



# Daňovky

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In brief**

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# Six main changes in the Commercial Code

Changes in the liquidation process of companies and co-operatives, introduction of the deposit for liquidation, winding-up of companies due to overdue filing of their financial statement into the Collection of Deeds or a change in the scope of data registered with the Commercial Register. Those are some of the main changes brought by the amendment of the Commercial Code (Act No. 513/1991 Coll. Commercial Code as amended) and related legal acts aimed at streamlining of the liquidation process of companies and improving the operation of the Commercial Register.



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The adopted amendment will take effect partially as of 1 January 2020 and partially as of 1 October 2020. However, the most important changes concerning the Commercial Register and the Commercial Code will become effective as of 1 October 2020.

The amendment brings mainly the following changes:

## 1. The changes in the liquidation process of companies and co-operatives

According to the new legislation, the liquidation of a company will commence as of the day the **liquidator is registered with the Commercial Register** and not as of, until now, the day of its winding-up (i.e. the date stated in the decision of the general meeting or the decision of the court).

Regarding the voluntary winding-up of a company, the shareholders or the respective body of the company will be obliged **to decide upon appointment of a liquidator altogether with adopting a decision to wind-up the company**, but not later than in 60 days as of the day of the winding-up of the company. If the shareholders fail to fulfill this obligation in the stated period, the liquidator will be appointed by the court but only in the case the deposit for liquidation was paid.

The new legislation introduces **the deposit for remuneration and expenditures of the liquidator (the deposit for liquidation)**, that the company will be obliged to pay irrespective of whether the liquidator was appointed by the court or by the shareholders themselves. The deposit for liquidation (the amount of which will be determined in the implementary regulation) will need to be deposited in the escrow account in the form of a notarial deed.

One of the crucial changes is that with the commencement of the liquidation of a company, the **unilateral legal acts of the company will cease to exist**, especially the instructions, authorizations, powers of attorney and procuracies. The power of attorney granted by the company for its representation at the court will be the only exception that will not be affected by the change.

A liquidator will now be obliged to draw up **a list of receivables and a list of assets of a company**. Such lists will need to be drawn up not later than 45 days as of the publication of the notice of the commencement of the liquidation of a company and they will need to be filed into the Collection of Deeds. Such obligation will also apply to the liquidators registered with the Commercial Register prior to 30 September 2020. However, the liquidation process in these cases will be completed under the legislation effective until 30 September 2020.

The amendment of the Commercial Code regulates in more detail the current regulation of an **additional liquidation**. The additional liquidation can only be initiated upon the motion of a person **proving to have legal interest** in its order. A person requesting an additional liquidation will be also obliged **to pay the deposit for liquidation**. Such motion must be filed not later than 4 years after the deletion of the company from the Commercial Register, otherwise the asset of the company will fall to the state.

## **2. Winding-up of a company due to overdue filing of its financial statement**

Nowadays a company may face winding-up due to a failure to file its financial statements into the Collection of Deeds for at least two consecutive accounting periods.

Under the new legislation, a court will wind-up a company in case of **more than six months' delay with filing its financial statement into the Collection of Deeds**. A company must file its financial statement into the Collection of Deeds within nine months of the day of its preparation.

The proceeding on winding-up of the companies and co-operatives will be regulated by the Code of Civil Non-Dispute Procedure (Act No. 161/2015 Coll. Code of Civil Non-Dispute Procedure as amended) in more detail.

## **3. Exclusion of persons, against whom the execution is conducted, from the possibility to establish a limited liability company**

According to the new legislation, a person against whom the execution is conducted **cannot establish a limited liability company**. This change will also affect **transfer of share**. A person against whom an execution is conducted cannot acquire nor transfer its share to another person, not even to a shareholder.

Likewise, such a person cannot become a managing director in a limited liability company.

## **4. The change in the scope of data registered with the Commercial Register**

The new legislation completely **excludes filing of motions** for the registration, change or deletion of registered data **in paper form**. Only the **electronic** motions will be available.

Under the new legislation, **the signature of the real estate owner on its consent with registration of the registered seat of a company will have to be notarized**, otherwise a court will reject the registration with the Commercial Register.

