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We begin our New Year's edition of BMB Newsfilter by thanking all our clients for their trust over the past year and wishing everyone all the success in 2024, despite the external factors that will be a major challenge in almost every business sector. Even though the inflation in the EU is expected to slow down, starting economic growth will not be easy in the EU or in Slovakia. That is why governments in most EU countries are consolidating public finances mainly through tax increases. Slovakia will be no exception; Germany has even greater difficulties. As we expected in the previous edition, the Slovak public administration budget, together with tax-law changes, was approved just before Christmas, and the new government of Robert Fico is not making radical changes in foreign or trade policy and continues to respect EU law.

The adopted year-end package contained the new Act on top-up tax proposed in the summer (TOP 1). Most of the pre-election expectations were met, too. With effect from 01/01/2024, the new government of Robert Fico approved windfall taxes for the banking sector and selected energy companies such as Slovnaft (TOP 1) as well as higher excise taxes on tobacco and alcohol (TOP 3). The only big unpleasant surprise is the increase in health insurance contributions for employers (from 10% to 11% of the assessment base) and for self-employed persons (from 14% to 15%). Further less unpleasant surprises include the reintroduction of a minimum tax in the form of a tax license (TOP 1), the abolition of the personal income tax exemption on the sale of securities and shares approved in June, and an increase in the withholding tax on dividends from 7% to 10% (TOP 2). Small entrepreneurs were at least pleased to see the limit for applying the 15% income tax rate increased to €60 thousand per year, better earning individuals appreciate that the top income tax rate for individuals stays at 25%.

Good news from the end of last year includes the final decision on the case of shell companies and the application of the concept of the beneficial owner in practice, on which our tax professionals published expert articles (the well-known SPP case) in the past. The quality of the final decision of the Supreme Administrative Court confirmed that its establishment in 2021 was a step in the right direction from the point of view of the quality of tax law in Slovakia (TOP 4). Those of our clients who are considering new or expanding existing investments in Slovakia should note the favourable changes to state aid rules (TOP 5).

The second part of our New Year's edition of BMB Newsfilter focuses, as always, on international topics, now also on the expansion of Slovakia's network of double tax treaties to cover further countries (TOP 6), the analysis of the reduction of the VAT gap in the EU (TOP 7) or OECD statistics on the resolution of international tax disputes (TOP 10).

BMB Taxand team of tax advisors and auditors wishes you a happy new year.

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TOP 1: CORPORATE INCOME TAX AS FROM 01/01/24

1. Reintroduction of minimum tax

One of the measures of the consolidation package, which was approved by the Parliament on 19/12/2023, is the introduction of a minimum tax (the so-called tax licence) for legal entities with effect from 01/01/2024. The minimum tax is to be paid by taxpayers:

- that generated a tax loss,
- that reported no tax liability in the CIT return,
- whose tax liability reported in the CIT return less tax paid abroad and tax reliefs is lower than the minimum tax amount.

The amount of the minimum tax will depend on the taxable income generated by the taxpayer for the tax period:

Taxable income	Minimum tax as from 01/01/2024
up to €50,000	€340
over €50,000 and up to €250,000	€960
over €250,000 and up to €500,000	€1,920
over €500,000	€3,840

If at least 20% of the total average number of employees employed by the taxpayer for the tax period are employees with disabilities, the minimum tax is reduced to 50%. The first year for which the minimum tax will be applied is 2024 (calendar year).

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2. Adoption of the Top-Up Tax Act

On 08/12/2023, the Parliament adopted the Act on the top-up tax to ensure a minimum level of taxation of multinational enterprise groups and large-scale national groups, which is a transposition of the Council Directive (EU) on ensuring a global minimum level of taxation of multinational enterprise groups and large-scale domestic groups in the Union. The act entered into force on 31/12/2023.

The basic idea behind the act

If the effective tax rate of the constituent entities is **lower than 15%**, a top-up tax corresponding to this difference must be paid.

Who is covered by the act?

This law applies to entities located in Slovakia which are members of a multinational group or a large national group with annual revenues of at least €750 million in the consolidated financial statements of its ultimate parent entity for at least two of the four fiscal years immediately preceding the fiscal year under analysis.

