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Tax & Legal News

Corporate and Personal Taxation

Corporate income tax (CIT) considerations during the pandemic period

We would like to highlight some of the main consequences of the current situation on reporting obligations for the 2019 tax year, as many taxpayers have decided to postpone filing their CIT returns due to the pandemic.

The deadline for filing tax returns

- Income tax returns must be filed no later than the end of the calendar month following the declared end of the pandemic period.
- Even though it is not yet clear when the government will terminate the pandemic period, we recommend being prepared to file a tax return at short notice.

Tax losses

- As a one-time exception, the rules for deduction of tax losses have been changed for 2019. For this period, taxpayers can claim tax losses unutilized during 2015 to 2018 without the normal 25% limitation. The maximum amount for this one-time utilization is €1,000,000. Losses must be utilized in order, beginning from the oldest recognized tax loss.
- Please note that this specific regime can be applied only to those tax losses which were not forfeited in previous periods.
- The taxpayer can opt to utilize tax losses by applying the standard regime, i.e. utilization of 25% of recognized tax loss per year, if this represents greater benefit to them than the one-off limit of €1,000,000.
- As this is a one-off measure, in 2020 taxpayers will revert to utilization of tax losses with a limit of 25% per year for losses recognized during the 2016 to 2019 periods.

Income tax prepayments

Income tax prepayments in 2020 can be divided into four categories:

- The taxpayer is not obliged to submit tax prepayments if they have experienced a 40% or greater decrease in revenues, compared to the same period of the previous calendar year. This approach is exercised by filing a notice to the tax authorities at least 15 days before the due date of tax prepayment. A separate notice must be filed for the month (or quarter) to which the condition of revenue decrease continues to apply.
- Taxpayers who filed a tax return for the 2019 period resulting in lower tax prepayments than those based on their 2018 tax return, will submit prepayments according to the 2019 tax return.
- Taxpayers who filed a tax return for 2019 period which resulted in higher tax prepayments than those based on their 2018 tax return, will submit prepayments according to the 2018 tax return, until the end of the postponed deadline for filing a 2019 tax return.
- Regardless of whether the tax return for 2019 was filed or not, taxpayers who determine that they will not be able to submit income tax prepayments in 2020, can file a request to the tax authorities for a decrease in tax prepayments.

If taxpayers have already submitted higher tax prepayments from the beginning of the 2020 tax period than those calculated from a tax return filed during the pandemic period, they can offset them against future prepayments or request repayment of the difference from the tax authorities. This does not apply if the

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taxpayer has filed a notice for postponement of the tax return filing deadline. In this case, the taxpayer can request repayment of the difference in tax prepayments only after the end of the postponed period.

End of the pandemic

Please note that declaration of the end of pandemic will trigger various suspended tax obligations, including the deadlines for:

- Preparation of annual financial statements and submission to the Register of Financial Statements
- Conducting a tax audit which was suspended during the pandemic period
- Other tax proceedings suspended during the pandemic period
- Completion of other actions, which were automatically excused if they expired during the pandemic period

If you have any questions, or require more detailed information, please do not hesitate to contact me or your contact person in EY.

Value Added Tax

Court of Justice of the EU: C-13/18 Sole-Mizo Zrt. and C-126/18 Dalmandi Mezőgazdasági Zrt. – What is the appropriate interest on an unlawfully withheld VAT refund?

The Court of Justice of the EU (CJEU) has issued a decision in the joint cases, C-13/18 Sole-Mizo Zrt. ("Sole Mizo") and C-126/18 Dalmandi Mezőgazdasági Zrt. ("Dalmandi") concerning the appropriate level of interest to be granted by the Hungarian Tax Authority on a withheld VAT refund.

