Legislative changes from 1 January 2018

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Personal income tax

Amended definition of tax resident (PP) – residence

(Article 2 (d)

- Amended definition of a taxpayer with unlimited tax liability (physical person, PP). The existing criteria “permanent residence“ and “habitual abode“ are completed by the criterion “**residence in the territory of SR**”.
- Residence within the meaning of the amendment shall mean (in the context of the double-taxation treaties) the possibility of accommodation, which is permanently available to PP, other than occasional accommodation for the purposes of business travels, tourism, recreation, etc., while an intention of PP to permanently reside in the state with respect to his/her personal and economic ties is obvious.

Taxation of income from the transfer of an asset owned jointly by spouses

(Article 4 (8) and Article 8 (16)

- Income from the transfer of an asset (e.g. immovable property) owned jointly by the spouses and classified under assets of either of them shall only be taxed by the spouse, who has **last** classified the asset under his/her assets – **division of this income between spouses according to Article 4 paragraph 8 of ITA shall not be permitted any more.**

Exemption of personal income in connection with the possibility of debt discharge for PP

(Article 4 (9) and Article 9 (1)(e)

In relation to the amendment to the Act on Bankruptcy and Restructuring, which introduced the possibility of debt discharge for physical persons in the form of repayment plan or bankruptcy with effect from 1 March 2017:

- The amendment cancels exemption of income from writing off debt in case of **restructuring** (restructuring is only available to LP), where:
- Exempted income shall be income:
  - from writing off debt in connection with a decision of court on **determination of a repayment plan** or **declaration of bankruptcy**
  - from writing off debt toward creditors, which have not registered their claims in the bankruptcy proceedings;
  - from writing off debt, (only) **if bankruptcy proceedings are cancelled** after **the realization of distribution of proceeds or** after the administrator has found that **the assets in bankruptcy would not cover the costs of bankruptcy.**
- **The payer can already use this possibility in the tax return filed after 31.12.2017.**

Non-monetary income – transport to work

(Article 5 paragraph 7(m)

Employee non-monetary income is a **non-monetary service provided to an employee by the employer in order to ensure the transport of the employee to the place of work and back** pursuant to Section 19 Article 2 (s) in the amount of difference between the amount of proven costs of the employer and the amount paid by the employee to the employer for the transport provided to the employee concerned, under the condition that the remuneration from the staff totals at least:

- **60%** of the amount of proven expenditures of the employer for such transport; or
- **30%** of the amount of proven expenditures of the employer for such transport, when the predominant activity of the employer is production carried out in a plant with several shifts and the provided mode of transport to the place of work is used by at least 30% of the total average number of employees on record.
- If the reimbursement does not reach 60% / 30%, the non-cash income is the difference between the amount spent by the employee and the amount corresponding to 60% / 30% of the amount of the employer's expenditure per employee
- Subsequent amendment in Article 19 paragraph 2(s) by the employer.

Income from occasional work

(Article 8 paragraph 1(a)

The amendment specifies the definition of **income from occasional work**, according to which income from occasional work **shall not mean:**

- income from work performed **under contract**, according to which a physical person is obliged to perform specified work, and
- if income is paid by a taxpayer, which is a legal person or physical person – entrepreneur, for whom the provided payment constitutes a tax cost decreasing the basis of the corporate income tax (i.e. the person has a proper accounting document, signed by the recipient of the payment).

In this case income will have to be classified as income according to Article 5 - Article 7 or as other income according to Article 8.

An exemption from the personal income tax shall only be applicable in case of income from occasional work, **which PP has decided to perform alone** (e.g. picking up of forest fruits, etc.).

Tax bonus for paid interest on home loans

(Article 33a)

- The amendment introduces the tax bonus for paid interest on home loans.
- **The amount of the tax bonus** represents **50% of interest paid in the respective** tax period, but not more than EUR 400 per year, where the amount of granted loan must be calculated from an amount not exceeding 50 000 EUR per domestic property.
- The claim for the application arises **during five successive years,** starting from the month, in which the home loan started to bear interest.
- **Applicable to credit contracts concluded after 31.12.2017.**

Tax bonus for paid interest on home loans

(Article 33a)

Conditions for the application:

- Applicable to both the **applicant and the co-debtor, if any,** but the claim for tax bonus can only be made by one of them.
- Age between 18 and 35 years and average monthly income not exceeding 1.3-times the average monthly wage.
- In case of **two or more loans** taken by a single taxpayer the tax bonus can only be applied to one of the loans.
- In case of a **tax non-resident, only if** income from sources in the territory of SR account for at least **90% of its worldwide income.**
- In case of **death of the taxpayer** the tax bonus can be claimed by the taxpayer, to which the payables from the home loan were transferred (conditions of age and income will not apply).

Tax bonus for paid interest on home loans *(cont´d)*

(Article 33a)

The tax bonus may be claimed:

- In the end of the tax period;
- In the annual clearance by the employer for the employee, **or**
- Upon submission of the personal income tax return (A/B)
- **Annex**: Bank document on granted home loan (**model form is available as Annex No. 4 of the Act No. 90/2016 on home loans**)
- The tax of the taxpayer will be decreased first by the amount of the tax bonus according to Article 33 and then by the amount of the tax bonus for paid interest,
- If the amount of the tax for the respective tax period is lower than the amount of claimed tax bonus for paid interest, the taxpayer will request the tax administrator for a refund of the amount corresponding to the difference in the tax return **in the same manner as for refund of the ovepaid tax**.

