SLOVAKIA

1. INTRODUCTION 2
2. RECENT DEVELOPMENTS 4
3. SHARE ACQUISITION 5
4. ASSET ACQUISITION 8
5. ACQUISITION VEHICLES 11
6. ACQUISITION FINANCING 12
7. DIVESTITURES 14
8. FOREIGN OPERATIONS OF A DOMESTIC TARGET 15
9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS 16
10. TRANSFER PRICING 16
11. POST-ACQUISITION INTEGRATION CONSIDERATIONS 16
12. OECD BEPS CONSIDERATIONS 18
13. ACCOUNTING CONSIDERATIONS 19
14. OTHER TAX CONSIDERATIONS 19
15. MAJOR NON-TAX CONSIDERATIONS 20
16. APPENDIX I - TAX TREATY RATES 20
17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS 23

CONTACTS 25

1. INTRODUCTION

a. Forms of Legal Entity

In Slovakia, legal entities established for the purpose of doing business may be formed by one or more individuals or legal entities. All the details on the legal entity are entered in the commercial register. The Slovak law differentiates four basic forms of a legal entity: limited liability company, joint-stock company, limited partnership and general partnership.

Limited liability company ("*spoločnosť s ručením obmedzeným*", "s.r.o.", "spol. s r.o.") is the most common type of legal entity used in Slovakia. It can be established by one or more owners (shareholders). However, the maximum number of shareholders is 50. The liability of the shareholders for the debts of the company is limited to the amount of their unpaid contribution. The minimum registered capital of a limited liability company is EUR5,000, while the minimum contribution of one shareholder is EUR750. The supreme body of a limited liability company is the general meeting, made up of shareholders. A supervisory board may also be established but is not obligatory. The statutory representative of the company is the managing director. A limited liability company is taxed on the company level (i.e. it is treated as an opaque entity for corporate tax purposes) and corporate income tax is applicable.

Joint-stock company ("*akciová spoločnosť*", "a.s.", "akc. spol.") is a corporation with an unlimited number of shareholders. It is liable for its debts up to the amount of its assets. The shareholders are not liable for the company's debts. The minimum share capital of the joint stock company is EUR25,000. The capital is divided into a certain number of shares, and these are held by individual shareholders. Important matters of the company are decided by voting at the general assembly of shareholders. The supreme body is the board of directors. Activities of the company are supervised by the supervisory board, which is obligatory. A joint-stock company is taxed at the company level (i.e. it is treated as an opaque entity for corporate tax purposes) and corporate income tax is applicable.

Limited partnership ("*komanditná spoločnosť*", "k.s.") has two types of partners, a general partner and a limited partner. General partners have unlimited liability for the debts of the limited partnership. Limited partners only have limited liability up to the amount of their contribution. A limited partnership is a combination of a transparent and an opaque entity. The tax base is calculated for the limited partnership as a whole and is attributed separately to general and limited partners in the next step. The share attributable to limited partners is taxed on the level of the limited partnership (corporate income tax is applicable) and the share attributable to general partners is treated transparently and taxed at the level of the individual general partners.

General partnership ("*verejná obchodná spoločnosť*", "v.o.s.") consists of at least two partners. The partners have unlimited liability for the debts of the general partnership. A general partnership may be established by natural and legal persons. The partners operate under a common business name. This legal entity is transparent. The tax base is calculated for the general partnership as a whole and is attributed separately to the partners in the next step. The taxation follows on the level of the individual partners.

In addition to these basic types of legal entities, there are also special legal forms, such as a simplified joint-stock company (*"jednoduchá spoločnosť na akcie", "j.s.a."*), a state-owned enterprise ("*štátny podnik*", "š.p.") and a cooperative ("*družstvo*").

Legal entities may be established also based on EU law, Societas Europaea ("SE"), European Economic Interest Grouping ("EEIG") and European Cooperative Society ("SCE").

b. Taxes, Tax Rates

i Corporate Income Tax

The general corporate income tax rate in Slovakia is 21%, irrespective of the amount of profits generated by the company (i.e. 21 % flat tax). The corporate income tax ("CIT") is due within the corporate income tax return filing deadline (generally three months after the end of the tax period, extensions of three or six months are possible subject to meeting the prescribed conditions). The standard tax period is a calendar year, it is also possible to apply a fiscal year. If losses are generated, only loss carry forward is possible (according to prescribed rules).

Since 2020, a reduced income tax rate of 15% has been applicable to small companies whose taxable income per year does not exceed a specified threshold. For 2020, the threshold was EUR100,000 and starting from 2021, the threshold has been reduced to EUR49,790.

No minimum CIT is applicable in Slovakia, if the company does not generate a profit, it does not pay any tax for the relevant tax period.

ii Personal Income Tax

The personal income tax ("PIT") rates are slightly progressive, 19% or 25%, with thresholds as follows:

If the annual income of the individual does not exceed 176.8 times the subsistence minimum in Slovakia, the PIT rate amounts to 19%. The subsistence minimum changes annually. For 2021, 176.8 times the subsistence minimum is EUR37,982 and for 2022 EUR38,553. The income of individuals exceeding this amount is taxed at 25%.

A special tax rate of 15% was introduced for individuals, sole traders, in 2020 (corresponding to the reduced tax rate for businesses with taxable income not exceeding a certain threshold). For 2020, the threshold to apply the reduced tax rate was EUR100,000 and starting from 2021, it has been reduced to EUR49,790. This tax rate is applicable only to business income of sole traders.

