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**Recent Developments in International Taxation
Slovak Republic**

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[Developments from June 2018 – May 2019 are covered]

FOREWORD

The period covered by this national report from June 2018 brought on numerous changes to the Slovak tax system arising mainly from the European Union's ("EU") legislation and continuous implementation of the recommendations from the Organisation for Economic Co-operation and Development's ("OECD") Base Erosion and Profit Shifting ("BEPS") project. This is an expected outcome of Slovakia's membership both in the EU and the OECD, its participation in the Inclusive Framework on BEPS and its ratification of the Multilateral Instrument (the "MLI"). Positive news for taxpayers should be, in particular, adoption of new tax dispute resolution law aiming to improve disputes on interpretation of tax treaties and Convention (see defined below).

Below, we describe in more detail these developments together with local legislation relating to their implementation.

IMPLEMENTATION OF BEPS RECOMMENDATIONS

Multilateral Instrument (BEPS Action 15)

The Slovak Republic, which became a signatory of the MLI on 7 June 2017, finalised the ratification procedure of the MLI on 20 September 2018 when the instrument of ratification and the final position of the Slovak Republic on the MLI were delivered to the depository. In line with Article 34(2) of the MLI, it entered into force for the Slovak Republic on 1 January 2019.

According to the final List of reservations and notifications, 64 tax treaties shall be covered by the MLI in relation to Slovakia. As of 4 April 2019, the MLI amends double tax treaties that Slovakia has concluded with the following countries: Australia, Austria, France, Israel, Japan, Lithuania, Poland, Slovenia, Serbia and the United Kingdom.

In more detail, Slovakia has chosen to apply almost all the provisions of the MLI as per the following overview:

- (i) as regards Article 5 (*Application of Methods for Elimination of Double Taxation*), to apply Option C under Article 5(1);
- (ii) as regards Article 7 (*Prevention of Treaty Abuse*), to apply the Simplified Limitation on Benefits Provision under Article 7(6);
- (iii) as regards Article 9 (*Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property*), to apply Article 9(4);
- (iv) as regards Article 13 (*Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions*), to apply Option A under Article 13(1);
- (v) as regards Article 15 (*Definition of a Person Closely Related to an Enterprise*), to make no reservation;
- (vi) as regards Article 16 (*Mutual Agreement Procedure*), to make a reservation;
- (vii) as regards Article 17 (*Corresponding Adjustments*), to make a reservation; and
- (viii) as regards Article 18 (*Choice to Apply Part VI*), to exclude application of Part VI (*Arbitration*).

Transfer pricing documentation (BEPS Action 13)

The Ministry of Finance of the Slovak Republic issued an updated guidance on transfer pricing ("TP") documentation requirements in December 2018 ("**TP Documentation Guidance**")

which is already applicable to the tax periods commencing after 31 December 2017. Based on the scope, the TP Documentation Guidance prescribes 3 types of TP documentation, i.e. (i) simplified scope, (ii) basic scope and (iii) full scope TP documentation. Those types were already set by the previous version of the guidance on TP documentation, but the criteria for their selection and their mandatory content have been changed by the new guidance as a harmonisation step towards the BEPS Action 13 recommendations.

The taxpayers that are not obliged to prepare any of the aforementioned TP documentation types should fulfil their TP obligations only by filling out a table when filing their corporate income tax returns, where the aggregate values of the related party transactions will be reported.

As regards the particularities of the TP documentation types:

- (i) full-scope TP documentation consists of a Master File and a Local File, and is mandatory for (a) significant cross-border controlled transactions executed by taxpayers that keep their books in line with IFRS, (b) cross-border controlled transactions with an annual transaction value of or where a group of related transactions exceeds a value of EUR 10m, (c) significant controlled transactions with counterparties who are tax residents of non-treaty jurisdictions, (d) controlled transactions where an advance TP agreement or corresponding cross-border TP adjustment was requested by the taxpayers, (e) controlled transactions where a mutual agreement procedure (“MAP”) initiation request was filed for the given tax period, and (f) significant cross-border controlled transactions executed by taxpayers who use tax incentives for the given tax period;
- (ii) basic TP documentation consists of a simplified Master File and Local File, and is required if the above full scope TP documentation criteria are not met for (a) significant cross-border controlled transactions executed by taxpayers whose total revenues exceed the threshold of EUR 8m, (b) cross-border controlled transactions with an annual transaction value of or where a group of related transactions exceeds a value of EUR 1m, (c) significant domestic controlled transactions executed by taxpayers who use tax incentives for the given period, and (d) non-significant controlled transactions with counterparties who are tax residents of non-treaty jurisdictions; and
- (iii) simplified TP documentation shall be prepared in the form enclosed with the TP Documentation Guidance, and if the above full scope and basic TP documentation criteria are not met, it is required for (a) significant controlled transactions executed by taxpayers who meet the criteria for a statutory audit of their financial statements, (b) significant controlled transactions executed by individuals who have business income, (c) significant controlled transactions with counterparties who are Slovak tax residents, (d) significant controlled transactions executed by taxpayers who are part of a consolidated group with counterparts who are also part of the a consolidated group, (e) significant domestic controlled transactions executed by taxpayers, not being part of a consolidated group, where the state or a municipality has an in-/direct participation with counterparts where the also state or a municipality has an in-/direct participation, and (f) non-significant transactions executed by taxpayers who use tax incentives for the given period.