Vzor

Potvrdenie podľa § 26a zákona č. 90/2016 Z. z. o úveroch na bývanie a o zmene a doplnení niektorých zákonov v znení zákona č. 279/2017 Z. z. (ďalej len „zákon o úveroch na bývanie“) na priznanie sumy daňového zvýhodnenia na zaplatené úroky pri úveroch na bývanie podľa § 33a zákona č. 595/2003 Z. z. o dani z príjmov v znení zákona č. 279/2017 Z. z.

za rok...

týkajúce sa zmluvy o úvere na bývanie č. ... uzavretej dňa... (ďalej len „zmluva“)

Názov banky alebo pobočky zahraničnej banky (ďalej len „banka“) týmto potvrdzuje pre dlžníka zo zmluvy:

Dlžník
Meno, priezvisko:
Dátum narodenia:
Trvalý pobyt:

Spoludlžník (spoludlžníci)
Meno, priezvisko:
Dátum narodenia:
Trvalý pobyt:

, že

1. žiadosť o úver na bývanie podľa § 1 ods. 6 zákona o úveroch na bývanie bola podaná dňa...,
2. uvedený(í) dlžník, spoludlžník (spoludlžníci) bol(i) dlžníkom (dlžníkmi) zo zmluvy aj ku dňu jej uzavretia/alebo/na uvedeného dlžníka prešli nesplatené záväzky z úveru na bývanie podľa § 1 ods. 6 zákona o úveroch na bývanie po osobe, ktorá zomrela a ktorá bola dlžníkom zo zmluvy ku dňu jej uzavretia,
3. na základe zmluvy je financovaná jedna tuzemská nehnuteľnosť určená na bývanie podľa § 1 ods. 7 zákona o úveroch na bývanie prostredníctvom poskytnutia úveru na bývanie podľa § 1 ods. 6 zákona o úveroch na bývanie,
4. úver na bývanie podľa § 1 ods. 6 zákona o úveroch na bývanie sa začal úročiť dňa...,
5. výška úrokov zaplatených v roku... na základe zmluvy vypočítaných z výšky poskytnutého úveru na bývanie, najviac však zo sumy 50 000 eur, predstavuje... eur,
6. dlžník má/nemá s bankou uzatvorenú inú zmluvu o úvere na bývanie, ktorá spĺňa podmienky podľa § 1 ods. 6 zákona o úveroch na bývanie.

V ...

Za banku... .

Exemption of benefits in kind provided by the holder – meals and participation in education

(Article 9 paragraph 2(y)

- The amendment to the Act introduces an exemption **in full amount** for benefits in kind provided by the holder to the health care provider in the form of:
  - **Value of meals during specialized event organized exclusively for** educational purposes;
  - **Participation in continuous education** according to of the Act on Medicines.
- The participation in continuous education shall not include the value of accommodation and transport provided in connection with such education.
- **Valid from 1 January 2018.**
- In case of provided **meals** the provision will be first applied to the notices of withheld tax according to Article 43 paragraph 17 of ITA after 31 December 2017 (i.e. also to events organized in 2017).

Introduction of a new tax allowance for payments for services provided in spa establishments

(Article 11 paragraphs 1 and 14)

- The total amount not exceeding EUR **50 per year** from documented payments made for services that are not covered by health insurance (e.g. meals, accommodation, procedures).
- It is only applicable to services of the spa establishments holding the license for provision of spa care according to the Spa Act.
- In addition, the taxpayer may claim EUR 50 from documented payments for **his spouse as well as EUR** 50 for his **dependent child,** who participated in the spa care programme together with the taxpayer,
  - Submission of the document proving the use of the services by the taxpayer.
- **Valid from 1 January 2018.**

Corporate Income Tax

New basic terms (definitions)

(Article 2ad, ae, af, ag, ah)

- **“Entity”**
  - Legal arrangement of assets (trust) or legal arrangement of persons, which **does not have a legal personality** (e.g. partnership, association) **or** other legal arrangement, which **owns** or **administers assets.**
  - In relation to the Council Directive 2016/1164 of 12 July 2016 “**ATAD**”.
  - A term completed in the definitions of economic and personnel interconnection, dependent person and foreign dependent person.

- **“Central Office”**
  - A legal person which is the **founder of a permanent establishment** (in connection with the “exit tax”).

New basic terms (definitions)

(Article 2ad, ae, af, ag, ah)

- **“Beneficial owner of income”**
  - “Person, who derives **income for its own benefit and** may use this income **without any limitation** without contractual or other legal obligation to transfer this income to another person or permanent establishment of this another person, provided that work performed in relation to this income is carried out by this permanent establishment or that assets, to which this income is related, are functionally linked to this permanent establishment; beneficial owner of income **shall not mean a person, which acts as intermediary on behalf of another person**”.
  - A term used in EU directives, the OECD Model Agreement and individual double-taxation treaties.

- **“Digital platform”**
  - Hardware platform or software platform required for development and administration of applications.
  - Technology enabling information exchange between groups of users, access of other users, data sharing with developers, etc.

New basic terms (definitions)

(Article 2ad, ae, af, ag, ah)

- **“Seat/Registered office”**
  - “Registered office entered in the Slovak Commercial Register or similar register abroad;
  - if the company does not have the registered office entered in the Commercial Register or a similar register abroad, the registered office shall be the territory of the state under which the company was established,
  - and the entity (e.g. trust) that does not have the registered office entered in the Commercial Register or similar register abroad, the registered office is the territory of the state in which the entity has its place of effective management,
  - and if i is not possible to determine the registered office according to previous methods, the registered office is the territory of the state under whose legislation the entity is established”.
  - Effective as of 1 January 2019

New basic terms (definitions) – amendment to the Commercial Code

(Article 2(ac)

Contribution

- **Contribution in cash and in kind** to the share capital; paid-up contribution also means an increase of the share capital of a company or cooperative by decision of general meeting of the company or the managing board of the cooperative **from after-tax profits recognized for tax periods**, for which the recognized dividend was not subject to the tax.
- **contribution to the capital fund from contributions** of a company, paid up by the taxpayer.
- **Company** also means a similar corporation with registered office abroad.
- **Valid from 1 January 2018**

Capital fund from contributions – amendment to the Commercial Code

- **Article 3 (1)(e)**: (…) where share in profits (dividend) shall also mean **income from a decrease of the share capital** of a company or cooperative in the amount, in which it was previously increased from after-tax profit, as well as payment of funds from the capital fund from contributions, which was created by reallocation of own sources of the company from after-tax profit.

- **Article 8 (1)(s)**: income from reallocation of the capital fund from contributions shall also mean **income from a decrease of the share capital** of the company in the amount, in which it was previously increased from paid-up contributions to the capital fund from contributions.

