combat tax fraud in cross-border e-commerce** and to check the correctness of the amount of the VAT declared have been introduced.

Changes to the Tax Administration Act

CHANGES TO THE TAX RELIABILITY INDEX (SINCE 01/01/2023)

During 2022, the tax administration began sending out information on the new Tax Reliability Index assigned to taxpayers. The original noble idea of evaluating taxpayers transparently was applied controversially, as the evaluation criteria were purely formalistic, regardless of the size and complexity of the company's operations. According to statistics, more than 2/3 of the entities in the highest category fell into a lower category. As the deadline for the publication of the assigned indices (30/09/2022) approached, many taxpayers facing reputational risk began to protest.

In September 2022, an amendment to the e-Government Act was passed, which included an amendment to the Act No. 563/2009 Coll. on tax administration (Tax Procedure Code). The amendment postponed the deadline for publication of the list of assigned tax reliability indices to **31/01/2023**, which gave the tax administration time to reassess and soften some of the criteria.

SECOND CHANCE SYSTEM WITH RESPECT TO IMPOSING FINES (FROM 01/01/2024)

From 2024, the **tax administrator will not impose a fine upon the first infringement** but will issue a warning instead. If the obligation is complied with after the deadline, the tax authority will notify the taxpayer that upon the next infringement a penalty will be imposed.

Changes to the Accounting Act

REPORT ON INCOME TAX INFORMATION

New provisions of the Accounting Act effective from 22/06/2023 introduce the duty to prepare a Report on income tax information (sections 21 through 21 f). This obligation is part of the broad international ATAD initiative (specifically Directive (EU) 2021/2101) and relates to the accounting periods starting on 22/06/2024 and later.

According to the amendment, the duty to prepare the Report on income tax information applies to the following entities:

- a. ultimate parent undertaking**, if its consolidated revenue reported in the consolidated financial statements prepared under special regulations exceeded **€750 million** in two immediately preceding accounting periods,
- b. standalone undertaking**, if, in two immediately preceding accounting periods, its
 1. revenue reported in the individual financial statements prepared under special regulations exceeded €750 million, or
 2. net turnover reported in its individual financial statements (if it does not prepare individual financial statements under special regulations) exceeded €750 million.

An accounting entity subject to the obligation to deposit the Report on income tax information shall **deposit it in the register no later than one year after the end of the accounting period** for which the Report on income tax information is prepared. In addition, the accounting entity is obliged to publish the report in the same form also on its website.

Other important legislative changes

MINIMUM EMPLOYEE HEALTH INSURANCE CONTRIBUTIONS (SINCE 01/01/2023)

In December 2022, an amendment to Act the No. 581/2004 Coll. on health insurance companies was approved, introducing minimum health insurance contributions for low-income employees since 01/01/2023. The minimum contribution must reach the amount of the contribution calculated from the minimum subsistence amount, which is at least €32.81 per month for 2023. If the calculated health insurance contribution does not reach the required minimum amount, the difference will be paid by the employee. **The employer's payment obligation remains unchanged.**

Given the complications expected in both the calculation and reporting of wages, **we recommend an independent review to each employer.**

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