SIR IUS 1/13

Revija za teorijo in prakso revizije, računovodstva, davkov, financ, ocenjevanja vrednosti in drugih sorodnih področij

SLOVENSKI INŠTITUT za REVIZIJO

Povzetki

Ema Čad

Bonitete in drugi dohodki fizičnih oseb z vidika obremenitve z dajatvami

Fringe benefits and other income of natural persons from the perspective of tax burdens

POVZETEK ● *Prispevek obravnava razlike v davčnih obremenitvah fizične osebe na prejete ugodnosti v naravi ali v denarju, če je fizična oseba v delovnem razmerju ali prejema ugodnosti v naravi v obliki drugega dohodka. V analitičnem prikazu obračuna bonitete je predstavljena tudi možnost, da motorno vozilo, na katerem temelji celotni prispevek, nabavi zaposlenec, delodajalec pa mu za znesek bonitete dvigne bruto plačo. V drugem delu so analitično prikazani obračun dajatev na drugi dohodek, problematika vrednotenja drugega dohodka in vpliv vrednotenja drugih dohodkov, prejetih v naravi, na dajatve. S finančno metodo dobe povračila je prikazan izračun, koliko časa bi prejemnik ugodnosti potreboval, da bi dobil povrnjeno investicijo, če bi se odločil sam nabaviti motorno vozilo.*

SUMMARY ● *The paper deals with differences in tax burdens for natural persons for the received fringe benefits in kind or in cash, if a person is employed or receives fringe benefits in kind through other income. In the analytical presentation of fringe benefit accounting, the paper also includes the case that the employee himself purchases the motor vehicle on which the entire paper is based, while the employer raises his gross salary by the amount of the fringe benefit. The second part of the paper analytically presents the accounting for taxes on other income, the issue of other income valuation and the impact of the valuation of other income received as fringe benefits in kind. The financial payback method has been applied to show the calculation of how long the benefit recipient would need to get the return on the investment should he have decided to purchase the motor vehicle himself.*

Karmen Demšar

Stalna poslovna enota v Sloveniji in problematika obračunavanja DDV-ja

Fixed establishment in Slovenia and the issue of VAT accounting

POVZETEK ● *Koncept stalne poslovne enote (v nadaljevanju SPE) za namene DDV-ja se uporablja pri določanju kraja, v katerem so storitve opravljene. Kraj, v katerem so storitve opravljene, je odločilen pri določitvi države, ki ima pravico do plačila DDV-ja od te transakcije. Opredelitev stalne poslovne enote za DDV je določena tako v slovenski zakonodaji kot tudi*

zakonodaji EU ter v sodni praksi Sodišča EU in tudi (sicer skromni) slovenski sodni praksi. Obstoj SPE je treba presojati v vsakem primeru posebej. V splošnem pa velja, da sama identifikacija tuje družbe v Sloveniji še ne pomeni, da ima ta družba v Sloveniji tudi SPE. Treba je namreč presoditi, ali ima družba v Sloveniji dovolj človeških in tehničnih virov, da lahko storitve prejme in uporabi oziroma jih opravi, pri čemer mora obstajati tudi zadostna stopnja trajnosti. Skladno s sodno prakso pa opravljanje storitev med matičnim podjetjem in stalno poslovno enoto načeloma ni predmet DDV-ja.

SUMMARY ● *The concept of fixed establishment for the purpose of VAT is used when determining the place, where services are deemed to be rendered. The place of supply of services is decisive for determining the country which is entitled to charge VAT on this transaction. The definition of fixed establishment for VAT purposes is provided in both Slovenian and EU legislation, and also in the case law of the EU Court of Justice and in the, yet modest, Slovenian case law. The existence of a fixed establishment should be determined in each individual case separately. A general rule is that the mere fact that a foreign company is registered for VAT in Slovenia does not necessarily determine a fixed establishment for this company in Slovenia. It should be assessed whether this company has sufficient human and technical resources available to receive and use services or to provide services, characterised by a sufficient degree of permanence. According to case law, the supply of services between a company and its fixed establishment is not subject to VAT.*

