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Parliament approves the insurance tax act

On 20 June 2018 the Slovak Parliament has approved the Governmental proposal of the insurance tax act introducing tax in the amount of 8% from non-life insurance lines of business in case that the insured risk is located in the territory of Slovakia. As opposed to the original wording the new insurance tax will not apply to life insurance lines of business.

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Comparing to the first draft of the act, which was originally subject to inter-governmental review process and details of which we covered in our January's issue, the approved wording of the act contains several changes.

The approved wording introduces insurance tax in the amount of 8% from the insurance premium payment received (receivable booked, payable) from non-life insurance lines of business, except for the third party motor liability insurance, in case that the insured risk is located in the territory of Slovakia. As opposed to the original wording the new insurance tax will not apply to life insurance lines of business.

In general the insurance tax act defines the following moments when the tax liability arises:

1. The day when the insurance premium is received.
2. The day when the insurance premium receivable is booked.
3. The day when the insurance premium receivable is payable while it is up to the tax payer to choose one of the above methods and then apply it for the period of at least 8 calendar quarters.

Tax period is a calendar quarter and the deadline for filing of the tax return is set as the end of month following the end of the respective tax period.

The effective date was, based on the Parliament Committee proposal, changed to 1 January 2019 instead of originally planned 1 October 2018. The insurance companies would also be obliged to inform their clients about the new amount of insurance premium at least 10 weeks before the end of the insurance period.

Under the transitional provisions the insurance tax will apply if the insurance period begins after 31 December 2018 and the insurance premium payment is received, receivable is booked or payable (given the chosen method of tax liability determination) after 31 December 2018. For the purpose of the insurance tax act the insurance period should be period to which the insurance premium payment (or its part) relates.

The signature of the President is the next step of the legislative process. We will keep you informed about the next steps of the legislative process.

Case law

Right to claim the input VAT deduction from advertising services exists even if they don't bring in new clients

A view, that the taxpayer has a right to claim the input VAT deduction from advertising services only if they prove certain economic impacts of the invoiced advertising services on their business activities is incorrect and at the same time it is not in accordance to case law. This is the result of the ruling of the Supreme Court of the Slovak Republic.

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The Case

Our colleagues from KPMG Legal s.r.o. succeed in another tax litigation in which they represented the client in the tax case regarding a right to deduct VAT from advertising services.

In this case, the Tax Office assessed the conditions to claim the input VAT deduction under Section 49 of the VAT Act.[1]

The Tax Office did not admit the taxpayer's right to claim the input VAT deduction due to the fact that advertising services supplied to the taxpayer were assessed as economically inefficient and the taxpayer did not prove that these were used for supply of its own goods and services as a VAT payer.

In the opinion of the Tax Office, the taxpayer did not demonstrate that the advertising services were used in the following tax periods for own business activities with the specific economic impacts of invoiced advertising services on business activities. In this regard, the Tax Office requested from the taxpayer to prove specific effects of advertisement on its business results, while efficiency of advertising services of the taxpayer was assessed solely by the number of new clients the taxpayer had attracted. The Tax Office at the same time argued that the taxpayer was not in the need to advertise his services to the business partners from the past and, therefore, did not approve the input VAT deduction for such advertising services.

Conclusions of Supreme Court of the Slovak Republic ("**Supreme Court**")[2]

In the view of the Supreme Court, even advertisement which directly does not lead to acquiring new contracts (with new clients), could be considered as taxable transaction used to supply goods and services of the taxpayer if such advertising services fulfil definition of advertisement and are to the extent, costs incurred, location and method of presentation, or other relevant circumstances appropriate to the taxpayer's business.

The Supreme Court came to the conclusion that the Tax Office cannot condition a right to input VAT deduction from taxable transactions with efficiency of advertisement, in a meaning that a right to tax deduction would belong only to advertising services which directly and immediately led to conclusion of new contracts, from which the taxpayer gained income.

