KempHoogstad
Tax Advice & Solutions

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Dear clients,

Summer is inevitably coming – a time when one thinks more about family and travelling and not taxes.

Nevertheless, the lawmakers want to keep our minds alert. Due to longer discussions in Parliament, the tax package of amendments will become effective from the unusual date of 1 July 2017. There will be a number of changes, especially to VAT, that can influence your business activities or your personal income even for 2017. We have prepared an overview of the changes in our June issue of KempHoogstad Tax News.

Wishing you a peaceful summer.

Bohdana Pražská and the KempHoogstad team

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Interesting interpretative opinions of the GFD

The General Financial Directorate published opinions on the impossibility of the exemption of the transfer of apartment units not located in residential buildings and on the tax regime of individuals operating photovoltaic power stations. Those opinions react to certain discrepancies in wording of acts and the original lawmakers' intention. The important thing is that the tax administration used originally also an approach different than those presented in the new opinions. This can cause certain complications for the affected tax payers.

Approved amendments to tax laws effective from 1 July 2017

The amendments to tax laws that we have informed you about already was published in the Collection of Laws on 16 June and will become effective from 1 July 2017. Most of the changes to value added tax regulations will be effective as of the mentioned date. A majority of the changes to income tax will not be reflected until the 2018 tax period (or the tax period beginning on 1 July 2017 or later if the tax period is a fiscal year), but there will be certain exceptions. It is clear now that some of the changes, especially those to VAT, will create certain ambiguities when applied in real life. The General Financial Directorate is expected to issue information on some of the changes and to provide an interpretation.

We would like to inform you about the effectiveness of some important changes:

Changes to VAT effective from 1 July 2017

(i) *Changes to VAT return obligations at the moment of receiving a payment*

The law will now stipulate that the obligation to pay VAT from a received payment or to claim an exempt supply when receiving a payment can be applied only if the respective goods or service, the tax rate, and the place of supply are sufficiently known as at the day the payment is received. In real life, there will more often be new situations where VAT will not be paid from a received payment. Those can be situations where, for example, the payment relates to several supplies subject to various VAT rates or where such a payment relates to several various supplies and it is not known which supply is covered by the payment.

The change can have an impact from 1 July not only on the provision of various vouchers or pre-paid services but also on other advance payments. The law does not directly stipulate how the respective goods or service should be specified (e.g. as a specific product or just a kind of goods). The way the Financial Authority will interpret the issue be known soon.

(ii) *Financial leasing items as long-term assets for the purpose of VAT*

Financial leasing items used after 30 June 2017 will be considered long-term assets of the lessee for the purpose of VAT, and the claimed VAT deductions will be subject to possible additional adjustments in the event of a change in the use of the asset.

(iii) *Changes related to determining the date of taxable supply*

The specific treatment of the date of taxable supplies regarding recurring supplies and transfer of rights has been revoked. Moreover, the date of long-term taxable supplies that are longer than twelve months is the end of the year.

(iv) *VAT concerning deficits in goods and damages*

A new unequivocal duty arises regarding additional adjustment of claimed VAT depreciation of assets if the assets have been consequently destroyed, lost, or stolen and such an act is not sufficiently proved or confirmed.

(v) *Revocation of the specific VAT treatment within an association*

The act will not govern the VAT regime regarding associations, and the related specific treatment is revoked (e.g. VAT payers and VAT non-payers can now be members of such an association). However, the associates can decide to use the current regime, but only until the end of 2018. The associates must announce earlier termination of the current regime to the tax administrator by the deadline for the tax return for the period in which they used the current regime for the last time. We assume that keeping the current regime will be advantageous until all issues regarding the new practice are clarified.

(vi) *The reverse charge regime for other supplies*

The reverse charge regime will now apply to some specific supplies, such as provision of workers for construction or assembly work, supply of real estate sold because of a decision of a court after proceedings regarding compulsory sale or delivery of goods supplied as a warranty for implementation of the warranty.

Changes to income tax – effective for the 2017 tax period

(i) Increases in the amounts of tax benefits for children are applicable for the whole 2017 tax period. However, these will be used for the first time in the clearance of payroll and tax deposits from dependent activities for July.

(ii) Reduced maximum amounts of lump-sum expense allowances for self-employed persons or tax-payers with income from renting real estate and the respective new possibility of applying tax relief will be mandatory from the 2018 tax period, but tax-payers can already apply the new treatment for the 2017 tax period.

(iii) Changes to financial leasing will apply to agreements on financial leasing where the leasing item would be handed over to the lessee after 1 July 2017.

