



# Daňovky

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# Nine legislative changes affecting the business environment in Slovakia in 2020

We would like to bring to your attention the most important legislative changes that will affect the business environment in Slovakia.



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## 1. Minimum wage increase

As of 1 January 2020, the sum of the basic monthly minimum wage, i.e. the minimum wage for work classified under the first degree of work intensity, increases from EUR 520 to **EUR 580** and the sum of hourly minimum wage increases from EUR 2.989 to **EUR 3.333**. Minimum wage increases depend on the degree of intensity of work performed by an employee. The minimum wage increase affects also the amount of compensation for weekend work or night work as they are calculated from the minimum wage.

The method of calculation of the minimum wage also changes. If the agreement between the representatives of employers and employees is not reached, a new valorisation coefficient will be used, i.e. 60% of the average nominal wage of an employee in the economy of the Slovak Republic published by the Statistical Office of the Slovak Republic for a calendar year 2 years preceding the year of the calculation of the minimum wage.

## 2. An additional week of paid holiday for employees taking care of a child

The amendment of the Labour Code introduces 5 weeks of the base holiday also for the employees under 33 years of age **taking care of a child permanently**. The interpretation of the term “permanent” child care may be problematic as the Labour Code lacks a legal definition of the term for now. The amendment became effective as of 1 January 2020.

## 3. Benefit for child's sporting activity

The amendment of the Labour Code taking effect as of 1st January 2020, introduces a new voluntary **benefit** provided by an employer **for a sporting activity** of children of their employees. An employer can provide its employee with a benefit amounting to 55 % of eligible expenditures, however up to maximum of EUR 275 per calendar year for all children of an employee upon his/her request. An employee is entitled to request for the benefit provided his/her **employment has lasted at least consecutive 24 months**.

## 4. Stricter rules for sending monthly statements to the Social Insurance Agency

As of 1 December 2019, if employers fail to comply with the statutory obligation to send the Social Insurance Agency a monthly report of premiums and contributions to pension savings, stricter sanctions apply. The reports must be submitted to the Social Insurance Agency by the due date of the premiums paid by them. If they fail to do so within the stipulated period, the Social Insurance Agency will treat them as debtors and include them in the list of debtors maintained by the Social

Insurance Company, regardless of whether the employer has actually paid the premium or not. Being included in the list of debtors then has several negative impacts, mainly on the right to use/apply for loans or subsidies or the possibility to establish subsidiaries or disposing of a business share.

This obligation also applies to foreign self-employed persons who will be treated as having arrears if they fail to notify the Social Insurance Agency of the amount of income and expenditures and the facts decisive for assessing the obligation to participate on the compulsory social insurance.

## **5. Exception from illegal work and illegal employment applies also to limited liability companies with one shareholder who is a natural person**

The amendment to the Act on Illegal Work and Illegal Employment effective as of 1 January 2020 extended the exception from illegal work and illegal employment to limited liability companies with no more than one shareholder being a natural person. Such limited liability companies may now employ a direct relative, a sibling or a partner's spouse, if they are insured and pensioners or pupils or students under 26 years of age without an employment contract or agreement. Before the amendment, this exception only applied to natural persons-entrepreneurs.

## **6. Termination of old legal enforcements**

As of 1 January 2020, the new act on termination of some legal enforcement procedures became effective. **The old legal enforcement** is defined as an enforcement procedure that had commenced prior to 1 April 2017 and is carried out under legislation effective until 31 March 2017. The old legal enforcement will be terminated ex lege when (i) the **decisive period of five years** passes as of the day of the delivery of the initial order to carry out the legal enforcement to the legal enforcer and (ii) at the proceeds amounting to at least EUR 15 has not been achieved in the last 18 months (dispossessed enforcements). In connection with the termination of an old enforcement, the entitled person (creditor) will be obliged to bear the **lump costs** in the amount of **EUR 35**. The entitled person will be called upon to pay by the legal enforcer in the notice on the termination of an old enforcement. The enforcement proceedings terminate as at the delivery of the notice on termination of an old enforcement to the respective court.