Situation

A Hungarian company, Sole Mizo, claimed an interest payment from excess VAT which was not refunded by the Tax Authority within the statutory deadline. The claim centered on two periods for which excess VAT was refunded late as follows:

- **First period**
  By applying a "settled compensation" condition stipulated by the Hungarian VAT legislation, the VAT refund had to be carried over to the following VAT period. It later transpired that this provision was in violation of EU law and therefore the Tax Authority granted interest on the late VAT refund equivalent to the standard base rate of the Hungarian Central Bank. The interest was calculated for the period from the date of filing the VAT return in which the refund was claimed until the deadline for filing the next VAT return.
- **Second period**
  This relates to a case when the Tax Authority settled the interest claim for the first period after the statutory deadline. In this instance it granted interest calculated using double the standard base rate of the Hungarian Central Bank.

Sole Mizo demanded, inter alia, that the amount of interest on the withheld VAT refund for the first period should also be calculated by applying double the standard base rate of the Hungarian Central Bank. In addition, Sole Mizo requested that the calculation method should include compensation for the decrease in monetary value caused by delayed settlement of the interest.

Sole Mizo referred to the CJEU judgment in case C-654/13 Delphi Hungary Autóalkatrész Gyártó, in which the CJEU ruled that VAT payers are entitled to interest from VAT refunds which were not paid out due to national provisions contradictory to EU law. In the absence of applicable EU legislation, Member States should specify conditions for the settlement of interest which are in line with the principles of equivalence and effectiveness.

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We will be glad to answer your questions on this topic.

Similarly, Dalmandi also objected to the amount of interest from the withheld VAT refund granted by the Tax Authority.

The Hungarian Administrative Court posed several questions to the CJEU relating to the appropriate level of interest to be applied to a VAT refund withheld by the Tax Authority.

One of these concerned whether interest should also be calculated for the period when the Tax Authority was not obliged to refund excess VAT, in line with national legislation valid at that time, since the national provision's incompatibility with EU was only subsequently ruled by the CJEU. The Tax Authority had merely proceeded in line with valid national rules and withheld excess VAT until the "settled compensation" condition was formally cancelled.

CJEU decision

The CJEU stated that where interest from a VAT refund was withheld beyond a reasonable period contrary to EU law, the law of each Member State should determine the conditions under which such interest should be paid, in particular the interest rate and method of calculation. These conditions, however, should not be less favorable than those relating to similar claims which could arise under national law.

According to the CJEU, calculation of the interest should compensate the taxpayer for the loss caused by their inability to dispose of the funds.

The CJEU stated that a taxpayer who borrowed the amount of the withheld VAT refund from a credit institution to compensate for a capital deficit would generally have to pay higher interest than the standard base rate of a national central bank. The principle of tax neutrality demands that the interest granted should compensate taxpayers for financial loss and economic burden incurred as a result of non-availability of funds withheld by the Tax Authority.

The CJEU concluded that interest should be calculated from the end of the VAT period in which the VAT refund arose and was claimed via a VAT return, until the actual settlement of the interest, irrespective of when the interest was granted.

The CJEU also ruled that EU law does not preclude Member States from determining the limitation period for claiming interest from excess VAT withheld due to application of a national provision, which has subsequently been held contrary to EU law.

In order to claim default interest from the Tax Authority (i.e., the second period scenario), according to the CJEU, Member States may require a specific request to be filed by taxpayers. It is also appropriate if the calculation period begins only on the day after the lapse of the statutory deadline for the Tax Authority to process such a request, as opposed to the day when the excess VAT arose.

What are the practical consequences?

RThe judgment refers to EU principles of proportionality, tax neutrality and the principles of equivalence and effectiveness which should be applied when calculating interest on an unlawfully withheld VAT refund. The judgment enhances the position of VAT payers in proceedings before the Tax Authority in disputes regarding interest from withheld VAT refunds.

The conclusions regarding appropriate compensation for financial loss could also help open a discussion on the level of interest applicable in similar cases in Slovakia. Furthermore, the question arises of whether the six-month period following lapse of the statutory refund period of excess VAT, for which no interest is granted in Slovakia, is proportionate or in contradiction with the referenced EU principles.

We will be glad to answer your questions on this topic.