Special withholding taxes apply to specific types of income of both companies and individuals, such as dividends, interest income, royalties etc.

iii Value Added Tax

The standard value added tax ("VAT") rate is 20% and applies to most goods and services.

Besides the standard rate, there is a reduced VAT rate of 10% applicable to certain goods. The aim of the reduced VAT rate is to offer some basic goods and services at a lower price for final consumers. The reduced VAT rate applies e.g. to selected basic foodstuffs, medicines, some medical devices, printed books and newspapers.

There are also other tax types applicable in Slovakia, including excise duties on specific products, real estate tax, motor vehicle tax, insurance tax etc. On the other hand, neither real estate transfer, inheritance nor gift tax is applicable in Slovakia.

c. Common divergences between income shown on tax returns and local financial statements

Local financial statements are prepared based on full scope double entry bookkeeping under Slovak accounting regulations ("Slovak GAAP"). In general, Slovak GAAP follows the IFRS concept.

In the next step, the accounting result may be subject to adjustments, items to be added or deducted from the tax base. These items may be of temporary nature, most commonly these adjustments include:

- Provisions and reserves.
- Certain expenses, if unpaid.
- Expenditures not deductible for tax purposes, including private consumption.
- Tax depreciation.
- Dividends and capital gains, if conditions are met.

2. RECENT DEVELOPMENTS

Most significant recent tax-related developments:

a. Recent Double Tax Treaties

In 2021, the Double Tax Treaty ("DTT") with Oman came into force. The DTT with New Zealand has been approved by the government in 2020, but has not been signed and ratified yet.

Based on the Multilateral Instrument ("MLI"), notices of addition and amendment to the DTT were published in 2021 and 2022 with the following countries: Estonia (effective 01/01/2022), Greece (effective 01/01/2022), Croatia (effective 01/12/2021), Indonesia (effective 01/01/2021), Hungary (effective 01/01/2022), Malaysia (effective 01/12/2021), and Spain (effective 01/01/2023).

b. Special deduction of investment costs

Starting with the 2022 tax period, a new tool of legitimate corporate income tax reduction is available. Taxpayers planning to invest in new progressive technologies (Industry 4.0 - investments in connection with digitalisation, automation, robotisation of production and logistical processes) will be able to take advantage of an additional deduction from 15% to 55% of the expenses for these investments from tax depreciation charges. The amount of the deduction depends on the ratio of the new investments compared to the average of the previous three tax periods (at least 700%) as well as on the amount of the new investments (minimum EUR1 million). To apply the deduction, no approval of competent authorities is necessary, it is sufficient to meet the conditions prescribed by law.

c. Public tax reliability index

Perhaps the most discussed recent change is the introduction of the public Tax Reliability Index to be published on the website of the Slovak Tax Directorate until 31 January 2023. The tax administration has divided taxpayers into four categories: very reliable, reliable, unreliable or unclassified. Depending on the classification, highly reliable entities have new benefits, while disadvantages exist for unreliable entities. As for the most important new benefits, the fees for binding rulings as well as advance pricing agreement ("APA") procedures have been reduced to half the standard amount. Specifically, this means that a very reliable entity will pay EUR5,000 instead of EUR10,000 for a unilateral APA request. In the case of a bilateral APA, the fee for very reliable entities will be EUR15,000 instead of EUR30,000.

d. Legislative changes resulting from transposition of EU directives

As a member state of the European Union ("EU"), Slovakia is obliged to transpose EU directives into its national law within the prescribed deadlines. These obligations are being met and all the EU directives in the field of taxation aimed at e.g. the common system of the VAT, anti-avoidance practices, EU Council Directive 2018/882/EU ("DAC 6") legislation, etc. are being transposed as scheduled, including the upcoming Unshell Directive.

3. SHARE ACQUISITION

a. General Comments

The acquisition of a share in a company is a common and standard purchase transaction in Slovakia. The buyer becomes co-owner of the company and, depending on its share and voting rights, may participate in decision-making. The acquisition may be conducted also via merger of companies.

From the tax point of view no special transfer tax is applied. There is no step up for the buyer in relation to the acquired assets. The buyer also inherits all tax liabilities including undisclosed ones.

Most M&A transactions in Slovakia are private share deals, when shares in a corporation (limited liability company or a joint-stock company) are acquired. From a legal point of view, these transactions are governed by the Commercial Code and in case of joint-stock companies, also by the Securities Act. Be aware that tax consequences of a deal will be different for the sale of shares in a corporation and the sale of a partnership interest.

Generally, the income from the sale of shares is taxable under the Slovak Income Tax Act. Depending on whether the seller is an individual or a legal entity, such income is subject either to personal or corporate income tax.

i Sale by an individual

If the seller is an individual, the income falls into the category Other Income (for the relevant tax rates see Chapter 1 above) and a tax exemption of EUR500 per year applies.

Expenses incurred in order to generate the income from the sale of shares may be deducted from the tax base. However, expenses may be deducted only up to the amount of the income received, e.g. losses from the sale of shares may not be claimed for tax purposes against other types of income.

Subject to meeting specific conditions, the income from the sale of shares may be exempt from taxation. Accordingly, the income from the sale of shares which were acquired before 2004 and held for the period of at least five years is exempt from tax.

ii Sale by a legal entity

With respect to legal entities, on one hand a loss generated by the sale of shares is generally non-deductible, with certain exceptions.

