

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

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Davek na dodano vrednost pri prodaji poslovnih deležev

Value added tax in case of share deal

POVZETEK ● *Prodaja oz. nakup podjetij je pomemben instrument za rast ali reorganizacijo podjetij v vseh fazah gospodarskega cikla. Na voljo sta dva glavna načina transakcij, in sicer prenos poslovnega deleža oz. delnic (share deal) in prenos poslovnih sredstev (asset deal). V prispevku so obravnavane DDV-jeve implikacije pri transakcijah "share deal". Direktiva o DDV-ju predvideva oprostitvev, vendar sodna praksa Sodišča EU pokaže kompleksnejšo sliko. Te transakcije lahko predstavljajo neobdavčljiv ali obdavčljiv promet, v skladu s tem pa je pomemben vidik odbitka DDV-ja od transakcijskih stroškov in morebitne vključitve tega prometa v odbitni delež. Poseben izziv predstavlja odbitek DDV-ja pri t. i. holdinških družbah.*

Ključne besede ● *prodaja deleža, "share deal", DDV, oprostitvev, odbitek vstopnega DDV-ja*

SUMMARY ● *Sale and acquisition of companies is an important instrument for business growth or reorganization in all stages of the economic cycle. Two main types of transactions are available, namely the transfer of business interest or shares ("share deal") and the transfer of assets ("assets deal"). This paper addresses VAT implications of share deal transactions. The VAT Directive provides for an exemption, but the case law of the EU Court of Justice shows a more complex picture. Such transactions may be either non-taxable or taxable, and accordingly an important aspect is the deduction of input VAT from transaction costs and the possible inclusion of these transactions into the pro-rata calculation. A special challenge is the deduction of input VAT in case of holding companies.*

Key words ● *sale of business share, share deal, VAT, exemption, input VAT deduction*

Obdavčitev naknadnih vplačil v luči sodne prakse in sprememb davčne zakonodaje

Taxation of Subsequent Payments in the Light of the Case Law and Changes to Tax Legislation

POVZETEK ● Vrhovno sodišče Republike Slovenije je 22. 1. 2019 na javni obravnavi razglasilo sodbo¹, s katero je razsodilo o stališču Finančne uprave Republike Slovenije², po katerem se naknadna vplačila družbenika v kapital družbe niso vštevala v nabavno vrednost poslovnega deleža družbenika družbe z omejeno odgovornostjo. Posledica te davčne prakse je bilo obdavčevanje fizičnih oseb z davkom od dobička iz kapitala na del dosežene vrednosti, ki so jo realizirali ob odsvojitvi poslovnega deleža, ki pa ni bila ustvarjeni dobiček odsvojitelja, temveč povračilo njegovega vložka v kapital družbe. Vrhovno sodišče je z izhodiščnim argumentom, da je treba pri obdavčevanju z dohodnino izhajati iz dejansko ustvarjenega povečanja premoženja, to stališče zavrnilo. Sodba Vrhovnega sodišča je precedenčna in je spremenila davčno prakso Finančne uprave Republike Slovenije. Zaradi te sodbe je zakonodajalec z novelo Zakona o dohodnini (ZDoh-2V³) dopolnil določbe v 6.2. in 6.3. poglavju Zakona o dohodnini⁴. V prispevku analiziram razloge za odločitev Vrhovnega sodišča, predstavljam spremembe v zakonodaji ter dileme s tem v zvezi.

Ključne besede ● davek od dobička od kapitala, naknadna vplačila, precedenčna sodba Vrhovnega sodišča, spremenjeni davčna praksa in zakonodaja

SUMMARY ● At a public hearing on 21 January 2019, the Supreme Court of the Republic of Slovenia issued a judgement^[1] on the position of the Financial Administration of the Republic of Slovenia^[2] according to which a shareholder's subsequent payments in a company's capital were not included in the acquisition value of a shareholder's interest in a limited liability company. As a consequence of such tax practice, capital gains of natural persons were taxed for the part of the value achieved and realized upon disposal of their share which, however, did not represent the seller's capital gains, but rather the

