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Valentin Bajuk, dr. Sara Remškar Rejc

Izzivi obdavčitve zavarovanj odgovornosti organov vodenja in nadzora ter drugih dohodkov članov posloводства in nadzornih svetov

Challenges of taxing liability insurance of management and supervisory bodies and other income of management and supervisory board members

POVZETEK • V prispevku obravnavamo problematiko obdavčitve posameznih vrst dohodkov organov vodenja in nadzora. Najprej pojasnimo ključne korporacijske pravne in pogodbene vidike razmerij gospodarskih družb z organi vodenja in nadzora, ki so pomembni za razumevanje davčnih posledic prejemkov članov teh organov. V nadaljevanju je podrobneje obravnavana obdavčitev nekaterih prejemkov članov organov vodenja in nadzora. V zvezi s prejemki posloводства obravnavamo zlasti obdavčitev plačila za delo in povračila stroškov, menedžerskih pregledov, odpravnin ter delniških in opcijskih programov nagrajevanja. V zvezi s prejemki članov nadzornih svetov pa predstavimo predvsem obdavčitev plačila za opravljanje mandata oz. funkcije ter sejin, povračila stroškov, plačila članarin in izobraževanj. V prispevku je obravnavano pojasnilo FURS-a, ki določa način obdavčitve plačanih premij za zavarovanje odgovornosti organov vodenja in nadzora (t. i. D&O zavarovanj). Avtorja meniva, da plačanih premij teh zavarovanj zaradi posebnosti tega zavarovanja ni mogoče enoznačno pripisati posamezni zavarovani fizični osebi, zato ne gre za individualizirani obdavčljivi prejemek fizične osebe. Poleg tega za premije D&O zavarovanj tudi v ZDoh-2 ni pravil za določitev davčne osnove (višine bonitete), kar je problematično z vidika ustavnega načela zakonitosti obdavčitve na davčnem področju (147. člen Ustave RS).

Ključne besede • zavarovanja odgovornosti članov organov vodenja in nadzora, prejemki posloводства, prejemki članov nadzornega sveta, dohodnina, dohodek iz delovnega razmerja, dohodek iz drugega pogodbenega razmerja, povračilo stroškov, boniteta

SUMMARY • The article discusses the challenges of taxation of individual types of income of management board members and supervisory board members. Initially the authors explain the key corporate and contractual aspects of the relations between companies and the management and supervisory bodies, which are

important for understanding the tax consequences of the remuneration of the members of these bodies. Furthermore, the authors discuss the taxation of certain remunerations of members of management and supervisory bodies. In relation to management remuneration, the authors deal in particular with the taxation of remuneration for work and reimbursement of expenses, management medical examination, severance pay, and share and option rewards. In relation to the remuneration of the members of the supervisory boards, the authors deals in particular with the taxation of remunerations for the performance of the mandate or function, and meeting fees, reimbursement of expenses, payment of membership fees and payments of training and education. The article discusses the explanation of the financial administration (FURS), which determines the taxation of the so-called D&O insurance premiums. The authors believe that paid premiums of D&O insurance cannot be unequivocally attributed to an individual insured natural person due to the specifics of this insurance, which is why we cannot speak of an individualized taxable income of a natural person. In addition, with regard to D&O insurance premiums, the Income Tax Act (ZDoh-2) does not contain any rules for determining the tax base (amount of benefits), which is problematic in terms of the constitutional principle of legality of taxation in the tax field (Article 147 of the Constitution).

Key words • *liability insurance of members of management and supervisory bodies, management remuneration, remuneration of supervisory board members, income tax, income from employment, income from another contractual relationship, reimbursement of expenses, benefit*

Mag. Rosana Dražnik

DMV in DDV od pridobitve in uvoza rabljenih motornih vozil v Slovenijo

Motor vehicle tax and VAT for vehicles acquired from EU and third countries

POVZETEK • V zakonodaji o DDV-ju so posebnosti, ki jih je treba upoštevati pri transakcijah z motornimi vozili. V prispevku predstavimo ureditev pridobitve in uvoza rabljenih motornih vozil v Slovenijo. Opišemo dejavnike za pravilno obdavčitev z DDV-jem ob pridobitvi vozila. Posebna pozornost je potrebna tudi zaradi razlik med obdavčitvijo vozil v različnih državah članicah. Na kratko je predstavljena tudi obveznost za davek na motorna vozila, predvsem s postopkovnega vidika in vidika napovedi. Ključno vprašanje, ki ga izpostavimo, je, ali je DMV transakcijski ali registracijski davek. Obravnavamo pa tudi vprašanja, ki se s tem v zvezi pojavljajo v praksi.