On the other hand, capital gains exemption may apply. The income from the sale of shares is tax exempt, if the minimum holding period of 24 calendar months since the acquisition of the direct share in the registered/share capital of at least 10 % has been met (subject to meeting also several other conditions including substance criteria.)

Please note that under certain circumstances, Slovakia may claim its taxing rights even in a share deal involving two non-resident entities, in particular when the seller is a company owning real estate located in Slovakia and the value of the real estate exceeds 50 % of the equity of the company. The income from the sale of real estate located in Slovakia is taxable in Slovakia unless an applicable tax treaty provides otherwise.

b. Tax Attributes

The tax losses of the target may be carried forward after a share deal under the general conditions for tax losses carried forward. There are no restrictions in the tax loss carried forward rules relating to a change of shareholders of a company. Generally, provided the only purpose of the restructuring was not to gain a tax advantage, a legal successor may carry forward tax losses reported by the target.

c. Tax Grouping

In Slovakia, the concept of a tax grouping for CIT purposes has not been approved yet. In general, each corporate entity is regarded as a separate entity for income tax purposes. Thus, parent corporations and subsidiaries are taxed separately. Resident parent corporations and resident subsidiaries may not elect for taxation as a fiscal unity. Any agreements in this regard are not valid for tax purposes. On the other hand, there are concepts including unlimited partnership that enable tax consolidation.

Currently, there are discussions and plans on the government level regarding the introduction of group taxation for income tax purposes, similar to the one in place for VAT purposes.

d. Tax Free Reorganisations

The EU Parent-Subsidiary Directive and EU Merger Directive, which have been transposed into the Slovak national law, apply.

Under the Slovak Income Tax Act ("ITA"), taxpayers are not given a choice as to whether to perform selected types of reorganisation, for tax purposes, at historical cost or at fair value. The fair value takes precedence (since January 2018) and special exemption applies for cross border situations only and when the state of acquirer (another Member State or EEA) recognises the historical value and additional conditions are met.

Certain issues may arise due to the fact that the Slovak ITA is heavily driven by the Slovak GAAP and does not reflect the differences between national legislation.

To summarise, there is the potential to structure a tax free reorganisation; however, individual in-depth legal analysis is strongly recommended. Under certain circumstances hidden reserves might be taxed (i.e. subject to withholding tax) or exit tax might apply.

e. Purchase Agreement

A share deal is carried out on the basis of a Share Purchase Agreement (in a limited liability company) or by purchasing shares under the Securities Act (in the case of a joint stock company). These contracts transfer the ownership of the shares or business interest in the target company to the investor. The contracting party in this case is not the company, but the individual shareholders of the target company. It is therefore up to the shareholders whether they are willing to sell their shareholding. After the share-deal transaction, the assets (property) of the target company will still belong to the target company.

In a share deal, the purchaser takes over the target together with all the liabilities and contingent liabilities. Therefore, it is advisable that the purchaser requires more extensive indemnities and warranties than in an asset deal.

From a tax perspective, it is recommended that warranties and indemnities cover the period of statute of limitation in tax law in Slovakia (five years for domestic transactions and 10 years for international transactions). The standard tax or/and legal Due Diligence covers a period of three to five years.

Moreover, a valuation for tax purposes may be recommendable, to support evidence that the purchase price is at arm's length, especially if related parties are involved.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no special transfer taxes on share transfers in Slovakia. There is no special real estate transfer tax. Notary and registration fees (obligatory registration of changes in the Commercial Register) apply, however, their amount is not significant.

No VAT is applicable on a share deal.

g. Share Purchase Advantages

The corporate identity of the target remains untouched.

All the existing contracts of the target (e.g. with suppliers, customers) remain valid. Thus, it is not necessary to conclude new contracts and try to get all the approvals.

A share deal is a suitable transaction form e.g. if the goal of the acquisition is to gain new customers (as the contracts with the existing customers remain valid and do not have to be negotiated anew).

If the target is a going concern and is commercially viable, this form of acquisition is administratively simpler than an asset deal.

From tax point of view, tax losses may be carried forward (for details, see above).

h. Share Purchase Disadvantages

The need of detailed due diligence to identify all the risks, including potential tax liabilities.

The purchaser will take over the commercial risk. Once the purchaser acquires a share in the target, it also acquires the liabilities of the target.

4. ASSET ACQUISITION

a. General Comments

Within an asset deal transaction, the assets of a company are transferred. From legal point of view, this transfer can be implemented through the purchase of individual assets (the buyer only picks up the assets they wish to purchase) or through the purchase of the entire business or its organisational part (i.e. as the purchase of a "going concern"). From tax point of view, an asset deal guarantees a step up in asset value. The purchase price of the individual assets determines the tax base for depreciation purposes whereas purchase price of a going concern has more complex tax consequences, for details see below.

i Purchase of individual assets

The buyer can determine which assets they want to buy and which they do not. Thus, the buyer can choose only those that are interesting for them, which he wants or can use in his business activities. The buyer can determine what, if any, liabilities he will assume in the transaction.

The buyer may decide to acquire only certain, suitable for them, employees of the company. In order to transfer a particular asset, it is necessary to identify each single asset being purchased and to prepare transfer documents relating to each of them.

This type of transaction is suitable if the investor is only interested in acquiring certain assets, such as machinery, real estate, etc.