- **Article 8 (5)(g)**: **(expense)** the amount of paid-up contribution in excess of income according to paragraph 1 (s) in the tax period, up to the amount of this income; if this income is derived in the following tax period as well, the same procedure shall be applied, up to the total amount of the paid -up contribution.

Capital fund from contributions – amendment to the Commercial Code

(Article 17 paragraph 40)

- The tax base of a taxpayer, who calculates the tax base according to Article 17 paragraph 1 (b) or (c), **shall not mean income from reallocation of the capital fund from contributions up to the amount of the contribution paid up by the taxpayer.**
- Income from reallocation of the capital fund from contributions **shall also mean income from the decrease of the share capital of and company** in the amount, in which it was previously increased from paid-up contributions to the capital fund from contributions.
- The tax base of a taxpayer, who has not realized a contribution, shall only include the amount of revenue from reallocation of the capital fund from contributions in the tax period, in which this receivable is recognized.

Capital fund from contributions – amendment to the Commercial Code

(Article 21 paragraph 2(d)

- Creation of the capital fund from contributions shall not be a tax deductible expense.

Change of the definition of “dependent person” (in relation to the “Anti-Tax Avoidance Directive “ATAD”)

(Article 2 (n) and (o) of the Council Directive 2016/1164 of 12 July 2016 “ATAD“)

Dependent person shall mean

1. a close person;
2. a person or “**an entity**“ with economic, personnel or other relations;
3. **“a person or an entity, which is a member of a consolidated group for the consolidation purposes** (according to the Act on Accounting)“.

Change of the definition of “economic or personnel connection“ (in relation to the directive “ATAD”)

(Article 2 (n) and (o) of the Council Directive 2016/1164 of 12 July 2016 , “ATAD”)

Participation in assets – completion of the definition by

- the term “**entity**”;
- the criterion of a **25% share in profit;**
- “(…) whereby **a person or an entity, which acts jointly with another person** as regards the voting rights or the interest in the share capital, shall be regarded as a person or an entity **participating in all voting rights or owning the interest in the share capital,** which is held by such another person”.

Introduction of exemptions - indemnities received

(Article 13 paragraph 2 (j)

- The amendment introduces an exemption for the received indemnities and compensations for non-material damage based on the decision of the European Court of Human Rights also for the corporate entities (previously, the exemption was applied only to the individuals).

Introduction of exemption - revenue from advertising for selected legal forms of organization

(Article 13 paragraph 1 (g) and 17 paragraph 3 (m)

- Exemption of **income from advertising intended for charitable purposes** from the corporate income tax of selected legal forms of organizations, which have not been established for the business purposes (civic associations, foundations, non-investment funds, non-investment funds and non-profit organizations providing services of general utility).
- Up to a maximum **amount of EUR 20,000** for the taxable period.
- Incomes may be used only for the purposes **defined in Article 50 paragraph 5**, only until the end of the following year (decisive is the moment of acceptance - not the charging of revenues) - otherwise the taxpayer is obliged to increase the tax base on this income.
- The expenses are tax deductible only after their payments for the taxpayer who incurred these expenses (article 17 paragraph 19 (i)

Increase of a „super deduction“ of R&D costs (expenses)

(Article 30c)

- The amendment to the Income Tax Act introduces a super deduction (from the tax base after deduction of the tax loss) **up to 100% of the research and development costs**.
- **Moreover, it will be possible to achieve a deduction of additional 100% of costs from the increase of average R&D costs** against average R&D costs incurred in two previous tax periods:
  - Increase = [(Costs 2018 + C 2017)/2] – [(C 2017 +C 2016)/2]
- deductible R&D expenses include also the costs of licenses for software used for the implementation of a R&D project (other than office software).
- **Validity: first time for the tax period starting on 1 January 2018 and later**

Increase of a „super deduction“ of R&D costs (expenses)

(Article 30c)

Example:

Taxpayer spent on research and development (R&D) the following amount of costs:

1. in 2016: 1 000 EUR
2. in 2017: 1 200 EUR
3. in 2018: 1 500 EUR

Solution:

[(C 2018 + C 2017)/2] – [(C 2017 + C 2016)/2]

[1 500 + 1 200)/2] – [(1 200 + 1 000)/2] = 1350 – 1 100 = +250

The taxpayer can apply an additional cost deduction of EUR 250 (100% of the positive year-on-year difference)

“Patent box”

(Article 13a)

- Exemption of income (revenues) in the amount of **50% of the fees for granting of the rights to the use or for the use of granted and registered patents, utility designs, which are the result of the research and development, and computer programmes** (software) created by own intellectual activity of the taxpayer and being subject to copyright.
  - An exemption may also be applied by a taxpayer, who operates in SR through a permanent establishment, provided that the patent, utility design or computer programme is functionally linked to the permanent establishment.
  - An exemption may be applied during the period of tax depreciation of activated development costs.
  - An exemption may not be applied to income from the purchase of exclusive patents, utility designs or software.
  - The legal successor or beneficiary of a contribution in kind shall not be entitled to apply an exemption from acquired assets.
  - **The taxpayer is obliged to keep records and** at request of the tax administrator or FD SR to submit these records **in 8 days of the delivery of the request.**
  - **Validity from 1 January 2018.**

“Patent box” (so-called “embedded intangible assets) (Article 13b)

- Exemption of **50% of income (revenues) from the sale of products** that were produced, fully or partially, using an invention protected by a patent, or using a technical solution protected by an utility design, **which are the result of research and development activities performed by the taxpayer**.
- The products can be i) **created by own work of the taxpayer in Slovakia or** ii) **acquired** from persons, which the taxpayer as owner authorized to use this invention or technical solution in their production.
- The exemption may be applied under similar conditions as set out in Article 13a **and**
  - to the part of revenues from the sale of products **decreased** by actual direct and indirect costs (production, administration and sale), related overheads and (arm´s length) profit margins;
  - in case of intangible research and development assets acquired from another person, the exemption may only be applied to a part of income from the sale of products (specific calculation).
- The list of entities applying exemption will be published on the website of FD SR.