Basis for calculation of the top-up tax

The starting point will be the accounting result, while various accounting standards (IFRS, local standards of EU countries and many other countries) are accepted. Groups may proceed from their consolidated financial statements (result before elimination of intra-group transactions) or from the individual financial statements of the constituent entities. The results are adjusted by the positions defined in the law.

In the first step, data for all group entities located in the Slovak Republic are calculated. In the last step, the calculated top-up tax will be allocated to the individual entities, which will report it in their tax returns.

Exceptions from the calculation of the top-up tax (safe harbours)

The law contains a number of minor exceptions. One of them is an exception based on a small scope of average qualifying revenue (max. €10 million) and average qualifying income or qualifying loss (max. €1 million). These values for entities located in the Slovak Republic can also be obtained from the country-by-country report (CbC report).

Tax period, tax return, notification, deadlines

The tax period of the top-up tax is the accounting period for which the ultimate parent entity of the group prepares consolidated financial statements.

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The taxpayer is obliged to file the top-up tax information return with the tax authorities **within 15 months** after the end of the relevant tax year. If the tax period is a transitional year (the first year in which the group falls within the scope of the act), this period is extended **by three full calendar months**. The top-up tax is due on the last day of the month in which the deadline for filing the tax return expires. The deadline for filing the tax return **may not be extended or waived.**

In addition to the tax return, the top-up tax also entails an obligation to file a notification containing information relevant for the payment of the top-up tax. The deadline is the same as for the tax return. In the case of the notification, entities in the group may choose to have the parent entity or another designated entity file it for all entities in Slovakia. The tax return, however, is filed by each entity itself, as it is linked to the taxpayer.

TOP 2: PERSONAL INCOME TAX AS FROM 01/01/24

1. Increase in the income threshold for the application of the reduced tax rate (applies also to legal entities)

As from 01/01/2024, the threshold of taxable income for applying the reduced tax rate (15%) for self-employed individuals as well as for legal entities increases to **€60,000**. Until 31/12/2023, the 15% income tax rate is applicable if the taxpayer's income does not exceed €49,790. The threshold of €60,000 will also be used for the definition of a micro-taxpayer. This is one of the few positive changes for entrepreneurs.

2. Increase in the withholding tax on dividends

As from 01/01/2024, the withholding tax rate on dividends (profit shares), liquidation proceeds and compensatory payments increases from the original 7% to **10%**. The withholding tax of 10% will be applied to:

- dividends earned for the tax period beginning no earlier than 01/01/2024,
- share in the liquidation proceeds of the company or cooperative, if the company or cooperative enters liquidation no earlier than 01/01/2024 or if the court decides to dissolve the company no earlier than 01/01/2024; and
- the compensatory payment, the amount of which has been determined on the basis of the ordinary individual financial statements for the accounting period beginning no earlier than 01/01/2024.

3. Increase in the tax bonus on mortgage interest paid

As the interest on mortgages is constantly increasing, the Parliament approved on 08/12/2023 an amendment to the Income Tax Act in connection with the repayment of mortgages.

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The amendment comes into force on 01/01/2024, however, the increased amount of the tax bonus can be applied **already for 2023.**

Conditions for applying the tax bonus on the 2023 instalment increase

The taxpayer is entitled to a tax bonus for 2023 on:

- the basis of one mortgage contract,
- one domestic real estate for residential purposes,
- real estate which is a flat or a family house, and
- real estate which serves exclusively for permanent residence of the taxpayer (together with persons close to him).

It follows from the above that the tax bonus cannot be applied to real estate that the taxpayer rents out.

The income condition must be met, too. The taxpayer is entitled to an increased tax bonus if he or she had an average monthly income of no more than **€2,086.40** in 2022.

Amount of the tax bonus

The tax bonus equals to **75%** of the difference between the lower average annual instalment paid in 2022 and the higher annual instalment paid in 2023, up to a maximum of **€1,800 per year**. If the amount of the instalment is changed during the tax year, the taxpayer is entitled to a pro rata portion of the tax bonus on the increase in the instalment paid per number of calendar months in the tax period, starting from the month of the increase in the instalment paid compared to the amount of the instalment paid in 2022, in a monthly amount of no more than **€150**.

