Tax&Legal Highlights

Slovakia

Information on the Deduction of R&D Expenses (Costs) under the Income Tax Act from 1 January 2018

The Financial Directorate of the Slovak Republic published information on the deduction of R&D expenses (costs), which contains definitions of terms related to R&D and illustrative examples.

The information contains definitions of terms related to R&D and examples. An additional deduction may be applied by a taxpayer who:

- Carries out an R&D project;
- Does not apply the tax relief in the taxation period under Article 30b of the ITA;
- Does not carry out an R&D project as a holder of a certificate of competence to carry out an R&D project for the purposes of selling intangible outputs of R&D; and
- Is not a holder of a certificate of competence to carry out R&D and carries out a project for its own needs, or for the purposes of selling

intangible outputs of R&D, or if it carries out the project as contract R&D as an intragroup service.

The list of taxpayers that have been granted the certificate is available at the Central Information Portal for Research, Development and Innovation www.vedatechnika.sk.

The R&D expenses (costs) from 1 January 2018 eligible for the additional deduction are:

- 100% of expenses (costs) incurred for R&D in the taxation period for which a tax return is filed; and
- Expenses amounting to 100% of the positive difference between the average total expenses (costs) incurred in the taxation period for R&D included in the deduction and the total expenses (costs) incurred in the immediately-preceding taxation for R&D included in the deduction and the two immediately-preceding taxation periods for R&D included in the deduction.

With effect from 1 January 2018, an increase in R&D expenses (costs) may be deducted as a year-on-year increase using average expenses (costs) that take into account the two immediately-preceding taxation periods (the 2017 and 2016 taxation period for 2018), unlike the legal situation until 31 December 2017, when this increase could only be determined in two consecutive taxation periods (eg 2016 for 2017). The general formula for year-on-year deduction of R&D expenses under Article 30c (2) of the Income Tax Act effective from 1 January 2018 is:

Deduction of expenses = [(R&D expenses for the current taxation period + R&D expenses for the preceding taxation period) / 2] - [(R&D expenses for the 1st preceding taxation period + R&D expenses for the 2nd preceding taxation period) / 2].

The additional deduction cannot be applied to R&D expenses (costs) for which full or partial support from public funds was granted and to services, licences other than software licences used directly to carry out an R&D project and intangible R&D outputs acquired from other persons, except for expenses on:

- Services related to the implementation of an R&D project and intangible outputs of R&D acquired from the Slovak Academy of Sciences or legal entities performing R&D established by central state administration authorities, public and state universities;
- Intangible R&D outputs acquired from persons who have been granted a certificate of competence to carry out R&D;
- Certification of own R&D outputs produced by the taxpayer; and
- Expenses (costs) for administrative, financial, legal and personnel activities, entertainment, security services, cleaning, training, market research, information collection and processing, standard SW development, activities of innovative nature that do not include a valuable element of innovation etc.

If there is a change in an R&D project as regards the application of a deduction of R&D expenses (costs), it is necessary to distinguish whether there has been a change in the project's conditions, or whether a new project has been begun, ie whether the main project objective has changed:

- If the main objective of the project has not changed, an amendment to the original project must be prepared;

- If the taxpayer has changed the main project objective, such a project will be considered a new project, for which the entire project documentation must be prepared.

The full wording of the information can be found on this link:
https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Zverejnovanie_dok/Aktualne/DP/2018.10.16_ulava_dan.pdf

Methodological Instruction on the Application of a Tax Bonus for Interest Paid on Housing Loans

The Financial Directorate of the Slovak Republic published a methodological instruction on the application of a tax bonus for interest paid on mortgage loans, which may be applied for the first time in the 2018 taxation period.

The Financial Directorate of the Slovak Republic published an instruction on the application of a new tax bonus for interest paid on housing loans, which may be applied by taxpayers for the first time for the 2018 taxation period. The tax bonus applies to interest paid on loans concluded after 31 December 2017. In addition to the legislative framework, which regulates the tax bonus in Article 33a of Act No. 595/2003 Coll. on Income Tax, as amended, it also contains specifications for the individual conditions of the entitlement, such as the taxpayer's age and average monthly income:

The taxpayer must be at least 18 years old and not more than 35 years old on the date of filing the loan application; and

The taxpayer's average monthly income, calculated from their taxable income included in the tax base and partial tax base for the calendar year preceding the calendar year in which the loan agreement was concluded, amounts to a maximum of 1.3 times the average monthly salary determined by the Statistical Office in the year for which the taxpayer's average monthly income is determined. This condition is assessed only once – at the moment of conclusion of the loan agreement, which is then deemed to be met over the next 5 years.

The methodological instruction also regulates the conditions for the application of the tax bonus for co-debtors, stating that for multiple co-debtors, the age condition must be met by all of them and the average monthly income must be measured as a multiple of the number of co-debtors and the basic value of the application limit, ie 1.3 times the average monthly salary in the economy for the calendar year preceding the calendar year in which the loan agreement was concluded.