Change of the tax base in relation to the “patent box”

(Article 17 paragraph 42)

- In case of the application of exemption according to Article13a or Article13b the taxpayer has to adjust the tax base by expenses (costs) on (of) this income (revenue) in the same proportion in which such income (revenue) is exempted from the corporate income tax.
- *For example marketing costs, advertising costs, sales brokerage costs, etc.*
- **Validity from 1 January 2018.**

Exemption of income from the sale of shares, ownership interest of selected taxpayers (excluding securities dealers)

(Article 13c and article 52zn paragraph 17)

Income exempted from tax:

- the income from the sale of shares, ownership interest of the partner in limited liability company, limited partner in limited partnership or in a similar company abroad) after fulfilling the conditions,
- the income of corporate entity (resident) or non-resident with a permanent establishment,
- **except of the taxpayer** who carries out the securities trading.

Conditions for the application of the exemption:

- the income from the sale of shares and income from the sale of ownership interest will flow of the expiry 24 immediately consecutive calendar months at the earliest from the date of acquisition of a direct interest of **at least 10%** on the registered capital of the company and
- a taxpayer in the territory of the Slovak Republic **carries out essential functions**, manages and bears risks associated with the ownership of shares or owership interest, having the necessary personnel and material equipment necessary for the performance of these functions, and in the quantification of the tax base proceeds from the IFRS or double-entry bookkeeping.

Exemption of income from the sale of shares, ownership interest of selected taxpayers (excluding securities dealers)

(Article 13c and article 52zn paragraph 17)

The exemption shall also apply to shares acquired until 31 December 2017 (while maintaining 10%), but the 24-month time test will count only from 1 January 2018.

The day of acquisition of a direct interest in the registered capital of a company **shall not be considered as**:

- the conclusion of a contract under which there is a transfer of shares or ownership interest in future or after fulfillment other deffered conditions, or the conclusion of another similar agreement or contract,
- purchase option, or
- acquiring a preemption right.

Tax expense in respect of exempting income from the sale of shares, ownership interest of selected taxpayers (excluding securities dealers)

(Article 13c and article 19 paragraph 2 (u) and (f)

Tax expenses that can be applied in relation to the transfer of participation (if not exempt):

1. **Interest paid on loans and loans used to acquire shares** in a public limited company or ownership interest of a limited liability company or limited partner in limited partnership or in a similar company abroad in case of the legal person a resident or non-resident with a permanent establishment, and it
   - **in the tax period in which there is a sale of shares or ownership interest,**
   - **if the taxpayer in this taxable period** in which there is sale of the shares or the ownership interest, **does not qualify for the exemption** according to Article 13c.
   - This does not apply to a taxpayer who carries out securities trading under a separate regulation.

2. The acquisition price pursuant to Article 25a (Article 19 paragraph 2 (f) subparagraph (1) - in the case of securities admitted to a regulated market, the provision governing the 10% deviation is also deleted)

A new type of income of tax non-residents from sources in SR

(Article 16 paragraph 1, subparagraph 10)

Payments from taxpayers with unlimited tax liability:

- Fees for provided **commercial, technical or other advisory services, data processing, marketing services**, managerial or intermediary activity in the amount, in which the fee **is recognized as tax expense according to Article 19 of ITA**.
- Provision of services will cease to be bound (limited) to the territory of SR.
- Taxation by withholding tax (19% / 35%), possibility to consider them as advance payment for the corporate income tax.
- **Validity from 1 January 2018.**

Income from the transfer of a ownership interest to a Slovak company with an EU taxpayer

(Article 16 paragraph 1 (g)

In case of the tax payers form EU countries, the income from sources in the Slovak Republic will be considered also received income from the transfer of participation or share in a commercial company or membership rights in a cooperative established in the Slovak Republic, r**egardless of whom this income comes from.**

Change / completion of the definition of permanent establishment (in relation to the Multilateral instrument) (Article 16 paragraph 2)

Permanent site

- Repeated mediation of transport and accommodation services, also through so-called **digital platform** in the territory of SR (in particular conclusion of contracts between the holders of movable or immovable assets or service providers and the end user).

Building / assembly permanent establishment

- Building site or place of implementation of construction and assembly projects, where a taxpayer with limited tax liability, **including its dependent persons,** carries out work, provided that the total period of performance of such work does not exceed **6 months.**
- Limitation of so-called **fragmentation of works** within a group.

Change / completion of the definition of permanent establishment (in relation to the Multilateral instrument) (Article 16 paragraph 2)

Agency permanent establishment

- A representative **with a decisive influence,** which leads to conclusion of the contract by a taxpayer **without fundamental change:**
  - **in the name of taxpayer, or**
  - where the subject of contract is the **transfer of ownership** or granting of the right to use assets owned / used by the taxpayer, or
  - **provision of services** by the taxpayer.

Changes in business reorganizations

(Article 17b, Article 17c, Article 17d and Article 17e)

- The amendment to the Act will permit the realization of domestic business reorganizations **in fair values only.**
- The use of original values will only be permitted for **cross-border reorganizations**, and only **subject to the fulfilment of the following conditions (at the same time)**:
  - For the purposes of the income tax, the beneficiary of contribution in kind or the legal successor will have a permanent establishment in Slovakia, and a Slovak contributor or its legal successor will have a permanent establishment abroad,
  - The main objective or one of the main objectives should be standard restructuring or rationalization of Group activities, **rather than** reduction or avoidance of the tax obligation,
  - The beneficiary of contribution in kind or the legal successor must be established **in EU or EEA,**
  - There is a functional linkage between the subject of contribution in kind or assets and liabilities and the permanent establishment of the beneficiary or legal successor in Slovakia, or of the contributor or legal successor in other country,
  - The possibility of valuation of a contribution in kind or assets and liabilities in original values according to the law of the State of the beneficiary, contributor or legal successor,
  - and the actual valuation of assets and liabilities in original values.

