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In this special edition of our Newsflash we focus on selected legislation changes impacting financial services sector.

I. Amendment to the VAT Act

Fund administration services VAT exempt irrespective of the entity supplying the services

According to the VAT Act amendment taking effect on 1 January 2016 fund administration services related to administration of mutual funds, pension funds or supplementary pension funds will be exempt from VAT regardless of the license of the entity supplying the services.

The exemption of these services has been so far conditioned by the VAT Act by the type of the entity which had to be a licensed company according to special regulations, e.g. an asset management company, a pension administration company, a supplementary pension company.

By this amendment, the national legislation was aligned with the case-law of the Court of Justice of the European Union (CJEU). According to this case-law, treating entities differently if they perform the same taxable supplies is contradictory to the principle of tax neutrality (cf. e.g. C-169/04 Abbey National plc.).

Who should be interested?

Asset management companies, supplementary pension companies, pension administration companies and their service partners – any other entities providing services in the area of fund administration.

II. Amendment to the Income Tax Act (ITA)

1. Valuation of financial assets for tax purposes

The ITA amendment taking effect on 1 January 2016 (the "ITA amendment") introduces special rules for valuation of financial assets for tax purposes. Effective from 1 January 2016 the ITA explicitly defines what should be regarded as a tax deductible expense upon sale of financial assets taking into account various ways how such assets were acquired, e.g. acquisition via purchase, free-of-charge transfer, or via a business combination using a particular tax regime. The changes in law may affect structuring of certain transactions such as contributions in kind or mergers.

According to the explanatory memorandum the purpose of the ITA amendment was inter alia to increase legal certainty of taxpayers and sustain tax justice. When applying certain of the amended law provisions, a question may arise as to whether (i) the new rules are merely a way of rendering the so-far-applied treatment of divestment transactions more precise for purposes of increasing legal certainty or (ii) this is a change in the so-far-applied tax valuation of financial assets while a different interpretation is still permissible and defendable for transactions carried out by 31 December 2015.

Who should be interested?

Business entities disposing their financial assets: securities and participation interests.

2. Support of the capital market

Effective from 1 January 2016 the income earned by individuals from the sale of securities traded on a regulated market will be exempt from income tax if the holding period is more than one year. This is unless the taxpayer included the securities among his business assets.

The ITA amendment introduces a tax exemption of income derived by individuals from their long-term investment savings under specified conditions.

Who should be interested?

Individuals interested in investing in the capital market and in long-term savings and financial institutions providing certain investment services.

3. Insurance

Technical reserves in connection with the new Act on Insurance

The ITA amendment deals with the area of creation of technical reserves of insurance companies considered as tax deductible expenses in connection with the new Act on Insurance ("Act on Insurance") which takes effect on 1 January 2016. This act modifies inter alia the way of declaring and computing technical reserves in insurance companies on the basis of Solvency II.

For tax purposes, technical reserves of all insurance companies (i.e. including those subject to Solvency II regime) will be considered as technical reserves laid down in Art. 171 of the Act on Insurance computed based on the methods according to Art. 172-177 of the Act on Insurance if recorded as expenses of the insurance company. Their amount may not exceed the volume of liabilities computed using the methods above. Creation of technical reserves for insurance claims from insured events incurred but not reported in the current accounting period will remain to be treated as non-deductible.

Transitional law provision to balances of tax deductible reserves for the settlement of liabilities vis-à-vis SKP

Technical reserves for the settlement of liabilities vis-à-vis Slovak Insurance Bureau (SKP) will no longer be considered as technical reserves according to the new Act on Insurance effective from 1 January 2016.

Starting from 1 January 2016 only technical reserves created in the manner and to the extent according to Art. 171-177 of the Act on Insurance will be considered as tax deductible.

The balance of technical reserves for the settlement of liabilities vis-à-vis SKP the creation of which was treated as tax deductible until 31 December 2015 shall be included into the tax base of the insurance company on a straight-line basis over two consecutive tax periods. The ITA amendment foresees a one-off inclusion of this balance into the tax base in certain specified situations.

Who should be interested?

In general all the insurance companies and in particular those providing motor vehicle 3rd party liability insurance.

4. Receivables

On the basis of amended ITA, creditors will be allowed to include expenses on provisions against appurtenances to receivables (i.e. late payment interest, fees and other expenses arising due to the late payment of receivables) and expenses incurred upon write-off of appurtenances to receivables in their tax base. Conditions of tax deductibility include:
(i) the appurtenances were included into taxable income of the creditor;
(ii) elapse of 1 080 days from the due date of receivables to which the appurtenances relate.

Expenses arising upon assignment of receivables will have to be tested for tax deductibility separately for the respective receivables and appurtenances to receivables. The respective new law provisions are already relevant in respect of 2015 tax return preparation.

Who should be interested?

Creditors with delinquent debtors.

III. International law

In October 2015 the European Union and Liechtenstein signed an agreement on the automatic exchange of financial account information aimed at improving international tax compliance. According to the European Commission the agreement represents an important step in ongoing efforts to clamp down on tax fraud and tax evasion. It upgrades a 2004 agreement that ensured that Liechtenstein applied measures equivalent to those in an EU directive on the taxation of savings income in the form of interest payments.

Under the agreement, the EU and Liechtenstein will automatically exchange information on the financial accounts of each other's residents, starting in 2017 for information collected in 2016. The aim is to address situations where a taxpayer seeks to hide capital representing income or assets for which tax has not been paid.

Who should be interested?

Individuals and entities having financial assets with institutions in Liechtenstein.

IV. Case-law of the Court of Justice of the EU

The exchange of traditional currencies for the virtual currency is exempt from VAT (C-264/14 Hedqvist)

The Court of Justice of the European Union (CJEU) decided in the preliminary ruling case C-264/14 Hedqvist, that no VAT is due on the exchange of a "traditional" currency into the digital currency (and vice versa on the exchange of a digital currency into the traditional currency). This means that bitcoins get the same VAT treatment as traditional currencies.

The judgment concerned the case of Mr. David Hedqvist, a Swedish citizen, who has envisaged to provide services consisting of exchange of traditional currencies into the digital currency "bitcoin" and vice versa. The CJEU in its judgment asserted that transactions involving exchange of traditional currencies into digital currency units "bitcoins" (and vice versa) constitute services supplied for consideration within the meaning of the Council Directive on Common System of VAT ("the VAT Directive").

The CJEU also holds the view that those transactions are exempt from VAT under the provision concerning transactions relating to "currency, bank notes and coins used as legal tender". Exclusion of transactions such as those envisaged by Mr Hedqvist from the scope of that provision would deprive the respective provision of part of its effects having regard to the aim of the exemption. The aim of the VAT exemption is to eliminate difficulties connected with determining the taxable amount and the amount of VAT deductible which arise in the context of the taxation of financial transactions.

The VAT Directive provides that the supply of goods and services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT. However, Member States must exempt, inter alia, transactions relating to "currency, bank notes and coins used as legal tender".

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