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The most positive news of the last quarter is the Amendment to the Income Tax Act, adopted by the Slovak Parliament at the beginning of September. We are pleased to confirm that all **business-friendly changes** we had informed you about in our previous issue of BMB Newsfilter were approved in ordinary legislative procedure on 11 September, which is unusually early: more than 3 months before becoming applicable (01/01/2020). This means taxpayers have **enough time for tax planning.** In addition, an MP's proposal to **decrease the income tax rate for small entrepreneurs from 21% to 15%** was approved on 19 September. The new tax rate will apply not only to companies, but also to all sole traders and self-employed persons with an annual turnover up to EUR 100 thousand.

In this Autumn issue of BMB Newsfilter, our colleagues Petra und Katarina will explain the most significant advantage for companies, i.e. the increase of the "super deduction" of R&D costs to 200% of legitimate costs (TOP 1). In other words, through this relief the state will refund **over 40% of expenses for innovations** to businesses.

We will inform you also about the amendment to the **Tax Code** being prepared currently (TOP 2) and summarize the first experience with "**eKasa"**, launched in the Summer (TOP3).

As for international developments, we draw your attention to:

- the current developments in **digital tax** (TOP 4),
- **statistics on the number and progress of international tax disputes** published in August by the European Commission (TOP 5),
- new rules for archiving and data processing reflecting technological progress (6),
- tax aspects of BREXIT, if it happens as at 31/10/2019 (7),
- **EU Arbitration Directive applicable since 01/07/2019** (8).

We will briefly inform you also on the changes expected in Slovakia in the coming months, including the minimum wages and the duty to register the beneficial owner with the Commercial Register until the end of December.

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TOP 1: SUPER DEDUCTION OF R&D COSTS

The super deduction of R&D costs increases to 200%. Given the **relatively low administrative burden** compared to other forms of tax relief and **interesting possibility of tax optimisation,** this change should bring a new increase in the number of businesses that invest in innovations and claim this relief.

In Slovakia, taxpayers are able to claim the super deduction since 2015, but the conditions introduced by the latest amendment are significantly more attractive than before.

How to proceed when claiming the super deduction?

Firstly, particular parameters of projects for which the company could claim the deduction are to be identified and technically evaluated. The **element of novelty or innovation** is analysed, the presence of which is, under the OECD Frascati Manual, the basic criterion for differentiating R&D from similar activities.
The company should be able to prove how the product, technology or process differs from commonly used projects and technologies, especially how it is novel. Taking into regard the R&D characteristics, the right to claim the R&D deduction does not expire in the event the project fails, if the taxpayer evaluates and justifies the unsuccessful results of the project, this being one of the proofs of innovation, which includes also the **element of uncertainty.**

Documentation

In connection with the super deduction, the company is obliged to prepare documentation ("project"), stating the subject matter of the research and development and basic information on the taxpayer, date of the beginning and end of project realization and expected costs. Detailed requirements for the content are listed in section 30c) (7) of the Income Tax Act.
The R&D project must be signed until the tax return filing deadline by the person authorized to act on behalf of the company. This is an important simplification, as before the amendment, the project had to be signed prior to the project realization.

Publicly accessible lists

Within three calendar months after the tax return filing deadline, the Slovak Financial Directorate publishes a list of taxpayers that have claimed the deduction of R&D costs, including the information such as: identification data of the company, amount of the deduction claimed, tax period in which the deduction was claimed, date of the beginning of R&D project realization, project targets reachable during its realization and project target measurable after its completion.

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The list of the taxpayers that claimed the R&D deduction for the particular tax periods is published on the portal of the Slovak Financial Administration, in the section Informative lists.

For the last published tax period (2018), the financial administration records 160 taxpayers having claimed the super deduction. This number only represents the taxpayers that filed tax returns until 31/03/2019, further will be added after processing the data on taxpayers that filed tax returns until the end of June.

