



# Approved amendments to the Slovak Income Tax Act and the draft Act on top-up tax

The Slovak Income Tax Act No. 595/2003 Coll. (hereinafter as "SITA") was amended several times after 1 January 2023. We have summarized below the most significant changes effective from 2023 and 2024.

During the summer, the Ministry of Finance of the Slovak Republic presented a **draft Act on the top-up tax to ensure a minimum level of taxation for multinational enterprise groups and large-scale domestic groups** (hereinafter as "draft Act on top-up tax").

The proposed draft Act on top-up tax transposes into the Slovak legislation the Council Directive (EU) 2022/2523 of 15 December 2022 on global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, by which the European Union adopted the recommendations of the OECD, specifically the document Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (so called Pillar II).

Please find below further details with respect to this draft Act as well.

**However, please note that the draft Act on top-up tax is still subject to undergoing legislative proceedings and therefore its final wording might change.**

## Approved Amendments of the SITA

Below we have summarized the most significant changes implemented by approved amendments of SITA:

### **Abolition of taxation of income from commercial bonds for tax non-residents**

Since **18 April 2023**, the regime of taxation of income from commercial bonds, issued by the Slovak companies on domestic and on foreign markets, valid until 31 December 2022 was reintroduced. This means that since this date,

the income from bonds and treasury bills (both, the state, and the commercial ones), paid by the Slovak tax residents to taxpayers with limited tax liability (tax non-resident) is no longer considered as Slovak source income and is not subject to Slovak withholding tax.

If during the period from 1 January 2023 until 17 April 2023 the Slovak tax has been withheld from non-resident's income derived from commercial bonds, the taxpayer (legal entity) may decide to treat this tax as an advance payment and, consequently, file the income tax return for 2023 in the Slovak Republic.

### **Change in taxation of income earned by sport experts**

Since **1 May 2023**, the income earned by sport experts (except for the income from dependent activity/ employment) is considered as income from other entrepreneurial (self-employed) activities, being subject to withholding tax. By properly withheld tax, the taxpayer's tax liability will be considered as fully settled.

The above change concerns the following persons:

- Trainer and sport instructor,
- A natural person performing a professional activity in sports based on acquired professional qualification,
- A natural person performing a professional activity in sports based on the professional qualification determined by the regulations of the sports association,
- A natural person performing an activity in sports, for whom, in accordance with the rules of the competition and the regulations of the sports association, the professional qualification is not required.

The withholding tax should not be applied if the sport expert agrees so with the person paying (remitting) the taxable income in advance and in written form. The person paying the income

should notify the tax authorities of any such agreement no later than by the end of the calendar month, following the end of the calendar year in which the agreement was concluded. Consequently, the sport expert will be obliged to settle the tax from respective income through his personal income tax return.

The above change in taxation does not apply to income of sport experts from self-employed activities based on sports sponsorship contract according to the regulations of the Slovak Act on sports as this income is not subject to withholding tax and the taxpayer is still obliged to settle the tax from the respective income through the personal income tax return.

The above change in taxation of income of sports experts in the form of withholding tax will be applied for the first time on income (revenues) arising from 1 January 2024.

### **Abolition of CFC rules for physical persons**

The controlled foreign corporation rules ("CFC rules") applicable for physical persons were abolished as of **1 August 2023**.

According to the EU Directive, the CFC rules apply to taxpayers that are subject to corporate income tax, while the EU Member States may have decided to implement these rules into their domestic legislation also for physical persons. The Slovak Republic originally introduced CFC rules for physical persons from 1 January 2022, on the amount of income attributable to the taxpayer from the economic results of the controlled foreign company reported for the tax period ending in 2022.

In relation to the cancellation, the transitory provisions were introduced into the law under which the taxpayer has no longer obligation to pay any tax based on the CFC rules. However, if the taxpayer has already paid tax based on the CFC rules effective until 31 July 2023, this amount is considered as tax overpayment from

1 August 2023, and could be claimed back based on the relevant provisions of the Slovak Tax Code.

## Changes in taxation of income from the sale of virtual currency (cryptocurrency) by physical persons

Since **1 January 2024**, the provisions of SITA as regard the taxation of virtual currencies (cryptocurrencies) will be amended.

A new definition of virtual currency, stablecoin and staking will be introduced and the definition of the sale of virtual currency will be amended. According to this new definition, the sale of virtual currency means the exchange of virtual currency for the asset, for the provision of the service, transfer for consideration, or the exchange of virtual currency for the stablecoin. The exchange of virtual currency for another virtual currency is not considered a sale within the meaning of SITA.

### Income from the sale of virtual currency

Starting from 1 January 2024, the taxable income from the sale of virtual currency acquired through the staking will be included in tax base (partial tax base) of physical person in the tax period when the sale takes place, just as it is in case of sale of virtual currency acquired through the mining.

