

Amendments to the Slovak legislation and other topics

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

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We wish you a pleasant read.



Thin capitalization – re-introduction analyzed by the Slovak Ministry of Finance

The Slovak Ministry of Finance (further also “the Ministry”) is currently analyzing the possibility to re-introduce thin capitalization rules in the Slovak tax legislation.

In an internal document sent for commenting to the Slovak Tax Advisors Chamber the Ministry expressed the opinion that low capitalization represents a potential tax optimization technique for hidden distribution of profits. In their opinion profits are distributed in the form of tax deductible interest attached to excessive debt financing which is paid to related parties. According to the Ministry, there are two methods

for tax optimization in connection to related party debt financing:

- granting a loan exceeding the needs of the company, or
- interest payments exceeding the arm's length interest rate.

Based on the working draft presented by the Ministry, the re-introduced thin capitalization rules could be formulated as denial of tax deduction for interest costs attributable to direct expenses (excluding interest costs which were capitalized into the acquisition value of fixed assets) calculated from the portion of average debt held during a taxable period by creditors who are foreign related parties of the taxpayer which exceeds:

- for banks and insurance companies 6-multiple (or alternatively 10-multiple) of the equity determined as at the first day of the taxable period for which the interest costs are calculated if there will be no changes in the equity during the taxable period, or the average equity in the case of a change in the amount of the equity; or
- for other taxpayers 4-multiple (or alternatively 6-multiple) of the equity determined as at the first day of the taxable period for which the interest costs are calculated if there will be no changes in the equity during the taxable period, or the average equity in the case of a change in the amount of the equity.

Based on the proposal, the average debt should be calculated as an average of the amount of debt as at the last day of each calendar month or calendar quarter. The average equity should be calculated as the weighted arithmetic average of amounts of equity during the taxable period, while the underlying weight should be the number of days during which the equity did not change. , According to the Ministry's initial proposal, changes in equity due to the achieved accounting profit/loss should be disregarded in the calculation.

Slovakia applied thin capitalization rules until the end of the year 2003, and they were abolished by the tax reform starting from 2004. There was an intention to re-introduce thin capitalization rules starting from 2010 and this intention was later postponed to 2011, but finally the proposed provisions were removed from the Slovak Income Tax Act and currently thin capitalization is not applicable in Slovakia.

The new rules, if adopted, should apply as of 1 January 2015. Based on the proposal of the Ministry, the new thin capitalization provisions should affect all existing loan arrangements, also those already entered into before 1 January 2015.

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Amendment to the EU Parent Subsidiary Directive postponed by ECOFIN

On the 6 May 2014 a meeting of the Economic and Financial Affairs Council (ECOFIN) was held in Brussels. Among other things, ECOFIN discussed the amendment to the EU Parent Subsidiary Directive (2011/96/EU), which aims to close a loophole allowing EU cross-border corporate groups to avoid taxation via the use of hybrid financial instruments.

Hybrid financial instruments are financing arrangements that have characteristics of both debt and equity. Due to different tax qualifications applied in two Member States, the payment under a cross border hybrid loan can be treated as a tax deductible interest expense in one

Member State (from which the payment is made) and as a distribution of profits in other Member State (where the payment is received). If the other Member State exempts the distribution of profits under the EU Parent Subsidiary Directive, double non-taxation occurs.

The amendment to the EU Parent Subsidiary Directive should eliminate such situations by denying the tax exemption for distribution payments which were deductible in the Member State of the paying subsidiary.

The amendment, proposed by the European Commission on 25 November 2013, originally included also a general anti-abuse rule (GAAR), denying the benefit of the Directive in the case of an "artificial arrangement". However, as the Member States within the Council were unable to agree on the final wording of the GAAR provision, the Council has split the amendment in two amendments in the hope to speed up the implementation of provisions relating to hybrid instruments.

In spite of wide support of the anti-hybrid rule among the Member States, an agreement was not reached due to the objection of Sweden, which was concerned that the rule could have unintentional negative effect on an investment model applied by some of large Swedish companies.

The amendment will be on the agenda again at the ECOFIN's meeting on 20 June 2014.

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New Act on the Cadastre Register

The draft Act on the Cadastre Register, which should replace Act No. 162/1995 Coll. on the Cadastre Register and registration of ownership and other rights to real estate (hereinafter the "Cadastre Act" or "**the Act**") as of 1 July 2015, has passed through the interdepartmental consultation.