In this context, the Supreme Court pointed out to its prior case law (mainly decision of the Supreme Court, case No. 3Sžf/66/2007, dated 6 March 2008) when the court stated: "*In case of substantiation factual relation of costs to advertising services direct evidences are used in limited scope. Scope of influence of advert to consumer behaviour is not exactly measurable. As an aid criterion, it is possible to investigate the case (the immediate economic reason) of the cost of advertising...*"

The Supreme Court ruled out that the Tax Office cannot consider advertisement as cost, which is capable to express itself specifically, in certain time and place as a factor having an impact on generating of income.

The Tax Office should assess whether the advertisement corresponds to the goods and services offered by the taxpayer on the market rather than to solely focus on a number of contracts newly concluded by the taxpayer as a result of the provided advertising services.

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[1] Act No. 222/2004 Coll. on Value Added Tax

[2] *Judgement of the Supreme Court of the Slovak Republic, dated 6 March 2018, No.* ***1Sžf/64/2016***

Major changes of EU VAT rules take shape of detailed technical measures

On 25 May 2018, the European Commission released a proposal of detailed technical amendments to EU rules on VAT. The proposed measures are aimed to introduce a future fraud-proof EU VAT system. To launch these changes, around 200 of the 408 articles in the EU VAT Directive would need to be adapted.

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May's package of measures is a follow-up to the proposal of the main principles or 'cornerstones' of a definitive EU VAT system for the B2B trade in goods within the EU (read more in the article „The European Commission proposes a significant reform of the VAT system in the EU“).

Putting the principles of the definitive EU VAT area into operation would require significant changes to the EU VAT Directive. These should bring about:

- ***Simplifying taxation of cross-border transactions involving goods***

In the current VAT system, trade in goods between businesses is split into two transactions:

1. a VAT exempt supply of goods in the EU member state where the dispatch or transport to the customer begins, followed by
2. **a taxed acquisition of goods in the EU member state where the goods are finally located after transportation from another EU member state.**

Once agreement on the amendments to the VAT rules is met, the cross-border trade of goods in the EU should be defined as a 'single taxable supply' which will ensure that goods are taxed in the EU member state where the transport of the goods ends. The objective of this measure is to significantly reduce VAT fraud.

- ***One Stop Shop***

It is proposed to introduce the necessary provisions to put in place the 'One Stop Shop' for all B2B EU traders. It should be created in form of an online portal to be used by businesses to fulfill their VAT obligations. The related details were announced by the European Commission in the October 2017 VAT reform proposal.

This system should also be available to companies outside the EU who want to sell to other businesses within the EU and who would otherwise have to register for VAT in the respective EU member states. Once the system enters into force, these businesses will have to appoint one “intermediary” established in the EU to take care of VAT for them.

- ***Less administrative burdens***

Measures aimed at combating VAT fraud should result in reducing the administrative burden businesses in the EU currently face when they sell to other companies in other EU member states. Filing of EU Sales Lists required by the current VAT system will no longer be needed for cross-border supplies of goods in the EU.

Invoicing regarding EU trade should continue to be governed by the rules of the EU member state of the seller.

- ***Seller should usually be responsible for settling the VAT liability***

May 2018 draft proposal clarifies that it is the seller that should charge the VAT due on a supply of goods to his customer in another EU member state, at the rate of the EU member state of destination.

Only where the customer is a ***Certified Taxable Person*** (i.e. a reliable taxpayer, recognized as such by the tax administration) and the supplier is not established in the EU member state of taxation, the acquirer of the goods will be liable for VAT. The concept of Certified Taxable Person was introduced by the European Commission in the VAT reform proposal published in October 2017.

The new rules are proposed to take effect from 1 July 2022.

The European Commission reconfirmed that the proposed changes for the so-called **„quick fixes"** remain entirely valid since they should enter into force well ahead of the adoption of the proposed technical changes of the EU VAT rules (by 2019). Their brief summary is included in the November 2017 issue of Tax and legal news.

As the proposed measures contain significant changes of the EU VAT rules, businesses should already consider assessing impact on their business activities and monitor development in the implementation process.