The purchase of individual assets is also appropriate in the case of a poor economic situation of the target company, as the investor can choose which and whether to take on any liabilities at all. It is also appropriate if the company is involved in serious legal proceedings or has weak and insufficient documentation.

ii Purchase of the going concern

The purchase of the entire business (or its part) is conducted based on a Contract for the sale of business. In a contract for the sale of business, the seller undertakes to transfer to the buyer the ownership right to assets, other rights and other values that serve the operation of the business. All rights and obligations related to the business, i.e. the business as a whole, are thus transferred. It is thus a legally simplified transfer, where the individual assets are not transferred by separate contracts but by one comprehensive contract. The parties cannot agree that certain rights and obligations are not transferred to the buyer. All rights and obligations arising from the employment relationship with the company's employees are likewise transferred to the buyer. The purchaser cannot therefore choose which employees he wishes to retain and which he does not.

The contract for the sale of business requires the approval of the general meeting. Thus, the need for shareholder approval makes the transaction more time consuming.

b. Purchase Price Allocation

An important basis for the determination of the purchase price is the due diligence. Once determined, it can be apportioned between individual assets that are being transferred or set for assets subject to a transfer as a going concern. The difference between the purchase price and the valuation of assets in the books is defined as goodwill (positive difference) or badwill (negative difference), special documentation for tax purposes is recommended. From a tax perspective, badwill or goodwill is included in the tax base for the duration of a maximum seven tax periods.

If the transaction is taking place between related parties, in most cases an expert's opinion is used to determine the purchase price. The expert's opinion evaluates the transferred assets at market value (fair value) and serves also as a confirmation that the price for the transferred assets corresponds to the arm's length principle. The acquirer of the assets or of the company records the assets in its books at fair value, including the liabilities and receivables.

c. Tax Attributes

Tax losses remain with the seller only in the case of an asset deal and therefore cannot be utilised by the buyer.

Please note that under certain circumstances, Slovakia may claim its taxing rights even in an asset deal involving two non-resident entities, in particular when the seller transfers real estate located in Slovakia.

d. Tax Free Reorganisations

Generally, the sale of assets is a taxable transaction and the income is added to the tax base of the seller. Deductibility of losses may be restricted for certain assets.

e. Purchase Agreement

The contract for the sale of business is governed by the Slovak Commercial Code. Under this contract, the seller undertakes to transfer to the buyer the ownership right to assets, other rights and other values that serve the operation of the business, and the buyer undertakes to assume the seller's obligations related to the business and to pay the purchase price. In the case of the sale of a business, the tax liabilities are transferred to the purchaser. However, under certain circumstances, the seller may also be required to cover these liabilities.

The Commercial Code requires that the contract for the sale of business is concluded in written form and the signatures of the seller and the buyer must be certified. Another essential feature of a contract for the sale of business is the determination of the purchase price. The purchase price is determined on the basis of the totality of the assets, rights and liabilities listed in the accounts of the business being sold and on the basis of the other values specified in the contract in so far as they are not included in the accounts. Thus, if the contract were gratuitous, it would not meet the characteristics of a contract for the sale of business. The contract has to be approved by the general meeting.

f. Depreciation and Amortisation

Generally, the purchase price of assets is considered to be the acquisition value for tax depreciation purposes, The acquired assets may be depreciated for tax purposes up to the value of the acquisition price, except for certain assets which may not be depreciated, e.g. land.

Goodwill under b. above is depreciated for tax purposes for a maximum of up to 7 years, at a minimum of 1/7th each year.

g. Transfer Taxes, VAT

There are no special transfer taxes on asset transfers in Slovakia nor are there special real estate transfer taxes.

The VAT treatment of an asset deal depends on whether only individual assets or the entire business (or its organisational part) are transferred. If individual (selected) assets are transferred, the transaction is subject to VAT. The applicable VAT rate is 20%.

If the business is transferred as a whole, the transaction is out of scope of VAT, given certain conditions are met.

A taxpayer who has acquired individual assets (with VAT) can usually claim back the VAT paid on their acquisition if he uses the assets to provide taxable supplies/services.

If a taxpayer not registered for VAT acquired a business or part of a business from a VAT registered taxpayer, the buyer automatically becomes a VAT registered entity from the day of the acquisition.

h. Asset Purchase Advantages

In the case of an asset purchase the step up in the asset value is available for tax depreciation purposes which is the main advantage compared to a share acquisition. Further advantages of an asset purchase transaction depend on whether individual assets or an entire business are transferred.

Purchase of individual assets, advantages:

- Both with assets and liabilities, the buyer may choose which assets/liabilities it wants to acquire and does not have to buy all of them;
- Purchase price of individual assets determines the tax base; and
- Simple tax treatment.

Purchase of a business, advantages:

- All the assets are transferred by one comprehensive contract which can be administratively simpler.

i. Asset Purchase Disadvantages

In the case of an asset deal, tax losses of the target usually cannot be transferred which can be a major tax disadvantage as compared to a share acquisition. Further disadvantages of an asset purchase transaction depend on whether individual assets or an entire business are transferred.

Purchase of individual assets, disadvantages:

- It is necessary to identify each single asset being purchased and to prepare transfer documents relating to each of them, which may be administratively more challenging.

Purchase of business, disadvantages:

- Shareholder approval is needed which might be more time-consuming;
- All assets and liabilities including tax issues are transferred, which may be associated with a higher risk; and
- There is a more complex tax treatment.