The personal identification number of a shareholder or a date of birth (in case of foreign individuals) will also become a subject of registration. However, these data **will not be published** despite their registration. The companies will be obliged to register these data with the Commercial Register when filing their next motion for a change of the registered data, however, **not later than by 30 September 2021**.

According to the amendment **the registration of any restriction to act on behalf of a company as a statutory body**, such as an approval of the general meeting prior to transfer of company's real estate, **will no longer be possible**. Restrictions of acting are already ineffective towards third parties under the current legislation, therefore, the companies will be obliged to delete such restrictions not later than by 30 September 2021.

Pursuant to the applicable legislation, a legal entity is established for an indefinite period, unless it is expressly stated that such entity is established for a definite period. The definite period will need to be registered with the Commercial Register.

## **5. The changes in registration of individuals and organizational units of enterprises (branch) with the Commercial Register**

Currently, individuals – entrepreneurs (sole traders) can in addition to their registration with the Trade Licence Register, register themselves voluntarily also with the Commercial Register. Such an option will, however, be no longer available following the entry into force of the amendment.

According to the amendment, registration of a branch of the Slovak legal entity with the Commercial Register will be voluntary. The branch of a foreign legal entity will, however, still need to be registered and the right to conduct a business in the Slovak Republic by the branch will still arise as of its registration with the Commercial Register.

Persons acting on behalf of branch of the Slovak or a foreign legal entity will be obliged **to confirm the registered data** on the branch by 30 September 2021 by filing a motion with the Commercial Register. In case of failure to fulfill this obligation,

the branches will be deleted from the Commercial Register.

## 6. Deletion of inactive companies from the Commercial Register

As a part of measures aimed at cleaning-up the Commercial Register, the registering court will delete inactive companies from the Commercial Register, for example those that (i) do not fulfill their obligation to convert share capital and nominal value of the shares from Slovak Crowns into Euro even by 1 December 2020 or (ii) branches of foreign legal entities or branches of Slovak legal entities that **fail to confirm the data registered with the Commercial Register** by 30 September 2021 at the latest.



# The amendment to the Tax Code introduces a tax execution by suspension of a driving license

The amendment to the Tax Administration Act (Tax Code) was published in the Collection of Laws. The amendment modifies for example the provisions on representation based on power of attorney, the provisions on the obligation of taxpayers to report bank account numbers and introduces a new way of recovering tax arrears. Effective from 1 January 2021 provisions on ex-offo registration and publication of the list of taxpayers registered for income tax are also introduced.



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The main objective of the amendment is to reduce the administrative burden on taxpayers and make certain legal provisions more effective. The amendment modifies inter alia the following provisions:

1. **Representation based on power of attorney** - In practice there are often situations, where a taxpayer submits several powers of attorneys, the scope of which overlaps each other. According to the approved amendment to the Tax Code, the most recent power of attorney will always replace the previous one, to the extent they overlap. In case of any doubt the tax authorities may require the taxpayer to resolve any discrepancies that arise.
2. **Suspension of a driving license** - in order to maintain effective collection of taxes and proper fulfillment of tax obligations, a new type of tax execution is introduced - tax execution by suspension of the driving license. Should the tax execution be performed this way, the tax debtor is indirectly forced to fulfill its obligation in order to get back the driving license. This tax execution method cannot be used in case of professional drivers.
3. **Reporting of a bank account number** - the registration procedure provisions abolish the obligation for individuals and businesses to report bank account number, as this is reported to the tax authorities by the payment services provider himself.
4. **Ex-offo registration** - effective from 1st of January 2021, the registration procedure is modified so that the taxpayers registered in the register of legal entities, entrepreneurs and public authorities are not obliged to register with the tax authorities, but the respective tax authorities register them ex-offo, within 30 days following their publication in one of the mentioned registers. A taxpayer that is not registered in such a register, shall be registered by the tax authorities based on a tax return filled after 31st of December 2020. The tax authorities will issue the registration decision with the assigned tax ID and a personal account number of the taxpayer. At the same time, taxpayers are no longer obliged to notify the tax authorities about the changes of their personal information, if they fulfill such an obligation towards another institution, that reports them to the tax authorities.



