Amendments to the Slovak legislation and other topics

Welcome to our April issue of Tax & Legal News. In this issue we outline information on the following topics:

- **Draft amendment to the Slovak VAT Act**
- **Explanatory notes on the changes to the place of supply of services that enter into force on 1 January 2015,**
- **Public consultation on investment protection in the Transatlantic Trade and Investment Partnership,**
- **OECD discussion drafts on Base Erosion and Profit Shifting (BEPS), and**
- **Information published by the Financial Directorate to general filings by electronic means.**

We wish you a pleasant read.

Draft amendment to the Slovak VAT Act

In March 2014, the Slovak Ministry of Finance introduced a draft amendment to the Act No. 222/2004 Coll. on VAT, as amended ("the VAT Act"). Changes are proposed mainly in the following areas:

- Place of supply of services

Based on the draft amendment, Article 5 of the Council Directive 2008/8/EC, amending Directive 2006/112/EC as regards the place of supply of services, will be transposed into the VAT Act.

As of 1 January 2015, changes to the place of supply of telecommunications, television and radio broadcasting and electronic services to non-taxable persons will be introduced.

According to the currently applicable legislation, the place of supply of the abovementioned services by EU businesses to non-taxable persons is generally the place where the supplier has established his business or where his fixed establishment, from which those services are provided, is located (i.e. country of establishment of the supplier).

As of 1 January 2015, the place of supply of the abovementioned services to a non-taxable person will be the place where that service recipient is established, has his permanent address or usually resides (i.e. in the country where the customer belongs). For non-EU businesses supplying the respective services to non-taxable persons, current rules already provide for taxation in the country of the customer.

The amendment to the VAT Act will thus also bring unification of the rules for determination of the place of supply of telecommunications, television and radio broadcasting and electronic services to non-taxable persons.

- The “Mini One Stop Shop” scheme

The new rules could result in an obligation of service providers to register as VAT payers in all member states in which they supply the respective services. To prevent additional administrative burden on businesses, the scope of the Mini VAT One Stop Shop scheme will be broadened.

Currently, this special scheme already applies to suppliers of electronic services not established in the EU territory. As of 1 January 2015, this VAT regime will be extended to telecommunication, television and radio broadcasting services. Starting with 2015, the special scheme could be used also by suppliers established in the EU, however not in the EU member state where the services are supplied (“EU member state of consumption”).

In practice, suppliers of the aforementioned services will be entitled to comply with their obligation to declare and pay VAT (attributable to the individual EU member states of consumption) via one VAT return submitted electronically via a web portal in the EU member state of identification.

This VAT return, along with the VAT paid, will then be transmitted by the EU member state of identification to the corresponding EU member states of consumption, i.e. EU member states eligible to this VAT.

Application of the special scheme should be governed separately for taxable persons not established in the EU and for taxable persons established in the EU. The differences between the scheme applicable to EU businesses and to non-EU businesses should include inter alia the process of registration (incl. granting the identification numbers), rules for claiming the input VAT deduction and the process of refund of VAT applied on goods or services purchased in relation to the supply of the abovementioned services.

- Special Scheme for Travel Agents

According to the draft amendment of the provisions related to the special scheme for travel agents, services of travel agencies rendered to customers according to Article 65 Section 1 of the Slovak VAT Act, are taxable in the EU member state in which the travel agent has established his business or has a fixed establishment from which he has carried out the supply of services. Transposition of Article 307 of the EU VAT Directive 2006/112/EC into the VAT Act should be achieved based on this proposed amendment.

- Deadline for filing a recapitulative statement by a tax representative upon import of goods

Based on the draft amendment, the deadline for filing a recapitulative statement by a tax representative upon import of goods for all the represented importers should be harmonized with the deadline as determined in Article 80 Section 9 of the VAT Act. Based on this, the tax representative will be obliged to file the recapitulative statement within 25 days, rather than within 20 days, of the end of the respective calendar month.

- Recapitulative statement filing periodicity

The recapitulative statement filing periodicity is generally a calendar month. According to the current wording of the VAT Act, a VAT payer may also submit a recapitulative statement for a calendar quarter, provided that the value of goods supplied to other EU member states does not exceed EUR 100,000 in both the respective calendar quarter and in the preceding four calendar quarters.