Brigita Franc

Določanje enotne konsolidirane davčne osnove – izziv EU na davčnem področju

Determination of Common Consolidated Corporate Tax Base – A Challenge for the EU in the Tax Field

POVZETEK ● *Evropska unija si že več kot 50 let prizadeva za uskladitev sistema davka na dohodek pravnih oseb v državah članicah. Davčne ovire, s katerimi se spopadajo investitorji na skupnem trgu, so še vedno zelo velike. Soobstoj različnih nacionalnih davčnih sistemov v navideznem skupnem notranjem trgu ogroža mobilnost investicij in je v nasprotju s ciljem združenega in konkurenčnega trga. Evropska komisija je zato predlagala uvedbo sistema CCCTB, ki je pri implementaciji že naletel na ovire in ni verjetno, da bo v kratkem zaživel. Zaradi upadanja proračunskih prihodkov v času gospodarske krize so države članice zelo občutljive na proračunske prihodke in se niso pripravljene odreči davčni samostojnosti. Še več, davčni sistemi so postali pomemben konkurenčni dejavnik pri izboru lokacije investiranja. Koristi od davčne konkurence med državami članicami imajo le multinacionalke, ne pa mala in srednje velika podjetja, ki delujejo na lokalnih trgih, ter potrošniki, ki plačujejo ceno v obliki višjih stopenj davka na dodano vrednost in višjih dohodninskih obremenitev.*

SUMMARY ● *The European Union have endeavoured for over five decades to harmonise the system of corporate income tax among the member state. Tay impediments faces by investors in the common market, are still considerable. The coexistence of different national corporate tax regimes in the virtual common domestic market threatens the mobility of investments and is in conflict with the aim of fully integrated and competitive market. Therefore, the European Commission has suggested a CCCTB system that has run into obstacles already at its implementation and is not likely to function soon. Due to the decrease in the budget's income in the time of economic crisis the member states have been very sensitive to the budget's income and are not ready to give up the tax independence. Moreover, the tax systems have become an important competitive factor in the selection of the location of investment. The multinational firms are the only ones that hold the benefits from the tax competition among the member states and not small or middle-sized companies that operate on local markets as well as not the consumers that pay the price in the form of higher added value tax rate and higher personal income tax.*

Saša Jerman

Problematika obračunavanja DDV-ja pri cesiji in odkupu terjatev (nepravi in pravi faktoring)

The issue of VAT treatment of cession and purchase of debts (quasi and true factoring)

POVZETEK ● *Odkup terjatev je obdavčena storitev, za katero ni mogoče uveljavljati oprostitev DDV-ja, določenih za finančne storitve. Sodišče evropskih skupnosti je v ključni sodbi v zadevi Case C-305/01 MKG GmbH pojasnilo, da sodi odkup terjatev, vključno s pravim faktoringom, med obdavčene storitve, ker izpolnjuje vse lastnosti koncepta opravljanja storitev zavezanca v okviru ekonomske dejavnosti za plačilo. Pri pravem faktoringu se te lastnosti kažejo v razbremenitvi odstopnika njegovega kreditnega tveganja ter v prevzemu aktivnosti izterjave terjatve, za kar odstopnik faktorju plača sorazmerno nadomestilo. V prispevku utemeljujemo, da obstoječa ureditev v Pravilniku o izvajanju ZDDV-1, po kateri je tudi odkup zapadlih terjatev ne glede na njihovo kakovost obdavčen z DDV-jem, ni skladna z Direktivo Sveta 2006/112/ES. Sodišče evropskih skupnosti je v zadevi Case C-93/10 pojasnilo, da je treba 2. člen 1. in 4. točke Šeste direktive Sveta (sedaj alineja c 1. točke 2. člena Direktive ES 2006/112/ES) razlagati tako, da gospodarski subjekt, ki na svoje tveganje odkupi terjatve po ceni, ki je nižja od njihove nominalne vrednosti, ne opravi storitve za plačilo v smislu 2. člena 1. točke, in ne opravlja gospodarske dejavnosti, ki je predmet obdavčitve po direktivi, če je razlika med nominalno vrednostjo navedenih terjatev in njihovo odkupno ceno odraz dejanske ekonomske vrednosti zadevnih terjatev ob odstopu (odkup slabih terjatev). Končno je v prispevku utemeljeno tudi, kakšna je obravnava DDV-ja pri naknadni spremembi davčne osnove, če so bile terjatve, nastale na temelju obdavčene dobave blaga ali storitev prenesene oziroma cedirane. V prispevku utemeljujemo, zakaj naknadno spremembo davčne osnove lahko izvede le odstopnik terjatve oziroma davčni zavezanec, ki je opravil prvotno obdavčeno dobavo blaga ali storitev.*