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# The Supreme Court of the Slovak Republic upheld the client's claim for compensation for VAT retention throughout the long-lasting tax audit

The taxpayer is entitled to the VAT retention interest even when the tax audit, aimed at assessment of eligibility for the excessive VAT deduction, exceeded the period of 6 months and the Tax Office completed the tax audit before 1 January 2017. Furthermore, the Tax Office may not address the taxpayer's request for the VAT retention interest by a written notice. The Tax Office must issue a decision on such a request and substantiate this decision with proper reasoning. This conclusion stems from the judgment of the Supreme Court of the Slovak Republic.



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Our colleagues from the legal department succeeded in another court litigation. The Supreme Court of the Slovak Republic („Supreme Court“) examined the following

**a) existence of the taxpayer's claim for the interest on retention of the excessive VAT deduction** throughout the long-lasting tax audit **completed by the end of the year 2016**, and

b) court reviewability of the **notice**, by which the Tax Office denied the taxpayer the VAT retention interest.

In the case in question, the Tax Office initiated the tax audit in order to assess the eligibility for the excessive VAT deduction applied by the taxpayer in the tax return. As the tax audit lasted approximately 17 months, the taxpayer requested the Tax Office to be granted an interest for the excessive VAT deduction retained throughout the tax audit (pursuant to Sec. 79a of the Act on VAT[1]).

The Tax Office addressed the taxpayer's request **by the notice** denying the taxpayer the interest, i.e. the Tax Office has not issued a decision in this case.

According to the Tax Office, **the taxpayer was not entitled to the interest**. The Tax Office argued that the tax audit was completed in 2015 and pursuant to Sec. 85ke of the Act on VAT, the taxpayer is entitled to the interest only in case of tax audit being completed after 1 January 2017.

## Conclusions of the Supreme Court

The Supreme Court concluded that the Tax Office's procedure applied in the decision-making process on taxpayer's request was incorrect.

## 1. Entitlement to the interest

Regarding the VAT retention interest, the Supreme Court referred to its earlier decision in a similar legal matter[2]. According to the Supreme Court, **the taxpayer is entitled to the VAT detention interest** throughout the long-lasting tax audit **even if such an audit was completed by the end of 2016**.

The Supreme Court emphasized that the claim for the interest stems from the order of the Court of Justice of the European Union[3], which takes precedence over the national provisions of Sec. 85ke of the Act on VAT. Based on this, the ruling applies also to the cases in which the Tax Office retained VAT for a period longer than 6 months and completed the tax audit by 31 December 2016.

The Supreme Court also stated that it is for the legislature to reconcile the national legislation on retained VAT interest with the order of the Court of Justice of the European Union Kozober, to allow for granting of the interest even in case of the tax audit being completed before 1 January 2017.

## 2. The legal nature of the Tax Office's notice

The Supreme Court confirmed that the Tax Office's notice is also **subject to the court review** if it is a measure by which the Tax Office de facto decides on the rights and legally protected interests of the taxpayer.

The Supreme Court also stated that the Tax Office **is obliged to decide on the denial of the retained VAT interest and substantiate its decision with proper reasoning**. In this regard the Supreme Court emphasized the identical legal matter when the Tax Office issued a decision denying the retained VAT interest (instead of a notice). According to the Supreme Court, the Tax Office is obliged to assess the same matters identically. That is the only way to assure legal certainty and predictability of the decisions of administrative authorities granted by the Constitution of the Slovak Republic. Different course of action of the Tax Office in factually and legally identical matters is, in view of the Supreme Court, unconstitutional.

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

[2] Judgment of the Supreme Court of the Slovak Republic dated 17 April 2019, No. 3Sžfk/4/2019

[3] Order of the Court of Justice of the European Union dated 21 October 2015, No. C-120/15 Kozober



# Amendments to the tax legislation were published in the Collection of Laws.

Amendments to the tax legislation that were approved on October's meeting of the National Council were published in the Collection of Laws. In addition, Ministry of Finance published a Decree, which provides for new templates of income tax and value added tax returns.



## Daňové a právne oddelenie

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Amendments to the following tax legislation were published in the Collection of Laws:

- Amendment to the VAT Act
- Amendment to the Tax Administration Act
- Amendment to the Excise tax on electricity, coal and natural gas Act
- Amendment to the Accounting Act

In addition, Ministry of Finance published a Decree, which provides for new templates of income tax and value added tax returns.



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