1 Vrhovno sodišče RS X Ips 23/2018 z dne 16. 1. 2019.

2 Stališče FURS-a je potrdilo tudi Upravno sodišče RS, npr. v sodbi I U 1248/2015 z dne 8. 11. 2016.

3 Uradni list RS, št. 66/2019.

4 Zakon o dohodnini. Uradni list RS, št. 13/11 – uradno prečiščeno besedilo, 9/12 – odl. US, 24/12, 30/12, 40/12 – ZUJF, 75/12, 94/12, 52/13 – odl. US, 96/13, 29/14 – odl. US, 50/14, 23/15, 55/15, 63/16, 69/17, 21/19 in 28/19.

[1] Supreme Court X Ips 23/2018 of 16 Jan. 2019.

[2] FURS's position was confirmed also by Administrative Court of the RS, e.g. in ruling I U 1248/2015 of 8 Nov. 2016.

repayment of his contribution in the company's capital. The Supreme Court rejected this position with the baseline argument that the taxation of personal income shall rather derive from the premises of the actually achieved increase of assets. This Supreme Court's judgement set precedence, and changed the tax practice of the Financial Administration of the Republic of Slovenia. As a result of the said judgement, the legislature amended the Personal Income Tax Act (ZDoh-2V^[3]) by amending the provisions in Chapters 6.2 and 6.3.^[4] The present article analyses the reasons for the Supreme Court's decision, presents the changes in the legislation and the dilemmas in this regard.

Key words ● tax on capital gains, subsequent payments, precedential judgment of the Supreme Court, changes in tax practice and legislation

[3] Official Gazette of the RS, no. 66/2019.

[4] Personal Income Tax Act (Official Gazette of the RS, no. 13/11 – official consolidated text, 9/12 – dec. by CC, 24/12, 30/12, 40/12 – ZUJF, 75/12, 94/12, 52/13 – dec. by CC, 96/13, 29/14 – dec. by CC, 50/14, 23/15, 55/15, 63/16, 69/17, 21/19 and 28/19).

Davčna in računovodska obravnava amortizacije ter obresti iz najemov

Tax and accounting analysis of depreciation and interest expenses from lease contracts

POVZETEK ● *Sredstva, ki predstavljajo pravico do uporabe sredstev iz najemnih pogodb ter obveznosti iz najema, so nove kategorije, ki bodo z amortizacijo sredstev, ki predstavljajo pravico do uporabe, ter z odhodki iz obresti učinkovale tudi na poslovni izid in davčno osnovo. Vendar bodo učinki v celotni dobi najema popolnoma davčno nevtralni. Predmet novele ZDDPO-2R so zgolj stroški amortizacije, ki bodo nižji od sedanjih stroškov najemnin, medtem ko novela ne ureja posebnosti za davčno priznavanje odhodkov iz obresti iz obrestovanja obveznosti iz najema. Ključno vprašanje novele ZDDPO-2 je davčno priznavanje amortizacije: ali se davčno prizna amortizacija od sredstva, ki predstavlja pravico do uporabe, ali pa amortizacija sredstva, ki je predmet najema? Prva se namreč obračunava z vidika najemnika, druga pa z vidika najemodajalca. Prispevek najprej analizira pravice najemnika iz najemne pogodbe in s tem povezano sredstvo, ki predstavlja pravico do uporabe, nato pa še sprejeto novelo ZDDPO-2R v tej povezavi.*

Ključne besede ● *sredstvo, ki predstavlja pravico do uporabe, predmet najema, amortizacija, obveznosti iz najema, odhodki iz financiranja, MSRP 16, SRS 1, ZDDPO-2R, davčno priznani stroški amortizacije*

SUMMARY ● *The right-of-use assets and lease liabilities are new categories, which will through the depreciation of right-of-use assets and interest expenses, also affect the profit and loss and the tax base. However, the effects throughout the total lease term will be completely tax neutral. The amendments to the Corporate Income Tax Act (ZDDPO-2R) regulate only depreciation costs that will be lower than the current rental costs, while the amendments do not regulate the specificities of the tax recognition of interest expenses from lease liabilities. The key issue of Act Amending the Corporate Income Tax Act (ZDDPO-2R) is the tax recognition of depreciation – whether tax deductible is the depreciation from the right-of-use assets, or the depreciation of the underlying asset, which is the subject of the lease. The first is calculated from the point of view of the lessee and the second from the point of view of the lessor. The article first analyses the right-of-use assets of the lessee, and then the adopted amendments in this connection.*

