

## Amendments to Slovak legislation and other topics

Welcome to our November issue of Tax & Legal News. In this issue we have prepared information for you on the following topics:

- **Recovery and resolution of credit institutions and investment firms and the indirect Amendment to the Income Tax Act,**
- **Amendment to the Act on the use of electronic cash registers,**
- **Amendment to the Commercial Code,**
- **Consumer Arbitrage.**

We wish you pleasant reading.



### Recovery and resolution of credit institutions and investment firms and the indirect Amendment to the Income Tax Act

The Government has submitted to the Parliament a draft Act on the recovery and resolution of credit institutions and investment firms which indirectly amends the Income Tax Act. The draft Act was prepared due to the obligation to implement the EU legislation governing the recovery of credit institutions and investment firms.

The proposed crises management should consist of the following three phases: **(1)** preparation of a recovery plan **(2)** interventions promoting solutions to redress the financial situation of the institution and **(3)** resolution action to be taken if the recovery of an institution is in

the public interest and intervention measures cannot be taken within a reasonable timeframe. A newly established Board for the recovery and resolution of credit institutions and investment firms ("the Board") should be entitled to intervene into the property rights of the public interest within so called "resolution proceeding".

The indirect Amendment of the Income Tax Act should introduce the following changes as of 1 January 2015:

- Income arising from the write-off of liabilities based on a decision of the Board should be exempt from tax,
- Expenses arising from the write-off of receivables or their unsettled part including associated payments that

were included in the tax base performed based on decision of the Board will be tax deductible,

- Value adjustments of receivables against debtors in resolutions proceeding that are not time-barred will be tax deductible up to the nominal value of the receivables or their unpaid part including associated payments that were included in the tax base,
- Financial contributions incurred on the implementation of intervention measures will not be tax deductible.

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## Amendment to the Act on the use of electronic cash registers

On 30 October 2014, the amendment to Act No. 289/2008 Coll. on the use of electronic cash register as amended ("the Act") was approved by the Parliament.

Please see below a summary of the main changes effective as of 1 April 2015:

The authority to issue a certificate for the electronic cash registers has been passed to the Customs Office in Bratislava who must act in accordance with the relevant procedural provisions of the Act. According to the Memorandum of reasons, the certificates should be provided free of charge.

Certificates issued by the officially authorized person prior to 1 April 2015 remain valid. Furthermore, should the certification process be commenced by the officially authorized person prior to 1 April 2015, this will be finished according to the Act effective from 31 March 2015.

The list of services to which the obligation to use the electronic cash register (defined in Annex 1 to the Act) has been substantially widened (e.g. taxi-services, legal services, accounting and auditing services, tax advisory services, tour operators / travel agencies activities, architectural activities, activities of personnel leasing agencies etc.).

The definition of a receipt has been supplemented by the proof of refund for the service not provided and proof of returning of the returnable containers issued by the electronic cash register. The document issued by the virtual cash register should be considered as a receipt as well.

A possibility to opt for the use of an electronic cash register or virtual cash register has been introduced. Entrepreneurs will be allowed use a virtual cash register if the threshold of 1,000 pcs of the receipts issued in one calendar month is not exceeded. The possibility to use the virtual cash register will apply to all services listed in the Annex 1 to the Act.

The virtual cash register refers to an electronic space set up by the Finance Directorate of the Slovak Republic on its web page working via an end device. The end device should refer to any electronic device enabling

access to the virtual cash register and print of the receipts and other documents according to the Act. According to the Memorandum of reasons the end device should, in fact, refer to any computer, notebook, tablet, mobile phone and printing machine. Should the end device be broken, the entrepreneur will be obliged to restore its operation within 48 hours as of the breakdown.

Printing machines communicating with the virtual cash register must be enabled to print the outputs (e.g. receipt, interval closing, and summarizing closing) which should be readable for the period of five years as of the end of calendar year in which these were issued.

The virtual cash register will be accessible to entrepreneurs after registration with the Tax Office. The registration may be performed by any Tax Office. For one point of sale, only one access to the virtual cash register may be created.

Entrepreneurs using the virtual cash register will be allowed to print only one original of the receipt. The receipt issued by the virtual cash register must contain the obligatory requirements stipulated by the Act and the unique identification number generated by the virtual cash register.

Entrepreneurs using the virtual cash register will not be obliged to perform a daily closing.

The possibility to use the virtual cash register has been postponed until 1 January 2016 at the earliest for the entrepreneurs to whom the obligation to use the electronic cash register arose/will arise **(i)** prior to 1 January 2015 or **(ii)** will arise for the first time for the sale of goods and services listed in the Annex 1 to the Act effective until 31 March 2015 in the period from 1 January 2015 to 31 March 2015.

In case that the threshold of 1,000 pcs of the receipts issued is exceeded, the Finance Directorate of the Slovak Republic terminates the use of the virtual cash register on the last day of month following the month in which this threshold was exceeded. In such a case, the entrepreneur will be obliged to start to use the electronic cash register no later than on the day following the day on which the virtual cash register was terminated. Repeated usage of the virtual cash

register will not be possible.