Overview of three companies with currently published highest claimed R&D costs in 2017 and 2018:

Company	Super deduction (TEUR) TOP 3
2018*	
MTS, spol. s r.o.	14,991
Telegrafia, a.s.	12,441
Sygic a. s.	10,323
2017	
U. S. Steel Košice, s.r.o.	18,472
TATRAVAGÓNKA a.s.	2,211
Continental Automotive Systems Slovakia sro	1,509

Analysis of super deduction claimed for 2015-2018:

Year	2018	2017	2016	2015
Number of companies	160*	163	112	83
Deduction of R&D costs (EUR million)	105	40.1	16.5	9.2
Tax savings (EUR million) **	22.0	8.4	3.6	2.0

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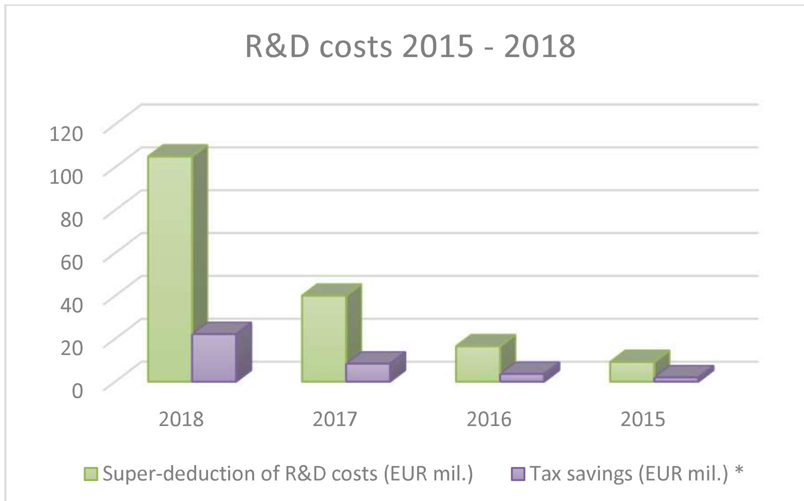

Source: Slovak Financial Administration
**data published as at 28/06/2019*
*** corporate income tax rate: 21% in 2017 and 2018; 22% in 2015 and 2016*

Period for carryforward of unclaimed super deduction

The amendment extends the period for the carryforward of the unclaimed part of super deduction, which could not have been claimed due to a negative tax base, **from 4 to 5 tax periods** following the tax period in which the claim for the super deduction first originated. A positive tax base remains a precondition for claiming.
We will provide you with information on further reliefs, comparison to the new super deduction as well as examples in a special overview scheduled for the coming months.

TOP 2: DRAFT AMENDMENT TO THE TAX CODE

In August, the SK government approved the draft amendment to the Tax Code, which aims **mainly to reduce the administrative burden** and to support businesses. The following measures could be helpful in practice:

- option to refrain from a certified translation, if Slovak language is required in the proceedings,
- where electronic communication is obligatory now, the amendment proposes that also other filing forms be acceptable (Central Public Administration Portal or paper form),
- if powers of attorney overlap, the new power of attorney should always replace the old one in the extent in which they overlap (according to our experience, tax administrators already accept this rule partly),

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- various redundant duties should be abolished from 01/01/2021, e.g. registration for corporate income tax or changes of data already reported to another public authority,
- it is proposed to decrease the fine for minor infringement of duties, e.g. for late filing of statements or issuance of invoice, from EUR 60 to EUR 30.

Apart from the above changes, we draw your attention to the below changes, most of which could come into force from 01/01/2020:

- course of tax inspections (extension of deadlines and scope),
- shortening of tax deferral period from 5 to 2 years,
- change of provisions on bankruptcy, restructuring, execution etc.