Key words ● *right-of-use assets, underlying asset, depreciation, lease liabilities, interest expenses, IFRS 16, SRS 1, the amended Corporate Income Tax Act (ZDDPO-2R), tax deductible depreciation costs*

Dajatve od dohodkov iz zaposlitve po sodnih odločbah

Taxes and contributions from employment income following court decisions

POVZETEK ● *Veliko sodnih sporov privede do izplačila dohodkov po sodnih odločbah. Kadar se ti nanašajo na dohodke iz zaposlitve iz preteklih let, se uporabi poseben način obračuna dohodnine, povprečenje. Kljub povprečenju pa je skupna davčna obremenitev z dohodnino višja, kot bi bila, če bi bili dohodki pravočasno (in prostovoljno) izplačani, kar je prikazano v zgledih. Zato bi bilo dobro spremeniti način povprečenja, da bi bili zavezanci v približno enakem (davčnem) položaju.*

Ključne besede ● *dohodki iz zaposlitve po sodnih odločbah, povprečenje, povprečna stopnja, izplačilo po poravnavi*

SUMMARY ● *Numerous litigations lead to payment of income following court decisions. When these relate to employment income from previous years, a special method of calculating income, averaging, is used. Despite averaging, the total income tax burden is higher than it would be if income were paid on time (and voluntarily), which is shown through illustrative examples. It would therefore be favourable to change the averaging method in such a way as to place taxpayers in an approximately equal (tax) position.*

Key words ● *employment income following court decisions, averaging, average personal income tax rate, payment after settlement*

Ali je odkup lastnega poslovnega deleža obdavčen?

Is the acquisition of own shares subject to a taxation?

POVZETEK ● *S sprejetjem zadnje novele Zakona o dohodnini se je temeljito spremenila davčna obravnava odkupa lastnih poslovnih deležev v d. o. o. Odkup lastnih poslovnih deležev od 1. 1. 2020 ni več obdavčen po pravilih o obdavčitvi dobičkov iz kapitala (oz. izjemoma po pravilih o obdavčitvi dividend, če se ugotovi zloraba), temveč vedno skladno s pravili o obdavčitvi dividend. Navedeno seveda nima nobenega pravnega učinka na samo pravno podlago pridobitve lastnega deleža, kot je zamišljena v okviru korporacijskega prava. Zato je kot uvertura predstavljen sistem pridobivanja lastnega poslovnega deleža, ki pa služi zgolj sistematski obravnavi celotnega postopka odkupa lastnega poslovnega deleža. Članek predstavlja pregled pretekle (do 31. 12. 2019), predlagane in nove (od 1. 1. 2020) ureditve davčne obravnave odkupa lastnega poslovnega deleža v okviru ureditve družbe z omejeno odgovornostjo, s poudarkom na kritiki novega sistema. Bistvo kritike je, da se nova ureditev oddaljuje od obdavčenja po ekonomski vsebini in približuje obdavčenju po formalnih kriterijih, ki pa ne upoštevajo morebitne ekonomske utemeljenosti. Zakonska in dejanska stvarnost se oddaljujeta druga od druge, pri čemer ni popolnoma jasno, v čem je legitimni namen takšne regulacije.*

Ključne besede ● *lastni poslovni deleži, obdavčitev kapitalskega dobička, obdavčitev dividend, Novela ZDoh-2V, ekonomska vsebina*

