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Virtual currencies taxation rules are getting basic contours

Trading with virtual currencies is becoming an increasingly discussed topic. As the current version of tax and accounting legislation does not provide for necessary guidance, at the end of March the Ministry of Finance issued a Methodological Guideline on Taxation of Virtual Currencies and also amendments of relevant legislation are in preparation.



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In the Methodological Guideline, the Ministry is expressing its position on taxation and accounting of virtual currencies at the time when the tax payers are missing any specific provisions dealing with virtual currencies in the legislation. At the same time, the government is working on an amendment to the Act on Accounting and to the Income Tax Act, being included under the draft of the Act on the Insurance Tax. Both of these indirect amendments are dealing with the accounting, valuation and taxation of virtual currencies, more or less in accordance with the already issued Methodological Guideline.

In accordance with the above-mentioned Methodological Guideline and drafted amendments, any exchange of virtual currency, including an exchange for another virtual currency and exchange for a service or an asset is understood as a sale of the virtual currency. Income from such sales shall be included in the tax base (i.e. including an exchange of one virtual currency for another virtual currency).

Income included in the tax base is determined by using a fair value at the date of exchange, while the fair value is the market value from the selected public market at the day of sale. Total amount of input values of virtual currencies could be reflected only up to the total amount of revenues derived from sale of virtual currencies, i.e. possible losses will not be included in the tax base. The amendments are also dealing with determination of input prices of virtual currencies and of assets and services acquired for a virtual currency.

As regards taxation of individuals, income from sale of virtual currencies is included under Section 8 of the Income Tax Act (Other personal income) and thus, will be subject to health insurance.

However, the drafted amendments still need to pass the approval process in the Slovak Parliament. We will keep you informed about future developments.

In case of trading with virtual currency, it is recommended to consider any potential tax implications in advance. Should you be interested in more details, please contact us.

What is the future of taxation of digital economy?

Digital technologies are spreading more and more and are raising questions concerning their fair taxation around the world. Future plans for fair taxation of digital economy were, however, already unveiled.



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The question of fair taxation of digital economy is a hot topic. After the informal ECOFIN meeting in Tallinn, held on 21 September 2017, the European Commission (EC) launched a new EU agenda to tax the digital industry in a fair and growth-friendly way. On 22 March 2018, the EC presented their proposal for two new EU directives:

- Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence, and
- Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services

Digital presence

A digital service was defined as a service that is delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention.

The mere sale of goods or services facilitated by using the internet or an electronic network is not regarded as a digital service. The Proposal provides for the following example: giving access (for remuneration) to a digital marketplace for buying and selling cars is a digital service, but the sale of a car itself via such a website is not.

For the purposes of corporate tax, a permanent establishment shall be taken to exist if a significant digital presence exists through which a business is wholly or partly carried on. There will be a significant digital presence in a Member State if one or more of the following criteria are met:

- the revenues from providing digital services to users in a jurisdiction exceed EUR 7 000 000 in a tax period; or
- the number of users of a digital service in a Member State exceeds 100 000 in a tax period; or
- the number of business contracts for digital services exceeds 3 000.

A significant digital presence should be attributed the profits that it would have earned through certain significant economic activities performed via a digital interface.

The revenues included in the scope of this Directive (taxable revenues) would be those derived from the provision of any of the following services:

- services consisting in the placing on a digital interface of advertising targeted at users of that interface; as well as the transmission of data collected about users which has been generated from such users' activities on digital interfaces;
- services consisting in the making available of multi-sided digital interfaces to users, which may also be referred to as "intermediation services", which allow users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users.

Services by an entity to users through a digital interface consisting in the supply of digital content such as video, audio or text, either owned by that entity or which that entity has acquired the rights to distribute, are not to be regarded as intermediation services and should therefore be excluded from the scope of the tax.

Revenues from digital services

It was proposed that Digital Services Tax would be levied on the gross revenues of a business resulting from the provision of the services falling within the scope of the tax, net of value added tax and other similar taxes. Revenues resulting from the provision of taxable services between entities of a consolidated group for financial accounting purposes will not qualify as taxable revenues.

An entity exceeding both of the following thresholds will qualify as a taxable person for the purposes of the Digital Services Tax:

- the total amount of worldwide revenues reported by the entity for the latest complete financial year for which a financial statement is available exceeds EUR 750 000 000; and
- the total amount of taxable revenues obtained by the entity within the European Union during that financial year exceeds EUR 50 000 000.

The Digital Services Tax will be due in the Member State or Member States where the users are located.

A single tax rate across the European Union of 3% was proposed.

For more information on this topic please refer to [the publication prepared by KPMG International](#).

Application of beneficial ownership concept under the EU Directives

In March EU Advocate General of the European Court of Justice released her opinion in four cases dealing with the interpretation of the beneficial ownership concept where the Interest Royalty Directive (2003/49/EC) applies and in two cases where the Parent-Subsidiary Directive (90/435/EC) applies.



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The four cases (C-299/16, C-115/16, C-118/16 and C-119/16) all involve back to back financing transactions and the two joined cases (C-116/16 and C-117/16) both concern dividend distributions made by a Danish resident company to an intermediary holding company resident in the EU.

In all cases in question, the Danish company requested an exemption of the Danish withholding tax levied on the payments made to the EU company based respectively on the Interest and Royalties Directive and on the Parent-Subsidiary Directive. The Danish tax authorities denied the exemption, arguing that the company receiving the income was a conduit structure and could not be considered as the beneficial owner of the payment.

The questions addressed to the European Court of Justice were whether Denmark may deny the benefits of the EU Directives and impose withholding tax and how the OECD's Commentaries on the Model Tax Convention should be applied in this respect.

In the respective opinion Advocate General pointed out that under the Parent-Subsidiary Directive the beneficial owner requirement is not relevant. In fact, the Parent-Subsidiary Directive does not refer to the concept of beneficial ownership and this is in line with its aims. In this regard, the only limitation foreseen is the potential application of domestic or agreement-based anti-abuse provisions. The Advocate General further affirmed that a Member State cannot rely on a provision contained in a directive if it has not transposed it.

Based on the definition provided in the Interest and Royalties Directive, the Advocate General first argues that the holding company receiving the interest income should be considered as the beneficial owner, unless it is not acting in its own name and on its own account, pursuant to a trust relationship. In this respect, a refinancing agreement would not, according to the Advocate General, be sufficient to assume that such a relationship exists.

In published opinion the concept of abuse in EU law was also discussed, concluding that it is up to the national courts to determine if the corporate structures involved were abusive based on the available facts and circumstances.

Further, the Advocate General stated that the concept of beneficial owner must be interpreted under EU law autonomously and independently of OECD Model Tax Convention for purposes of the Interest Royalty Directive and Parent-Subsidiary Directive.

The Advocate General's opinion does not represent the European Court of Justice's final decision which may differ from the published opinion.

EU updates tax-haven blacklist

On March 19, 2018 the ECOFIN published a consolidated EU list of non-cooperative jurisdictions for tax purposes.



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The current list of non-cooperative jurisdictions includes the following countries:

- American Samoa
- Bahamas
- Guam
- Namibia
- Palau
- Samoa
- St. Kitts and Nevis
- Trinidad and Tobago

More information is available in our article published in January.

[ECOFIN agrees on an EU black list of non-cooperative jurisdictions for tax purposes](#)

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