SUMMARY ● *Purchase of debts is supply of services, which is not entitled to VAT exemption for financial services. According to settled case-law, the ECJ in Case C-305/01 MKG GmbH concluded that factoring, including true factoring, meets the concept of supply of services as an economic activity under the VAT Directive. The ECJ concluded that by assuming the risk of the debtors' default and, in return for which, by invoicing its clients in respect of commission (true factoring), the factor pursues an economic activity for the purposes of Articles 2 and 4 of VAT Directive. The article also analyses and explains that the provisions of implementing regulations are not in line with the EU VAT Directive. In another case, the ECJ concluded that a purchaser who, at his own risk, purchased defaulted debts at a price below their face value did not effect a supply of services for consideration and did not carry out an economic activity falling within the scope of VAT Directive when the difference between the face value of those debts and their purchase price reflected the actual economic value of the debts at the time of their assignment. Finally, the article also considers what is the proper VAT treatment of any subsequent change in the taxable amount due to non-payment of defaulted debts. The author concludes that only taxable persons who perform taxable supply of goods or services are entitled for subsequent reduction of the taxable amount.*

Darija Šinkovec

Učinkovito obvladovanje davčnih tveganj v gospodarskih družbah

Effective Tax Risk Management in Companies

POVZETEK ● *Zaradi nenehnih sprememb pri poslovanju, številnih omejitev ter različnih pritiskov postaja v velikih gospodarskih družbah upravljanje tveganj vse pomembnejše. Gospodarska kriza in finančni zlomi nekaterih podjetij so še bolj zaostrili zahteve po preglednosti poslovanja, zlasti v tistih družbah, katerih vrednostni papirji so sprejeti na organiziranem trgu. Upravljanje tveganj*

je tesno povezano s cilji in vzpostavljenimi sistemi notranjega kontroliranja, čemur dajejo velike gospodarske družbe vse večji pomen. V prispevku so opredeljena davčna tveganja in notranje kontrole, tako računovodske kot davčne. Predstavljeno je obvladovanje davčnih tveganj v velikih gospodarskih družbah na Nizozemskem in v Sloveniji. Na Nizozemskem je vzpostavljeno ogrodje davčnega nadzora (Tax Control Framework) eden od pogojev za vključitev v posebno obliko nadzora – horizontalni monitoring. Ocena vzpostavitve okvira notranjih kontrol temelji na Simonsovem modelu vzvodi nadzora, preko katerega se uporabi model COSO ERM, ki sta opisana v prispevku. Ker se zakonodaja in kodeksi upravljanja družb pogosto sklicujejo na ta model, je COSO postal standard, med drugim tudi pri vzpostavljanju notranjih davčnih kontrol. Priporočajo ga tudi publikacije največjih davčnosvetovalnih družb. V prispevku je prikazan primer vzpostavitve notranjih davčnih kontrol v nizozemski družbi, opisano je tudi obvladovanje davčnih tveganj v velikih gospodarskih družbah v Sloveniji ter primerjava z nizozemskim davčnim okoljem na podlagi izkušenj, pridobljenih ob uvedbi pilotskega projekta horizontalnega monitoringa. Za učinkovito obvladovanje davčnih tveganj so ključne notranje davčne kontrole, ki se v velikih gospodarskih družbah izvajajo s pomočjo notranjih oziroma zunanjih davčnih svetovalcev, pomembno pa je tudi sodelovanje z davčno upravo.

