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Tax&Legal Highlights

Slovakia

Brexit and its implications from the tax perspective. Will it have an impact on you?

The withdrawal of the United Kingdom from the European Union will have implications for citizens, businesses and administrative authorities both in the UK and in the EU. The Financial Administration is raising awareness in this area by constantly updating the information on its website.

It also provides a summary of information related to direct taxes. Brexit will not affect the valid Double Taxation Avoidance Treaty between the United Kingdom and the Slovak Republic. The income of a taxable person with limited tax liability (UK tax resident) generated from sources in the Slovak Republic will continue to be governed by Article 16 of the Income Tax Act (Source of Income of a Taxable Person with Limited Tax Liability) and related ITA provisions.

Following Brexit, a UK tax resident will not be considered a taxable person of an EU Member State, nor of another state which is a party to the Agreement on the European Economic Area. Such a taxable person will be

subject to taxation in accordance with the Income Tax Act as a taxable person of a "third country". Changes affecting such taxable persons will take effect after Brexit, primarily in the following areas of Income Tax Act application:

- Exemption of interest and licence fees, as set out in Article 13 (2) (f) and (h) of the Income Tax Act;
- Application of a tax security;
- Advantages related to measurement of an in-kind contribution at historical costs pursuant to Article 17d of the Income Tax Act;
- Advantages related to mergers by acquisition, mergers by formation, or divisions of a company or cooperative at historical costs pursuant to Article 17e of the Income Tax Act;
- Special regulation related to payment of "exit tax" in instalments pursuant to Article 17g of the Income Tax Act;
- Sustainability of tax-deductible expenses pursuant to Article 19 (3) (k) of the Income Tax Act.

All information published by the Financial Administration can be found **here**.

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The Court of Justice of the European Union (CJEU) has ruled in a case regarding the granting of an A1 certificate to nationals of third countries residing legally in a Member State

The CJEU delivered its judgment in Case C-477/17 related to two Russian figure skaters (Lukachenko, Balandin) employed by Holiday on Ice Services BV with its registered office in the Netherlands. As part of their employment, the figure skaters practice in the Netherlands before the season and perform during the season in the Netherlands and other Member States, in particular in France and Germany. All the concerned employees are third-country nationals who stay legally in the Netherlands with work permits being issued to them. They also stay and work legally in other Member States on the basis of a visa known as a "Schengen visa". For many seasons, the Dutch Social Insurance Bank issued A1 certificates to such employees establishing that they were covered by the social security legislation of the Netherlands. However, from the 2015/2016 season onwards, the Social Insurance Bank refused to issue such certificates, arguing that they had been incorrectly issued in previous years. It thus refused their applications in that regard on the ground of their nationality, as third-country nationals are not subject to the same rules as EU citizens.

The dispute was referred to the CJUE with a question as to whether the rules of coordination of social security systems also apply to third-country nationals who temporarily reside and work in different Member States and have an employer established in a Member State.

The question submitted to the CJEU particularly refers to Article 1 of Regulation (EU) No. 1231/2010 extending the rules laid down by the Regulation on the coordination of social security systems within the EU to third-country nationals. The disputed issue mainly comprises the translation of provisions laid down by this Regulation, as its application is subject to the condition that these persons are legally resident in a Member State. The term "legal residence" is not defined in the basic regulation, which leads to different interpretations in various language versions. "Legal residence" differs from the terms "residence" (the place where a person habitually resides) and "stay" (temporary residence). In some language versions, the interpretation of "legal residence" is closer to long-term habitual residence, while in others it is translated and understood as a short-term or temporary residence.

The CJEU has ruled on the above and held that third-country nationals who temporarily reside and work in different Member States in the service of an employer established in a Member State may rely on the coordination rules laid down by basic Regulation (EC) No 883/2004 in order to determine the social security legislation to which they are subject, provided they are legally staying and working in a Member State. Thus, they may be granted an A1 certificate under the specified conditions.

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