

Tax & Fiscal Alert

December, 2013

Overview of changes effective starting from 2014

In the year 2013 Amendment to the Income Tax Act, Act on Health Insurance as well as Amendment to the Tax Code were introduced in the Slovak Republic. Accace Slovakia brings you the overview of the most significant changes that will be effective starting from 2014.

Tax licenses

Pursuant to Article 46b of the Income Tax Act (hereinafter "ITA"), a tax license means a minimum tax after deducting the tax allowance and adding the tax paid abroad, that a tax payer will pay for each taxable period for which their tax liability calculated in the tax return is lower than the minimum tax or in case that they report a tax loss too.

Tax payers, whose calculated tax liability is lower than the amount of minimum tax attributable to them in compliance with their classification into the relevant group according to the ITA provisions, shall pay the minimum tax amount that will be determined as follows:

- If at the last day of a taxable period the tax payer is not a VAT payer with the annual revenues not exceeding 500 000 EUR, **the minimum tax amount shall be 480 EUR,**
- If at the last day of a taxable period the tax payer is a VAT payer with the annual revenues not exceeding 500 000 EUR, **the minimum tax amount shall be 960 EUR,**
- If for a taxable period the tax payer reached the annual revenues higher than 500 000 EUR, **the minimum tax amount shall be 2 880 EUR.**

For the purposes of the relevant provision, the revenues means the annual revenues defined by the Act on the State Administration Authorities in the Field of Taxes, Fees and Customs, i.e. for a taxable unit accounting in the system of double-entry bookkeeping, the annual revenues means the total revenues from all activities carried out by them for the respective taxable period.

The tax license will be due in a period for filing the tax return.

In case that the amount of tax license paid, i.e. the amount of minimum tax is higher than the tax liability calculated in the tax return in the "usual" way (hereinafter the "difference") for the respective taxable period, then such difference shall be set off against the tax liability before the application of advance payments up to a maximum of three successive taxable periods following the taxable period for that the difference arose, and under the condition that the tax license was paid.

The above mentioned difference can be set off in the following three taxable periods only for such part of tax liability, that exceeds the amount of tax license for the respective taxable period. For the set-off purposes it will not be possible to set off an amount of unapplied tax license from previous years and

to shift the current amount of tax license to the next years.

In case that the taxable period is shorter than 12 calendar months, the amount of tax license shall be reduced pro rata according to the number of calendar months of the respective taxable period.

Exceptions by tax licenses

The tax payers whose average registered number of disabled employees for a taxable period is at least 20% of the total average registered number of employees will be entitled to the relief on tax license in the amount of one half.

The tax license, i.e. the minimum tax amount, shall not apply to any tax payer to whom the liability to submit the tax return arose for the first time for the respective taxable period, i.e. in the case of new established companies.

The exemption from the payment of minimum tax shall not apply to tax payers that were founded as the legal successor of the tax payer wound up without liquidation.

Tax licenses shall not be paid also by non-profit organizations and by tax payers running a sheltered workshop or a sheltered workplace. Tax licenses shall not be paid by tax payers after the start of the liquidation process or the bankruptcy order.

Please note that the start of liquidation process or bankruptcy and the cancellation of tax payer without liquidation shall be the reason for the termination of right to the set-off of tax licenses from the preceding taxable periods which was not set off.

In addition to the above stated cases, also a tax payer that is wound up with liquidation over the course of the calendar year 2014 or with respect to that bankruptcy was adjudicated, shall not be subject of the payment of tax license, even though their taxable period which ended on a day preceding its start of liquidation process or the day of adjudication of bankruptcy started not earlier than on 1 January 2014.

Please note that the tax license will apply only to the taxable period starting not earlier than on 1.1.2014, i.e. for legal entities with the business year it will not apply to the business year which started before 1.1.2014.

At the same time it is determined that the shift from the calendar year to the business year made in the calendar year 2014 has no effect on the liability to pay the tax license.

The tax license for the taxable period ended on a day preceding the day of such shift shall be paid along with the tax license for the taxable period which starts on the day of shift, i.e. it shall be paid in 2015.

Tax losses

Starting from 2014, it will be possible to amortize tax losses only for a period of 4 taxable periods and only evenly.

According to the current version of the Income tax Act, the possibility to amortize is set for a period of 7 taxable periods, whereas the amortized amount is not limited.

Starting from 2014, it will be possible to deduct unamortized tax losses for 2010 to 2013 or the sum of such unamortized tax losses only evenly and only for a period of 4 years.