SUMMARY ● *Due to constant changes in conducting business, due to numerous limitations and various pressures, tax risk management in large enterprises is becoming more and more important. The economic crisis and financial collapses of some companies gave rise to a greater need for transparency in business operations, especially of those enterprises whose securities are admitted to trading on a regulated market. Risk management is closely connected to the objectives and established systems of internal control, which increasingly gain significance for large enterprises. This article defines tax risks and internal controls, i.e. accounting as well as tax controls. It presents the managing of tax risks of large enterprises in the Netherlands and in Slovenia. In the Netherlands, an established tax control framework is one of the conditions to be included into a special form of supervision – horizontal monitoring. The evaluation of an established tax control framework is based on the Simons model "Levers of Control", through which the COSO ERM model is applied, which are both described in this article. Since the legislation and corporate governance codes often refer to the COSO model, it has become a standard, among others also for establishing internal tax controls. It is often recommended also by the publications of the largest tax advisory companies. This article presents an example of establishing internal tax controls in a Dutch enterprise and it also describes the tax risk management at large enterprises in Slovenia, which is then compared to the Dutch tax environment, based on the experience gained during our pilot project of horizontal monitoring. Internal tax controls are essential for an effective tax risk management and in large enterprises they can be implemented with the help of internal or external tax advisors. Enhanced cooperation with the tax administration is of great importance as well.*

Dr. Clemens Nowotny

Determination of the Tax Basis of a PE

The New OECD-Approach

SUMMARY ● *In 2008, the OECD Committee on Fiscal Affairs approved the "Report on the Attribution of Profits to Permanent Establishments" as the Authorized OECD Approach (AOA) on how to attribute profits to permanent establishments. Under the AOA, the following two steps have to be taken: first, a functional and factual analysis must be performed in order to hypothesise the PE as a separate and independent enterprise undertaking functions, owning and/or using assets, assuming risks and entering into dealings with other parts of the enterprise; second, any recognised dealings have to be remunerated at arm's length by applying the OECD Transfer Pricing Guidelines by analogy.*

Since important conclusions of the AOA are inconsistent with the 2008 version of Art 7 OECD-MC and its interpretation provided in the Commentary, the introduction of a treaty provision corresponding to the 2010 version of Art 7 OECD-MC is required in order to fully implement the

AOA. For those tax treaties which have not yet incorporated the 2010 version of Art 7 OECD-MC, the fiction that the PE is a separate and independent enterprise is still restricted.

POVZETEK ● *Odbor OECD za fiskalne zadeve je leta 2008 odobril "Poročilo o pripisu dobičkov stalnim poslovnim enotam" kot potrjeni pristop OECD k načinu pripisovanja dobičkov stalnim poslovnim enotam. Potrjeni pristop OECD narekuje postopek v dveh korakih: najprej je treba opraviti funkcijsko analizo in analizo dejstev kot podlago za hipotezo, da je stalna poslovna enota ločeno in neodvisno podjetje, ki opravlja funkcije, ima v lasti in/ali uporablja sredstva, prevzema tveganja in sklepa posle z drugimi deli podjetja; nato pa je treba vse pripoznane posle poplačati po tržnih cenah in pri tem smiselno upoštevati Smernice OECD za določanje transfernih cen.*

Ker pomembni predlogi potrjenega pristopa OECD niso skladni z različico 7. člena vzorčne konvencije OECD iz leta 2008 in njegovo razlago v komentarju, je za popolno izvedbo potrjenega pristopa OECD v sporazume o izogibanju dvojnemu obdavčenju potrebno vključiti določbo, ki ustreza različici 7. člena vzorčne konvencije OECD iz leta 2010. Za sporazume o izogibanju dvojnemu obdavčenju, ki še nimajo vključene različice 7. člena vzorčne konvencije OECD iz leta 2010, je domneva, da je stalna poslovna enota ločeno in neodvisno podjetje, še vedno omejena.