## **7. Audit of financial statements**

The amendment to the Act on accounting, effective as of 1 January 2020, liberalizes the conditions for mandatory auditing of financial statements. Two of the three conditions determining the **obligation to audit the financial statements are doubled**, namely:

- The condition of the total amount of assets as at the day of preparation of the financial statement increases from EUR 1 000 000 to EUR **2 000 000** and
- The condition of the net turnover changes from EUR 2 000 000 to EUR **4 000 000**.

The third condition relating to the number of employees remains unchanged.

## **8. Changes in the process of liquidation of companies and cooperatives**

As of 1 October 2020, the amendment to the Commercial Code introduces several significant changes in the liquidation process that will affect the cost and duration of the entire process.

Pursuant to the new legislation, the Company will not enter into liquidation until the **day when the liquidator is registered with the Commercial Register**. Upon entry into liquidation, under the new regulation, **unilateral legal acts** of the company such as power of attorney, orders or procurations, except for power of attorney granted to represent the company in legal proceedings, **will expire**.

**It will be possible to terminate the liquidation only once the 6-month period passes of the notice of company's entry into liquidation.** If there is a tax debt or a tax audit, the period in question will be extended by further 6 months.

The amendment introduces a new obligation to deposit **an advance for the liquidator's remuneration** in the escrow account of the notary public. The minimum advance payment is set at EUR 1 500.

The new legislation also introduces several new obligations for the liquidator, in particularly the obligation to draw up a list of

the company's assets and receivables, reporting and disclosure obligations, etc.

## 9. Cleanup of the Commercial Register

An amendment to the Commercial Code effective from 1 October 2020 introduces new rules with the aim (i) to ensure full electronization of the Commercial Register, (ii) to arrange for deletion of inactive entities and (iii) to reduce the scope of entities registered with the Commercial Register.

Following the amendment, an entity may be dissolved, if it fails to meet the statutory duty to deposit its financial statements with the Collection of Deeds.

As part of measures to cleanup the Commercial Register, the registry court will also de-register „dead“ companies, e.g. those which: (i) failed to fulfil their statutory duty to convert the nominal value of the registered capital or contributions to the registered capital from Slovak crowns to euro by 1 December 2020; or (ii) enterprises of foreign legal entities, branches of enterprises of foreign legal entities, branches of enterprises of Slovak legal entities, which by 30 September 2021 will **not confirm the data registered with the Commercial Register.**

The filing with the Commercial Register will only be possible **electronically.**

Pursuant to the amendment to the Commercial Code, natural persons are not registered in the Commercial Register. At the same time, a person subject to legal enforcement will **no longer be able to set up a limited liability company or dispose of a business share in a limited liability company.** Similarly, such a person will not be able to be appointed as a managing director of a limited liability company.



# The tax authorities closely cooperate in the field of exchange of information about foreign taxpayers

The tax authorities of OECD states annually exchange information on persons having relations in another country. It happens more often than in the past that the tax authorities ask taxpayers to document taxation of income from foreign sources or interests credited on foreign bank accounts. The exchange of information is focused on finding cross-border tax evasion and tax frauds.



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Slovak financial institutions provide information on bank accounts of US residents, EU residents and most of the OECD countries tax residents to the Financial Administration. Tax authorities forward the received information to tax authorities of the respective states. Therefore, foreign authorities obtain information on bank account of their tax residents kept abroad, including the bank account balance.

Obviously, Slovak Financial Administration receives annually detailed information on Slovak individuals having bank accounts abroad.

However, the taxpayers are not often aware of their obligations. Slovak tax resident having a bank account in a foreign bank is obliged to tax the interest credited on the foreign bank account in Slovakia, even though the foreign bank already withheld certain withholding tax at the time of crediting the interest. The same principle applies to other types of foreign income, such as dividends received from abroad.

