

Dr. Stanko Čokelec

Kaznovanje davčnih utaj

Punishment of tax evasions

POVZETEK ● V pričujoči raziskavi smo proučevali sodbe sodišč o kaznivih dejanjih davčnih utaj. Zanimalo nas je število sodb o davčnih utajah v posameznih letih, vrste davčnih kaznivih dejanj po Kazenskem zakoniku (odslej KZ) in njihovi številčnosti, davčne utaje po zneskovnih razredih in njihovi številčnosti, kaznovanje davčnih utaj in njihova številčnost, davčne utaje po vrstah kršitev KZ, po zneskovnih razredih in po številčnosti in davčne utaje po vrstah kršitev KZ, po kaznovanju in številčnosti. Poleg kaznivih dejanj smo proučevali tudi podatke o izrečenih globah za prekrške za leta 2011, 2012 in 2013 po posameznih zakonskih osnovah.

Ugotavljamo, da v Sloveniji še nimamo vzpostavljenega stalnega spremljanja kaznovanja davčnih utaj ter enotnih podatkovnih evidenc. Tako, žal, ne spremljamo, kako kaznovanje davčnih utaj vpliva na njihov obseg kot temelj davčnega sistema.

Ključne besede ● davčna nepravilnost, davčni prekršek, davčno kaznivo dejanje.

SUMMARY ● In the present study, we investigated court judgments on criminal offenses of tax evasion. We were interested in the number of judgments on tax evasion in individual years, types of tax offences under the Criminal Code and their abundance, tax evasion by amount ranges and their abundance, punishment of tax evasion and their abundance, tax evasion by type of violation according to the Criminal Code, and their amount ranges and abundance, and tax evasion by type of violation according to the Criminal Code, their punishment and abundance. In addition to the offences we also looked at data on fines imposed for violations in the years 2011, 2012 and 2013, according to the individual legal basis.

We note that Slovenia has not yet established permanent monitoring of punishing tax evasion and uniform data records. Thus, unfortunately, we do not monitor how punishment of tax evasion affects its scope as the foundation of the tax system.

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Key words ● Tax irregularity, tax offence, tax criminal offence

Rosana Dražnik

Odbitni delež davka na dodano vrednost ter naknadne spremembe odbitka vstopnega DDV-ja

Deductible proportion in the VAT system and subsequent changes of the input VAT deduction

POVZETEK ● Pravica do odbitka vstopnega DDV-ja je tesno povezana tudi s trenutkom nastanka obveznosti za obračun DDV-ja. Brez samega sistema odbitka DDV-ja pa tudi ne bi bilo mogoče vzpostaviti načela nevtralnosti. Davčni zavezanci kot kupci blaga in storitev morajo biti pri uveljavljanju pravice do odbitka pozorni in upoštevati z zakonom določena pravila. V članku zato obravnavamo trenutek nastanka pravice do odbitka DDV-ja in navajamo, kdaj lahko odbitek uveljavljamo. Zakon predpisuje tudi pogoje, ko odbitka ni mogoče uveljaviti, in opredeljuje, kolikšen delež odbitka pripada zavezancem, ki opravljajo tudi dejavnosti, za katere odbitek ni dovoljen. Prav vsi zavezanci pa morajo biti pozorni tudi na dejavnike, ki lahko pripeljejo do tega, da morajo del ali celotni DDV, ki so ga odbili, vrniti državi.

Ključne besede ● DDV, odbitek vstopnega DDV-ja, odbitni delež, popravek odbitka

SUMMARY ● The right to deduct input VAT is closely connected to the moment when the VAT becomes chargeable. Without the system of input VAT deduction, it would not be possible to set up the principle of neutrality. Taxable persons as buyers of goods and services must consider the legal provisions when exercising the right to deduct. This article deals with the moment when the right to deduct arises and explores the situations when this right can be exercised. In case of taxable persons who also perform activities in which the deduction is not granted, the law prescribes conditions when the deduction cannot be claimed and defines the portion of deductible VAT. All taxable persons must be attentive to the factors which can lead to a situation when a part of the deducted input VAT or the entire deducted input VAT must be refunded to the fiscal authorities.