The amendment further tightens the sanctions for entrepreneurs in certain cases insofar as where a Tax Office or Customs Office imposes a penalty on the spot, he likewise imposes a ban on the sale of goods or services to which the usage of electronic / virtual cash register on the point of sale relates to. The ban on the sale of goods or services will apply as of the moment of delivery of the decision to a person with whom the report on the breach of the Act was written, but will only last for 72 hours at most.

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## Amendment to the Commercial Code

The amendment to Act No. 513/1991 Coll. Commercial Code as amended ("Act"), adopted by the National Council introduces with the effectiveness as of 1 January 2015 several significant changes related, among other areas, to limited liability companies. However, the President of the Slovak Republic exercised his right of veto on 18 November 2014 and returned the Act back to the National Council for its renegotiation. A brief overview of the most important changes brought by the Act as well as the President's objections are summarized as follows:

### ***Establishment of a register of disqualified persons***

The court may rule that an individual cannot during a certain period perform a function in a statutory supervisory body of a company, cooperative or the function of head of a branch or procurist (the Act uses the term "excluded representative").

The following can be included among such court rulings: e.g. (i) a decision issued in a criminal proceeding as a ban on acting, or (ii) a decision issued in bankruptcy proceedings stating that a person had breached her obligation to file a petition for bankruptcy on time (in this case the person will be held liable also according to civil law – e.g. payment of a contractual penalty).

Legal actions taken by the excluded representative at the time of disqualification should not be affected by the absolute nullity.

However, the Act introduces the personal liability of the excluded representative for such actions. A non-public register of disqualified persons will be maintained by the Žilina District Court.

### **Company in crisis**

The Act introduces a new concept, a so called "company in crisis". The company in crisis will be a company in insolvency or threatened by insolvency (i.e. the ratio of assets and liabilities is less than 8 to 100 from 2017, in the year 2015 it will be 4 to 100 and in the year 2016 it will be 6 to 100). The statutory body which finds that the company is in crisis will be required within its fiduciary duty to take necessary steps to avert the crisis, mainly to convene the supreme body of the company and prepare draft measures to overcome the crisis.

The Act stipulates that alien sources of financing (facilities, loans or similar payments) provided to the company in crisis will be treated as a payment replacing the company's own sources of financing. The Act also provides for a ban on the return of such payments replacing the company's own sources (along with appurtenances and contractual penalties) if

- (i) the company is in crisis, or
- (ii) the company would be in crisis as a consequence of returning such payments.

### **Two categories of a limited liability company**

The Act sets forth a differentiation of limited liability companies into two categories with respect of the amount of the registered capital. The first category will be a limited liability company with the amount of registered capital not exceeding EUR 25,000. Such companies will be required to state the amount of registered capital and extent of its payment on their commercial documentation and will be permitted to have five shareholders at the maximum. The second category will be a limited liability company with the amount of registered capital exceeding the stated amount.

In relation to the amount of the Companies' registered capital, the Act introduces the opportunity to establish a limited liability company with the registered capital in the amount of EUR 1.

### **Dividend payment**

The company with the registered capital below EUR 5,000 will be entitled to distribute dividends among its shareholders only from 3/4 of the generated net profit at a maximum. Other limited liability companies with a registered capital of EUR 5,000 or higher will be subject to the current legal regulation. A change has also been made that the company may not distribute dividends in case such a distribution would lead to the insolvency of the company. In addition, the Act explicitly stipulates that payments provided to the shareholders in the event of a decrease of the registered capital or distribution of other own sources of the company (provided also other statutory conditions be fulfilled) will not be considered as a returned contributions to shareholders.

### **President's objections to the Act**

The President expressed mainly the following objections to the Act:

- the limitation of the maximum number of shareholders of a limited liability company with a registered capital below EUR 25,000 is arbitrary and unreasonably makes the assertion of start-ups more difficult;
- a duplicity in the regulation of the replacement of the own sources of a company with alien sources in relation to the general regulation of subordinated receivables in bankruptcy;
- the regulation of the ban on the return of the contributions in relation to the limited liability company is not comprehensive and provides for wide leeway for its circumvention.

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### **Consumer Arbitrage**

On 21.10.2014, the National Council of the Slovak Republic passed a government bill on consumer arbitration, amending and supplementing Law No. 244/2002 Coll. on Arbitration as amended (hereinafter referred to as the "Act"). Under the Act, which will become effective from 01 January 2015, disputes arising out of consumers' disputes shall not be heard and resolved in standard

arbitration proceedings, but in the so-called consumer arbitration proceedings.

The main purpose of this Act is to strengthen the legal status of the consumer in supplier-customer relationships, taking into account well established case law in this area.

The Act provides both the positive and negative definition of the scope of its application. The positive definition says that only consumer disputes which may be settled pursuant to § 585 of the Civil Code, including disputes to determine whether the right or legal relationship exists or not (§ 1 par. 2 of the Act) shall be subject to consumer arbitration proceedings. By contrast, disputes concerning the creation, modification or termination of property rights and other rights in rem in immovable property, disputes over personal status, disputes related to the enforcement of decisions and disputes arising in the course of or in connection with bankruptcy and restructuring proceedings shall not be decided in consumer arbitration proceedings (§ 1 par. 3 of the Act).