Prolongation of the optional reverse charge mechanism and of the Quick Reaction Mechanism against VAT fraud

As part of the package introduced in May 2018, the European Commission published a proposal of amendments to the EU VAT Directive, the purpose of which is to prolong the possibility of EU member states to:

- apply the reverse charge mechanism to combat existing fraud in supplies of goods and services included in Article 199a(1) of the VAT Directive,
- use the Quick Reaction Mechanism (QRM) to combat VAT fraud more quickly and efficiently.

According to the current wording of the EU VAT Directive, these temporary and targeted measures should expire on 31 December 2018. As the EU member states would subsequently be deprived of an efficient tool to fight fraud, the European Commission considers appropriate to prolong these measures until 30 June 2022, the date on which the definitive VAT regime should enter into force.

ECOFIN formally adopts new Mandatory Disclosure Requirements for Intermediaries and Taxpayers - entry into force on June 25, 2018

On May 25, 2018, the most recent amendments to the Directive on administrative cooperation in the field of taxation ("DAC 6"), which introduce mandatory disclosure requirements for tax intermediaries, were formally adopted by the Economic and Financial Affairs Council (ECOFIN). The Directive was published in the Official Journal of the European Union on June 5, 2018. The importance of this is that these new mandatory disclosure rules will enter into force on June 25, 2018.

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Member States have until December 31, 2019 to change their domestic law, which will be applicable from July 1, 2020. However, intermediaries and relevant taxpayers will also be required to disclose information on reportable cross-border arrangements, the first step of which was implemented between the date of entry into force of the Directive (June 25, 2018) and the date of application of the Directive (July 1, 2020). This information should be filed by August 31, 2020.

Background

On June 21, 2017, the European Commission presented a proposal for a Council Directive as regards the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The proposal introduced an obligation on intermediaries to disclose potentially aggressive tax planning arrangements and the subsequent exchange of this information between tax administrations.

Following several discussions in the Council working groups, on March 13, 2018 the ECOFIN reached political agreement on a revised text. On May 25, 2018, the ECOFIN adopted the Directive formally. It is expected that DAC 6 will be published in the Official Journal of the European Union shortly. The Directive will enter into force on June 25, 2018 (on the twentieth day following its publication in the Official Journal).

According to the final text, tax intermediaries are required to disclose qualifying cross-border arrangements to tax authorities within 30 days of implementation. In the absence of an intermediary (e.g. the obligation is not enforceable upon an intermediary due to legal professional privilege, the intermediary is located outside the EU or because an arrangement is developed in-house), the obligation to disclose falls on the taxpayer – defined as any person that uses a reportable cross-border arrangement to potentially optimize their tax position.

Qualifying arrangements have to be reported within 30 days beginning on:

1. the day after the reportable cross-border arrangement is made available for implementation,or
2. the day after the reportable cross-border arrangement is ready for implementation,or
3. when the first step in the implementation of the reportable cross-border arrangements has been made,

   whichever occurs first.

Where the obligation is shifted to the taxpayer, the timing of disclosure is maintained.

The Directive leaves it to the Member States to lay down rules on penalties applicable for infringements of the mandatory disclosure rules - with the only requirement being that any penalties are effective, proportionate and dissuasive.

Adoption

Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by December 31, 2019 at the latest. The provisions will be applicable from July 1, 2020.

Furthermore, Member States must also take the necessary steps to require intermediaries and relevant taxpayers to disclose information on cross-border arrangements - the first step of which was implemented between the date of entry into force of the Directive (June 25, 2018), and date of application (July 1, 2020) of DAC 6. Information on these reportable arrangements will have to be reported by August 31, 2020.

The reported information will be automatically exchanged each quarter by the competent authorities of each Member State via a central directory on administrative cooperation. The directory will be developed by the Commission by the end of 2019. The automatic exchange of information will take place within one month of the end of the quarter in which the information was filed, with the first information to be communicated by October 31, 2020.

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