Key words ● VAT, input VAT deduction, deductible prortion, adjustment of input VAT deduction

Mag. Klavdija Erjavec

Prekvalifikacija navideznih samostojnih poslovnih razmerij v odvisno razmerje

Requalification of apparently independent business relations into a dependent relationship

POVZETEK ● V prispevku so najprej opredeljeni pojmi in glavni elementi ekonomske odvisnosti in delovnega razmerja. Prav tako je narejena primerjava med ekonomsko odvisnimi osebami, samozaposlenimi osebami in delavci v delovnem razmerju. Izrecno je pojasnjeno delovnopravno varstvo, ki ga v skladu z določbami Zakona o delovnih razmerjih uživajo ekonomsko odvisne (samozaposlene) osebe, ter pogoji, pod katerimi se varstvo lahko uveljavlja. Na koncu je tudi mnenje v zvezi s tem, ali je takšna ureditev dejansko primerna in kaj pomeni za naročnika. V samem prispevku so izpostavljene tudi sodne odločbe v zvezi z obstojem delovnega razmerja v primerih, ko gre za navidezno samostojna razmerja, ter postopek pravnega varstva pri obstoju elementov delovnega razmerja, ko gre za navidezno samostojna razmerja.

Ključne besede ● delovno razmerje, delavec, ekonomsko odvisna oseba, samozaposlena oseba, pravno varstvo

SUMMARY ● The article initially defines concepts and main elements of economical dependency and employment relationship. Furthermore, a comparison between economically dependent persons, self-employed persons and employees in employment relationship is presented. Especially the issue of legal protection assured by the Employment Relationship Act to economically dependent (self-employed) persons is addressed, as well as the conditions that shall apply for such protection. Finally, the opinion whether such regulation is actually appropriate and what it represents for the customer, is provided. The article highlights also some Court's decisions addressing the existence of employment relationship in cases where independent relationships are only apparent, and legal protection procedures in case of existence of elements of employment contracts, where the issue of apparently independent relationship is questioned

Key words ● Employment relationship, employee, economically dependent person, self-employed person, legal protection

Saša Jerman

Davčni vidiki upnikov in dolžnika v prisilni poravnavi po ZFPPIPP-ju

Creditors and debtors position in a compulsory settlement procedure from the taxation point of view

POVZETEK ● Namen prisilne poravnave je finančno prestrukturiranje zaradi insolventnosti dolžnika, ki se izvede bodisi z delnim odpisom in odlogom plačila preostanka terjatev bodisi s prenosom terjatev na dolžnika v postopku povečanja osnovnega kapitala. Postopek prisilne poravnave ima specifične pravne posledice za premoženje dolžnika in upnikov. S temi specifičnimi premoženjskimi posledicami je neposredno povezana tudi obdavčitev, tako z vidika davka od dohodkov pravnih oseb kot davka na dodano vrednost. V prispevku so obravnavani davčni vidiki prisilne poravnave za upnike in dolžnika, v prvem delu prispevka pa temeljne procesne značilnosti in posledice prisilne poravnave na premoženje upnikov in dolžnika.

Ključne besede ● insolventnost, prisilna poravnava, upnik, dolžnik, terjatev, odpis terjatve, davek od dohodkov pravnih oseb, davek na dodano vrednost, davčno priznan odhodek, popravek DDV-ja

SUMMARY ● The purpose of any compulsory settlement is the debtor's financial restructuring by virtue of its insolvency. It is carried out by partial write-offs or deferred payments of creditors' receivables or by increasing the debtor's capital with creditors' receivables. Compulsory settlement has specific legal effects on the assets of both the creditors and the debtor concerned and is, thus, also related with specific tax consequences. This article mainly deals with tax aspects of compulsory settlements, while its first part addresses the basic procedure characteristics and consequences of compulsory settlements.

Key words ● Insolvency, compulsory settlement, creditor, debtor, receivable, receivables writt-off, corporate income tax, value added tax, tax deductible costs, input tax correction

Mag. Matjaž Kovač

Harmonizacija evropskega podjetniškega obdavčenja

Harmonisation of European corporate taxation

POVZETEK ● *Nedavna finančna in gospodarska kriza v Evropski uniji je izpostavila potrebo po dopolnitvi monetarne unije z ekonomsko unijo. Eden od elementov močnejšega gospodarskega povezovanja je usklajevanje davčnih sistemov (npr. sistem korporacijskega obdavčevanja) v 28 državah članicah. Evropska komisija je predlagala skupen mehanizem za izračun davčne osnove za podjetja, konsolidacijo davčnih osnov, nastalih v različnih državah članicah, in poznejšo razdelitev konsolidirane davčne osnove med državami članicami (porazdelitveni mehanizem). Sistem, ki ga je Evropska komisija predvidela, že uspešno deluje v svetovnih visoko povezanih gospodarstvih, kot so Združene države Amerike in Kanada, v katerih se davčna osnova za pravne osebe porazdeli med državami in deželami na podlagi posebnega porazdelitvenega mehanizma.*