Consumer disputes may be resolved by arbitration only on the basis of a consumer arbitration agreement, which is defined as an agreement between a supplier and consumer that all or certain disputes between them in the course of or in connection with a consumer contract shall be decided by a permanent arbitration tribunal specified in this consumer arbitration agreement. The consumer arbitration agreement must be in writing, separated from the consumer contract by its content and form and shall not include any arrangements that are unrelated to arbitration. Further essentials of the consumer arbitration agreement are stipulated in § 3 of the Act. A significant difference, compared to the standard arbitration, is the exclusion of ad hoc arbitration tribunals, i.e. consumer arbitration disputes can only be heard and decided by arbitration tribunals listed in the list maintained by the Slovak Ministry of Justice, provided that the mere consumer arbitration agreement must not include an agreement on a particular arbitrator.

Consumer proceeding shall be ended by issuing an arbitration award or arbitration resolution. The arbitration award is issued when the arbitration tribunal decides on the merits

or an amicable settlement has been reached. The arbitration resolution shall be issued in all other cases. A duly delivered arbitration award is binding on the parties and has the same force and effect as the court's judgment, i.e. after the given period for performance it becomes enforceable.

For the reasons set out in Art. 45 par. 1 of the Act the parties to the dispute are entitled to file a motion to vacate the arbitration award within three months from the day of delivery of arbitration award.

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### In one sentence

- On 19 November 2014 the President signed the amendment to the Slovak Income Tax Act approved by the Parliament on 30 October 2014.
- Effective from 1 January 2015, income from the placement of technical reserves paid to the retirement pension beneficiaries will be tax-exempt.
- With effect from 1 January 2016, the remunerations for participation in the election committees and the referendum committees will be exempt from income tax.
- On 3 November 2014 the OECD published a discussion draft on Action 10 (Proposed Modifications to Chapter VII of the Transfer Pricing Guidelines Relating to Low Value-Adding Intra-Group Services) of the OECD's base erosion and profit shifting (BEPS) action plan where the principal proposed changes that would be to add a definition of "low value-adding intra-group services" and to provide a "simplified method" for such services.
- The draft can be found under following link:  
<http://www.oecd.org/ctp/transfer-pricing/discussion-draft-action-10-low-value-adding-intra-group-services.pdf>
- On 31 October 2014 the OECD announced the release of a discussion draft on the base erosion and profit shifting (BEPS) Action 7 - Prevent the Artificial

Avoidance of Permanent Establishment (PE) Status, including the preliminary results of the work carried on with respect to issues related to the artificial avoidance of PE status as well as proposals for changes to the definition of PE found in the OECD Model Tax Convention. The draft can be found under following link:

<http://www.oecd.org/ctp/treaties/action-7-pe-status-public-discussion-draft.pdf>

- The Financial Action Task Force (FATF) issued new Guidance on Transparency and Beneficial Ownership explaining the requirements for the provision of accurate information about the legal and beneficial owners, and the source of the corporate vehicle's assets and its activities. More information regarding this guidance is available through the following link:  
<http://www.fatf-gafi.org/media/fatf/styleassets/images/Guidance-beneficial-ownership-transparencyl.pdf>
- On 28-29 October 2014 the 7<sup>th</sup> meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes took place in Berlin, Germany where 51 jurisdictions translated their commitments into action during a massive signing of a Multilateral Competent Authority Agreement that will activate the automatic exchange of information. A Statement of Outcomes from this meeting is available through the following link:  
<http://www.oecd.org/tax/transparency/statement-of-outcomes-gfberlin.pdf>
- The Global Forum invited developing countries to join the automatic exchange of information and as a result, representatives of African countries agreed to launch a new "African Initiative" to increase awareness of the merits of transparency in Africa.
- In the area of VAT the Financial Directorate of the Slovak Republic issued:
- Guidelines on the application of the Slovak VAT Act in case of supply and acquisition of goods

which are subject to excise tax;  
[https://www.financnasprava.sk/\\_img/pfsedit/Dokumenty\\_PFS/Profesionalna\\_zona/Dane/Metodicke\\_pokyny/Nepriame\\_dane/2014/2014.11.04\\_MP\\_SD\\_internet.pdf](https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Metodicke_pokyny/Nepriame_dane/2014/2014.11.04_MP_SD_internet.pdf)

- Guidelines on the termination of joint liability for VAT in case of payments of VAT by a guarantor to the taxpayer's personal account of its supplier, which is published in the list kept on the website of financial administration according to Article 69 (12) of the Slovak VAT Act.

[https://www.financnasprava.sk/\\_img/pfsedit/Dokumenty\\_PFS/Profesionalna\\_zona/Dane/Metodicke\\_usmerenia/Nepriame\\_dane/2014/2014.10.21\\_Ruc\\_usmern\\_portal.pdf](https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Metodicke_usmerenia/Nepriame_dane/2014/2014.10.21_Ruc_usmern_portal.pdf)

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