Legal News

Home office – employers' legal risks and obligations

The restrictions introduced in response to the COVID-19 pandemic have contributed significantly to widespread expansion of home office working practices, i.e., employees working, based in their own household. This has represented a positive experience for many employers and employees, new to such a routine, who discovered that IT facilities could enable them to continue their jobs without needing to spend time travelling to work. It is therefore expected that the home office option will remain relevant after the pandemic and in many companies will become a standard practice or a benefit offered to employees. In this article, we will clarify the legal conditions for a home office, outline the need to distinguish occasional home office from working at home and telework, explain the legal risks resulting largely from inadequate legislation and provide recommendations for their mitigation.

The need to differentiate types of home working

The Labor Code distinguishes the different legal forms of home working according to the following terms:

(i) Working at home ("domácka práca" according to Sec. 52 (1) of the Labor Code)

(ii) Telework ("telepráca" according to Sec. 52 (1) of the Labor Code)

(iii) Work from a household (further "home office"), carried out occasionally or under extraordinary circumstances (according to Sec. 52 (5) of the Labor Code)

The first two entail permanent performance of the employee's work, according to conditions agreed in their employment contract, at home or at a different agreed place, during working time which the employee schedules themselves. Telework is defined by its use of IT, whereas a seamstress, for example, does not require IT to perform their job, which therefore qualifies as working at home.

The third type cannot be identified as either working at home or telework, as it does not meet all the Labor Code criteria. It is not permanent performance of work from home, there is no regulation of its conditions in an employment contract and the employee does not schedule their own working hours. Furthermore, home office is performed only occasionally (e.g., a few days a month or once or twice a week) or under extraordinary circumstances (e.g., due to workplace power or internet outage or employee accident). By default, the employee may exploit the home office option only under agreement or with the consent of the employer. However, to enable implementation of home office during the COVID-19 pandemic, an amendment to the Labor Code was adopted as part of measures aimed at preventing the spread of the virus. According to the amendment, in such a situation the employer can order home office working for appropriate jobs and the employee is entitled to work from a home office, equally where the type of work allows it and there are no serious operational grounds preventing it. However, after the restrictions related to the pandemic are lifted, home office will again require the agreement or consent of the employer.

Conditions for implementation of home office

The Labor Code is considered outdated in many respects and like its lack of reflection of other modern resources, such as electronic delivery, it fails to reflect the significance of home office to the labor market by containing almost no specific regulation of it. Therefore, implementation of home office arrangements raises many practical questions, which demand the introduction of greater legal certainty to employment relationships.

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Do you have any further questions on this or another topic? If yes, we will be happy to answer them.

We highly recommend that employers adjust the conditions for implementing home office by adopting internal regulations or appropriate amendments to employment contracts or collective bargaining contracts, where applicable. The following aspects deserve special attention and legal treatment:

- **Wages and overtime work**

  Unlike working at home and telework, occasional home office may entitle the employee to payment for working overtime. However, in many cases the employer is unable to check how many hours the employee has worked. Therefore, we recommend that the employer agrees with the employee a form for recording and reporting the nature of work and time spent working, e.g., through IT systems or submission of daily reports.

- **Reimbursement of incurred costs**

  Compensation for employees' costs incurred in connection with a home office (e.g., energy, internet, telephone services, paper and toner) is another important issue to tackle, especially if the employee uses a home office regularly (e.g., once or twice a week). Automatic claim to reimbursement of employees' expenses does not explicitly follow from the Labor Code. Nevertheless, we recommend including the amount and mechanism of such reimbursement in employment contracts or collective bargaining agreements to prevent possible future employee claims. In the case of lump sum compensation of expenses, we recommend assessing its tax regime, i.e., whether it is to be considered taxable income or income excluded from personal income taxation and subsequent contributions to social and health insurance systems. Due to the heavy administrative burden associated with proving and justifying the compensation amount, lump sum compensation, even when subject to tax, may be preferable.

- **Provision of catering for employees**

  Employers should not forget that even under home office conditions, the employee is entitled to meal vouchers or the provision of catering. Employees' entitlement to catering is also confirmed in the statement of the National Labor Inspectorate.