SUMMARY ● *With the adoption of the latest amendments to the Income tax act, the regulatory framework for the taxation of own shares has been thoroughly changed. From 1 January 2020 onwards, acquisition of own shares is not taxed as a capital gain (except for instances when an own stock is acquired through a stock market) but rather as a dividend. While this change has no bearing on the corporate law side of acquiring own shares, it has a significant impact on rationalizing the acquisition of own shares from an economic point of view. This Article will first deal with corporate legislation regarding the acquisition of own shares in an effort to show the systematic whole and to present a better view of things to the reader. The main part of the article is devoted to a presentation of the past, the intended and the new legislation in regard to the taxation of the acquisition of own shares, with an emphasis on criticism of the present regulatory framework. The essence of the critique is the abandonment of the principle of taxing the economic substance of the transaction in favor of a formalistic approach. The legal solution and reality are at odds with each other, and the reason behind it is not clear.*

Key words ● *Own shares, capital gains tax, dividends tax, Personal Income Tax Act, economic substance of a transaction*

'Hitri ukrepi' na področju DDV-ja in nekatera odprta vprašanja

'Quick Fixes' in VAT legislation and some open issues

POVZETEK ● Decembra 2018 je bila sprejeta Direktiva Sveta EU 2018/1910/ES, v katero so države članice vnesle določene hitre ukrepe zaradi poenotenja in poenostavitve prakse ter preprečevanja davčnih utaj v EU-ju. Septembra 2019 je Generalni direktorat Evropske komisije za obdavčenje in carinsko unijo sprejel Osnutek pojasnil o EU DDV spremembah v zvezi s posebno ureditvijo skladiščenja na odpoklic, zaporednih dobav in oprostitev za dobave blaga v EU-ju ("2020 hitri ukrepi"), kjer so predstavljene rešitve oziroma možni odgovori na nekatera vprašanja v zvezi z novostmi na področju DDV-ja. Novembra 2019 je bil objavljen nov dopolnjen osnutek teh pojasnil. Namen prispevka je povzeti novosti in predstaviti določene predloge TAXUD-a, ki bi zavezancem lahko pomagali pri implementaciji novosti v praksi.

Ključne besede ● DDV, novosti za leto 2020, zaporedne dobave, skladiščenje na odpoklic, oproščene dobave v EU-ju, ID za DDV

SUMMARY ● EU VAT Directive 2018/1910/ES was adopted in December 2018 with an aim to unify and simplify some procedures in the EU and to prevent tax evasions. Solutions are known as 'quick fixes'. At the end of September the Commission's Directorate General for Taxation and Customs Union published Draft Explanatory Notes on the EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemptions for intra-Community supplies of goods ("2020 Quick Fixes"), giving some possible solutions or answers on open questions how to implement the VAT novelties in practice. The new revised draft version of the Explanatory Notes was published in November 2019. The aim of the article is to present in brief the novelties and some of the solutions proposed that could be useful when implementing the novelties in practice.

Key words ● VAT, novelties for 2020, chain transactions, call-of stock arrangements, intra-Community supplies of goods, VAT ID number

Nadja Ovčar

Priprava razvojnega programa za namene uveljavljanja davčne olajšave za vlaganja v raziskave in razvoj ter izzivi pri davčnem nadzoru

Preparation of development program for R&D tax allowance purposes and challenges in the event of tax audit

POVZETEK ● *Trenutno veljavni Zakon o davku od dohodkov pravnih oseb (ZDDPO-2) predvideva možnost uveljavljanja davčne olajšave za vlaganja v raziskave in razvoj v višini 100-% zneska stroškov, ki predstavljajo vlaganja v raziskave in razvoj, in vključuje tako stroške v povezavi z notranjo kot tudi zunanjo raziskovalno-razvojno dejavnostjo. Kot posledica ugodne ureditve področja je obseg uveljavljenih davčnih olajšav v preteklih letih precej narasel, obenem pa ni zaznati enako izrazitega povečanja gospodarske učinkovitosti družb. Pomanjkljiva ureditev v nacionalni zakonodaji in sklicevanje na mednarodne priročnike zavezancem povzročata težave, tako v zvezi z samim uveljavljanjem kot tudi v kasnejših primerih davčnega nadzora tega področja.*

Ključne besede ● *davki, davek od dohodkov pravnih oseb, davčna olajšava za vlaganja v raziskave in razvoj, elementi za razmejevanje raziskovalno-razvojne dejavnosti, davčni nadzor*

