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New Methodological guideline on employees' meal allowance and the planned increase in meal allowances

On 22 of February 2022, the Financial Directorate issued a Methodological guideline detailing the various forms of providing meals to its employees. It also mentions the planned increase in meal allowances for business trips, which will also have impact on the amount of the tax-free meal allowance.



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According to the preliminary proposal of the Ministry of Labour, Social Affairs and Family of the Slovak Republic (MPSVaR SR) on increasing the amounts of meal allowances, the amounts of meal allowances for business trips should be increased as follows:

- from 5,10 to **EUR 6** for the time zone 5 to 12 hours,
- from 7,60 to **EUR 9** for the time zone over 12 hours up to 18 hours,
- from 11,60 to **EUR 13,70** for the time zone over 18 hours.

MPSVaR is thus responding to the rising prices of meals and soft drinks in the gastro sector. The review process should be held in February/March 2022, while the increase should come into force on 1 April 2022.

This increase will have impact on all forms of meals and financial contribution for meals provided based on the Labour Code. The maximum amount of tax exemption for an employee, which we have mentioned in this [article](#), **will increase from EUR 2,81 to EUR 3,30** with the planned increase in the amount of the meal allowance. The value of the meal voucher will also increase from the current EUR 3,83 to EUR 4,50.

We are monitoring the process and we will keep you informed.

The Methodological guideline goes into details on all types of meals arranged by employers as well as financial contribution and explains a number of situations using concrete examples. It also addresses some of the so far problematic issues, such as applicability of the exemption under § 5 Section 7 lett. o) of the Income Tax Act on meals provided for consumption on the workplace.

Pursuant to § 5 Section 7 lett. o) as of 1 January 2022, non-cash benefits provided to an employee in an aggregate amount up to EUR 500 per tax period from all employers are exempt from tax, unless the Income Tax Act provides otherwise and the employer does not claim it as tax deductible expenses (costs). According to the Methodological guideline, an employee cannot claim this tax exemption for meals, i.e. the difference between the maximum amount contributed by the employer of EUR 2,81 (EUR 3,30 soon) and the value of the meals is the employee's taxable income. As such, the provision is probably not applicable to e.g. snacks at meetings or fruit in the kitchen, when the maximum amount of the exempt meal allowance is already provided for a lunch. This situation and tracking of such snack consumption for employees therefore remains problematic.

Transfer pricing in a rapidly changing environment

The current economic development has a significant impact on the functioning of many companies. The main topic of recent months is a high inflation. However, there are several other factors that affect companies' transfer pricing policies.



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In January 2022 inflation in Slovakia climbed to 8.4%, which is the highest monthly value over the last seventeen years¹. Inflation is linked to pressure from employees to increase wages in the phase of persistent labour shortage. Inflation is also reflected in increase of production costs, which reduces companies' profitability.

Issues also prevail in supply chains, with the automotive industry being an example. This sector will face many challenges in 2022, including a gradual transition to electromobility.

At the same time, the business models of companies respond to various commercial and geopolitical problems, climate change, remote working, ESG agenda, new technologies and others.

The changes in the way of work, which the pandemic has brought have intensified globalization and the fight for talents in the labour market. Additional tax issues arise for multinational companies in terms of personal income tax (where the employee is to tax their income and pay taxes), but also in terms of transfer pricing (to which country the group's profits are to be allocated). Traditional approaches to transfer pricing may no longer be suitable with new and innovative ways of carrying out business.

The OECD base erosion and profit shifting (BEPS) project has led to a significantly increased transparency in transfer pricing. However, the BEPS 2.0 initiative is already on the horizon with even greater degree of complexity in the field of global taxation.

Therefore, several fundamental questions arise regarding the current development of the business environment:

- **Does the current setting of the transfer pricing policy generate sufficient profitability for the company?**
- **Would independent comparable companies make price adjustments?**
- **Does the company's functional and risk profile reflect the actual functions performed and risks borne?**
- **Is the transfer pricing documentation prepared in adequate scope?**

If these questions are relevant to you, we will be happy to discuss the topic of transfer pricing with you.