Based on the proposed amendment to the VAT Act, the maximum limit for applying the exception to the general rule on filing periodicity should be lowered from EUR 100,000 to EUR 50,000. The objective of the proposed change is to harmonize the respective provision of the Slovak VAT Act with Article 263 (1a) of the EU VAT Directive 2006/112/EC.

- Tax code of an electronic cash register

Based on the draft indirect amendment of the Act on the use of electronic cash registers, it is proposed that any tax authority should be entitled to assign a tax code to an electronic cash register.

According to the current legislation, only a locally responsible tax authority could assign a tax code to electronic cash registers of domestic businesses while foreign businesses can be granted tax codes by any tax authority.

- Identification of persons published in the blacklist of „unreliable“ taxpayers

The Slovak Financial Directorate maintains in its web portal a public list of VAT payers in whose case reasons have arisen for cancellation of their VAT registration (so called blacklist of „unreliable“ VAT payers). Based on a draft amendment to the Slovak Tax Procedure Code, the public list should, in addition to other identification data, also contain the identification number of organization (IČO), if assigned to the VAT payer.

The proposed date of effect of the amendment to the VAT Act is 1 January 2015 except provisions related to the recapitulative statement filing periodicity and except provisions governing the receipt of requests and issuance of approvals for using the abovementioned scheme for persons established in the EU and the scheme for persons not established in the EU, which will become effective as of 1 October 2014.

Following the end of public consultation, the draft amendment was submitted for discussion by the Slovak government’s advisory bodies on 2 April 2014. We will keep you updated on the next steps in the legislative process.

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Explanatory notes on the changes to the place of supply of services that enter into force on 1 January 2015

On 3 April 2014, the European Commission published explanatory notes to help businesses prepare for the new VAT rules for telecommunication, television and radio broadcasting and electronic services which will enter into force as of 1 January 2015.

The objective of the document is to bring better understanding of legislation adopted at the EU level, and in this case principally Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services.

Along with the explanatory notes on the place of supply rules, attention should be paid also to the guide to the VAT One Stop Shop ("mini One Stop Shop guidelines"), which was published by the European Commission in October 2013.

You can find the documents under the following links:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop-shop-guidelines_sk.pdf

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Public consultation on investment protection in the Transatlantic Trade and Investment Partnership

At the end of March 2014 the European Commission launched a public consultation procedure on investment protection and Investor-to-State-Dispute-Settlement in the negotiations of Transatlantic Trade and Investment Partnership (TTIP).

The Transatlantic Trade and Investment Partnership (TTIP) is a trade agreement that is presently being negotiated between the European Union (EU) and the United States (US). It aims at removing trade barriers in a wide range of economic sectors to facilitate trade in goods and services between the EU and the US.

At the time of writing this article (April 2014) the consultation is available online in English, German and French. (Link to the English version of the questionnaire: http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=ISDS)

Deadline for submissions is three months from the date on which the consultation has been made available in all official EU languages. Accordingly, the final deadline for submissions should be indicated on the consultation webpage once the texts are available in all EU languages.

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OECD issued discussion drafts on Base Erosion and Profit Shifting (BEPS)

In July 2013, the OECD published its Action Plan on Base Erosion and Profit Shifting. The Action Plan identifies 15 actions to address BEPS in a comprehensive manner and sets deadlines to implement these actions.

Discussion draft on BEPS action 1: Address the tax challenges of the digital economy

According to the OECD, the digital economy is characterized by an unparalleled reliance on intangible assets, massive use of data (including personal data), widespread adoption of multi-sided business models capturing value from externalities generated by free products, and the difficulty of determining the jurisdiction in which value creation occurs. This raises inter-alia the question, where is the source for the underlying income. The draft outlines the following information:

- information and communication technology and its impact on the economy,
- the digital economy, its key features and the emergence of new business models (electronic commerce, application stores, online advertising, cloud computing, payment services, high frequency trading or participative networked platforms),
- identifying opportunities for BEPS in the digital economy,
- tackling BEPD in the digital economy, and
- broader tax challenges raised by the digital economy and options to address them.