5. ACQUISITION VEHICLES

a. General Comments

Slovak law does not specifically recognise acquisition vehicles either for legal or tax purposes. Debt push down structures used to be frequently used in Slovakia, however, due to the rulings issued by the Slovak tax authority in recent years aimed at restricting interest deductions related to share acquisition loans, an individual analysis including appropriate business reasoning is recommended.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicle is the limited liability company (SK “s.r.o.”) or the joint stock company (SK “a.s.”). The reason for choosing this legal form is the possibility to benefit from the participation exemption from both taxation of profit distribution and capital gains.

c. Foreign Acquisition Vehicle

The most common jurisdiction in Slovakia for a foreign holding company is currently the Netherlands. Foreign holding structures enjoy DTT benefits in front of the Slovak tax authority only in case of sufficient business substance.

d. Partnerships and joint ventures

General partnerships in Slovakia (v.o.s.) are transparent, therefore the income is taxed at the level of the partners of the partnership. Withholding taxes may apply. A purchase or creation of a Slovak partnership triggers a Slovak permanent establishment for its foreign partners. Tax advantages may include benefits of a tax group.

Depending on individual preferences, a limited partnership may be a good acquisition vehicle as well.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

In Slovakia, the acquisition of a target may be funded either by:

(i) equity financing that includes an increase in the registered capital as well as a partially hybrid increase in the so called “other capital funds”;

(ii) debt financing (e.g. through a loan granted directly by the shareholder or by another related party); or

(iii) a combination of debt and equity financing.

For the tax treatment please refer to point 6.c. below.

b. Foreign Acquirer

The most common jurisdiction for a holding entity in Slovakia is the Netherlands. One of the benefits is a favourable DTT in respect of WHT, provided the holding company has a sufficient business substance. For the tax treatment please refer to point 6.c. below as well as the withholding tax rates applicable under relevant treaties which are set out in Appendix I.

c. Debt

i Limitations on Interest Deductions

Generally, both the debt/equity ratio and the interest rate should be in line with the credit facility market. In addition, when a loan or credit is granted by a related party, the debtor shall include in tax expenses interest and related costs on borrowings up to a maximum of 25 % of EBITDA. Any amounts exceeding this threshold are non-deductible for tax purposes. Related entities from the financial sector are exempt.

Obligatory transfer pricing documentation is applicable (for details see section 10 below).

Interest deductibility from a debt push down transaction can be subject to restriction (see also section 5 above).

ii Related Party Debt

See i. above.

iii Debt Pushdown

Interest from a debt push down transaction can be restricted in its deductibility, depending on the business reasoning available (see also section 5 above). The interest may be treated as tax deductible no sooner than in the tax period in which this share is sold.

d. Hybrid Instruments

In Slovakia there are no typical hybrid instruments available for tax purposes. The EU's ATAD provisions are implemented in the Slovak Income Tax Act in addition to Slovak GAAR.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Contractual provisions that lead to obtaining additional compensation in the future should be tailored to the specific case, both the legal drafting and accounting approach including moment of recognition should be reviewed from a tax perspective. The Slovak tax legislation does not provide any specific regulation in respect of earn-out instruments, therefore the situation depends on the facts and circumstances of the case. Depending on the circumstances, earn-outs can be either fully expensed or become part of the purchase price and expensed at the moment of sale.

7. DIVESTITURES

a. Tax Free

i Domestic

Since 1 January 2018, domestic participation exemption rules for capital gains from the sale of shares and business shares have been in force in Slovakia. They are applicable to Slovak resident companies and permanent establishments of non-residents, provided the following conditions are met:

- Minimum holding of 10% of the registered capital,
- Minimum holding period of 24 months (consecutive),
- Passing the substance test including economic activities in Slovakia, significant functions and risks related to the investment, relevant personal and material equipment.

The domestic participation exemption is available only to legal entities.

ii International

In addition to the above, Slovakia fully respects participation exemption for income from subsidiaries located in the EU under the Parent Subsidiary Directive.

b. Taxable

General income tax rates apply. The general corporate income tax rate in Slovakia is 21%, irrespective of the amount of profits generated by the company (i.e. 21 % flat tax).

The personal income tax ("PIT") rates are slightly progressive, 19% or 25%, with the main threshold being below TEUR 40 (for 2021 EUR 37,982 and for 2022 EUR 38,553). The income of individuals including capital gains exceeding this amount is taxed at 25%.

c. Cross Border

General income tax rates (CIT 21%, PIT 19% and 25%) and bilateral double tax treaties apply.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Slovak tax residents declare their worldwide income in Slovakia. The taxation of worldwide income follows the provisions of the Slovak Income Tax Act and of the applicable Double Tax Treaty ("DTT"), which takes precedence over Slovak law. Depending on the provisions of the applicable DTT, a credit or exemption method is applicable to avoid the double taxation of foreign-sourced income.

Slovak non-residents declare and tax only their Slovak sourced income in Slovakia, such as income from the sale of real estate located in Slovakia, rental income from the real estate located in Slovakia, income from the sale of shares in a company with at least 50% of assets being real estate located in Slovakia, income attributable to a permanent establishment ("PE") located in Slovakia. The taxation follows the provisions of the Slovak Income Tax Act and of the applicable Double Tax Treaty.

b. CFC Regime

In Slovakia, controlled foreign company ("CFC") rules are applicable both for legal entities and individuals.

CFC rules for legal entities have been applicable since 2019 in line with the ATAD 1 EU Directive. They apply to legal entities resident in Slovakia owning directly or indirectly more than 50% of shares / voting rights / profit rights or untaxed PEs, if their actual corporate income tax paid is less than the difference between the corporate income tax they would have paid in the taxpayer's Member State and the actual corporate income tax paid by the company or permanent establishment.