Changes in business reorganizations

(Article 17b, Article 17c, Article 17d and Article 17e)

- **The use of original values will be possible if the subject of contributions in kind** is individual assets in the form of securities or business shares, a business or a part of business.
- If, due to a contribution in kind made in the form of a business or its part outside the territory of SR, the contributor has a permanent establishment left in the territory of SR (assets and liabilities are functionally linked to the permanent establishment) and later assets or operations are transferred from this permanent establishment to another country, such transfer shall be subject to the tax at the time of leaving the Slovak territory (according to Article 17f).
- In relation to the amendment to the Commercial Code, the company being merged will be required to inform the tax administrator about a draft merger contract, draft amalgamation contract or draft project of division of the company not later than **60 days** before the date of general meeting.

Changes in business reorganizations – revaluation differences

(Article 17e)

- The proposed amendment provides for a **tax assessment of payment of the revaluation differences from revaluation** in case of merger, amalgamation or division of companies.
- In case of merger **in original values** the legal successor paying the valuation differences is obliged to monitor whether the amount of revaluation differences paid is higher than the amount of revaluation differences falling to the respective tax periods, as follows:
- **Calculation:** *(Sum of **revaluation differences** / (number of years of depreciation of assets with longest depreciation period acquired during reorganization) * **number of years**, during which the assets **were depreciated, at the time of payment of** valuation differences.*
- If the sum of valuation differences paid is higher than the calculated amount of the valuation difference, the difference between both values will be subject to the withholding tax according to Article 43.

Changes in business reorganizations – revaluation differences

(Article 17c)

- In case of merger **in fair values** the legal successor is obliged to monitor whether the sum of valuation differences paid does not exceed the sum of valuation differences included in the tax base. If so, the legal successor is obliged to include this difference in the tax base in the **tax period, in which the payment is made**.

- The same procedure shall be applied (in case of merger in fair values or initial prices) when income of the legal successor is derived from:
  - **Decrease of the share capital** in the part, in which it was increased from revaluation differences;
  - Reallocation of **so-called capital fund from contributions** in the part, in which it was increased from revaluation differences.

- **Validity:** in case of payment of the revaluation differences in the tax period, which starts not sooner than on 1 January 2018.

Exit tax
(Article 17f)

Introduction of so-called "exit tax"

- In case of the relocation of assets or tax residence outside of SR.
- For the purposes of calculation of the "exit tax" the **fictional sale of assets** will be applied**.**
- Special tax base (must not have a negative value)
- The rate of the corporate income tax is **21%.**
- The taxpayer may apply for the permission to pay the exit tax per installments (directly in the tax return) **during 5 years**.
- The amendment of ITA also provides for a situation where assets, residence or business operations are relocated **to the territory of SR**.
- **The date of relocation** of assets and liabilities shall be:
  - Date of relocation of assets, functions and risks,
  - Day when the taxpayer decides to allocate the assets to the permanent establishment, or
  - Date of physical relocation of assets outside of SR.

Exit tax

(Article 17f)

The exit tax shall be applied in the following situations, where relocation takes place:

- **Assets:**
  - of a tax resident of SR from the central office in SR to the permanent establishment abroad,
  - of a tax non-resident of SR from the permanent establishment in SR to the central office or permanent establishment abroad.
  - The taxpayer will include in the special tax base the difference between the fair value of relocated assets at the time of relocation and tax expenses which would be claimed in case of a real sale of the assets, and the value of stock at the time of exit.
- **Tax residence of a** tax resident of SR to other country (it does not apply to assets functionally linked to the permanent establishment, which remains in the territory of SR), **or**
- **(Part of) business operations:**
  - by a tax resident of SR to other country;
  - **Performed by the permanent establishment of** a tax non-resident in the territory of SR.
  - It does not apply to assets functionally linked to the permanent establishment, which remains in the territory of SR.
  - The tax base shall be quantified like for the sale of (a part of) business according to Article 17a from the fair value of transferred assets and liabilities at the time of exit.

Exit tax

- Relocation of assets **shall not mean**:
  - Temporary relocation of assets linked to financing of securities, assets provided as a security;
  - Relocation of assets with the aim to fulfill prudential capital requirements;
  - Relocation of assets from the territory of SR for the purposes of cash management, while expecting their return in 12 months following the relocation. If such assets are not returned to SR within 12 months of the date of relocation the taxpayer shall be obliged to file a supplementary tax return for the tax period, in which these assets were relocated, and to pay the exit tax.
- **Validity from 1 January 2018**

Rules for controlled foreign companies – CFC rules

(Article 17h)

- **Controlled foreign company of the taxpayer (LP with registered office or place of actual management in SR) shall mean** LP or an entity established in other country than Slovakia:
  - A taxpayer (LP with registered office or place of actual management in SR) alone or together with dependent persons
    - has a direct or indirect share on the registered capital higher than 50%;
    - has a direct or indirect share on the voting rights higher than 50%, or
    - has the claim for a share in profits of this LP or entity higher than 50% and
  - the corporate income tax paid by the controlled foreign company abroad is lower than the difference between the corporate income tax of the controlled foreign company according to Articles 17 to 29 and the corporate income tax, which would be paid by the controlled foreign company abroad.
- Income of a permanent establishment of the controlled foreign company, which is not subject to the tax or which is exempted from the tax in the State, where the controlled foreign company is situated, shall not be included in taxable income for the purposes of calculation of the corporate income tax.
- **Validity from 1 January 2019**

Writing off debts and creation of (tax) provisions to receivables – debt discharge

(Article 19 paragraph 2 (h) subparagraph 1, Article 20 paragraphs 10 to 12)

The amendment introduces changes in the area of writing off debts and creation of (tax) provisions to receivables following the amendment to the Act on Bankruptcy and Restructuring, which introduced the possibility of **debt discharge for physical persons** in the form of a **repayment plan** or **bankruptcy** with effect from 1 March 2017.

Writing off debts

- The amendment to the Act specifies that **writing off debts** can be regarded as **tax expense**:
  - In case of cancellation of bankruptcy of PP (Article 19 paragraph 2 (h)(1))
  - Within a scope in which receivables towards PP in the debt discharge process will not be satisfied in bankruptcy proceedings or through a repayment plan (Article 19 paragraph 2 (h)(2)).