Ključne besede ● *harmonizacija davčne osnove, skupna davčna osnova, konsolidacija, porazdelitveni mehanizem*

SUMMARY ● *The recent financial and economic crisis in the European Union has exposed the necessity to complete the monetary union with an economic union. One of the elements of a stronger economic integration is the harmonisation of the tax systems (e.g. the corporate tax regimes) of the 28 Member States. The European Commission proposed a common mechanism for the calculation of the corporate tax base, the consolidation of the tax bases incurred in the different Member States and the subsequent allocation of the consolidated tax base between the Member States (formulary apportionment). The system envisaged by the European Commission has already been introduced by the world highly integrated economies, like the United States of America and Canada on a domestic level, where the corporate tax base shall be also allocated between the states and the provinces based on the formulary apportionment method.*

Key words ● *Tax base harmonisation, common tax base, consolidation, formulary apportionment*

Marko Mehle

Vnaprejšnji cenovni sporazumi – realnost za Slovenijo in izkušnje tujih držav

Advance pricing arrangements¹ – Slovenia reality and the experiences from abroad

POVZETEK ● Smernice OECD-ja² vnaprejšnje cenovne sporazume opredeljujejo v okviru smernice 4.124. Vnaprejšnji cenovni sporazum je opredeljen kot dogovor, s katerim se pred izvedbo povezanih transakcij določijo primerna merila (na primer metoda, relevantne primerljivke, pomembne predpostavke za prihodnje dogodke) za določanje transfernih cen za te transakcije v izbranim obdobju. Vnaprejšnji cenovni sporazum se začne na pobudo davčnega zavezanca in vključuje eno ali več povezanih oseb ter zahteva dogovarjanje z davčnim organom iz ene države ali z davčnimi organi več držav. Vnaprejšnji cenovni sporazum je lahko enostranski (dogovor med davčnim zavezancem in davčno upravo v eni državi), dvostranski (dve povezani osebi, dva davčna organa) ali večstranski (dogovor več povezanih oseb in davčnih organov iz več držav). Enostranski sicer sistematično ne rešuje problematike dvojnega obdavčenja, še posebej v velikih državah. Ne glede na to pa je enostranski vnaprejšnji cenovni sporazum za davčnega zavezanca še vedno zanimivejši, kot če ga sploh ne bi bilo. V Sloveniji je letos začel veljati in se tudi uporabljati Zakon o finančni upravi, ki v 11. členu določa, da Finančna uprava RS med drugim sklepa tudi vnaprejšnje cenovne sporazume. Vendar pa to še ne zadostuje za njihovo dejansko izvedbo v Sloveniji, saj še ni predstavljena natančnejša regulativa, ki bi podrobneje določala postopek sklenitve vnaprejšnjega cenovnega sporazuma med davčnim zavezancem in davčno upravo; pričakovati je, da bo le-ta predstavljena v letu 2015.

Ključne besede ● vnaprejšnji cenovni sporazumi, vnaprejšnji cenovni dogovori, transferne cene, metode za določanje transfernih cen, postopek skupnega dogovora

SUMMARY ● In the OECD guidelines, an Advance Pricing Agreement (APA) is defined under item 4.124 as follows: "An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time." An APA is initiated by a taxpayer and requires discussions between one or more associated enterprises, and one or more tax administrations. APAs can be unilateral (an agreement

¹ V okviru Smernic OECD-ja se za vnaprejšnje cenovne sporazume uporablja terminologija Advance pricing arrangements. V okviru pravne regulative v posameznih državah in tudi v okviru priporočil Evropske komisije pa se običajno uporablja terminologija Advance Pricing Agreement; odslej v besedilu APA.

² Smernice OECD za določanje transfernih cen za mednarodna podjetja in davčne uprave, 2010.

between an enterprise and one tax administration), bilateral (an agreement involving connected enterprises and two countries where they conduct business) or multilateral (where more than two tax jurisdictions are involved). A unilateral APA does not systematically avoid the problem of double taxation, especially in big countries. However, a unilateral APA might still be preferable to a taxpayer than no APA of any kind. Slovenia introduced the general provision for APA in Article 11 of the Financial Administration Act in 2014, but there is still no detailed regulation about the way of conducting an APA process between the Tax Administration and the taxpayer – this is expected to be introduced in 2015.

