



Draft amendment to the Slovak Income Tax Act and the Tax Administration Act (Tax Code).

The National Council of the Slovak Republic ("SR") approved in the first reading the draft amendment to the Income Tax Act, which in its proposed wording, should be effective from 1 January 2023, or in case of some provisions from 1 January 2024 (hereinafter "amendment").

The amendment brings, among other things, an amendment to the rules for determining the tax base of a taxpayer with limited tax liability in the territory of the SR, a change in the method of registration of selected types of taxpayers for income tax purposes and complements the procedure for tax treatment of claims in the case of preventive restructuring.

In the Article II of the amendment, certain provisions of the Tax Code are amended and supplemented - a system of a so-called 'second chance' is being implemented, and the deadline for imposing late payment interest shall be shortened when the arrears have been fully paid.

Further information on selected provisions is summarized below.

The amendment also clarifies and supplements several provisions in the area of transfer pricing, as well as introduces a new net interest (exceeding borrowing cost) limitation rule. Given the complexity of this issue, these topics are subject to a separate edition of our Tax Alert.

Please note that, since the draft amendment has been only approved by the National Council of the SR in the first reading so far, its final wording may still be amended.

Improving of position of foreign taxpayers operating in the territory of the SR through a permanent establishment

The amendment will amend provisions on determination of the tax base (tax loss) of foreign taxpayers that carry out activities in the territory of the SR, whether via a permanent establishment or not, and do not have the obligation to keep their accounts according to the Slovak accounting rules. This is the case, for example, of taxpayers that operate in Slovakia on a temporary basis, most often in the field of construction or similar temporary projects.

In determining the tax base of the permanent establishment of these foreign taxpayers, it will be possible to set this as a difference between the revenues and costs reported in their accounting or other records, which can be attributed to this permanent establishment (accrual principle) or as the difference between income and expenses (cash principle).

The amendment also governs the procedure for inclusion of revenues and costs attributable to the Slovak permanent establishment into its tax base, after the tax period in which the permanent establishment ceased to exist.

Process of the taxpayer in the case of preventive restructuring

From 17 July 2022, a new Act on Solving Impending Bankruptcy has been in force to help entrepreneurs managing risk of bankruptcy due to possible insolvency. In preventive proceedings, the law enables the timely resolution of debtor's situation, so that he can continue his activity and prevent bankruptcy or insolvency of the company. The preventive procedure may be in the form of public or non-public preventive restructuring.

In connection with the above, it is proposed to add the related provisions to the Income Tax Act. These are the provisions for the creditor on write-off receivables upon the waiver or partial waiver of the debt, and on creation of tax-deductible bad-debt provisions, against the debtor in the preventive restructuring. The proposed provisions are based on the same principle as applies on claims against the debtor in classic (insolvency) restructuring procedure.

Tax deductibility of technical reserves in the insurance industry

Following the adoption of new International Financial Reporting Standard IFRS 17 - Insurance Contracts (replacing the temporary IFRS 4), it is proposed to adjust the inclusion of technical reserves created in the insurance industry into tax-deductible expenses.

The insurance companies will no longer report technical reserves by applying the IFRS 17 standard but will rather report liabilities on the basis of discounted cash-flow. The costs reported in this way will no longer meet the definition of a reserve and will be, similarly to other liabilities, included into the tax base in line with their accounting treatment.

In connection with the implementation of the IFRS 17 standard it is also stipulated that the changes reported in the equity that would have affected taxable income or tax-deductible expenses must be included in the tax base evenly during three tax periods, starting with the tax period beginning on 1 January 2023 at the earliest.

Registration for income tax purposes

From 1 January 2023, the tax administrator will register individuals and legal persons for income tax purposes ex officio. Registration will be based on data entered in the Register of Legal Entities, Entrepreneurs and Public Authorities

taken from Business, Trade, and other Registers.

Consequently, registration based on the submitted tax return, will be deleted from the Tax Code.

The second chance system

Proposed provision reduces the sanctions (penalties) for taxpayers in case of the first detected violation of tax obligations.

On the first violation of tax obligation, the tax and customs administrator will not be obliged to automatically impose a penalty, which may be determined within the range of values. Instead, it will first request the taxpayer to fulfil his obligation and will warn him about the consequences of the next violation.

The tax authorities should start to act based on this proposal in case of the violations occurring after 31 December 2023.

Shortening of maximum period for imposing late payment interest

The amendment proposes, starting from 1 January 2024, to shorten the maximum period for the possibility of imposing late payment interest in the event of full payment of arrears

(delayed tax payment, tax advance, tax installment, etc.). Late payment interest may be imposed a maximum of one year from the end of the year in which the amount of the arrears is paid.

If the arrears are paid in the 5th year, or if no payment is made at all, the late payment interest will continue to be calculated for a maximum of four years of delay, and it will be possible to impose it no later than five years from the end of the year in which the payment was delayed.

If you have any questions about the proposed amendment, please do not hesitate to contact us.

Contact

Kvetoslava Čavajdová, Partner, Tax
kvetoslava.cavajdova@mazars.sk

Petra Beláňová, Manager, Tax
petra.belanova@mazars.sk

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