Writing off debts and creation of (tax) provisions to receivables – debt discharge

(Article 19 paragraph 2 (h)(1), Article 20 paragraphs 10 to 12, Article 20 paragraph 4)

Creation of (tax) provisions to receivables (repayment plan)

- Creation of provisions to receivables from debtors, to which the court prescribed a repayment plan, shall be a tax expense **up to the nominal value of receivables or paid acquisition price of receivables, including accessories**, if they were included in the tax base.
- In case of **banks** the value of recognized tax provisions to receivables shall correspond to the **difference** between the value of receivables (including a receivable from the principal of outstanding loan as well as user loan) in the repayment plan and already created tax value adjustment according to Article 20 paragraph 4.
- The possibility of creation in the tax period, in which the draft repayment plan was **published in the Commercial journal**.
- Registration of receivables is not required (is not possible).
- Provisions to receivables will be **included in the tax base in the tax period, in which the receivable was satisfied**.

Writing off receivables and creation of (tax) provisions to receivables – further changes

- **Creation of tax provisions to accessories**
  - In the tax period, in which **1 080 days** elapsed from the maturity date of a receivable, to which the accessories relate, or in the tax period, in which **more than 1 080 days** elapsed from the maturity date of accessories.
  - **Validity: in the tax return filed after 31.12.2017**

Writing off receivables and creation of (tax) provisions to receivables – further changes

(Article 19 paragraph 2 (h) subparagraphs 4 and 5, Article 20 paragraph 22)

- **Tax write-off of receivables** on the basis of the following decision:
  - Decision of the court on cancellation of the bankruptcy proceedings against the natural person based on the fact the assets in bankruptcy would not cover the costs of bankruptcy – registered receivables (par. 1),
  - Notice in the Business Journal, bankruptcy proceedings against the natural person have been canceled because bankruptcy does not cover bankruptcy costs - unregistered receivables (par. 1),
  - Write off of the receivable as a result of repayment schedule (par. 2),
  - On suspension of the enforcement proceedings or exercise of the decision by the court or the enforcing authority due to new circumstances which caused the extinguishment of the enforced claim (par. 4),
  - On suspension of the exercise of the decision by the enforcing authority or suspension of the enforcement proceedings for the reason according to Article 61n of the Enforcement Code (e.g. winding up of the debtor or the creditor without liquidation), which also applies to other receivables of the taxpayer toward the same debtor (par. 5).

- **Validity: in the tax return filed after 31.12.2017**

Further changes

- **The settlement shares, shares in liquidation balances** - the possibility of applying the tax expense in the amount of the paid deposit or the purchase price pursuant to § 25a.
- **Interruption of depreciation of assets (Article 26 paragraph 11) –** the **interruption** of depreciation and **changes** of the interruption of depreciation (i.e. cancellation of the interruption of depreciation) of tangible assets cannot be applied **during the assessment proceedings** (after termination of the tax audit).
- Introduction of **a single electronic structured form** for the notification of prolongation of the period for submission of the tax return (Article 49 paragraph 3 (a), (b))
- Specification of collection of the withholding tax from permanent establishments – only in case of properly registered establishments according to Article 49a paragraph 5 of ITA.

Value added tax

Supply of an immovable property – written notice

(Article 38 (1)

- According to Article 38 paragraph 1 of the VAT Act, the supply of a building (construction) including the supply of development land, on which the building is located, is VAT exempt provided that the supply is made **five years** after the first building approval under which the building was approved for use or five years from the day when the building was put in use for the first time.
- However, the VAT payer may decide that supply of such building (construction) including development land will not be VAT exempt and the person obliged to pay the VAT would be the recipient of such immovable property – a VAT payer (Article 69 paragraph 12 (c).
- The amendment introduces an additional obligation **for the supplier – VAT payer** to inform the recipient of the immovable property about the decision not to exempt such supply - **in writing and no later than within the period for the issuance of invoice according to Article 73 of the VAT Act** (15 days). The invoice must contain information “reverse charge applied”.

Adjustment of deducted input VAT in respect of investment properties – engineering structures

(Section 54 (2b and c), Section 85kf (2)

- From 1 January 2018 the term investment property shall mean:
  - Movable properties with acquisition value, excluding the VAT, or the own expenses is EUR 3 319.39 and more and their useful life is more than one year,
  - ~~Buildings~~ **constructions**, development lands, residential and non-residential premises,
  - Superstructures of ~~buildings~~ **constructions**, extensions of ~~buildings~~ **constructions** and remodeling of ~~buildings~~ **constructions**, residential and non-residential premises requiring a building permit under a specific regulation.
- The term "**constructions"** is wider than the term "building" and comprises also **engineering constructions** (Article 43 of the Building Code) which may also be subject to change in the purpose of use.
- This includes e.g. highways, roads, local and tertiary roads, paths and uncovered parking spaces, advertisement constructions, open sports fields, motorcycle and bicycle roads, golf courses, ski routes and lifts, amusement parks, zoological and botanical gardens.
- Application applied on construction where input VAT was deducted **after 31.12.2017**.

Changes in guarantee for VAT payment

(Article 69 (14) (b)

- One of the three situations, where the requirement of a guarantee for VAT payment at the previous stage **will no longer be applied** for VAT payers (customers), specifically the situation, where the VAT payer (customer) performed a taxable transaction with a VAT payer at the previous stage (supplier) during a period, in which the second VAT payer (supplier) was **published in the list of payers, for whom reasons for cancellation of their VAT registration have arisen** (Article 69 paragraph 15).
- The list of VAT payers, for whom reasons for cancellation of their VAT registration have arisen, continues to be published at the website of the Financial Directorate SR.

Cancelling the limit for application of local reverse charge - commodity trade

(Article 69 (12) (f) and (g)

- The amendment cancels the limit of EUR 5,000 for the application of local reverse charge on supply of:
  - **agricultural crops** (Chapters 10 and 12 of the Common Customs Tariff, e.g. wheat, rye, oats, rice) which are generally not in the unaltered state intended for final consumption, and
  - **metals** such as steel and iron and semi-finished goods from metals (Chapter 72 and under items 7301, 7308 and 7314 of the Common Customs Tariff).
- Local reverse charge is applied on each supply of these commodities between VAT payers.