(iv) According to the current wording of the law, the exemption of individuals' income from the sale of shares in a corporation was not applied to situations regarding the sale of shares that were acquired as a consequence of a shareholder's contribution to own equity (e.g. even a monetary contribution to other capital funds) made within five years of the sale. The tax periods beginning in 2017 will be affected by the limitation but only regarding non-monetary contributions.

Changes to income tax – effective from the 2018 tax period but with a link to 2017

(i) The possibility of prolonging the period for depreciation of intangible assets and extending the number of tax payers who can apply depreciation of technical improvement (e.g. a tenant) can be applied from the 2018 tax period (or the tax period beginning from 1 July 2017 and later if the tax period is a fiscal year). This applies to intangible assets where the depreciation started after 1 July 2017 or the technical improvement that was completed and being used after 1 July 2017.

(ii) The new amendment regarding application of withholding tax (in certain cases only) should in principle be applied, according to the interpretation of the Ministry of Finance, to incomes falling within the 2018 tax period or the tax period beginning on 1 July 2017 and later if the tax period is a fiscal year (i.e. it is not related to the

date when the obligation to withhold the tax is due but there is a relation between the given income to a certain tax period of the tax payer). This is relevant to, for example, withholding tax on paid deposits on profit shares, withholding tax on gratuitous supplies arising to non-residents, and withholding tax on contributions arising to public-service oriented tax payers or associations of owners.

Interesting interpretative opinions of the GFD

The General Financial Directorate published opinions on the impossibility of the exemption of the transfer of apartment units not located in residential buildings and on the tax regime of individuals operating photovoltaic power stations. Those opinions react to certain discrepancies in wording of acts and the original lawmakers' intention. The important thing is that the tax administration used originally also an approach different than those presented in the new opinions. This can cause certain complications for the affected tax payers.

Tax on the acquisition of real estate regarding new apartment units not located in residential buildings

According to a currently published opinion issued by the General Financial Directorate, the transfer of ownership of an apartment unit can be exempt from real estate acquisition tax for the first transfer of new apartment units only if the apartment unit is located in a residential building. This means it cannot be applied if the unit is located e.g. in a family house or multipurpose building.

This opinion is based on a strict interpretation of Section 7(1)(c) of the legislative measure on real estate acquisition tax which allows the respective exemption regarding the first transfer of ownership regarding new units only for units located in a residential building or during the transfer of ownership of a family house (e.g. not the apartment units in the house).

Even though it was probably not the lawmakers' intention to exclude apartment units located in family houses or other buildings from the above mentioned exemption, which the explanatory memorandum confirms, the current wording of the act suggests this conclusion. The impossibility of the exemption is valid, in this case, from 1 January 2014, i.e. from the date the legislative measure became effective, and it was not influenced by the amendment effective from 1 November 2016. The amendment introduced certain changes to the exemption of new buildings, but apartment units not located in residential buildings were not explicitly included in the exemption. However, there is a draft of an amendment in the Chamber of Deputies which should allow exemption of the transfer of apartment units in family houses.

The General Financial Directorate admits that, in real life, the financial administration accepted exemptions related to the transfer of a new apartment unit in a family house or other building in the past, but such an approach was not correct. This is why the General Financial Directorate published an announcement which calls attention to the issue; the GFD also appeals to tax payers who applied the exemptions in conflict with the current wording of the legislative measure for submitting tax returns and paying the additional tax. Simultaneously, information related to the issue has been published saying that there is a possibility of requesting a deferment of the tax payment and waiving accession of the tax because, according to the respective law, late payment interest accrues.

We assume that the financial administration may focus on cases like this, and if the tax payers do not submit their tax returns, the financial administration will assess the tax and interest. If you believe the above-mentioned issue is relevant for you, you can contact us for further information and resolving any issues.

The tax regime of individuals operating photovoltaic power stations under 10 kW

In 2016, a new provision was added to Sec. 10 of the Income Tax Act, under which incomes from operating power stations that do not need a licence granted by the Energy Regulatory Office are considered other income, which means these are not taxed as incomes from self-employment. This change was intended to affect operators of power stations under 10 kW. By classifying such incomes as other income, the income is not subject to social and health insurance contributions. On the other hand, some related costs cannot be deducted.

The General Financial Directorate has now published an opinion saying that incomes from small photovoltaic power stations under 10 kW should be taxed as incomes from self-employment if the individual produces electricity not only for its own consumption but also supplies the produced energy to the electricity network and receives income from it because, according to the ERO's opinion, this requires a licence. The possibility of taxing such an income under Section 10 does not apply to anybody since it is assumed that, if an individual produces electricity for its own consumption only, such activity does not generate any taxable income.

The newly published opinion can negatively influence those who applied the originally introduced intent to the 2016 income taxation (in real life, the intent was practised by some tax administrators, social security administrators, and health insurances) and taxed the income from electricity production as other income without paying insurance contributions.

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