In case that a tax payer could deduct losses reported in 2010 to 2012 in the following taxable periods after the reporting, but he failed to do so, he must

proceed in a manner as per Article 30 par. 1 effective from 1 January 2014, i.e. he is not allowed to apply them additionally by filing a supplementary tax return in a manner valid until the end of 2013.

Natural persons will not be allowed to deduct tax losses reported in 2010 and 2011 from the total sum of partial tax bases pursuant to Articles 6 to 8 of the Income Tax Act. They will be allowed to do so only from the partial tax base pursuant to Article 6 par. 1 and 2.

Only unamortized amount of tax loss, for instance for the year 2009, to that the possibility of amortization applied only during 5 consecutive taxable periods according to the original text of ITA effective until the end of 2009, can be amortized at the amount of not amortized sum in the taxable period 2014.

In case of application of tax loss by natural persons from a period starting before 1.1.2010 there is also the possibility of the tax loss deduction from the total sum of partial bases of income tax pursuant to Articles 6 to 8 of the Income Tax Act.

Change of corporate income tax rate

The Slovak government also plans to cut the corporate income tax from 23 to 22 percent.

The approved version of Article 52w of the Income Tax Act lays down that a reduced legal corporate income tax rate will apply for the first time for a taxable period which starts not earlier than on 1.1.2014, i.e. will not apply to the business year of legal entities which began before 1.1.2014.

It will have an effect on the calculation of advance payments from 01/2014.

Amendment to the Act on Health Insurance

A special assessment base will be cancelled only with respect to income from dividends of average monthly salary.

Dividend income will be summed up with other income that is considered as gainful employment for the purposes of health insurance.

As the maximum assessment base for health insurance is considered 60 times of the average monthly salary of the Slovak economy from a period two years ago.

The above mentioned applies also for annual health insurance reconciliation for 2013.

Risk countries

The provision is effective starting from March 1, 2014.

“High-risk tax payer“ = a tax payer of non-contracting country: natural person having no permanent address or a legal entity having no seat in a country specified in the list of countries published at the website of the Ministry of Finance of the Slovak Republic (hereinafter also “MF SR”). The MF SR will place only such country on this list with that the Slovak Republic has concluded an international convention for the avoidance of double taxation or an international treaty for the exchange of information related to taxes, or a country being a contracting country to an international convention containing provisions on the information exchange for tax purposes in a similar scope, by which the country and the Slovak Republic are bound.

If the SR concludes an international convention for the avoidance of double taxation or an international treaty for the exchange of information related to taxes during the taxable period 2014, the respective country will be placed into the list of the MF SR regardless of the fact that the international convention for the avoidance of double taxation or an international treaty for the exchange of information related to taxes will become effective after 31 December, 2014.

Tax payer's expenses (costs) related to payments originating for tax payers of non-contracting countries, even though according to the provisions of law they are considered as tax expenses, will not be treated as tax expenses in the case that the tax payer fails to meet the duty to report the withholding obligation and payment of withholding tax or secured tax to the tax administrator.

These expenses must also meet the general conditions of tax deductible expenditures.

A 35% tax rate will be applied to income that is paid out, remitted or credited to a tax payer of non-contracting country.

The tax payer is obliged to pay the withheld tax to the tax administrator not later than within the 15 day of each month for the preceding calendar month, unless the tax administrator has specified otherwise on demand of the tax payer. The tax withholding shall be conducted from the payment or credited outstanding amount to the credit of the tax payer. Also non-monetary fulfillment shall be treated as the payment.

Within the same period, the tax payer will be obliged to submit a notice about tax withholding and payment to the tax administrator. The template of this notice shall be determined by the Financial Administration and published at its website.

To secure the tax on taxable income except income from which tax is withheld and income from gainful employment, from which an advance payment is deducted pursuant to Article 35 of the ITA, the tax payer making payment to the credit of tax payer of non-contracting country, is obliged to withhold an amount of 35% of the monetary payment.

Amounts to secure taxes shall be paid until the fifteenth day of each calendar month for the preceding calendar month to the respective tax administrator.

This fact shall be reported by the tax payer within the same period to the tax administrator, unless the tax administrator has specified otherwise on demand of the tax payer. This report shall have the form that will be determined by the Financial Administration and published at its website.

Periods for filing tax return

On the basis of a notice submitted to the tax administrator within a period for filing the tax return, it will be possible again to extend the period for filing the tax return. However only by maximum of 3 whole calendar months.

For tax payers with income originating from sources abroad, possible extension by additional three months will be conditioned by the presence of taxable income abroad.