TOP 3: "EKASA" LAUNCHED, AUTHORITIES WILL BE TOLERANT UNTIL THE END OF 2019

Pursuant to the amendment to the Act No. 289/2008 Coll. on the use of electronic cash registers, entrepreneurs were obliged to request an "eKasa code" until 30/06/2019 (applies to OCR – online cash registers and VCR – virtual cash registers). Tax codes of the former cash registers (ECR) were deleted automatically.
However, the transitory provision adopted in June 2019 ensured that:

- entrepreneurs may book sales revenues using the old types of ECR with a deleted cash register tax code,
- **the financial administration will not impose fines for not using eKasa until 31/12/2019,**
- ATTENTION: the approved transitory provision refers only to non-imposing of fines and not to using eKasa,
- <u>non-imposing of fines applies only to entities which requested, until 30/06/2019, eKasa code for OCR, but still have not received the registers by the producer with a certified software solution,</u>
- non-imposing of fines does not apply to VCR, which must be used by entrepreneurs since 01/07/2019.

According to the latest records available (September 2019), the financial administration records sales revenues of more than 121 thousand cash registers through online connection. However, at the same time, the financial administration declares that <u>no more than 50% of the total number expected are online</u>.

Almost 700 inspections have been carried out since the system launch. Violations were identified in over 60% of cases reviewed. <u>Sanctions in total amount of approx. EUR 380,000 have been imposed.</u>

Source: Slovak Financial Administration
**data published as at 12/09/2019*

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TOP 4: LATEST DEVELOPMENTS IN DIGITAL TAX

As neither the EU succeeded in approving a common proposal of the digital tax (3% of sales of technology giants) at the beginning of 2019 nor the G20 leaders found a common alternative solution at a later meeting, some countries have adopted unilateral measures. Tax rates and the scope of tax differ currently in the particular countries. Austria has introduced a 5% tax on online sales and the Czech Republic a 7% tax on advertising sales. The sharpest reaction so far was caused by the unilateral introduction of a 3% tax on digital services in France, approved by the Parliament this July, known also under the informal acronym GAFA (Google, Apple, Facebook, Amazon). No wonder that the American government has responded by threatening to scrutinize French firms. We are of the opinion that Slovakia and Germany opted for a reasonable way: waiting patiently for the results of OECD and G20 negotiations. The facts speak for themselves: According to an EC study, the average effective tax rate paid by technology giants is just 9%, i.e. less than half the amount when compared to 23% in traditional industries.

Representatives of OECD countries including the USA and France agreed at the IFA Congress in London this month that it is necessary to conclude a multilateral agreement until the end of the year, which will reflect also the American proposals regarding a compromise minimum taxation of profits.

TOP 5: STATISTICS ON APAS A MAPS PUBLISHED IN AUGUST

As expected by a number of experts, the BEPS project launched by OECD and G20 brings not only more money into state budgets, but also an increased number of disputes due to differing approaches of tax authorities of the particular countries. A direct consequence of this development is also the increased number of bilateral procedures, either APAs MAPs.

MAP

The good news is that as many as 674 MAPs were completed in the EU in 2018, which is 34% of the total amount, compared to 28% in 2017. However, the average time needed to complete a MAP case increased from **27 to 31 months.**

APA

As at the end of 2018, the EU recorded a total of 726 APAs in force, which is a decrease compared to 2017 (902 APAs). **However, the share of bilateral and multilateral APAs in the total amount rose from 10% in 2017 to 16% in 2018.** Accordingly, taxpayers increasingly prefer international agreements with tax authorities, as they provide greater legal certainty.

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The average time needed to reach an APA within the EU remained at the level of 32 months.

The complete statistics of the European Commission of July 2019 can be found under this link.