The new Act promises to make the legal regulations in field of the cadastre more comprehensible, to improve and accelerate

the proceedings on registration of real estates, as well as to improve the accessibility to data which are subject to the cadastre. In this context the new Act proposes to specify existing legal institutes as well as to implement new institutes. The draft Act proposes the following changes:

- **Specification.** Definitions of existing terms are specified and new definitions are proposed (e.g. building, partially built building, partially built flat, cadastre map, other authorized person, cadastre information system).
- **Scope of data registered with the cadastre.** The new Act precisely sets out which real estate and rights thereto will be subject to cadastre evidence. It is proposed that also for example underground constructions, which have firm foundations, should be registered (to date only its entrance was registered)
- **Reduction of periods.** The district authority will be obliged to render a decision in expedited proceedings within 10 days instead of 15 days. If the contract is authorized by advocate or executed in the form of a notary deed, the period is shortened to 15 days.
- **Extension of the regime of „beneficial assessment“ to more contracts.** Under the new Act this regime should be applied on all contracts concerning real rights to real estate authorized by the advocate or executed in the form of a notary deed, not only on contracts on transfer of real estate as it is today. However, the Act on advocacy entitles the advocates only to authorize contracts on transfer of real estate; therefore, certain further amendments of relevant legislation might be expected.
- Register of real estate prices. According to the new Act also real estate prices should be recorded with the cadastre register. However, this data will not be public, but only available for owner and other entitled persons.
- **Protection of the owner.** As a prevention of deceptions,

the decision on a permit of registration will be always sent to the owner of real estate (also when s/he is represented by authorized representative).

- **Extension of reasons for the suspension and stop of the proceedings.** The draft Act extends reasons for suspension of proceedings in cases when an objection of the prosecutor has been raised or an action against the decision has been filed, or when a party has withdrawn from the contract prior to rendering the decision on the registration. In addition, it sets out the procedure of the district authority after the withdrawal from contract has been delivered, as well as a possible stop of the proceedings due to these reasons.
- **Proceedings on record.** Proceedings on record may be concluded also by non-performance of a record, if a delivered deed is not a deed, which should be recorded with the cadastre or if it does not meet all necessary requirements. It will be also possible to perform only a partial record of the delivered deed.
- **Obtaining data from the cadastre.** It will be possible to obtain data from the cadastre within the entire territory of Slovakia. Data will be accessible at the district authorities, but also on post offices and by notaries. In addition, it will be possible to obtain data eligible for legal acts by electronic means.
- **List of real estate.** New output of the cadastre register, which will include a list of all real estate of a particular owner, or tenant.

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Amendment to the Act on the Protection of Personal Data

On 27 March 2014 the National Council of the Slovak Republic adopted an amendment to Act No. 122/2013 Coll. on the protection of personal data, which came into effect on 15 April 2014. It was

necessary to adopt this amendment due to requirements of practice.

Changes concern primarily the following fields:

- **Definition of an “authorized person”.** The amendment replaces in the definition of an “authorized person” the term “employment relationship” with the term “labour-law relationship”, since the formation of the function of an authorized person is not exclusively related to an employment relationship, but an authorized person may be also for example an individual performing activities on the basis of agreements on work performed outside of employment relationships or as a graduation internship.
- **Imposing fines.** The hardness of obligation to impose fines has been softened by the introduction of distinguishing between obligatory and optional fines. An optional fine depends on the weight, extent and time, consequences of unlawful actions, repeating of an unlawful actions and extent of imperil of private and family life of individuals and number of hurt persons.
- **Activities of the Office for Personal Data Protection** (hereinafter only „Office“). The status and powers of the Office have been specified, primarily its inspection activities.

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Horizon 2020 – new EU grants for R&D

This EU framework program Horizon 2020 is meant to stimulate EU research and development to further develop the EU knowledge economy and society. Horizon 2020 replaces the old framework program (FP7) as of 1 January 2014. Applications can be submitted after publication of a call on the relevant websites of the EU (e.g. <http://ec.europa.eu/programmes/horizon2020/>).

The budget for this program amounts to EUR 76.8 billion up to 2020.

The program is divided in three objectives:

- Excellent Science,
- Industrial Leadership,
- Societal Challenges.

Horizon 2020 offers the opportunities not only for large companies but also for small and medium sized companies.

In promoting excellent science the program aims to raise the level of excellence of Europe’s science base and ensure world class research to secure Europe’s long term competitiveness. It should make Europe an attractive location for the world’s best researchers.

In promoting competitive industries Horizon 2020 aims to make Europe a more attractive location to invest in R&D. It should promote major investments in key industrial technologies and maximize the growth potential of EU companies. It also will help innovative SME’s to grow into world-leading companies.