Ključne besede • DDV, rabljena motorna vozila, obveznost za obračun DDV-ja, posebna ureditev za rabljena vozila, obveznost obračuna DMV-ja

SUMMARY • VAT legislation contains some special provisions for transactions with motor vehicles. In this article, we will focus on VAT treatments of used vehicles when acquired from the EU or imported from third countries. We will present factors taxable persons must be aware of when determining the correct VAT treatment of acquired vehicles. Additional focus is needed due to differences in EU countries regarding the VAT treatment of vehicles. In addition, key points of motor vehicle tax in Slovenia will be presented in the article. The main issue presented is the question whether the Slovenian motor vehicle tax is a registration tax or a transactional tax. In relation to that, there are some open issues in the law itself and also in the practice of tax authorities.

Key words • VAT, used vehicles, VAT liability, margin scheme for used vehicles, motor vehicle tax liability

Blaž Pate

Oddaja poslovnih prostorov in obračun trošarine za dobavo proizvedene elektrike

Renting out business premises and charging excise duty on the supply of electricity generated

POVZETEK • Lastniki oz. upravljalci trgovskih centrov oddajajo posamezne poslovne prostore oz. lokale različnim najemnikom, ki v najetih lokalih opravljajo svojo dejavnost. Glede pokrivanja potreb po električni energiji v trgovskih centrih je običajno možno dvoje: trgovski center še nima nameščenih in aktivnih naprav za samooskrbo (tj. fotovoltaičnih elektrarn) ali trgovski center razmišlja, da bi oz. je že namestil fotovoltaično elektrarno za proizvodnjo električne energije, namenjeno pokrivanju potreb električne energije v trgovskem centru. V teh primerih se bomo osredotočili na vprašanje obračuna trošarine za električno energijo s poudarkom na vprašanju, kdo je trošarinski zavezanec.

Ključne besede • električna energija, trošarinski zavezanec, končni odjemalec, zaprti sistem, trgovski center

SUMMARY • Owners or managers of shopping centers rent individual business premises or premises to various tenants, who thus carry out their business in the rented premises. Regarding the coverage of electricity needs in shopping centers, there are two common cases: the shopping center does not yet have devices for self-supply installed and active (i.e. its own photovoltaic power plant), or the shopping center is considering that, or has already installed a photovoltaic power plant that serves to produce electricity which is intended to cover the electricity needs of the shopping center. In these cases, we will focus primarily on the issue of calculating excise duty for electricity, with an emphasis on the question of who is liable for excise duty.

Key words • electricity, excise duty payer, final customer, closed system, shopping center

Nina Žefran

Uvedba minimalnega davka v Sloveniji

Introduction of minimum tax in Slovenia

POVZETEK • Slovenija je bila ena izmed prvih držav članic Evropske unije, ki je objavila predlog zakona o minimalnem davku. Z novim zakonom prispeva k izpolnjevanju mednarodnega dogovora o obdavčitvi velikih mednarodnih skupin ter v domačo slovensko zakonodajo prenaša določbe Direktive Sveta EU o zagotavljanju globalne minimalne davčne stopnje. Nova davčna pravila so posledica koordiniranih mednarodnih prizadevanj za odpravo davčnih praks mednarodnih podjetij, ki tem podjetjem omogočajo preusmerjanje dobičkov v jurisdikcije, kjer zanje velja zelo nizka ali ničelna obdavčitev. Zavezanci bodo plačali davek na razliko med dejansko davčno stopnjo in minimalno davčno stopnjo 15 %. Novi zakon je samostojen in bo veljal ločeno od obstoječe obdavčitve dohodkov pravnih oseb, saj gre za drugačen sistem in obseg obdavčitve. Davek se bo obračunal na presežni dobiček, ki se izračuna v skladu s standardizirano davčno osnovo in posebnim mehanizmom za izračun davka. Slovenija bo z novim davkom dosegla dodatne prilive v proračun v skupni ocenjeni vrednosti 27 milijonov evrov.

Ključne besede • povrhni davek, minimalni davek, pravilo o vključitvi dohodkov, pravilo o preizko obdavčenih dobičkih, kvalificirani domači povrhni davek, dejanska davčna stopnja, prehodni režim varnega pristana

SUMMARY • Slovenia was one of the first EU Member States to publish the legislative proposal on the minimum tax. The new law adheres to the global deal agreed by the members of the OECD on taxation of large multinational enterprises as well as transposes the requirements of the EU Council Directive on ensuring a global minimum level of taxation into the domestic legislation of Slovenia. The new tax rules are a consequence of coordinated international action to eliminate harmful practices carried out by many global enterprises on profit shifting to jurisdictions that provide them with low or zero taxation. Taxpayers will pay tax on the difference between the effective tax rate and the minimum tax rate of 15 %. The new tax law is independent and will be applied separately from the existing taxation of corporate persons as it represents a different system and scope of taxation. Tax will be charged on excess profit, calculated from the standardized tax base and a special mechanism to calculate the tax. Slovenia will receive additional tax revenue in total estimated value of 27 million EUR.

Key words • top-up tax, minimum tax, income inclusion rule, undertaxed profit rule, qualified domestic minimum top-up tax, effective tax rate, transitional safe harbour regime