“Additional taxation“ of liabilities

Generally a tax payer except tax payers with respect to which bankruptcy was adjudicated, that while calculating the tax base uses the double-entry bookkeeping or international standards, shall amend the tax base by the

amount of liability related to the expense (cost), which according to Article 19 of the ITA is a tax expense, including an expense (cost) related to depreciated and non-depreciated assets, inventory, financial assets and other assets, at which the expense (cost) arises at its inclusion into or exclusion from consumption or from use, or the outstanding part of such liability, as well as by the amount of the liability posted as decrease of the proceeds (income) so that the increase in the tax base, if after the agreed period of the maturity of liability, which for the purposes of this provision may not be extended, a period lapses which is longer than:

- 360 days, in which case the expenses shall include at least 20% of the nominal value of liability or its outstanding portion,
- 720 days, in which case the expenses shall include at least 50% of the nominal value of liability or its outstanding portion,
- 1 080 days, days, in which case the expenses shall include at least 100% of the nominal value of liability or its outstanding portion.

If after the period in which the tax base was increased

- **by 100% of the nominal value of liability or its outstanding portion**, the liability or its portion is paid, the tax base shall be reduced by the amount of paid liability in the taxable period in which the liability or its portion was paid,
- the liability is statute-barred or ceases to exist, the tax base shall be reduced by the amount of posted revenue in the taxable period in which the revenue is posted.

Article 17 par. 29 of the ITA

It will be possible to use the option of applying tax expenses or a reduction of taxable revenues which are time related to an earlier taxable period than they are posted only if for the respective taxable period a right to tax assessment did not terminate.

Working time account

It is proposed that to the existing tax deductible reserves a reserve for salary should be added including insurance premiums and payments that employers are obliged to pay for the employee in the event of working time account for any performance of higher volume of operations for an identical remuneration where the employer does not know the exact amount of salary, e.g. due to future adjustment of salaries at the time of payment of the salary.

In this case in the bookkeeping created reserve shall be treated as a tax expense.

For the working time account in the event of a smaller volume of operations for an identical remuneration the accrual of labour costs including insurance premiums which the employer is obliged to pay for the employee is included in the tax base of the taxable period of income payment.

In the following taxable periods, if the not worked hours will be worked, the account of deferred expense will not be included in the tax base on the respective cost account.

Employee workplace transport

Employer's expenses for ensuring workplace transport of employees due to fact that the transport by transportation facilities is not provably provided at all or in the scope corresponding to employer's needs, shall be treated as a tax

expense.

If a subsidy, support or contribution was provided to the employer for this form of transport from the state budget, budget of the municipality or higher territorial unit, the employer can include only their portion in the expenses, by which the expenses exceed the actually obtained subsidy, support or contribution

Tax advances

This provision aims to unify the lower limit for the obligation to pay quarterly advances of legal entities and natural persons.

An exception shall be removed, for tax payers seated abroad who perform construction or assembly activities on the territory of the Slovak Republic, if the place or facility for those activities is treated as a permanent establishment pursuant to Article 16 par. 2 of the ITA.

Company cars used for private purposes of employees

The wear and tear of motor vehicle should be taken into consideration while calculating the amount of taxable income of an employee in the case of use of the vehicle also for private purposes.

The calculation of the non-monetary income originating from the use of motor vehicle by an employee for private purposes will be based on the market entry price of such motor vehicle, whereas the non-monetary income shall be taxed to the employee during 8 years after putting the vehicle into use, whereas :

- In the year of putting the vehicle into use, it is set as 1% of the market entry price for each started calendar month when the employer's motor vehicle is provided also for private purposes,
- In the next seven years, it is set as 1% of the market entry price reduced by 12.5% annually for each started calendar month when the employer's motor vehicle is provided also for private purposes.

If any technical improvement is made on the vehicle during the mentioned years, its market entry price shall be increased by the value of technical improvement and subsequently the amount will be reduced by 12.5% annually. The market entry price always does include VAT.

The above stated procedure shall apply **for the first time** in the calculation of taxable income of an employee for the period 01/2014.

If the same employer's motor vehicle was provided to an employee in the previous taxable period also for private purposes, the non-monetary income shall be calculated from the reduced market entry price.

Early termination of leasing

While calculating the tax base in the taxable period in that

- the financial leasing was terminated early and the object of lease was delivered to the lessor, the residual value shall be included in the tax base, whereas the loss due to the return (purchase) of the object of lease to the lessor is not taken into consideration.
- the financial leasing was terminated early, except early termination of lease agreement due to the return of the object of financial leasing,

the residual value shall be included in the tax base (Article 25 par. 3) up to the amount as per Article 19 par. 3 d) and g) of the ITA (due to damage).