CFC rules for individuals have been applicable since 2022. Compared to CFC rules for legal entities, CFC rules for individuals are stricter. Participation of 10% is sufficient to be classified as a CFC. Tax rate amounts to 25% or 35% for non-cooperative countries. Income up to EUR100,000 is exempt.

c. Foreign Branches and Partnerships

Foreign companies may set up branch offices in Slovakia. A branch office is not a separate legal entity and is generally considered to be subject to Slovak-sourced income only. Such an income attributable to the branch office is subject to the corporate income tax ("CIT") in Slovakia. The arm's length principle is applicable.

Partnerships are transparent entities, and their income is taxed at the level of partners. In order to prevent double non-taxation, Slovakia introduced rules for hybrid and transparent entities in 2020, which have been applicable since 2022 (see also section 12) and are in line with ATAD.

d. Cash Repatriation

Cash repatriation is generally not restricted, whether in form of dividends, royalties, interest payments, management fees and service fees.

Withholding tax applies. The general withholding tax rate applicable to foreign source income is 35% (undisclosed beneficial owner) or 19% (beneficial owner disclosed and residing in a country on the so called "white list"). This rate is automatically reduced to a rate agreed by the double tax treaty (see section 16).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Real estate transfer tax ("RETT") was abolished in Slovakia in 2005.

The Slovak Income Tax Act includes a domestic real estate clause for CIT purposes. Under these provisions, income from the transfer of shares in a non-resident company is subject to the Slovak CIT if the company owns immovable property situated in Slovakia, the book value of which, based on the financial statements for the accounting period preceding the transfer, is more than 50% of the value of the company's equity.

b. CbC and Other Reporting Regimes

Country-by-country ("CbC") reporting regulations have been applicable in Slovakia since 2017 in line with EU rules. Entities that are part of a group of multinational enterprises as defined by law (MNEs) and whose consolidated revenues exceed EUR750 million are required to file either a CbC report in Slovakia or a notification with the Slovak tax authorities. The deadline for filing the notification is the same as the deadline for filing the Slovak corporate income tax return for the relevant tax period. A fine of up to EUR3,000 may be imposed for the failure to file the notification (even repeatedly).

Further, Slovakia has transposed the Council Directive 2018/882/EU (DAC 6) into its national law and the therefrom resulting reporting duties have been applicable since 2020. On the other hand, strong professional client privilege rules were implemented along.

10. TRANSFER PRICING

Related parties that carry out controlled transactions generally have an obligation to maintain transfer pricing documentation. Depending on the annual value of transactions conducted with related parties, full-scope, basic or shortened transfer pricing documentation is obligatory. All methods specified in the OECD Transfer Pricing Guidelines are applicable and equal in Slovakia. The transfer pricing documentation is to be submitted upon the request of the tax administrator within 15 days, therefore sustainable upfront preparation is strongly recommended.

The Slovak tax administration has been focusing on transfer pricing audits in the last years. Therefore, the tax risk assessment for this area should be considered medium to high depending on individual circumstances of the target company. Tax due diligence should focus heavily on this income tax area.

Penalties for incorrect settings of transfer prices amount to 20% per annum and can be imposed for the period of 10 previous years.

More details can be obtained in a special TP Guide upon your request.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The most common transparent entities in Slovakia are the general partnership (*verejná obchodná spoločnosť ("v.o.s.")*) and the limited partnership (*komanditná spoločnosť ("k.s.")*), the income of which is taxed at the level of partners (for more details on general partnership and limited partnership see section 1.a.). No other hybrid entities are available.

b. Use of Hybrid Instruments

ATAD 2 has been transposed into Slovak national law with the aim to avoid hybrid mismatches which lead to double non-taxation of income. Accordingly, the state in which the entity is established and considered to be transparent, should treat the entity as opaque if the entity is treated so by its foreign founder.

The legislation on reverse hybrid entities is based on the principle that the income of non-resident majority partners (at least 50% in registered capital, voting rights or profit) is taxed at the level of this transparent entity applying the corporate income tax rate of 21%, if it cannot be taxed at the level of a permanent establishment in Slovakia or if it is not taxed at the level of this non-resident partner in its residency state. To put it simply, if there is no proof of taxation of this income abroad or at the level of the permanent establishment in Slovakia, this income will be taxed at the level of v.o.s. or k.s. in Slovakia. In such way a double non-taxation of income is avoided.

c. Principal/Limited Risk Distribution or Similar Structures

On one hand, Slovakia follows the OECD methodology including concepts such as "principal / limited risk distributor" or "licensed / contractual manufacturer", on the other hand, the tax administrator may be opposed to accept structures that undermine fiscal interests of Slovakia, which is a typical capital importing country. Cost plus method or TNMM are commonly accepted by the Slovak tax authority, however, both the margins and basis can be subject to an in-depth analysis.

The Slovak tax administration has been focusing on transfer pricing audits in recent years. Therefore, the related tax risk assessment should be considered medium to high depending on individual circumstances of the target. Tax due diligence should focus heavily on this income tax area.

d. Intellectual Property

There is no special patent box regime in Slovakia or any other special tax regimes related to intellectual property. On the other hand, Slovakia has very generous tax regime applicable to the deduction of research and development costs as well as to the deduction of investments into Industry 4.0 technologies (for more details see part e. below).

e. Special Tax Regimes

Super deduction of Research and Development Costs

Given the relatively low administrative burden, the “super deduction” of R&D costs is a favourite tool to legitimately reduce the tax base. Since 2022, it is possible to deduct additionally as much as 100% of R&D costs. The crucial criterion is the element of novelty, the presence of which is, under the OECD Frascati Manual, the basic criterion for differentiating R&D from similar activities.