- **The rules of Health and Safety (H&S)**

  An important part of the internal regulation governing home office should be the rules of occupational H&S, especially those aimed at preventing accidents at work and occupational diseases. Although these risks are undoubtedly less serious in a home office than during manual work in factories or on construction sites, they cannot be overlooked.

  The employer has H&S prevention and information obligations which it must fulfill also with respect to the home office. Therefore, it is appropriate to include the area of H&S in the relevant internal regulation. This may include recommendations for employees to take regular breaks at work, an indication of how to sit properly, a list of unauthorized activities during working hours or simple exercises to prevent typical home office health issues, such as back pain or headaches. According to the National Labor Inspectorate, during temporary home office, the employer is not responsible for the layout and status of the employee's workplace. There is no obligation to ensure compliance by providing ergonomic workplace requirements, such as buying of suitable tables and chairs. However, at their own cost, the employer may have the workplace assessed and organized by an H&S expert directly in the employee's household. Of course, the employee's right to the inviolability of home and privacy must be respected.

  Furthermore, home office arrangements need to comply with the minimum H&S requirements for working with display units. These employer's obligations do not apply where the use of a portable device (e.g., laptop) is only temporary or irregular. When work on portable devices is conducted for longer periods (e.g., during the current pandemic situation), we recommend that these requirements are considered and adjusted accordingly in the internal regulation (e.g., the possibility of providing home office monitors for employees).

  In addition, you should bear in mind that the employee may experience an accident at work during operation of a home office. Determination of whether an accident occurred while performing work tasks or in direct connection with work is very

demanding, as the employee is not "under the control" of the employer (e.g., it is not possible for another employee to witness the accident). Therefore, assessment of whether an accident at work has occurred depends on determining the activity during which the accident occurred and assessing whether it was related to performance of work duties. As a result, we recommend that employer and employee agree and specify the exact location of the employee's home office.

- **Security of personal data during home office arrangements**

  To provide security of personal or confidential data to which the employee is exposed during home office working, the employer should ensure that adequate measures are in place, especially technical (e.g., VPN) and organizational (e.g., instructing employees to secure laptops against theft or damage, to store their work documents in a safe place and to lock their screens). Employees should adhere to internal security rules, particularly safeguarding personal data from relatives or roommates. In addition, we recommend making employees familiar with the security risks related to home office working (e.g., cyber-attacks, especially phishing).

If you are interested in further consultation on individual obligations, drafting internal regulations for home office, adjustment of employment contracts, or if you have any other requirements related to employment relationships, please do not hesitate to contact us.

News – in Brief

Suspension of proceedings before the Ministry of Health initiated on the basis of the Act on the Range and Conditions of Medicinal Products Subject to Reimbursement

Another article of so-called pandemic legislation[1] temporarily **authorizes the Ministry of Health to suspend proceedings, initiated by the Ministry of Health pursuant to the Act on the Range and Conditions of Medicinal Products Subject to Reimbursement**[2]. Such proceedings include, inter alia, decisions on removing medicinal products from the list of categorized medicinal products, or reducing the officially determined price of such products.

In suspended proceedings, the statutory period for issuing a decision remains unchanged, so that when they recommence this period continues as if there had been no suspension. The Ministry of Health may cancel the suspension of a proceeding, which in any event cannot extend beyond the period of the Slovak Government's declared state of crisis, at which point the statutory period for issuing a decision automatically begins to elapse once more.

There is no legal remedy against the decision to suspend a proceeding, but such a decision only impacts proceedings initiated by the Ministry of Health itself. Proceedings initiated by other authorized parties (e.g., a marketing authorization holder) are not impacted by such a decision on suspension.

[1] Section 98f of the Act No. 363/2011 Coll. on the Range and Conditions of Drugs, Medical Devices and Dietetic Groceries Subject to Reimbursement on the Basis of Public Health Insurance and on amendment and supplementation of other acts, as amended

[2] Act No. 363/2011 Coll. on the Range and Conditions of Drugs, Medical Devices and Dietetic Groceries Subject to Reimbursement on the Basis of Public Health Insurance and on amendment and supplementation of other acts, as amended

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