The income from the sale of virtual currency taking place within one year since its acquisition will be included in regular tax base (partial tax base), while the income from the sale of virtual currency after one year since its acquisition will be included in special tax base, subject to tax rate at 7% (however, only provided the cryptocurrency has not been part of the business assets of the taxpayer).

### Income from exchange of virtual currency for the asset or provision of the service

According to the legislative change, the income from exchange of virtual currency for the asset

or provision of the service will be exempted from tax, provided this income, decreased by provably incurred costs, does not exceed 2,400 EUR in relevant tax period. If the difference between the total aggregate income and costs exceeds the limit of 2,400 EUR, only the difference over this amount will be included into the tax base.

## Changes in taxation of income from the sale of securities and shares by physical persons

Likewise, since **1 January 2024**, the following income in hands of physical persons will be exempted from tax:

- **from the sale of securities\* that are accepted** for trading on the regulated market, or a similar foreign regulated market, if the sale is carried out after one year since acquisition of the securities (currently, the period of one year was tested, in addition to the moment of acquisition, also in connection with the period between admission to the regulated market or a similar foreign regulated market and the sale);
- **from the sale of securities\* that are not accepted** for trading on the regulated market, or a similar foreign regulated market, if the sale is carried out after three years since acquisition of the securities;  
*\* except for temporary certificates, certificates of deposit, treasury bills, bills of exchange, deposit books, coupons, bills of exchange, cheques, traveller's cheques, bills of lading, warehouse bills, warehouse pledge certificates, commodity pledge certificates, cooperative share certificates and deposit receipts*
- **from the repayment (return) of units (share certificates),** after three years since the issuance of the units;

- **from the transfer of a participation interest (share)** in a limited liability company, if the sale is carried out after three years since the acquisition of the share, except for the transfer of a participation interest acquired as an in-kind benefit. This exemption will apply in case of participation interests acquired after 31 December 2023.

However, the income from the sale of securities, return of units and sale of participation interest (share), which have been part of the business assets of the taxpayer, will not be exempted from tax.

Furthermore, a new tax exempted in-kind benefit for the employees will be introduced. This relates to employee's shares in a joint stock company (valued at their nominal values), or a share in a limited liability company (valued at the value of contribution per employee), which the employee receives in relation to the performance of a dependent / employment activity carried out for the employer, provided certain conditions set by the law are met.

A similar exemption will apply also for contractors (with business income) that acquire shares in the company in connection with the performance of their activities for this company.

The above provisions will apply to non-monetary benefits received by the employees (contractors) after 31 December 2023.

Consequently, the income from the sale of shares acquired as a benefit will always be taxable (i.e. without the possibility to apply tax exemption even if meeting the timing criteria).

#### **Extension of the scope of tax-deductible expenses related to income from capital assets**

Starting from 1 January 2024, a physical person, that earns selected types of income from capital assets (interest income or other revenues from provided loans and credits and interest income from paid up contributions of the

partners in the unlimited partnerships) will be able to decrease this income, in addition to the mandatory insurance premiums, also by expenses provably incurred in relation to the acquisition of financial assets that were used to generate this income.

#### **Increase of limits for exempted income from advertising for charitable purposes**

Since **1 January 2024**, the amount of tax-exempt income from advertising for charitable purposes, achieved by selected taxpayers not established for business, will increase from 20 000 EUR to 30 000 EUR for the relevant tax period.

At the same time, the scope of the taxpayers that are not established for business will be extended by the following entities:

- special purpose entities of churches and religious associations,
- organizations with an international element,
- Slovak Red Cross,
- Slovak Academy of Sciences,
- other subjects of research and development.

Based on this change, all entities that are qualified recipients of share of tax paid could apply exemption on income from advertising for charitable purposes.

#### **Conversions of companies and cooperatives**

The new Act on Conversions of Companies and Cooperatives (hereinafter "Act on Conversions") has been published in the Collection of Laws of the Slovak Republic. It becomes effective from **1 March 2024**.

The Act on Conversions represents the transposition of the Directive (EU) 2019/2121 of

the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers, and divisions into the Slovak legislation. The Act on Conversions regulates domestic and cross-border conversions and changes of the legal forms of the companies and cooperatives, and it will replace the currently valid legislation.

The term conversion will mean the fusions (including mergers) and divisions (including full division/ demerger or split and a partial division/ spin-off).

On the contrary to the split, under the spin-off the divided company will not cease to exist, just a specified part of it will be separated to taken one or more legal successors (existing or newly established or their combination thereof).

In relation to the above changes established by the Act on Conversions, the SITA will also be amended with effectiveness from 1 March 2024. However, the changes will reflect mainly the new terminology and introduction of new provisions with respect to the tax treatment of the spin-off of companies or cooperatives in real and historical values.

The basic principles of the tax treatment will be set out in a similar way as they are in the current wording of the SITA with respect to mergers, fusions, and splits.

