

Tax & Legal Alert

Learn about the latest changes in
Slovak legislation

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Legislative initiatives

A number of legislative initiatives and policies are currently being instigated within the area of tax.

Binding opinions

The Ministry of Finance ("MF") has released for comment a proposal of measures to improve the system of providing information by tax and customs administration, which seems to be mainly of interest from a taxpayer's point of view. In this material, MF analyses the current status of sharing information relevant for taxpayers from the point of view of tax administration. MF highlights as one of the priorities the need "to sustain a system of clear, relevant and timely interpretation of acts relating to tax and social security contribution obligations.". One of the means to achieve this goal is the initiative focusing on the implementation of so called 'binding opinions'. According to this proposal, taxpayers would be able to request a binding opinion from the tax office, and the tax office would be bound by that opinion. Tax authorities would charge EUR 2,000 for issuing the opinion. The standpoint would not be binding for the taxpayer, if he/she does not agree with the conclusions within the opinion. Opinions may contribute to greater legal certainty for taxpayers in Slovakia. Therefore, the implementation of this institution to Slovak tax practice is, in our opinion, more than welcome. We will inform you about further developments in this area after the articulated version of this proposal is published.

Limits on income tax advances

MF has also analysed the option to change the limits for paying income tax advances. According to their analysis, there is currently no space within the state budget to increase the threshold for paying advances. This applies to the limit for both the obligation for general advances and the limit for paying advances on a monthly basis. This conclusion is implied by the potential negative impact on state budget cash-flows. On the other hand, MF is considering rounding up the current limits (EUR 16,596.96 and EUR 1,659.7) to EUR 20,000 for monthly advance tax liabilities, and EUR 2,000 for quarterly advance tax liabilities.

Double Tax Treaty with Georgia

During May, MF also started an inter-ministerial commenting procedure in relation to the double tax treaty with Georgia. The maximum withholding tax on interests and royalties is set at 5% and dividends may be taxed only in the source country. Slovak tax residents will be eligible to apply a tax credit regime for income earned from a Georgian source.

For more information, please contact [Tomáš Vavrák](#).

Bank tax

The Slovak Ministry of labour, social affairs and family submitted a legislation draft of a specific levy for selected financial institutions which also amends Act no. 479/2009 Z. z. on State administration within taxes and charges and certain acts for the inter-ministerial commenting procedure. The proposal may establish a specific bank levy, which is publicly known as the bank tax. It is suggested that the levy will be calculated from a base which will be the sum of bank liabilities decreased by equity and secured bank deposits. From these net liabilities, the banks and subsidiaries of foreign banks will pay 0.2%. The proposed act also regulates the means of paying levies as well as their administration and audit. The act should become effective as of 1 January 2012.

According to the results of the commenting procedure, the proposal is the subject of several comments which also concern the calculation of levy base. The reason may be that the base of the levy is not sufficiently linked to the IFRS accounting standards, or the fact that the specific status of subsidiaries of foreign banks was not taken into account. It is also questionable whether the Tax Administration Act or Administrative Code will be applied to procedural questions related to bank tax.

For more information, please contact [Dagmar Haklová](#).

Information on the application of withholding tax for taxpayers with a tax period other than a calendar year

The Tax Directorate of the Slovak Republic has released information which guides taxpayers through the application of new wording of Article 43, paragraph 6 and paragraph 7 of Slovak Income Tax Act by filing tax returns for a tax period other than a calendar year. The Tax Directorate of the Slovak Republic requires that taxpayers distinguish between the withholding tax applied to their taxable income until 31 December 2010 and as of 1 January 2011. In the first event a withholding can be regarded as a tax advance, while in the second event the withholding will be a final tax. Within this information the Tax Directorate of the Slovak Republic concludes that, for the question of whether withholding tax can be regarded as a tax advance or not, the date of transfer, payment or remittance of the income which is liable to withholding tax will be decisive.

For more information, please contact [Tomáš Vavrák](#).