## Practical example

*Slovak tax resident holds a Swiss bank account where the bank credits interests and withholds tax according to the Swiss regulations. However, the final tax liability is not settled by this withholding tax. The individual is obliged to report this income in Slovakia, calculate the Slovak tax and if possible, apply tax credit of the Swiss tax. If you do not inform the foreign bank about your residency, the bank usually withholds higher tax rate (e.g. 35%). However, this withholding tax cannot be credited fully against the Slovak tax liability, only up to tax rate enabled under the respective Double tax avoidance treaty (e.g. 5%). The remaining tax should be paid in Slovakia. If you submit to your foreign bank a confirmation of your residency in Slovakia, you can avoid withholding tax abroad. And by including this income in the Slovak income tax return you may avoid unpleasant discussions with the Tax authorities.*

If you received an income from abroad, we would be glad to assist you with your tax obligations.



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# Exemption of capital gains in Slovakia and Austria for corporate taxpayers

The Amendment to the Slovak income tax act effective from 1 January 2018 implemented participation exemption rules exempting capital gains from taxation also to the Slovak tax legislation. Due to transitional provisions Slovak tax resident corporate taxpayers and foreign corporate taxpayers having a permanent establishment in Slovakia can benefit from these rules for the first time in 2020. In cooperation with Austrian KPMG we also provide you an overview of the rules applied in neighboring Austria and a comparison of approaches in both countries.



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## Slovakia

The conditions for the application of the participation exemption rules in Slovakia are as follows:

Income from the sale of shares in a joint stock company, sale of ordinary shares or shares with special rights in a simplified joint stock company, sale of shares in a limited liability company, and sale of shares by a limited partner in a limited partnership, or shares in a similar foreign company, is derived earliest after 24 consecutive calendar months from the acquisition of a direct share of at minimum 10% in the share capital of the company sold, and

The seller performs significant functions in the territory of Slovakia in relation to the financial investment, manages and bears the risk connected to the ownership title to the shares, while he has the needed personal and material equipment necessary for performing these functions, and

The seller determines his taxable base based on double entry accounting rules or IFRS standards.

If these conditions are met, the income from the sale of shares is exempt from taxation in Slovakia. Brokers and other traders with shares cannot benefit from the participation exemption.

The exemption does not apply if:

1. The company on which shares are sold is in liquidation, bankruptcy or restructuring proceedings;
2. The seller is in liquidation;
3. Own shares of the company are being sold by the company.

For the purposes of the tax exemption the date of acquisition of a direct share in the share capital of the company is defined as

- The date of the full settlement of a cash contribution that cannot be earlier than the registration of the contribution in the company register;

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- The date of the settlement of the in-kind contribution that cannot be earlier than the registration of the contribution in the company register, the same approach is taken to the recipient of the contribution if he sells shares that he acquired as the contribution of individual assets or a part of the contribution of business or its part;
- The date of finalizing the acquisition process, that is
  - the date of registration of shares in the evidence of the central depository or the member of the central depository;
  - the date of transfer by endorsement and handover of the certificated shares (in paper form);
  - the date of the effectiveness of the written agreement of the sale of shares in a limited liability company or limited partnership;
- The date of registration in the company register by which the merger, amalgamation or demerger of companies takes legal effect, if the legal successor of this reorganization sells shares acquired by the company dissolved without liquidation as a consequence of the reorganization; the same approach is taken in the case of a seller who by the dissolution of a taxpayer without liquidation acquires shares in the legal successor;
- The date of registration in the company register of the transfer of the legal seat of a company to the territory of Slovakia.

Entering into an agreement based on which the transfer of shares will be affected in future, or only after meeting the agreed postponing conditions, or some other similar agreement, as well as the acquisition of an option, or receiving the pre-emption right to the purchase of the shares does not qualify as the acquisition of a direct share in a company.