4. Abolition of exemptions which were to come into force on 01/01/2024

With effect from 31/12/2023, the provisions which were to come into force on 01/01/2024 were abolished. This includes the abolition of the exemption from personal income tax in the case of income from the sale of securities (including a joint-stock company), income from the sale of participations (shares) in a limited liability company and income from the redemption of share certificates. The favourable changes in the area of virtual currencies approved outside of the regular legislative process were abolished, too.

TOP 3: OTHER CONSOLIDATION MEASURES AS FROM 01/01/24

1. Increase in health insurance contributions for employers and self-employed

The amendment to the Health Insurance Act increases health insurance contributions for employers, self-payers and self-employed persons, but only for a transitional period **from 01/01/2024 until 31/12/2027**.

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The rate for employees remains unchanged. The changes are presented in the table below:

Health insurance payer	**Rate until 31/12/2023**		**Rate from 01/01/2024 until 31/12/2027**	
	Standard rate	Reduced rate for disabled persons	Standard rate	Reduced rate for disabled persons
Employee	4%	2%	4%	2%
Employer	10%	5%	11%	5.5%
Self-payer	14%	7%	15%	7.5%
Self-employed person	14%	7%	15%	7.5%

2. Extension of the windfall tax for companies in the oil sector

The amendment also approved the continuation of the imposition of the special windfall tax on excess profitability for companies active in the oil, natural gas and coal sector and refineries for the year 2024.

3. Special levy on business in regulated sectors

The amendment introduces a higher rate for the monthly levy for banks in the amount of 0.025, which will gradually decrease annually until 31/12/2027, after which the amount of the monthly levy will be the same for all regulated entities, i.e. 0.00363.

4. Changes to VAT and excise duties

The approved amendment increased the VAT rate on alcoholic beverages sold in restaurants from 10% to the standard 20% VAT rate.
From 01/02/2024, the excise duty on tobacco products is also being increased, namely on tobacco from €101.30/kg to €139/kg. For cigarettes, the amendment increases both tax rates, namely from €84.60/1000 cigarettes to € 91.30/1000 cigarettes, while the percentage rate increases from 23% to 25%.
As from 01/01/2024, the percentage rates of excise duty on alcoholic beverages, namely alcohol, are also changed, where the basic percentage rate increased from 130% to 138% and the reduced rate changed from 65% to 50%.

5. Valorisation of court and administrative fees

The amendments to the Court Fees and Criminal Record Fee Act and the amendment to the Administrative Fees Act increase a number of court and administrative fees from **01/04/2024**.

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6. Change to Pillar II contributions

The measures also include a reduction in the rate of compulsory contributions for old-age pension insurance to Pillar II from the current 5.5% to 4%.

7. Abolition of a public holiday (1 September)

1 September (Constitution Day) will no longer be a non-working day or a public holiday as defined by the Labour Code. The day will no longer be subject to extra public holiday pay and the ban on retail sales will no longer apply.

TOP 4: TAX ADMINISTRATION WON A LONG-RUNNING LAWSUIT AGAINST SPP

At the end of 2023, the judgment of the Supreme Administrative Court of the Slovak Republic became final, which confirmed the approach of the Tax administration ("TA") in detecting an artificial change of shareholders of the company Slovenský plynárenský priemysel, a. s. ("SPP") with the aim of obtaining a tax advantage in the form of non-taxation of dividends. This is a key dispute in terms of application of the principles of international tax law in Slovakia in practice, and our team of tax advisors has published a number of expert articles in this regard in the past. We are pleased that the Supreme Administrative Court of the Slovak Republic, created by the recent judicial reform, has ruled along the lines of our opinion, so we would like to briefly summarize our conclusions.

During a corporate income tax audit carried out for the 2003 tax period, TA detected that shortly before SPP was due to distribute dividends, its shareholders - the German company Ruhrgas Aktiengesellschaft Essen ('RAE') and the French company G. D. F. International Paris ('GDF') – established the company Slovak Gas Holding B.V. ('SGH') in the Netherlands for the purpose of non-taxation of dividends. Subsequently, TA imposed a withholding tax of €15.43 million on SPP.

If the dividends had been paid to the original SPP shareholders, they would have been subject to a withholding tax of 15% or 10%. However, when the dividends were paid to the new shareholders, they were exempt from tax under the double tax treaty with the Netherlands. They were not taxed in Slovakia and were exempt from taxation in the Netherlands under national rules. The dividends have thus 'flowed' through the 'empty' SGH company tax-free via loans to the original shareholders - RAE and GDF.

