

Amendments to Slovak legislation and other topics

Welcome to our September issue of Tax & Legal News.

In this issue we have prepared information for you on the following topics:

- **Amendment to the Labor Code and amendment to the Act on Travel Allowances,**
- **New guidelines of the Ministry of Finance of the Slovak Republic on the determination of the content of transfer pricing documentation,**
- **BEPS 2014 Deliverables,**
- **Binding rulings,**
- **CJEU Judgment in Case C-7/13 Skandia America Corporation.**

We wish you pleasant reading.



Amendment to the Labor Code and amendment to the Act on Travel Allowances

The Government has approved a proposed amendment to the Labor Code and other related amendments, including an amendment to the Act on Travel Allowances. The proposed amendments should be effective from 1 January 2015.

The aim of this proposal is to solve problems arising with respect to the temporary assignment of employees. The amendment therefore contains e.g.:

- A limitation of the duration of temporary assignments to max. 24 months and a limitation of

the number of repeated assignments and prolongations; resulting in cancellation of the original / primary employment relationship, if the limitations are not met;

- Prohibition of further assignment of an assigned employee by the receiving employer to a third person;
- Possibility of sending assigned employees to business trips, but only by the receiving entity (and not by the legal employer).

The amendment, however, does not specifically address temporary assignments among group companies, assignments to another EU member

state, and is focused mainly on temporary employment agencies. We expect that several questions, especially with respect to temporary assignments outside the Slovak Republic, will emerge.

The amendment also contains an indirect amendment to the Act on Travel Allowances, canceling obligation to provide travel allowances during temporary assignments in the same amount as during business trips. However, travel allowances during assignments to another EU member state remain unchanged, i.e. the obligation to provide travel allowances as in case of a foreign business trip will be still applicable.

With respect to the travel allowances, we would like to also note the proposed provision of article 19 section 1 of the Income Tax Act according to the amendment, which is currently in the Parliament. According to this amendment, an income, which is taxable income on the side of the employee (including travel allowances provided beyond the obligatory allowances), could be regarded as tax deductible expenses for the employer.

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New guidelines of the Ministry of Finance of the Slovak Republic on the determination of the content of transfer pricing documentation

The Ministry of Finance of the Slovak Republic issued new guidelines on the determination of the content of transfer pricing documentation NO. MF/8120/2012-721 (hereinafter also „guidance“), that replaces guidance NO.MF/8288/2009-72.

In the previous guidance, content and extent of transfer pricing documentation was determined by whether the taxpayer that conducted controlled transaction had to maintain his accounting records through separate financial statements using the International Financial Reporting Standards (hereinafter also „IFRS“) or local accounting standards. Taxpayers that maintained their accounting records through IFRS had to maintain their transfer pricing (hereinafter also „TP“) documentation in its „basic form“ (the Masterfile and Country specific documentation), remaining taxpayers that were subject to guidance had to maintain their TP documentation only in simplified form (Simplified documentation).

The content of the documentation was revised and expanded from a basic and simplified form to a basic, simplified and fullscope form.

Fullscope documentation is based on the simplified documentation from the previous guidance. The new guidance’s fullscope documentation is in general identical in terms of content with the basic documentation defined in the previous guidance. However, the range of taxpayers that have to maintain this form of

the documentation is expanded compared to the previous guidance. Taxpayers that have to maintain their TP documentation in fullscope form include:

- taxpayers that report their accounting result based on IFRS,
- taxpayers that conduct controlled transaction with related parties that are taxpayers of a non-contractual state,
- taxpayers that request approval for the selected transfer pricing method,
- taxpayers that apply for tax base adjustments.

The simplified documentation is maintained by taxpayers that are micro accounting entities and/or individuals that are considered micro accounting entities for tax purposes according to the Accounting Law.

The new guidance’s basic documentation is to be distinguished from the basic documentation as defined in the previous guidance. Basic documentation has to be maintained by taxpayers that do not have to maintain the fullscope or simplified documentation.

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BEPS 2014 Deliverables

The Organisation for Economic Co-operation and Development (OECD) on 16 September 2014 released its first set of recommendations under seven topics of the Base Erosion and Profit Shifting (BEPS) project.