- The purchase of item acquired by financial leasing occurs before the lapse of a minimum term of lease, the tax base shall increase by a positive difference of already applied depreciation by a special method in tax expenses and depreciation which the tax payer would apply as the owner using the straight-line method, whereas the tax payer shall further depreciate acquired assets using the straight-line method just like in the next years of depreciation. If the tax base increases, the determined residual value shall be adjusted by the amount of such calculated increased tax base.
- After the termination of lease without any right of purchase of leased item agreed in advance for a lower purchase price than its residual value pursuant to Article 25 par. 3 of the ITA, the tax base shall increase by the positive difference of already applied rent in tax expenses and depreciation, which the owner could apply from such assets during the term of lease agreement using the straight-line or accelerated method, whereas the market entry price of purchased property shall be increased by such difference.

New tax records, possibility to keep accounts for passive author's income

Starting from January 1, 2014 it is suggested that in the application of provable spent expenses in the form of tax records, all tax payers with income from business, other independent gainful activity and from the use of work and artistic performance could use tax records.

At the same time, another form of record-keeping of provable expenses for income from lease will be replaced by tax records, and also the record for lump-sum expenses with tax records is united. However, in this case the tax payers keep such record only in the scope of provable income, inventory, and receivables.

Therefore with effect from 1.1.2014, tax payers with income as per Article 6 of the ITA who apply provable expenses can choose whether they will keep

- single-entry bookkeeping,
- double-entry bookkeeping, or
- tax records.

Starting from 2014, tax payers having income from the use of work and artistic performance specified in Article 6 par. 4 of the ITA will be allowed to keep accounts in compliance with accounting standards despite the fact that according to the Accounting Act, they will not become an accounting entity like tax payers having income from lease.

Rent of workforce

The amendment is in accordance with the already applied access to “economic” employer for the purposes of application of conventions on the avoidance of double taxation and applies in particular to the cases of international employees having managerial posts on the territory of the SR, i.e. it is not possible to state clearly that they perform work on the basis of employer’s instructions and orders, **but certainly they perform work on behalf of and at the responsibility of the employer.**

Services provided outside the SR and their taxation

The object of tax of tax payer with limited tax liability is income originating from sources located in the territory of the Slovak Republic for the provision of services, also in cases when they were not provided in this country.

In practice the relevant provision is applicable only to tax payers from countries with that the Slovak Republic does not have a convention on the avoidance of double taxation.

In other cases an internationally accepted principle is followed: the country where the service is performed shall have the right to tax the income from services (according to conventions on the avoidance of double taxation).

Income of tax payer with limited tax liability originating from sources located in the territory of the Slovak Republic for the provision of services defined in Article 16 par. 1 c) of the ITA shall not be object of the withholding tax, but the object of the tax security pursuant to Article 44 of the ITA if the defined conditions were met, or in a submitted tax return.

Other selected amendments the Income Tax Act

- Introduction of the presence of “service permanent establishment”
- The non-inclusion of passive exchange differences in the tax base will be provided only through tax returns
- Lump-sum reimbursement of cost (40 EUR) will be included in the tax base only after the receipt of payment or after its payment
- In “reasonable” cases it will be possible to submit Transfer pricing documentation to the tax administration of the Financial Directorate of the Slovak Republic within 15 days of delivery of call
- Even tax payers with income from business or from other independent gainful activity, if they use their own motor vehicle, will be allowed to use lump-sum expenses up to 50% of the total demonstrated purchase of fuels for the respective taxable period
- Gift vouchers for advertising articles will not be treated as advertising articles
- The payment for an application for the approval of the valuation method for transactions between related parties will be effective from 01.09.2014
- The value of advertising article for the purposes of tax recognition is increased to 17 EUR/piece
- The “snitch” paragraph with respect to the effect of act on the limitation of cash payments is repealed
- The partner in public limited company and general partner in limited partnership company will be allowed to deduct travel expenses and allowance from the income/tax base falling upon such tax payer

Amendment to the Tax Code – Selected changes

- The tax administrator will not take into account any legal act or another fact having no economic substantiation and the result of which is purposeful circumvention of the tax liability or obtaining such tax benefit to which the tax payer would not be entitled.
- Binding opinions will be effective starting from September 1, 2014.
- The tax administrator is obliged to accept each payment although it is not made by a tax payer and handle it as if it was paid by the taxable unit. Those who made a payment for the taxable unit can apply for its reclassification. The tax administrator will reclassify such payment to an account which was assigned for the payment of tax within 30 days of filing the application at the amount at which it is considered as overpaid tax. In this case, as the payment date is considered the day on that the payment was debited from the account of the person who realized the payment.

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