¹Statistical Office of the SR

Act on on certain extraordinary measures in connection with the situation in Ukraine was published in the Collection of Laws

The Act on certain extraordinary measures in connection with the situation in Ukraine was published in the Collection of Laws on Saturday, February 26th.



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The new legislation reflects adverse development in Ukraine and among other matters makes it easier to obtain temporary refuge for refugees from Ukraine.

We are preparing a more detailed overview of changes resulting from the approved legislation.

How to prove online advertising expenses?

The tax deductibility of advertising costs is often subject to review of the tax authorities. In addition, the current digital age also brings new challenges in this area.



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In general, advertising costs provably incurred for the purpose of the presentation of the taxpayer's business activities and in order to generate, maintain or increase a taxable income are considered as tax deductible expenses. Slovak tax legislation does not contain a definition of presentation costs, and it is therefore necessary to consider these transactions on the individual basis, including all supporting documentation.

Proving internet advertising expenses was the subject of the judgment of the Czech Supreme Administrative Court No. 10 Afs 74 / 2020-50 ("SAC"). The SAC considered whether the taxpayer had provided sufficient proof of the claimed advertising expenses for advertising that took place on the internet and whether the expenses relating to this advertising could be claimed as tax deductible.

Advertising in the Google AdWords system performed during a longer period and arranged for the taxpayer by an agency was subject of the judgment.

The SAC considered it necessary for the taxpayer to provide documentation not only in the form of statements containing records of the number of searches and the number of times the website was opened, but also in a form of screenshots. Although the taxpayer submitted screenshots these were found to be neither distinct from each other nor dated, and thus were insufficient to prove the tax deductibility of relevant advertising expenses.

Another way to prove the receipt of an advertisement could be the administrator account in the Google AdWords system from which the advertisement was to be provided. Since the taxpayer in the case at issue arranged the advertising through an intermediary, they did not have access to the administrator account themselves.

The SAC rejected the taxpayer's cassation complaint and confirmed the opinion of the tax authorities that the taxpayer had failed to prove the receipt of the advertising.

In practise, in case of a tax audit, it is important to have not only the relevant accounting documentation and confirmation of advertising agency but also supporting documentation proving that the advertising has taken place (e.g. screenshots with sufficient identification characteristics).

We were involved in a similar issue in Slovakia concerning the advertisement, which was performed via screens in a shopping centre. The tax authorities rejected the tax deductibility of advertising costs, due to the absence of evidence proving actual broadcast (e.g. a video capturing the broadcast of the advertisement). It must be noted that there was a suspicion that the advertising agency and advertiser were connected and the price charged was relatively high. These factors may have caused rejection of tax deductibility, although the tax authority did not state them as reasons in the decision.

European Commission has proposed a directive to prevent the misuse of shell entities

On 22 December 2021, the European Commission („EC“) has published a proposal Directive „Unshell“, which sets out the rules to prevent the misuse of shell entities for improper tax purposes. The new measures will introduce a more transparent system for detecting and reporting shell entities in the EU. This initiative will ensure that companies with no- or minimal economic activity are unable to benefit from any tax advantages.



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As we have already informed you [in our previous Article](#), one of the key measures of the international tax reform presented by the EC is to resolve the issue of shell companies. [The Directive](#), also known as "ATAD 3" (Anti-Tax Avoidance Directive), introduces a seven-step frame of several features to identify shell companies within the EU.

Step 1: Indicators used to determine the economic substance

The new mechanism will enable to detect at-risk companies in three „gateways“:

- **Is the bulk of the company's income passive (dividends, interest on bonds, etc.)?** - more than 75% of the company's turnover for the two previous years is passive income or more than 75% of the value of its assets is real estate or private property exceeding EUR 1 million;
- **Are a majority of transactions cross-border?** - the company generates most of its revenues from cross-border transactions or the other way round, pays most of its income to abroad;
- **Are management and administration outsourced?** - the administration of day-to-day operations and the decision-making on significant functions was outsourced;

If the company meet the cumulative criteria, it will be subject to new reporting under ATAD 3.