IN BRIEF

6. NEW ARCHIVING RULES REFLECTING THE TECHNOLOGICAL PROGRESS

In July, the German Finance Ministry issued a new circular which simplifies the process of recording and archiving documents, reflects the dynamic technological progress and provides greater legal certainty for German entrepreneurs. Meanwhile, the circular has been recalled and will be subject to further discussion. The most important rules, which we expect to become applicable also in Slovakia, include the **acceptance of scans or digital pictures including the use of smartphones,** under the condition that the content and the legibility remain verifiably unchanged (currently already accepted also by some tax inspectors in Slovakia), and the use of cloud solutions abroad for the purposes of processing and storing data, including accounting ledgers.

Given the high dependence of Slovak economy on the German and the current practice, we are of the opinion that a similar concept, either formal or informal, can be expected in Slovakia, too.

7. TAX ASPECTS OF BREXIT AS AT 31/10/2019

The envisaged date of UK's withdrawal from the EU, i.e. 31/10/2019, is approaching fast, while the uncertainty surrounding the future relationship between the UK and the EU continues. In any case it is necessary that companies are prepared for tax implications of Brexit.

Despite most direct tax legislation being imposed domestically, the loss of EU Directives will have withholding tax implications. As a result, increasing importance will be placed on the network of bilateral double tax treaties concluded between the UK and the particular countries. Indirect tax is one area where significant legislative changes are expected, as the non-applicability of the EU VAT Directive will result in e.g. the end of exempt cross-border supplies of goods and services. More information on this topic from the IFA Congress in London held at the beginning of this month can be found under this link.

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8. ARBITRATION DIRECTIVE ALREADY APPLICABLE TO DISPUTES FOR 2018

Since 1 July 2019, the Act on Dispute Resolution Rules, which implements the EU Arbitration Directive, may be applied to disputes for 2018. Generally, the Directive is expected to bring more legal certainty in various disputes, including:

- an extended scope of application (the former legislation in form of the EU Arbitration Convention referred only to transfer-pricing disputes),
- extensive changes to procedural rules including complaints,
- possibility to involve national courts in the arbitration proceedings.

The introduction of the Arbitration Directive could help cut the duration of proceedings. However, we do not expect their decrease in number. The current relevant statistics can be found in TOP 5.

9. DISCUSSION ON MINIMUM WAGES INCREASE AT GOVERNMENT LEVEL

The Ministry of Labour and Social Affairs proposes to increase the minimum wages from the current EUR 520 to EUR 580 from January 2020. In addition, it plans to introduce an automatic update mechanism to the value of 60% of the average wages.

Employers do not agree and we have participated in the discussion, from the perspective of taxes and social security contributions, too. We are of the opinion that the government should be more generous and increase the net pay of employees through higher tax-free allowances.

With effect from January 2020, the Slovak Parliament has approved the **increase of the tax-free personal allowance** from the current 19.2 times the subsistence level (2019: EUR 3,937.35) to 21 times the subsistence level (from 01/01/2020: EUR 4,414.20 p.a.). Consequently, employees will receive higher net pay from January.

10. REGISTRATION OF BENEFICIAL OWNER UNTIL 31/12/2019

Please note that companies must register their beneficial owner (BO) and information on him with the Commercial Register until 31/12/2019. This duty applies to almost all legal entities, except for public administration bodies, issuers of securities admitted to trading on a regulated market and entities already registered with the Register of Public Sector Partners.

Information on BO will appear in the non-public part of the Commercial Register.

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If a legal entity does not file a registration of the BO with the Commercial Register until 31/12/2019 or if the information on BO does not reflect the reality, the Registry Court may impose a fine of up to EUR 3,310 to the company or to the individual authorized to act on behalf of the company.

USEFUL LINKS

STATISTICS ON APAS AND MAPS PUBLISHED IN AUGUST

MORE MATERIALS FROM IFA CONGRESS IN LONDON

DISCUSSION OF 20 TOP SLOVAK ECONOMISTS ON MINIMUM WAGES INCREASE (E DENNÍK)

SLOVAK-GERMAN ECONOMIC FORUM 10/10/2019

TAXAND TRANSFER PRICING CONFERENCE IN WARSAW 27-28/11/2019

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