TA identified an abuse of law, which was confirmed by the judgment of the Supreme Administrative Court, which after many years of legal proceedings in Slovakia as well as at the Court of Justice of the EU confirmed the correctness of the approach of the FA on the basis of the doctrine of abuse of law in the field of international taxation.

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TOP 5: NEW STATE AID RULES

We provided detailed information on the Act No. 57/2018 on regional state aid at the time the law was adopted. In the course of the following years, the act and its implementing regulation (Government Regulation No. 195/2018) were amended several times. The latest amendments were prompted by the difficult economic situation due to the receding COVID-19 pandemic and the subsequent energy crisis and were aimed at loosening the conditions for investors to benefit from the aid. In the following paragraphs we provide brief information on the basic conditions as well as on the most important changes.

State aid continues to be granted to support the implementation of investment projects in industrial production, technology centres and business services centres. State aid may be granted in the form of a subsidy for tangible and intangible fixed assets, income tax relief, contribution to create new jobs, and in the form of the transfer of immovable property or the lease of immovable property at a value lower than expert's valuation.

When dividing districts into zones for the purpose of the contribution to create new jobs, instead of the 'recorded unemployment rate', the 'proportion of available jobseekers in working age, as published in the statistical data of the labour office' in each district is taken into account.

Most important changes in 2023:

- The minimum value of acquired non-current tangible and non-current intangible assets decreased to 50%.
- The minimum number of newly created jobs decreased to 50%.
- The maximum proportion of acquired machinery in industrial production that can be located in a secondary place of implementation of the investment project increased to 40%.
- All investment projects in industrial production are considered to be investment projects in priority areas of industrial production.
- All investment projects in technology centres are considered to be investment projects in the priority areas of technology centres.
- All investment projects in business services centres are considered to be investment projects in the priority areas of business services centres.

Moreover, numerous transitional provisions were introduced, applicable to proceedings that were initiated but not finally concluded by 30 April 2023. This includes e.g. the extension of the time limit for starting works on an investment project from 12 to 24 months, extension of the time limit for completing all works on a project from 3 to 5 years (from 5 to 7 years for large projects), and reduction of the minimum value of the increase in production or services for production expansion projects from 15% to 5%.

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TOP 6: SLOVAKIA EXPANDS ITS NETWORK OF DOUBLE TAX TREATIES

Slovakia has currently 70 bilateral double tax treaties (DTTs) in force. In December 2023, the Slovak Parliament approved double tax treaties with Albania, Azerbaijan, New Zealand and Saudi Arabia.

It can be briefly summarised that DTTs are of particular interest to companies whose economic activity is international, especially if they do business with countries whose domestic tax system seeks to tax as much income from global sources as possible. In particular, tax systems of non-EU countries may be less transparent for us, whether it is withholding taxes on any payment made to our company by a business partner based abroad, or the forced registration of a permanent establishment, which is subject to unpredictable taxation.

On the other hand, it should be noted that every double taxation treaty also contains articles that allow for the exchange of information and thus enable tax administrations to prevent profits from being shifted without being taxed. To summarise the material from our colleagues at TAXAND, double tax treaties specify rules which:

- resolve tax disputes between two countries;
- cover cross-border transactions;
- are part of public international law.

Slovakia has currently 70 DTTs, while the Czech Republic almost 100. While our western neighbours succeeded in expanding their network of DTTs even during the 2020-2022 crisis period, Slovakia has only managed to conclude one new DTT in these years (with Oman in 2021). During this period, the process of concluding new treaties stagnated, but with the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"), which entered into force on 01/01/2019, it has been possible to implement modifications to a significant number of DTTs. The list of modified DTTs of Slovakia can be found here.

It will also be interesting to see whether it will be possible, in the near future, to renegotiate the DTT with Germany, which is the largest foreign investor in Slovakia.

TOP 7: REDUCTION OF THE VAT GAP IN THE EU

According to a new report released by the European Commission in October 2023, most EU Member States made progress in the enforcement of VAT compliance in 2021. The annual VAT Gap Study, which measures the difference between theoretically expected VAT revenues and the amount actually collected, shows that Member States lost around €61 billion in VAT in 2021, compared to €99 billion in 2020.

