

Amendments to the Slovak legislation and other topics

Welcome to our January issue of Tax & Legal News. In this issue we outline information on:

- Mandatory electronic filing – reminder,
- Register of financial statements,
- Preliminary injunction banning disposal with business share,
- New templates of corporate and personal income tax returns,
- Reduced corporate income tax rate affects the calculation of advance payments.

We wish you a pleasant read.



Mandatory electronic filing – reminder

As of 1 January 2014, electronic filing to the Slovak financial authorities became mandatory for registered VAT payers in Slovakia, tax advisors on behalf of taxpayers whom they represent for tax administration purposes, attorneys-at-law on behalf of taxpayers whom they represent for tax administration purposes and to other authorized representatives on behalf of registered VAT payers in Slovakia, whom they represent for tax administration purposes.

E-filing has to be made a) using the qualified electronic signature, or b) without the qualified electronic signature based on a written agreement on electronic filing concluded with the tax authorities in accordance with Article 13 (5) of the

Slovak Tax Procedure Code. It is necessary to conclude an agreement with each tax administrator separately. Based on an agreement concluded with the tax authorities it is not possible to deliver filings electronically to the customs authorities and vice versa.

Electronic filing of documents is made via the new web portal of the Slovak financial authorities www.financnasprava.sk. Filings having a structured form can also be delivered using the software application eDane, which is available at the aforementioned web site of the Slovak financial authorities.

We would again like to stress that mandatory electronic filing applies to all filings submitted by the abovementioned persons to the financial authorities, i.e. not only to tax returns and documents in a prescribed

structure, but also to other filings (such as appeals, requests, and announcements). These are also delivered to the financial authorities via the abovementioned web portal, using a designated form of a “general filing.” This form is also expected to become accessible in the software application eDane.

It is vital that due attention be paid to this new legislative requirement in order to mitigate the risk that void filings are made with the financial authorities. Please contact us with any questions in relation to the new obligation of electronic communication.

Author: Elvíra Ungerová

Contact: eungerova@kpmg.sk

+421 2 599 84 111

Register of financial statements

The amendment to the Accounting Act of 17 October 2013 (published in the Collection of Laws under number 352/2013) changed original provisions and introduced new provisions dealing with the Register of Financial Statements (RFS).

Provisions relating to RFS took effect on 1 January 2014. According to the amended law financial statements and annual reports prepared as of 31 December 2013 and later should be filed in the RFS.

The obligation to file financial statements in the collection of deeds of the commercial register would be fulfilled in accordance with the amended law by filing financial statements in the RFS which should in turn ensure filing thereof in the collection of deeds of the commercial register.

We would like to draw your attention to the fact that the amended law contains transitory provisions which lay down differentiated approach to filing of financial statements prepared as of a date earlier than 31 December 2013 which are being belatedly published or filed in the collection of deeds after 1 January 2014.

Read more about this topic in our alert:

<http://www.kpmg.com/SK/en/IssuesAndInsights/ArticlesPublications/Publicationseries/Documents/AASAlert-Dec-2013-EN.pdf>

Author: Ján Vajcík

Contact: jvajcik@kpmg.sk

+421 2 599 84 111

Preliminary injunction banning disposal with business share

In the recent decision of the Slovak Supreme Court in the proceedings file No. 5 Obdo 33/2012, the court was dealing with a question of fulfilment of law requirements for order of a preliminary injunction banning disposal with the business share to the defendants (“preliminary injunction”).

The petitioner demanded that the court issue a preliminary injunction, by way of which the defendants would be prohibited to dispose of their business shares due to a pending arbitration in Austria, in which the petitioner had claimed his receivables against the

company who had been the previous owner of the business shares (“debtor”) and had transferred the business shares to its shareholders, the defendants.

In the core of the matter proceedings, the petitioner claims legal ineffectiveness of the contract on transfer of business shares concluded between the Debtor and the defendants vis-a-vis the petitioner (“adversative action”).

The District court, as the court of first instance, has dismissed the motion to order preliminary injunction. The court stated that it had not been lawfully decided yet in the arbitration proceedings about the receivable of the petitioner towards the Debtor, and the petitioner did not prove that this claim should be awarded to him in the foreseeable future. Also the decision in question in the proceedings on adversative action was not expected to be rendered soon, and thus the concern about frustration of the execution of decision was assessed by the District court as premature.

The Regional court, as the appellate court, has revised the decision of the District court and ordered the preliminary injunction. The Regional court concluded that the petitioner had sufficiently proven the legitimacy of his claim and the necessity of a preliminary arrangement of mutual relationships with the defendants. The petitioner has successfully carried the burden of proof by proving pending arbitration proceedings between him and the Debtor and the transfer of business shares by the Debtor to its shareholders, thus related persons.

The Supreme Court agreed with the opinion of the appellate court and in relation to the legal institute of preliminary injunction stated the following:

- The purpose of preliminary injunction is to arrange relations of the parties only temporarily. The law requires the petitioner to prove the basic facts, which means the claim and the possibility of frustration of execution. The claim itself does not have to be proven beyond doubt. The petitioner has proven legitimacy of his claim and possibility of frustration of execution by proving that:

- a. There are pending arbitration proceedings between the petitioner and the debtor, and
- b. The debtor has transferred his business share to its shareholders, thus related persons.