Case law of the Constitutional Court in tax matters - relevant tax inspector

The Constitutional court („CC“) has found that incorrect procedure carried out during the course of tax inspection, which is not rectified within the administrative judiciary, can lead to a breach of human rights settled in the Slovak Constitution (“Constitution”).

Under article 46, paragraph 1 of the Constitution, everyone can claim his/her right in an independent and objective court through a procedure set by the relevant law, or by another statutory body of the Slovak Republic as defined by law. Under paragraph 2 of the same article, those who argue that he/she was deprived of his/her rights because of a decision made by public administration bodies, can lobby the court to allow an investigation into the legality of such a decision, unless otherwise stated by law. However, investigation into decisions regarding basic human rights and liberties cannot be excluded.

In one case a taxpayer disputed a prejudice of all employees of tax office K. The taxpayer had not accepted the procedure because in his opinion (1) he had a right that the inspection be performed by the territorially relevant tax office, and if this were not possible because of a prejudice of the employees of the tax office, then (2) the delegation of territorial jurisdiction under article 4 of the Tax Administration Act would ensue. The Director of tax office K, by whom prejudice had also been disputed, decided that the tax inspection would not be carried out by employees of tax office K, but by controllers who are employed by tax office P.

Independent courts within the administrative judiciary endorsed the action of the Director of tax office K, and subsequently the taxpayer filed a complaint with CC.

CC admitted the complaint and noted that the protest against the prejudice must be decided under article 24, paragraph 5 of the Tax Administration Law. Under the finding of CC, the procedure undertaken by the Director was not in accordance with articles 3 and 24 of the Tax Administration Law when tax office K was acting, however, although the tax inspection was performed by employees of another tax office, the employees of the territorially relevant tax office were not excluded from tax procedure. This procedure, which was not rectified by the general courts within the administrative judiciary, should be considered arbitral under CC. This means that the courts have contravened the complainant’s right on other law protection within the investigation of the legality of the public administration body’s decision.

The set finding of CC is further corroborating decisions in which the courts assess, relatively rigorously, procedural breaches by tax authorities in tax inspections.

Following the provisions about territorial jurisdiction, the taxpayer has the right that the tax inspection will be performed by employees of the territorially relevant tax office. The procedure, which “de facto” replaced the exclusion of prejudiced employees of territorially relevant tax offices, will not be sufficient from a legal point of view. Within the finding of CC it is also very interesting that CC did not consider whether the defect within the procedure could have an impact on the legality of the questioned decision (compare article 250j (2) e) of Civil Court Procedure).

From a taxpayer’s point of view this finding can be relevant in the event that a tax inspection is performed by persons other than employees of the relevant tax office. We are not aware of any standpoint of the tax administration towards this issue. On the other hand, we are aware of an amendment of Sec 15 para 1 of the Tax Administration Act effective on 1 January 2011. Based on this, tax authorities can delegate the inspection to any employee of the Tax Directorate. Given the short time since this amendment was passed, we do not have any information about the court review of this amendment.

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Supreme Court case law - written arrangement of travel allowances

The Supreme Court has rendered a decision sp. zn. 3Sžf 48/2009 which is another in a line of decisions that dispute the practice of tax authorities looking at the formal part of contracts only in the course of the tax proceeding

A taxpayer has concluded an agreement on work performance with his employee. The contract did not explicitly state that the employee is entitled to claim travel expenses. However, these were paid out. Subsequently, the tax authority disputed the tax deductibility of the cost on travel allowances, based on the absence of a written agreement in relation to payment of these travel expenses.

The Supreme Court, in deciding in this case, quoted article 25, paragraph 1, letter j) of the Slovak income tax Act No. 366/1999, under which tax base cannot be decreased by expenses (costs) unless they are related to achievement, assuring and maintaining income even if the taxpayer accounted expenditures (costs), and unless the expenditures are sufficiently evidenced, and unless the expenditures (costs) were incurred in compliance with this act or special legislation. In this particular case, the special legislation shall be understood as the Travel Allowances Act.