Super deduction of Investment Costs

This new tool of legitimate corporate income tax reduction can be applied already for the 2022 tax period. Taxpayers planning to invest in new progressive technologies (Industry 4.0 - investments in connection with digitalization, automation of production and logistics processes) will be able to take advantage of an additional deduction of 15% to 55% of the expenses for these investments from tax depreciation charges, depending on the amount (minimum EUR1 million) and comparison to previous years.

12. OECD BEPS CONSIDERATIONS

Slovakia is a member state of the OECD and supports its BEPS initiatives and measures. A number of changes to the Slovak legal regulations have been made as a result of the BEPS initiative, such as transposition of Anti-Tax Avoidance Directive (“ATAD 2”) (neutralising the effects of hybrid mismatch arrangements), introduction of controlled foreign company rules for both legal entities and individuals, thin capitalization rules, stricter definition of a permanent establishment (PE) (incl. introduction of a “digital PE”), taxation of profits from virtual currencies, introduction of the Act on the rules for tax dispute resolution (transposition of the Council Directive (EU) 2017/1852), Council Directive 2018/882/EU (DAC 6), country-by-country reporting, exit taxation.

Ratification of the Multilateral Instrument (“MLI”) was accepted as well, step by step. Slovakia updates its network of bilateral Double Tax Treaties (“DTTs”) and introduces changes resulting from MLI. So far, 38 of Slovakia’s 70 DTTs have been modified.

13. ACCOUNTING CONSIDERATIONS

In general, transactions should be accounted for based on Slovak GAAP, IFRS rules are applicable to selected entities (based on size and industry sector). For tax purposes, Slovak GAAP take precedence. From the accounting point of view, the assets transferred within the following types of reorganisation are to be valued as follows:

(i) Purchase of business or its organisational part: valuation at fair value.

(ii) Contribution-in-kind: valuation at fair value, at the value allocated as the contribution of a shareholder, or at historical cost.

(iii) Merger or de-merger: valuation at fair value or historical cost.

Since 2018, resident taxpayers shall apply the historical cost only in the case of cross-border contributions-in-kind/mergers/de-mergers carried out to the EU or EEA, provided that the assets which are the subject of the transaction remain part of the permanent establishment in Slovakia, and the legislation of the other state allows the successor to transfer the assets at historical cost or gives the option to choose and the successor chooses the historical cost.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

A profit distribution (dividend) abroad is generally subject to the withholding tax at 19% / 35% unless exempt by the Parent-Subsidiary Directive or the respective DTT specifies otherwise. If so, the reduced DTT rate applies automatically.

b. Application of Regional Rules

Being a Member State of the European Union ("EU"), Slovakia is obliged to transpose all the EU directives into its national law. Thus, the PSD, the Interest and Royalty Directive, the Merger Directive, Anti-Tax Avoidance Directives etc. have been transposed and are applicable also in Slovakia (see also section 12 above).

c. Tax Rulings and Clearances

Basically, there are two types of rulings, unbinding or binding.

A simple request can be addressed free of charge and the reply of the tax administrator is not binding, it is to be perceived as a general guidance.

There is also the possibility to file a request for a binding ruling. Before 2022, the fees for binding rulings were rather high (up to EUR 30,000), depending on the value of the relevant transactions of the taxpayer relating to the request. Consequently, there were only 1 or 2 requests per year filed. Beginning with 2022, a fixed fee of EUR 1,000 was introduced and the number of requests went up rapidly. Moreover, the fee for taxpayers classified as "very reliable" within the tax reliability index has dropped to EUR500. The areas to which a binding ruling can refer are specifically regulated (especially purchase or sale of a business at fair value, adjustments of the tax base by specific items, tax deductibility of expenses and certain VAT issues). The legally prescribed deadline for the issuance of a binding ruling is 6 months. However, in many cases the tax administrator issues the binding ruling within 60 days after the receipt of the complete request.

In the field of transfer pricing, it is possible to apply for a unilateral or bilateral advance pricing agreement, including a roll-back.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

More detailed references can be obtained on this web page of the Slovak Ministry of Finance as the application can be complex.

https://www.mfsr.sk/en/taxes-customs-accounting/direct-taxes/income-tax/international-taxation/double-tax-treaties/

Jurisdiction	Dividends %	Interest %	Royalties %
Armenia	5 / 10	10	5
Australia	15	10	10
Austria	10	0	5 / 0
Belarus	10 / 15	10	5 / 10
Belgium	5 / 15	10	5
Bosnia and Herzegovina	5 / 15	0	10
Brazil	15	10 / 15	25 / 15
Bulgaria	10	10	10
Canada	5 / 15	10	10 / 0
China	10	10	10
Croatia	5 / 10	10	10
Cyprus	10	10	5 / 0
Czech Republic	5 / 15	0	10
Denmark	15	0	5 / 0
Estonia	10	10	10
Ethiopia	5 / 10	5	5
Finland	5 / 15	0	0 / 1 / 5 / 10
France	10	0	0 / 5
Georgia	0	5	5
Germany	5 / 15	0	0 / 5
Greece	19	10	10 / 0
Hungary	5 / 15	0	10