- In reference to objections raised by the defendants claiming that the transfer of business shares was realized under regular market conditions and it was an equivalent legal act, which is never disputable, the Supreme court stated that these are related to the core of the matter claimed by the petitioner in proceedings on ineffectiveness of the contract on transfer of business share and it is necessary to carry out regular evidencing in regard to these objections. The court did not take into consideration these circumstances, evaluating them as unreasonable, since it would contradict the meaning of preliminary injunction as means of temporary arrangement of relations between the parties to a lawsuit.

Author: Marian Dzuroška

Contact: mdzuroska@kpmg.sk

+421 2 599 84 111

New templates of corporate and personal income tax returns

New templates of corporate and personal income tax returns were published in the Financial Bulletin of the Ministry of Finance 12/2013. These templates should be used in case of filings where the last date of the filing deadline is after 31st December 2013. The new tax returns bring several changes, both for legal entities and for individuals. As an example, they include new section for reporting dividends received from profits earned before 2004.

The corporate income tax return contains, inter alia, information on inclusion or exclusion of unrealized foreign exchange rate differences into the tax base and a new line for stating the income tax rate.

The personal income tax return includes more detailed information on foreign income, including type of income, the source country, and attributable expenses.

The personal income tax return type B further includes a detailed table for reporting the tax evidence, e.g. in case of rental income (where the amount of assets, inventory, receivables and liabilities should be disclosed). Moreover, it contains a new table providing detailed evidence for social and health insurance purposes.

Moreover, new templates for reporting income from dependent activities were published. These should be used for reporting income for 2013 (Annual settlement of tax prepayments and Statement on reconciliation of taxes and income from dependent activities) as well as in the course of the 2014 tax period (Overview of withheld and paid tax prepayments).

With respect to the income tax return forms, we would like to bring to your attention also a new provision of the Income Tax Act effective as of 1 January 2014. The new provision specifies that attachments stated on the income tax return forms are obligatory attachments to the income tax return. The provision is to prevent different interpretations of obligations with respect to attachments stated solely on the tax return forms rather than specified in the Income Tax Act.

Author: Ivana Soboličová

Contact: isobolicova@kpmg.sk

+421 2 599 84 111

Reduced corporate income tax rate affects the calculation of advance payments

The Amendment to the Income Tax Act that has been approved by Parliament on 3 December 2013 reduced the corporate income tax rate from 23% to 22% as of 1 January 2014. The decreased tax rate is effective for tax periods beginning after 31 December 2013. Where a fiscal year other than the calendar year is used, the new rate applies from the fiscal year which starts in 2014.

The change in the corporate income tax rate affects the calculation of tax advance payments as well as the cash flow of companies. Regarding the calculation of tax liability for 2013, the tax rate of 23% was applied. However, from the first month or quarter of 2014 companies will be obliged to pay tax advance payments based on the latest known tax liability recalculated by the

new tax rate of 22%.

Practically, this change enables recalculation of the tax base for the year 2012, which has been used for the calculation of the advance payments paid in 2013, using the current tax rate of 22%, in the case of taxpayers with the taxable period equal to the calendar year. The advance payments due in 2014 should be calculated using this method up to the deadline for filling the tax return for 2013, i.e. up until 31 March 2014, unless the filing period was extended.

After filling the 2013 corporate income tax return the amount of further advance payments due in 2014 should be calculated from the last known tax liability, i.e. the tax liability for 2013, using the same tax rate of 22%.

At the same time, the threshold for quarterly advance payments obligation has been increased from EUR 1,659.70 to EUR 2,500 as of 1 January 2014.

Should you be interested in more details regarding the changes in tax advance payments, please contact us.

Author: Zuzana Blažejová

Contact: zblazejova@kpmg.sk

+421 2 599 84 111

In one sentence...

The Slovak Financial Directorate released the following guidelines and notifications:

- Guideline on submitting the EU Sales Lists,
- Guideline on commencement of VAT liability according to Article 19 of the Slovak VAT Act,
- Updated guideline on invoicing,
- Guideline on application of Article 69 Section 12 Letter f) of the Slovak VAT Act,
- Notification on changes in application of the Slovak VAT Act from 1 January 2014 by taxable persons doing business jointly under an agreement on association not having legal capacity,
- Notification on the last amendment on Act no. 595/2003 Coll. on Income Tax as amended.

Contacts

Tomáš Círan, Partner

+421 (0)2 59 98 43 06

tciran@kpmg.sk

Branislav Ďurajka, Partner

+421 (0)2 59 98 43 03

bdurajka@kpmg.sk

Róbert Kolár, Director

+421 (0)2 59 98 43 14

rkolar@kpmg.sk

KPMG Slovensko Advisory, k. s

Dvořákovo nábrežie 10

811 02 Bratislava

skmarketing@kpmg.sk

www.kpmg.sk

The information contained is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.