Cancelling the limit for application of local reverse charge - commodity trade (cont´d)

(Article 69 (12) (f) and (g)

- Practical application problems in the case of small purchases by a VAT payer if VAT ID is proved – it is assumed that purchase of goods is performed for business purposes and local reverse charge should be applied on such supply.
- In case of cash payment and its recording in **Electronic Cash Register (ECR)** and **Virtual Cash Register (VCR),** (based on the Information of the Financial Directorate SR) the following options are recommended:
  i. Issuing of an invoice (Article 74 (1) and recording of a payment in ECR/VCR, or
  ii. Adjustment of receipts from ECR/VCR – receipts should include all invoice requirements (Article 74 (1).
- Limit of 5,000 EUR remains by delivery of cell phones and integrated circuits.

Triangular transactions – change of rules

(Article 17 (4) (c) and Article 45 (1) (c)

- The amendment changes the condition relating to **triangular transactions** – the first customer ~~has not been identified for VAT purposes~~ does not have a registered seat, place of business, fixed establishment, residence or habitual abode in the Member State, in which the dispatch or transport of goods ends (alignment of the provision with Article 141 (a) of the VAT Directive)).

- **Example:**
  - Slovak Company A orders in February 2018 goods from German Company B which is identified for VAT purposes in Germany and Slovakia (and does not have a fixed establishment in Slovakia).
  - Company B orders goods from Austrian Company C which is identified for VAT purposes only in Austria. Company C agrees to deliver the goods from its warehouse in Austria directly into the warehouse of Company A in Slovakia. Company B provides to both Company A and Company C the same (German) VAT ID.
  - **Are the conditions for triangular transaction simplification fulfilled?**

- **Answer:**
  - Yes. Company B is not established in the state of the second purchaser (in Slovakia).

VAT representative for foreign persons

(§ 69aa)

- Foreign persons may be represented by a VAT representative without need of VAT registration in SR in the following cases:
  - Import of goods that are dispatched or transported from a third country and such dispatch or transport ends in another Member State (Article 69a of the VAT Act – valid from 01 January 2005)
  - Acquisition of goods from another Member State to be supplied to another Member State (including distance selling) or to a third country (valid from 1 January 2018).

- The conditions are
  a) The foreign person supplies goods exclusively **through an electronic communication interface such as electronic marketplace, electronic platform, electronic portal or similar electronic means** (“e-commerce”);
  b) the foreign person is not a VAT payer in accordance with the Slovak VAT act, and
  c) the foreign person does not supply goods or services where VAT liability payment would arise within the territory of Slovakia if this foreign person had a status of a VAT payer in Slovakia (Article 69 (1).

- In case of violation from condition c), a foreign person must register in the Slovak Republic for VAT purposes and revoke a power of attorney granted to a VAT representative - otherwise the VAT representative is liable jointly and severally for the VAT from the goods or services delivered.

Special VAT treatment applicable to travel agencies

(Article 65 paragraph 1,3,4,8 and 9)

- **Judgment of the Court of Justice of the EU C-269/11** - Member States have to apply special VAT treatment (taxation of margin) related to any sale of tourism services regardless of their recipient (taxable and non-taxable persons).
- The amendment **extends the application of a special VAT treatment (taxation of margin)** also to tourism services supplied to taxable persons for their business purposes. Until now, this special treatment was applied only if the end-user – the passenger – was the recipient of these services.
- The amendment applies to all VAT payers acquiring goods and services from other taxable persons for the purpose of trip realization (**'travel services**') and sell these goods or services to customers on their own behalf ('**travel agency**').
- The special VAT treatment does not include own services of travel agencies which will be subject to standard taxation.

Changes in VAT guarantee

(Article 4 (c)

- Addition of an obligation to pay a VAT guarantee also in case that the applicant for VAT registration is a individual or a legal entity which has at the date of request for VAT registration arrears on VAT exceeding € 1000 **OR** whose registration for VAT purposes had been previously cancelled ex-offo (Section 4c (1)).

- Changes in the refund of the VAT guarantee:

Cancellation of registration for VAT purposes	The tax authority shall revoke the decision on payment of a VAT guarantee and immediately returns paid VAT guarantee.	Article 4 (c) (2)
Cancellation of VAT registration prior to the payment of VAT guarantee	The tax authority shall revoke the decision on payment of a VAT guarantee and immediately returns the paid guarantee or its part (which has not been used to cover VAT and other tax arrears - Section 79 of the Tax Administration Act).	Article 4 (c) (6)
Cancellation of VAT registration within 12 months from payment of VAT guarantee	The tax authority shall immediately return paid VAT guarantee or its part. It does not apply to the VAT deregistration in case of a merger, if the legal successor is a VAT payer or becomes a VAT payer as a result of the merger (Article 4 (4).	Article 4 (c) (7)

Other changes

Summary invoice (Article 75 (2)

- The possibility to use of the payment agreement which constitutes a part of a contract on the supply of electricity, gas, water or heat, and the agreement on rent payments where the supplier does not have to issue a special invoice, was extended to situations where the **recipient of supply is a foreign person** (until now it was possible only for domestic recipients of supply).

Cash accounting – amendment (Article 68 (d) (4) and (5)

- Special rule relating to VAT application on the basis of reception of payment for a supply of goods or services is amended by a specific provision on arising of VAT liability in case of a cession of a receivable at the VAT payer's side, who applies this special rule.

EC Sales List (Article 80 (3) and Article 85(kf) (3)

- Persons registered for VAT purposes pursuant to Article 7 and 7(a) of the VAT Act (i.e. non-VAT payers), **who participate in triangular transactions as the first customer, will be required to submit a EC Sales List**.

Other changes

Purchase of used motor vehicles from another Member State – form (Article 70 (7)

- Introduction of a **new form to be submitted to the Tax Authority by VAT payers who bought a motor vehicle from another Member State** that is or was in the register of vehicles in another Member State from a person identified for VAT purposes in another Member State for the purposes of its resale.