Controlled foreign company rules (BEPS Action 3)

On 1 January 2019, controlled foreign company (“CFC”) rules came into effect as part of the larger amendment to the Slovak Act No. 595/2003 Coll on income tax, as amended (the “ITA”), which was approved in December 2017 and, among other things, implemented the Council

Directive (EU) 2016/1164 (“**ATAD I**”) which sets minimum standards for EU Member States in regard to the BEPS recommendations. Other measures implementing ATAD I, such as exit taxation, already became effective as of 1 January 2018 or were already incorporated in the Slovak ITA prior to that, such as interest limitation rules and general anti-abuse rule.

Report on implementation of the Minimum Standard (BEPS Action 14)

The OECD released the 5th round of the Stage 1 peer review reports on implementation of the BEPS Action 14 Minimum Standard on 14 February 2019, dealing with improving tax dispute resolution mechanisms. Such peer review report was released also in the Slovak Republic¹ (the “**Report**”).

The Report has concluded that overall, Slovakia meets almost all the elements of the Action 14 Minimum Standard and is working on addressing the deficiencies. The Report further notes that Slovakia has an extensive network of 70 tax treaties, it has signed and ratified the EU Arbitration Convention and it has a MAP programme in place. There is, however, only modest experience with MAP due to the small number of cases submitted each year (31 cases pending on 31 December 2017) and cases are decided quite slowly (number of cases the Slovak Republic closed in 2016 or 2017 is significantly less than the number of all new cases started in those years).

The Report recommends that, in order to be fully compliant, Slovakia needs to amend and update a significant number of its tax treaties, but recognising that Slovakia has signed the MLI through which a number of them will be potentially modified to meet the Action 14 Minimum Standard. For tax treaties that will not be amended by the MLI, Slovakia has reported that it intends to update all of such tax treaties through bilateral negotiations in order to be compliant with requirements under the Action 14 Minimum Standard. There is, however, no specific plan on such bilateral negotiations according to the Report.

The Report further notes that in principle, Slovakia meets the Action 14 Minimum Standard concerning the prevention of disputes, also having a bilateral advance pricing agreement programme in place, and that Slovakia meets most requirements regarding the availability to MAP.

Hybrid mismatches (BEPS Action 2)

Hybrid mismatch arrangement rules are part of the current proposal of an amendment to the ITA which implements the Council Directive (EU) 2017/952 (“**ATAD II**”) and which also sets minimum standards for EU members states in regard to the BEPS recommendations. These Hybrid mismatch arrangement rules are planned to become effective as of 1 January 2020 in line with ATAD II.

NEW TAX DISPUTE RESOLUTION ACT

A new tax dispute resolution act was approved in December 2018 that will become effective on 1 July 2019 and implements Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the EU (the “**Tax Dispute Resolution Act**”). Its scope will cover proceedings initiated based on the taxpayer’s request for prevention of double taxation submitted after 30 June 2019 and regarding tax periods commenced after 31 December 2017 (unless the competent authorities of both states agree otherwise).

¹ OECD (2019), Making Dispute Resolution More Effective - MAP Peer Review Report, Slovak Republic (Stage 1): Inclusive Framework on BEPS: Action 14, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264309890-en>.

The Tax Dispute Resolution Act deals not only with (i) disputes between the EU Member States and Slovakia arising from interpretation of their tax treaty but also with (ii) disputes between Slovakia and EU non-member states arising from interpretation of their tax treaty, and with (iii) disputes between Slovakia and a contracting state of Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the “**Convention**”), arising from interpretation of this Convention.

All of the above proceedings to prevent double taxation commence based on the applications submitted by a taxpayer to the authorities of concerned states, while application to the Ministry of Finance of the Slovak Republic must be done in a 3-year period after receiving the first notification on an act which leads to the disputed question. The MAP is emphasized as a first resolution option to settle disputes. In general, if a mutual agreement is not reached by states in the period of 2 years the application process is concluded, the taxpayer is entitled to request that an advisory commission be established by authorities of both states that will issue an opinion on the matter within 6 months (can be prolonged by at most 3 months), after which the concerned states shall agree on the resolution and issue a decision or are otherwise bound by such opinion. The proceedings, however, do differ slightly from each other based on the fact if tax treaty or Convention is invoked and if the other contracting state is an EU member state.

UPDATED LIST OF TAX TREATIES

The Ministry of Finance of the Slovak Republic has published an updated list of the effective international tax treaties, effective as of 1 January 2019. The list was extended by Ethiopia and Iran, based on the bilateral tax treaties, and by the Bahamas, Bahrain, Grenada, Hong Kong, Macau, Peru and Vanuatu, based on their accession to the Convention on Mutual Administrative Assistance in Tax Matters.