SUMMARY ● *The Corporate Income Tax Act (ZDDPO-2) currently in force allows claiming the R&D allowance of 100 % of the amount of expenses that relate to research and development and includes costs related to internal and external R&D. As a result of the favourable regulation, the scope of the claimed tax allowances has increased significantly over the past years; however, at the same time no significant increase in the economic efficiency in companies has been established. The lack of regulation in national law and referencing to international manuals create problems for taxpayers, when claiming the R&D allowances, and in the event of tax audits.*

Key words ● *Taxes, corporate income tax, R&D tax allowance, concepts of delineating the R&D activities, tax audit*

Implementacija Direktive EU na področju sankcij in sodnega varstva v Veliki Britaniji

Implementation of the EU Directive in the area of sanctions and judicial protection in the United Kingdom

POVZETEK ● 27. maja 2014 sta bila v Uradnem listu Evropske unije objavljena dva pomembna dokumenta v zvezi z revizijo računovodskih izkazov, in sicer Direktiva 2014/56/EU o obveznih revizijah za letne in konsolidirane računovodske izkaze in Uredba (EU) št. 537/2014 o posebnih zahtevah v zvezi z obvezno revizijo subjektov javnega interesa. Države članice EU-ja so morale omenjeno direktivo implementirati v svojo nacionalno zakonodajo v dveh letih po začetku veljavnosti, to je najkasneje do 17. junija 2016. Istega dne je začela veljati tudi Uredba (EU) 537/2014. V Veliki Britaniji je Direktiva 2014/56/EU o obveznih revizijah za letne in konsolidirane računovodske izkaze implementirana v Zakon o revizorjih in predpisih o revizorjih tretjih držav 2016 (angl. *The Statutory Auditors and Third Country Auditors Regulations 2016*), ki je začel veljati 17. 6. 2016. V članku predstavljamo implementacijo Direktive 2014/56/EU, ki je bila izpeljana v Veliki Britaniji, omejili pa smo se izključno na področje sankcij in sodnega varstva, predstavljamo pa tudi nadzorni organ v Veliki Britaniji na področju revidiranja.

Ključne besede ● revidiranje, Direktiva 2014/56/EU, Uredba (EU) 537/2014, nova evropska zakonodaja, sankcije, sodno varstvo

SUMMARY ● On 27 May 2014, two important documents were published in the Official Journal of the European Union concerning the auditing of accounts, namely Directive 2014/56/EU on statutory audits of annual accounts and consolidated accounts and Regulation (EU) No 537/2014 laying down specific requirements for statutory audit of public-interest entities. EU Member States were required to implement this Directive into their national legislation within two years of its entry into force, no later than by 17 June 2016. Regulation (EU) 537/2014 entered into force on the same day. In the United Kingdom, Directive 2014/56/EU on statutory audits of annual and consolidated financial statements has been implemented by the Statutory Auditors and Third Country Auditors Regulation of 2016, which entered into force on June 17, 2016. This article introduces the implementation of Directive 2014/56/EU in the UK, which is, however, limited solely to sanctions and justice. In addition, the UK supervisory authority in the field auditing is presented.

Key words ● auditing, Directive 2014/56/EU, Regulation (EU) 537/2014, new European legislation, sanctions, judicial protection

Revizija dostopnih pravic – drugi del

Auditing User Access Privileges

POVZETEK ● *Dostop do informacijskih virov je ključni pogoj za učinkovito delo. Ker pa informacijski viri organizacij pogosto vključujejo osebne in druge zaupne podatke, morajo biti dostopi do njih omejeni skladno z zakonskimi zahtevami in dobrimi praksami varovanja informacij. Usklajevanje nasprotujočih si zahtev učinkovitosti in zaščite ter varovanje informacij je lahko zelo kompleksno.*

Revizorji lahko pri reviziji dostopnih pravic uporabijo najrazličnejše pristope. V prispevku Revizija uporabniških pravic, ki smo ga zaradi obsežnosti razdelili na dva dela, predlagamo možen praktični pristop k reviziji področja. Pri tem se osredotočamo na notranjerevizijski vidik izvajanja tovrstnega posla, seveda pa ga je mogoče izvesti tudi kot revizijo informacijskih sistemov.