The first set of seven BEPS deliverables covers:

- [Transfer pricing documentation and a template for country-by-country reporting](#) (Action 13) to improve transparency for tax administrations and to increase certainty and predictability for taxpayers
- The new guidance recommendations confirm that the OECD is focusing on a three-tiered approach for documentation. The three-tiered approach means:
- A master file that provides an overview of the multinational group and business. The OECD guidance for BEPS Action

13 provides a somewhat more precise description of expectations for the master file—indicating, for example, that the description of the supply chain would be for the five largest product or service offerings by volume plus any other products or services amounting to more than 5% of group sales.

- A local file that provides additional detail on the operations and transactions relevant to that jurisdiction. The description of the local file requirements has also been refined. The detailed data requirement for each “material category of controlled transactions” of the local entity now requires copies of material intercompany agreements, copies of advance pricing agreements (APAs) and other tax rulings to which the local tax authority is not a party, and the intercompany payment or receipts broken down by tax jurisdiction of the foreign payer or recipient.
- A country-by-country (CbyC) report that provides summary data, by jurisdiction, with respect to the group’s income, taxes, and indicators of economic activity. The CbyC report is intended by the OECD to be used as a risk-assessment tool. A template for reporting “by jurisdiction” and “by entity” has been involved in the document.

- [Hybrid mismatch arrangements](#) (Action 2) to provide for coherence of corporate income taxation at the international level through new model tax treaty provisions to neutralise hybrid mismatch arrangements.
- [Prevent the abuse of tax treaties](#) (Action 6) to realign taxation and relevant substance to restore the intended benefits of international standards and to prevent the abuse of tax treaties.
- [Transfer pricing issues in the key area of intangibles](#) (Action 8) to allow for transfer pricing outcomes to be in line with value creation.
- [Challenges of the digital economy](#) (Action 1) are addressed.

- [Feasibility of developing a multilateral instrument](#) (Action 15) to amend bilateral tax treaties for swift implementation of BEPS actions.
- [Harmful tax practices](#) (Action 5) to be countered.

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Binding rulings

Taxpayers may apply for binding rulings since 1 September 2014. Based on the ordinance issued by the Ministry of Finance a binding ruling can be issued if the **subject of the assessment** is related to:

- The source of income of the taxpayer with limited tax liability according to Art. 16 of the Income Tax Act.
- The sale and purchase of a company or its part at fair values according to Art. 17a of the Income Tax Act.
- The commencement of tax liability according to Art. 19 – 21 of the Value added Tax Act.
- Tax rates for goods according to Art. 27 of the Value Added Tax Act.
- The person who is liable to pay value added tax according to Art. 69 section 12 of the Value Added Tax Act.

A **written application** and a **payment of fee** is required for the issuance of the binding ruling. The deadline is **60 days** from the application delivery or from the application completion. It is possible to extend this deadline with the approval of the taxpayer.

The application for the issuance of binding ruling **must include** a detailed description of facts (which will arise or which are awaited and facts, on which issue of binding ruling will be based), the proposal to exercise procedure according to respective tax regulations, the legal case assessment and the amount of expected business case.

The Financial directorate of the Slovak republic doesn't issue binding ruling to a tax subject in two cases: when it is necessary to interpret the legislation of another state and when the taxpayer is applying for a ruling on such facts, which have come up in a tax period for which

the tax return has already been filed.

For the issuance of the binding ruling, it is necessary to file the application and to pay the fee. **The respective tax subject is liable to make a payment in the stated amount:**

- 1 % of the expected business case amount, however at least 4.000 EUR, 30.000 EUR at most, in cases when the tax subject applies for a ruling to exercise one tax regulation,
- 2 % of the expected business case amount, however at least 5.000 EUR, 30.000 EUR at most, in cases when the tax subject applies for a ruling to exercise two and more tax regulations,
- 3 % of the expected business case amount, however at least 6.000 EUR, 30.000 EUR at most, in cases when the tax subject applies for a ruling to exercise tax regulations with regard to repeated business cases.

The payment on application filing is payable without any prior notice and the respective tax subject is obliged to make this payment to bank account stated in The Financial Directorate's Republic regulation.

Tax or Customs authorities may assess interest in such a case, when the real business case amount is higher by at least 10% than the amount stated in the application. The interest may also be assessed, if the tax subject exercised the same procedure (within one year) to the case, which is not stated in application.

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CJEU Judgment in Case C-7/13 Skandia America Corporation

On 17 September 2014, the Court of Justice of the European Union ("CJEU") released its judgment in Case C-7/13 Skandia America Corporation USA, filial Sverige v. Skatteverket, concerning the area of VAT grouping arrangements.