A taxpayer who is a debtor in one loan relationship and a co-debtor in another loan contract for which another debtor applies a tax bonus, is not entitled to claim a tax bonus.

The tax bonus may be applied over five consecutive years, starting with the month in which the loan interest started to accrue. In this calendar year, the taxpayer will apply the pro-rata portion of the tax bonus based on the number of months in which the loan accrues interest and the same procedure applies in the last year of the entitlement to claim the bonus. The tax bonus amounts to 50% of interest paid in the relevant taxation period up to EUR 400 per year. If the interest accrues only in several months in the taxation period,

the application limit will be reduced on a pro-rata basis depending on the number of months.

A taxpayer may claim the tax bonus after the end of the taxation period with an employer that is a taxpayer, or via a tax return. The entitlement must be formally documented by a confirmation issued by a bank upon request, which must be submitted by the taxpayer to their employer by 15 February of the year following the taxation period for which the taxpayer wishes to apply a tax bonus, or it must be attached to a tax return. A template of the confirmation is included in the methodological instruction.

Contact Details

Valéria Morťaniková
Senior Manager, Tax
Mobile: +421 917 627 421
Email: vmortanikova@deloitteCE.com

Katarína Povecová
Manager, Tax
Mobile: +421 917 858 604
Email: kpovecova@deloitteCE.com

New Draft Guideline on the Determination of the Contents of Transfer Pricing Documentation

The Ministry of Finance of the Slovak Republic issued a first draft of a new guideline on the determination of the contents of documentation pursuant to Article 18 (1) of Act No. 595/2003 Coll. on Income Tax, as amended.

The Ministry of Finance of the Slovak Republic issued a first draft of a new guideline on the determination of the contents of documentation pursuant to Article 18 (1) of Act No. 595/2003 Coll. on Income Tax, as amended. The deadline for submitting comments on this draft guideline was 9 November 2018. The new draft guideline includes, inter alia, the following changes compared to the effective guideline:

- The content of the simplified documentation is standardised in a form; and
- A benchmarking analysis obligation is introduced for a wider range of companies, depending, inter alia, on the value of the transaction (the draft proposes EUR 10 000 000 per transaction/group of transactions).

It is proposed that the first application of the guideline will be when submitting the documentation for the taxation period beginning after 31 December 2017. We will keep you informed about developments in this area in subsequent editions of Tax and Legal News.

Contact Details

Martin Sabol
Senior Manager, Tax
Mobile: +421 907 465 508
Email: msabol@deloitteCE.com

Insurance Tax as a New Form of Indirect Tax in Slovakia

From 1 January 2019, the Slovak Republic will introduce an insurance tax on non-life insurance if the insured risk is located in Slovakia. The insurance tax rate is 8%. Taxable persons are primarily insurance companies, but in special cases, an entity other than an insurance company may also be a payer of this tax.

From 1 January 2019, the Slovak Republic will introduce a new form of indirect tax: insurance tax. The insurance tax will apply to non-life insurance.

The insurance tax applies to non-life insurance if the insured risk is located in Slovakia. The insurance tax will apply to paid insurance premium for the insurance period starting after 31 December 2018, irrespective of the insurance contract date. The current special levy of a portion of insurance premium for non-life insurance will continue to apply to insurance contracts concluded after 31 December 2016 if the insurance period started before 1 January 2019.

The payers of insurance tax will mainly be legal entities that do business in the insurance sector, ie insurance companies with their registered office in the Slovak Republic, insurance companies from other EU Member States or the EEA, and branches of foreign insurance companies from third countries. Insurance provided by a foreign insurance company from a third country which provided insurance with the insured risk located in Slovakia without establishing a branch will be taxed in a special way. **A foreign insurance company** means an insurance company with its registered office outside the EU or EEA. To ensure efficient tax collection in such cases, a person other than the insurance company is liable to pay tax, namely:

- A policyholder who paid an insurance premium to a foreign insurance company that has no branch in the Slovak Republic.
- A legal entity to whom insurance costs are charged, while the insurance was concluded with a foreign insurance company without a branch in the Slovak Republic. For example, group insurance where the parent company concludes insurance with a foreign insurance company for the whole group and then allocates the costs to individual group companies.

The taxation period is a calendar quarter and the tax is payable by the end of the calendar month following the end of the taxation period. The tax return must be filed electronically.

The insurance tax rate is 8%. The zero tax rate is applied to motor third party liability insurance, which is subject to a separate levy.

The Tax Insurance Act allows a taxpayer to decide which day will be considered the **origin date of the tax liability**. The method chosen must be used for at least eight consecutive calendar quarters.

Contact Details

Matúš Falis
Manager, Tax
Mobile: +421 918 677 519
Email: mfalis@deloitteCE.com

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