VAT deregistration (Article 81 (2)

- **VAT payers (especially foreign persons)** will be required to **apply for VAT deregistration in Slovakia only when they terminate their business activities as such (in Slovakia and abroad).** The previous regulation forced foreigners to deregister for VAT purposes every time they terminated their activity in Slovakia, even if they did not terminate their activities as such, for example in other countries.

- Also, with regard to VAT deregistration, VAT payer will be obliged to refund (pay back) the deducted VAT (invoiced on the basis of received payments) if, on the end-day of the last taxation period, the goods or the service were not delivered.

Tax Code

Tax reliability index

(Article 2 (h)

- Introduction of an “objective, independent and legally applicable” evaluation of taxable entities – entrepreneurs in the form of tax reliability index.
- **The tax reliability index evaluates taxable entities on the basis of fulfilment of their obligations toward the financial administration.**
- The criteria of eligibility of a taxable entity to special tax treatments and the list of special tax regimes are published by the Financial Directorate of SR on its website.
- **Validity from 1 January 2018**

Tax secret – changes in legislation

(Article 11)

Legal regulation of tax secret

- The definition of tax secret, which is information about the taxable entity collected in the process of tax administration (other than information in public domain). The tax Code does not specify the content of a tax secret.
- Every person, including a former employee, is obliged to keep a tax secret.
- The tax administrator and other state authorities in the area of taxes, charges and customs are obliged to instruct the taxable entities and other persons on the obligation to keep a tax secret and on legal consequences of violation of this obligation.
- Cancellation of exhaustive list of exemptions from a tax secret – introduction of so-called "**general exemption"** (access only after submission of the authorization).

Tax secret – changes in legislation

(Article 11)

- What it **not regarded as a violation of obligations to keep a tax secret**:
  - Use of a tax secret in the area of tax administration
  - Disclosure of information about a committed offence
  - to an entity providing IT services for the financial administration in public procurement
  - with written approval of the taxable entity concerned by a tax secret, etc.
- Information about notification of a tax secret will be stored in the file of the taxable entity, in addition to the provision of automatic access to tax secret through the information system of the financial administration.
- **Validity from 1 January 2018**

Access of the Tax Administration to information of financial institutions collected using measures AML (Article 26 paragraph17)

- Transposition of the Council Directive (EU) 2016/2258 amending Directive 2011/16/EU, as regards access of the tax authorities to information collected as part of the fight against money laundering.
- If the account holder is an intermediary, the financial institutions have to verify such entity and identify and report its actual owners.
- The obliged person (bank) shall, for the purposes of tax administration, provide the financial administration at request with information collected at fulfilment of obligations under Article 8, Article 10 to 12 and Article 19 of the Act no. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing and on Amendments and supplements to Certain Acts.

Binding opinion (Article 53c paragraph1)

- It is proposed to decrease the fee for the issue of a binding opinion to 50%.

Prolongation of the period for lodging an appeal from 15 days to 30 days (Article 72 paragraph 3).

- **Validity from 1 January 2018**

Accounting Act

Revision of the classification to size groups (Article 2 paragraph11)

- When preparing the opening balance sheet as of the decisive date the successor company will revise the size criteria and take into account the value of assets taken over as well as the number of employees of the disappearing accounting entity.
- The successor company will classify itself to the respective size group (micro, small or large AE) and perform the respective accounting operations.
- The successor company, which is a new-founded company, shall classify itself to the size group at its discretion.

Individual financial statements (Article 6 paragraph4)

- An accounting entity is obliged to compile, in accordance with kept books of account, the individual financial statements for the accounting entity according to Article 17 and 18 or to compile individual financial statements according to Article 17a.
- There should be continuity between the individual financial statements and the accounting kept by AE.

- **Validity from 1 January 2018**

Deposit of documents in the Financial Statements Register (Article 23a paragraph 3)

- The successor accounting entity shall deposit documents in the Financial Statements Register on behalf of the disappearing accounting entity;
- The disappearing accounting entity may deposit these documents until the day when amalgamation, merger or split enters into force.

Approval of financial statements (Article 23a paragraphs 4 and 6)

- **The period for deposit of the notice** of the date of approval of the financial statements by AE **is extended from five to fifteen working days**.

Violation of the obligation of AE in relation to the Financial Statements Register (Article 23b paragraphs 1, 3 and 5)

- The tax office (“TO“) shall send an appeal to AE, which did not deposit accounting documents in the Financial Statements Register, deposited a wrong model or form of the financial statements, deposited financial statements not containing mandatory information or items, or did not deposit the model notice of the date of approval of the financial statements.
- If AE does not comply with the appeal of TO in full extent and within the determined period the documents shall be regarded as not delivered.

Archiving of accounting documents (Article 35 paragraph 3 (b) and c))

- Accounting records shall be archived for **ten** years.
- (This period) will be applied to archiving of accounting records, for which the period of storage started to run before 1 January 2018 and did not elapse on 31 December 2017.

Repeated administrative offences (Article 38 paragraphs 3 and 4)

- The tax office shall impose a fine or may suggest a withdrawal of the trade license in case of repeated violation of obligations, if the accounting entity repeatedly fails to keep books of account or to compile financial statements, or if the accounting entity made accounting entries outside the books of account or made a book entry about an accounting transaction that did not take place.
- **It will be applied to offences committed after 31.12.2017**

Accounting of the capital fund from contributions – amendment to the Commercial Code

(Article 28 paragraph 5)

- On the basis of contributions to the capital fund from contributions, **creation of the capital fund** shall be recognized in the company and at its member or shareholder**.**
- Contributions made to the capital fund from contributions shall be recognized in the accounting of a member or shareholder of the company **as part of valuation of a security or interest in the share capital**.
- Booking based on the real payment
- Until that moment at ‘out of balance accounts’.

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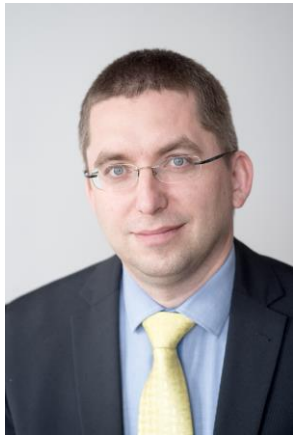

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