At the time of signing the agreement on work performance, the Labour Code did not require a written form for this agreement and related agreements. Based on the decision of the Supreme Court, this provision cannot be interpreted as that where arrangements in respect of travel allowances must be concluded in written form. Therefore, based on the Supreme Court decision, the costs incurred for travel allowances cannot be excluded from the tax base for corporate income tax purposes only for the lack of a written agreement about the travel allowances. This obligation is not required by the Labour Code, the Travel Allowances Act, nor any other act.

For more information, please contact Miroslava Terem Greštiaková.

Amendment of the Commercial Code

An amendment of the **Act No. 513/1991 Coll (Commercial Code)** has been ratified by the National Council.

- **The amendment introduces these most significant changes:**
- **There will be a new obligation** for a company which is a part of a merger to **provide information about every significant change in the assets or liabilities** of the company, which occurred during the period between the preparation of a draft of the merger agreement and the day of the general meeting which decides on the approval of such draft agreement.
- **An obligation to prepare preliminary financial statements will no longer be in place**, provided that all shareholders of each of the merging companies consent to the matter.
- **The possibility of meeting legal requirements in terms of publishing the documents** for shareholders prior to the merger **can now be conducted by electronic means**, if shareholders consent to the matter. These documents can now also be **published on the company's website**.
- **There will be the possibility for a legal entity**, which has lost its membership in a cooperative due to bankruptcy or execution, **to regain its membership in the cooperative**.

The amendment has passed the third **round of the legislative process and it is brought to the editorial office of NR SR. The Act comes into effect on 30 June, 2011.**

For more information, please contact Miroslava Terem Greštiaková.

Current affairs in PwC

Pocket Tax Book, Slovakia 2011

Our most popular tax publication now available

Pocket Tax Book is one of our most popular leadership initiatives. It provides on a year-by-year basis a concise summary of Slovak tax rules by covering the key aspects of taxation including corporate tax, personal tax, VAT, excise duties, and customs. It also includes information on State Aid potentially available for investments in Slovakia. You can download PTB in Slovak, English, German and Italian language from our webpage www.pwc.com/sk/publications.

Annual Report of the Year 2010

We are seeking companies that are leaders in corporate reporting

PwC is a patron of the 'Best Annual Report' contest which was announced by the Institute for Economic and Social Reforms (INEKO). Besides PwC, the project's professional supporters include HSBC Bank and the Faculty of Management of the Comenius University in Bratislava. The daily *Hospodárske noviny* is the project's exclusive media partner.

The purpose of the 'Best Annual Report' contest is to stimulate discussion on the quality of Slovak annual reports and financial statements, and to motivate firms operating in Slovakia to improve the transparency, quality, and informative value of their annual reports. Our objective is to distinguish positively those companies who provide information from which one can obtain a real understanding of the company's financial position and their overall performance prospects. All necessary information is available at www.rocnasprava.sk.

Benefit from the 2011 PayWell and HR Benchmarking studies

The PwC Human Resources Services team is opening another year of PayWell and HR Benchmarking studies. PayWell is the largest sector-oriented study of remuneration, which offers customers an overview of the current situation in salaries and employee benefits in the Slovak market. The survey outputs are an important tool for effective remuneration planning in companies striving to succeed in the competition for recruiting, retaining, and motivating high-quality staff.

HR Benchmarking is a study which examines key indicators of human resource management. It allows monitoring of the link between the efficiency of the human resource management system, the company's financial results and its overall productivity. If you are interested in more information about the studies, or in a personal meeting, please contact Ludmila Guerin, Tel.: +421 2 59350 525.

The Academy - Holder of ACCA accreditations

The Academy is a new concept in professional training and development in the Slovak market. We can help your business develop the future leaders that you need to succeed in today's marketplace. The Academy is a holder of two high level accreditations from ACCA: Gold Approved Learning Partner and CPD Provider (Continuing Professional Development). More information about The Academy and the portfolio of courses can be found at www.pwc.com/sk/academy.