Step 2: Reporting obligation

Companies that meet all three criteria are required to disclose additional information in their annual corporate income tax return (e.g. own premises, existence of an active bank account within the EU, the tax residency of its directors and employees). These three indicators are defined in the Directive as „**minimum substance indicators**“ that demonstrate the economic activity of taxpayers. The tax return should be accompanied with documentary evidence.

Step 3: Presumption of minimum substance for tax purposes

If one of the substance requirements isn't met, the entity will be considered as a shell company.

Step 4: Rebuttal of presumption

The proposal for the Directive does provide for possibility of requesting an individual examination of their business activities and thus to rebut such presumption that the company has been set up for reasons of tax avoidance. The tax authority will thoroughly check the specific evidence and circumstances (detailed information about the profiles of their employees,

undertaking commensurate control over, bearing the risks of the business activities, generating the relevant income).

Step 5: Exceptions

There are a number of specific exclusions from the scope of the ATAD3, such as for some regulated financial entities, companies listed on a regulated stock exchange, holding companies with shareholders or entities with at least five full-time employees engaged exclusively in the activity generating the income. Moreover, the tax authority provides a general exemption where a shell entity exists but does not create a tax benefit. Company found to be “at-risk”, as per the above, can request an exemption from its reporting obligation if it can provide evidence that its existence does not reduce the tax liability of the beneficial owner or of its group.

Step 6: Tax consequences

If a company is deemed as shell company and fails to counter-prove this presumption, it will not be able to access tax relief and benefits under double taxation treaties and European directives. Member States will not issue a tax residence certificate to such entities, which means that payments (interest, dividends) may be subject to withholding tax.

Step 7: Exchange of information

Tax authorities will share data on shell companies as part of the automatic exchange of information between Member States, which will contribute to transparency and detect companies that exist merely on paper. This will result in creating a new EU central database on administrative cooperation in the field of taxation. The data reported by entities could be subject to tax audits.

Penalties

Member States shall set penalties, a minimum penalty for non-compliance is provided consisting of at least 5% of the entity's turnover.

The draft Directive is now being negotiated by Member States and could potentially be subject to further amendments. The ATAD 3 will have to be transposed into Member States' national legislation **by 30 June 2023** for the rules to come into effect as of 1 January 2024.

In addition, the European Commission will present in 2022 a new initiative to respond to the challenges linked to non-EU shell entities.

We will continue to monitor the current development of changing international rules.

Changes ahead for thin capitalization rules

The Ministry of Finance has published preliminary information on the amendment to the Slovak Income Tax Act, which implements the Interest Limitation Rule from the Anti-Tax Avoidance Directive (ATAD 1).



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The current thin capitalisation rules limit the tax deductibility of interest on loans and borrowings from related parties. The new rule will regulate the rules of tax deductibility the so-called exceeding interest costs, i.e., interest costs in excess of interest income, irrespective whether they originate from related parties.

Slovakia must transpose Article 4 of the Directive ATAD 1, which defines the Interest Limitation Rule until 2024 at the latest. We will monitor the development of the legislative process and keep you updated.

If you are interested in this topic, do not hesitate to contact us for more information.

Extended deadlines for tax reliability index

On 22 February 2022, an amendment to the Financial control and Audit Act, which amends also the Tax Administration Act (Tax Code), was published in the Collection of Laws. The parliamentary amendment introduces a change in the deadlines for notification on the tax reliability index.



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In comparison with the original wording that was covered [in our previous Article](#), the deadline for sending the notification of the assignment of the tax reliability index is extended from 28 February **to 30 June 2022** and the deadline for publishing the list of taxpayers from 30 June **to 30 September 2022**.

The amendment should provide the Slovak Financial Administration with sufficient time to prepare the information campaign and technical implementation of the tax reliability index.

The amendment to the Act became effective as of 27 February 2022.

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