Based on transitional provisions, the participation exemption rules can for the first time be applied by a qualifying corporate taxpayer with the taxable period equal to the calendar year effective from 1 January 2020, if the conditions for their application were met and the seller owned the required direct share for at least 24 consecutive calendar months prior to its sale. If the taxpayer has a taxable period different from the calendar year, the exemption can for the first time be applied after 24 consecutive months starting from the first day of such taxable period that commenced after 31 December 2017.

## **Austria**

In Austria, a distinction must be made between the sale of a participation in an Austrian resident company resp. in a non-resident company:

Capital gains from the sale of a participation in an Austrian resident company realized by an Austrian resident company are part of the taxable income and are taxed at the ordinary CIT rate (25%). With regard to shares in a domestic company the tax exemption is limited to dividends but does not include capital gains.

Contrary, under the international participation exemption dividends as well as capital gains from the sale of participations are exempt from corporate income tax. The following conditions must be fulfilled to apply the exemption for capital gains:

- a direct or indirect participation of at least 10% in the share capital
- with the participation having been held for an uninterrupted period of minimum one year

If these conditions are met, the extent of the sold participation is irrelevant for the exemption. However, if the extent of the participation falls below 10% as a result of a previous sale, the remaining participation is no longer subject to capital gains exemption.

Only entities which are by virtue of their legal form obliged to keep accounts under company law (e.g. stock corporation (AG), limited liability company (GmbH), Societas Europaea (SE), certain cooperatives, Societas Cooperativa Europaea (SCE)) are entitled to this tax exemption. Furthermore, foreign companies subject to unlimited tax liability are entitled to tax exemption, if the legal form of the foreign company is comparable to a qualifying domestic corporation.

The participation must be held in a nonresident company comparable to a domestic corporation resp. in a company listed in the EU Parent-Subsidiary Directive. Furthermore, the foreign participation must not be a low-taxed company that generates predominantly passive income, as otherwise the exemption method will be replaced by the credit method.

The tax neutrality of the international participation exemption extends to impairments as well. Therefore, capital losses originating from depreciations as well as from the disposal of participations are not taken into account in taxation. However, if real and final losses are sustained such as in case of insolvency or liquidation, they are allowed to be deducted for tax

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purposes.

Under the international participation exemption, the parent company can also exercise an option for tax effectiveness upon filing of the CIT return for the year of acquisition or for the year in which the international participation exemption is applicable the first time. Exercising this irrevocable option results in a loss of the tax neutrality of the participation. Thus, depreciations as well as losses from the disposal of participations can be claimed for tax purposes (spread over 7 years), whereas capital gains and appreciations will also increase the taxable profit.

If a participation in an Austrian company is sold by a Slovak company, the taxation right is attributed to Slovakia in accordance with Article 13 of the Double Tax Treaty between Austria and Slovakia.

| Conditions                                           | Slovakia                                                                                                                                                                                       | Austria                                                                                                                                         |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Required minimum direct share in share capital       | 10%                                                                                                                                                                                            | 10%                                                                                                                                             |
| Minimum holding period                               | 24 months                                                                                                                                                                                      | 12 months                                                                                                                                       |
| Personal and material equipment to manage investment | Yes, and significant functions required in the territory of Slovakia                                                                                                                           | General Principles                                                                                                                              |
| Qualifying shares                                    | Shares in joint stock companies, limited liability companies, simplified joint stock companies and shares of limited partners in limited partnerships, and shares in similar foreign companies | All forms of qualifying capital shares (e.g. including share in stock corporations, limited liability companies and in qualifying cooperatives) |
| Who can benefit                                      | Slovak tax resident corporate shareholders and Non-resident corporate shareholders having a permanent establishment in Slovakia                                                                | Companies which are subject to unlimited tax liability that are obliged to keep accounts under company law                                      |
| Applicability of the rules for the first time        | 1.1.2020                                                                                                                                                                                       | n/a                                                                                                                                             |

Article was written in cooperation with Rainer Goetz from KPMG Austria and was also published in annual bulletin of Slovak - Austrian Chamber of Commerce.