For the purposes of application of the exemption of income from the sale of shares and participation interests acquired through the spin-off of companies or cooperatives, the moment of acquisition of a direct share in the share capital has been determined as a day of entry in the Commercial Register, on which the spin-off takes effects. This applies in case where the shares were acquired:

- As a result of spin-off, by the successor from the taxpayer that is being divided by the spin-off,

- By the shareholder or partner of the successor of the taxpayer that is divided by the spin-off.

After the Act on Conversions becomes effective, the change of the legal form of the personal companies (Slovak v.o.s., k.s.) into capital companies (Slovak s.r.o., a.s.) and vice versa will no longer be legally possible.

## Report with information on income tax

With reference to our [Tax Alert: Amendment to the Accounting Act: Report on income tax information](#) in which we have informed you about the obligation for selected accounting units to prepare a Report with information on income tax, we would like to inform you that the Ministry of Finance of the Slovak Republic issued the Measure on the Report with information on income tax (No. MF/006455/2023-74) which became effective on **22 June 2023**.

This Measure stipulates the details on the content of the Report with information on income tax, their arrangement and electronic format in which the accounting units are obliged to file the report in the Register of Financial Statements.

## Other

- Since 1 May 2023, through an amendment to the legislation regulating the provision of **regional investment aid**, the SITA was also amended. Consequently, the period, during which the recipient of regional investment aid will be able to claim tax credit, was extended.
- As of 1 August 2023, the new **Act on the general safety of the products** entered into force. Within this Act, the reference in Article 21 of SITA and the definition of dangerous goods was amended. Upon

their disposal, the acquisition value (costs) should be treated as tax non-deductible.

- Following the adoption of Act on amendments to certain acts in connection with the **reform of construction legislation**, some provision of SITA will be amended with effectiveness from 1 April 2024. The changes are predominantly of a legislative – technical nature (e.g. change of the references, unification of terminology, expansion of the range of constructions that are not considered depreciable tangible assets for the purposes of SITA).

## Draft Act on top-up tax

### What is subject of this draft Act?

The subject of the draft Act is an introduction of the top-up tax ensuring a minimum level of taxation for multinational enterprise groups and large-scale domestic groups located in the territory of Slovakia.

The draft Act on top-up tax regulates the methodology of computation, payment, and collection of top-up tax as well as the related reporting and filing obligations towards the Slovak Tax Authorities.

### Who will be affected by the draft Act?

The draft Act on top-up tax will apply to:

- a) **Constituent entities** located in Slovakia that are members of a multinational enterprise group or of a large-scale domestic group, if the consolidated revenues of such a group in the consolidated financial statements of the ultimate parent entity are EUR 750 million or more in at least two of the four fiscal years immediately preceding the tested fiscal year (accounting period), and

- b) **Joint ventures** and joint venture affiliates established in Slovakia.

The entities that are excluded from the scope of the draft Act are in general carrying out the activities in the public interest and do not carry out business activities (e.g. governmental entities, international organisations, non-profit organizations, pension and investment funds, or real estate investment vehicle that is an ultimate parent entity).

### When will the top-up tax apply?

If the effective taxation of income of qualified entities located in Slovakia is lower than 15%, the minimum taxation of these entities will be ensured by collection of the top-up tax.

The computation of the effective tax rate for the purpose of assessing the level of taxation of the relevant entities, as well as of the top-up tax itself, is quite complicated and will include several variables and exceptions specified by the draft Act.

### Tax period and related obligations

The tax period for the top-up tax will be the fiscal year (accounting period) for which the ultimate parent entity of a multinational enterprises group or of a large-scale domestic group prepares its consolidated financial statements or the calendar year.

The taxpayer will be obliged to file with the Tax Authorities by electronic means:

1. **The top-up tax information return**, the form of which will be published on the website of the Financial Directorate of the Slovak Republic, and which will contain e.g. following information:
  - name, registered seat, identification number of organization, tax identification number, type of taxpayer and its position within the group,

- corporate structure of the group including controlling interests,
- necessary for the computation of the effective tax rate in Slovakia for all the constituent entities that are part of the same group / joint ventures, and top-up tax of each constituent entity / group entity,
- Notifications of the filing entity in accordance with to the draft Act on top-up tax.

## 2. Tax return

The deadline for submission of the top-up tax information return / tax return will be **within 13 months** after the end of the relevant tax period. For the first fiscal year for which the group will fall within the scope of this law, the above

deadline will be extended by another three calendar months (i.e. to 16 months). The top-up tax will be due within the same period.

It will not be possible to extend the deadline, or to excuse the missed deadline, for filing the top-up tax information return and the tax return, not the deadline for paying the top-up tax.

## Effectiveness of the draft Act

The draft Act on top-up tax is currently subject to undergoing legislative procedure, but it is proposed that it enters into force on 31 December 2023.

This means that the relevant reporting and filing obligations may arise for the first entities during April 2026.

**If you would like to discuss the above changes in more detail, or assess their impact on your business, we are at your disposal.**

## Contact

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