In promoting a better society Horizon 2020 reflects priorities of the Europe 2020 strategy and addresses major concerns shares by EU citizens. Funding will focus on e.g. health, food security and climate action.

Note that other alternatives under EU (EU structural fund program) and Slovak (investment and R&D aid) legislation may apply for grants from European structural funds.

It is advisable to investigate as to whether an investment project associated with R&D may be eligible for funding under EU and/or Slovak funds. Preferably this review should be carried out before any investment projects will commence.

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Preparation of Explanatory notes on the VAT treatment of services connected with immovable property

As we informed you in the previous issues of Tax and Legal News dated in 2013, implementing measures for the Directive 2006/112/ES (“VAT Directive”) were amended based on the 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.

Inter alia, Articles 13b, 31a and 31b were added to this Regulation, which aim to clarify which services should be governed by the rule set in Article 47 of the VAT Directive. According to this provision, the place of supply of services connected with immovable property is the place where the property is located.

The added articles define what has to be considered as immovable property and which services have a sufficiently direct connection with immovable property to be covered by that special rule for determination of the place of supply of services. These provisions will apply from 1 January 2017.

The Commission has already initiated the work on Explanatory notes that should focus on the practical implications of these rules to reach a common understanding on their application. These should be finalized mid-2015 in order to have them ready for businesses and EU member states well in advance. Businesses and experts were also invited to submit any issues relating to those topics that they may have identified, as well as the way they would suggest to deal with them.

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 is available under:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1042&from=EN>

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OECD International VAT/GST Guidelines

In April 2014, the second OECD Global Forum on VAT was held in Tokyo, where representatives of over 100 countries endorsed the International VAT/GST Guidelines as a global standard for application of the mentioned taxes. The aim of these guidelines is to ensure neutrality in the context of cross-border trade and a more coherent taxation of business-to-business (B2B) trade in services.

The Guidelines are available under: <http://www.oecd.org/tax/consumption/i>

[international-vat-gst-guidelines.htm](http://www.oecd.org/tax/consumption/international-vat-gst-guidelines.htm).

Further, OECD intends to develop the B2C services guidelines and present them for endorsement at the next Global Forum in November 2015. The issues focused on VAT/GST taxation on electronically supplied services and goods ordered online by non-business customers ("B2C") were also raised as part of Public Discussion Draft [BEPS Action 1: Address the Tax Challenges of the Digital Economy](#), of which we have informed you in the previous issue of Tax and Legal News.

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In one sentence ...

- **Dividends and health security.** Individuals who received a dividend income in 2013 (from a foreign entity or from a Slovak entity from profits earned in 2011 or 2012) are obliged to announce this income to the respective Health Insurance Company by the end of May 2014. Dividends from profits from 2011 and 2012 are reported only if exceeding EUR 393. The Health Insurance Company will include this income into the health insurance reconciliation for the previous year.
- **KPMG Tax Rates Online Tool.** You may be interested in indirect, corporate or individual income tax rates for 2009 – 2014 in approximately 130 countries worldwide published by KPMG on the following web-page: <http://www.kpmg.com/global/en/services/tax/tax-tools-and-resources/pages/tax-rates-online.aspx>
- **Amendment to the Civil Code.** As of 1 July 2014 an amendment to the Civil Code will become effective, which introduces an institute of civil usury. Any legal act will be void due to usury when i) a person misuses distress, lack of experience, mental maturity, anxiety, carelessness, financial dependence or inability to fulfil obligations, and simultaneously ii) allows to promise or provide performance, the value of which is in rough disproportion in regard to mutual performance.

- **FATCA (Foreign Account Tax Compliance Act).** As of 11 April 2014, the Slovak Republic has become a member of the group of countries, which have reached agreements in substance and have consented to being treated as having an intergovernmental agreement between the U.S. and FATCA partnership jurisdiction (IGA) in effect.
- **An amendment to the Act on the Protection of Competition adopted.** The National council has adopted an amendment to Act No. 136/2001 on the protection of competition, which introduces a financial reward for an individual who reports existence of cartel and submits evidences thereof. The amendment will become effective as of 1 July 2014.
- **Act on the short-term rental of flats.** Act No. 98/2014 Coll. on the short-term rental of flats became effective on 1 May 2014. We will inform you on more details in our next Tax & Legal News.
- **Investment aid.** As of 1 July 2014 the investment aid intensity ceilings will be changed again. The investment aid for investment projects in low unemployment regions will be increased dramatically from the current 10% to 25%. In the next issue of our Tax & Legal News we will provide you with a more detailed overview of all changes which will enter into force.

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