Prispevek smo zasnovali tako, da smo v prvem delu pojasnili temeljne pojme s področja dostopnih pravic z vidika njihovega pomena v kontekstu notranjerevizijskega ali revizijskega pregleda informacijskih sistemov. V drugem delu prispevka predlagamo pristop k načrtovanju in izvedbi takega posla.

Ključne besede ● *dostopne pravice, varnost, programska oprema, dostop, oddaljeni dostop, administracija, privilegij, pooblastila, identiteta, geslo, aktivni imenik, notranja revizija*

SUMMARY ● *Access to data sources is the key to working efficiently. However, as data sources frequently include personal and other confidential data, access must comply with regulatory requirements and information protection best practices. Balancing between the opposing efficiency requirements and information protection can be extremely complex.*

Auditors can use various approaches to auditing of access privileges. This two-part article focuses on one potential practical approach – the internal audit assignment. The first part introduces the basic terminology connected with access privileges and, in particular, the nuances of these terms in the context of an internal audit assignment. The second part suggests several approaches to this type of audit.

Key words ● *access privileges, security, software, access, remote access, administration, privilege, identity, password, active directory, internal audit*

Izvedba notranjerevizijskega posla – prvi del

Implementation of an internal audit engagement – Part 1

POVZETEK ● *Izvedba notranjerevizijskega posla zajema nekaj različnih skupin aktivnosti, ki so organizirane za načrtovanje izvedbe notranje revizije, preizkušanje kontrol, izvedbo del na terenu in zaključevanje notranjerevizijskih del. Posel se začne s seznanitvijo revidiranca o nameravani izvedbi revizije. Nato se revizor in revidiranec dogovorita o predvidenih postopkih izvedbe, času izvedbe posameznih notranjerevizijskih aktivnostih, namenu revizije in sredstvih, ki naj bi bile na razpolago notranjemu revizorju. Notranji revizor nato izvede predhodni pregled področja revidiranja, da bi pridobil zadostno razumevanje organizacije in notranjih kontrol. Naslednja skupina nalog je preizkušanje notranjih kontrol in pridobivanje čim več informacij o njihovem delovanju.*

Na osnovi pridobljenih rezultatov izvedenih del notranji revizor pripravi osnutek formalnega revizijskega poročila, ki ga posreduje revidirancu. Na njegovi osnovi se izvede zaključni sestanek, ki je namenjen obravnavi revizijskih zaključkov in priporočil. Notranji revizor predloži končno revizijsko poročilo in vprašalnik, ki je namenjen pripombam o kakovosti izvedene revizije. Notranji revizor običajno zaključi revizijo v šestih mesecih po izvedbi revizije s pregledom izpolnitve revizijskih priporočil.

Ključne besede ● *načrtovanje posla, cilj, obseg, sodila, prepoznavanje in ocenjevanje tveganj, ključne kontrole, plan preizkušanja, prevare, prepoznavanje informacij, poročanje o izidih, spremljanje napredovanja*

SUMMARY ● *When referring to the audit as a whole, audit engagements encompass several distinct steps, which are organized into planning, testing of controls, substantiation or fieldwork and exit or finalization. The first step is sending a letter to the client alerting him of the audit. After this initial contact, the client and auditor meet to pinpoint further how, when and why the audit will happen, as well as the resources the auditor will have at his disposal. The auditor then conducts primary surveys to understand the company and the controls in place. The next step is testing the controls and gathering as much information as possible.*

Based on the results, the auditor constructs a draft of the formal audit report, which he shares with the client. As the audit work draws to a finish, the auditor and client schedule an exit meeting. The client responds to the findings in the report and the recommendations the auditor has made. The auditor issues a final report and may ask the client to complete a survey about the auditor's performance and the audit results. Auditors complete the audit by following up with the client, normally within six months.

Key words ● *Engagement planning, objective, scope, criteria, identification and assessment of risks, key controls, test plan, fraud, identifying information, communicating results, follow-up procedures*