# 24 double tax treaties were amended with respect to Multilateral Instrument, do you know how?

Ratification of Multilateral Instrument started an update process of majority double tax treaties that Slovakia has concluded. 24 double tax treaties have already been amended. The changes relate to treaty abuse, hybrid mismatches, permanent establishment and tax disputes resolution.



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Multilateral instrument (MLI) is an important part of BEPS initiative that enables effective and quick implementation of selected BEPS actions into individual double tax treaties.

In order to maintain legal certainty, the Slovak Ministry of foreign and European affairs issues individual announcements with changes of the respective double tax treaties.

So far 24 double tax treaties were amended with respect to MLI:

| Contractual country | Effective date |
|---------------------|----------------|
| Australia           | 1.1.2019       |
| Belgium             | 1.10.2019      |
| Denmark             | 1.1.2020       |
| Finland             | 1.12.2019      |
| France              | 1.1.2019       |
| Georgia             | 1.1.2020       |
| Netherlands         | 1.7.2019       |
| India               | 1.1.2020       |
| Island              | 1.1.2020       |
| Israel              | 1.1.2019       |
| Ireland             | 1.11.2019      |

| <b>Contractual country</b> | <b>Effective date</b> |
|----------------------------|-----------------------|
| Japan                      | 1.1.2019              |
| Canada                     | 1.12.2019             |
| Lithuania                  | 1.1.2019              |
| Latvia                     | 1.8.2020              |
| Luxembourg                 | 1.1.2020              |
| Malta                      | 1.10.2019             |
| Poland                     | 1.1.2019              |
| Austria                    | 1.1.2019              |
| Singapore                  | 1.10.2019             |
| Slovenia                   | 1.1.2019              |
| Great Britain              | 1.1.2019              |
| Serbia                     | 1.1.2019              |
| Ukraine                    | 1.12.2019             |

MLI adjusts double tax treaties mainly in the following areas:

- Hybrid mismatches
- Treaty abuse
- Artificial avoidance of permanent establishment
- Mechanism of tax disputes resolution

For illustration purposes please see below selected provisions that amend the Double Tax Treaty concluded with Netherlands (Treaty).

In relation to the minimum standard the principal purpose test was added to the Treaty and the preamble of the Treaty was also amended. The contractual parties agreed that the double tax treaty will be interpreted in a way that it prevents from the double taxation without creating the opportunities for non-taxation via frauds or treaty shopping.

Permanent establishment provisions were amended and the MLI provisions limiting specific activity exemptions and anti-fragmentation rule were added.

Based on the amended wording of the Treaty, the specific activities (e.g. maintenance of stocks of goods for storage, display, delivery or processing) will not constitute a permanent establishment only under the assumption that these activities are preparatory or auxiliary in relation to business as a whole. Anti-fragmentation rule has also been introduced to prevent the breakup of an operating business into several small business units in order to benefit from the preparatory or auxiliary exemption. The amended wording of the Treaty changes also the conditions for construction permanent establishment. In order to prevent splitting up contracts artificially into shorter periods the new provision allows for combining the activities of related enterprises carried out at one construction site during different periods of time, each exceeding 30 days when considering the time test of 12 months.

Amended Treaty contains also the mutual agreement procedure. The dispute must be presented within three years as of the first notification of taxation that is not in accordance with the provisions of the Treaty.

Do not hesitate to contact us should you apply double tax treaties in the course of your business and you are not sure about the changes resulting from their amended wording.

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# The European Commission released Explanatory Notes on the VAT “Quick Fixes”

On 20 December 2019, the European Commission released final version of the Explanatory Notes on the VAT “Quick Fixes”, which were to be implemented by the EU Member States as of 1 January 2020.



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The document aims at providing a better understanding of the new rules in the following areas:

- call-off stock arrangements,
- chain transactions,
- the exemption for intra-Community supplies of goods and
- the proof of transport for the purposes of that exemption.

The Explanatory notes were first made available in the English language. The Commission endeavours to make the Explanatory Notes available in all official languages of the EU member states before the end of March 2020.



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