The Case

The Company Skandia America Corporation is seated in the USA and carries out activities via its branch (fixed establishment for VAT purposes)

in Sweden, which has been registered as a member of a VAT group in Sweden. The head-office in the USA has distributed externally-purchased IT services to various companies in the Skandia group, as well as to its Swedish Branch.

The Swedish fixed establishment was tasked with processing the externally-purchased IT services to produce the final product, an IT-platform. That final product was then supplied to various companies in the Skandia group, both within and outside the VAT group. A mark-up of 5% was charged on each supply of services.

The Swedish tax authorities required charging VAT on the supplies of IT services from the US head-office to the Swedish branch registered as a member of a VAT group in Sweden. The company brought an action against those decisions before the referring court (Stockholm Administrative Court) in Sweden.

Questions referred for a preliminary ruling

The Swedish court requested a preliminary ruling of CJEU on whether supplies of externally purchased services from a company's main establishment in a third country to its branch in an EU member state, with an allocation of costs for the purchase to the branch, constitute taxable transactions if the branch belongs to a VAT group in the EU member state.

If the answer to the first question is affirmative, a question arises on whether the main establishment in the third country is to be viewed as a taxable person not established in the EU member state within the meaning of Article 196 of the EU VAT Directive, with the result that the purchaser is to be taxed for the respective transactions.

The Judgment

According to the judgment in Case C-210/04 „FCE Bank“, a fixed establishment, which is not a legal entity distinct from the company of which it forms part, established in another EU member state and to which the company supplies services, should not be treated as a taxable person by reason of the costs imputed to it in respect of those supplies and as a recipient of these services. In line with this judgment, transactions within

the same legal person are treated as falling outside the scope of VAT.

The CJEU had to cope with the question (i) whether this VAT treatment should apply also to a VAT group or (ii) whether a Branch that enters a VAT group must be regarded as a part of a separate taxable person, as a result of which the services rendered by the foreign head-office to its branch should be treated as services between two independent persons, which are subject to VAT.

In the judgment in Case C-7/13, CJEU in principle concluded that a fixed establishment which enters a VAT group, becomes a part of a separate taxable person, being the VAT group. CJEU ruled that the supplies of services from a main establishment in a third country to its branch in an EU member state constitute taxable transactions when the branch belongs to a VAT group.

In the situation concerned, where the main establishment of a company in a third country supplies services for consideration to a branch of that company in a EU member state and where the branch belongs to VAT group in that EU member state, that VAT group, as the purchaser of those services, becomes liable for the VAT payable.

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In one sentence

- The Financial Directorate of the Slovak Republic has issued the following documents in the area of VAT:
 - Information on the amendment to the VAT Act;
https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Infosevis/Aktualne_informacie/2014_08_18_novela_DPH_dopl.pdf
 - Information on the Act No. 218/2014 Coll., amending the Act No. 222/2004 Z. z. on Value Added Tax, as amended, with effect from 1 October 2014, 1 January 2015 and 1 July 2015;
https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Novinky_z_legislativy/2014/nepriame_dane/2014.0828_inf_DPH_novela.pdf
 - Methodological guidance on the registration of taxable persons according to Articles 4 and § 6a of the Act No. 222/2004 Coll. on Value Added Tax, as amended;
https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Methodicke_pokyny/Nepriame_dane/2014/2014_09_10_MP_k_par_4_ZDP_H-od_1-1-2014.pdf
 - Questions and Answers on the refund of VAT from other EU

member states.

https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Infosevis/Aktualne_informacie/dph/2014/2014_09_05-Ot-Odp-vrat-dane.pdf

- The Parliament of the Slovak Republic during its September meeting expressed its consent to the conclusion of the agreement between the Slovak Republic and Guernsey on the exchange of tax information.
- The Parliament further approved:
 - The draft amendment to the Act on Municipal Taxes that was tabled by the Members, purpose of which was to facilitate application of the act for municipalities through partial changes in local tax;
 - The government proposal on amendments of the Income Tax Act, Excise Duty on mineral oil Act and Motor Vehicle Tax Act at the first reading. The approval of these drafts is expected to take place during the second and third reading during October 2014. We will keep informing you on further approval process in our upcoming Tax and Legal News.

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