The draft can be downloaded from this link:

http://www.oecd.org/ctp/tax-challenges-digital-economy-discussion-draft-march-2014.pdf

Discussion draft on BEPS action 2: Neutralize the effects of hybrid mismatch arrangements

According to an OECD definition, a hybrid mismatch arrangement is a profit shifting arrangement that utilizes a hybrid element in the tax treatment of an entity or instrument to produce a mismatch in the outcomes in respect of a payment that is made under that arrangement. The two key mismatch arrangements identified in Action 2 are payments that are deductible under the rules of the jurisdiction of the payer and not included in the taxable income of the recipient, and payments that give rise to duplicate deduction of the same expenditure. The OECD recommends domestic rules that would:

- prevent exemption of non-recognition for payments that were deductible by the payer,
- deny deduction for a payment that is not included in income by the recipient (and is not subject to taxation under the controlled foreign company or other rules), and
- deny deduction for a payment that is also deductible in another jurisdiction.

The discussion draft outlines examples of hybrid financial instruments and transfers, hybrid entity payments and imported mismatches and reverse hybrids. The draft can be found under this link: http://www.oecd.org/ctp/aggressive/hybrid-mismatch-arrangements-discussion-draft-domestic-laws-recommendations-march-2014.pdf

Discussion draft on BEPS action 6: Preventing the granting of treaty benefits in inappropriate circumstances

Double Tax Treaty abuse is one of the most important sources of BEPS concerns. The Commentary on Article 1 of the OECD Model Treaty Convention already includes a number of examples of provisions that could be used to address treaty shopping situations as well as other cases of treaty abuse, which may give rise to double non-taxation. OECD recommends to:

- develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances,
- clarify that tax treaties are not intended to be used to generate double non-taxation,

- identify tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country.

The discussion draft further outlines some examples of wording for the above provisions.

The draft can be accessed under this link:

http://www.oecd.org/ctp/treaties/treaty-abuse-discussion-draft-march-2014.pdf

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Information published by the Financial Directorate to general filings by electronic means

The Financial Directorate has published information about completing and filing of general filings by electronic means ("Všeobecné podanie"). Besides required information to be stated in such filings, the instruction also states that the documents that are available within the catalogue of electronic forms cannot be filed as a general filing (e.g. tax returns or financial statements). When such a document is filed as a general filing, its filing will be considered as not relevant (and not filed). However, it is still questionable whether such an interpretation has sufficient support in the legislation.

The Financial Directorate published on its portal also two information papers related to claiming the tax bonus for dependent children. The first information refers to the amendment to the Act on Child Allowances which has extended the term *dependent child* (e.g. if the duration of studies exceeds standard length of the studies) and thus it has extended also the application of the tax bonus. The other instruction deals with conditions required for claiming the tax bonus (income exceeding 6 times the minimum wage).

Several other information papers and guidelines were published on the website, e.g. one interpreting the term "economic employer" stipulated under Art. 5 (4) of the Act on Income Tax, or information on claimable expenses related to rental income. In principle, the tax authorities continue to pursue the line interpretation already presented in these areas in the past .

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In one sentence …

- A group of parliament members signed a filing with the Constitutional Court to challenge the tax licenses approved by the parliament last year levying upon companies certain minimum income tax even if they declare a loss.
- EU granted unilateral tariff cuts to import of goods from Ukraine for a limited period until 1 November 2014.
- The Collection of Laws has published an announcement of the Ministry of Foreign Affairs on the Agreement between Slovakia and USA on social security. The agreement will enter into force on 1 May 2014 and will prevail over Slovak legislation. If you have U.S. assignees to/from Slovakia, please do not hesitate to contact us.
- The Slovak Ministry of Finance published draft forms of personal income tax and corporate income tax returns that should be used in 2015 for the first time. According to the draft legislation individuals should use only one type of tax return form in future instead of the current two types. The draft corporate income tax return reflects introduction of tax licences with effect from the year 2014.

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