This figure represents revenues lost mainly to VAT fraud, evasion and avoidance, non-fraudulent bankruptcies, miscalculations and financial insolvencies.

In nominal terms, the overall EU VAT gap decreased by around €38 billion, from €99 billion in 2020 to €61 billion in 2021, an unprecedented improvement on previous years.

The most significant reductions in their national VAT gap were recorded by Italy and Poland. **The VAT gap of Slovakia for 2021 was 10.6%, amounting to €871 million**.

The unprecedented increase in VAT collection and decrease in the overall VAT gap in most Member States could be explained by a variety of factors. First, electronic payments and online shopping, where the rate of VAT compliance is generally much higher, have grown in popularity since the COVID-19 pandemic. Second, Member States start seeing the benefits of targeted measures introduced in their domestic tax systems such as new digital reporting tools, the real-time tracking of transactions, and e-invoicing regimes which are particularly effective against criminal VAT fraud.

As part of the 2022 VAT in the Digital Age proposals currently under discussion between Member States the Commission has put forward plans for a cross-border digital reporting system based on e-invoicing for business-to-business transactions. The new system would make sure that Member States' authorities are fully informed of transactions in almost real time, allowing them to immediately address VAT fraud.

TOP 8: EC SUES BELGIUM OVER TAXATION OF NON-RESIDENT TAXPAYERS

In November 2023, the European Commission decided to refer Belgium to the Court of Justice of the European Union for its failure to comply with the Treaty principle of free movement of workers, as regards taxation of non-resident taxpayers with modest income.

In its judgment of 10 March 2022 (European Commission v the Kingdom of Belgium, Case C-60/21) the Court found that Belgium infringed the Treaty by refusing non-resident taxpayers who earn less than 75% of their worldwide income in Belgium from deducting their alimony payments from their taxable income. In response to the 2022 judgment, Belgium extended the personal scope of the tax deduction. However, it did not eliminate the infringement in its entirety. The new legislation introduces two conditions, which appear to unduly restrict the availability of the benefit for non-residents with modest income.

If the Court finds that Belgium has not complied with its previous judgment, it may impose financial sanctions.

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TOP 9: TAX PROPOSALS TO SIMPLIFY RULES AND CUT COMPLIANCE COSTS

In September 2023, the European Commission adopted a key package of initiatives to reduce tax compliance costs for large, cross-border businesses in the EU. The proposal, called "Business in Europe: Framework for Income Taxation" (BEFIT), will make life easier for both businesses and tax authorities by introducing a new, single set of rules to determine the tax base of groups of companies. This will reduce compliance costs for large businesses who operate in more than one Member State and make it easier for national tax authorities to determine which taxes are due. The new, simpler rules could reduce tax compliance costs for businesses operating in the EU by up to 65%.

BEFIT will mean that:

- Companies that are members of the same group will calculate their tax base in accordance with a common set of rules.
- The tax bases of all members of the group will be aggregated into one single tax base.
- Each member of the BEFIT group will have a percentage of the aggregated tax base calculated on the basis of the average of the taxable results in the previous three fiscal years.

The package also includes a proposal aiming at **harmonising transfer pricing rules** within the EU and ensuring a common approach to transfer pricing. It incorporates the arm's length principle and key transfer pricing rules into EU law, clarifies the role and status of the OECD Transfer Pricing Guidelines and creates the possibility to establish common binding rules on specific aspects of the rules within the EU.

At EU level, transfer pricing rules are currently not harmonised. This leads to a number of problems, such as profit shifting between jurisdictions, tax avoidance, litigation, double-taxation and high compliance costs.

The proposal will increase tax certainty and mitigate the risk of litigation and double taxation. The new Transfer Pricing Directive will also further reduce the opportunities for companies to use transfer pricing for aggressive tax planning purposes.

Once adopted by the Council, the proposals should come into force on 01/07/2028 (BEFIT) and on **01/01/2026 (Transfer Pricing Directive).**

TOP 10: OECD RELEASED MAP STATISTICS FOR 2022

In November 2023, OECD released The 2022 Mutual Agreement Procedures (MAP) Statistics. These latest statistics cover 133 jurisdictions and practically all MAP cases worldwide. They provide an objective and global reference frame as well as a country-specific view.