SLOVAKIA

RETURN TO CONTENTS PAGE

Jurisdiction	Dividends %	Interest %	Royalties %
Iceland	5 / 10	0	10
India	15 / 25	15	30
Indonesia	10	10	15 / 10
Iran	5	5	7.5
Ireland	0 / 10	0	0 / 10
Israel	5 / 10	2 / 5/ 10	5
Italy	15	0	0 / 5
Japan	10 / 15	10	0 / 10
Kazakhstan	10 / 15	10	10
Korea, Republic of	5 / 10	10	0 / 10
Kuwait	0	10	10
Latvia	10	10	10
Libya	0	10	5
Lithuania	10	10	10
Luxembourg	5 / 15	0	0 / 10
Malaysia	0 / 5	10	10
Malta	5	0	5
Mexico	0	10	10
Moldova	5 / 15	10	10
Montenegro	5 / 15	10	10
Netherlands	0 / 10	0	5
Nigeria	12.5 / 15	15	10
North Macedonia	5	10	10
Norway	5 / 15	0	5 / 0
Oman	0	10	10
Poland	0 / 5	5	5
Portugal	10 / 15	10	10
Romania	10	10	10 / 15
Russia	10	0	10

SLOVAKIA

RETURN TO CONTENTS PAGE

Jurisdiction	Dividends %	Interest %	Royalties %
Serbia	5 / 15	10	10
Singapore	5 / 10	0	10
Slovenia	5 / 15	10	10
South Africa	5 / 15	0	10
Spain	5 / 15	0	0 / 5
Sri Lanka	15	10	0 / 10
Sweden	0 / 10	0	0 / 5
Switzerland	0 / 15	5	0 / 10
Syria	5	10	12
Taiwan	10	10	5 / 10
Tunisia	10 / 15	12	5 / 15
Turkey	5 / 10	10	10
Turkmenistan	10	10	10
UAE	0	10	10
United Kingdom	5 / 15	0	0 / 10
Ukraine	10	10	10
United States	5 / 15	0	0 / 10
Uzbekistan	10	10	10
Vietnam	5 / 10	10	5 / 10 / 15

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

From a tax perspective, it is recommended that warranties and indemnities cover the period of statute of limitation in tax law in Slovakia (five years for domestic transactions and 10 years for international transactions). The standard tax or/and legal Due Diligence covers a period of three to five years.

No.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Financial Statements: BS, P&L, Notes for the reviewed periods.
2	Tax Due Diligence	General	Tax registration documents.
3	Tax Due Diligence	General	Information/documents on previous/pending tax audits and their results.
4	Tax Due Diligence	General	Binding rulings issued by tax authorities / if any.
5	Tax Due Diligence	General	Information on target company business activities and business contracts in Slovakia.
6	Tax Due Diligence	General	Information on target company business activities abroad, permanent establishments abroad.
7	Tax Due Diligence	General	Information on granted tax exemptions and subsidies.
8	Tax Due Diligence	General	Information on unusual transactions.
9	Tax Due Diligence	General	Information on fraudulent behaviour, court or tax disputes.
10	Tax Due Diligence	General	Information on persons responsible for bookkeeping.
11	Tax Due Diligence	General	Organisation chart of the company and responsibilities of the departments/persons.
12	Tax Due Diligence	General	Overview of profits/losses for the reviewed periods.
13	Tax Due Diligence	CIT + Accountancy	CIT returns for the reviewed periods, amended CIT returns if any.
14	Tax Due Diligence	CIT + Accountancy	CIT cover letter to the CIT calculation (relevant if calculated by an external advisor),
15	Tax Due Diligence	CIT + Accountancy	Detailed CIT calculation for the reviewed periods,
16	Tax Due Diligence	CIT + Accountancy	Information on tax losses to be carried forward,
17	Tax Due Diligence	CIT + Accountancy	Information on transactions with related parties.
18	Tax Due Diligence	CIT + Accountancy	Transfer pricing documentation.
19	Tax Due Diligence	CIT + Accountancy	Information on cross-border payments (royalties, interest, services etc.).
20	Tax Due Diligence	CIT + Accountancy	Information on R&D activities, APAs, MAPs.
21	Tax Due Diligence	VAT	VAT returns for the reviewed periods, amended VAT returns if any.
22	Tax Due Diligence	VAT	VAT registration documents.
23	Tax Due Diligence	VAT	Description of transactions performed by the company from VAT perspective, types of supplies/acquisitions, sample invoices.

SLOVAKIA

RETURN TO CONTENTS PAGE

No.	Category	Sub-Category	Description of Request
24	Tax Due Diligence	VAT	EC Sales Lists for the reviewed periods.
25	Tax Due Diligence	VAT	Inland recapitulation statements for the reviewed periods.
26	Tax Due Diligence	VAT	VAT records for selected months.
27	Tax Due Diligence	VAT	Information on excessive VAT deductions refused.
28	Tax Due Diligence	VAT	Information of VAT audits and their results.
29	Tax Due Diligence	VAT	Information on eventual VAT underpayments.
30	Tax Due Diligence	PIT	Information on employees and types of employment contracts.
31	Tax Due Diligence	PIT	Information on taxation of employee benefits in kind.
32	Tax Due Diligence	PIT	Information on expats/impats – employee secondments.
33	Tax Due Diligence	PIT	Information on payroll accounting.
34	Tax Due Diligence	Other tax types	Depending on the particular tax type.

SLOVAKIA

RETURN TO CONTENTS PAGE

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