Key words ● Advance pricing arrangements, Advance pricing agreements, transfer pricing, transfer pricing methods, mutual agreement procedure

Blaž Pate, Jure Mercina

Problematika čezmejnega obdavčevanja dohodkov direktorjev – avstrijskih davčnih rezidentov

Issues of cross-border taxation of managing directors – tax residents of Austria

POVZETEK ● Dohodki davčnih rezidentov Avstrije (direktorjev v slovenskih družbah) imajo vir v Sloveniji, če fizično opravljajo storitve v Sloveniji ali če njihov dohodek bremeni slovensko družbo ali stalno poslovno enoto nerezidenta v Sloveniji. FURS meni, da je v teh primerih za določitev pravice do obdavčitve treba uporabiti alokacijsko pravilo iz 16. člena Konvencije. Na drugi strani avstrijski BMF vztraja pri uporabi splošnega alokacijskega pravila za dohodek fizičnih oseb iz 15. člena Konvencije. Različna interpretacija Konvencije v praksi lahko pomeni dvojno obdavčitev dohodkov direktorjev. Odpravo dvojne obdavčitve je mogoče doseči samo na podlagi postopka skupnega dogovora med Avstrijo in Slovenijo v vsakem posameznem primeru.

Ključne besede ● posameznik, nerezident, dohodnina, obdavčitev dohodka z virom v Sloveniji, konvencija o izogibanju dvojnega obdavčevanja (KIDO), plačila članom upravnega in nadzornega odbora, osebni prejemki, postopek skupnega dogovora

SUMMARY ● Income of Austrian tax residents, directors in Slovenian companies, is considered to have its source in Slovenia if their services are exercised in Slovenia or if a Slovenian company or a permanent establishment (PE) of a non-resident in Slovenia bears the costs of director's income.

According to the Slovenian Financial Administration, Article 16 of the double tax treaty shall be applied for allocation of taxing rights between Slovenia and Austria. On the contrary, the Austrian Federal Ministry of Finance (BMF) is of the opinion that conditions for the application of Article 16 are not met and, therefore, Article 15 shall apply. In practice, different interpretations of the treaty may result in double taxation of directors' income. Double taxation can be avoided only on the basis of a mutual agreement procedure between Austria and Slovenia presented by the taxpayer concerned in each individual case.

Key words ● Individual, non-resident, personal income tax, source based taxation, Double Taxation Treaty (DTT), directors' fee, dependent personal services, mutual agreement procedure

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Razvitost poslovodnega računovodstva v slovenskih podjetjih – informacije za odločanje pri kadrovski in proizvodni funkciji

Development of management accounting in Slovene companies – information for decision-making in human resource and production functions

POVZETEK ● V sestavku so predstavljene informacije, ki jih uporabljajo v slovenskih podjetjih pri odločanju pri kadrovski in proizvodni funkciji. Poudarek je dan predvsem poznavanju tistih informacij, ki so pomembne za poslovne odločitve pri posamezni funkciji. Tako je pri kadrovski funkciji analizirano poznavanje informacij o deležu stroškov dela v celotnem prihodku, o višini plač vodstva podjetja in politiki plač. Pri proizvodni funkciji so vključene informacije o poznavanju praga dobička in varnostnega količnika, dobičkovnosti proizvodov in racionalizacijskih ukrepov v podjetju. Postavljene so tudi nekatere teze o povezanosti med uspešnostjo podjetij in poznavanjem nekaterih informacij pri kadrovski in proizvodni funkciji. Preverjanje povezanosti je opravljeno z dvorazsežnimi preglednicami in t-preizkusom.

Ključne besede ● kadrovska funkcija, plače, proizvodna funkcija, prag dobička, varnostni količnik, prodajna funkcija, prodane cene, kalkulacije, dobičkovnost kupcev.

SUMMARY ● The article presents information used in Slovene companies for decision-making in human resource and production functions. Highlighted is the understanding of information significant for business decisions in each of those functions. In the human resource function, the author analyses the

management's understanding of information regarding the share of labour costs in total income, the salary and wage rates and the wage and remuneration policy. With regard to the production function, the understanding of information on break-even-point, margin of safety, product profitability and rationalization measures in the company have been addressed. In addition, some theses are presented about the relationship between a successful company and its understanding of information regarding the human resource and production functions. The analysis of the relationship with the use of two-dimensional spreadsheets and a t-test has shown that such interconnection exists.

Key words ● *Human resource function, salaries and wages, production function, break-even-point, margin of safety, sales function, sales prices, calculations, customer profitability*