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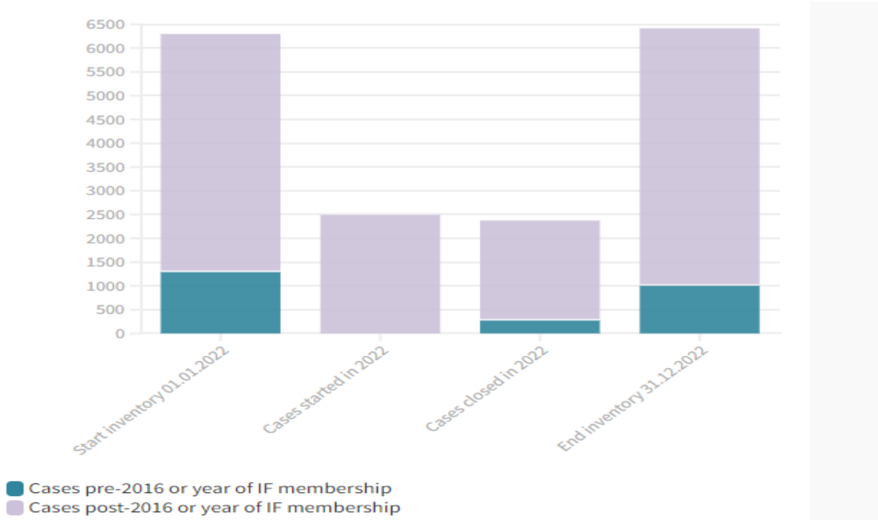
The 2022 MAP Statistics show the following trends:

- **The number of newly opened MAP cases has increased**. Compared to 2021, the number of MAP cases opened in 2022 increased by approx. 3%.
- **Fewer MAP cases were closed in 2022**. Compared to 2021, approx. 4% less MAP cases were closed in 2022.
- **Outcomes remain generally positive**. Around 73% of MAP cases closed in 2022 fully resolved the issue both for transfer pricing and other cases, while only 2% of MAP cases were closed with no agreement.
- **Average MAP closing time comes close to the 24-month target**. On average, MAP cases closed in 2022 after 25.3 months, compared to 26 months in 2021. In particular, transfer pricing cases took 29 months on average (down from 32.3 months in 2021). These results are positive and show that even though taxpayers are requesting MAP more than ever, competent authorities face the challenge through greater resources and better case management.

The jurisdictions that needed the shortest time to close transfer pricing and other cases in 2022 were Netherlands and New Zealand.

TOTAL MAP CASELOAD



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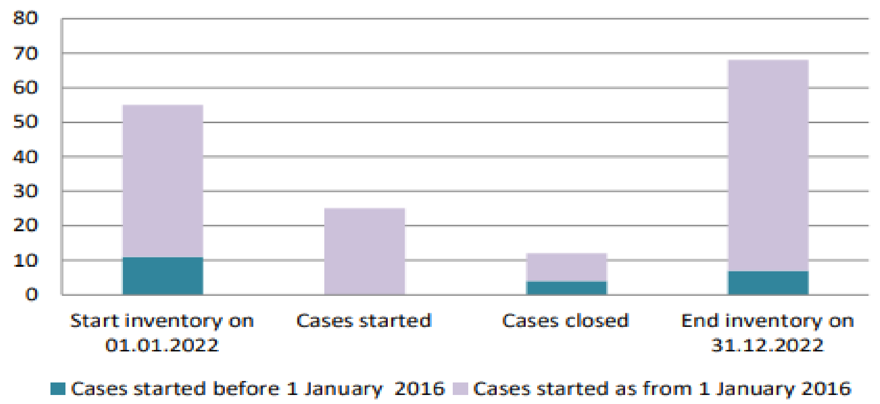
SLOVAKIA MAP CASELOAD



USEFUL LINKS

Article of Renata Blahova on the SPP case (EN)
List of Slovak Double Tax Treaties (SK)
Taxand: Introduction to Tax Treaties (EN)
List of Slovak DTT modified through MLI (SK)
Progress in VAT compliance (EN)
BEFIT (EN)
Proposal of the Transfer Pricing Directive (EN)
MAP Statistics for 2022 (EN)

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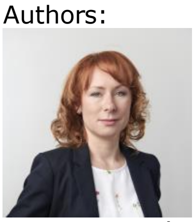
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